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NSW Biodiversity Credits Market Review
Independent Pricing and Regulatory Tribunal NSW
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Haymarket Post Shop NSW 1240
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Dear Sir/Madam,

RE: MONITORING THE NSW BIODIVERSITY CREDITS MARKETS

Thank you for the opportunity to provide a submission on IPART's Discussion Paper on the performance of the Biodiversity Credits Market in NSW.

Council understands that IPART has been tasked with monitoring the performance of the Biodiversity Credits Market over a three-year period and has prepared this Discussion Paper on the performance of the credits market in 2022-23.

Council is keen to see the strengthening of the NSW Biodiversity Offsets Scheme to ensure that biodiversity losses due to development or land clearing are compensated by equivalent biodiversity gains and meet the necessary "no net loss" standard of the scheme.

Please find Council's responses to the questions raised in your Discussion paper outlined below.

1. What is Council's experience with the biodiversity credit market?

In the Randwick Local Government Area (LGA), the most critically endangered ecological community is the Eastern Suburbs Banksia Scrub (ESBS). Currently, there is no credit supply market for local critically endangered ecological communities and species in the Randwick LGA where developers can purchase biodiversity credits to offset the impacts of their clearing and development of land. Instead, developers simply pay into the Biodiversity Conservation Fund (BCF) to offset impacts of their clearing and development. Council shares the concern that the BCF has tended to provide an expedient means of meeting developers' offset obligations without placing a realistic price on their actual cost to adequately fund conservation and restoration works especially where these involve complex plant communities like ESBS.

In addition, although conserving biodiversity can be funded by credits available through the BCF, these credits are not necessarily used to protect biodiversity within the metropolitan region or locality where specific species communities are in danger. The biodiversity credit market should have a principal goal of ensuring that there is no overall loss of biodiversity within a region or locality. For example, in Victoria, any offset for the removal of native vegetation must be in an area within the same Catchment Management Authority boundary or municipal district. In this way, there is a direct geographical link between where the offset occurs and the site where native vegetation is being removed. Regrettably, some accreditors and assessors do not put adequate effort into exploring local offset opportunities; they often opt for the simplest solution by recommending that developers simply contribute to the BCF.

Often the credits available in the BCF are not utilised within a timely manner and there is a significant lag between the money being paid into the Fund and conservation works occurring on the ground. There have been instances where payments due for the fund occur some months after the site has been cleared despite a court order requiring payment be made before any on site works occur.

In summary, in terms of market considerations, the BCF mechanism may no longer be the most optimum approach to solve biodiversity problems, particularly in relation to areas of very high conservation value where biodiversity credits are scarce.

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

Developers appear to choose the easiest option to buy credits by paying into the BCF Fund to offset impacts of their clearing and development. Council supports the IPART Biodiversity Market Monitoring Annual Report 2022-23 recommendation that an interim measure should be established to reduce developers' reliance on the BCF pay-in option. In this report, it was found that 80% of credits were purchased through the BCF, which, given the issues discussed in point 1 above, undermines the purpose of the credit transfer system. BCF Payments should be a payment of last resort when all other options have been exhausted. Additionally, there should be a higher price to pay into the fund to incentivise proponents to purchase credits within the market and/or to minimise deleterious impacts on biodiversity on development sites.

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

and

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?

From Council's experience with relevant development applications affecting ESBS, Accredited Assessors are reluctant to review/amend credit estimate reports especially in instances where developments have been amended to increase density and scale. This seems to have occurred following the introduction of the new payment calculator in October 2022 for the BCF when the 20% cap on price increases expired. However, Council has no evidence of any causal links between the role and actions of Accredited Assessors in the handling of these DAs and the removal of the price cap. Suffice to say, reviewing credit impacts from amended developments before any credit transactions are completed is a legislative requirement. A well-functioning market should be structured in a way that disincentivises harm/destruction of communities/species. In this regard, the price point for offset credits that involve removal of endangered communities/species should be set at a higher level compared to other native vegetation, to be commensurate with the severity of the removal and biodiversity impact. This is more likely to encourage development projects to be designed in a way that gives greater regard to the potential impacts on endangered communities on a site and potentially their retention.

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

As discussed above, due to the lack of credit supply for critically endangered ecological communities developers simply opt into the BCF. There is an inherent assumption that payments into the BCF can be appropriately allocated to a Biodiversity Stewardship Agreement (BSA) (an agreement that provides for permanent protection and management of biodiversity in a specific site) and translated into intended biodiversity outcomes and like-for-like offsets. However, in reality, as noted by IPART, there is a discord between the site specific protection and management measures in a BSA and the credits available from the BCF to developers.

In NSW, the Biodiversity Conservation Trust (the Trust) oversees the process of acquiring and generating credits through BSAs while also administering funding from the BCF with the goal of distributing credits to developers to achieve no net loss in biodiversity. The Trust, therefore, has an important role in connecting the credits generated through BSAs and those available in the BCF. However, according to the IPART Biodiversity Market Monitoring 2022/23 annual report, the Biodiversity Conservation Trust obtained credits much faster than it accounted for them. This means that there is a significant time gap between when biodiversity impacts occur and when biodiversity offsets are implemented. This situation does not align with the goal of achieving “no net loss in biodiversity”. It is recommended that the role of the Trust should be reviewed to strengthen its ability and capacity to connect landowners, developers, and conservation efforts, through the BSA and BCF mechanism.

Specifically, more effort should be made by the Trust to identify and establish offset sites within the city metropolitan area (including Randwick LGA) and within the required species communities in this area that funding through the BCF can be directed towards. This is essential to ensure that offset occurs within the local area so there is no net loss of biodiversity within the designated area.

It is considered that interventions by the Trust to increase credit supply will have a positive effect on the biodiversity credits market. Work to establish more credit sites should be prioritised by the Trust as it will expand support for the credit market as well as facilitate an efficient market, where credit prices serve as indicators of the cost associated with offsetting impacts. They also provide landholders, whether they are buyers or sellers of credits, with the appropriate incentives to either develop land or prioritise biodiversity conservation.

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

Council has encountered feedback from participants in the biodiversity credit market that credit registers (official records that manage and track biodiversity credits) and public transaction registers (registers that provide transparent data on credit market transactions) are difficult to navigate. These registers are often in need of update and the time delay in getting these updates creates uncertainty in tracking credit transactions. The databases should be easier to navigate and search so that they can be relied upon to provide an accurate, current and easy to understand tracking system for all participants. The registers should be easily accessible on-line; maintained in one database that is searchable via clear accessible search fields; and kept up-to-date in real-time.

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

The current use of the BCF does not reflect the real need for credit sellers within the existing market. To address this and to ensure confidence in the market, the following measures are suggested:

- Innovation and technological improvements should be introduced and encouraged to streamline the process and update the credit database. This would be useful for improving access to, and transparency for, credit registers and public transaction registers as referred to above.
- Stakeholder engagement should be enhanced by seeking feedback from landowners, developers and conservation groups on how to connect and match their credit supply and credit demand needs to efficiently and effectively meet biodiversity conservation goals and targets. Their concerns should be addressed and their perspectives incorporated into market oversight decisions.

- The biodiversity offset credit market should be expanded to play an oversight role in addressing Aboriginal land use matters by linking biodiversity credits to Indigenous Stewardship. Increased biodiversity credits should be generated for conservation efforts undertaken by indigenous stewards who have a deep connection to the land and are natural custodians of biodiversity. By engaging Indigenous landholders, the credit market can recognise and value their traditional knowledge, practices, and contributions to conservation. In addition, there are cultural and ecological benefits to be gained from using Aboriginal land use practices which often align with biodiversity conservation. For example, traditional land management techniques, such as controlled burning, can enhance ecosystem health and promote biodiversity. Subject to consultation with the relevant landowners, there may be opportunities in exploring sites with native vegetation and endangered species that may benefit from indigenous stewardship.

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

A possible future reform for the scheme could involve Biodiversity accredited assessors providing early advice to clients during the design phase.

Council looks forward to seeing improvements IPART can make to enhance biodiversity outcomes and support a functioning biodiversity credits market.

If you require any further information on items raised in this submission please contact Bronwyn Englaro, Senior Sustainability Officer on [REDACTED] or [REDACTED]

Yours sincerely

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