



4 August 2023

Biodiversity Market Monitoring Review  
Independent Pricing and Regulatory  
Tribunal  
PO Box K35  
**HAYMARKET POST SHOP NSW 1240**

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Our Ref: DOC 2023/120051

## **BIODIVERSITY CREDITS MARKET IN NSW REVIEW**

Cessnock City Council refers to the Independent Pricing and Regulatory Tribunal (IPART) Monitoring the Biodiversity Credits Market in NSW Issues Paper and provides the following submission for consideration in IPART's review.

### Q1: What contribution should the biodiversity credits market make to achieving the Biodiversity Offsets Scheme's purpose?

The biodiversity credits market should provide a relatively modest contribution to the overall purpose of the *Biodiversity Conservation Act 2016* (s1.3) (BC Act). The objective of the biodiversity credits market was to establish a market-based mechanism through which the biodiversity impacts of development and land use change can be offset at landscape and site scales. However, it must be acknowledged that the wider purpose of the BC Act has not been effectively identified by the NSW State Government in the implementation of the biodiversity reforms. While the Biodiversity Assessment Method (BAM) refers to a no net loss of biodiversity there is no effective system in place, including within the biodiversity offset scheme or credit market, to ensure this objective is monitored or met.

The Issues Paper notes an objective of the Biodiversity Offsets Scheme is to form a biodiversity credits market to create a price signal of the true cost of biodiversity loss from development. The establishment of the biodiversity offset credit market has not been reflective of biodiversity value, in which the scheme has not established any definable value or metric, but is rather identified by economic market or development forces only. The existing location of infrastructure for development is prioritised over habitat value and is highlighted by continuing loss of threatened ecological communities (TEC) near existing urban areas. There is no metric established for the value of these TECs or threatened species or whether continuing loss can be sustained. The areas of these TECs are continuing to decline and with no metric established i.e what area needs to be retained to ensure ecological integrity or continuance of habitat quality, then TECs will continue to be lost. This is highlighted in the Lower Hunter where TECs such as Lower Hunter Spotted Gum Ironbark Forest continues to be removed due to development pressure, but credits for this TEC are not being generated as the development potential of this habitat is higher than any monetary value within the offsetting credit market.

### Q2. Do the outcomes in Table 3.1 accurately depict a well-functioning biodiversity credits market? What other factors should we consider?

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- Table 3-1 identifies the finite availability of land with biodiversity value within the supply and demand cycle. This finite supply, particularly for certain habitat types, needs to be clearly articulated for credit buyers as some habitat types are nearing non-supply due to scarcity of the habitat. The Issues Paper acknowledges a majority of credit types have not been purchased due to low demand or minimal development within similar habitat types. Council suggests that due to the disparity in credit type demand that IPART review the utilisation of the Biodiversity Conservation Fund and variation rules within the system that potentially undermines the effectiveness of the biodiversity credits market.
- Variation or suitable substitute of offset obligations lack transparency within the biodiversity offsetting system particularly after the approval of development by a consent authority. This system needs to be tightened to ensure transparency within the market.
- The monetary obligation for on-going management of biodiversity stewardship sites needs to be identified appropriately, particularly in response to economic forces such as inflation for goods and services.
- Table 3-1 identifies that prices for credit types should be consistent and stable. However, this appears to be inconsistent with the identified market driven system in which the biodiversity credits system was designed.
- Transparency around transfer and retirement of credits is minimal and needs to improve within the system.

Q3. What are the main challenges facing the credits market? What evidence is there that might suggest the market is not working as effectively as it should be?

One of the main challenges for the biodiversity credit market is the disconnection of development approval under the *Environment Planning and Assessment Act 1979* (EPA Act) and the credits market itself. Approvals are continuing to be issued with assigned credit obligations that are not available within the credit market or even on the horizon of market entry. These approvals are being issued on the assumption of market availability for 'in-demand' credits, but economic forces outside of the credit market are limiting supply due to development potential of habitat areas (see Q1). This disconnection places downward pressure on variation rules and access to the biodiversity conservation fund, which are administered by the same department that administers/regulates the credit market, resulting in significant transparency issues within the market.

The transparency of the biodiversity credit market is also significantly impacted by intervention by the market administrator which can result in distortion of credit prices and/or supply. Council suggests that the market intervention within the biodiversity credit supply system should be explored in terms of market impact and alignment with approval systems under other legislative acts that have conflicting objectives to the BC Act.

Q6. How clear are the biodiversity credits market rules and objectives? Is there appropriate oversight of brokers and other intermediaries

The objectives of the biodiversity credits market are not clearly defined and there appears to be minimal regulatory oversight of broker/intermediary activity within the credit market.

Q7. What other information should we collect that would tell us how the market is performing?

- Whether credit seller retirement obligations are being met within the biodiversity stewardship agreements.
- Effectiveness of management actions in maintaining or improving the biodiversity values of biodiversity stewardship sites and regulatory action if non-compliant.

Q8. What affects your decision to enter a Biodiversity Stewardship Agreement? If you have inquired or applied, but not proceeded with an agreement tell us why

- Capital or upfront cost of establishing a biodiversity stewardship agreement before credit can be generated.
- Even if credits are generated there is no commitment/guarantee that credits will be purchased resulting in holding of land for no gain.
- 20% reduction in credit generation for public authorities.

If you require any further information, please do not hesitate to contact me on

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Yours faithfully

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