



Environmental Defenders Office

26 August 2021

Ms Holly Park
Manager Biodiversity Offsets Program
NSW Biodiversity Conservation Trust

By email:

Dear Ms Park,

BCF Charge System - BCT Preliminary Design Approach: Issues Paper for stakeholder meetings

Thank you for the opportunity to comment on the *BCF Charge System - BCT Preliminary Design Approach: Issues paper for stakeholder meetings (Issues Paper)*. Environmental Defenders Office (EDO) provides the following comments in relation to the Design Principles articulated in the Issues Paper. These comments build on our previous submissions to consultations on the Biodiversity Conservation Fund (BCF) Charge System.¹

EDO has also commissioned specific expert advice in relation to the economic models proposed to be used in developing the BCF Charge System. That advice is **attached** for your consideration.

Of overarching concern is the fact that **none of the proposed principles go to ensuring that the BCF Charge System delivers positive environmental outcomes**. The Technical Review identified that a characteristic of a successful system will be the ability to develop a 'healthy environment'. This should be a fundamental consideration in the development of a BCF Charge System and expressed as a principle in the development of the system.

Principle 1: The developer charge should reflect the average cost of delivering offsets at a Biodiversity Stewardship Agreements (BSA) site

There still remains substantial risk to the BCT, and the achievement of environmental outcomes, if the average cost of all sites provides an insufficient buffer to cover costs associated with implementing offsets on more expensive sites. There is no evidence that the BCT has conducted scenario modelling to understand the scale of this risk. As EDO has stated previously, the cost of offsets should be driven by the costs of delivering the necessary environmental outcomes, including a recognition of increased scarcity, irrespective of the cost this creates for developers. See also the expert advice provided to EDO in relation to this principle.

¹ In particular, see EDO submission "Changes to the biodiversity offsets scheme: public consultation", April 2021

Principle 2: The value of payments into the fund should balance the cost of acquitting these obligations over time, however a modest margin for risk and administration for the BCT is appropriate

EDO is concerned about the concept of a ‘modest’ margin for risk. The review that informed this Issues Paper demonstrated that the current system is high risk, as shown by the fact that the BCT currently holds insufficient funds to cover the costs of the offset liability it already holds. In light of this, the ‘margin for risk’ should be accurately identified as substantially higher than ‘modest’ and further consideration should be given as to what extent this risk currently is. The risk margin could be revisited over time if and when the system is shown to be delivering the necessary environmental outcomes.

Principle 3: Charges should reflect the objectives of the BOS to encourage the avoid, minimise, offset hierarchy and to ensure, as far as practical, offsets met through the BCF are ‘like-for-like’

EDO agrees that charges should reflect the true cost of delivering ‘like-for-like’ land based offsets. EDO has written previously about our significant concerns with the variation rules and refers to the Biodiversity Conservation Trust (**BCT**) to those comments.²

Principle 4: The charge system should be robust and aim to reduce unnecessary volatility and improve certainty for participants

It is important to ensure that the implementation of this principle does not come at the expense of environmental outcomes. There is a significant tension between providing certainty for participants and ensuring the Biodiversity Offset Scheme (**BOS**) delivers the required environmental outcomes on the ground. There is still no appropriate cost factor in the BCF Charge System to recognise increasing scarcity of species or ecosystems, and there is no appropriate cost factor to recognise stochastic events such as the 2019/20 bushfires. Both of these factors are necessary and should be built into the design principles.

This principle is also relevant to the timeframe for the validity of a charge estimate. Charge estimates should be limited in time to ensure that the availability of offsets does not change significantly (due to other purchases or stochastic events), and there should be a mechanism to allow charge estimates to be reviewed following significant events, such as bushfires.

² For example, see: “Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes – August 2020”, available at: <https://www.edo.org.au/publication/report-nsw-native-vegetation-law/> and “Submissions on the NSW Biodiversity Law Reform Package 2016; and Draft regulations and products on public exhibition 2017”, available at: <https://www.edo.org.au/publication/submissions-on-the-nsw-biodiversity-law-reform-package-2016/>

Principle 5: The charge system methods should be logical, explainable and transparent

EDO strongly supports the development of a transparent system. As the dominant market player, the BCT must consider the implications its charge system has for individual landholders who may not be able to match the cost efficiencies that are inherent in an organisation the size of the BCT.

There is a significant concern that current Total Fund Deposits may not be sufficient to allow landholders to manage land for conservation in perpetuity. The assumptions around long term funding for ongoing management must also be explainable and transparent. While basing assumptions on credits prices that have been sold to date may provide some useful information, it has yet to be demonstrated that existing credit prices actually provide for the long term viability of funds available to manage sites in perpetuity.

Principle 6: The charge system should be repeatable, utilise the best available information and not be onerous to implement

Again, we make the point that environmental inputs informing the charge system are not stable and therefore there should not be an assumption that the price of offsets will be stable and therefore repeatable. If the charge system is going to be repeatable, it must transparently build in factors that account for scarcity and stochastic events upfront, so that a repeatable system delivers a charge estimate that reflects the state of the environment at the time of the offset.

This principle is also relevant to the proposed species credit model. There is a real risk that grouping species to determine a price will undervalue species that are rare or where credits are difficult to obtain. Adjustments to the system must be made based on the best available information and including 'repeatable' as a key setting in the charge system may not be compatible with this.

For further information about these concerns, please contact megan.kessler@edo.org.au.

Yours sincerely,

Environmental Defenders Office

Rachel Walmsley

Head of Policy and Law Reform

Attachment: Expert comment on BCF Charge System - BCT Preliminary Design Approach - Issues paper for stakeholder meetings