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The NSW biodiversity credit market is underpinned by the Biodiversity Assessment Method (“BAM”) which is a science-backed methodology and market-based mechanism for determining offsetting equivalence between the biodiversity impact from proponents and the additional biodiversity outcomes delivered by Biodiversity Stewardship Agreements. The Biodiversity Conservation Act 2016 (“Act”) hierarchy of ‘avoid, minimise and offset’ and the high-level provisions it enshrines, such as the like-for-like requirements, create the basis for a world-class, science-based, high-integrity scheme.

However, the potential of the scheme is being undermined by recent legislative and policy changes. This is almost solely due to the DCCEE (the Department of Climate Change, Energy, the Environment and Water) being fundamentally conflicted by concurrently regulating and operating the biodiversity credits market whilst also being the main participant in the market. This has resulted in most changes being predicated on protecting and advancing the Department’s financial interests rather than the biodiversity outcomes the Act is there to enshrine. IPART should urge the Department to recruit the skills and experience required to operate a fair, transparent and orderly market and to prioritise biodiversity outcomes over its pecuniary interests.

IPART has done a wonderful job of monitoring the biodiversity credits market and providing insights into areas that urgently need to be addressed. It is concerning that the monitoring timeframe of IPART is coming to an end, and they should be re-appointed to continue monitoring the biodiversity credits market. The Department should ensure the recommendations of IPART are enacted.

Q: *What has been your experience with the market in the 2024–25 financial year?*

The March 2025 changes¹ in the Act severely undermined the integrity of the market for the 2024–25 financial year. The negative impact of some of these changes is explained later in this submission, but the main change that has undermined the market is the introduction of Strategic Offset Delivery Agreements (SODAs).

SODAs are an opaque and highly discretionary avenue for the Department to acquit proponent impacts. They inherently cause a conflict of interest for the Department, as they circumvent the scientific rigour and offsetting equivalence dictated by the BAM and allow a pool of money to be allocated at the Department’s discretion toward more opaque conservation goals. These goals may overlap with other objectives the Department is concurrently pursuing. So instead of proponent impacts being offset by a scientific methodology on a like-for-like basis, as the public would expect, they are acquitted in an opaque and discretionary manner. There could also be double-dipping by the Department if, for example, programs such as the recently announced Conservation Co-investment

¹ <https://legislation.nsw.gov.au/view/pdf/asmade/act-2024-96>

Schemes are also used to satisfy SODA requirements by utilising private and philanthropic investment to offset SODA obligations².

Not only are biodiversity outcomes compromised by SODAs, but the overall functioning of the biodiversity credits market is also undermined. Suppliers of credits who, at considerable time and expense, have conserved properties to generate like-for-like credits are bypassed and left high and dry. Potential credit suppliers need enough faith in the operation of the market to undertake the multi-year process of acquiring a property and setting up a Biodiversity Stewardship Agreement. During that time, suppliers run the risk that the Biodiversity Conservation Fund (BCF) will not source like-for-like credits and will instead use the variation rules or SODAs to avoid like-for-like purchases from the market. In the 2024–25 financial year, this has unfortunately predominantly been the case.

Q: Have you faced any difficulties or inefficiencies in buying or selling credits, including via the Credits Supply Fund?

The tenders and reverse auctions are more of an asymmetric information-gathering exercise to inform the Credits Supply Fund on the best approach to manage its own obligations, rather than something that benefits the broader market. In a financial market it would likely be considered insider trading.

For example, the April 2025 Central-West Orana (CWO) REZ reverse auction received bids from over 45 landholders, with each bid likely containing many types of credits. Over \$27 million was spent and 14,000 credits were traded, yet the entire outcomes report was one paragraph – it gave no pertinent information that could inform the broader market or allow better price discovery³.

Unbeknownst to the market at the time, the CWO REZ reverse auction was actually part of the first SODA. The reverse auction was officially lodged on 'Buy NSW,' the Government's procurement portal, as a competitive tender with a 100% weighting on price⁴.

In the 15-page official Participants' Guide, there was one single sentence hinting that the tender would not be run in the purely price-competitive manner stated on the portal: "*When selecting credits for purchase, preference will be given based on the location, within the eligible area, of the property that generated or will generate the credits.*"

After the closing date of the reverse auction on 30 April 2025, a report was published in June 2025 explaining the Central-West Orana conservation investment strategy for the SODA⁵. This information, clearly known by the Department at the time of the reverse auction, explained the true procurement process – which was not primarily based on price but

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<https://www.nsw.gov.au/environment-land-and-water/conservation-on-private-land/conservation-co-investment>

³ <https://www.environment.nsw.gov.au/sites/default/files/2025-07/bos-update-38-250248.pdf>

⁴ <https://buy.nsw.gov.au/prcOpportunity/ED4BAEFA-26AE-4296-BBCCF7F7680AAAD3>

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<https://www.environment.nsw.gov.au/sites/default/files/2025-07/central-west-orana-conservation-investment-strategy-250161.pdf>

instead on location – and it should have been shared with the market to make the reverse auction a transparent and fair process.

This SODA created a completely new market that does not follow the geographic functioning of the existing biodiversity credit market. Credit suppliers who had set up sites and had the appropriate credits to offset the REZ projects according to the BAM were sidelined by the opaque operation of this SODA. Not only was this disingenuous, but the introduction of SODAs has completely undermined the confidence of credit suppliers in the Department's administration of the biodiversity credits market and, thereby, the willingness of credit suppliers to bring liquidity to the market.

Q: What changes, if any, have you noticed in the performance and competition in the credits market during the 2024–25 financial year?

I have noticed that recent developments in the biodiversity credits market, such as SODAs and policy changes by the Department, have effectively hindered the development of a well-functioning market and have also curtailed and discouraged new biodiversity credit supply from entering the market. These changes need to be immediately reversed for the market to function in a fair, orderly and transparent manner.

Q: What characteristics should be used to define sub-markets?

There is no need to consider creating or defining sub-markets when there is a dire need, and substantial scope, to improve the data quality and transparency of the broader market.

Q: What has been your experience with brokers, accredited assessors and other third-parties in the market?

The focus of the Department has been on the probity and conflicts of interest related to Accredited Assessors. Meanwhile, brokers - who frequently arrange multi-million dollar trades for a hefty commission - have no supervision or regulation. Some are conflicted by having their own credit-generating sites and looking to sell the same credits as their clients (this is frequently never disclosed). In some regulated financial markets, brokers can only charge commission to their initiating interest (which is usually the purchaser). The reason for this is that by not charging a commission to the seller of credits, they are truly incentivised to find the best price for the buyer, and not look to match the buyer's interest with a seller that pays the highest commission but provides a worse price to the buyer.

Biodiversity credits are an analogous instrument to Australian Carbon Credit Units (ACCU), which ASIC classifies as financial products and therefore regulates⁶⁷. Biodiversity credits should also be classified as financial products. Classifying biodiversity credits as such would have the ancillary benefit of bringing certainty to the tax position of those trading biodiversity credits.

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<https://www.asic.gov.au/regulatory-resources/financial-services/carbon-markets/regulated-emissions-units-applying-for-or-varying-an-afs-licence/>

⁷ <https://cer.gov.au/markets/carbon-credits#>

Q: What has been your experience with the Biodiversity Conservation Fund as a market alternative in the 2024–25 financial year?

Q: What are the pros and cons of the Biodiversity Conservation Fund's increased use of variation rules and conservation actions to meet its obligations? If and how do you think this might affect trading activity?

Consolidated response:

In theory, the BCF should play an important and useful role in the biodiversity credits market ecosystem. The BCF allows proponents to immediately acquit their offset obligations, ensuring that projects are not delayed. This generates an equivalent liability within the BCF that the BCF needs to acquit on a like-for-like basis. The credit supply side of the market can see this liability through the BCF's Charge Report, which gives suppliers confidence to purchase sites that can generate these credits to sell to the BCF. The BCF should then fairly and transparently acquit its liability within a certain timeframe by purchasing those credits, on a like-for-like basis, on the market. If the BCF operated in this way, it would help create a well-functioning market – this is its *raison d'être*.

Unfortunately, this last step does not happen, and so the whole BCF mechanism (and therefore the Act) is undermined. The BCF historically purchased 100% of its credits on a like-for-like basis until 2022, which honoured the intention of the Act⁸. Now, however, the BCF sources the bulk of its credits via the variation rules (81% of ecosystem credits in Credit Tender 24-02) and rising⁹.

This is done purely for financial outcomes, not biodiversity outcomes. The BCF does not utilise variation rules because the credits it needs to purchase are unavailable; the BCF utilises the variation rules because it can acquit its liabilities more cheaply. The BCF's own policy states that it will not pay above its charge price for like-for-like credits via tenders or reverse auctions; then, after 2 failed attempts, it switches to the variation rules. The BCF purchasing credits below their charge price is locking in a profit. If it cannot secure credits at or below the charge price after two attempts, it switches to the variation rules, which allows it to purchase cheaper credits – thereby also locking in a profit. The BCF policy is structured to produce a profit at the expense of biodiversity outcomes.

This is acknowledged in a very recent report published on 24th November 2025¹⁰ where the BCF admits it made a mistake in under pricing credits sold to proponents and so then can't purchase the credits from sellers at a "*price acceptable to the seller or to stimulate new supply of credits at a price the BCF could afford to pay*". So rather than own up to its mistake and pay the right price to offset its obligations on a like-for-like basis the BCF throws the biodiversity outcomes it is meant to protect under the proverbial bus and "*make full use of the Offset Hierarchy*" including "*purchasing biodiversity credits that do not meet like-for-like or variation rules*". I ask that IPART read this report in its entirety as the

⁸ <https://www.bct.nsw.gov.au/sites/default/files/2023-10/annual-report-22-23-offset-obligations.pdf>

⁹ <https://www.bct.nsw.gov.au/sites/default/files/2025-03/outcomes-report-credit-tender-24-02-2025.pdf>

¹⁰

<https://www.bct.nsw.gov.au/sites/default/files/2025-11/agreement-acquit-bcf-credits-held-three-years.pdf>

consequences for the market and biodiversity outcomes are dire¹¹. This course of action is irreconcilable with the BCT's own charter to *“seek strategic biodiversity outcomes to compensate for the loss of biodiversity due to development and other activities.”*¹²

The March 2025 changes to the Act exacerbated this situation. The addition of section 6.31(4) into the Biodiversity Conservation Act 2016 in March 2025 completely undermines the much-vaunted *“net positive”* provision in section 6.7(3). Section 6.31(4) formalises that the BCF only has to spend the amount paid into the Fund by proponents, rather than the cost of the credits actually needed to be acquitted. This means if proponents pay into the Fund via the charge mechanism, say \$5,000 per credit for the 2,000 credits they require to offset their impact (i.e. a total of \$1 million), and then those credit prices rise to \$10,000 per credit before the BCF has acquitted them, the BCF can just go to the market and buy 1,000 credits at \$10,000 each, spending only the \$1 million received. However, 2,000 credits worth of biodiversity have been impacted by the proponent, and only 1,000 credits worth of biodiversity are protected – producing a net loss to biodiversity of 1,000 credits. Clause 6.31(4) can only result in a net-negative outcome for biodiversity, making a mockery of the Act's new net-positive mandate¹³. IPART needs to recommend removal of 6.31(4).

This is further compounded by the addition of section 6.31(9), which clarifies that the BCF is not required to spend the “delivery cost” portion of the payments it charges proponents. That delivery charge is now pure profit for the BCF even when there is a net loss for nature like in the example above (since those funds are not used to secure offsets).

The 7 March 2025 amendment to section 6.4(4) of the Act – removing proponents' ability to use the variation rules – is close to a sham because it achieves little in practice. The BCT effectively takes on that obligation through the BCF and continues using the variation rules to acquit offset obligations, and now has the even more opaque SODAs at its disposal as well.

Q: What changes, if any, have you noticed in the quality of information on credit prices, demand and supply (including reverse auctions and tenders) in 2024–25? Have your experiences using and navigating pricing information changed from prior years?

Very little has changed. Data is scattered across numerous platforms and domains with limited uniformity, making analysis difficult. A well-functioning market needs transparency, and this is sadly lacking – huge amounts of data flow into the hands of the Credit Supply Fund, and very little flows back to the market. The current structure of the market is neither fair nor orderly – the hallmarks of a well-functioning financial market.

If you would like to discuss anything further on these topics, please get in touch.

¹¹

<https://www.bct.nsw.gov.au/sites/default/files/2025-11/agreement-acquit-bcf-credits-held-three-years.pdf>

¹²

<https://www.parliament.nsw.gov.au/tp/files/192110/Biodiversity%20Conservation%20Trust%20Annual%20Report%202024-25.PDF>

¹³

<https://www.environment.nsw.gov.au/sites/default/files/2025-03/reform-summary-and-commencement-impacts-bos-amendment-act.pdf>