Henribark
Pty Ltd
ABN: 55 622 963 366
ACN: 622 963 366

Submission to IPART from Henribark Pty Ltd

The majority of this submission is written from the viewpoint of a director of Henribark Pty Ltd, a BSA site owner and credit trader. However, I am also a director of Thesium Pty Ltd which develops stewardship sites for clients and acts as agent (more than broker) for the sites and the credits they generate.

1. **What has been your experience with the market? For example, have you faced any difficulties or inefficiencies in buying or selling credits?**

We are only sellers so can only provide experience for this side of the equation. The purchasing we have done over the last few years is a related-entity trade, and we would wish for it to be identified as such as it is significantly below a true-market value for these same credits (being a combination of species, ecosystems and threatened ecological communities that range from not threatened to critically endangered in their status). However, as it cannot be identified in this way, the market presumes that these trades are real-world, open-market trades, and they caused a serious downward push on the pricing for the potential resale as well as the prices that can be offered by others with like-for-like credits in the same trading pools.

Our experience has been very, very poor. We hold one of the – if not the most – diverse portfolios of credits available, with potential to offset communities across almost all of the eastern half of NSW, and about 80 percent of the energy and mining development in the state. We have participated in every auction run by the Nature Markets and Offsets Division (NMO) (including when they were the Credit Supply Taskforce) and the Biodiversity Conservation Trust (BCT) for the Biodiversity Conservation Fund (BCF). To date, we have not succeeded in selling to the NMO auctions, and had limited success in the BCT auctions.

The NMO has itself been very unsuccessful in getting transactions – which is their main reason for being. Their most recent auction saw them able to transact for a mere 3% of the credits that were offered. This is not a market – it is a joke! While the NMO continues to present this option of seeking to act as broker for the market, the buyers are not approaching the vendors. We have had almost no interactions with developers, despite our capacity to satisfy needs.

2. **What do you see as the costs or obstacles to participating in the market?**

Costs: The main cost is wasted effort – mainly in trying to get the developers to interact with us as vendors and have realistic, market-set pricing to go by. At present the department acts as gatekeeper and does not appear to advise developers of the offers made to their auction processes.

The costs of assessment are an accepted part of the process and really cannot (nor should) be avoided. The expertise required to implement the method is such that similar levels of expertise in other industries (e.g. finance, engineering) is recognised and well rewarded – ecology has always been the poor cousin.

Obstacles: One of the main obstacles being confronted is the reduced ability to advise developer buyers of the costs of the credits on offer, how much we are willing to negotiate, and the reason for establishing our prices. While the BCT continue to strangle the market from developing through providing prices on credit types that are in the market yet are not being asked about, such as our own slaty red gum credits, there is no capacity for a market. They still provide a ceiling price and are not obligated or required to ensure that the credit supply from the market (including from those sites in development) is entirely exhausted before they provide a price on a credit type and acquire an obligation. The BCT pricing has a further effect on the market through the fact that the department – through their auctions – dismiss any credits offered for a price higher than the BCT price – for which it would seem they use the BCT 'published' price, which is much lower than the cost a developer would have to meet to resolve their obligation.

Another obstacle we run into is a generally poor level of understanding by larger developers about the obligations they have when participating, and whether the establishment of their own sites has been or would be financial sensible, given that land management is likely to not be a core business function and they become obligated forever. In attempting to interest national parks in the acquisition of a site we have hit a roadblock of the site not being in their priorities, despite being part of the coast-to-mountains corridor in the northern rivers and home to at least 50 threatened species, long term monitoring sites and coming with a very healthy $2.3m total fund deposit that will pay for all of the future management obligations.

3. **What changes, if any, have you noticed in the performance and competition in the credits market during the last financial year?**

Performance: Ridiculously poor. Yes, more credits have traded, but that is still only a small fraction of the credits already developed and being developed. As major projects mature through the assessment, they are only now getting to the point of having come through the BOS requirements. Any project that had 'substantially commenced' their ecological assessments could continue to use the Framework for Biodiversity Assessment process which utilised the now defunct BBAM scheme. Therefore there will be a continuing rise in the number of and diversity of credits required by the market. However, the fact that the department is accepting 3% of the credits offered and the BCT 10% of the eligible credits offered shows that those mechanisms are not successful in establishing a price point between sellers and buyers – the backbone of a market.

Competition: This is stifled by the two government-run auction processes. There is no competition in the market – only acceptance of the lowest bids. That these same credits come around again and again (yet there doesn't seem to be any further projects needing those credits moving through the public-facing major project processes) and the same credits in the same numbers come up in both the BCT and the NMO auctions shows that there is something not happening – trading. Competition can be looked at from two different perspectives – the buyer's and the seller's. Seller competition is currently between those that have credits and the BCT who accept to take on an obligation for a price that is calculated but rarely seems to relate to a realistic value, and don't actually have to have the credits available to effect the trade. The competition with the NMO is not even competition. They just provide a blanket 'too expensive for buyers' response to 97% of the bids put forward (if they are only accepting 3%). This does nothing to promote competition in the market – they are just trying to deflate credit values as much as they can (given the minister at their establishment did say that the purpose was 'to reduce the cost of biodiversity credits over time' (14/6/22 media release by Ministers Kean and Griffin). Making things cheaper over time is not a way to allow a market to initially set a price point, let alone account for the impact on pricing that factors such as inflation (which is variable across the actions required on a BSA site), changes in land values (Valuer General put the UCV of almost all rural land in NSW up by at least 75% and mostly more than 100% in the last 3 years) or recognition of the fact that this is the only source of income that land will have from that day forward. Developers are allowed to make a profit, but when a landholder does it through the selling of perpetual obligation to improve the biodiversity under management, it has to be done for no profitable outcome. In fact, we are called profiteers by the staff of the agency, yet we are returning only a fraction of the value of the land that the developer of an urban or infrastructure item is doing that requires the offset. It's a very one-eyed view.

If the market truly wants to develop competition then the people who could, but as yet don't participate in the provision of biodiversity credits would be readily enticed in by the returns being higher. That is, allow the vendors to set prices. If the developer needs the credits, they have to pay (as they do for steel or concrete or wind turbine blades). If another potential vendor sees a good return being made, they will be enticed into the market and costs will come down. However, that is not an artificial price-setting such as the taking on of an obligation by the BCT.

4. **What has your experience with the Biodiversity Conservation Fund and/or Credits Supply Fund been?**

Biodiversity Conservation Fund: So far have been okay, but do not have enough funds available to buy the credits they need for the obligations they have taken on. They bought an obligation (even for credits already in the market) and now want to resolve for that price. However, often the price is unrealistically low, or is even insufficient to meet the costs of the actions, or is not spread equivalently. For instance, why is it that credits of *Eucalyptus glaucina* are half the price of *E. cannonii*, yet the latter is only listed by NSW and the former is listed by both NSW and Commonwealth, at the same threat level – Vulnerable – and with the same mechanism to identify credit yields – count of individuals. The fund (by knowing what pricing they have acquired an obligation for though not actually publishing that value) know when an offer is satisfactory and will proceed to buy. Almost all of our sales for the last two years have been through the BCT auction of April this year.

However, the BCF still provides an artificial ceiling to the market, does not force buyers to negotiate with credit sellers when the credits are in the market and do not themselves even ask sellers what price they would be selling their credits for until they seek a value through their auction processes. This is a severe market distortion.

Credits Supply Fund is a joke. We have yet to have a successful trade to the fund, which acts as a broker between developers and the credit providers, while also having staff involved in undertaking assessments and no desire to act as they should – a matchmaking service between suppliers and buyers. They do nothing to foster a market, and when only 3% of the bids made are actually accepted, shows how distorted their view of where pricing should be is – and is not helping developers to get projects underway if they are not getting the credits that they need at prices that are set by mutual negotiation with suppliers.

5. **What oversight of brokers and accredited assessors would allow you to be confident in their activities in the market?**

Brokers have an interesting role – and being mostly now a broker myself – I recognise that they need to be able to determine how clients from both sides of the supply chain can be suited to each other. There is certainly a requirement to be aware of the spatial and like-for-like limitations on trades, and they should not be giving their purchaser-clients unrealistic expectations of what a price will be (especially as the prices are currently still in such flux).

Accredited assessors are the most conflicted of all. The scheme should have three different categories of assessor – those for impacts, those for offsets, and those for review. No company should be able to have more than one type, which would mean that the opportunity for related-party trades (and the significant downward impact these have on pricing) is reduced and would also mean that an assessor is looking to suit their chosen clientele rather than both sides of the BOS.

The values an obligation would be acquired by the BCF is still seen by assessors working for developers and the values disseminated throughout their businesses – and probably to related / close contacts, which means that their offset providers have a more accurate view of the actual pricing the 'market' has.

Assessors also need to be able to be 'reviewed' in a more timely manner. I was recently advised of the outcome of a review I launched into an AA that took 3 years – then to be told the job was not high risk, so no action was taken. However, the fact that the assessor had not been applying the BAM correctly on this job meant that they probably also did it on other jobs too. As to the correctness / accuracy of application of the BAM, I have found issues in our own assessments, including statement made (and methods employed) by staff of the agency.

6. **What information do you need to make decisions about buying or selling in the market? What is currently missing?**

Part 1: As we are only selling into the market our answer will be oriented towards that.

Part 2: The main missing information can be broken into several categories: true pricing; market values reported that are between related entities;

First is the actual values at which the BCF has created an obligation for themselves. At present, it is a much-reduced value that is provided in their documentation. As the dominant player across the whole market (being able to accept an obligation even when credits do not yet exist) they are artificially setting a price point that cannot be exceeded s a vendor has to sell below the BCF price to a developer or the developer merely seeks the BCF to resolve the obligation.

Secondly, giving the market an unrealistic pricing item through the transactions between related entities.

7. **What form of market oversight would you like to see going forward to ensure your ongoing confidence in the market?**

Oversight that is needed includes:

- Reducing the influence of the BCF on the market for credits that exist or are in production on a prospective / in-assessment future stewardship site. In essence – if a credit exists in the market then the BCF should not be able to offer a price for it until those credits are marked as committed (which is not something the department does yet in its registers but needs to).
- Inability of the BCF to take an obligation for a credit type until the like-for-like credit is no longer available in the market at any price set by the vendor. As biodiversity is a finite resource, as less becomes available for trade, the price should increase, potentially exponentially, as happens in typical market dynamics.

- Provision of different categories of credit trades types so that those which are 'off market' (but still have to be reported by requirement of the legislation) get captured and reported so that these trades do not distort price expectation of buyers. Such examples are 'related entity'; 'vendor market'; 'government auction'. Additionally, one where the credits are retired as a tax-writeoff could also be included. Not really philanthropic, but with a similar outcome for the market.
- Provision of trade information / Price estimation values in a much more timely manner than the current 6-month delay – AND – provision of the actual prices offered, not the 'base price' onto which all the on-costs are added before the developer is given the price of acquiring their obligation.
- Recognition that prices should increase over time by at least the minimum inflationary increase of the inputs required to generate that credit (such as the price of labour, fencing materials, chemical or land value). At present the market has an artificial belief that there should be a decline in credit prices (see the media release mentioned above), or at least a stabilisation, while costs continue to be subject to inflationary pressures.

8. **UNABLE TO PROVIDE A RESPONSE. See below.**

9. **Has the removal of the price cap in October 2023 impacted your use of the Biodiversity Conservation Fund? Have you noticed any secondary impacts resulting from this on the market?**

There has been no removal of the price capping. All credit prices are still regulated by the BCF, through their publication of the values in the 'price estimation service' documents. As this has no relation to actual values at which trades occur – being without their markups and risk values – it distorts the expectations of buyers. We are told that the published prices are what we should be selling for – which fails to take into account all the oncosts a buyer will be charged. It also appears to be the price the department would like to see trades at, given they state in their auction information that prices higher than the BCF values will be dismissed from the auction process and prices we calculated to the low end of the range using the published BCF information were still identified as 'too high for buyers'. This price is only ever declared when the trade is for actual credits and this is reported through their dashboards and registers. There needs to be accuracy and correctness in presentation of information, which at present is distortionary on the market.

Yes we have noticed this. We have been told by prospective purchasers they will not pay more than the published prices despite these being much lower than actual trade values. The department perpetuates this in their auction processes, ignoring anything / dismissing any bid that is higher than the published price, even though the method the BCF uses is published and therefore the likely credit price for trading can be worked out to within a reasonable degree of accuracy. When we offer just below these values we are informed that we are 'priced too high for buyers', even though we are the only supplier in the market and therefore should be setting the price point.

10. **What information, communication or other measures could be taken to assist market participants navigate new market reforms?**

a. Immediate trade reporting, for all trades (including the acquisition of an obligation by the BCF) so the market has a visibility on pricing. It also needs to identify when a trade occurs whether it is open market, related-entity, BCF obligation, bulk-valuing (where all of the credits are retired for an agreed value that gives one price overall) or self-retirement (such as Walker Corp, Lend Lease, Transgrid and Inland Rail). At present this is undeclared in the trading / settlement forms and is also not presented in the public registers.
b. Publication of the successful bid pricing from all auctions (not the 'weighted average'), even if the site is still in the process of assessment. Such obligations are contractually binding on both buyer and seller (and are able to be dismissed only if the credit cannot be created). Therefore, they can and should be reported, with an identification to flag that this is a price offered and accepted for credits that are 'in preparation'.

Question item 8 is directed at aboriginal landholders.

8. For Aboriginal landholders: what are the main barriers to your participation in the credits market? Are there any aspects of the biodiversity credits market that do not align with Aboriginal ways of managing Country?

We are unable to answer this question as we are not aboriginal landholders.

Yours sincerely

Henribark Pty Ltd

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Director, Ecology

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