

Author name: Name suppressed

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Your submission for this review:

A submission provided at an officer level is attached. The short timeframe has not allowed for formal endorsement of the submission at a Council meeting. The submission welcomes the Review and opportunity to provide comment. The submission provides comments that are in part consistent with comments provided by Council on the Biodiversity Conservation Regulation. We are fine with the submission being publicly available if a comment can be provided that it is a staff submission.

SUBMISSION ON THE IPART BIODIVERSITY MARKET MONITORING REVIEW

The Wollondilly Local Government Area (LGA) contains a diverse and significant range of biodiversity values, including three Critically Endangered Ecological Communities and an important koala population. Ongoing and planned development across the LGA—ranging from large-scale subdivisions to individual dwelling applications—meets the entry requirements of the Biodiversity Offset Scheme and places increasing pressure on these ecological assets.

Council has previously lodged several submissions outlining concerns with the operation of the Biodiversity Offset Scheme, particularly its limited ability to achieve meaningful biodiversity outcomes at the local scale and the inequitable financial impacts experienced by applicants. These issues have been raised consistently by both Council and the community.

Council therefore welcomes IPART's review of the Scheme and the release of the Discussion Paper as an important contribution to addressing these long-standing concerns. The Review provides a valuable opportunity to examine the performance, transparency and effectiveness of the Biodiversity Credit Market, as well as its role within the broader offsetting framework.

This submission provides Council's comments on the Discussion Paper, informed by staff experience in administering the Biodiversity Offset Scheme through development assessment under Part 4 of the *Environmental Planning and Assessment Act 1979*. The focus is on the operation of the Biodiversity Credit Market and its influence on the Scheme's ability to deliver ecologically sound, economically fair and socially acceptable outcomes.

PART A: BACKGROUND INFORMATION FOR THE SUBMISSION

1) Overview of Council position on issues associated with the Review

The following provides an overview of the position of staff based on relevant Council resolutions on the operation of the Biodiversity Offset Scheme and the scope of the Review and Discussion Paper based on the scope of this submission.

(i) Position on the Biodiversity Offset Scheme

Council staff acknowledge that a State-managed biodiversity offset scheme is an appropriate mechanism to help ensure accountability for biodiversity losses associated with development. The use of offsetting is widely embedded in international legislation and policy frameworks, and a State-prepared scheme provides consistency, transparency and oversight.

However, Council has consistently raised concerns regarding several shortcomings of the current scheme. These relate particularly to the Scheme's alignment with its stated Objects, and to the limited consideration given to biodiversity values at the local scale, including habitat connectivity and landscape-level ecological function. These issues have been outlined in numerous Council submissions, most recently in response to the proposed amendments to the Biodiversity Conservation Regulation.

(ii) Council position on the Biodiversity Conservation Fund

The understood intent of the introduction of the Biodiversity Fund to address delays at the application stage for securing and retiring biodiversity offset credits is recognised. However, as is considered highlighted by the IPART Discussion Paper, this Fund is not currently considered to provide any form of security for the achievement of the No Net Loss outcome of the BC Act or achieve the purpose of the Offset Scheme through retirement of required credits for a particular development proposal.

There is also considered insufficient recognition that the credits being traded on the Market are biodiversity values based on the widely supported Vegetation Integrity Score within the Biodiversity Assessment Methodology. In this respect, Council's submission on proposed amendments to the Biodiversity Conservation Regulation contained an expectation that a Pathway/Pipeline based on the avoid/minimisation offset hierarchy of the Offset Scheme be embedded into the Fund application process that is ecologically based and not credit based.

(iii) *Overview of relevant Council comments on the review of the Biodiversity Conservation Regulation*

Council recently provided a submission on a Discussion Paper regarding amendments to the Biodiversity Conservation Regulation (noticed to be referenced in the Discussion Paper). This Discussion Paper had a number of Focus Areas viewed as having relevance to the IPART Discussion Paper. Comments and requested amendments contained in this submission for each of these Focus Areas is provided in Table 1. The extract of this submission in relation to matter associated with the Biodiversity Conservation Fund is presented in Attachment 1 for the information.

Table 1: Key recommendations of Council's submission on applicable themes within the DCCEEW Discussion Paper

Theme in DCCEEW Discussion Paper	Key recommendation in the Council submission
Simplifying Offset Trading Rules for Ecosystem Credits	There should be processes for effective local trading and advanced offset schemes on a local / sub-regional basis. It is suggested that local governments could have a role in implementing offsetting measures subject to the adequacy of the processes, suitable sites and capacity of the relevant council.
Balancing the outcomes of the Scheme with biodiversity risks	Develop measures that would enable the exemption of certain low risk development from the Offset Scheme subject to the adequacy of the alternate processes, suitable sites and capacity of the relevant council to implement these processes.
Reducing reliance on the Biodiversity Conservation Fund	Payment into the Biodiversity Conservation Fund should follow a similar hierarchical priority process (extension of avoid and minimise hierarchy), where it is the last step and only used if it has been adequately justified that no alternative is available.

The statement in the Discussion Paper regarding this matter "*it is unlikely that we will be able to monitor the effects of these reforms (to the Biodiversity Conservation Regulation) on the market before the expiry of our Terms of Reference*" is agreed with in principle.

2) Scope and Key Concerns of the Submission

(i) *Scope of the submission*

Council has a limited role in the actual operation of the Offset Scheme comprised of reviewing received applications based on consistency with Guidelines and issuing of Determinations also based on guidance issued by the Department of Planning.

In this respect, Council staff do not have any involvement in operational matters associated with the Credit Market Scheme and overall Biodiversity Offset Scheme in relation to

development proposals. This approach is viewed as appropriate for transparency and open governance purposes.

Within this context, the submission primarily focuses on how the Biodiversity Credit Market operates within the broader Biodiversity Offset Scheme and how effectively it supports the Scheme's intended purpose. Council's comments align closely with the Discussion Paper's statement that the "biodiversity credits market plays a key role within the NSW Biodiversity Offsets Scheme to ensure biodiversity losses due to development or land clearing are offset by equivalent biodiversity gains at a price that reflects the efficient cost of conserving biodiversity."

(ii) *Key concerns raised by the submission*

Review of the Guideline has identified the key areas of concern consistent with the above context that are discussed in this submission.

- Insufficient overseeing of the operation of the Biodiversity Conservation Fund to ensure developments comply with requirements of the Act based on the significant payment made by applicants.
- Non retirement of a high volume of credits identified as required for a development site for which a significant financial payment has been made by applicants and subsequent significant revenue received by developers for the larger subdivision proposals.
- Insufficient achievement of like for like offsetting for both species and ecological communities. Such offsetting considered necessary to achieve the intended purpose of the overall Biodiversity Offset Scheme.

The statement that only 23 percent of the 80,000 obligations received over the life of the Biodiversity Conservation Fund have been fully acquitted is a significant concern. This figure and stated overall credits remaining in the Fund demonstrates the fundamental flaws in the approach and operation of the Fund from an economic, social and ecological perspective. The question also arises as to whether the large volume of non-retired credits is consistent with Section 7.13(5) of the Biodiversity Conservation Act 2016, which requires that "*a condition to retire biodiversity credits must be complied with before any development is carried out that would impact on biodiversity values*".

PART B: RESPONSE TO THE REVIEW AND DISCUSSION PAPER

1) Comments on the Scope and context of the review and Discussion Paper

The need for a market based mechanism with accompanying details is recognised for the ongoing operation of the Biodiversity Offset Scheme. The expertise of IPART in biodiversity market regulation issues and statutory requirements for the Review to investigate pricing, regulation, and contributions matters is recognised. It is considered important however that the Review into the Biodiversity Credit Market contain an evaluation of biodiversity considerations within the overall context of the Biodiversity Offset Scheme on the following grounds:

- As stated in the Discussion Paper, IPART states the biodiversity Credit Market plays a key role within the NSW Biodiversity Offsets Scheme to ensure biodiversity losses due

to development or land clearing are offset by equivalent biodiversity gains at a price that reflects the efficient cost of conserving biodiversity.

- The Credit Market should not be considered as detached from the Biodiversity Offset Scheme given its key role referred to above.
- Credit trading based on definitions below is the trading in biodiversity features/values:
 - Required credits (Residual impacts of a proposal on biodiversity values);
 - Credits generated (Gain in biodiversity values).

Biodiversity values as defined in Section 1.5 of the Biodiversity Conservation Act includes species, ecological communities and habitat connectivity

The consideration of ecological aspects of relevance to the Biodiversity Credit Market as part of the Review is considered to have consistency with the role of IPART on its website that *‘It regulates key markets and NSW Government services to ensure effective social, environmental and economic outcomes’* The reference to the Offset Scheme and the underpinning of the operation of the credit market on biodiversity values is however considered to be restricted to a quote of the Scheme’s overall purpose.

IPART is encouraged to engage a person with suitable experience in the operation of the Biodiversity Credit Market and the broader Biodiversity Offset Scheme, if such expertise is not already available internally. Bringing ecological expertise into the Review would help ensure that any findings and advice to government support a more efficient and effective Scheme, delivering improved environmental, economic and social outcomes.

2) Response to Focus Questions

The following provides comments and recommendations for investigation by IPART in regard to the Focus Questions of direct relevance to the responsibilities of Council. The comments are based on observations and experiences of Council staff given the absence of direct involvement in the operation of the Biodiversity Credit Market.

RELEVANT QUESTIONS NOT RESTRICTED TO BIODIVERSITY CONSERVATION FUND

Focus Question 5: Have you faced any difficulties or inefficiencies in buying or selling credits, including via the Credits Supply Fund?

Council staff have not participated in the selling or buying of biodiversity offset credits on the market or to the Biodiversity Conservation Fund. Staff are however in the early stages of examining potential Biodiversity Stewardship sites and entering into the market. The following comments and recommendations for consideration by IPART to address difficulties are based on observations and experiences of staff in the review of proposals.

Comment

The major credit types that are subject to the operation of the Biodiversity Credit Market within the Wollondilly LGA is the Critical Endangered Ecological Communities Cumberland Plain Woodland (CPW) and Shale/Sandstone Transition Forest (SSTF) Ecosystem Credits. Anecdotal advice has been provided to Council staff by both developers and applicants over the shortage of credits for these communities

The shortage of the credits within the Wollondilly LGA and greater Western and South Western Sydney is considered exacerbated by the market-based mechanism that has the effect of

elevating price per credit as a consequence of deficiency in supply. It is considered further exacerbated by the following based on the experiences of Council staff.

- A requirement for the Department of Planning for the retirement of credits totalling \$22 million for Cumberland Plain Woodland under the Cumberland Plain Conservation Plan has had a negative impact on available credits for this Community for small scale applications.
- The difficulties for smaller 'Mum and Dad' applications in competing with developers for large subdivisions. In this regard, the applicants for a shed to accompany a recently constructed dwelling were required to pay \$80,000 for 1 Credit for the removal of 200 square metres Cumberland Plain Woodland comprised of a small number of isolated shrubs and trees.
- The current triggers of the Biodiversity Offset Scheme requiring a Biodiversity Development Assessment Report for the removal/pruning of any native vegetation.

Recommendations for consideration by IPART

The response provided by Council staff to enquiries from a wide range of residents has highlighted a need for raising awareness of the Biodiversity Credit Market and Biodiversity Offset Scheme. A number of issues have been raised during these enquiries over the complexity of the scheme, up-front costs involved as well as offsetting costs. The IPART is recommended to investigate and identify measures that would raise awareness as well as address these issues broadly based on the following approaches:

- Measures that would reduce the calculated credits required on the site of a development proposal through application of an avoid, minimisation/mitigation hierarchy.
- A raise awareness strategy targeted at different stakeholders (including local government), that outlines the complexities of the scheme, process and benefits in participating in the Market and overall Biodiversity Offset Scheme. Clear guidance within the overall framework of such a Strategy needs to be provided on the following:
 - Appropriate avoid and minimise measures.
 - Appropriate conservation measures in consultation with consent authorities.
 - Purchasing credits on the market.
 - Procedures for payments into the Biodiversity Conservation Funds.
- Facilitating alternate mechanisms where credits are not available or enabling applicants with low impact to biodiversity to opt out and apply conservation actions under a suitably ecological and rigorous framework.
- Investigation of biodiversity conservation actions, such as avoid or mitigate, that can be applied where no biodiversity credits for the threatened entities exist or are likely to.

RELEVANT QUESTIONS TO THE OPERATION OF THE BIODIVERSITY CONSERVATION FUND

The following provides comments concurrently on Questions 5 and 6 within the Discussion Paper given their common applicability to the operation of the Biodiversity Conservation Fund.

Focus Question 6: What has been your experience with the Biodiversity Conservation Fund as a market alternative in 2024-25 financial year?

The Biodiversity Conservation Fund within the scope of Council's consent responsibilities has been seen to work effectively in terms of the issuing of Determinations for applicable development proposals. However, this market alternative is viewed as having strong

deficiencies in terms of efficiency and achievement of the purpose of the Biodiversity Offset Scheme and delivery of positive social, economic and environmental outcomes

The Discussion Paper lists a range of identified various issues impacting the effective functioning of the market that included “*the option for proponents to pay into the Biodiversity Conservation Fund (Fund) is preventing the market from developing*”. This statement is supported in principle in terms of such payments preventing the achievement of the purpose and No Net Loss Outcome of the Biodiversity Offset Scheme. Comments of relevance to this matter based on stated key findings in the IPAR Discussion Paper are provided in Table 2.

Table 2: Comments over Key Findings of the IPART Review

Finding of the Discussion Paper	Comments and experiences of Staff
Transactions between proponents and sellers in the market significantly exceeded payments into Biodiversity Conservation Fund during 2024/25 in comparison to previous years.	The precise reasons for this finding was not able to be located within the Discussion Paper and is uncertain. The stated low level of retirement of such payments and high price for certain credits such as Endangered Ecological Communities however is viewed as indicating flaws in the Scheme from an economic and environmental perspective.
The Biodiversity Conservation Fund’s credit purchases increased three-fold from last year, though only 65% were on a like-for-like basis..	The variation rules are not supported in principle due to technical inconsistencies with the basic principles of biodiversity offsetting by enhancing the condition of a similar type of vegetation to that being removed.
The Biodiversity Conservation Trust remains one of the largest buyers in the credits market.	As per comments above, the large reliance on the Biodiversity Conservation Trust is hindering the achievement of the purpose and No Net Loss outcome of the Biodiversity Offset Scheme.

Focus Question 7) 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?

The following provides comments and recommendations based on the experiences and observations of Council staff.

(i) Variation Rules

Council considers like-for-like offsetting to be fundamental to the principles of biodiversity offsetting and consistent with the Biodiversity Assessment Methodology, which aims to address the residual biodiversity impacts of development. For this reason, Council does not support the use of variation rules unless all reasonable options to obtain like-for-like credits have been fully exhausted and clearly demonstrated. Clause 6.3(1) of the Biodiversity Conservation Regulation 2016 requires that “the proponent... must have taken reasonable steps to obtain the requisite like-for-like biodiversity credits” before seeking a variation, and Council would expect a revised Scheme to ensure this requirement is robustly applied as a minimum standard.

In response to the consultation question, Council acknowledges that increased use of variations could expand the number of sites eligible for credit retirement and may stimulate market activity. However, such an approach is not supported due to the ecological concerns outlined above. Instead, Council considers that broader engagement with stakeholders should

be undertaken to identify measures that reduce demand for credit retirement and increase the availability of suitable offsetting options, including through additional offset sites, alternative mechanisms, and greater use of appropriate conservation actions.

(ii) *Increased use of Conservation Actions*

The use of appropriate ecologically based conservation actions as an alternate offsetting measures to the retirement of biodiversity offset credits is supported in principle and is consistent with Council's Protecting Biodiversity Principle provided below:

Considering the broader planning framework, all decisions are made in accordance with the following order of priority, where achievable:

- *Avoidance of potential impacts to biodiversity. Where avoidance cannot be achieved then;*
- *Mitigation of any unavoidable impacts of the decision on the site affected. Where mitigation cannot be achieved then;*
- *Offsetting of any residual impacts of the decision within the Wollondilly LGA.*

Those proposals prepared under biodiversity frameworks at the state and/or Commonwealth level involving offsetting must demonstrate compliance with the above position in accordance with all relevant documents including legislation and Environmental Planning Instruments. It is Council's view that this approach will promote positive sustainable biodiversity outcomes on the site affected consistent with the objectives of this Policy.

IPART is requested to note that the preferred position of staff, is for the Offset Scheme to be amended to achieve consistency with the avoid/mitigate/offset hierarchy approach of the Principle and remove the statement referring to state based offsetting frameworks. Staff would consequently support the incorporation of suitably measures for conservation actions and/or programs into a revised Offsetting Scheme that would achieve positive ecological, economic and social outcomes. **The consideration of such actions/programs as part of the ecological based evaluation of the operation of the Biodiversity Offset Market recommended by this submission is requested.**

PART C: CONCLUSION

Council welcomes IPART's review of the Biodiversity Credit Market and values the opportunity to provide feedback informed by its experience applying the Biodiversity Offset Scheme through development assessment processes. The observations of staff highlight several core issues affecting the ecological integrity, economic fairness and social acceptability of the current Scheme.

In particular, the finding that only 23 per cent of the 80,000 credit retirement obligations paid into the Biodiversity Conservation Fund have been fully acquitted points to fundamental shortcomings in both the operation of the Fund and the broader offsetting framework. These outcomes undermine confidence in the Scheme's ability to achieve its stated "no net loss" purpose and to ensure development impacts on biodiversity are equitably and transparently addressed.

This submission therefore emphasises the need for the Review to:

- **Recognise that biodiversity credits represent real biodiversity values** - including species, ecological communities and habitat connectivity - and ensure the credit market is assessed within this ecological context.
- **Examine the implications of non-retired credits**, including whether current Fund performance aligns with Section 7.13(5) of the Biodiversity Conservation Act 2016.
- **Ensure adequate ecological expertise informs the Review**, either internally or through engagement of suitably qualified external specialists.
- **Consider reforms that strengthen like-for-like offsetting**, reduce unnecessary reliance on variation rules, and support ecologically robust conservation actions.
- **Explore mechanisms to improve local supply and reduce demand for credit retirement**, including improved avoidance and minimisation practices, increased offset site availability, and clearer guidance for applicants.
- **Improve transparency, accountability and market function**, particularly in relation to the operation of the Biodiversity Conservation Fund.

Council supports IPART's ongoing work to enhance the efficiency, transparency and ecological effectiveness of the Biodiversity Credit Market and looks forward to continued engagement as improvements to the Scheme progress.