



IPART - Monitoring the Biodiversity Credits Market in NSW - WAG submission 4 August 2023

IPART Terms of reference:

The task

IPART is requested to:

1. Monitor the performance of and competition within the biodiversity credit market, and make findings and recommendations with the aim of:
  - a. maintaining and promoting competition
  - b. addressing the interests of existing and potential biodiversity market participants, and supporting fair trading
  - c. identifying opportunities to improve market efficiency and address market failure
2. Report annually on the performance of and competition within the biodiversity market for a period of three years (annual market monitoring report).

Relevant considerations

In undertaking this task, IPART is to have regard to:

1. The purpose and structure of the Scheme
2. The roles and responsibilities of the Department of Planning and Environment, the BCT, local government authorities and other participants
3. The incentives and impacts of the Scheme on existing and potential market participants, including developers, landholders and Biodiversity Stewardship Agreement holders, accredited assessors, local government authorities and other interested parties
4. The impact of government interventions, including the Biodiversity Credits Supply Fund and the BCF
5. Whether there are gaps in data collected or reported on by participants in the market or the timing of making that data available that could help track performance of the market
6. Recent reviews of the Scheme including the parliamentary inquiry into the integrity of the Biodiversity Offsets Scheme and Audit Office report on the effectiveness of the Biodiversity Offsets Scheme
7. Any other matter that IPART considers relevant.

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WAG analysis of and response to the above terms of reference>

1. The assumption that there is endless supply, or a supply that can be increased, is the underlying basis of the scheme - and seriously flawed.
2. The objectives of the scheme & market don't include what normal people assume would be its core function - that Biodiversity is preserved. It doesn't pass the pub test.
3. Expansion of the scheme to public lands reduces biodiversity overall, as public lands are largely not under threat. It is akin to double dipping. (Already protected, now protected on top of that protection, but this enables more destruction than was previously allowed due to limited private credits available, and potentially devalues the credits available in the scheme as well, further reducing the incentive to preserve biodiversity - cheap to destroy, not profitable to protect or improve).
4. Increasing supply generally just enables further destruction, you are not creating a net increase in preservation. You are artificially increasing supply by increasing the land that it will apply to (public lands).
5. You cannot match supply and demand because the demand is for destruction. Supply is always being diminished. Biodiversity and EECs are limited, under threat, and further threatened by other human impacts such as bushfire and climate change. They are in BAD shape already, this scheme further reduces their resilience.
6. There is no consideration of damage to existing credits by bushfire, drought, flood etc - so the market does not preserve biodiversity as it does not even measure or monitor net biodiversity.
7. There is no way of knowing if the number of proposals seeking credits or about to seek credits, is not in excess of the amount of credits available. There seem to be loopholes where credits can be sought after the planning stage at which the hold point should be (eg rezoning). We can end up destroying entire EECs.
8. There are several projects which have not yet purchased the required credits - thus there is a debt, which is not currently factored in.
9. You can't plant an ecosystem, to replace an already existing ecosystem that you want to destroy, it doesn't work like that - its not a "thing" its a "system", an ECO-system. Systems can't be created like things can. You can't just "increase production". You may be able to conduct some restoration, but it wont be as good as the real thing, and it likely will take tens to hundreds of years and may never actually be fully successful.
10. What prevents the market functioning is the fact that destruction is business as usual - avoidance does not appear to be the ultimate goal here - but it should be. Thus the market will never have enough credits as the demand is too high.
11. This market is very lop sided - taking stakeholders needs into account on the buying and selling sides, but ignoring the one real stakeholder - the environment. The environment does not have a voice in the market, yet its survival is entirely dependent upon it. The market fails its key stakeholder entirely.

12. The focus on the market allows the crime of biodiversity destruction and net biodiversity loss to go unpunished. There is no uproar because the average person on the street does not understand the smoke and mirrors process of "preserving - destructing".
13. There is no consideration of other threatening processes such as future road corridors etc. The market is isolated from threats to existing and future credits.
14. Developers understanding of what is "unavoidable" is different to the public, their need for credits is an unquenchable thirst. Developers want maximum yield, and consider any reduction of that yield as unacceptable, this is supported by government targets on yield for new urban estates. The public would expect different outcomes - more preservation within developments of endangered habitat and systems, but many larger developers do not develop in this way. There is not enough skin in the game when it comes to long term impacts. Developers are focused on profit, not long-term survival of the human race. They have had too much influence on the scheme already. The driver of biodiversity loss is money, and economic growth.
15. What should be used as a 'last resort' is not, it is business as usual (step 1: try to deny it exists, step 2: if step one fails, just offset it). When offsets were expensive, developers cried poor, and the offset scheme was changed. This indicates the market cannot ever work - there needs to be a point when offsets are too expensive, but that point will never be reached if the market is not considered to be functional due to reaching that point. An ever increasing swathe of destruction is not OK just to preserve a "functioning market".
16. It is almost impossible to define and monitor "no net loss". Transparency is also poor. Because of this, the market cannot succeed in what should be its primary goal - no net loss of biodiversity.
17. The market cannot be what preserves biodiversity - it must be dealt with separately with VERY strong policy. The focus must be on the causes. We must re-evaluate our obsession with economic growth. The avoidance step just isn't happening, the market is not sufficient to drive it. There is no driver to become efficient in what we propose/build and reduce the requirement for offsets.
18. The presence of the market is a barrier to stronger policy to preserve Biodiversity. It has a negative effect on improving the situation we face.
19. Science doesn't know everything, what we think is "equivalent" now, will likely be reviewed and found to be grossly overstated. We only just recently understood that soil was indeed its own ecosystem, and we have still not fully applied that knowledge to our agricultural pursuits. Science likes to examine individual elements in isolation, away from the influence of other factors to see single causes and effects. Biodiversity doesn't work like that - it is a web of enormous complexity which we are nowhere near to understanding.
20. Dept planning acting as a market facilitator, and reviewer and changer of the scheme is like putting the fox in charge of the hen house, as they also need housing supply, and are regularly in contact with developers etc etc.
21. Why are biodiversity credits not compared to urban land price? If it enables the destruction of habitat to create urban areas, why is its value not compared against such land to ensure that it achieves a fair value?

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22. The current scheme is a massive barrier to those with a moral compass. I have some land. It is biodiverse, I am improving this biodiversity, and have done so for the last 27 years of land ownership - none of it is via the scheme, as that would be the equivalent of selling my soul to the devil, and further enabling destruction elsewhere. It is the polar opposite of what I want to achieve for the planet and my children, which is a net INCREASE in biodiversity, climate resilience, and carbon sequestration.
23. Planning decisions are divorced from the scheme resulting in further habitat destruction - eg Developers are not forced to contain trunk service roads within their rezoned land, as that would reduce urban yield. This then creates further habitat and biodiversity destruction when the roads that are required to service the proposed population, are then routed via other areas which are usually MORE environmentally sensitive than the developers (rezoned but not yet built) area. The scheme provides no price signals on this, as it is another body that then incurs the offset costs (Roads dept).
24. Everyone wants the market to work - but it just doesn't. We need to acknowledge that we have to create strong rules, throw out the old way of doing things, and radically change our desire for perpetual Economic Growth and our own individual McMansions that drive sweeping greenfield urban sprawl over endangered ecological systems and at the expense of interconnected habitats. We need to STOP. RETHINK. RECALIBRATE. Preserve, protect, and promote the needs of the environment above all else.

Addendum – WAG submission to DPE on Cumberland Plain Conservation Plan -

We also submit the following summary extract from our WAG submission to DPE on the Cumberland Plain Conservation Plan (CPCP) its biodiversity offset objectives for the CPCP and financial and market analysis

#### **KEY CHANGES REQUIRED TO PROPOSED OFFSETS IN THE CPCP**

- o Protect the Cumberland Conservation Corridor within the Strategic Conservation Area (SCA)
- o Allow smaller lots to be eligible for offsetting (SCA) and improve offset funding accordingly
- o Demand new, large public reserves of Cumberland Plain Woodland (CPW) to offset loss of CPW (in three new National Parks)
- o Restore the focus of offsets to Cumberland Plain Woodland – the ecosystem most impacted by these developments
- o Scrap landowner-specific exclusions in the SCA

Specifically:

- **STAGING DEVELOPMENT to MATCH DELIVERY OF OFFSETS:** The CPCP must stage development and require the satisfactory delivery of offsets from each stage before further development proceeds (as per the Western Sydney Growth Centres)
- **NO PUBLIC LAND FOR DEVELOPER OFFSETS:** Stop the CPCP using loopholes in NSW law to relabel existing public reserves as offsets for developers. This denies us new green spaces and denies farmers funding to conserve bushland on their land. No offsets should be created on existing public reserves of any kind.
- **NEW CONSERVATION RESERVES, NOT PLANTING:** The CPCP tries to cut developers costs by replacing the requirement for new conservation areas with tree planting on

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waste land (The Confluence). Research demonstrates that neither traditional nor scalp-and-seed revegetation compensates for clearing Cumberland Plain Woodland. We need to save the woodlands that remain, not plant seedlings.

- **NO TAXPAYER SUBSIDY OF DEVELOPER OFFSETS**

### **More detailed analysis of CPCP offsets and financial modelling**

**Reducing offset cost** This is the purpose of the CPCP. The CPCP is offered as an *optional alternative* to developers in meeting their offset needs, compared to the status quo. By being cheaper, the CPCP is pretty much doomed to deliver less biodiversity gains than the status quo, unless it were somehow overwhelmingly innovative & outstanding. So it's a loss on the status quo. So why would we want the CPCP?

There are a number of measures within the CPCP which help deliver this reduction in offset costs, but the primary mechanisms are by replacing existing offset arrangements with greater flexibility. Developers are presently legally required to deliver offsets, whatever the cost, at fixed ratios. Under the CPCP, in practice, they will not actually be required to deliver anything at all. The government will replace their obligations with a plan which has no minimum deliverables, no budget, and no staging. All it has are *targets*. In other words it is **designed** to fail to deliver its offset requirements. This necessarily reduces the cost.

### **Reduced costs make real offsets extremely unlikely**

The lower the offset market costs, the fewer landowners can (and will) participate. Already the biodiversity offset market is failing. Farmers want to participate in the scheme, but they demand (fairly) to do so at market prices.

### **NSW offsets no longer a free market**

Of course, that situation would normally drive up the price of offsets. A founding principle of biodiversity offsetting is that as a market mechanism the rarer it gets, the more disincentive to clear (and offset) it. However the NSW scheme is no longer operated as a free market system. The latest biodiversity law reforms, and a lot of changes to implementation (changes which occur silently, without legislative change) have all seen the NSW Government take over control on price. This change occurred in response to pressure from developers. Now the BCT take on most developers obligations and buy offsets at prices they see fit.

**The government can't deliver and isn't delivering its existing obligations for CPW** (for the reasons above)

The government is already failing to deliver on existing development offset obligations for CPW. It is trying to mask evidence of the shortfalls but it is not trying too hard. The existing NSW-government growth area (the Western Sydney Growth Areas) are already unable to meet their obligations for biodiversity offsets. The Western Sydney Airport simply didn't deliver theirs - instead relabelling DEOH (an existing government conservation area under active restoration) as a 'new' offset to meet 70% of their target.

Since we can't meet our existing obligations for offsets The CPCP has no chance of delivery on those obligations. By reducing the checks-and-balances on offsetting it will only further reduce offset price. It has no chance in getting landowners to sign up as offsets. And at the same time it naively claims it

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will (or rather, it promises to try to) miraculously deliver over 5,000 hectares of CPW for offsets. Again - it is openly, rather honestly, setting itself up to fail.

### **Financial modelling**

The key to all of this is how offsetting is measured, how it is defined. The key to this is local diversity in land prices. The essential irony of biodiversity offsetting is that it can only be financially viable if a vast discrepancy exists in the financial value of land not only of the same ecosystem, but under the same degree of threat of development. This is for the *de facto* status of 'offsetting' as a scheme to limit (mitigate, rather than offset) the decline of conservation (the loss of remnant functional ecosystems). Of course the NSW scheme occasionally still claims to be a true *offset* scheme, that is a scheme where 'restoration' or 'revegetation' create gains which offset the loss of clearing, but the claimed benefits are directly contradicted by 2 decades of research

From our research budgeting \$20-60,000/ha for land reservation while valuing developable land at \$.125 M/lha could give the CPCP half a chance for delivering its obligations. But that disparity only exists if you believe NSW Valuer General valuations, which everyone knows are set politically to limit land tax. No-one is going to conserve their land for \$60,000/ha in a region where real-estate sells for more than ten times that rate. On that view, The CPCP will fail.

### **Public contributions to developer offset obligations**

The fine print in the CPCP Draft Plan both directly contradict the CPCP 'Highlights' and confirm a public contribution toward developers offset costs.

What does a public contribution mean? It doesn't mean any change to housing costs, either way. For decades housing costs in Western Sydney have been set by *ability to pay*, *not by market factors*. This is the result of housing being a necessity not a choice, and being grossly undersupplied. So any tariffs placed on development (such as biodiversity offsets) come out of developers pockets, despite what their PR teams keep telling us. Such tariffs cannot (and have not) resulted in actual increases in the cost of housing to the public, because the public is already paying as much as they can afford (or more). So the only thing that will be changed by a public contribution to the scheme, rather than the existing developer-pays offset model, is that the public taxes begin to subsidize directly into the developers purse.