



Native
Vegetation
Panel

Native Vegetation Panel Secretariat

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Our Ref: NVPC 24/03

8 October 2024

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 - Discussion Paper - 9 September 2024

The Native Vegetation Panel (the Panel) is pleased to take this opportunity to comment on IPART's - Monitoring the Biodiversity Credits Market in NSW - Discussion Paper - 9 September 2024.

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,

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Chair, Native Vegetation Panel

Attachment - NSW Native Vegetation Panel submission to IPART - Monitoring the Biodiversity Credits Market in NSW - Discussion Paper - 9 September 2024

NSW Native Vegetation Panel
Submission - IPART Discussion Paper
Monitoring the NSW Biodiversity Credits Market
9 September 2024

The Native Vegetation Panel (the Panel) is an independent statutory body established under the *Local Land Services Act 2013* (LLS Act). The Panel is responsible for assessing applications for clearing native vegetation and issuing approvals or refusals pursuant to s.60ZF of the LLS Act and clause 2.14 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Approvals issued by the Panel require applicants to offset their native vegetation impacts in accordance with the Biodiversity Offset Scheme. The Panel therefore welcomes the opportunity to comment on IPART's 2024 Discussion Paper on "the performance of and competition within the biodiversity credits market" and offers the following comments.

1. Introduction

While acknowledging the caveat that the Discussion Paper does not provide a complete picture of the performance of the NSW biodiversity credit market, an over-arching concern is that the Paper reiterates a set of recommendations from the 2022-23 Annual Report based on the analysis of the market over 2022–23, without further consideration based on the updated 2023-24 information or further policy development.

2. Discussion Paper Comments and Suggestions for Future IPART Monitoring

2.1 As stated in the Discussion Paper, the aim of the Biodiversity Offset Scheme (the Scheme) is to offset development impacts, however, there is no clear statement in the Paper about the extent to which this objective is or is not being met, or whether it is likely to be met. Given that the Trust has not acquitted its obligations, readers could otherwise assume that the Scheme objective is not being met, and given the apparent supply-side constraints to credit availability, may never be met.

2.2 The extent to which this issue is simply temporal, in that the obligation will be met with lower transaction costs in the future, is a critical assessment issue for the Scheme. If the propensity to purchase credits for acquittal is high, then this pathway should be viewed as reducing costs and enabling timely development. If it is low, there may be an integrity issue. Given that 70 participants used the Biodiversity Conservation Fund (BCF), any proposed changes to policy settings associated with the Fund are significant and should be a key focus of monitoring and the development of an appropriate assessment framework which would include the development of a counterfactual.

A related concern is whether the objective of offsetting development impacts based on the pursuit of like-for-like credits, necessarily equates to reversing or constraining adverse environmental outcomes. While this is largely an issue for government, there are issues here for what IPART monitors in terms of Scheme outcomes, and whether it monitors meaningful outcomes such as environmental improvement, or process-based outcomes such as developer impacts simply being physically "offset" (Note: of some

relevance to this issue are those provisions relating to Biodiversity Conservation Actions and “like-for-like” credit retirement under the variation rules).

Suggestions for future monitoring are therefore:

- (a) for IPART to offer greater clarity regarding whether the Scheme is or is not meeting its objectives and in so doing provide stronger strategic direction for potential Scheme reforms. Greater strategic insight to possible reforms could also be informed by IPART considering likely forward credit demand and supply outcomes over the medium term under the assumptions of ‘no change’ to the Scheme and under a ‘change’ assumption consistent with proposed Government reforms; and
- (b) for this work to also offer insights into the current and future demand and supply trends for the various credit sub-categories. Such an analysis would highlight the supply and demand issues in sub-categories rather than in aggregate which may be misleading. This would be consistent with the statement in the Paper on page 2, that IPART’s “aim for this year is to continue monitoring key performance and competition indicators (covering both current and emerging issues)”.

- 2.3 The report emphasises the intent of IPART to monitor key Performance and Competition indicators, however, there appears to be no clear listing of what those specific indicators are for each of these categories. Without that clarity it is difficult to assess whether IPART’s portfolio of indicators is appropriate, complete, and importantly in terms of “performance”, whether they well encapsulate the public benefit outcomes the Scheme is intended to achieve.
- 2.4 In terms of monitoring the “efficiency” of the credit market, the report offers few insights into the extent to which offset credit prices can be deemed to be efficient. For example, there is little information in the Paper on credit prices achieved to date, the volatility of those prices, prices paid by the two large purchasers noted in the Paper relative to smaller purchasers, and there is no monitoring of transaction and compliance costs faced by the various categories of buyers and sellers. These factors can represent fundamental constraints to market entry, liquidity, competition and efficiency.
- 2.5 In terms of Scheme performance, a growing concern due to declining supply-side credit availability and transactions being dominated by large purchasers, is whether the scheme is failing to cater for smaller, private landholder developers. Understanding how the already significant transaction and compliance costs associated with Scheme entry might be discriminating against this and other groups and likely future trends in these costs, seems highly relevant to IPART performance monitoring.
- 2.6 Related issues that may warrant consideration include the impact on competition, Scheme performance and credit pricing of having large infrastructure purchasers making early purchases of a diminishing stock of credits at the same time as the Trust is acquitting its outstanding credit purchases. IPART should also consider whether the Schemes high credit prices due to factors such as these might currently or in future act as an incentive for illegal clearing.

2.7 It is unclear what the status of certain IPART recommendations are, particularly those recommendations that include the findings that:

- (a) “The option for proponents to pay into the Biodiversity Conservation Fund is preventing the market from developing”.
- (b) “High up-front costs and long credit generation times create a lag between credit demand and supply.....”
- (c) “High transaction costs and market complexity discourage participation”.

These three findings are critical to Scheme performance, however, IPART’s monitoring does not seem to outline how the Fund prevents the market from developing, what the lead times for credit generation are, and what the transactions costs are.

2.8 To complement the above-mentioned IPART findings and suggested further monitoring and analysis, it would be appropriate for IPART to outline its policy development and assessment approach when flagging significant changes, such as phasing out the option for proponents to pay into the BCF. IPART should also consider providing an update on any significant steps being taken by the Trust for reducing unacquitted credits in the Biodiversity Conservation Fund and how that would potentially impact on the market.

3. Moving Forward

Given the various concerns emerging in relation to the current and future performance of the Biodiversity Offset Scheme, the Panel has considered new approaches that might be more effective in enhancing the State’s environmental assets and reversing critical habitat and species loss.

A starting point for the Panel’s deliberations has been concern about the quality of the State’s native vegetation stock due to its highly fragmented nature and hence its limited connectivity.

An important contributor to this situation has and may continue to be government programs that focus on what can and cannot be done at the scale of individual landholdings, and programs such as the Biodiversity Offset Scheme that offer very little in terms of addressing high value, local and regional connectivity opportunities.

A new approach could therefore involve a major new program initiative involving elements such as:

- a) Regional communities and government first being highly engaged in understanding the quality of their environmental assets and where key quality enhancing connectivity opportunities exist - a strategic landscape approach supported by easily accessed regional mapping capability.
- b) New program efforts to allow developer offset requirements to be linked with off-farm regional connectivity opportunities, facilitated by (a) the focussed mobilisation of developer, government and private sector funding; and (b) a strengthened and focussed extension effort by government on working with communities and financiers to drive real progress in landscape-level revegetation connectivity. Note that the retention of the BCF (with modifications) could offer a central strategic funding source to address high value environmental connectivity opportunities.

- c) Policy principles such as the current interest in requiring developers to first “minimise and avoid” being applied at the local and regional scale, rather than being confined to individual landholdings.
- d) The ‘like-for-like’ principle underpinning the Biodiversity Offset Scheme being complemented by a principle of ‘environmental costs needing to be outweighed by environmental benefits’, thereby allowing offset, Trust and private funding to be directed to the highest public environmental value opportunities, such as connectivity related to critically endangered habitat and species loss.

4. Conclusion

We welcome IPART’s involvement in and publication of the Monitoring the NSW biodiversity credits market report. We conclude, however, that the monitoring report itself should be contained in a clear and comprehensive Annual Report in December 2024, and further, that any costs and benefits of a proposed policy change are examined robustly and the implications for the environment, the level of development and the costs to society of meeting its no net loss target are clear.

The NVP welcomes the opportunity to discuss any of the issues raised in this submission.