

Mr Andrew Nicholls  
Chief Executive Officer  
Independent Pricing and Regulatory Tribunal

By email: [andrew.nicholls@ipart.nsw.gov.au](mailto:andrew.nicholls@ipart.nsw.gov.au)

Dear Mr Nicholls

I am writing to request a meeting with IPART Tribunal members and yourself to discuss your second annual review of the NSW biodiversity credits market. In particular, we would like to address some comments made in recent stakeholder workshops and to provide updates on recent BCT progress in acquitting obligations and the Biodiversity Offset Scheme reforms that are likely to impact the BCT's operation in the credit market.

### **The BCT has made significant recent progress in meeting its credit obligations**

IPART's overview of market activity indicates that new credit obligations transferred to the BCT grew at more than double the rate that the BCT was able to purchase credits. This figure is based on credit purchases and acquittals, which is a lag indicator. I have attached some figures that include the credits that the BCT has contracted to purchase (i.e. a lead indicator). These figures demonstrate that the BCT has made significant progress in meeting its credit obligations in the last 12-15 months. The BCT has provided the underlying data to the IPART Secretariat.

### **Proposed BC Act amendments will address aspects of BCT's role and operations**

On 13 August 2024 the Minister for the Environment introduced the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* in the Legislative Council. If passed, these reforms will enable limits to be imposed on the ability of proponents to meet an offset obligation by paying into the Biodiversity Conservation Fund (BCF). The reforms will also require the BCT to acquit offset obligations paid into the BCF within three years, after which the BCT must enter into an agreement with the Minister on how the obligation will be met.

### **Factually incorrect statements by stakeholders present reputational risk to the BCT**

Some erroneous statements by stakeholders in the recent IPART workshops would negatively impact the BCT's reputation if published again without correction or appropriate context. Comments include:

1. *The BCT suppresses prices to benefit development proponents or is incentivised to suppress prices by its long-held obligations.*
  - This is incorrect. The Biodiversity Offsets Payment Calculator (BOPC) is designed to accurately estimate the cost to the BCT of meeting obligations. The BCT's Framework for updating the BOPC ensures the BOPC prices are based on the best available information. The BCT tries to identify all non-market and averaged trades and exclude these when calculating the BOPC price.
  - The BOPC sets the price for proponents to pay into the BCF but the BCT does not limit itself to this price when buying credits and does sometimes pay over the paid-in price to purchase credits in the market.
  - The BCT has other regulatory mechanisms to acquit long-held obligations, such as conservation actions and variation credits.

2. *The BCT uses funds in the Biodiversity Conservation Fund (BCF) for its other conservation activities, or to subsidise staff positions.*
  - This is untrue. The delivery fee component of BCF payments is used to recover staff and administrative costs incurred in delivering our role to secure offsets paid in to the BCF. This delivery fee is added to the amount paid in by developers per their obligations, which are solely used to secure offsets.
3. *Fund charges are published with a 6-9 month time lag and without including the risk premium and delivery fee, which gives proponents an unfair market advantage and low price expectations.*
  - The *Biodiversity Offsets Payment Calculator Order 2022* establishes that quote information would be published 6-9 months after a quote was issued, to supply information to the market but minimise the influence of the BOPC on the market price.
  - The published prices are intended to provide information to assist sellers, and not to be a market signal. Therefore, the predicted credit price is published without the risk premium and delivery fee. The risk premium is necessary for the BCT to cover uncertainty about the future price and timeframe in which we will be able to buy a particular credit.
  - The figures for the risk premium and delivery fee are published on the BCT's website.

I note that BCT and Department of Climate Change, Energy, the Environment and Water staff have also met with the IPART Secretariat to provide advice on statements made in the stakeholder workshops. I thank the Secretariat for providing this opportunity but would value the opportunity to convey our position directly to Tribunal members.

At the meeting it would be helpful to get an update on IPART's progress and timeframes for release of the annual monitoring report.

I also seek an opportunity to see a copy of the draft report at least one week prior to publishing so that we can check for any factual inaccuracies. Depending on timing and availability, I would seek to be joined at the meeting by our Chair, the Hon. Niall Blair and our Director Programs, Mick O'Flynn.

Please contact me on [REDACTED]  
[REDACTED] to arrange a suitable time to meet.

Yours sincerely

[REDACTED]

Dr Erin Giuliani  
**Chief Executive Officer**  
**Biodiversity Conservation Trust**

Enclosure

**Attachment – Progress in meeting credit obligations transferred to the BCT since 25 August 2017**

<b>Date</b>	<b>Total number of credits transferred to the BCT</b>	<b>Total number of credits the BCT has committed to purchase, purchased and acquitted</b>
June 2023	55,674	16,580 (30%)
June 2024	66,615	30,318 (46%)
September 2024	69,513	38,903 (56%)

**Our reference:** 24/101  
**Your reference:**

**Contact** Ineke Ogilvy



20 November 2024

Dr Erin Giuliani  
Chief Executive Officer  
Biodiversity Conservation Trust

via email

Dear Dr Giuliani

### **IPART's 2023-24 Biodiversity Credits Market Monitoring review**

Thank you for your letter regarding IPART's second annual review of the NSW biodiversity credits market.

The Tribunal has noted the Biodiversity Conservation Trust's concerns regarding statements made by stakeholders at recent stakeholder workshops. The Secretariat has also been alerted to these matters through earlier discussions and information provided by Biodiversity Conservation Trust officers. I thank you for raising these matters with us. Although our consultation period has closed, the Tribunal has indicated that it would be willing to treat your letter as a submission to the review and publish it on our website so that other stakeholders may also have the benefit of the information it contains. We seek your confirmation on whether you would consent to this. IPART's submissions policy is available on our website for your reference.

In view of the consultation process now being complete, the Tribunal does not typically meet with key stakeholders during the deliberative process to avoid perceptions of undue influence or private submissions being made outside of the public process. While the Tribunal would ordinarily be pleased to meet the Trust, I would suggest that we organise this at some time after the current review process and before the next review commences.

That said, I would be happy to meet with you as appropriate.

Prior to release of IPART's second annual report (due by 31 December), the Secretariat will ensure the Biodiversity Conservation Trust is given the opportunity to undertake appropriate fact-checking. IPART's Secretariat will engage with your officers regarding fact-checking as early as practicable.

At present the annual report is scheduled for release in mid-December. I will seek to arrange a confidential pre-briefing with the Biodiversity Conservation Trust to convey key findings and recommendations from the report prior to its release. My team will be in contact with yours to arrange a time for this meeting.

Should you wish to discuss any other matters prior to this, I would welcome a meeting with yourself in the coming weeks and will convey any relevant matters to the Tribunal thereafter.

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Please do not hesitate to reach out should you have any other questions. IPART's contact officer for this review is Ineke Ogilvy, [REDACTED]

Yours sincerely

20/11/2024

[REDACTED]

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Andrew Nicholls PSM  
Chief Executive Officer  
Signed by: [andrew.nicholls@ipart.nsw.gov.au](mailto:andrew.nicholls@ipart.nsw.gov.au)