



Environment Institute  
of Australia and  
New Zealand Inc.

## **NSW Biodiversity Conservation Trust**

Re. Biodiversity Conservation Fund Charge System

Via email: [justin.williams@bct.nsw.gov.au](mailto:justin.williams@bct.nsw.gov.au)

31 March 2022

Dear Biodiversity Conservation Trust,

### **Submission on behalf of the EIANZ Biodiversity Offsets Community of Practice**

This submission to the NSW Biodiversity Conservation Trust (BCT) is made by the Biodiversity Offsets Community of Practice (Ecology Special Interest Section) of the Environment Institute of Australia and New Zealand (EIANZ). The submission includes contributions from a group of experienced consultant ecologists that represent multiple ecological consultancies from NSW. The majority of members are Accredited Assessors (under the NSW BC Act) and have significant experience with the NSW Biodiversity Offsets Scheme (BOS) since its commencement in 2018, as well as the prior voluntary scheme (Biobanking) from 2006-2017, and assessment and ecology offset process prior to implementation of both schemes (negotiated outcomes on a case-by-case basis). The contributors to this submission implement the BOS on a day-to-day basis, and together have unparalleled experience on how the scheme operates in real life. We provide below our submission to directly address each of the proposed changes to the Biodiversity Conservation Fund (BCF) Charge System having considered the following documents and information sources:

- Draft BCF Charge System (BOPC) Order (BCT 2022)
- Draft BCF Charge System Method (BCT 2022)
- Landholder interview report (O'Connor 2021)
- Independent review report (O'Connor 2022)
- Econometric Model report (MJA 2022)
- Land valuation for System Hunter report (Opteon 2022)
- Webinar held by BCT on 7 March 2022.

#### **Change 1: The BCT will become responsible for the design and management of a new BCF Charge System to replace the current BOPC**

We are supportive of the BCT taking responsibility for the BCF Charge System. It is logical that the agency responsible for sourcing and acquitting the biodiversity offset obligation is also responsible for setting the charge.

We note that one purpose of the NSW *Biodiversity Conservation Act 2016* (BC Act) is:

---

*'To establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset'*.

---

Through the BCF Charge System, the BCT is a key participant in this market. As such, we believe the BCT has an obligation to ensure that all stakeholders (ie. proponents, stewardship site owners and accredited assessors) have equal access to information and that there is transparency regarding market activity. Whilst we are supportive of several of the proposed changes, we have concerns that some of them will result in an inequality of access to information that is critical for all participants of the BOS, due to the restricted access to the credit pricing under the proposed Developer Charge model. These concerns are highlighted further below.

### **Change 2: The current BOPC will be withdrawn from public view.**

The current price of Biodiversity Credits is a critical consideration for proponents and landowners alike. Prior to the launch of the Biodiversity Offset Price Calculator (BOPC), credit pricing could only be inferred based on recent past trades for a limited number of communities and species, as held within the Biobanking Public Registers, or extrapolated for similar communities/species with corresponding limitations. The BOPC solved this problem by readily providing a current credit price for each Offset Trading Group (OTG) and species credit species that could be used by proponents entering the BOS or landowners considering entering the BOS (by establishing a Biodiversity Stewardship site). Whilst there are limitations associated with using the current BOPC price, it does provide a valuable guide as to a potential future offset liability for proponents or the viability of a proposed Biodiversity Stewardship Site. For proponents, this price information can be vitally important when assessing the future financial viability of a development. Having this price readily accessible has undoubtedly led to additional avoidance and minimisation of ecological impacts on countless projects to reduce project costs.

Notwithstanding the above, we agree that the establishment of the BOPC has influenced the Biodiversity Credit market and in many cases, the current credit prices do not reflect the cost of generating credits on a Biodiversity Stewardship Agreement (BSA) site. Despite this, it is unclear how removing the BOPC from public view will resolve this issue as the market will continue to be influenced by the Developer Charge through the proposed quote system.

We have concerns as to whether there will be confidentiality requirements for Developer Charge quotes and whether this will result in perceived conflicts of interest for Accredited Assessors with access to Developer Charge quotations when advising clients considering a BSA. In short, it is not clear whether Developer Charge quotations will be considered to be confidential information or not. If they are considered to be confidential it is unclear how Accredited Assessors are meant to handle this potential conflict of interest. We propose that all Developer Charge prices should be publicly available so that equal information is available to all.

Should government make the decision that Developer Charge prices will not be publicly available, we provide commentary below on what will help the market to function. Setting aside the current BOPC, the current suite of tools publicly available are inadequate and

time consuming to use. We therefore propose that the following information should be publicly available through one logical user-friendly interface at the time the Developer Charge model becomes active:

- Species credit and ecosystem credit sales, including the sale price of each OTG/species credit. This should include credits purchased by the BCT.
- Credits retired that have not previously been sold, and the associated price paid into the TFD for each OTG/species credit. Current data in this space is substantially flawed with larger trades (e.g. Transport for NSW), lumping species and ecosystem credits and therefore lowering the actual trade price for each credit. An attempt to rectify this issue on the public facing website could be made, or the register should indicate that these trades are not considered 'market priced' trades.
- Credits currently available for sale (searchable by OTG and Plant Community Type (PCT)).
- Identification of credits being held to meet a future anticipated credit obligation, and therefore not available for sale.
- Credits wanted (searchable by OTG and PCT), including those being sought by the BCT.
- All categorisation data that influences the credit price, as outlined within the Draft BCF Charge System Method.
- The estimate of credit demand value for each OTG.

We further request that the publicly available credit registers are made much more user friendly. Searching for recent trades within the current multiple public registers is time consuming as PCTs are not grouped into OTGs and the majority of PCTs have had no prior trades. The vast majority of trading had taken place prior to the PCT classification, and retrospective application of PCTs to the old BioMetric Vegetation Type (BVT) system also presented issues, particularly with the removal of the BVT codes from the NSW Vegetation Classification System 2.1 (VIS). We have concerns that the proposed east coast PCT classification will further complicate matters if available tools do not clearly show PCT lineage. Making this information more accessible and user friendly will assist all participants in the biodiversity credit market.

**Change 3: The charge is calculated by estimating the likely cost of acquitting an obligation for like-for-like credits from one or more of four decision support systems outlined in a new method:**

We have provided specific feedback about each method below, however, there appears to be no clear decision-making framework to follow when determining which method is the most appropriate to apply. The BCT should, as a minimum, publish which pricing method applies to each OTG and to species credit species.

**a) Cost-structure tool for ecosystem credits**

The cost-structure tool provides a robust method for predicting the cost of generating a credit at a BSA site for OTGs and species that are poorly traded. Whilst the method appears sound, there are some considerations we wish to point out that may improve the accuracy of the data being used.

The BCT have used existing BSA/Biobanking Agreement data to model various elements of the cost-structure tool for ecosystem credits, including predicted Total Fund Deposits (TFDs) and typical risk margin. We would point out that this data is based on sites that have been established and does not account for sites that were deemed not viable due to the current BOPC credit prices. Further it does not account for TFDs that have been established by interested parties ie. where a proponent establishes a BSA for the sole purpose of generating credits for their development. Whilst it is noted that all TFDs undergo a review process, typically these TFDs have a lower allocation of funds for initial and on-going management, have no Part B or opportunity cost, and thus we consider these to be Part A only trades and should be excluded from any future modelling.

Other changes that have influenced TFDs over time include a drop in the Discount Rate as well as additional landowner requirements, inflationary pressures (e.g. fencing) particularly the Ecological Monitoring Module, that have resulted in additional in-perpetuity costs, which has yet to be reflected in credit trades and pricing. Appropriate scaling of older TFDs would be required to ensure they are comparable will more recent ones. We understand that BCT have made adjustments to previous prices to account to these changes. We note that this 'adjustment' factor could also be relevant to other market participants.

Whilst our preference would be that credit pricing for all OTGs is made publicly available, in the absence of this it is desirable that the categorisation of each OTG (such as BSA size category) is made publicly available.

#### **b) Cost-structure tool for species credits**

As noted above, the cost-structure tool provides a robust method for predicting the cost of generating a credit for a given species. The BCT have clearly given significant consideration to the factors that determine the likely cost of generating a species credit and we look forward to seeing the outcome of this process.

Whilst our preference would be that all credit pricing is made publicly available, in the absence of the pricing it is desirable that the categorisation of species is made publicly available. Without this information it will be impossible for proponents to understand the potential cost of species credits and for landowners to consider whether targeted surveys for species credit species at BSA sites are worthwhile. In our experience, species credit prices are particular difficult to price, and the BCT's classifications will help provide transparency for all market participants.

#### **c) Econometric (or statistical)**

We agree that the Cumberland Plain Woodland and River-flat Eucalypt Forest OTGs are the most traded ecosystem credits and therefore are the most suitable for the econometric charge calculation. We support that ongoing econometric calculation for these OTGs but note that the market/econometric price associated with both Cumberland Plain Woodland and River-flat Eucalypt Forest OTGs credits was established in a true market-based environment under the former Biobanking Scheme. Since the establishment of the BOS and the BOPC, the prices of these credits have been subject to an artificial ceiling (the BOPC price) and have not been purely subject to the market factors of supply and demand. It is unclear if or how this will be factored into the econometric pricing of these two OTGs

moving forward. In addition, trading rules for HN528 and HN529 (now PCT 849 and PCT 850) which are both associated with Cumberland Plain Woodland, have changed over this period and both are now combined into a single OTG.

Presumably it is anticipated that if there is sufficient market activity for an OTG then it will be moved from the cost-structure tool to the econometric pricing. No guidance has been provided regarding the threshold for this change or how the process will be managed. We recommend that this is elaborated upon in the BCF Charge System Method

#### **d) Market soundings**

We agree that alternative sources may provide information that is relevant to credit pricing, however the process for using information gathered during "market sounding" is vague, relying on "*relevant information from within government, from the market, from scheme participants, and/or from external experts*" (BOPC order 2022, 6 (\*10 (d))).

In such instances where market soundings inform the credit pricing, this information should be made publicly available for transparency.

#### **Change 4: Development proponents can request a quote for a charge after finalising a Biodiversity Development Assessment Report (BDAR) and seeking development consent.**

As noted above (Change 2), the potential future offset liability is a key consideration for projects (and proponents) that are entering the BOS. The offset liability alone can render a project unviable or can result in significant alterations to proposed designs at the pre-lodgement phase. This design development often drives avoidance and minimisation measures beyond what would have otherwise been proposed.

By not allowing proponents to receive a Developer Charge quote until after a project has been approved, they are not able to understand this cost at the planning stage of a project when biodiversity considerations are best incorporated. It is likely that this will result in alterations to projects post-approval through modification that are a burden on both the proponent and the consent authority.

If the BOPC is to be taken out of public view, we recommend that proponents be permitted to request a quote prior to finalising a BDAR or receiving a development consent.

#### **Change 5: The BCT will provide a charge with 20 days for small projects or 30 days for large projects, or longer by agreement.**

The current BOPC provides an instantaneous result therefore it is unclear why the BCT requires 20 days to provide a quote.

#### **Change 6: Charges will be valid for 12 months.**

We are supportive of this timeframe.

#### **Change 7: Development proponents will be able to opt for immediate or deferred payment options.**

We are supportive of this option for proponents.

#### **Change 8: The BCT will publish Developer Charges at the time that credits are retired.**



Under the current system, transactions are published at the time they occur, regardless of whether they are a transfer or a retirement. On the basis that it will take BCT, on average, two to three years to acquit an offset obligation, the prices being published will be, on average, two years behind the market.

We believe that Developer Charges should be made publicly available at the time the charge is paid by the proponent. This is because it could take some time until the BCT is able to source the biodiversity credits, and this delay will affect appropriate market pricing.

**Change 9: The BCT's implementation of the BCT Charge System will be subject to annual independent assurance reviews commissioned by the Department of Planning and Environment.**

We note that the BCT will play an increasingly vital role in the biodiversity marketplace, as the agency will have:

- Responsibility for review and approval of Biodiversity Stewardship applications, and other private land conservation agreements.
- Responsibility for overseeing and funding ongoing management on private land conservation agreements.
- Take on proponent credit obligations via payment to the Biodiversity Conservation Fund and setting the price for these credit obligations.
- Fund Manager of the Biodiversity Conservation Fund.
- Sourcing credits to meet the obligations made via payment to the Biodiversity Conservation Fund.

In the credit market the BCT will be a buyer, a regulator, and a price setter, as well as playing a conflicting role by funding private land conservation agreements. We are thus strongly supportive of a yearly independent review process and making the findings of these reviews publicly available shortly after they are completed. We further propose that the BCT should prepare and publish a clear code of ethics for BCT staff, identifying where accountability rests for decisions made, and processes that proponents or Stewardship site landholders have to challenge decisions made, where relevant.



## Conclusion and Recommendations

In conclusion, the EIANZ Biodiversity Offsets Community of Practice are supportive of the BCT taking responsibility for the BCF Charge System, as it is logical that the agency responsible for sourcing and acquitting the biodiversity offset obligation is also responsible for setting the price charged.

We have concerns about removal of the BOPC, as this will make it harder for all participants to understand the likely price point of different credits in the market, but we understand much of the data in BOPC does not reflect actual market trading and can provide erroneous market signals to proponents and landholders. We also have concerns about whether Developer Charge quotations may be considered to be confidential, as this may create perceived or real conflicts of interest for Accredited Assessors.

We believe a much stronger, robust, and user-friendly portal providing information on all credit trades or expressions of interest in one location will help the market to function.

Finally, we believe that the BCT should more clearly articulate the code of ethics that their staff will be expected to follow, and relevant process to ensure that the agency is acting in good conscience and in accord with its objectives.

## Declaration of Interest

We declare that various members of the EIANZ Biodiversity Offset community of practice have been consulted on the BCT working group and/or undertaking technical review on the Biodiversity Assessment Method, or various technical components of the new Developer Charge model.

A handwritten signature in black ink that reads "Steven Ward". The signature is written in a cursive style and is positioned above a horizontal line that serves as a separator.

**Dr Steven Ward MEIANZ**

Chair EIANZ Biodiversity Offsets Community of Practice