

9 June 2026

Submission on the National Environmental Standard for Environmental Offsets

The Nature Conservation Council of NSW (NCC) is the state's leading environment organisation. We represent over 200 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW. We acknowledge that we live and work on the land of First Nations. This land has been cared for since time immemorial by Traditional Owners, whose sovereignty was never ceded. We pay our respects to the Traditional Owners past and present of the many Countries within so-called New South Wales.

NCC welcomes the opportunity to provide the Australian Government's Department of Climate Change, Energy, the Environment and Water feedback on the draft National Environmental Standard for Environmental Offsets (**Offsets Standard**).

Protecting biodiversity in NSW is key to NCC's mission. Alongside the other state and territory conservation councils, we welcomed many of the changes made in the 2025 reforms to the *Environmental Protection Conservation and Biodiversity Act 1999* (**EPBC Act reforms**), while expressing concern that the effectiveness of these reforms will rely on the quality of association legislation and delegated legislation.

Reform of our national environmental laws was urgently needed, as across Australia we are facing the devastating impacts of clearing the last remaining habitat for threatened species. [NSW has felt the brunt of these impacts](#), with the NSW State of the Environment Report released last year describing almost all indicators of the health of our life support systems as 'getting worse'. It stated that our distribution of land mammals is shrinking, 36 more animal and plant species have been listed as threatened with extinction since the last report, and tens of millions of fish have been killed in fish kill events.

Providing feedback on individual elements EPBC reform is made difficult by the scattered rollout of legislation, regulations and policy positions. These reforms will only achieve their collective goal of protecting nature if the framework is consistent and the different pieces of legislation work cohesively together. **The Offset Standard should not be approved in isolation, rather a thorough analysis of how the whole framework will interact should be undertaken before individual elements are finalised.**

Removal of the requirement to meet the Outcomes and Objectives

Similarly to the Draft National Environmental Standard for Matters of National Environmental Significance, the draft Offset Standard includes new subclauses that remove the requirement that the Outcomes and Objectives be achieved by a proposed offset. Instead, now the offset activity must only be consistent with the vaguely worded Principles. This is a severely weakened standard than what was in the originally published 2025 draft of the Offset Standard.

Strong and enforceable Objectives and Outcomes were recommended in the 2020 Independent Review of Australia’s environmental laws (the Samuel Review) to create outcome-driven goals that strengthen environmental standards. The Samuel Review also recommended that clear and legally binding goals be set for protecting nature. These new subclauses providing that the Outcomes and Objectives can be ignored so long as the Principles are met are in contradiction to these recommendations and the overall goal of the EPBC reforms of providing real protections for nature.

These new subclauses should be removed from the draft Offset Standard so that the Outcomes and Objectives must be met. If the subclauses were to remain, at the very minimum the wording of the Principles must be strengthened to ensure consistent compliance in the decision-making process. This rewording should ensure the Principles are outcomes-based and enforceable, such as replacing recommendations of “should” with “must”.

Weakened principles and timeframes in the draft Offsets Standard

The process outlined in the draft Offset Standard that set the parameters for offset activities have been noticeably weakened from the previous 2025 draft.

Key changes of concern to NCC include:

- A reduced time period for securing and maintaining offsets, with no perpetuity requirements for permanent impacts.
- The removal of the requirement that alternative methods of addressing residual significant impacts be explored if the proposed offset is not likely to achieve required outcomes.
- The removal of the requirement that the offset activity should be able to be commenced at the time the relevant decision is made.
- The removal of specific information about the types of activities that cannot be considered additional.
- A weakened evidentiary requirement for establishing a high degree of certainty or confidence.

NCC submits that these changes should be at least reverted to their previous versions so that protections for nature are not weakened in the updated draft Offset Standard.

‘Required Net Gain’ definitions

NCC firmly believes that any environmental offset should only be allowed if the outcome leaves the environment in a better position than it was prior to the activity. Improvement in the biodiversity values of an offset area is essential to ensure no net loss in biodiversity and a net gain in those values across both the impact and offset sites. Biodiversity offsets must maintain or improve biodiversity and environmental outcomes, including the quality of the water and soil.

The draft Offset Standard uses the term ‘required net gain’ as the prescribed test for whether the Offset Standard has been met. It states that the ‘required net gain’ should be consistent with section 527K of the EPBC Act in that an action passes the test if by complying with the conditions of the approval it results in a net gain as prescribed by regulation, or if the Minister is satisfied it does.

This does not adequately define ‘required net gain’, and the associated regulations have not been released for feedback meaning there is little information available to determine if this test is sufficient for protecting nature. The Offset Standard must recognise the limits of offsetting, in particular that some protected matters cannot be appropriately offset, such as habitat for endangered and critically endangered species.

NCC submits that a clear definition for ‘required net gain’ must be released for feedback, as the efficiency of the Offset Standard at protecting nature cannot be determined without this understanding. NCC recommends that the definitions and framework for ‘required net gain’ should include:

- Requirements of no-go zones for areas of irreplaceable biodiversity value, such as Koala habitat.
- An exclusion for mine rehabilitation sites to be used as offsets, as protection of biodiversity value should already be required as part of the mine's conditions of consent.
- Additionality provisions that mandate ‘net gain’ being additional to existing biodiversity requirements.
- No allowance for supplementary measures being permitted instead of direct offsets, such as research and education.

If the test of net gain is left ambiguous and open to the direction of the Minister of the day, it leaves the Offset Standard open to less favourable interpretations by potential future governments.

Restoration Contribution Payments

The draft Offset Standard still allows for proponents to avoid offset requirements by making restoration contribution payments in lieu of direct offsets. Concerningly there is also a lack of limitations included on what types of activities can be offset by restoration contribution payments, and under what circumstances.

The Restoration Contributions Holder is also not required under this draft to act consistently with the Offset Standard when making decisions on how the funds shall be used, only that they must have regard to the Offset Standard. There are no clear mechanisms for enforcement or compliance on how the Restoration Contributions Holder spends or invests the funds.

NCC is concerned that allowing proponents to make restoration contribution payments with only the vague promise of the payment being used down the line to protect nature in a way the only regards the Offset Standard will undermine the entire offset framework. With new animals and plants being listed as threatened or endangered every year and populations rapidly declining towards extinction, every bit of habitat is precious. Destruction of habitat displaces native species and decreases the health of the landscape. Breaking habitat connectivity means genetic diversity will be reduced and populations will continue to suffer.

Payments to a fund cannot be seen as a fair trade-off for genuine offsets that provide immediate protection for nature. NCC recommends that the following principles be included as requirements for the restoration contribution payments system:

- Upfront payments for biodiversity offsetting must only be permitted where it can be demonstrated the payment will result in the identification and protection of appropriate offset sites before development commences.
- Restoration contribution payments should only be permitted under strict circumstances, which should be clearly outlined in the Offset Standard or associated regulation.
- Genuine consideration of offset options must be undertaken prior to requesting to make a payment, so that payments are only made as a last resort.
- The Restoration Contributions Holder must act consistently with the Offset Standard when deciding on how the funds should be distributed, with enforcement mechanisms put in place to ensure compliance.

Thank you for the opportunity to make a submission. Your contact person at Nature Conservation Council of NSW for any further discussion or questions is Government Relations Manager, Kashmir Miller, at kmiller@nature.org.au.



Nature Conservation Council
The voice for nature in NSW

Sincerely,

Jacqui Mumford
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Nature Conservation Council of NSW