

12 September 2024

Ms Sue Higginson, MLC
Chair, Portfolio Committee 7 – Planning and Environment
Parliament House
Macquarie Street
Sydney NSW 2000

By email: PortfolioCommittee7@parliament.nsw.gov.au

Dear Ms Higginson,

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

The National Trust of Australia (NSW) welcomes the opportunity to provide comments on the Inquiry into the NSW Biodiversity Offsets Scheme.

The National Trust understand that the scheme has been largely ineffective in protecting the natural heritage of NSW, the biodiversity of which is now considered to be in a state of crisis. We note the words of Ken Henry in his *Statutory Review of the Biodiversity Conservation Act 2016* that “despite everything that has been achieved in (the past) five years, the natural environment is at greater risk now... today, we can have even less confidence that the natural environment will continue to be able to provide the flows of essential ecosystem services and environmental amenity that would sustain well-being.”

The National Trust recommends that the following three core issues be addressed when considering the integrity of the Biodiversity Offsets Scheme and effective environmental management into the future:

- 1. Mitigation** – to be effectively prioritised in the hierarchy system of the offsets scheme
- 2. Resourcing and information** – to be made available to effectively implement and manage the scheme
- 3. Accountability of data** – to be mapped for effective measurement of the scheme’s success

National Trust history of environmental advocacy

The National Trust is the state’s oldest and most respected heritage organisation, operating with a vision to bring the heritage of New South Wales to life for future generations. Since its inception in 1945, the Trust has had a long history in promoting the fundamental importance and role of a healthy and vibrant natural environment to the social, cultural and economic wellness of our community.

For close to 80 years, the National Trust has had a constant and “hands-on” approach to the conservation of natural heritage. In its earlier years, prior to the creation of the National Parks and Wildlife Service, the Trust acquired several bushland properties commencing in 1953 with its first property, Montague Island off Narooma. This was followed by the Bantry Bay Reserve in 1961, and Hawkesbury Reserve at Brooklyn in 1963. Since the 1950s we have advocated for various environmental issues, including the establishment of National Parks, flora and fauna reserves, against logging and mining in sensitive areas, and of course the destruction of important elements of our natural environment for development including Myall Lakes and Jarvis Bay.



The Trust continues to directly care for the natural environment through its Bushland Management Services, established in 1976, which was a world first for local council contracting the National Trust to regenerate and restore native bush land in urban areas. We continue to advocate for the conservation of natural heritage of NSW.

National Trust position on the NSW Biodiversity Offsets Scheme

The National Trust has previously written to the Portfolio Committee No. 7 regarding the earlier Inquiry into the Integrity of the Biodiversity Offsets Scheme (BOS) in 2021. We remain deeply concerned that in the three years that have elapsed since the last enquiry, few visible changes have been made to enact the scheme more effectively. In reviewing our prior submission, we find that many of the comments made by the National Trust remain relevant when again considering the Biodiversity Offsets Scheme in 2024.

The National Trust understands that the BOS, which was established under the *Biodiversity Conservation Act 2016*, “provides a mechanism to avoid, minimise and offset the impacts of development and some types of clearing on biodiversity in NSW”.¹ There is a clear and simple hierarchy in place in order to guide developers and other proponents on ‘how to avoid, minimise and calculate offsets’ when planning large scale environmental changes.

However, the Auditor General’s Report into the *Effectiveness of the Biodiversity Offsets Scheme* (The Report) in 2022 was incredibly damning of the scheme, noting that 50% of the threatened species in NSW will be extinct within the next hundred years without effective biodiversity management. The Biodiversity Council of Australia states that ‘declines are on-going and accelerating’ and ‘catastrophic losses are occurring’ noting that 144 new species were declared under threat last year, which is five times more than the yearly average. Similarly, the NSW Government has also recently (July 2024) claimed that the state’s biodiversity is in a state of crisis. It is clear that the Biodiversity Offsets Scheme is not effectively working.

The National Trust notes the following core issues relating to the Biodiversity Offsets Scheme, as indicated by the Auditor General’s Report:

Mitigation should be the priority

The hierarchy clearly states the priority of the scheme is to AVOID the loss of biodiversity before considering minimising or offsetting as an option. However, the system appears to be operating in reverse, with offsets considered the default. The National Trust notes that the report states that “around 90% of demand cannot be matched to credit supply”. This demand is so high in part due to the lack of effective implementation of the hierarchy.

The National Trust reiterates our statement in the previous submission that we concur with the EDO recommendations that “given the significant challenges in achieving genuine biodiversity outcomes through offsetting, it should only be allowed in limited circumstances, in line with best practice science-based principles.” The principles are:

- Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts
- Offsets must be based on the ‘like for like’ principle (not located in completely different locations)
- Legislation and policy should set clear limits on the use of offsets
- Indirect offsets must be strictly limited
- Offsetting must achieve benefits in perpetuity
- Offsets must be designed to improve biodiversity outcomes
- Offsets must be additional
- Offset arrangements must be legally enforceable
- Offset frameworks should build in mechanisms to respond to climate change and stochastic events.

¹. <https://www2.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme>



Resourcing and management of the program

Effective mechanisms have not been implemented to effectively manage the BOS. The Auditor General's Report states that "The Department of Planning and Environment has not effectively designed core elements of the NSW Biodiversity Offsets Scheme. DPE did not establish a clear strategy to develop the biodiversity credit market or determine whether the Scheme's operation and outcomes were consistent with the purposes of the *Biodiversity Conservation Act 2016*".

The National Trust notes that the scheme has not been effectively implemented, with a lack of resourcing for employment, and without mechanisms for data collection or mapping. The scheme has also been without effective communication or information for participants (on both ends) to understand the market system.

Measurables and accountability

The National Trust notes that the Biodiversity Offsets Scheme has not been measurable by any certain terms, and that the first key finding in The Report was that "DPE has not clearly articulated goals and performance measures for the Scheme and how these are expected to contribute to biodiversity outcomes in line with The Act".

Despite covering close to 1000 assessments, the DPE does not have information readily available as to whether developers are meeting their offset obligations, nor does it maintain a public register of biodiversity credits. This is critical. The Report also notes that 90% of Biodiversity Stewardship Agreement sites do not contain the appropriate ecological monitoring requirements, and therefore cannot measure whether the offset sites are successful in achieving the requirements for biodiversity loss.

The National Trust questions how this scheme can be considered in any way effective when there are so few measurable outcomes by which to even consider its success (or lack thereof). The initial act of "offsetting" is simply not enough, when it is the intention of such works to provide continuing benefits for lasting development – ongoing care and maintenance of our environment is critical, with ongoing care and management of offset sites a core part of any scheme.

Intergenerational Equality

The *Biodiversity Conservation Act* and its objective must be based on an understanding and acceptance that each generation is a trustee for the generations to follow, ensuring that the inherited asset is passed on in better condition than when it was inherited. The Trustee generation must be alert to falling victim to creating aspirations/lifestyles that require the need to exploit resources that are harmful to the environment and the future generation.

We note that the purposes of the Act are required to be consistent with the principles of ecologically sustainable development –the definition of which specifically includes "inter-generational equity—namely, that the present generation *should ensure that the health, diversity and productivity of the environment are maintained or enhanced* for the benefit of future generations." The Act has failed this requirement.

Summary of our Submission

In recent years, despite the new reform package, NSW has seen a significant increase in rural land clearing in addition to impacts from drought, bushfire, floods and climate change. Despite serious concerns raised around relaxed biodiversity offsetting rules, ongoing koala policy debates, multiple reports and parliamentary inquiries raising concerns about the regulatory framework in NSW, little has been done. The existing regulatory framework has not halted, reversed or healed our natural environments and without significant change, they are unlikely to.

As enunciated by Dr Ken Henry AC in the Foreword to the Review's Consultation Paper:

Biodiversity sustains human life. Our quality of life, our sense of well-being, and the opportunities we have to lead lives of our choosing are tied inextricably to the condition of the natural environment. In the state of New South Wales, we are fortunate to have those choices.



The good news is that we do have the skills, in NSW, to do what needs to be done. The review of the Biodiversity Conservation Act provides a window of opportunity to align policy and institutional settings in NSW with ambitious national and global biodiversity targets, and achieve a 'nature positive' future that ensures that future generations will be given the opportunity to be even better off than we are.

The National Trust maintains that offsets must be the last, rather than the first, resort to the biodiversity crisis in NSW. The best way to repair damage to our biodiversity is to not lose it in the first place. We must avoid and mitigate/minimise before we move to any desire to offset, and when we do offset it must be in a meaningful, effective and accountable way. The current system however appears to be operating in reverse, with the default mechanism set as offset.

We hope that this inquiry and subsequent Bill can help effect the necessary change that has been so clearly enunciated by multiple parties in relation to biodiversity offsets in NSW.