



Native
Vegetation
Panel

Native Vegetation Panel Secretariat

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Our Ref: NVPC 23/02

3 August 2023

Carmel Donnelly PSM - Chair
Independent Pricing and Regulatory Tribunal (IPART)
Monitoring the Biodiversity Credits Market in NSW

Dear Madam,

Re: NSW Native Vegetation Panel - Submission to IPART - Monitoring the Biodiversity Credits Market in NSW - Issues Paper July 2023

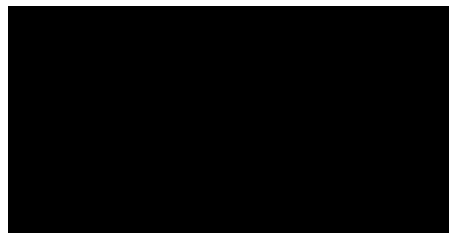
The Native Vegetation Panel (the Panel) is pleased to take this opportunity to comment on IPART's - Monitoring the Biodiversity Credits Market in NSW - Issues Paper July 2023.

The Panel is an independent NSW Government agency established under the Local Land Services Act 2013. The Panel is a determining authority in relation to certain native vegetation land clearing applications and hence an important part of the NSW Government's Land Management and Biodiversity Conservation Framework.

All applications made to the Native Vegetation Panel are subject to landholder costs which include the cost of an initial Biodiversity Development Assessment Report and the subsequent cost of securing offsets by way of the NSW Biodiversity Offset Scheme.

Please find attached the Native Vegetation Panel's written submission. Please do not hesitate contact the Panel if you would like to discuss any aspect of this submission, contact details for the Native Vegetation Panel Secretariat are provided above.

Yours sincerely,



Attachment - NSW Native Vegetation Panel submission to IPART - Monitoring the Biodiversity Credits Market in NSW - Issues Paper July 2023

NSW Native Vegetation Panel

Monitoring the Biodiversity Credits Market in NSW

Issues Paper July 2023

1. Introduction

The Native Vegetation Panel welcomes the opportunity to comment on the IPART's - Monitoring the Biodiversity Credits Market in NSW - Issues Paper July 2023.

The Native Vegetation Panel is an independent agency established under Part 5A, Division 6, of the *Local Land Services Act 2013*. The Panel has the function of objectively determining applications to clear native vegetation.

Comments in this submission are on the following issues:

1. The offset market as one element of a broader framework designed to deliver public outcomes.
2. The concept of public value.
3. The importance of transaction costs as a barrier to effective markets.
4. Challenges to performance assessment and monitoring.

2. The Offset Market as One Element of a Broader Framework

Biodiversity offset markets aim to compensate for the environmental impacts of development projects by generating appropriate conservation and restoration actions elsewhere. Hence, they are just one of many public policy tools that can be used to manage the impacts of native vegetation clearing.

In terms of the performance and monitoring of the offset market, it is important to recognise that it plays a role within a wider policy framework. As such, the interaction and relationships between the offset market and related government programs is important. For example, where a market is characterised by high participation costs and uncertainty, incentives will be created for potential participants to engage in alternative actions and clearing pathways that are less efficient from a societal perspective. An offset market can therefore have unintended impacts on the effectiveness of other policy measures, which provides a further focus for program performance monitoring.

Also of critical importance to this monitoring task will be to first develop an understanding of how effectively the offset market has contributed to broader legislative objectives. This is required to understand whether the market-based approach is appropriate or whether changes to the market mechanism are warranted.

3. The Concept of Public Value

The concept of value, whether public or private, is based on scarcity associated with the supply of a resource relative to its demand. While scarcity applies to the offset market, a key question is whether credit market prices reflect the value to society of a particular vegetation type.

Factors such as 'thin' markets, or high market entry and participation costs, may mean that the scarcity value to society is not reflected in market determined prices. A high degree of volatility for a particular credit would also indicate that the market is not reflecting its underlying value.

4. Transaction Costs

Since its inception, the Panel has received a significant number of enquiries regarding the Panel/BOS approval pathway, but very few follow-up applications. This low level of use by the farm sector is seemingly at odds with the original intent and expectations of the legislation.

The pathway in its current form has only been used where the private benefits from clearing clearly exceed costs, such as a small number of trees needing to be removed to enable the installation of a pivot irrigation system. Hence, economic analysis has indicated that in its current form the pathway is likely to only be relevant to a very small proportion of farmers.

Further, the costs of the pathway are made high by high transaction costs, expensive and time-consuming assessment procedures and high offset prices. It is of concern therefore that values derived through the offset credit system are significantly higher than societal values placed on vegetation retention, leading to sub-optimal outcomes.

Of significance also is the high level of uncertainty associated with the pathway in terms of a developer needing to commit significant time and money at the outset of the process without knowing what the outcome might be.

Other approaches such as investment in landscape scale planning and restoration may be a more efficient response in some circumstances.

5. Challenges in Performance Assessment and Monitoring

5.1 Are Public Outcomes and Legislative Objectives being achieved.

Market failure exists where the allocation of goods and services by private markets is inefficient. Market failures in biodiversity provision arise because of the public good characteristics of native vegetation and the clearing impacts on the broader citizenry of New South Wales (externalities).

The biodiversity credit market in NSW is a public policy intervention aimed at addressing this market failure and a key test of any public policy is whether government action makes society better off - a net public benefit test of action. It follows that any monitoring regime should be very closely aligned with the ongoing assessment of scheme costs and benefits.

Section 3.3 of the Issues Paper outlines a range of attributes of a well-functioning market. We believe it is important, however, that IPART not only focuses on desirable, textbook features of a market, but complements that with the close monitoring of public interest outcomes. For example, poor public interest outcomes may be caused by factors other than the offset market, but in the absence of that knowledge, remedial efforts may inappropriately be directed at offset market reforms.

It is difficult to comment on the proposed reporting of measures of market performance and competition given that the Issues Paper does not outline these measures in detail. Some which should be tracked via robust and repeatable measures include:

- The known supply and demand of credits.
- Time taken for credits to be sold or purchased.
- The number of parties active in the market.
- The price of credits by vegetation/species type.

- Market transaction costs.
- The level of clearing and the level of vegetation protection (remnant and restored) enabled by the market.
- The breakup of costs via cost driver, e.g. administration, credit creation, management.

This is not an exhaustive list of indicators, however, indicators should reflect the outcome sought via the offset market, namely the costs to society of clearing vegetation is not only reflected in costs but offsets are in place. A well-functioning credit market should also deliver timely development.

Factors of particular interest that likely affect market function are the thinness of markets and high transaction costs, which should be of particular focus for the monitoring regime.

5.2 Product Integrity

A further central issue in regard to the efficiency of the offset market is the integrity of the commodity (credits) being transacted and the further costs associated with ensuring credit integrity. A central question is whether credits have been adequately defined to ensure additionality is being achieved. For example, do credits as currently defined, constitute an area of native vegetation that would otherwise have been cleared for development purposes, or do they constitute an area of native vegetation that would otherwise have always remained in that state. Note that further significant assessment and management costs will be associated with addressing this fundamental integrity issue.

5.3 Ad Hoc Offers and Connectivity

A further challenge for the approach is the ad hoc nature of offers. Both the Productivity Commission and the recent Samuel review of the EPBC Act¹ highlighted the role of planning at a landscape scale.

Despite its purpose, however, the credit market may not facilitate maintenance of the environment and avoid environmental decline. Cumulative impacts on the environment and alignment with landscape scale vegetation connectivity plans are important. Put another way, this market enables significant investment in offsetting and hence the alignment and utility of this investment in aggregate should be monitored to assess whether specified environmental outcomes are being achieved 'efficiently'.

5.4 Data Collected Supports Ongoing Program Evaluation

We note that the IPART review will make findings and recommendations to maintain and promote competition in the market, identify opportunities to improve efficiency and address any market failures. The information collected should therefore play a key role in the on-going evaluation of the regulatory regime and the role of the offset market as a component.

5.5 Other Outcomes to be Monitored

It is important that IPART are mindful of the utility of the information collected and the associated analysis is fit for a range of policy considerations. This could include the full costs and benefits of the scheme and also the distributional impacts between developers (taxpayers and consumers), various credit providers and administrators.

¹ Samuel (2020) Independent Review of the EPBC Act.