

Submission to the NSW Government

Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016

28 June 2016

WHO WE ARE

AUSTRALIA'S BIGGEST INDUSTRY



BIG JOB CREATOR



The Property Council of Australia is the leading advocate for Australia's biggest industry – property.

The Property Council champions the interests of more than 2200 member companies that represent the full spectrum of the industry, including those who invest, own, manage and develop in all sectors of property. Creating landmark projects and environments where people live, work, shop and play is core business for our members.

Our industry represents one ninth of Australia's GDP (the largest of any sector), employs 1.1 million Australians (more than mining and manufacturing combined) and generates \$72 billion in tax revenues to fund community services.

EXECUTIVE SUMMARY

The Property Council of Australia holds serious concerns about the impact the NSW Government's proposed reforms of biodiversity legislation will have on housing supply and affordability.

The analysis provided in this submission is at a high level and seeks to identify the strategic consequences of the proposed changes. Making specific recommendations is made problematic by the absence of;

1. Draft regulations that set a biodiversity offsets scheme threshold.
2. Draft regulations that set a biodiversity offsets calculator.

The Property Council Of Australia will make further submissions to the NSW Government with specific recommendations when greater certainty is available on the operation of the proposed policy settings.

STRATEGIC CONSEQUENCES

- The proposed legislation's purpose/objectives do not seek to foster the significant social and economic benefits that result from the use of land.
- The proposed legislation will establish a **compulsory** biodiversity offsets scheme, replacing existing voluntary schemes.
- The new biodiversity offsets scheme will introduce a regime generally requiring **full** offsetting for urban development at a development application stage. This is a marked change to the existing arrangements.
- The new offsetting arrangements do not protect development proponents from double dipping by consent authorities. That is, fully offsetting impacts under the proposed legislation does not prevent those issues affecting a merit assessment of a development application. This is in sharp contrast to the current voluntary scheme.
- There is a new wide power to require offsets in any development consent condition.
- There is a new blanket prohibition on development when it would cause serious and irreversible impacts on biodiversity values. There is potential for this to have wide implications (if it is not narrowly defined).

- Traditional approaches to the rezoning process may no longer be appropriate under the new regime. Developers dealing with large parcels with environmental attributes will now be incentivised to seek the biodiversity certification of land as part of the rezoning process. However, there are issues with the proposed regime.
- There is an excessive reliance mapping and tools adopted by the OEH. The opportunities for flexibility that exist in comparable schemes have not been adopted.
- The replacement of 'critical habitat' with the broader 'areas of outstanding biodiversity value' may create uncertainty about the ability of developers to act on some approved projects.
- There is some uncertainty surrounding the arrangements for the modification of approved development.
- A biodiversity assessment report lapses if it is not extended before the lapse date. This is certain to create problems.
- There will be duplication between a species impact statement and a biodiversity development assessment report.

A BREACH OF PLANNING PRINCIPLES

Mandatory refusal displaces the longstanding principle of ecologically sustainable development

The reforms require councils to refuse development if they form the opinion that there are 'likely serious and irreversible impacts on biodiversity values'. The introduction of mandatory refusal at the discretion of a local council is a breach of established planning principles.

Decision making about development has always required the integration of economic, social and environmental considerations.

The mandatory requirement for councils to refuse development on environmental grounds will elevate environmental concerns above all others.

This will be the first time the principles of ecological sustainable development have been disturbed and environmental concerns given priority over all other matters.

The reforms undermine strategic planning

It makes no sense that permissible development in an identified growth area should be subject to mandatory refusal at the development assessment stage.

Why zone the land for a particular use if the likely impacts on biodiversity are then deemed unacceptable at the DA stage?

This proposal contradicts all of the planning reforms championed by the Department of Planning and Environment over the past 5 years that emphasise upfront certainty and a greater focus on strategic planning.

The reforms increase uncertainty for investors, rendering strategic planning and zoning a useless exercise.

Decisions about biodiversity impacts and land use compatibility should be made upfront at the strategic planning and zoning stage (before a significant investment of time and money is made) rather than at the DA stage.

Mandatory biodiversity offsets will exacerbate the housing affordability crisis.

Expanding requirements to obtain specialist biodiversity reports and offsets for biodiversity conservation will add to the expense of development finance and increase the cost of housing. The problem will be compounded in regional areas.

Biodiversity offset discounts should apply in locations identified for growth to ensure development can proceed in the areas the government has earmarked for expansion.



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