

Submission
No 97

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: NSW Government

Date Received: 27 September 2021

Table of contents

1. That Portfolio Committee No. 7 - Environment and Planning inquire into and report on the integrity of the NSW Biodiversity Conservation Scheme, and in particular:	2
(a) the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales.....	2
The NSW Biodiversity Offsets Scheme is a central element of the Government’s integrated land management and biodiversity conservation framework	3
The Biodiversity Offsets Scheme supports ecologically sustainable development	4
The Scheme builds on earlier experience in biodiversity offsetting.....	4
The Scheme is designed to bring transparency and consistency in decision-making	5
The Scheme is built on ecological principles.....	6
The Biodiversity Assessment Method.....	6
Avoid, minimise, offset hierarchy	7
Serious and irreversible impacts considered	7
Offset rules prioritise like-for-like offsetting	7
Offset obligations are met before the impact occurs.....	8
The Scheme has been endorsed by the Commonwealth	8
Biodiversity outcomes are being secured and delivered.....	9
(a) cont’d the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,.....	9
Department of Planning, Industry and Environment – Environment, Energy, and Science Group	9
NSW Biodiversity Conservation Trust	10
Consent authorities.....	10
(b) the use of offsets by the NSW Government for major projects and strategic approvals.....	11
The Biodiversity Offsets Scheme applies to all major projects.....	11
The Scheme offers strategic approaches to biodiversity offsetting	11
(c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and	12
The Scheme requires offsets to provide additional biodiversity outcomes	12
The Scheme provides a way to measure and value biodiversity losses and gains	13
There are opportunities for private landowners to engage in the scheme.....	13
(d) any other related matters	14
The NSW Government is committed to improving the Scheme.....	14
Attachments	15

1. That Portfolio Committee No. 7 - Environment and Planning inquire into and report on the integrity of the NSW Biodiversity Conservation Scheme, and in particular:

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

NSW's biodiversity is at significant risk. The NSW Biodiversity Outlook Report 2020 estimates that without effective management, only 50 per cent of listed threatened animal and plant species and 59 per cent of listed ecological communities will still exist in 100 years.¹ The 2019-20 bushfires have added to the risk profile with 5.5 million hectares of land burnt and an estimated 800 million animals lost, including damage to the habitat for 202 threatened animals.²

The Biodiversity Offsets Scheme is one component of the NSW Government's approach to combatting this decline. Without the Scheme, clearing related to development and land use change would be unmeasured and unmitigated, leading to accelerated biodiversity loss. By creating a system to value biodiversity, the Scheme provides a way for this value to be factored into decisions. The Scheme is both contributing to and learning from the global movement towards natural capital thinking. For example, NSW uses expertise gained in developing the Scheme to contribute to the United Nations led System of National Accounts and System of Environmental Economic Accounting.³

The Scheme is delivering biodiversity outcomes. To date, 211 landholders have established biodiversity stewardship sites (offset sites), protecting more than 27,480 hectares of land.⁴ As a result, many threatened ecosystems and habitats for NSW's threatened native plant and animal species are being protected by private landholders who can earn an income from managing their land for conservation.

The Scheme in its current form is four years old, having commenced on 25 August 2017, and adjustments will be required as experience continues to be accumulated. The NSW Government is committed to improving and refining the operation of the Scheme to help ensure it delivers effective environmental and economic outcomes. Market-based approaches provide opportunities to deliver conservation more flexibly, as well as challenges and risks not traditionally associated with environmental regulation. In pursuing improvements to the Scheme, there are several key areas of current focus, including:

- the need for a more robust and reliable mechanism to replace the Biodiversity Offsets Payments Calculator currently used as the basis for determining payments for transferring a credit obligation to the Biodiversity Conservation Trust (BCT) — consultations around replacement arrangements for a developer charge model that will use a range of data sources, are well

¹ DPIE, *NSW Biodiversity Outlook Report 2020*, DPIE, NSW Government, 2020, accessed 24 August 2021. <https://www.environment.nsw.gov.au/research-and-publications/publications-search/biodiversity-outlook-report>

² DPIE, *NSW Wildlife and Conservation Recovery: Medium-term response plan February 2021*, DPIE, NSW Government, 2021, accessed 24 August 2021. <https://www.environment.nsw.gov.au/research-and-publications/publications-search/wildlife-and-conservation-bushfire-recovery-medium-term-response-plan>; DPIE, *Wildlife and Conservation Bushfire Recovery: Immediate Response January 2020*, DPIE, NSW Government, 2020, accessed 24 August 2021. <https://www.environment.nsw.gov.au/research-and-publications/publications-search/wildlife-and-conservation-bushfire-recovery-immediate-response>

³ United Nations Statistics Division (UNSD), *The System of National Accounting*, UNSD website, 2021, accessed 24 August 2021. <https://unstats.un.org/unsd/nationalaccount/sna.asp>; United Nations, *System of Environmental Economic Accounting*, UN website, 2021, accessed 24 August 2021. <https://seea.un.org/content/homepage>

⁴ Biodiversity Conservation Trust (BCT), *Biodiversity Offsets Program Outcomes*, BCT website, n.d., accessed 24 August 2021. <https://www.bct.nsw.gov.au/info/biodiversity-offsets-program-outcomes>

underway following the publication of a consultation paper in March 2021 and an independent review conducted by EY Port Jackson Partners (Attachment A provides further detail)⁵

- Actively exploring and progressing mechanisms to improve the supply of offsets — this is aimed at ensuring sufficient supply of biodiversity credits to promote a more competitive market and meet demand at the right time
- Ensuring market integrity including by addressing risks around potential and actual conflicts of interest and market information asymmetry
- Ensuring the ecological integrity of the Scheme, including by continuing to monitor biodiversity gains at offset sites and better capturing data on the no net loss standard the Scheme is designed to enable through measures such as promoting avoidance and minimisation at development sites.

The NSW Biodiversity Offsets Scheme is a central element of the Government's integrated land management and biodiversity conservation framework

In response to the 2014 Independent Biodiversity Legislation Review, in 2016 the NSW Government introduced comprehensive land management and biodiversity conservation reforms. These reforms fundamentally changed land management and biodiversity policy in NSW. The reforms were extensively consulted on and carefully negotiated to balance the interests of agriculture, development and biodiversity conservation.

The Biodiversity Offsets Scheme was legislated to facilitate ecologically sustainable development. The Scheme provides a transparent, consistent and scientifically based approach to biodiversity assessment and decision-making.

Another key objective of the reforms was to reduce the regulatory burden on farmers and improve productivity while responding to environmental risks. This was achieved by amendments to the *Local Land Services Act 2013*, which included retaining Allowable Activities for low impact native vegetation clearing, streamlining requirements for some clearing activities through the Land Management (Native Vegetation) Code 2018 and requiring approval from the Native Vegetation Panel using the Biodiversity Offsets Scheme for clearing on rural land that does not meet the requirements of Allowable Activities or the Land Management Code. This land management framework regulates clearing on rural land in NSW that is not regulated under the Scheme.

Objectives to conserve and increase biodiversity were delivered through the NSW Government's initial investment of \$100 million in the flagship threatened species conservation program – Saving Our Species.⁶ Improvements were also made to wildlife licensing and approaches to the protection and listing of threatened species. The BCT was established and the NSW Government committed \$240 million over the first five years and \$70 million per annum ongoing to be invested by the BCT in private land conservation, guided by a Biodiversity Conservation Investment Strategy.⁷ The Biodiversity Indicators Program was established alongside the *Biodiversity Conservation Act 2016* (BC Act) to assess the status of biodiversity in NSW at the beginning of the Act and future intervals. The

⁵ DPIE, *Strengthening the Biodiversity Offsets Scheme: a new approach to developer charges*, DPIE, NSW Government, 2021, accessed 24 August 2021. <https://www.environment.nsw.gov.au/research-and-publications/publications-search/strengthening-the-biodiversity-offsets-scheme-a-new-approach-to-developer-charges>. BCT, *A new approach to establishing the charge for payments into the Biodiversity Conservation Fund*, BCT website, 2021, accessed 24 August 2021. <https://www.bct.nsw.gov.au/new-approach-establishing-charge-payments-biodiversity-conservation-fund>

⁶ DPIE, *Saving our Species program*, DPIE-EES website, 2021, accessed 24 August 2021. <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program>

⁷ BCT, *Private land conservation in NSW*, BCT website, 2021, accessed 24 August 2021. <https://www.bct.nsw.gov.au/private-land-conservation-nsw>

first assessment and Outlook Report is publicly available and presents results on the status and trend of biodiversity and ecological integrity at a regional and statewide scale.⁸

The land management and biodiversity conservation framework is implemented by multiple agencies including the Department of Planning, Industry and Environment (DPIE), the BCT, Local Land Services and local government. The relevant provisions of land management and biodiversity conservation framework will undergo the five-year legislative review from August 2022.

The Biodiversity Offsets Scheme supports ecologically sustainable development

The Biodiversity Offsets Scheme aims to facilitate ecologically sustainable development – that is, to allow decision-makers to understand the biodiversity costs when considering the overall costs and benefits of development and land use change and to use pricing and incentive mechanisms to deliver biodiversity conservation. It is designed to enable proponents to address environmental impacts from development flexibly and efficiently.

The Biodiversity Offsets Scheme is established under the BC Act. The primary purpose of the BC Act is ‘to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.’

Further BC Act objectives that are delivered by the Scheme include to:

- encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity
- establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity
- establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values
- establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales.

The Scheme has been endorsed by the Commonwealth Government for all activities that need approval under State and Commonwealth laws through the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) Condition-setting Policy.⁹ This endorsement also underpins the Assessment Bilateral Agreement, streamlining the assessment and approval of major projects.

The Scheme builds on earlier experience in biodiversity offsetting

The Biodiversity Offsets Scheme builds on more than 15 years of work and experience in implementing market-based approaches to biodiversity conservation in NSW. The acceptance of biodiversity offsetting arose from the government’s need to better address environmental impacts in its decisions to approve development, and to provide greater certainty to developers and the community through consistent rules and methods.

It has been a longstanding requirement in the NSW planning system for proponents to prepare an environmental impact statement with their development application to state and local government decision-makers. In 2007, BioBanking was introduced as a voluntary offsetting mechanism. BioBanking provided a structured model for privately held offset sites to be available to

⁸ DPIE, *A biodiversity indicator program for NSW*, DPIE-EES website, 2021, accessed 24 August 2021.

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-indicator-program>

⁹ DAWE, *EPBC Act Condition-setting Policy*, DAWE website, Australian Government, 2021, accessed 24 August 2021. <https://www.environment.gov.au/epbc/publications/condition-setting-policy>

development proponents as a credible compensatory measure. In 2014, biodiversity offsetting became mandatory for major projects under the NSW Biodiversity Offsets Policy for Major Projects. This policy provided a consistent approach for avoiding, minimising and offsetting biodiversity impacts from development.

The 2014 Independent Review of biodiversity legislation concluded there remained a high degree of subjectivity in decision-making as to when biodiversity impacts were considered significant, how impacts were assessed and how biodiversity loss was compensated.¹⁰ The review also noted a lack of consistency in how land was identified, secured and managed as an offset – for example, some decisions did not require active ongoing management of biodiversity at the offset site, while others did. The review concluded this created uncertainty for proponents and a lack of transparency in decision-making by governments.

The Independent Review therefore recommended:

- a single, scientifically-based, transparent method for assessing biodiversity impacts
- that a single offsets policy should apply to all development.

The NSW Government accepted the recommendations of the 2014 Independent Review. Extensive community consultation was undertaken on the new legislative framework to deliver the recommendations. The Biodiversity Offsets Scheme commenced on 25 August 2017 with the Biodiversity Conservation Regulation 2017 (BC Regulation), with progressive implementation over the subsequent years.

The Scheme is designed to bring transparency and consistency in decision-making

The Biodiversity Offsets Scheme expanded biodiversity offsetting to cover local development and other clearing activities that have impacts above risk-based thresholds, in addition to major projects that were already subject to mandatory offsetting. This brought new participants into the Scheme who had previously not needed to engage in offsetting.

The Scheme aims to provide a consistent framework for decision-making and offsetting, including:

- consistent rules for when anticipated biodiversity impacts must be professionally assessed
- a consistent scientific method for assessing biodiversity impacts based on the ‘avoid, minimise, offset’ hierarchy and for assessing biodiversity gains at an offset site to a standard of no net loss
- a consistent way of measuring losses and gains, expressed in biodiversity credits
- rules for how regulatory decision-makers set a biodiversity credit obligation as part of a development consent
- rules for how a proponent meets a biodiversity credit obligation.

This consistency provides for transparency in decision-making. The Scheme settings do allow consent authorities to move away from the no net loss standard. This applies differently depending on the type of development or clearing and is explained in Attachment B. However, as the biodiversity credit calculations associated with the impacts of a proposed development are included in the publicly available environmental impact statement, such a decision is now transparent and open to public scrutiny. Once a biodiversity credit obligation is set as part of the conditions of

¹⁰ Independent Biodiversity Legislation Review Panel, A review of biodiversity legislation *in NSW: Final report*, report to NSW Government former Office of Environment and Heritage (OEH), 2014, accessed 24 August 2021. <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform/legislation/review> (See pages 34-35)

consent, the proponent must meet that obligation in accordance with the established rules before the impact occurs.

The Scheme also provides greater certainty about likely offsetting requirements, allowing proponents to plan for the offsets they need to deliver in advance of project impacts. There was less up-front certainty under earlier arrangements when offsets were negotiated on a case by case basis and offsetting conditions could vary significantly between State and Commonwealth regulators.

Attachment B provides an overview of the development and clearing activities that the Scheme applies to, how entry into the Scheme is triggered and the discretion available to decision-makers.

The Scheme is built on ecological principles

The Biodiversity Offsets Scheme is built on principles that promote the regulatory integrity of biodiversity assessment and offsets.

The Biodiversity Assessment Method

Section 6.7 of the BC Act establishes the Biodiversity Assessment Method (BAM), a peer reviewed scientific method for measuring losses and gains in biodiversity values to a standard of no net loss.¹¹ The BAM provides a single, transparent and repeatable method for quantifying the biodiversity values lost at development sites and gained at offset sites. The BAM also reduces the subjectivity of environmental assessments that exists in other jurisdictions' offset schemes.

The BAM is based on the best available science, data and knowledge of biodiversity in NSW. It has been built on the experience and knowledge gained from the previous approaches and informed by reviewing assessment methods used by other Australian jurisdictions and overseas. The BAM has been peer-reviewed and several components of the method are published in scientific journals¹². The data that underpin the BAM are sourced from BioNet, a repository for biodiversity data products managed by DPIE, and are publicly accessible. The data include NSW wildlife observation records, classification of native plant communities, threatened species information and spatial layers.

The BAM must be applied at impact and offset sites by an Accredited Assessor. About 400 people have been trained and accredited by DPIE to apply the BAM. A range of assurance measures are in place to regulate the quality of Accredited Assessors. To be eligible for accreditation, a person must pass a 'fit and proper person' test, successfully complete the BAM Assessor training, and have appropriate knowledge, skills and experience. BAM Accredited Assessors are subject to a Code of Conduct, which includes conflict of interest management and an Accredited Assessors Complaints and Feedback Management Policy. DPIE also audits Accredited Assessors to assess compliance and to look for opportunities for building findings into Accredited Assessor training and guidance documents.

Using the BAM, Accredited Assessors produce biodiversity assessment reports, which accompany development and clearing applications and applications for biodiversity stewardship agreements. As part of a process of ongoing improvement, DPIE has identified a need for further support to promote the quality and consistency of these reports. Guidance, templates and additional quality standards are being developed. The Department of Planning, Industry and Environment – Environment, Energy and Science Group (DPIE-EES) also reviews biodiversity development assessment reports submitted for major projects, providing additional assurance.

¹¹ P Gibbons and T Eyre, *Independent review of the Biodiversity Assessment Method*, report to NSW Government former OEH, 2015.

¹² See under *Supporting science* for scientific papers related to the BAM: DPIE, *Vegetation Condition Benchmarks*, DPIE-EES website, 2021, accessed 24 August 2021.
<https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/vegetation-condition-benchmarks>

The price of biodiversity assessments is set by Accredited Assessors. Some stakeholders have raised concerns about assessment costs given the expertise, site analysis and survey effort involved.

Avoid, minimise, offset hierarchy

The Biodiversity Offsets Scheme requires all proponents to first avoid and minimise impacts to biodiversity values, with the prospective cost of offsetting providing an economic incentive to avoid and minimise impacts. The BAM provides guidance on how to avoid and minimise impacts, for example by reducing the size of the impact or repositioning the development to avoid areas of high value biodiversity. Other types of impacts can also be avoided and minimised, such as through restoring movement corridors and installing fencing to prevent animal entry to transport corridors.

Steps to avoid and minimise impacts must be documented and, in determining development applications, consent authorities must consider if the measures that have or will be taken are sufficient. After all steps have been taken to avoid and minimise impacts, the residual impacts must be offset. Avoid, minimise and offsetting requirements form part of a development application's conditions of consent.

Serious and irreversible impacts considered

The concept of serious and irreversible impacts is fundamentally about protecting threatened species and ecological communities that are most at risk of extinction from potential development. Clause 6.7 of the BC Regulation establishes the principles applicable to determining if an action will have a serious and irreversible impact on biodiversity values. These principles broadly align with the criteria prepared by the International Union for the Conservation of Nature (IUCN) to assess the extinction risk of species and ecological communities.

The Biodiversity Offsets Scheme requires all assessments to consider if there may be a serious and irreversible impact. An Accredited Assessor is required to include any relevant advice in their assessment report. The relevant consent authority is responsible for determining if an action will have a serious and irreversible impact. DPIE has published guidelines to help consent authorities make this decision.¹³

For local development or a clearing proposal not related to a development application, applications determined to have serious and irreversible impacts cannot be approved. For Major Projects (State Significant Development and State Significant Infrastructure), Part 5 activities and biodiversity certifications, applications determined to have serious and irreversible impacts can be approved but the approval authority must take those impacts into consideration and determine if additional measures can be implemented to minimise the impact.

Offset rules prioritise like-for-like offsetting

Clause 6.2 of the BC Regulation establishes rules for how an offset obligation must be met:

- retiring credits based on the like-for-like rules, and/or
- funding a biodiversity conservation action that benefits the threatened species or ecological community affected by the development to an equivalent cost of acquiring credits, determined by the Biodiversity Offsets Payment Calculator. The Ancillary rules: Biodiversity Conservation Actions sets out conservation actions that can be funded. This rule currently

¹³ DPIE, *Guidance to assist a decision-maker to determine a serious and irreversible impact*, DPIE, NSW Government, 2019, accessed 24 August 2021. <https://www.environment.nsw.gov.au/research-and-publications/publications-search/guidance-to-assist-a-decision-maker-to-determine-a-serious-and-irreversible-impact-2019>

identifies the Saving Our Species program as the delivery mechanism to ensure the biodiversity benefits are achieved, and/or

- committing to deliver mine site ecological rehabilitation that creates the same ecological community or threatened species habitat (available for major mining projects only). The Ancillary Rules for Mine Site Ecological Rehabilitation, which will be published by the Environment Agency Head, will set out how this is delivered, and/or
- making a payment to the Biodiversity Conservation Fund calculated using the biodiversity offsets payments calculator.

Proponents can choose any one or a combination of these options. The Biodiversity Offsets Payment Calculator is often used in project planning to cost a biodiversity offset obligation, but it is not the only option proponents have to meet their obligation.

‘Like for like credits’ means that the native vegetation impacted must be offset with very similar vegetation that is in the same geographical area and is of the same, or a higher, threat status. For species, the impacted species must be offset with the same species, which can be located anywhere in NSW.

If a proponent can demonstrate they were not able to find like-for-like credits after taking reasonable steps and chooses not to use the other offset options, they can seek approval to offset with a broader suite of biodiversity using the variation rules. The variation rules cannot be applied to some threatened species and ecological communities. While the variation rules allow for a broader range of vegetation and species credits to be used, those entities must have the same or a higher threat status.

For payments made to the Biodiversity Conservation Fund, the BCT takes on responsibility for securing the associated offsets. The BC Regulation establishes rules for how the BCT can meet these obligations that prioritise like for like offsetting. An added benefit of this option is the BCT’s ability to ‘pool’ offset obligations from multiple proponents, allowing it to seek strategic offsets (e.g. larger sites) and do so more efficiently compared to individual proponents negotiating alone.

Offset obligations are met before the impact occurs

Once a consent authority has set a condition to retire biodiversity credits, sections 7.13 and 7.14 of the BC Act requires this to be complied with before any development is carried out that would impact on biodiversity values. If development and biodiversity impacts are staged, the offset can be staged. This was a change in approach introduced under the Biodiversity Offsets Scheme. Previously, proponents may have been allowed to develop a biodiversity offsets strategy after the development was approved to detail when credit obligations would be met. This could reduce transparency and certainty in when and how the offsets were delivered.

The Scheme has been endorsed by the Commonwealth

Biodiversity offsetting is used in some form by all Australian governments including the Commonwealth Government. The Commonwealth does not have a direct constitutional power to regulate for the environment and its responsibility is limited to defined matters of national environmental significance, principally as they relate to Australia’s obligations under international environmental conventions. The EPBC Act applies where there is likely to be a significant impact on a matter of national environmental significance and operates irrespective of NSW laws.

In 2020 the Commonwealth Government endorsed the NSW Biodiversity Offsets Scheme under the EPBC Act as meeting its biodiversity assessment and offsetting requirements. While the Commonwealth maintains approval responsibility, this endorsement helps to ensure there is no

duplication in assessment or offsetting requirements, streamlining the process and providing more certainty for NSW proponents.

Biodiversity outcomes are being secured and delivered

The Biodiversity Offsets Scheme is securing the in-perpetuity protection of land and funding to improve biodiversity values over time. As at 30 June 2021, 211 landholders have established biodiversity stewardship sites (offset sites), protecting over 27,480 hectares of land. This includes Biobanking agreements entered under previous arrangements. As a result, many threatened ecosystems and habitats for NSW's threatened native plant and animal species are being protected and managed by private landholders.

When a landholder enters a biodiversity stewardship agreement, the management actions, such as weed and pest control, revegetation, and fire management, needed to deliver the expected gain in biodiversity (expressed as credits) are specified in the agreement and costed. When the credits are sold by the landholder, the expected management cost must be paid into the Biodiversity Stewardship Payments Fund managed by the BCT. The BCT invests this money and makes annual management payments to the landholders on delivery of the specified actions. If the management actions are not satisfactorily delivered, the BCT can withhold the management payments. The security of this funding helps ensure the integrity of the biodiversity outcomes the Scheme delivers. DPIE-EES and the BCT monitor and evaluate the biodiversity gains that are achieved at offset sites to ensure the validity of Scheme and BAM settings. Further information on how the BCT monitors offset sites is at Attachment C.

Biodiversity stewardship agreements are in-perpetuity and registered on land title, meaning current and future landholders must carry out management actions in accordance with the agreement. They fill a significant gap in previous arrangements, removing the need for proponents to enter long term contractual arrangements with private landholders or rely on government agencies (such as NSW National Parks and Wildlife Service) to take on offset sites.

(a) cont'd the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,

The BC Act is administered by the Minister for Energy and Environment. The Environment Agency Head, BCT and consent authorities have specific responsibilities and functions under the Act.

Department of Planning, Industry and Environment – Environment, Energy, and Science Group

The Department of Planning, Industry and Environment – Environment, Energy, and Science Group (DPIE-EES) supports the Minister to administer the Scheme. DPIE-EES is responsible for providing information and participant support for engaging with the Scheme. DPIE-EES has specific legislative roles in administering the Biodiversity Offsets Scheme, including (but not limited to):

- Advising the Minister to make the Biodiversity Assessment Method, and supporting databases and platforms
- The formal accreditation of assessors who apply the Biodiversity Assessment Method
- The transfer and retirement of biodiversity credits, including maintaining public registers and issuing statements of reasonable equivalence for credits created under previous approaches
- The publishing of Ancillary Rules to support the biodiversity offset rules
- Concurrence with requests to discount a biodiversity credit obligation for local development

- Providing advice to the Minister on making the Biodiversity Offsets Payment Calculator
- Cost recovery arrangements for Scheme administration.

DPIE-EES also has responsibility for making recommendations to the Minister for biodiversity certification of land under Part 8 of the BC Act.

NSW Biodiversity Conservation Trust

The BCT is a statutory not-for-profit body established under Part 10 of the BC Act. It commenced operating on 25 August 2017. The Act provides for the Minister for Energy and Environment to appoint the BCT Board, and for the Board to manage the affairs of the BCT.

The BCT is subject to the control and direction of the Minister, except in relation to payments from the Biodiversity Conservation Trust Public Fund. The BCT must publish any directions made by the Minister.

The BCT has established a comprehensive governance framework that includes public annual reports and quarterly reports to the BCT Board on: performance; communication, engagement and education activities; finance; conformance; risk management; and work health and safety. The BCT has also established an internal audit program and appointed a Chief Audit Executive. The BCT undertakes external financial audits and can be subject to performance audits by the Audit Office NSW. Attachment C provides further information on the BCT's role.

The BCT has specific legislative responsibilities under the BC Act related to the Scheme, including:

- Facilitating the supply of biodiversity credits by entering Biodiversity Stewardship Agreements with landholders
- Managing agreements by ensuring the management actions are delivered and making the annual management payments to landholders
- Managing the Biodiversity Stewardship Payments Fund, which holds the deposits paid by landholders when the credits are sold to secure the delivery of the management actions
- Securing biodiversity offsets on behalf of proponents who opt to pay into the Biodiversity Conservation Fund to transfer a biodiversity offset obligation to the BCT
- Securing biodiversity credits when commissioned and funded to do so by DPIE under place-based biodiversity offsets programs, such as the Growth Centres Biodiversity Offset Program.

Consent authorities

Consent authorities are responsible for determining development or clearing activities and, if approved, setting biodiversity offset obligations and avoid and minimise measures as part of conditions of consent (Attachment B). Consent authorities are also responsible for ensuring compliance with the conditions once an action is approved.

- Local councils are responsible for determining Part 4 development (other than State Significant Development) that triggers the Scheme
- The Minister for Planning and Public Spaces, or delegate, is responsible for determining State Significant Development and State Significant Infrastructure
- Public authorities are responsible for determining Part 5 activities that apply the Scheme
- The Native Vegetation Panel determines applications on rural land for clearing that cannot be undertaken under the Allowable Activities or the Land Management Code and for

clearing on non-rural land that triggers the Scheme when the clearing is not related to a development application.

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

The Biodiversity Offsets Scheme applies to all major projects

All major projects are subject to the Biodiversity Offsets Scheme, whether the proponent is a government agency or a private proponent. A waiver can be granted by the Planning Agency Head and Environment Agency Head if it can be demonstrated there is no impact to biodiversity. Biodiversity offsetting has been used by major projects for more than 15 years and became mandatory in 2014 under the Biodiversity Offsets Policy for Major Projects.

Under the Scheme, major projects must engage an Accredited Assessor to apply the Biodiversity Assessment Method and produce a Biodiversity Development Assessment Report. This report forms part of the environmental impact statement and is publicly exhibited.

Section 7.14 of the BC Act sets out how the Scheme applies when determining State Significant Development or Infrastructure. The Minister or delegate must take the Biodiversity Development Assessment Report into consideration when determining an application. If the Minister decides to grant approval, the conditions of consent may require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values. This can be the same or a different number and type of biodiversity credits as was calculated. If a condition to retire credits is set, it must be complied with before the impact can occur.

To date, major projects have created the largest demand for biodiversity credits. Information provided in Attachment D demonstrates how biodiversity offsetting has been used for Transport for NSW projects. Savings and transitional arrangements provided under the BC Act mean the Biodiversity Offsets Policy for Major Projects continues to apply to some major projects.

The Scheme offers strategic approaches to biodiversity offsetting

The Biodiversity Offsets Scheme supports strategic approaches to offsetting where biodiversity is assessed upfront instead of site by site at the development application stage. This approach is called biodiversity certification and is available to all proponents. Biodiversity certification is established under Part 8 of the BC Act. It uses the same assessment method and offset rules as when the Scheme is applied to a single development, just on a larger scale. The Minister for Energy and Environment, or delegate, determines applications for biodiversity certification.

Biodiversity certifications were available under the previous *Threatened Species Conservation Act 1995*. The 2014 Independent Review recommended that, where efficient, biodiversity certification should be applied to all forms of urban and rural development and planning proposals for rezonings or subdivisions.

Biodiversity certification can be an attractive option if a proponent owns multiple parcels or a large lot. It means the proponent has certainty upfront about where the development can occur. Biodiversity certification applications are publicly exhibited and DPIE-EES maintains a public register of approved certifications. Once land is biodiversity certified, no further biodiversity assessment is required, though other environmental, social and economic aspects of a development are still considered at the application stage.

Strategic biodiversity certification is a special type of biodiversity certification available solely to planning authorities such as local governments, Local Land Services, the Greater Sydney Commission and the Minister for Planning and Public Spaces. Strategic biodiversity certifications are used to achieve strategic planning and biodiversity outcomes on a large scale. It offers more offsetting options such as creating new national parks or using environment zones. The BAM provides

guidance on how to value these offsetting options in terms of biodiversity credits to ensure the no net loss standard is maintained.

The Cumberland Plain Conservation Plan is an example of this strategic approach. Here, the Scheme is facilitating one of the largest strategic conservation plans to be undertaken in Australia. The Scheme is being used to identify high biodiversity value land to avoid, to calculate the residual impacts in terms of credits and identify strategic offset options, including the creation of new national parks. Once finalised, it will mean development applications can be determined across a large area of western Sydney without site by site biodiversity assessment and offsetting. This strategic biodiversity certification is being aligned with a Strategic Assessment under the Commonwealth EPBC Act, allowing for upfront NSW and Commonwealth biodiversity approval.

These strategic approaches allow biodiversity and development outcomes to be considered across a larger area, which is more efficient for proponents and can provide better environmental outcomes. Often, the biodiversity offsets will be generated from the areas that have been strategically avoided at the site. This can help deliver regionally significant biodiversity outcomes, such as facilitating movement corridors.

(c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and

The Scheme requires offsets to provide additional biodiversity outcomes

Non-additional offsetting practices are understood to mean offsets that do not provide any additional conservation value or increase in biodiversity values. For example, if the land used to provide the offset was already subject to a form of protection or legal obligation to manage the biodiversity, such as a nature reserve.

There was inconsistency in how biodiversity offsets lands were identified and secured under earlier offsetting approaches. The 2014 Biodiversity Offsets Policy for Major Projects recognised the principle of additionality and prevented offsets being placed on land that already had a legal requirement for protection and management.

This principle was expanded and strengthened under the Biodiversity Offsets Scheme. Clause 5.1 of the BC Regulation establishes criteria for determining if land is eligible to be designated as a biodiversity stewardship site, that is, eligible to generate tradeable biodiversity credits. Land is not eligible to generate credits if the Minister is of the opinion that the owner of the land is already under a legal obligation to carry out biodiversity conservation measures on the land. This includes land reserved under the *National Parks and Wildlife Act 1974* or a flora reserve under the *Forestry Act 2012*. Other land that is not eligible includes an offset for a property vegetation plan made under the repealed *Native Vegetation Act 2003* or identified as a set aside under the *Local Land Services Act 2013*. Land that is required to be managed as a condition of a development consent or as a requirement issued by any public authority is not eligible.

Some land may be eligible to be a biodiversity stewardship site while having an existing obligation to perform management actions. The Biodiversity Assessment Method provides approaches for determining how credits are generated in these circumstances. This maintains the no net loss standard for calculating losses and gains in terms of biodiversity credits. For example, land that is classed as 'community' land or 'operational' land under the *Local Government Act 1993* or land reserved under the *Crown Land Management Act 2016* is subject to a 20 percent reduction in the biodiversity credits that would otherwise have been generated. Other percentage reductions apply to private land that may already have obligations, such as to carry out fire or grazing management or weed and pest animal control.

There are other ways an offset obligation can be met, including through funding conservation actions. Conservation actions do not generate biodiversity credits but are considered an equivalent outcome, are valued using the Biodiversity Offsets Payment Calculator and must benefit the impacted species. There are circumstances where conservation actions can be funded on land that is not eligible to generate biodiversity credits. For example, when the impacted species only occurs within national parks, funding a conservation action on reserved land may provide the best biodiversity outcome. In these circumstances, the conservation action needs to provide an outcome beyond the existing legal obligation to manage the land.

The Scheme provides a way to measure and value biodiversity losses and gains

Biodiversity credits represent the biodiversity gains expected when landholders enter biodiversity stewardship agreements. These gains arise from commitments to improve and protect the biodiversity values of a given parcel of land. Under current rules, any interested party may purchase biodiversity credits, although they are typically purchased by developers who need to meet a specific offset obligation, or by the BCT to acquit offset obligations transferred from developers.

Biodiversity credit prices are informed by what it would cost the landholder to manage a stewardship site in accordance with a management plan in-perpetuity. The 'production cost' is calculated upfront when establishing a stewardship site as a Total Fund Deposit (TFD). It includes the estimated cost of management actions the landholder agrees to undertake to ensure biodiversity gains occur, such as weed control, feral pest management and maintaining fencing. The TFD is held in the Biodiversity Stewardship Payment Fund managed by the BCT, with payments made to the landowner in accordance with their biodiversity stewardship agreement.

The calculated production costs of biodiversity credits tend to set a floor for biodiversity credits prices because the BC Act requires the TFD to be paid when credits are sold. In pricing credits, land holders will also consider lost opportunity costs from alternative uses of the land, assessment and establishment costs and profit expectations.

As at 3 August 2021, \$455.2 million worth of biodiversity credits have been traded since 2010.

There are opportunities for private landowners to engage in the scheme

The Biodiversity Offsets Scheme creates opportunities for landholders to earn income by managing their land for conservation. The Scheme's market-based approach creates significant new conservation opportunities supported by private sector investment. A market mechanism can be more flexible than traditional regulation, while supporting economic development and jobs creation.

The price proponents pay for biodiversity credits is reinvested into local conservation, supporting regional liveability and economic diversification. Under the Scheme, a landholder does not need to cover all of their land with a biodiversity stewardship agreement. They can set aside a portion to be protected and managed for biodiversity and continue other activities on the remainder, creating multiple income streams. This can improve resilience to economic shocks such as those caused by drought or the COVID-19 pandemic.

The Scheme does not guarantee a financial return for landholders selling credits. Establishment costs are recouped, management costs are met and profits are made through negotiating the sale of credits with buyers. The upfront establishment costs, including the cost of an accredited assessor preparing the biodiversity assessment and management plan, can be high and deter some landholder from establishing agreements. As such, landholders mainly enter biodiversity stewardship agreements when they have confirmed a buyer for the credits that would be produced. Indeed, some proponents work directly with landholders to establish the site and generate the

credits they need. Attachment D demonstrates how Transport for NSW works with landholders to deliver the credits they need, while diversifying regional communities' economic opportunities.

The publicly available charges produced by the Biodiversity Offsets Payment Calculator may also influence landholders in deciding to enter an agreement by acting as a benchmark for biodiversity credit prices. The current calculator relies on relatively limited trading data and may deviate from the actual cost of supplying credits. Because credit buyers also have the option of transferring their credit obligation to the BCT, the Biodiversity Offsets Payment Calculator acts as a point of competition for credit sellers.

Entering a biodiversity stewardship agreement is a significant decision for landholders. The NSW Government is implementing improvements to make it easier for landholders to engage in the Scheme. In particular, the BCT provides comprehensive guides for landholders and has introduced a financial assistance scheme that provides financial assistance to cover upfront establishment costs in some circumstances. DPIE is considering what extra support may help landholders get the legal, financial and business advice they need to set up a successful offset site. The BCT purchases credits directly from landholders. Further information on how the BCT procures credits is in Attachment C.

The BCT has established a publicly available policy on staff participation in BCT programs that prohibits BCT Board members and BCT staff and their close family members (partners, children or those with a dependant relationship) from participating in funded BCT programs, which includes the Scheme. Under arrangements established by the former Office of Environment and Heritage, DPIE has allowed its staff to participate in the Scheme, with an expectation any potential and actual conflicts of interest are fully declared and carefully managed.

[The Scheme provides opportunities for Aboriginal stakeholders](#)

DPIE and the BCT are supporting Local Aboriginal Land Councils (LALCs) and native title bodies corporate to identify suitable pathways to obtain the relevant biodiversity approvals needed to realise the potential of their land rights and identify opportunities to generate income through biodiversity stewardship agreements. Collectively, LALCs and native title holders have extensive land holdings and skills in traditional land management that have the potential to make a significant contribution to the conservation network.

DPIE is also exploring strategic approval pathways, including the biodiversity certification process to help LALCs and native title holders achieve their social, cultural, environmental and economic aspirations.

(d) any other related matters

[The NSW Government is committed to improving the Scheme](#)

The Scheme is intended to provide a comprehensive approach to managing biodiversity offsets, seeking to foster a market that delivers effective environmental and economic outcomes for NSW. While the Scheme continues to mature, and experience is gained, the NSW Government is committed to improving and refining the operation of the Scheme.

DPIE is progressing a cross-government work program for the Scheme, involving all departments and agencies with a significant interest in the effective operation of the Scheme. Broad engagement is essential in identifying opportunities to improve implementation of the Scheme, so that it is most effectively and efficiently achieving the central goal of ecologically sustainable development. As noted earlier in this submission, the Scheme can be complex to navigate for proponents engaging in it for the first time, and better information and assistance is being developed to assist them. The work program aims to identify and progress initiatives to facilitate and expand the supply of biodiversity credits, improve knowledge about future supply and demand, address barriers to

participation, promote scheme integrity and support the application of the Scheme to major projects. It includes a focus on regional areas where the Scheme has not been active to date and where the NSW Government is investing in several major infrastructure projects.

Ensuring sufficient supply of biodiversity credits to create a more competitive market and meet demand from major infrastructure projects is a key focus, particularly for regional markets. Options to create offsets on Government-owned land are being considered and could secure ongoing funding to improve biodiversity values while supporting regional job creation, economic recovery and delivery of infrastructure. The program is also considering opportunities to improve information on the future supply and demand pipelines and to work with major projects to develop supply. A whole-of-government supply strategy is being developed to assist agencies to contribute ideas and progress emerging opportunities to supply credits.

Another key focus is developing a new method for calculating how much proponents pay to transfer an offset obligation to the BCT, an option proponents can use instead of securing offsets privately. Attachment A provides more detail on the current Biodiversity Offsets Payments Calculator, which uses an econometric model to set this charge, and the consultation underway on a proposed new charge system that would also consider cost-structure modelling and market soundings. Measures are proposed to assure stakeholders that charges would be set fairly. DPIE is also exploring what new market information and tools would be useful to market participants when planning their projects. Overall, these changes are intended to promote confidence around the setting of charges, reduce unnecessary price volatility and improve certainty for market participants.

Attachments

Attachment A	Using the Biodiversity Conservation Fund to meet offset obligations - changes to payment calculations
Attachment B	Biodiversity Offsets Scheme: Key dates, entry and discretion
Attachment C	BCT role and governance
Attachment D	Transport for NSW

Using the Biodiversity Conservation Fund to meet offset obligations – changes to payment calculations

There are three main options¹ to satisfy offset obligations for impacts on biodiversity values from proposed developments or other projects:

1. establish a new offset site through a Biodiversity Stewardship Agreement
2. purchase biodiversity credits on the open market (generally from landholders who have established a Biodiversity Stewardship Agreement)
3. pay into the Biodiversity Conservation Fund (BCF), which transfers the obligation to the BCT.

For option 3, the Biodiversity Offsets Payment Calculator (BOPC) is used to determine the amount a developer would be required to pay into the BCF to discharge an offset obligation.

Importantly, there is no obligation for a developer to choose this option. It can, however, be a faster and simpler option for developers.

The current BOPC is based solely on an econometric model that uses available information on actual credit transactions to estimate the price that the BCT would need to pay to secure a specific offset, with allowance for a risk premium and administration costs.

Like any statistical model, an econometric model works best when there is a sufficiently large number of observations to produce estimates with a high degree of confidence. In practice, the actual volume of sales in biodiversity credits in the market has proven to be very low for many credit classes. In these cases, the BOPC can have unintended consequences. In particular, the BOPC may produce estimates that deviate materially from the actual costs that the BCT will incur. Small deviations are inevitable in any charging model. However, if they are too large, developers may be faced with costs that are higher than necessary to achieve the biodiversity offsets (although only if they voluntarily choose the BCT option); and if they are too low, the BCT may be faced with a shortfall.

In 2018 and 2019, the BOPC was externally reviewed in consultation with NSW Treasury. These reviews found the model to be robust and effective, while noting issues with insufficient data². A further review by EY Port Jackson Partners (PJP) in 2020,³ recommended fundamental change, including that responsibility for the method for payments into the BCF should be transferred to the BCT; and that the body responsible for determining developer charges should not be bound by the existing BOPC model. In particular, PJP recommended that three sources of information – the econometric model, a cost-structure model and market soundings – should be taken into consideration and weighted according to the nature of the market for the relevant credit class. PJP

¹ A fourth option is available under ancillary rules for biodiversity conservation actions when biodiversity credits are not available and with approval (<https://www.environment.nsw.gov.au/research-and-publications/publications-search/ancillary-rules-biodiversity-conservation-actions>)

² Applied Economics, *Review of the Economic and Econometric models that underpin the ecosystem pricing model of the Biodiversity Offsets Payment Calculator (BOPC), and analysis of the impact of a monopolistic competition scheme* (2018); R Joyeux, *Review of the Economic and Econometric models that underpin the Biodiversity Offsets Payment Calculator – BTD* (2019)

³ EY Port Jackson Partners, Biodiversity Offsets Payment Calculator Technical Review [Extract], <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/biodiversity-offsets-payment-calculator-technical-review-consultant-extract.pdf>

also supported steps being taken to remove the publicly available BOPC from view (given the potential for it to provide inappropriate market signals).

In April-May 2021, the Government consulted on these proposed changes to the BCF payment option. As a transitional measure, it was proposed that the BCT would provide quotes to proponents while a new method of calculation was established. Although stakeholders supported the concept of reform, there were concerns about the BOPC (or its replacement) not being publicly available, and a desire for more confidence in the method being developed by the BCT, as well as the need to improve the supply of biodiversity credits and market functioning.

As a result of these reviews and stakeholder feedback, further consultation on the new method for calculating payments into the BCF is continuing. The BCT is undertaking this work, and is currently consulting on the new method, to be known as the BCF Charge System.⁴

This consultation commenced in June 2021 and will continue over coming months to allow interested stakeholders to supply data, analysis and expertise to help build and refine a new charge system. The consultation involves stakeholder interviews, meetings and workshops along with a larger forum of stakeholders.⁵

It is expected that the new BCF Charge System will be finalised in early 2022. Ensuring confidence in the charging arrangements, through strong independent assurance, will be critical. Accordingly, it is envisaged that the new charge system will be supported by arrangements for regular review of the method and its application, to be conducted independently of the BCT and DPIE.

The relationship between the BCF payments (BOPC or its replacement) and credit pricing

With the low volume of sales in biodiversity credits, particularly in some credit classes, market participants have limited sources of data to draw on in deciding fair prices for credits. This impacts buyers who want to be confident they are not over-paying for credits and sellers who want to know they are not selling their credits too cheaply.

Currently, the sources of market information available are existing sales, informal advice from Accredited Assessors and the price given by the BOPC. It should be noted that the role of brokers, which is possible under the *Biodiversity Conservation Act 2016*, has not been formally established. DPIE is exploring developing further market tools to support Scheme participants.

Some market participants are seeking to undertake credit pricing based on the cost of land, the cost to manage land under the BSA (total fund deposit), set up costs (including for surveys, legal advice) and a reasonable profit. This is a sound approach in the absence of pricing data from comparative sales.

DPIE does not recommend the use of the BOPC for pricing credits. This is because it includes the BCT's costs to deliver equivalent offsets and includes risk. The BOPC is a method of calculating payments to the BCF and should not be relied upon for other purposes as it is a statistical model that may not reflect the actual market price with a sufficient level of confidence.

⁴ DPIE, Strengthening the Biodiversity Offsets Scheme: A new approach to developer charges, <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/strengthening-biodiversity-offsets-scheme-new-approach-to-developer-charges-210115.pdf>

⁵ BCT, A new approach to establishing the charge for payments into the Biodiversity Conservation Fund, <https://www.bct.nsw.gov.au/new-approach-establishing-charge-payments-biodiversity-conservation-fund>

References linked

[DPIE stage 1 consultation paper](#) - Department of Planning, Industry and Environment, 'Strengthening the Biodiversity Offsets Scheme: A new approach to developer charges'

[PJP review public extract](#) - Department of Planning, Industry and Environment, 'Biodiversity Offsets Payment Calculator Technical Review' [Extract]

[DPIE BOPC consultation page](#) – 'Proposed changes to the biodiversity offsets scheme deferred'

[BCT charge for payments to the BCF consultation page](#) – 'A new approach to establishing the charge for payments into the Biodiversity Conservation Fund'

Key dates: Biodiversity offsetting in NSW

Year	Event
Pre-2008	Biodiversity offsets negotiated on case-by-case basis and obligations set out in conditions of consent. No consistent approach to securing offset sites, ranging from reserving land for inclusion in the national park system, dedication of land for inclusion in communal land systems, covenants and monetary contributions.
2008	NSW Biobanking Scheme commences under the <i>Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</i> , establishing a voluntary scheme to address biodiversity loss from development
2010	First trade of BioBanking (BBAM) credits, opening the NSW biodiversity credit market
2014	October - NSW Biodiversity Offsets Policy for Major Projects commences and applies to state significant infrastructure or development under the <i>Environmental Planning and Assessment (EP&A) Act 1979</i> . It requires a biobanking agreement to be used to secure an offset site, subject to exceptions and transitional arrangements. December - The Independent Biodiversity Legislation Review Panel releases <i>A Review of biodiversity legislation in NSW</i> , making 43 recommendations.
2015	March – The NSW Government commits to implementing all recommendations from the Independent Biodiversity Legislation Review Panel’s 2014 report, including a broader and deeper application of offsetting as approved in the NSW Biodiversity Offsetting Policy for Major Projects.
2016	May - Public consultation on land management and biodiversity conservation reforms November - Legislation to deliver land management and biodiversity conservation reforms is passed, specifically the <i>Biodiversity Conservation (BC) Act 2016</i> and amendments to the <i>Local Land Services (LLS) Act 2013</i> .
2017	May - Public exhibition on land management and biodiversity conservation reforms August - Biodiversity offsets scheme is established on 25 August and commences for new applications for: <ul style="list-style-type: none"> • major projects (state significant development and infrastructure) • Public works (Part 5 activities under the EP&A Act), if they opt in • agricultural clearing proposals that require approval by the Native Vegetation Panel under the LLS Act • clearing that does not require development consent in urban areas and environmental conservation zones (E2-E4 zones) regulated under the Vegetation SEPP.
2018	February - Biodiversity offsets scheme commences for local development except for designated priority growth areas in western Sydney and regional NSW. August - Completed 12-month review of the Biodiversity Assessment Method. November - Biodiversity offsets scheme commences for local development in local government areas of Lower Hunter (Cessnock, Newcastle, Port Stephens, Lake Macquarie, Maitland), Central Coast, Coffs Harbour, and the West Dapto Urban Release Area.
2019	September - Public consultation on proposed changes to the Biodiversity Assessment Method. November - Release of the upgraded Biodiversity Offsets Payment Calculator and release of the Spot Price Index for Biobanking credits. Biodiversity offsets scheme commences for local development in western Sydney local government areas of Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly. This marks the full commencement of the Scheme.

Year	Event
2020	March - The Commonwealth endorses the biodiversity offsets scheme under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> , allowing the Scheme to be used to satisfy NSW and Commonwealth requirements for impact assessment and for securing offsets. October - Release of the Biodiversity Assessment Method 2020.

When does the Biodiversity Offsets Scheme apply?

The Biodiversity Offsets Scheme only applies to development activities that present a significant risk to biodiversity. The pathway into the Scheme depends on the type of development or clearing activity being undertaken by the proponent. Flowcharts are provided below.

There are five pathways into the Scheme:

- Major projects
- Local development
- Public works
- Clearing on non-rural land
- High risk agricultural activities.

The information below sets out how the Scheme is triggered for each pathway and the discretion in decision-making.

The offset scheme applies to all major projects

Major projects are defined under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and include State Significant Development and State Significant Infrastructure (including Critical State Significant Infrastructure). This includes large-scale development like mines, solar farms, highways and dams.

The Scheme automatically applies to all major projects. However, there is an option for the DPIE Secretary and Environment Agency Head to issue a waiver if the proponent can demonstrate there are no risks to biodiversity. For example, a waiver was issued for major renovations of the Sydney Opera House.

The proponent engages an Accredited Assessor to apply the avoid, minimise, offset hierarchy in the Biodiversity Assessment Method. The report produced is exhibited as part of the environmental impact statement.

The Planning Minister or delegate is the consent authority for major projects and has discretion to increase or decrease an offset obligation. This decision is recorded in the approval decision and conditions of consent.

As part of the initial assessment, impacts to entities at risk of a serious and irreversible impact must be considered. If the consent authority determines an action will have a serious and irreversible impact to biodiversity, further steps to reduce the impact will need to be considered, but the development can be approved irrespective. That is, the consent authority has discretion to approve serious and irreversible impacts to biodiversity.

Public works can choose to apply the Scheme or prepare a Species Impact Statement

Public works refers to Part 5 activities under the EP&A Act. These activities apply where the authority proposing to do the works is also the authority that approves the works, for example, local councils doing road works and maintenance, public school development and hospitals.

Under the EP&A Act, these activities require environmental assessment that must apply the Test of Significance set out in the *Biodiversity Conservation Act 2016*. If the Test of Significance concludes the activity is likely to significantly impact threatened species, ecological communities, or their habitats, or it is to be carried out in a declared Area of Outstanding Biodiversity Value, then the public authority has the option of either preparing a Species Impact Statement (SIS) or entering the Scheme.

If they use a SIS, the Environment Agency Head issues the assessment requirements and their concurrence with the final report is needed. This includes concurrence with proposed conservation measures, which may include a requirement to retire biodiversity credits. The SIS, or biodiversity assessment report if using the Scheme, is publicly exhibited so there is transparency and accountability in decision-making. The authority can also approve a proposal that will have a serious and irreversible impact after determining if there are additional steps that can be taken to reduce the impact.

If they choose to enter the Scheme, there is no referral to the Environment Agency Head and the authority can reduce an offset obligation.

The Scheme applies to local development if it meets the risk triggers

Part 4 of the EP&A Act defines local development where approval from a local council is required. Local development includes residential building, commercial building and subdivisions. The Scheme applies to local development if:

- the development area is on the Biodiversity Values Map, or
- it involves clearing above the area thresholds, or
- it meets the 5-part test of significance, or
- it is in a declared Area of Outstanding Biodiversity Value.

These tests are detailed below.

The local council can reduce or increase an offset obligation for local development, however Environment Agency Head concurrence is required to reduce it. The Environment Agency Head must consider the principles of ecologically sustainable development in concurring to a request to reduce an offset obligation. If a local development will have a serious and irreversible impact it cannot be approved. The biodiversity assessment and approval for local development is made public by the council and any decision to reduce an offset obligation must be published.

The Scheme can apply to large scale agriculture in rural areas

Agricultural activities on rural zoned land are regulated under the *Local Land Services Act 2013* (LLS Act) and *Native Vegetation (Land Management) Code 2018* (Code).

The Code sets out clearing related activities that can be done with certification from LLS and may involve 'set asides', which act like offsetting but are separate to the Scheme.

If clearing cannot occur under the LLS Act or Code, Division 6 of the LLS Act refers the activity into the Biodiversity Offsets Scheme and the relevant decision-maker is the Native Vegetation Panel. The Panel has the discretion to reduce an offset obligation considering social and economic factors but must publish reasons. The Panel cannot approve a proposal that will have serious and irreversible impacts.

The Scheme applies to clearing in non-rural areas (e.g. urban and environment zoned areas) if it meets certain risk triggers

The *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) completes the regulatory framework for clearing.

This planning instrument applies the Scheme to clearing activities that do not require planning approval if they are occurring in metropolitan regions or in non-rural zones (but including RU5) outside of these regions. For example, clearing for amenity or access on urban or environment zoned land.

The Scheme only applies if the activity meets one of the two thresholds being the area clearing threshold and the biodiversity values map (detailed below).

The Native Vegetation Panel is the approval authority and like for agricultural clearing has the discretion to reduce an offset obligation considering social and economic factors but must publish reasons. The Panel cannot approve a proposal that will have serious and irreversible impacts.

Risk thresholds

The Scheme applies to some activities based on risk thresholds. These thresholds help ensure the Scheme only captures activities that will impact on biodiversity. They also help make it clear to proponents if the Scheme applies or not. There is an online tool to help proponents determine if the biodiversity values map or area clearing thresholds apply.

Area clearing threshold

The area clearing threshold is established in clause 7.2 of the Biodiversity Conservation Regulation 2017 (BC Regulation). These thresholds were extensively consulted on during the exhibition of the new laws. The thresholds are based on the minimum lot size associated with the property as shown in Lot Size Maps under the relevant Local Environmental Plan (LEP).

As an example, on a lot less than 1 ha (10,000 square meters or roughly the size of a football field) you can clear 2,500 square meters before triggering the Scheme.

If the area clearing threshold is relevant, the Scheme applies in the following circumstances:

- minimum lot size is less than 1 ha, and clearing is 0.25 ha or more
- minimum lot size is between 1 and 40 hectares and the clearing is 0.5 ha or more
- minimum lot size is between 40 and 1000 ha and the clearing is 1 ha or more
- minimum lot size is 1000 ha or more and the clearing is 2 ha or more

If there is no minimum lot size provided for the site under the relevant LEP, the area clearing threshold depends on the actual lot size. If there is more than one minimum lot size then the smallest one is used.

Biodiversity Values Map

Clause 6.1 of the BC Regulation establishes the biodiversity values map. This map captures land with biodiversity values that are particularly sensitive to impacts from development and clearing such as coastal wetlands, old growth forest, high conservation value grasslands and land containing threatened species and communities. The map also captures declared Areas of Outstanding Biodiversity Value (see below) and maps species and communities at risk of a serious and irreversible impact. The Environment Agency Head makes the map and landowners can request that EES review a property on the map if they consider the biodiversity values are mapped incorrectly.

Test of significance

Section 7.3 of the BC Act establishes the five-part test of significance. This test determines if the activity will have a significant impact on threatened species or ecological communities or their habitats. For example, it considers if the impact will place a local population of a species or a local occurrence of an ecological community at risk of extinction or will isolate populations. Public authorities must apply the test of significance. Local development applies the test if the map and area thresholds have not been triggered. The test helps capture if a development or activity will have significant impact that might not have been captured under the map or area clearing threshold.

Areas of Outstanding Biodiversity Value

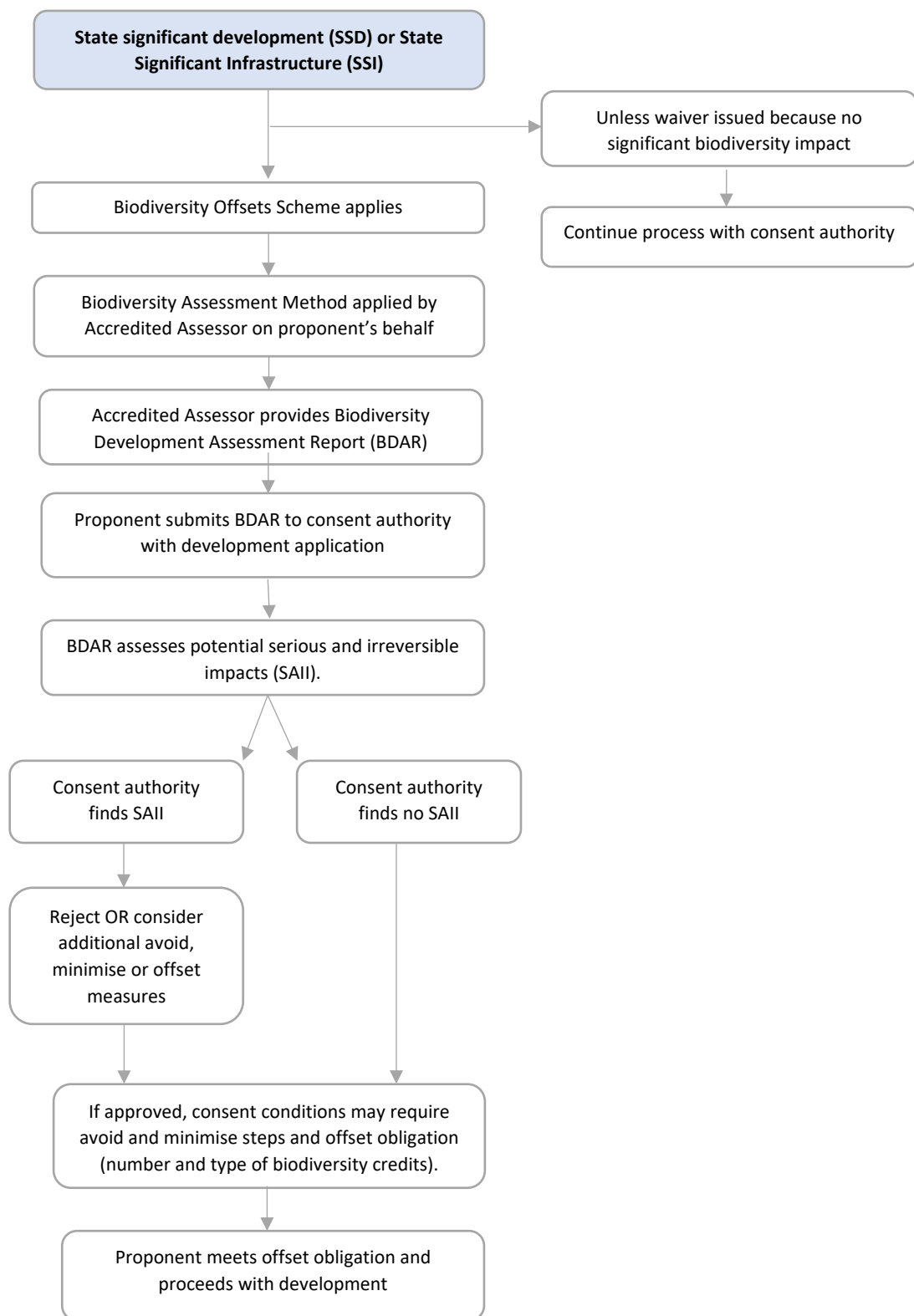
Area of outstanding biodiversity values area established as a trigger under section 7.2 of the BC Act. There are only four declared areas of biodiversity values:

- Gould's petrel – two islands in Port Stephens
- Little penguin population in Sydney's North Harbour critical habitat declaration
- Mitchell's rainforest snail in Stotts Island Nature Reserve
- Wollemi pine.

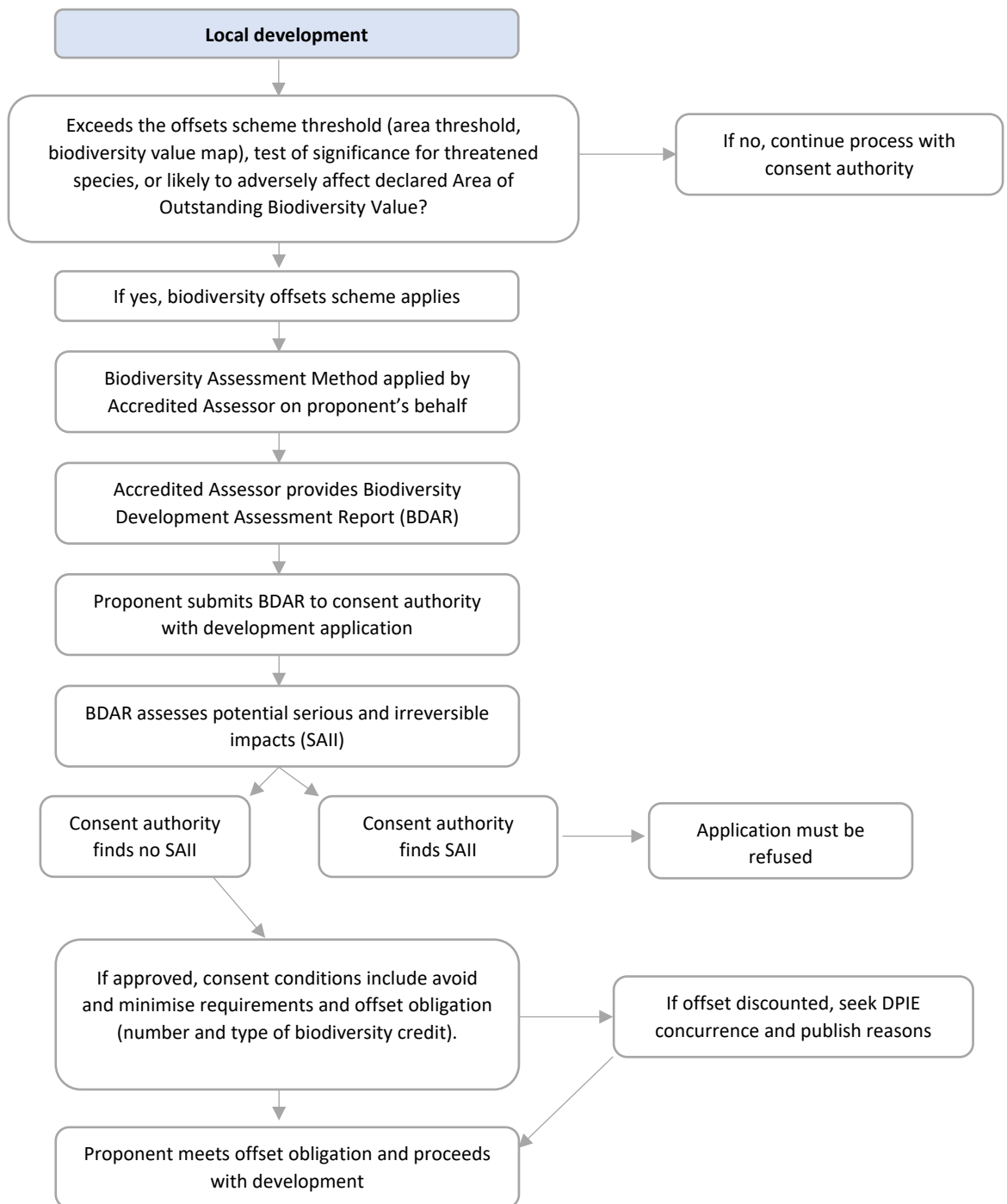
No new areas of outstanding biodiversity value have been declared since the Act commenced. Declaring a new area requires a scientific assessment process and landowners' consent.

Flowcharts: How proponents step through the scheme

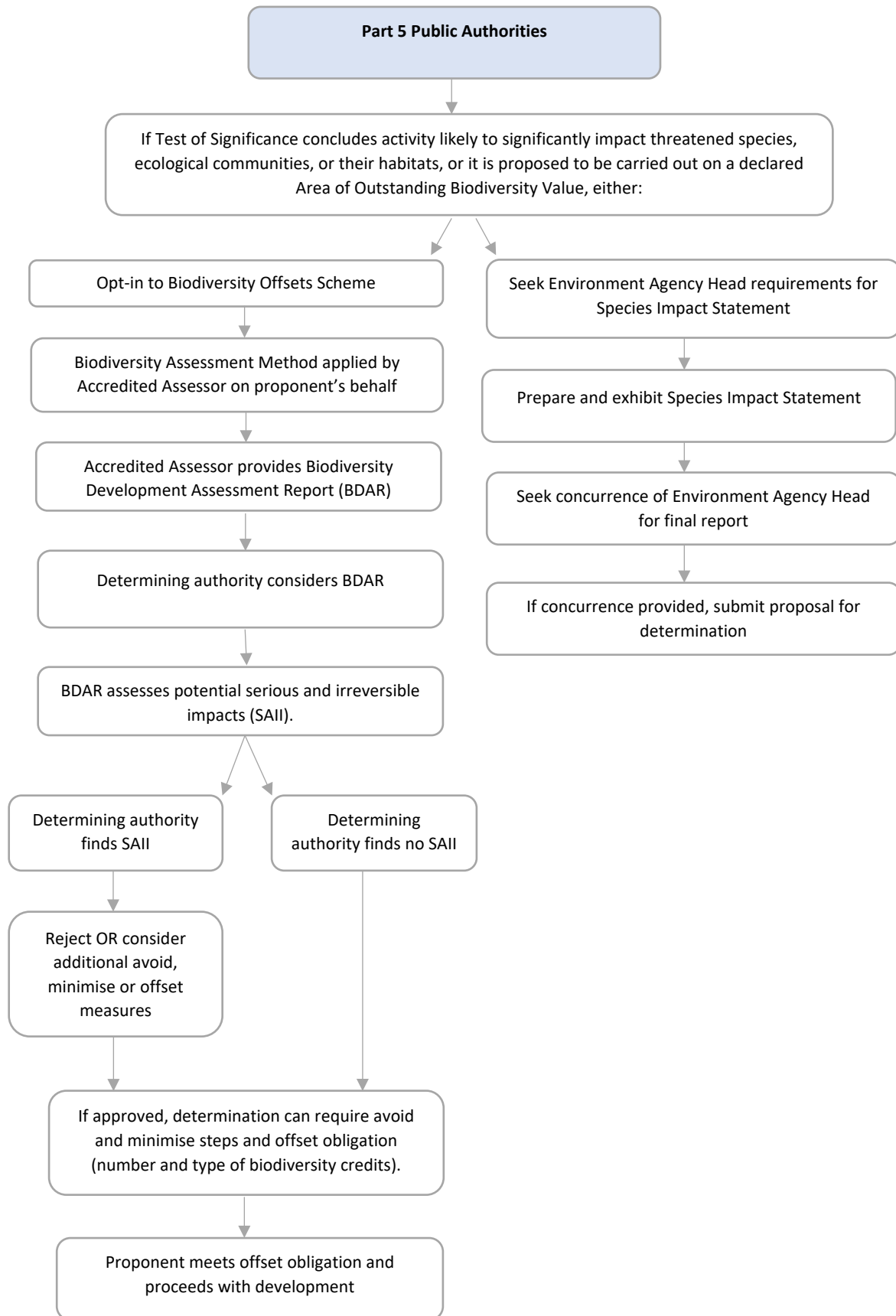
Major Projects



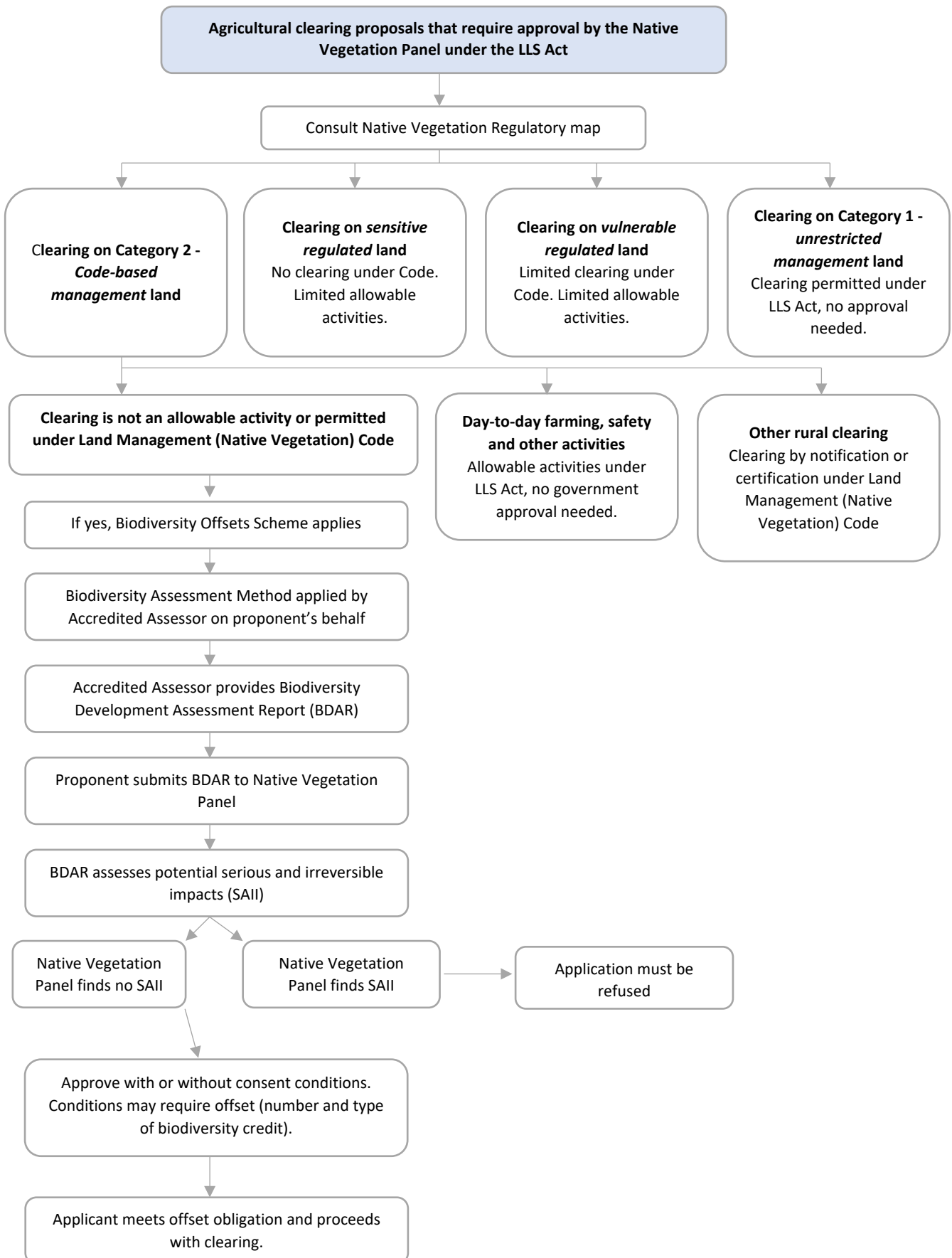
Local development



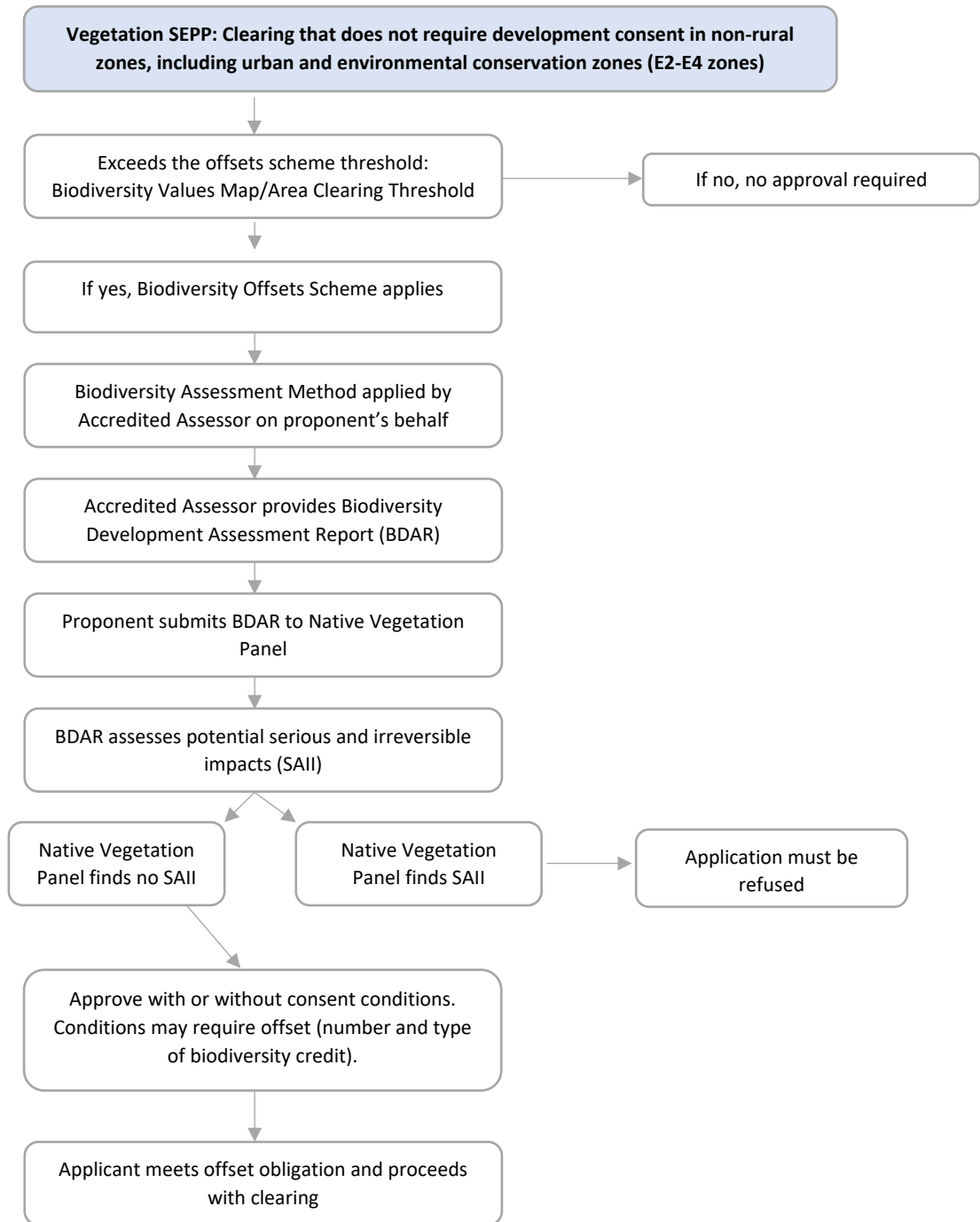
Part 5 Public authorities



Large scale agricultural clearing



Vegetation SEPP





Attachment C

NSW Legislative Council

Portfolio Committee No. 7 – Planning and Environment Committee

Parliamentary Inquiry into the Integrity of the

NSW Biodiversity Offsets Scheme

BCT Role and Governance

Contents

Introduction	3
Overview	3
The role of the Minister and DPIE under the BOS	4
The roles of the BCT under the BOS	4
1. Facilitating the supply of biodiversity credits	4
2. Managing the Biodiversity Stewardship Payments Fund	5
3. Delivering offsets from payments into the Biodiversity Conservation Fund	5
4. Delivering offsets under place-based schemes	8
Outcomes under the BCT's Biodiversity Offsets Program	11
Outcomes for landholders	11
Outcomes for developers	12
Biodiversity Offsets Payment Calculator (BOPC)	14
Governance	14
Legislation and Regulation	14
Role of the Minister for Energy and Environment	15
Role of the BCT Board	15
Role of the BCT Executive	16
Funds and Investment Management Framework	17
Risk Management and Audit	17
Management of Conflicts of Interest	18
Reporting and Public Accountability	19
Abbreviations and Definitions	20

Introduction

This document has been prepared by the Biodiversity Conservation Trust of NSW (BCT) as an appendix to the whole-of-government submission to the Legislative Council's Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme.

Among other things, the inquiry is considering 'the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight'.

To be clear, the BCT does not administer the Biodiversity Offsets Scheme.

The NSW Biodiversity Offsets Scheme is administered under the *Biodiversity Conservation Act 2016* (the Act) by the Minister for Energy and Environment (the Minister) and the Department of Planning, Industry and Environment¹ (DPIE).

The BCT has specified roles in the Biodiversity Offsets Scheme. This submission outlines those roles, and arrangements in place to govern the BCT.

Overview

The Biodiversity Conservation Trust (BCT) was established in August 2017, as part of the NSW Government's biodiversity conservation reforms, to encourage and support landholders across NSW to participate in private land conservation.

The major part of the BCT's business is delivering private land conservation (PLC) programs. Landholders can apply or express interest to enter wildlife refuge agreements or conservation agreements through a range of programs and delivery mechanisms offered by the BCT.

The BCT also plays specific roles in both the supply and demand sides of the Biodiversity Offset Scheme (BOS). This submission deals only with the BCT's roles under the BOS.

Under the BOS, 211 landholders have entered Biodiversity Stewardship Agreements (BSAs) to date. As at 30 June 2021, the BCT held \$176.2 million in trust, with these funds invested with NSW Treasury Corporation (TCorp) and used to support annual payments to BSA holders.

As at 30 June 2021, 212 developers have made payments worth \$48.1 million into the Biodiversity Conservation Fund (BCF) to transfer their offset obligations to the BCT. The BCT is working with landholders to purchase biodiversity credits and establish new biodiversity stewardship sites to acquit these offset obligations. This mechanism allows private and government development proponents to acquit their offset obligations quickly and easily. Importantly, it enables the BCT to bundle biodiversity offset obligations to achieve strategic biodiversity conservation outcomes.

¹ The Act refers to the 'Environment Agency Head,' which is the Secretary of DPIE or their delegate.

The role of the Minister and DPIE under the BOS

The NSW BOS is administered by the Minister and DPIE. Their key legislated responsibilities are set out in the main submission.

The roles of the BCT under the BOS

The BCT plays four key roles under the BOS, under the BCT's Biodiversity Offsets Program (BOP).

1. Facilitating the supply of biodiversity credits

The BCT undertakes a range of tasks to facilitate the supply of biodiversity credits. The BCT does this primarily through the review and establishment of biodiversity stewardship agreements (BSAs). Landholders that wish to generate and sell or use biodiversity credits can apply to enter a BSA with the BCT.

A BSA is an agreement, registered on property title, where native vegetation and threatened species habitat are protected in-perpetuity. These sites generate biodiversity credits which can be sold to offset the impacts of approved developments elsewhere. Once credits are sold, landholders receive ongoing annual management payments, and a potential profit from the sale of credit. Habitat must be improved through management actions such as fencing, weed control, pest control and planting native species.

Part 5 Division 2 of the Act outlines the requirements for a BSA. Under the Act the BCT is responsible for the establishment of new BSAs as well as BSA variations, annual reporting and annual management payments for agreements established under the former *Threatened Species Conservation Act 1995* and the *Biodiversity Conservation Act 2016*. Sections 5.8.3 and 5.9 of the *Biodiversity Conservation Act 2016* establish the requirements for a BSA application and entry into a BSA respectively.

The BCT engages with landholders and developers to provide information on and support in establishing a BSA. This includes responding to enquiries from landholders and developers interested in establishing BSAs or enquiring how to meet offset obligations, and provision of information to landholders to raise awareness about BSAs.

The BCT does not provide specific advice as to the viability of a BSA for a particular site but refers landholders to Accredited Assessors to provide information regarding vegetation type, credit demand and prices, likely credit yield and total fund deposits.

The BCT maintains the policies and procedures that govern:

- Expression of interest in establishing a BSA by a landholder
- Submission of an application for a BSA by a landholder, including eligibility, due diligence and fit and proper person test requirements
- The preparation, review and submission for approval of a BSA
- Execution and registration of a BSA.

The Minister has delegated the execution of BSAs to the BCT Chief Executive Officer.

The BCT is also responsible for ensuring landholders comply with their obligations under a BSA through receipt of annual reports and site visits, and, where necessary, withholding of payments and/or civil compliance action.

2. Managing the Biodiversity Stewardship Payments Fund

The BCT manages the Biodiversity Stewardship Payments Fund (BSPF) on behalf of the Minister. The BSPF is used to receive the total fund deposits for each biodiversity stewardship site. Funds can either be paid upfront or can accrue incrementally, as credits are sold, with the credit owner required to deposit money into the BSPF until the total fund deposit amount is met.

The BCT invests these funds in NSW TCorp Investment Management funds. The funds, and proceeds from investment, are used to make the annual biodiversity stewardship payments to BSA landholders, subject to agreement compliance. This allows the landholders to undertake the actions outlined in the management plan for the BSA.

The BCT manages the BSPF in accordance with a BCT Board-approved Funds and Investment Management Framework (see below).

3. Delivering offsets from payments into the Biodiversity Conservation Fund

The BCT acts as a market intermediary between credit buyers and sellers. Developers can choose to acquit their offset obligation by paying, via a charge set by the Biodiversity Offsets Payment Calculator (BOPC), into the BCF. The payment acquits the developer's offset obligation and they can proceed with their development. The BCT takes on a corresponding obligation to deliver an equivalent offset in accordance with the legislated offset rules. The BCT has the capacity to bundle obligations and deliver strategic conservation outcomes. This work is demand driven, influenced largely by the scale and location of offsets associated with payments into the BCF, which the BCT does not control.

Legislative requirements

Under the Act, developers can choose to meet an offset obligation by making a payment into the BCF (clause 6.30). The BCT then takes on the responsibility for securing the required biodiversity offsets to acquit the obligation (clause 6.31). There is no statutory timeframe for the BCT to deliver the biodiversity offsets. However, the BCT Board has set a policy that the BCT should aim to acquit all offset obligations within five years and a median of obligations by dollar value within three years.

The BCT is required to secure offsets in accordance with the biodiversity offset rules established under the *Biodiversity Conservation Regulation 2017*. The rules establish a hierarchy of options that the BCT must apply to meet its offset obligations. These are:

- Retire credits under the like-for-like rules or fund a biodiversity conservation action that benefits the entity impacted and is listed in the ancillary rules
- Retire credits under the variation rules
- Fund a biodiversity conservation action that benefits the entity impacted, but this action does not need to be listed in the ancillary rules

- Retire credits under the variation rules, but these credits can be generated from anywhere in the State i.e. the location requirement in the variation rules does not apply
- Use any other conservation measure approved by the Minister for the Environment.

Offset principles

The offset rules provide the BCT with a degree of flexibility in securing offsets and are broader than those available to proponents. In accordance with the BCT Business Plan, the BCT exercises this flexibility through balancing the following considerations:

- Ecological benefits and community expectations associated with securing like-for-like offsets
- Credit rarity and price, including price fluctuations, relative to the price paid by the proponent
- Length of time between the development impact occurring and delivering the offset
- Consideration of the application of variation rules to achieve strategic biodiversity outcomes
- Ecological implications, and community sensitivity, about varying offsets for impacted entities.

The BCT has adopted more detailed offset principles which guide how it applies the offset rules in practice. These principles reflect the BCT's view that in most cases land-based offsets provide a better conservation outcome than time-bound, transient actions.

Delivery mechanisms

The BCT has established six delivery mechanisms under its Biodiversity Offsets Program:

- **Landholder applications for offset conservation agreements:** conservation agreements can be applied to land required as an offset under local development under Part 5 of the *Environmental Planning and Assessment Act (EP&A) 1979* and major projects or planning approvals previously under the now repealed Part 3A of the EP&A Act (these are mostly approvals granted prior to the *Biodiversity Conservation Act 2016*). Offset conservation agreements may not be used where projects trigger the requirements of the BOS, or where development proponents are required to acquire and retire biodiversity credits under the BOS. The expansion of the BOS to incorporate most types of development means the use of offset conservation agreements is limited.
- **Landholder applications for biodiversity stewardship agreements:** facilitating the supply of biodiversity credits.
- **Biodiversity credit fixed price offers:** the BCT uses two biodiversity credit fixed price offer mechanisms: open and targeted. The [biodiversity credit open fixed price offer](#) is available to existing and prospective credit owners on a continuing basis for credits on the BCT's [Wanted Credit List](#) and operates on a 'first in' basis. The biodiversity credit targeted fixed price offer is where the BCT offers to purchase credits directly from credit owners or landholders. It is used in limited circumstances and specific regions to obtain highly sought-after credits.
- **Biodiversity credit tenders:** the BCT may call for expressions of interest or bids from credit sellers to participate in a biodiversity credit tender for identified credits the BCT is seeking. The tenders are advertised and a landholder guide to the tender released, with bids sought from all eligible landholders.
- **Revolving fund:** the BCT may purchase properties for sale that have the potential to generate wanted biodiversity credits. Properties are sold in the real estate market with a pre-commitment to enter a funded BSA, or with a BSA in place. Purchasers must be willing to buy the property knowing it comes with the responsibilities of a BSA.
- **Biodiversity conservation actions:** under the BOS rules, the BCT may sometimes be required to fund biodiversity conservation actions, instead of procuring site-based offsets. The BCT may identify and fund high-priority investment options or may invite tenders to supply conservation projects. The BCT has not used this mechanism to date.

Evaluation and probity measures

The BCT biodiversity credit fixed price offers and credit tenders are conducted in accordance with the Biodiversity Offsets Program Implementation Plan approved by the BCT Board. They operate under formal evaluation processes and are supported by a landholder guide and other communications, developed in consultation with the BCT's independent, external probity advisor (appointed from the NSW Government's pool of pre-qualified probity suppliers). All participants are required to complete written declarations of conflicts of interest as part of their involvement in the BCT's delivery mechanisms.

The targeted fixed price offer and biodiversity credit tenders are run in accordance with a formal documented evaluation process overseen by the BCT's independent, external probity advisor. An evaluation panel is established that is separate from the BCT team leading the project work on the

targeted fixed price offer or tender and includes an independent (non-BCT) member. The evaluation panel assesses proposed sites or tender bids against the offer or tender evaluation criteria and makes a recommendation based on value for money of credits to the BCT Chief Executive Officer. The BCT Board or the BCT Chief Executive Officer (according to delegations made by the Board) make decisions on which credits to purchase based on the recommendations of the evaluation panel.

Credit pricing approach

The following principles have been developed to guide the BCT's approach to credit pricing:

- Ensure equity by applying a consistent pricing approach for landholders within a single fixed price offer or credit tender
- Reflect true market prices; pricing considers management costs of the site and relevant market sales
- Realising value for money; taking into consideration the 'value' of the credit (for example, its rarity, conformity to the offset principles, achieving a strategic outcome), comparable market prices and the BCT's budget
- Achieving budget neutrality over rolling five-year periods
- Encouraging strategic conservation outcomes² by paying a premium of up to an additional 10% for credits.

Credit tenders operate as a reverse auction, with prices set by landholders who bid to sell their credits. Credit tenders operate on a value for money basis, however additional criteria to help achieve strategic conservation outcomes may be included (for example, providing a small weighting for credits from a site in a mapped priority conservation location). The rules of the tender are clearly articulated in the landholder guide for each tender.

In fixed price offers, the BCT sets the price for credits using a method approved by the BCT Board.

4. Delivering offsets under place-based schemes

Governments can commission and fund the BCT to acquire biodiversity credits under place-based offset schemes. The BCT obtains a fee to recover its costs to deliver biodiversity credits for these programs. These arrangements are governed under MOUs between DPIE and the BCT. The BCT is currently commissioned and funded to deliver offsets for three place-based offsets schemes.

Growth Centres Biodiversity Offsets Program – Western Sydney

The NSW Growth Centres Biodiversity Offsets Program was established in 2008 as part of the biodiversity certification of the North West and South West Growth Centres in Western Sydney. In 2012, the Australian Government approved the biodiversity certification as part of a strategic assessment program under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

² Strategic conservation outcomes will be defined through the documentation for the FPO or tender.

The Growth Centres Program is funded with \$397.5 million to be used for biodiversity conservation outside of the Growth Centres over a 50-year period. DPIE commissions the BCT to use this funding to procure offsets to meet the NSW and Commonwealth government targets under the biodiversity certification, operating under an annual allocation.

The BCT prepares a periodic delivery plan for this program. The scheme is overseen by a Steering Committee coordinated by DPIE and established to meet the requirements of the Commonwealth strategic assessment. The Committee provides advice on the delivery plan, which is approved by DPIE.

North Cooranbong Offsets Program – Lake Macquarie

The North Cooranbong Offsets Program was established to offset a residential development approved by the NSW and Commonwealth governments in 2009. Funding constitutes a single payment to the BCT of \$2.8 million to be used for biodiversity conservation, specifically to contribute to the protection of the Charmhaven apple (*Angophora inopina*) and Black-eyed Susan (*Tetradlea juncea*) within the Wyong and Lake Macquarie areas.

The funding for this program has recently been transferred from DPIE to the BCT. BCT has committed to expend the funding within three years of receipt. The BCT will develop a plan to deliver the program and report on delivery to DPIE for this program.

Cumberland Plain Conservation Plan

DPIE is leading the development of the Cumberland Plain Conservation Plan (CPCP). The CPCP is a large-scale strategic conservation planning project that aims to deliver landscape-scale biodiversity assessment and offsetting outcomes that will facilitate new housing and infrastructure corridors in Western Sydney. The draft CPCP was publicly exhibited in late 2020 and DPIE is currently considering feedback received in finalising the CPCP.

The BCT has been identified as the delivery partner under the CPCP to secure conservation outcomes on private land through entering BSAs with landholders.

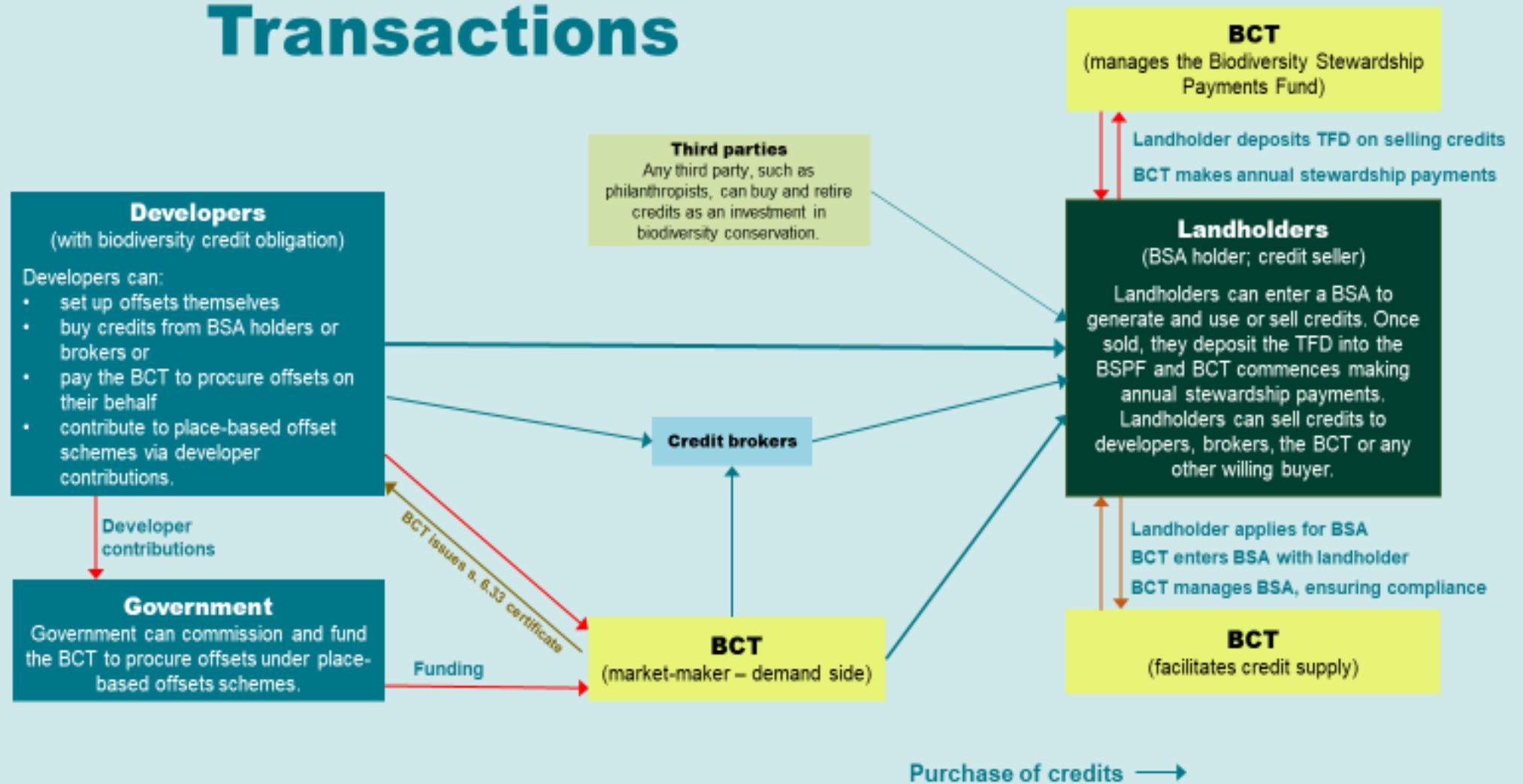
Pricing approach

The approach taken by the BCT to determining a price for offsets to be delivered under the place-based schemes may differ, where deemed appropriate, from the BCT's general pricing approach. The BCT may have limited options to meet the often very specific offset requirements/targets of these schemes which in turn will strongly influence consideration of 'value for money' acquittal of obligations.

Where the BCT departs from the standard credit pricing approach to procure offsets under a place-based offset schemes, approval is sought from the BCT CEO. In all instances, the BCT will operate within the budget of the program, the MoU governing the place-based schemes, and any specific delivery plans and governance arrangements with DPIE.

The BCT's four roles are shown diagrammatically on the following page.

Biodiversity Offsets Transactions



Outcomes under the BCT's Biodiversity Offsets Program

Outcomes for landholders

Under the BOS, a landholder can enter an in-perpetuity BSA to generate biodiversity credits, which they can use themselves to offset their own development project or sell to a developer or the BCT.

So far to 30 June 2021, 211 landholders have entered biodiversity stewardship agreements to maintain and improve biodiversity values across 27,480 hectares. Of these, 130 sites are in active management, which means the total fund deposit has been paid into the BSPF and the land is being actively managed to enhance biodiversity outcomes.

As at 30 June 2021, the BCT is holding \$176.2 million in trust in the BSPF and invests these funds with NSW TCorp to support ongoing payments to the landholders. These landholders are earning \$8.9 million per annum to conserve and enhance biodiversity on their land. By providing this income, the BCT is supporting landholders to maintain and improve the conservation values of the land, which is how biodiversity credits are created.

These agreements provide landholders with an ongoing, drought-proof income to undertake conservation management, such as pest and weed control.

Another 60 landholders have applied to enter BSAs with the BCT.

The BCT also manages 'offset conservation agreements.' Prior to the commencement of the Act, some consent authorities required developers to secure offsets via conservation agreements. The BCT manages 108 offset conservation agreements across more than 38,000 hectares and some offset conservation agreements are still being processed pursuant to old development consents.

Case study

Warren Dyason, a property owner near Wagga Wagga, was approached by the then Roads and Maritime Services in 2018. They were seeking credits to offset the Newell Highway by-pass at Grong Grong.

Mr Dayson has said "It was an opportunity to earn an income from a relatively uneconomic part of the family property. When the initial assessment was made, I was surprised at the number of native plant species that were present. While we had generally kept livestock out, it was convenient at times to use the area for short periods. I had thought that this, coupled with the drought conditions over previous years, may have diminished native species to almost nothing."

Now 41.3 hectares of the threatened ecological community grey box woodland has been conserved in-perpetuity with funds set aside and invested by the BCT to support annual payments to Mr Dyason to undertake agreed conservation management.

Mr Dyason believes that the ongoing management should not require an excessive amount of time, skill or equipment. He took advantage of the high rainfall in 2020 to plant additional trees with his family to encourage the re-establishment of native flora and fauna.

Outcomes for developers

Under the BOS, a developer with a biodiversity offset obligation can choose to acquit that obligation by either: buying biodiversity credits in the market from a biodiversity stewardship agreement holder; entering an agreement themselves; or paying into the BCF to transfer the obligation to the BCT.

So far to 30 June 2021, 212 developers have paid \$48.1 million into the BCF, transferring 516 offset obligations (15,935 biodiversity credits) to the BCT.

This includes payments to support large scale infrastructure projects, school and hospital re-developments, wind and solar farms, tourist facilities and mining projects, through to smaller scale residential developments.

The BCT offers a streamlined and simple process for developers, enabling them to acquit their biodiversity offset obligation within a two-week timeframe, allowing them to proceed immediately with their development.

This regime also enables the BCT to bundle offset obligations and acquit them in a manner that maximises environmental benefits.

The BCT uses various mechanisms to acquit offsets, including tenders and fixed price offers. For example, the BCT ran a state-wide credit tender during 2020, resulting in the purchase of 881 ecosystem credits and 1,154 species credits, with a total value of \$4.4 million.

Case study

A market leader in high-quality renewable energy, Clenergy, paid around \$330,000 into the BCF for their 115 MW Metz Solar Farm development east of Armidale.

Daniel Hong, Clenergy CEO, said the process of paying into the fund was quick and well supported by the BCT. Mr Hong said "It's great to know that the credits will be sought and offset by the experts at the NSW BCT, while this important development can proceed as planned."

The BCT will use the funds to procure 43 grassy woodland ecosystem credits to offset the unavoidable impacts of the solar farm.

Dashboard

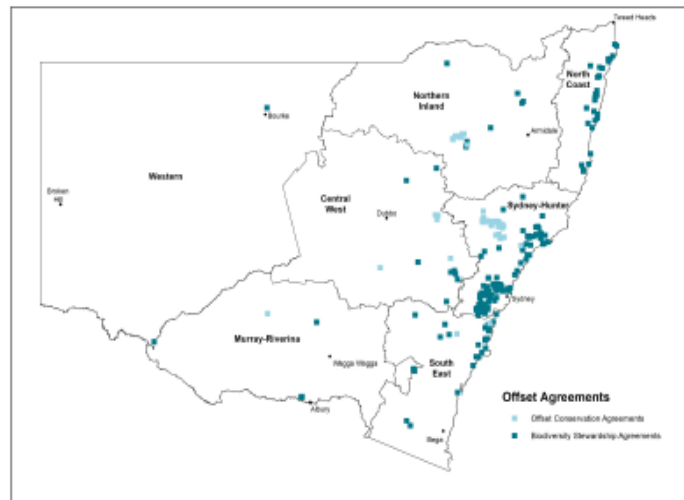
The BCT's Biodiversity Offset Program outcomes are update on the BCT's website quarterly. The BCT's performance dashboard for the period ending 30 June 2021 follows on the next page.

Biodiversity Offsets Program outcomes

Data current to 30 June 2021

Facilitating supply of biodiversity credits

Map of Biodiversity Stewardship Agreements (BSAs)



108

No. of signed offset CAs

211

No. of signed BSAs (60 applications in progress)

\$176.2m

Assets held by Biodiversity Stewardship Payments Fund

38.1K_{ha}

Area of Offset CAs

27.5K_{ha}

Area of signed BSAs

\$8.9m

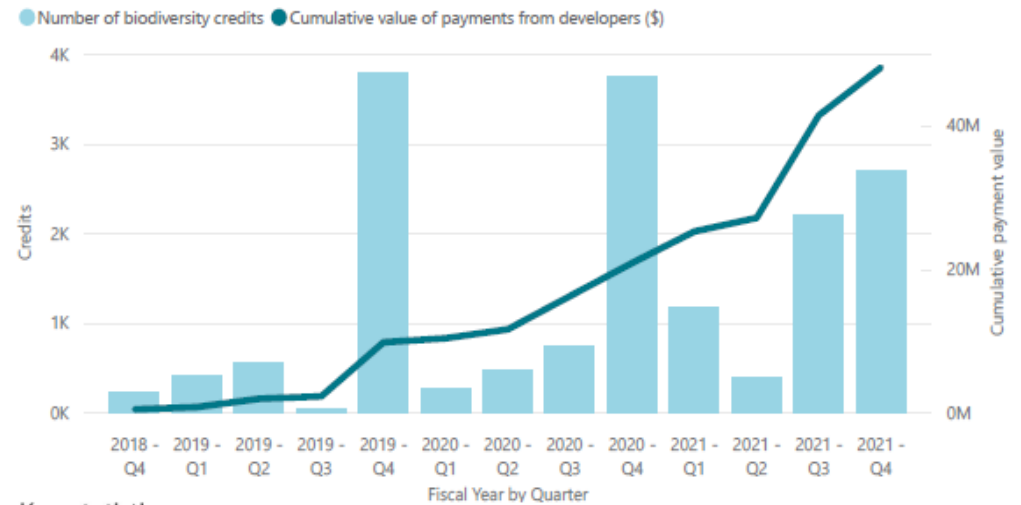
Biodiversity stewardship payments made in last 12 months

Other statistics (since 25 August 2017)

No. of Offset CAs signed by the BCT	52
No. of BSAs signed by the BCT	23

Securing biodiversity credits under the Biodiversity Offsets Scheme (BOS)

Developer payments into the Biodiversity Conservation Fund (BCF)



Key statistics (since 25 August 2017)

No. of developer payments into the BCF	212
Value of developer payments into BCF (exGST)	\$48.1m
Offset obligations (no./credits/dollar value) acquitted, acquired or pending acquisition (%)	43/34/34
Offset obligations (no./credits/dollar value) held by BCT (%)	57/66/66
No. of offset obligations held*	516
No. of offset obligations met	82
Offset obligations met under like-for-like rules	100%
Total allocation to BCT for government offset delivery (budget)	\$6.0m [^]
Value of government offsets secured (actuals)	\$2.6m [~]
No. of tenders underway/completed	0/5
No. of fixed price offers underway/completed	2/4

* Each payment may comprise one or more offset obligations (types of biodiversity credits)

[^] \$5.6m Growth Centres and \$400k seed project for Cumberland Plain Conservation Plan

[~] \$2.4m spent for Growth Centres, \$3.2m to be carried over to 21/22 to purchase credits from a pending BSA site

Biodiversity Offsets Payment Calculator (BOPC)

Payment into the BCF is one option for development proponents to meet their biodiversity offset obligation. Currently, the price a proponent must pay into the BCF is set by a biodiversity offsets payment calculator (BOPC) designed and operated by DPIE. Attachment A details changes to the BOPC that DPIE and BCT are currently progressing and consulting on.

Governance

The BCT is subject to an extensive regime of governance, transparency and accountability.

The BCT Board has established and ensures compliance with a comprehensive governance framework, which includes:

- A Board Charter
- An Audit and Risk Committee (and associated Charter), to oversee risk management, financial management, funds and investment management, compliance and ethics, and internal and external audit
- A risk appetite statement and risk management framework
- A conformance framework
- An internal audit charter, an internal audit plan and an outsourced internal audit provider
- Assigned chief finance, audit and risk officers
- A WHS framework
- Probity frameworks, plans and reporting
- External financial and performance audit by the NSW Auditor General
- Instruments of financial and administrative delegation
- Policy on staff participation in BCT programs.

Legislation and Regulation

The BCT is part of the portfolio of the NSW Minister for Energy and Environment (the Minister) and is part of the Planning, Industry and Environment cluster.

The BCT is a statutory, not-for-profit body established under Part 10 of the Act. The statutory object of the BCT, as stated in the Act, is to 'protect and enhance biodiversity' by:

- Encouraging landowners to enter into co-operative arrangements for the management and protection of the natural environment that is significant for the conservation of biodiversity
- Seeking strategic biodiversity offset outcomes to compensate for the loss of biodiversity due to development and other activities
- Providing mechanisms for achieving the conservation of biodiversity

- Promoting public knowledge, appreciation and understanding of the value of biodiversity and the importance of conserving biodiversity.

Part 10 of the Act sets out the BCT's object and principal purpose, the BCT's functions, and the BCT's powers.

The BCT has prescribed roles in the BOS under Part 6 of the Act.

The BCT's roles in the BOS are subject to an extensive regime of legislative and regulatory provisions established in the Act and Regulations, including reporting and transparency measures.

Role of the Minister for Energy and Environment

Under the Act, the Minister is responsible for:

- Ensuring that consultation is undertaken with the Minister for Planning and Public Spaces, and the Minister for Regional NSW, Industry and Trade before entering any BSA (Division 2 of Part 5 of the Act),
- Approving or declining a request to enter, vary or terminate a BSA (Division 2 of Part 5 of the Act)
- Matters dealing with proposals by public authorities affecting biodiversity stewardship sites (clause 5.16) and the requirements of applications to enter (clause 5.8), and the entry into (clause 5.9) of BSAs.

Under Part 6 of the Act, the Minister may also:

- Participate in the BOS, including by purchasing, holding, transferring and retiring biodiversity credits (Division 1)
- Require the retirement of credits if they have not been retired in accordance with the credit retirement requirement (Division 5)
- Establish the BOS offsets payment calculator (the BOPC).

The BCT is subject to the control and direction of the Minister under the Act. The Minister may also issue directions to the BCT in accordance with clause 10.2(2) of the Act. The BCT must publish any such directions (clause 10.2(3)). The Minister has not yet made any such directions.

The Minister appoints the members of the BCT Board, determines board member terms of office, approves the BCT's Business Plan, and tables the BCT's Annual Report in Parliament.

The Minister has delegated the exercise of identified ministerial statutory functions under the Act, the *Biodiversity Conservation Regulation 2017* and the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* to the BCT Executive with regard to BSAs and the BSPF.

Role of the BCT Board

The BCT Board is constituted under Clause 10.3 of the Act, is directly accountable to the Minister, and operates pursuant to the Act and associated regulations. Appointment to the BCT Board

requires approval by the Minister and follows consultation with, and the recommendations of, the Minister for Planning and Public Spaces, and the Minister for Regional NSW, Industry and Trade.

The BCT Board currently comprises seven members and is chaired by the Hon. Niall Blair. Board member details are available on the BCT [website](#). The Board has made a [Charter](#) that sets out its responsibilities.

Board delegations

The BCT operates under an Instrument of Delegations approved by the BCT Board, which sets out:

- Financial delegations with regard to expenditure from the BSPF and the BCF
- Protocols that govern the exercise of administrative and financial delegations in relation to the functions of the BCT.

Audit and Risk Committee

The Board has established an Audit and Risk Committee under [Charter](#) that complies with the requirements of the NSW Treasury *Internal Audit and Risk Management Policy for the General Government Sector* TPP20-08. The ARC comprises two BCT Board members and two independent members.

The ARC provides independent assistance to the Board by monitoring, reviewing and providing advice and assurance on governance, risk management, external accountability, compliance and ethics, internal audit and external audit, financial and funds and investment management, and other governance matters. Staff from the NSW Audit Office and the BCT's internal auditors attend meetings of the Audit and Risk Committee.

The Audit and Risk Committee meets at least four times per year, with special meetings held to review the BCT's financial statements. Members of the ARC are required to provide annual written conflicts of interest declarations to the Board stating that they do not have any conflicts of interest that would preclude them from being members of the ARC. Members or observers at ARC meetings are required to comply with the conflicts of interest provisions of the [ARC Charter](#).

Programs and Delivery Committee

The BCT Board established the Programs and Delivery Committee (PDC) as a subcommittee under [Charter](#) pursuant to clause 29 of the BCT Board Charter. The PDC provides advice to the Board by considering BCT management recommendations on program design and planning, program delivery, and the related operations of the Programs Branch and the Regional Delivery Branch.

The PDC meets before each meeting of the BCT Board, and otherwise as required. Members or observers at PDC meetings are required to comply with the conflicts of interest provisions of the PDC Charter.

Role of the BCT Executive

The BCT is led by the Chief Executive Officer (CEO) and three directors.

The CEO is accountable to the Board for the operations of the BCT. The CEO is supported by a Director Programs, Director Regional Delivery, and Director Strategy and Finance.

The role of the CEO of the BCT is also set out in the BCT Board Charter.

The BCT Executive Committee is a key leadership forum for collective dialogue, debate and discussion to inform decision-making by the BCT's leadership team. No formal decision-making powers are delegated from the Minister, Board or Chief Executive Officer to the Executive Committee. The BCT Executive Committee works as a group to inform and support all members in the exercise of each member's own authority and responsibilities. Resolutions of the BCT Executive Committee are consistent with formal delegations for decision-making.

Funds and Investment Management Framework

Under the Act, the BCT is responsible for the management of the BSPF (Division 7, Part 6), and the BCF (Division 2, Part 10).

The Act requires the BCT to 'act as trustee of money or other property vested in the Trust', establishing a fiduciary duty to ensure that funds are managed prudentially, particularly the large sums of money held in the BSPF and BCF to meet future stewardship or conservation management payment obligations to agreement holders.

The BCT Board takes a view that it must fulfil fiduciary duties to the NSW Government, the Minister, the BCT's landholders and stakeholders, and BCT itself. As directors, the members of the BCT Board also have general statutory duties of loyalty and good faith, and of care and diligence.

For these reasons, the BCT Board has approved a Risk Appetite Statement and a Funds and Investment Management Framework which sets out policies and procedures to be implemented by BCT management, to ensure rigorous and prudential funds management.

Among other things, the framework requires the BCT to seek investment advice from TCorp and actuarial advice and modelling on a regular basis, to ensure the Board can consider and approve investment arrangements that prudentially balance investment returns and risk.

The operation of the Funds and Investment Management Framework intersects with the BCT Board's Risk Appetite Statement and instruments of delegation.

Results from the BCT's funds and investment management are disclosed in the BCT's annual reports and annual financial statements.

Risk Management and Audit

Risk Management

The BCT Board has approved a Risk Management Policy (the Policy) as part of its risk management framework, which includes the Board's Risk Appetite Statement. The framework is consistent with the requirements of the NSW Treasury *Internal Audit and Risk Management Policy for the General Government Sector* TPP20-08.

The Policy assigns specific responsibilities to the BCT Board, the Audit and Risk Committee, the Chief Executive Officer, the Chief Risk Officer, the Strategy and Governance business unit, Directors and senior managers, other BCT staff and contractors/consultants.

Quarterly enterprise and operational risk reports are submitted to the BCT Executive Committee, the Audit and Risk Committee and the Board.

Internal Audit

The BCT has established an internal audit program as a key component of its governance framework.

The BCT Board has established an [Internal Audit Charter](#), which complies with the requirements of the NSW Treasury *Internal Audit and Risk Management Policy for the General Government Sector* TPP20-08.

The Audit and Risk Committee approves a three-year Strategic Internal Audit Plan, and an Annual Internal Audit Plan.

The Chief Audit Executive manages the internal audit function.

The scope of internal audit covers all programs and activities of the BCT together with associated entities, as detailed in relevant business agreements, MoUs, contracts; and all financial and non-financial policies and operations.

Deloitte Touche Tomatsu was appointed as the BCT's independent internal auditor via tender from 5 July 2021. NTT Limited (previously known as Oakton Services Pty Ltd) was the BCT's independent internal auditor from 30 April 2018 – 30 June 2021.

Quarterly internal audit reports are submitted to the BCT Executive Committee, the Audit and Risk Committee and the Board.

External Audit

The BCT is subject to external audit by the NSW Audit Office. This includes the annual audit of the BCT's financial position and periodic performance audits.

Management of Conflicts of Interest

BCT Policy on Staff Participation in BCT Programs

The BCT's [Policy on Staff Participation in BCT Programs](#) (the Policy) sets out the BCT's expectations and requirements for staff in relation to participation in its programs. The Policy is informed by the [NSW Public Service Ethical Framework](#) and DPIE's Standards of Conduct, and sets out the following principles:

- BCT Board members, staff and their close family members should not seek to financially benefit from BCT programs
- BCT Board members and staff should immediately disclose their personal (or a close family member's) participation in BCT programs to ensure potential conflicts are managed appropriately.

The policy applies to BCT Board members, current staff in ongoing or temporary roles with a continuous contract period of six months or longer, independent contractors, consultants or contingent labour working exclusively for the BCT for a period of six months or longer, past BCT staff (if within 12 months of termination of employment), close family members (partners, children or those with a dependent relationship).

The policy also makes provision for dealing with cluster employees.

Declarations of Conflicts of Interest

All BCT staff are required to complete an annual Conflicts of Interest Declaration via the DPIE Ethics Portal by 31 July each year. Staff are required to identify any actual, reasonably perceived or potential conflicts that may arise in the course of their work.

Where any conflicts of interest are identified, staff are required to identify appropriate strategies for managing conflicts of interest and discuss these with their manager. Managers are required to approve staff conflicts of interest declarations (including any management strategies as appropriate), and proactively monitor the management of conflicts of interest in discussion with staff (at least every six months, or as circumstances change).

Reporting and Public Accountability

The BCT maintains a public website which is updated regularly with information about BCT governance arrangements, programs, offers and outcomes.

The BCT's credit purchase transactions are published in the biodiversity credit public registers maintained by DPIE alongside all other market transactions.

Credits the BCT is seeking to purchase via open fixed price offers are published on the wanted credits list on the BCT's website. Credits the BCT is seeking to purchase via a credit tender are advertised in the landholder guide for the tender.

The BCT will soon introduce more comprehensive quarterly reporting which will increase transparency and improve market information. The BCT will publish details about the payments made by development proponents into the BCF transferring offset obligations to the BCT, and the corresponding biodiversity credits purchased and retired or conservation actions funded by the BCT to acquit the obligations. This will commence in Q1 2021-22 for all offsets acquitted by the BCT to date to 30 June 2021.

Like all public sector entities, the BCT prepares a full annual report, including the BCT's audited financial statements, which is tabled in Parliament by the Minister.

Abbreviations and Definitions

- ARC: Audit and Risk Committee
- BCF: Biodiversity Conservation Fund
- BCIS: Biodiversity Conservation Investment Strategy
- BCT: NSW Biodiversity Conservation Trust
- BOP: NSW Biodiversity Conservation Trust Biodiversity Offsets Program
- BOS: NSW Biodiversity Offsets Scheme
- BSA: Biodiversity Stewardship Agreement
- BSPF: Biodiversity Stewardship Payments Fund
- CA: Conservation Agreement
- DPIE: NSW Department of Planning, Industry and Environment
- FPO: Fixed price offer
- PDC: Programs Delivery Committee
- TCorp: NSW Treasury Corporation
- TFD: Total Fund Deposit: Defined under Section 6.21 of the *Biodiversity Conservation Act 2016* as 'total Fund deposit for a site means an amount determined (subject to the regulations) by the Environment Agency Head as the present value of the total of all scheduled management payments in respect of the site (under the BSA) during the life of the agreement. The present value is to be determined and published by the Environment Agency Head from time to time'. The TFD requirement is written into the BSA. It is calculated by working the present value of all future BSA payments to in-perpetuity using a discount rate determined and published by the Environment Agency Head.



Transport
for NSW

Transport for NSW contribution

Portfolio Committee no 7 – Planning and
Environment

*Inquiry into the Integrity of the NSW Biodiversity
Offsets Scheme*

Sep 2021

Contents

- 1 Introduction 3
- 2 Background 4
- 3 Use of offsets for major projects (Transport) 5
- 4 The current scheme for TfNSW projects 7
- 5 TfNSW's processes for participation in the scheme 7
- 6 TfNSW's community engagement for future projects 9

Appendix A: Selling Biodiversity Credits to Transport Factsheet



1 Introduction

The Parliamentary Portfolio Committee No 7 – Environment and Planning commenced an inquiry into the Integrity of the NSW Biodiversity Offsets Scheme (the Scheme) on 24 June 2021.

The Terms of Reference for the inquiry are:

1. That Portfolio Committee No. 7 - Environment and Planning inquire into and report on the integrity of the NSW Biodiversity Conservation Scheme, and in particular:
 - (a) the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales, the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,
 - (b) the use of offsets by the NSW Government for major projects and strategic approvals,
 - (c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and
 - (d) any other related matters.
2. That the committee report by 1 March 2022.

The Department of Planning, Industry and Environment (DPIE), as the lead department administering the *Biodiversity Conservation Act 2016* (BC Act) including the Biodiversity Offset Scheme (BOS), is coordinating a whole of NSW Government submission to the Inquiry and will address the entirety of the Committee's Terms of reference.

Transport for NSW (TfNSW) is providing contribution to Item (b) of the Terms of Reference given TfNSW's role as a proponent of major infrastructure.

The contribution outlines TfNSW's role in the Scheme, a comparison of the current Scheme to previous regulatory approaches, TfNSW's approach to credit pricing and the credit market facilitation role played by the forward notification of infrastructure projects. TfNSW has also included information from Sydney Metro about their offsetting activities to date. Sydney Metro is the only other Agency within the Transport cluster with offset obligations.

Submissions to the Inquiry close on 30 September 2021.

2 Background

TfNSW is required under the *Environmental Planning and Assessment Act 1979* to assess the environmental impacts of certain infrastructure development activities. In satisfaction of this requirement, TfNSW from time to time provides biodiversity offsets in accordance with the requirements of the BC Act, the *Biodiversity Conservation Regulation 2017* and the Biodiversity Offset Scheme (BOS) administered by the DPIE.

This involves:

1. assessing the impacts of activities in accordance with the assessment methodologies and processes established under the BOS
2. purchasing biodiversity credits or making payments to the Biodiversity Conservation Fund (BCF)¹ in order to offset unavoidable impacts arising from infrastructure development.

Due to the extended savings and transitional provisions associated with the BC Act, the previous NSW policy framework for biodiversity offsetting still applies to a large number of TfNSW projects. This involves applying the NSW Biodiversity Offsets Policy for Major Projects and the Framework for Biodiversity Assessment. Offsets for these projects can include offsetting options available under the BC Act (such as payment to the BCF) with agreement from DPIE.

In some cases, TfNSW activities are also subject to a strategic approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)².

¹ The BC Regulation also makes provision for “biodiversity conservation actions” to be used in lieu of offsets in some circumstances, but this option is rarely used by TfNSW and is not discussed here.

² This includes certain:

1. State Significant Infrastructure (SSI) projects assessed under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) – See [EPBC Act bilateral agreement for major projects in NSW](#)
2. road development activities assessed under Part 5, Division 5.1 of the EP&A Act – See [Road and traffic management strategic assessment](#)
3. infrastructure development within the Western Sydney Growth Areas - See [Western Sydney Growth Centres strategic assessment](#)

3 Use of offsets for major projects (Transport)

TfNSW's first priority for all infrastructure development is to, where feasible and practicable, avoid or minimise impacts on biodiversity at all stages of the infrastructure development process. Due to the linear nature of most infrastructure development projects, some impact on biodiversity is an unavoidable consequence of infrastructure development, particularly at greenfield sites. Such unavoidable impacts potentially trigger the BOS requirements.

For unavoidable impacts, TfNSW works to secure offsets as early as possible in the planning process to meet the prospective regulatory requirements which would apply under both NSW and Commonwealth approvals, and to reduce the time between impact and offset delivery. This may take place prior to determination of applications for NSW and Commonwealth approvals. In some cases, this involves the early acquisition of biodiversity credits based on information contained in strategic planning documents such as Preliminary Environmental Investigations. The M12, for example, has substantially achieved the offsets required for the project in advance of project determination and approval.

Table 1 presents summary data for terrestrial biodiversity offset obligations for projects where an external regulator (DPIE or the Commonwealth Department of Agriculture, Water and the Environment) required offsets as part of an approval condition³ since 2011. Offset contributions voluntarily made by TfNSW or Sydney Metro under various sustainability initiatives and fish habitat offsets under Department of Primary Industries' fisheries guidelines are not included.

Table 1: TfNSW and Sydney Metro⁴ Offset obligations for externally approved projects since 2011

Offset Policy Framework	Value of offset required	Vegetation impacted (ha)	Number of approved projects	Average cost/ha cleared Greater Sydney	Average cost/ha cleared Regional NSW
1. BC Act offsets using Biodiversity Offset Scheme⁵ - 2017 to date					
SSI projects	\$1,121,997	2.17	3	\$508,957	N/A
REF projects	\$5,437,370	45	2 ⁶	N/A	\$120,830
2. Threatened Species Conservation Act 1995⁷ (TSC Act) policy based offsets⁸ - 2014 to date⁹					
SSI projects	\$116,654,173	261	11	\$407,113	\$257,531

³ This includes planning approvals under EP&A Act, concurrences under the repealed TSC Act and controlled action decisions under EPBC Act including the EPBC Act strategic assessment approval for road projects. Complete data was not available for 4 projects and these have not been included. Correct as at May 2021.

⁴ Sydney Metro is not part of TfNSW and is the only other Agency within the Transport cluster than has offsetting obligations – Sydney Metro data has been obtained in the interests of completeness

⁵ Includes EPBC Act controlled action referrals and projects that have triggered the RMS EPBC Act strategic assessment approval along with projects that have triggered the BOS under the BC Act.

⁶ 2 Review of Environmental Factors (REF) projects excluded as offset costs are not available. Both projects included triggered EPBC Act strategic assessment requirements and did not require a BDAR.

⁷ The TSC Act was repealed by the BC Act. The TSC Act established a voluntary biodiversity offsets scheme known as BioBanking and, in addition, the NSW Government put in place a policy to require offsets from major projects – known as the NSW Biodiversity Offsets Policy for Major Projects.

⁸ Includes SSI/Part 3A projects assessed under the NSW Biodiversity Offsets Policy for Major projects, REF projects requiring TSC Act concurrence, EPBC Act controlled action referrals and projects triggering the EPBC Act strategic assessment approval for road projects.

⁹ These dates overlap with the BC Act due to the operation of the BC regulation savings and transitional provisions.

Offset Policy Framework	Value of offset required	Vegetation impacted (ha)	Number of approved projects	Average cost/ha cleared Greater Sydney	Average cost/ha cleared Regional NSW
REF projects	\$18,085,466	53	3	\$390,640	N/A
3. TSC Act offsets requirements determined on case by case basis¹⁰ - 2011 – 2014					
Major projects (Part 3A)	\$79,516,767	1458	5 ¹¹	\$403,416	\$47,208
REF projects ¹²	\$493,805	3.83	1	N/A	\$127,928

TfNSW notes the significant difference in offsetting costs per hectare cleared between Greater Sydney and rural areas of NSW.

The main challenge facing TfNSW in meeting offset requirements relates to the lack of credit supply in many areas of NSW (indeed any area of NSW outside Western Sydney). This has led to TfNSW facilitating supply by assisting landholders to participate in the scheme and entering agreements over land owned by TfNSW. This land has been either purchased with the intention of entering an agreement or is surplus to TfNSW requirements and identified for divestment.

To date, TfNSW has assisted private landholders to generate more than 16,400 credits across 2022 hectares of land and has generated more than 17,300 credits across 1414 hectares of TfNSW owned land, with the intention of TfNSW retiring all credits from these properties as part of its offset obligations. These agreements establish legal protection and a funded, long term management framework for a diverse array of habitats including rainforests, grassy woodlands, heathlands and sclerophyll forests along with the threatened species which inhabit them.

Since 2011, TfNSW has purchased more than \$77 million of biodiversity and biobanking credits¹³, expended more than \$6 million to establish agreements over land owned by TfNSW and paid more than \$5.8 million in BCF payments to the Biodiversity Conservation Trust (BCT). Sydney Metro has purchased a further \$12 million in biobanking credits.

TfNSW expect to continue to require a significant number of biodiversity credits for current and future projects and will increasingly rely on the BCF mechanism. This is due to the BC Act provisions which require proponents to either buy credits or pay into the BCF prior to project impacts. This was not a requirement of Biodiversity Offsets Policy for Major Projects.

¹⁰ Major projects with approval conditions requiring offsets and REF EPBC Act controlled action decisions.

¹¹ 3 early major projects excluded as offset costs are not available

¹² 2 REF projects excluded as offset costs are not available.

¹³ Information collated as at June 2021

4 The current scheme for TfNSW projects

TfNSW notes the legal and policy framework for biodiversity offsets has evolved across the last twenty years. Below is a comparison of the current scheme for TfNSW projects compared to past approaches:

1. **Offset requirements are now based on an agreed and objective methodology endorsed by the Commonwealth¹⁴.** Previous offset obligations were applied on a case by case basis by the relevant regulator, which led to significant variation in biodiversity outcomes between projects across NSW and between State and Commonwealth regulators. Planning for offset delivery in advance of project impacts was not supported (principally because offset requirements were not known until post approval processes were complete) which caused delays between impact and offset delivery and long implementation times for proponents.
2. **Accredited assessors now apply the offset assessment methodology.** Proponents have access to accredited consultants trained in the assessment methodologies and subject to professional standards and guidelines administered by DPIE. This was a feature of the former BioBanking Scheme which has been carried through by the BOS.
3. **Biodiversity Stewardship Agreements (BSAs) provide a mechanism whereby private landholders can supply offsets and are funded in perpetuity to do so.** This has filled a significant gap in previous offsetting arrangements and means TfNSW is no longer required to rely on another government agency (such as NSW National Parks and Wildlife Service) taking on the offset site and associated liabilities in perpetuity or to enter long term contractual arrangements with private landholders.
4. **Biodiversity Offset Payment Calculator (BOPC) supports strategic route option analysis.** The BOPC is an online tool managed by DPIE whereby developers can estimate the amount they would need to pay to the BCF, administered by the BCT, to offset the impacts of development. In practice, this tool provided support to strategic route option development whereby the relative costs of different route options can be identified. Being able to accurately estimate the cost of offsets for a project means proponents are further incentivised to select routes and construction methodologies which minimise impacts.
5. **A market based system of biodiversity offsetting makes the presence of biodiversity on land into a potential asset** which can be traded in a way which compensates for forgone development opportunities and pays for long term management. This provides an incentive for private landholders to retain biodiversity values on their land.

5 TfNSW's processes for participation in the scheme

TfNSW has internal processes in place to support participation in the BOS. A critical component of this is its approach to credit pricing. TfNSW is a significant purchaser of biodiversity credits and so it is important that:

1. all landholders have the opportunity to sell credits to TfNSW
2. the basis by which TfNSW makes credit offers is transparent and consistent.

¹⁴ For more information on Commonwealth endorsement of NSW assessment methods see: [EPBC Act bilateral agreement for major projects in NSW](#) and [Road and traffic management strategic assessment](#)

To this end, TfNSW (and the former NSW Roads and Maritime Services) prepared a public facing factsheet '[Selling Biodiversity Credits to Transport](#)' which explains the approach taken by TfNSW when making offers to purchase credits and to negotiate credit values as part of the BOS (see Factsheet at **Appendix A**).

Critical components of this approach are:

3. the use of public notification for expressions of interest to locate potential sellers. This is usually carried out via local newspapers and on the TfNSW website.
4. making offers based on relevant biodiversity credit sales and asking prices and, where necessary, considering the market value of the land, the likely change in land values as a consequence of entering the BSA¹⁵, the costs borne by the seller in entering the BSA (including cost of the accredited assessor and BCT fees) and a profit and risk factor which represents a reasonable incentive to the property owner to enter the agreement. Combined with the Total Fund Deposit calculated by the accredited assessor and agreed by the BCT, these factors make up the credit price offer.
5. dispute resolution procedures should the buyers and sellers not be able to agree on a credit sale price.

TfNSW notes property values and biodiversity credit values are not comparable. Property value is the price a buyer and seller agree represents the value of the property including both the value of the land itself as well as any improvements which have been made to it and any development potential. Credit value is the price a buyer and seller agree represents the value of:

1. the Total Fund Deposit paid to the BCT to fund in perpetuity management of the BSA;
plus
2. all forgone development opportunities as a consequence of entering the BSA; *plus*
3. a profit/risk factor of sufficient size to incentivise the property owner to enter the BSA;
plus
4. the cost of entering the BSA including assessment costs and BCT fees.

TfNSW notes while the DPIE credit registers display the sale price for traded credits, these registers do not display the components of the credit price.

Consequently, potential buyers need to work with potential sellers to understand how the four factors above come together to a final credit price. TfNSW routinely does this when assisting landholders to enter agreements and, for credits on the market, where market signals are poor. This is done to ensure TfNSW is paying a fair and reasonable price for all credits purchased.

¹⁵ Based on the advice of independent property valuer

6 TfNSW’s community engagement for future projects

TfNSW’s community engagement for future projects informs the credit market about our likely forward demand for biodiversity credits. TfNSW endeavours to advise the community as early as possible about intentions to build new infrastructure and to obtain feedback on various route options. Publicly available information giving forward notice of the Government’s intention to pursue road infrastructure typically map road corridors at varying scales and can provide detail on the biodiversity features present.

Combined with other publicly available sources of information, such as vegetation mapping, this information is available to any member of the public and could be used to infer future offset requirements. **Figures 1 and 2** provide examples of publicly available information from 2015 about the future alignment of the M12 motorway which could be used to infer offset requirements. The M12 was subsequently approved this year.

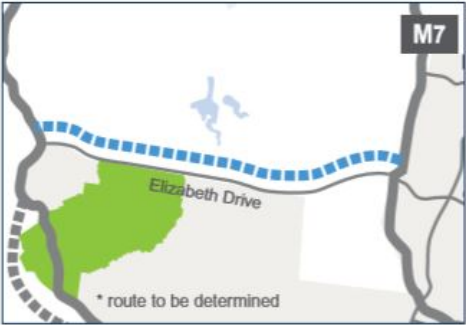


Figure 1: Western Sydney Infrastructure Plan Report Card January to March 2015

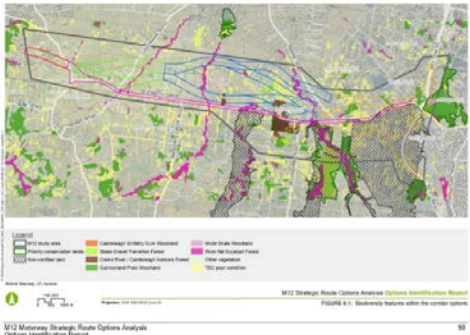


Figure 2: M12 Motorway Strategic Route Options Identification Report December 2015

TfNSW notes providing a high level of transparency through the public notification of future route alignments supports a functioning biodiversity credit market, as the process of finding suitable land and entering BSAs is a lengthy one for anyone wishing to participate.



Selling biodiversity credits to Transport

December 2020

This guideline explains the approach taken by Transport for NSW (Transport) when making offers to purchase credits and to negotiate credit value as part of the NSW Biodiversity Offset Scheme.

This document is applicable until withdrawn or replaced by Transport and does not constitute legal advice. Transport encourages all property owners considering participation in the Biodiversity Offset Scheme to obtain their own legal and financial advice before proceeding.

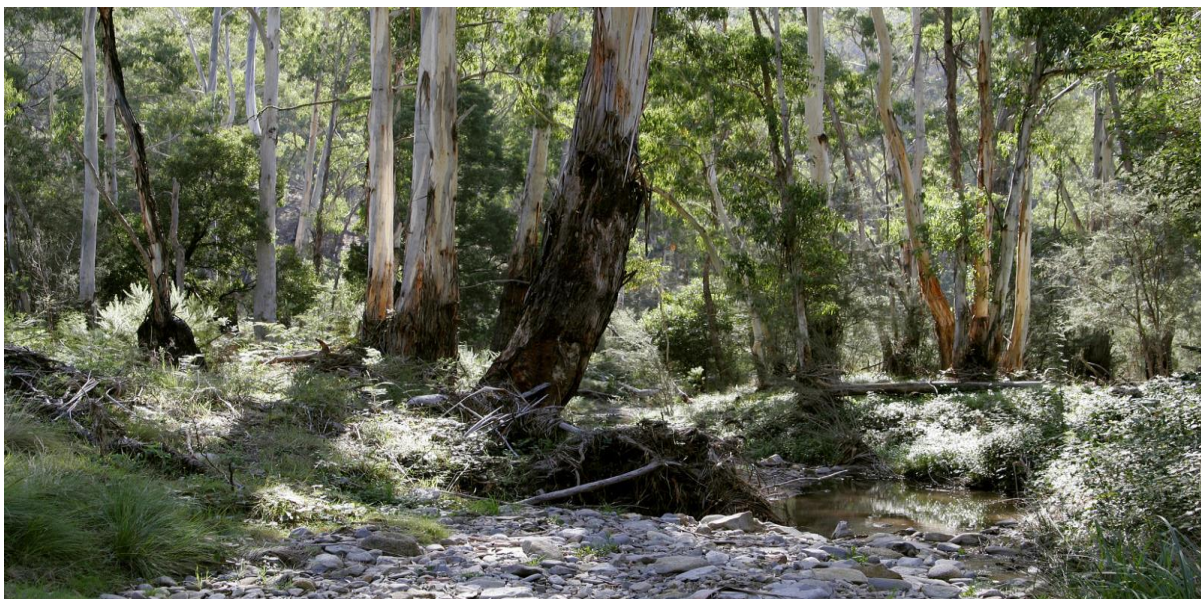
Transport seeks to avoid, minimise and mitigate the impacts of its infrastructure on biodiversity during the development and design of its projects. Where impacts cannot be avoided or mitigated, Transport looks to offset these impacts using the NSW Biodiversity Offset Scheme administered by the Biodiversity Conservation Trust (BCT) and the Environment, Energy and Science Division (EES) of the NSW Department of Planning, Industry and Environment.

This approach is consistent with NSW and Commonwealth planning and environmental laws.

The Biodiversity Offset Scheme is a market based scheme that provides:

- A consistent biodiversity assessment process for development
- A rigorous and credible offsetting scheme
- An opportunity for rural property owners to generate an income by managing land for conservation.

Under the scheme, property owners enter a Biodiversity Stewardship Agreement (BSA) with the NSW Minister for the Environment and can then sell the biodiversity credits generated by their properties. More information about this scheme can be found at <https://www.bct.nsw.gov.au/cards/apply-agreement-generate-credits>



Frequently Asked Questions

How does Transport find potential sellers?

Transport finds potential sellers of biodiversity credits by:

- reviewing the Biodiversity Offset and Agreement Management System (BOAMS) on the BCT website
- seeking expressions of interest from property owners who don't currently have a BSA applying on their land, but may be interested in entering one. This is done in a variety of ways including:
 - posting our requirements on BOAMs
 - placing advertisements in local newspapers seeking expressions of interest
 - contacting property owners directly.

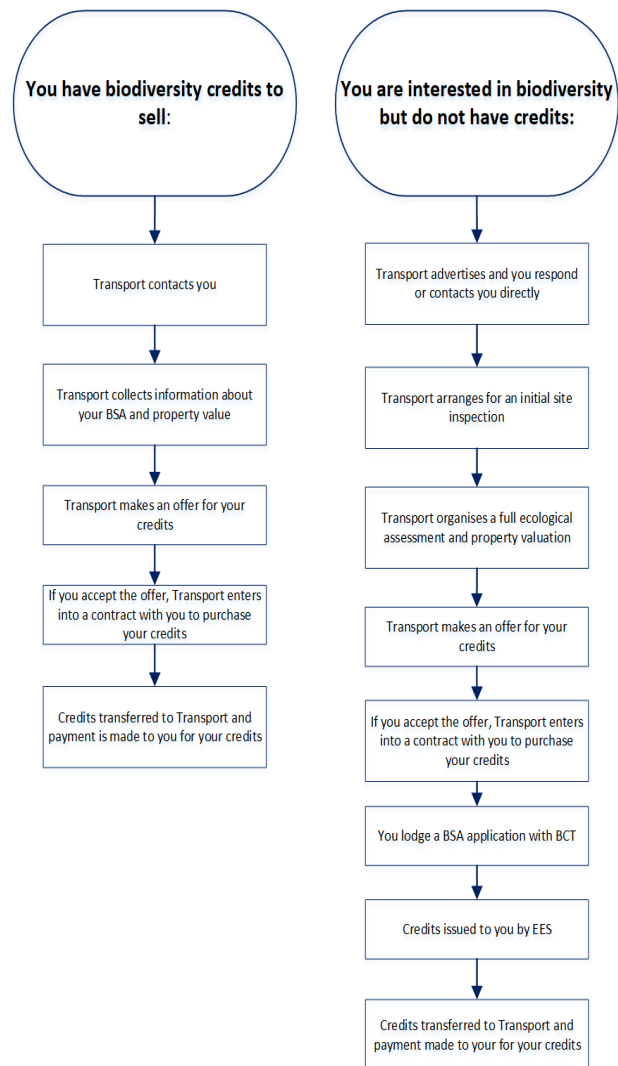
What happens if I am contacted about buying my issued credits?

Depending on whether there have been recent sales of your credits, Transport may ask you:

- for a copy of the BSA and credit pricing spreadsheet prepared on your behalf by an assessor accredited by EES
- for any other relevant information, including quotes and land valuations used to estimate credit value
- for permission to access your property for valuation purposes.

As part of the process we will:

- hold the information on your property on a strictly confidential basis
- appoint a primary contact officer to communicate with you
- carry out investigations regarding the value of the credits.



Once investigations are complete and credit value is assessed, we will either make an offer to purchase your credits within a reasonable timeframe (based on our approach to credit pricing) or advise you that at this time we will not be pursuing the credits and will return any confidential information to you.

What happens if I respond to an expression of interest?

With your agreement, Transport will:

- carry out an initial inspection of your land to confirm that the biodiversity values are potentially present
- help you access the information resources available that explain the benefits and responsibilities of property owners entering BSAs

- arrange a primary point of contact to handle communications with you
- arrange and pay for any necessary detailed ecological and property assessments of your land, the results of which will be the property of Transport
- make an offer to purchase credits within a reasonable timeframe based on our approach to credit pricing or advise you that your credits are not required
- assist you lodge the Agreement with the BCT.

You will be expected to:

- familiarise yourself with the obligations that come with managing a BSA
- assist the accredited assessor and an appropriately qualified land valuer access your property to conduct the necessary assessments. In some cases, this may involve entering a formal agreement with us
- review the BSA documentation within a reasonable timeframe, noting that once the agreement is lodged with the BCT and the credits sold, you will be responsible for implementing the management actions contained in the BSA
- review the offer from Transport
- should you agree to the offer, enter a contract to sell the credits to use for an agreed price
- lodge the BSA with BCT and transfer the credits to Transport once issued
- treat the ecological and property assessments prepared on your behalf as strictly confidential.

How is the value of biodiversity credits determined?

The value of the biodiversity credits is based on two components:

- **Part A** – the amount of money required to fund ongoing biodiversity management of the land by the property owner. The **Part A** component is paid to the Biodiversity Stewardship Payments Fund administered by the EES/BCT. Part A payments are determined by assessors accredited by EES in consultation with property owners.
- **Part B** – an upfront payment to the property owner to cover foregone development opportunities, administrative fees and a profit or risk margin. **Part B** payments are negotiated between the seller and buyer of credits.

How does Transport determine the Part B costs?

Transport is committed to offering property owners a fair price for credits and has adopted a consistent and transparent approach to determining Part B costs.

In addition to examining relevant biodiversity credit sales and asking prices, in determining an offer we may also consider factors such as:

- the **market value of the land** that is proposed to be the subject of a BSA – this is known as the ‘before value of land’
- the **opportunity costs** of entering the BSA given any likely changes in the value of land as a result of entering the BSA given any likely changes in the value of the land as a result of entering the Agreement – this is known as the ‘after value of the land’
- any **establishment costs** that would be incurred in creating the BSA. This would include the cost of the accredited Biodiversity assessor (unless Transport has already incurred this cost) and BCT fees to lodge the agreement application.

- a **profit and risk factor** which represents a reasonable incentive to the property owner to enter the agreement given regard to the particular circumstances of the agreement, the risks involved in entering the agreement and the existence of competing biodiversity stewardship opportunities which may be in competition with the agreement.

These four factors come together to inform the assessment process to determine an appropriate Part B component, which forms part of the total value of all credits generated from the BSA. The value is then divided by the number of biodiversity credits on the property to determine a price per credit.

What if I disagree with the offer?

Transport is committed to offering property owners a fair price for credits. If you do not agree with our offer, we would be happy to meet with you to discuss how we determined our offer price and your expectations.

Following this meeting, we will consider whether there is any justification for putting forward a revised offer and, if so, provide a revised offer to you.

If we cannot reach an agreement the following options are available:

- Transport and the credit owner can jointly choose to seek assistance from the Australian Property Institute (API). The API would nominate an appropriately qualified valuer who would act as an independent expert in determining the Part B component. The selected valuer would act as an independent expert and would be commissioned to carry out an assessment of the value of the required credits. This independent review process is subject to the following conditions:
 - the credit owner and Transport would each be responsible for the payment of 50% of the expert's fee

- the credit owner or Transport may make written submissions to the expert valuer within the first seven days after the expert valuer is instructed
- any existing offer by Transport as to the credit price is deemed to be withdrawn
- the expert's decision will be binding on both parties if the credit owner wishes to proceed
- no further valuations will be obtained and the offer to acquire at the value determined by the expert will remain open for three months or such other time as may be determined by Transport on a case by case basis, after which time the offer will lapse.
- We may withdraw the offer and retain intellectual property rights for all assessment collected for the BSA and paid for by Transport.

When do I receive payment for my biodiversity credits?

Property owners receive an upfront payment when their credits are transferred to Transport and will receive ongoing annual payments to manage their property for conservation from the Biodiversity Stewardship Payments Fund managed by EES.

Further information

If you would like to discuss any aspect of this Factsheet please contact Transport's Senior Environment Specialist (Biodiversity) on 0419 406324.

Murray's Beach offset site, Central Coast, NSW

