

**INQUIRY INTO INTEGRITY OF THE NSW
BIODIVERSITY OFFSETS SCHEME**

Name: Name suppressed

Date Received: 24 August 2021

Partially
Confidential

My approach to the Terms of Reference

Points 1a and 1c in the TORs each list more than one issue so I have chosen to separate them:

1(a)

- I. the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales**
- II. the role of the Biodiversity Conservation Trust in administering the scheme, and**
- III. whether the Trust is subject to adequate transparency and oversight**

1(c)

- I. the impact of non-additional offsetting practices on biodiversity outcomes, offset prices, and**
 - II. the opportunities for private landowners to engage in the scheme**
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The challenge of distinguishing the operations of BCT and DPIE

Although BCT and DPIE profess to be independent agencies they are inseparable in my experience.

- On many occasions my enquiries have been referred from one agency to the other and back again
- Departmental officers are frequently unable to give guidance about where to direct my enquiries
- There is no information on the website that clearly differentiates them. An organisational chart outlining where each function fits into the organisation might assist the general public (functions only, not names)
- They share information not publically available

To accommodate this issue I have used the generic term 'the department' in this submission

1(a)

I. the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales

This TOR is appropriately addressed at State level. Some issues for consideration are:

- The scheme lacks protocols for ensuring adequate management actions and enforceable standards
- There is no 'cop on the beat'. BCT oversees site management but refers non-compliance to DPIE
- Conservation and biodiversity receive less attention than economic drivers in BCT deliberations
- It is open to unscrupulous individuals or organisations to buy land, strip its credits and flip it to unsuspecting buyers
- The scheme is unstable and frequently subjected to changes

II. the role of the Biodiversity Conservation Trust in administering the scheme

I have never understood why the NSW government established a market based scheme for protecting biodiversity and then set up an agency that distorts the market. I'm not an economist but in a free market the role of government is to manage the settings and focus on removing barriers to participation. There is no role for government when buyers and sellers can meet directly through an online marketplace.

BCT has competing and conflicting responsibilities. BCT:

- oversees conservation management activity
- income is sourced from developers
- may be tasked to source credits that can never be created
- holds an exclusive position with market information
- distorts the market by setting credit prices
- may seek lower prices to ensure the success of the scheme
- could execute substandard agreements to meet outstanding credit obligations

In my observation BCT resolves its conflicting responsibilities in favour of credit seekers. BCTs 'mechanisms' for administering the scheme are flawed experiments, constantly revised and confusing. None can be relied on for business planning:

Statewide Open Tenders and Fixed Price Offers

Biodiversity credit tenders will be the primary means by which the BCT Biodiversity Offsets Program secures credits to meet developer offset obligations. (BCT Website)

Participation in tenders places a heavy compliance burden on landholders, compounded when BCT unilaterally changes its requirements at short notice and without reason. I can cite examples if the Committee needs them.

Management of tenders shamelessly serves the interests of developers by squeezing credit holders down on price. BCTs website describes the process as

- *a reverse auction because this approach is considered an effective means of acquiring value-for-money biodiversity credits. (BCT website)*
- used to apply downward pressure on the price

Other biases inherent in BCT tender process are

- The 'first in' basis gives the jump to related parties
- By calling for expressions of interest BCT gains exclusive information about the size and depth of the market, undermining the negotiating position of vendors.

The Biodiversity Offsets Payment Calculator

While BOPC modelling may be conceptually sound there is insufficient data to justify its use. Shortcomings of this model are outlined in the Ernst and Young Port Jackson Partners report on the departmental website.

The move by the department to replace the BOPC econometric model with a cost structure model is a further cause for concern. Building a price structure based on cost disregards the influences of supply, demand and – importantly – scarcity.

The Spot Price Index

The SPI is subject to similar problems as the BOPC, notably the indices lack reliable data. Trades can occur between related parties and in the current data vacuum it is open to manipulation.

The Registers

The credit supply and demand registers are not maintained and information about projects is inaccurate.

III. whether the Trust is subject to adequate transparency and oversight

Transparency

It's difficult to extract useful information from BCT in a timely way. It has long been my view that BCT deals are struck behind closed doors without open scrutiny.

Oversight

Independent oversight is desperately needed.

(b) - the use of offsets by the NSW Government for major projects and strategic approvals

This relates to the use of offsets for state significant development (SSD) and state significant infrastructure (SSI) major projects, including as part of strategic assessments (or biodiversity certifications) and the offsetting conditions that consent authorities apply to these types of projects.

No Comment

1(c)

I. the impact of non-additional offsetting practices on biodiversity outcomes, offset prices, and

No Comment

II. the opportunities for private landowners to engage in the scheme

As a landholder I regret ever having committed to the scheme. I would never do it again.

Landholders carry most, if not all, of the risks associated with BSAs. We provide the land, pay consultants to assess its conservation value, support the administrative costs of the BCT, raise the funds necessary to underwrite a long term management plan and then implement that plan.

As an early adopter I relied on advice from accredited assessors and the information available online, reassured that departmental support would be available to assist me through the process.

Most line officers appear competent, genuinely committed to their work and open to feedback, however, I have become disillusioned because the agencies:

- Openly favour assessors through newsletters, webinars and meetings
- Systematically exclude landholders from information
- Lack transparency
- Don't reply to emails, don't return calls and refer enquiries from one area to another and back again

I have discovered that my concerns about information paucity are held by other landholders. A recent article in *The Conversation* identifies two classes of landholder: those with access to information and others who are excluded, an information divide perpetuated by BCT. The article notes

- Landholders unable to participate ... often relied on online information and had a poor understanding of the scheme
- Information barriers create unequal opportunities across landholders

I lost trust in the department after an experience a couple of years ago which led me to suspect possible connections, personality clashes or conflicts of interest between departmental officers, assessors and other credit holders.

My discomfort has been affirmed by recent reports in *The Guardian* indicating that the system is open to manipulation.

Changing policies for landholder engagement have not recognised the investment by people who have 'done everything right', ticked every box and completed the process at their own expense. For example BCT now offers financial and technical support, and an agreed market

for new entrants. This policy may expand participation in the scheme but creates an uneven playing field, pitting landholders against each other and further undermining confidence in the system.

(d) any other related matters.

I hope my input will improve the committee's understanding of the scheme and highlight some areas that could be strengthened. Most of my concerns can be summed up in one word: inequity.

Here are some additional suggestions:

Replace BCT activity in the market with an online facility

Other sectors of the economy function without government intervention and there is no need for government to actively participate in this market.

Information about recent trades for real estate, cattle or company shares is easily acquired online. Long and happy marriages have begun online. The obvious long term approach to the scheme is to set up an open and transparent online marketplace for trading biodiversity credits and then leave all trading activity to the market.

Secure the release of submissions on *Proposed changes to the way that payments to the BCT are determined under the Biodiversity Offsets Scheme*

In April 2021 DPIE completed consultation on its proposal to transfer the BOPC to the BCT and remove it from public view. In this process participants were asked permission for their submissions to be made public, however, DPIE has not published submissions received, either in full or summary. By contrast, I am aware that DPIE has given access to BCT even though the latter is an independent authority.

Publication of the submissions would give the Committee greater insights into the Biodiversity Offsets Scheme from all points of view, encourage understanding of the scheme and facilitate public debate.

Review the role of assessors

Assessors are in a position to influence the scheme even though

- Assessors are not an unbiased group of bystanders only interested in the science. Their business model requires ongoing contracts and their interests differ from those of the landholder or credit owner
- Accreditation is not a guarantee of knowledge and skills across all types of biodiversity
- Assessors are accredited for their expertise as ecologists and not market experts
- Accreditation is not an endorsement of expertise in econometrics, strategic planning, broking, taxation or business advice
- Assessors may have conflicts of interest by representing more than one client, or as credit owners themselves

Investigate Impacts of the Taxation Regime

CGT is imposed when credits are created, before any money has changed hands and before the TFD is paid down, whereas it may take years to find a buyer for all credits and some may never sell.

An ATO class ruling could address these problems to reduce this barrier to participation.

Facilitate communication with and between landholders

A landholder association or forum would generate interaction between landholders and with the department, provide a mechanism to resolve issues and reinstate respect and trust between parties.

Some references and supporting information

I assume that committee members are familiar with these documents:

[Strengthening the Biodiversity Offsets Scheme: A new approach to developer charges \(nsw.gov.au\)](https://www.nsw.gov.au/offsets/offsets-scheme)

[Biodiversity Offset Payment Calculator Technical Review \[Extract\] \(nsw.gov.au\)](https://www.nsw.gov.au/offsets/offsets-scheme/technical-review)

[We asked landholders how they feel about biodiversity offsets — and the NSW government has a lot to learn \(theconversation.com\)](https://theconversation.com/we-asked-landholders-how-they-feel-about-biodiversity-offsets-and-the-nsw-government-has-a-lot-to-learn-125454)

[Environment officials questioned use of land government already owned as offset for western Sydney airport | Environment | The Guardian](https://www.theguardian.com/environment/2018/jun/14/environment-officials-questioned-use-of-land-government-already-owned-as-offset-for-western-sydney-airport)

[‘Too many loopholes’: NSW inquiry to scrutinise use of environmental offsets | Sydney | The Guardian](https://www.theguardian.com/australia-news/2018/jun/14/too-many-loopholes-nsw-inquiry-to-scrutinise-use-of-environmental-offsets-sydney)

[Coalition must ‘urgently explain’ more than \\$30m it paid for western Sydney airport offsets, federal Labor says | Sydney | The Guardian](https://www.theguardian.com/australia-news/2018/jun/14/coalition-must-urgently-explain-more-than-30m-it-paid-for-western-sydney-airport-offsets-federal-labor-says-sydney)

[‘We need to change the scheme’: calls for multiple investigations into \\$40m gain from NSW environmental offsets | Sydney | The Guardian](https://www.theguardian.com/australia-news/2018/jun/14/we-need-to-change-the-scheme-calls-for-multiple-investigations-into-40m-gain-from-nsw-environmental-offsets-sydney)