



4 August 2023

Biodiversity Market Monitoring Review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
SYDNEY NSW 1240

ipart@ipart.nsw.gov.au

Dear Sir/Madam

Subject: Submission - Monitoring the NSW Biodiversity Credits Markets

Thank you for the opportunity to provide feedback on the Monitoring the Biodiversity Credits Market in NSW Issues Paper. Lake Macquarie City Council staff have reviewed the issues paper and offer the following comments.

Local governments are important participants in biodiversity assessment, conservation and land use regulation and have a strong interest in the provisions and operation of the *Biodiversity Conservation Act 2016* (BC Act) and the biodiversity credits market established by the Act.

Key roles for local government are:

1. regulatory and consent authority in relation to development and vegetation under the *Environmental Planning and Assessment Act 1979* and *Biodiversity Conservation Act 2016*, including the determination of offset credit requirements
2. local land use planning authority implementing land use zoning and local vegetation and biodiversity policy, including strategic planning for biodiversity
3. public land management authority and potential biodiversity offset provider
4. development proponent for projects impacting on biodiversity, including those requiring biodiversity offsets.

Lake Macquarie City Council is a local government authority in the Lower Hunter with a population of approximately 217,000 people and native vegetation comprising around 58 per cent of the local government area (LGA). The LGA provides habitat for an estimated 107 listed threatened species, and 12 threatened ecological communities. The city is also subject to ongoing development, which is predicted to result in the clearing of around 7,000 ha of native vegetation over the next 25 years.

Our Ref: D11170488

Council has a strong record in protection of biodiversity and is a leader in considering biodiversity in our strategic land use planning and development assessment framework. We are also responsible for managing biodiversity offset land, including stewardship agreement areas, and other Council land. Council has been a participant in the biodiversity offsets market both as a purchaser and supplier.

This submission outlines matters Council believes are important to consider in relation to the monitoring and operation of the NSW biodiversity credits market. The focus is on the general approach to monitoring and review of the market, with specific issues for consideration including:

1. purpose of the offset credits market
2. whether the offset credit market supports no net loss of biodiversity and facilitates the provision of local biodiversity offsets.
3. Integrating the credit market with strategic conservation and land use planning
4. information used to assess credit market performance
5. practical issues for local government in participating in the offset credit market.

Purpose of the offset credits market

The Biodiversity Offsets Scheme and its legislative and methodological underpinning does not compensate for loss of all biodiversity, focusing only on threatened species and threatened ecological communities. Therefore, it only functions to partially offset biodiversity and functional natural processes. Much loss of biodiversity continues without effective offsets.

The intent of the offset credits market has never been clearly defined as recognised in Section 3.1 of the Issues Paper. The purpose could be to put a realistic price on the cost of destroying and rehabilitating biodiversity based on restoration and management of biodiversity land, or alternatively to provide adequate compensation for biodiversity loss that achieves a 'no net loss' standard, or to facilitate development with unavoidable biodiversity impacts.

It is questionable whether it is realistic to expect to create a 'functioning' offset market when biodiversity is unique, dynamic, and rapidly declining. Ideally, achieving the purposes of the BC Act that established the Biodiversity Offset Scheme and market would best be achieved if prices are so high that biodiversity loss is avoided. Measuring the true cost of biodiversity loss is inherently problematic – this can be based on use value, replacement cost, irreplaceability, ecosystem services lost, or other measures.

The NSW Biodiversity Credits Market should be monitored and assessed against its effectiveness in achieving the purpose of the BC Act, as stated in Section 1.3, rather than just its contribution to achieving the purpose of the Biodiversity Offset Scheme. Resources allocated to the Biodiversity Offset Scheme should be proportionate to its ability to achieve the purposes of the BC Act rather than the scheme being an end in itself.

No net loss of biodiversity and provision of local offsets

The BC Act and Biodiversity Assessment Method (BAM) seek to achieve a no net loss of biodiversity standard. However, in practice it appears that this is not being achieved.

Lake Macquarie City Council and some other local government authorities have a strong preference for the provision of local biodiversity offsets. This is desirable from both a biodiversity conservation and community perspective, although is not facilitated by the operation of the credits market which is directed solely by price and short-term availability of credits.

Experience with the operation of the Act also shows that the provision of offsets from development is not being provided within the local government area. Local biodiversity offsets are preferred by Council to achieve our strategic objectives for the benefit of our local community. Offsetting close to the impacted site also has important biodiversity benefits.

An important issue is the availability of local offsets within the market. Local governments are exploring opportunities to incentivise the provision of local offsets, and there is also the potential for them to enter the market as participants in ways that may influence market prices and competition. To achieve local strategic planning objectives, it may be desirable for local governments to participate in the credit market through advanced purchase of biodiversity credits with a view to providing local offsets over the long term.

The offset credit market and strategic conservation planning

It is important to consider the offsets market within a strategic land use planning context. Lake Macquarie City Council's focus for over a decade has been on resolving biodiversity issues at the strategic planning and rezoning stage of the development process. However, the biodiversity assessment and approval process in the BC Act and the creation of biodiversity credits is undertaken at the development application stage. This delay in the identification of credit requirements and pricing is problematic, with the operation of the credits market not supporting the achievement of long-term strategic land use planning objectives.

As a site-based approach, the BAM fails to consider broader strategic conservation and land use planning objectives. This significantly limits its long-term effectiveness. It would be helpful for the BAM to specifically require consideration of the landscape scale planning context in both identification of impacts and offset credit requirements and the creation of credits through the establishment of stewardship sites.

Figure 3.1 in the Issues Paper should include an additional desired outcome for a well-functioning biodiversity credits market, which is to 'support strategic land use and management objectives'. These objectives include protecting high value biodiversity in conservation reserves in appropriate locations, maintaining landscape scale biodiversity connectivity, achieving local and regional targets for protecting biodiversity, and supporting long term sustainable land use settlement.

Council would like to see upfront offsets and credit provision, rather than offsets provided after development occurs. This represents a fundamental shift in approach and is an additional issue that should be recognised in Section 4 of the Issues Paper.

It is important to note that the timeframes for establishing stewardship sites do not match the timeframes for development or projects. It is therefore difficult to achieve a balanced outcome on a site where offsets realistically balance biodiversity impacts.

Information used to assess credit market performance

The measures identified in Section 5 of the Issues Paper are important to support understanding of how the market is performing. However, it is unlikely that the information will play a significant role in assisting market participants to navigate the market more effectively or provide a clear view on how well the market is achieving its objectives.

It is suggested that information on the market should also be collected spatially to evaluate the extent to which the market is supporting the provision of local offsets (i.e., within the same local government area as the development). A further heading could be included to assess market performance, such as 'achievement of strategic conservation planning objectives'. This includes the extent to which the offset credits market support no net loss of biodiversity, achieve local and NSW strategic conservation targets, and protect against serious and irreversible impacts on biodiversity.

Information or metrics used to assess the market should relate to the purpose of the BC Act as the market is the only tool available to achieve the legislated purpose of the Act.

Data availability

The lack of availability of market prices for credits makes it extremely difficult to plan projects and provide cost estimates until very late in the development process. A development application must be lodged before a proponent can ascertain relative prices and costs for options particularly payment into the Biodiversity Conservation Fund.

Sourcing suitable credits on the market and subsequently transferring credits is a complex and time-consuming process that adds cost, risk and delay to projects, including public projects. Often credit owners do not respond to requests for their sale price within a reasonable time. The reverse auction process of the Credit Supply Taskforce is not suitable for project planning.

Practical issues for the operation of the offset credit market

There are many practical issues influencing the offset credit market including:

- Complexity of this system, which consumes resources particularly from both an administrative and proponent perspective.
- Role of approval authorities in determining offset credit requirements, including the influence of approvals in creating demands.
- Thresholds for entry into the BOS are arbitrary and inconsistent (based primarily on standardised land zoning and minimum subdivision size) rather than actual biodiversity values. For example, an inappropriate outcome of this is that more land can be cleared of native vegetation in conservation zones than in urban zones before the BOS applies.
- Importance of concurrently considering biodiversity offsets and carbon emissions to determine more realistic pricing of loss of native vegetation.
- Extent and importance of 'off market' credit transactions.
- The market is strongly influenced by the lack of consideration given in design and approval of developments to avoid biodiversity impacts. In practice, offsetting has become the default position.

- The preferred option for many developments is to make payments to the Biodiversity Conservation Trust and Fund, thereby creating largely a monopoly buyer for many credit types.
- Historically, offset credit prices are not high enough to cover long term land stewardship costs.
- In some cases, offset credit prices are so low that they do not support avoidance of loss of threatened ecological communities and threatened species and their habitats.
- Administration of the scheme is spread over several government or quasi government departments making it difficult for proponents, the community and landowners to navigate the system.
- The relative equivalence between credits generated under the former Threatened Species Conservation Act and the BC Act is very complex and the reduction in the number of older credits continue to be an issue.

Recommendations

Council staff make the following recommendations for consideration in the biodiversity offsets market review:

1. The purpose of biodiversity offsets is to compensate for the loss of biodiversity, and to support the legislative objective to achieve no net loss of biodiversity values.
2. Metrics used to assess effectiveness need to be related back to the purpose of the BC Act.
3. Operation of the biodiversity offsets market is a secondary consideration compared to the legislative objectives to conserve biodiversity and natural ecosystems in the long term and to slow the rate of loss of biodiversity, threatened species and ecological communities.
4. Upfront provision of offsets in advance of development is preferable and is not supported by the current market.
5. An additional metric for evaluating market operation and performance should be included, to measure the extent to which strategic conservation planning objectives are achieved (such as native vegetation retention, support for local offsets, conservation reserve protection, habitat connectivity, or ecological restoration targets).

Detailed comments and responses to the issues paper focus questions are included on the following pages.

Thank you for your consideration of the above matters.

Should you require further information, please contact me on [REDACTED].

Yours faithfully

[REDACTED]

David Hughes
Director Built and Natural Assets

Detailed comments and responses to issues paper focus questions

1. What contribution should the biodiversity credits market make to achieving the Biodiversity Offsets Scheme's purpose?

The BC Act makes no reference to conserving biodiversity at the local scale in its purpose, yet local conservation planning is essential if state and national objectives are to be achieved, such as the Global Biodiversity Framework 30 x 30 target. The only mechanisms included in the Act that enables such area targets to be implemented at the local scale is through the operation of the credits market and the preparation of a Biodiversity Conservation Investment Strategy.

Lake Macquarie City Council has adopted a target of retaining 57.5 per cent of its land area with native vegetation and is working towards a strategic conservation planning approach that can be implemented in conjunction with Council's role as a land use planning authority. It is hoped that the offset credits market can support this objective.

The NSW Biodiversity Credits Market should be monitored and assessed against its effectiveness in achieving the purpose of the Biodiversity Conservation Act 2016 (BC Act) as stated in Section 1.3 rather than solely its contribution to achieving the purpose of the Biodiversity Offset Scheme.

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

An additional heading should be included in the Figure 3.1 table of outcomes of a well functioning market, namely to 'support strategic land use and management objectives'. These objectives include protecting high value biodiversity in conservation reserves in appropriate locations, maintaining landscape scale biodiversity connectivity, achieving local and regional targets for protecting biodiversity, and supporting long term sustainable land use settlement.

This additional outcome relates to biodiversity offset locations and characteristics that conform to a strategic regional biodiversity and conservation plan that recognises high biodiversity value areas and protects long term habitat connectivity requirements (for example, koala landscapes).

3. 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?

The main challenge for the credits market is that it is unlikely to be effective, as biodiversity is unique, site specific and changes over time. It should be regarded as capital, rather than a market product, as it is effectively irreplaceable and in serious decline.

The market is also subject to many risks and unknowns. Spatial and temporal variability suggest that achieving an efficient market will be inherently problematic.

The credits market needs to be complemented by other measures such as a conservation framework or plan with spatial outcomes focused on conservation of threatened species populations. For example, there are cases where rehabilitation of native vegetation in sensitive locations adjacent to development proposals would achieve a more positive outcome than the purchase and extinguishing of biodiversity credits.

Council is aware of several cases where credit prices have not been high enough to support or establish management of stewardship/biobank sites. Low credit prices have been a deterrent for Council in both establishing a stewardship site, and in using or selling credits already generated by the establishment of a biobank site.

4. What published information would help you buy or sell credits in the market more efficiently?

A simplified system and sorting by bioregion would assist, as would additional information on credit prices during the project planning stage.

5. Have you used a broker to buy or sell credits? Tell us about your experience.

No. Lake Macquarie City Council has never used a broker for offset credit trading.

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

Oversight of the market is unclear.

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

Performance of the market should consider the achievement of local and regional strategic planning objectives.

An additional metric for evaluating market operation and performance should be included, to measure the extent to which strategic conservation planning objectives are achieved (such as native vegetation retention, conservation reserve, habitat connectivity, or ecological restoration targets).

It is suggested that information be collected on how long credits have been available on the market and monitoring the lowest and highest prices over time. One low price sale can influence the future of a species making it unviable to establish a stewardship site and removing any incentive to avoid impact on the species.

Furthermore, ensuring credits on the public register are marked as available or not available is important. This is the case where the credit owner is intending to use them for its own projects and is often the case for public authorities.

Species rarity needs to be incorporated in a more tangible way into the scheme. There should be acknowledgement that credits should not be able to be generated for very rare species as loss of populations or individuals of these species does not meet the objectives of the Act. Serious and irreversible impact (SAIL) requirements are currently failing to do this. Trading rules need to be changed to protect these species if the purposes of the Act are to be achieved.

8. 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.

Lake Macquarie City Council has had the experience of seeking to establish a BioBanking site (equivalent to a stewardship site), but this was prevented due to the refusal of a mining lease holder to agree to the establishment of the site.

Council also conducted a feasibility analysis of purchasing a site that was strategically important for biodiversity with the intention of establishment of a BioBank site.

However (ignoring the purchase price) the management costs would not have been covered by the sale price of the credits at that time.

In a separate case, Council established a stewardship site, but this is not yet under active management because it was cheaper to purchase credits on the market than to retire the credits from its own site. In this example, significant time has lapsed between the original assessment of the site (when management actions were required) and the Total Fund Deposit (TFD) were determined, to the time when the site became actively managed. Due to the delay between passive management and active management, sites will change and may decline in condition. Combined with increased management costs over time (contractor and material price increases) and relatively common time delays there are likely to be insufficient funds in the TFD to effectively manage the sites by the time active management occurs.

The TFD required should be redetermined when the site becomes active to ensure management budgets are sufficient to achieve the management actions.

9. Have you wanted to terminate or vary an Agreement, or sell land under a Biodiversity Stewardship Agreement? What were the reasons?

Not applicable.

10. Have you found you could not sell credits at the price you need to manage your land under your Biodiversity Stewardship Agreement?

See comment in No 8. above.

There is a high level of uncertainty in the establishment of stewardship sites. This relates not only the price of the credits, but also whether they will be in demand and be able to be sold within a reasonable period of time.

The system disadvantages small projects as the resource intensiveness of purchasing credits and the total fund deposit threshold means owners prefer to sell large rather than small numbers of credits.

11. Do you have unsold credits under your Biodiversity Stewardship Agreement? Are you confident you will have adequate funding to carry out management actions under your agreement?

Council has created credits, although these are intended for internal organisational use only and not for sale. Management actions are not being undertaken on the land because not enough credits have been retired to trigger the total fund deposit and hence no total fund deposit has been made.

Sites under passive management often suffer deterioration of condition. This means that the agreed Stewardship or BioBank site management plan actions, and estimated costs will be severely underestimated and predicted biodiversity gains may not eventuate.

12. Have you found it difficult to find credits in the market? What were the reasons?

For some projects, credits have been very difficult to source. Lake Macquarie City Council experience with biodiversity offsets market is that credits may need to be purchased from multiple sellers, and it is easier to buy large numbers of credits (bundled) rather than small numbers. The market sales dashboard is not particularly helpful and some sales are 'off market' so actual prices are not known in practice.

Council has bought credits on the open market however, there is a confidentiality agreement around this sale hence prices cannot be disclosed.

13. Have you decided not to proceed with a development because credits were too expensive or not available?

No.

As indicated earlier, the price estimation of credits becomes available very late in the planning process. Inability to estimate these costs realistically adds time, risk and contributes to cost blowouts in public projects.