



Draft terms of reference for IPART to monitor the biodiversity credits market

Terms of reference

NSWMC is supportive of the terms of reference. This submission provides background on the intersection of mining with the biodiversity credit market.

The mining industry has long been supportive of initiatives that encourage the creation of biodiversity offsets by private landholders. A successful market for biodiversity credits, would potentially provide for greater strategic conservation gains from offsetting, as well as securing the long-term management of offset areas.

However, to date there has not been a functioning market for biodiversity credits in NSW.

Mining and biodiversity offsets

NSW mining companies are significant owners and managers of biodiversity offsets in NSW. Mining projects in the Upper Hunter Valley collectively own and manage an estimated 41,034 hectares of biodiversity offsets.¹

Our members have experience both as developers and owners of biodiversity offset sites and unique insights from both sides for the market.

While there has been a market-based biodiversity offset scheme operating in NSW since the introduction of the BioBanking Scheme in 2006, there has never been a market for the type and quantity of credits sought by mining projects. As a result, the industry continues to purchase and manage land for conservation to meet the offsetting requirements of project approvals.

There have not been a significant number of trades in regions where mining occurs.

Reasons for market failure

The barriers to an efficient market for biodiversity credits in NSW are many and complex. Some of these issues are being addressed by the Department of Planning and Environment and its Credit Supply Taskforce.

The Biodiversity Offsets Payment Calculator set an inflated price of credits which large scale developers, including mines and infrastructure providers, have not been willing to pay. Although the Biodiversity Conservation Fund Charge System does not have a public calculator, as quotes are sought, prices for credits will become known to the market. It is important that charges generated by

¹ Upper Hunter Mining Dialogue, Rehabilitation Principles and Commitments Annual Reporting, 2021, <https://miningdialogue.com.au/wp-content/uploads/2022/10/UHMD-Rehabilitation-Results-2021-Updated-annual-results-with-notes.pdf>

the Biodiversity Conservation Trust (BCT) for the Biodiversity Conservation Fund (BCF) are realistic and not inflated as this will continue the unrealistic expectation of landholders.

Complexity and upfront costs

Creating a Biodiversity Stewardship Agreement (BSA) is a very significant and complex commitment. It requires assessment conducted by expert ecologists, legal, financial and tax advice and expert land management advice. The extensive cost, time and expertise required for the preparation of the BSA application documents is a barrier for small landholders.

Guidelines published by the BCT are very detailed and extensive in their requirements. Smaller landholders (with limited financial backing) may not be able to meet all requirements. Banks, solicitors, and others who traditionally act as advisors to small landholders are not well versed in the process and will struggle to assist clients.

It is acknowledged that the Credit Supply Taskforce is aiming to address some of these issues, however as set out below, it has limitations in the support it is able to provide.

Complexity of managing a BSA site

Landholders are likely to require input from multiple specialists (weed contractors, fire specialists, etc) to support the management plan, adding very significant cost and complexity to the ongoing management of the BSA site. Negotiation of required land management actions is a lengthy and complex process even with expert advisors.

The management plan is a complex document, and experience to date indicates that BCT has high expectations for land management commitments. It may be difficult for smaller landholders to interpret the requirements of the plan and to manage contractors to implement it. A stewardship site project manager may need to be engaged to oversee the implementation of the plan, requiring additional cost to be added to the Total Fund Deposit.

It is common for management requirements not to consider historical farm practices and limit any ability for future innovation. This is a significant disincentive for farmers who want to continue to farm alongside a BSA.

Most private landholders will be unused to a government agency monitoring and having such a significant compliance role in their land management. How the BCT will enforce compliance, including what approach will be taken to any failure to achieve biodiversity gain through no fault of the landowner, is a concern for private landholders.

Uncertainty about price and value of the BSA and how government agencies will act in the future

Uncertainty is a significant barrier for private landholders. Establishing a BSA is outside of their experience and banks, solicitors and others who traditionally act as advisors to small landholders are not well versed in the process and will struggle to assist clients.

Given the thinness of the credit market, there is no certainty about credit pricing and what is fair value for biodiversity credits. In addition, landholders without the backing of a developer cannot know whether the credits once created will be purchased. While the Credit Supply Taskforce has the capacity to support landholders, as discussed below, this is for credits where there is known demand in the short term (12 months and less).

While there is an opportunity to reassess sites after 20 years, landholders are not confident about the process and consider that there is only one chance to gain a profit from the land.

The emotional barriers of losing agency over land which is subject to a BSA should not be underestimated and will be difficult to overcome. Landholders are uncertain about whether the BSA will detract from the future sale price of the land, and whether potential future owners including legatees will consider the management commitments a burden.

Other concerns

Large projects like mining projects have long lead times. Due to the type and quantity of offsets required for these large projects, avenues for securing the credits take time and need to be locked in during the development assessment process. While some large Government infrastructure agencies have had the scale to coordinate programs to broker the creation of credits, this is not an option for mining and other private industries.

NSWMC is concerned that without stronger intervention and central coordination, private land holdings will not be a significant generator of biodiversity credits.

While the Government has set up the Credit Supply Taskforce, its relatively small revolving fund, lack of access to variation rules and extended time to retire credits mean that it is limited in terms of identifying and holding credits against future demand. The CST is limited to brokering demand for credits that are required within 12 months or shorter time periods.

NSW Minerals Council

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