

27 July 2023

Biodiversity Market Monitoring Review  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240  
Via Portal

Dear Sir or Madam,

**IPART Issues Paper: Monitoring the Biodiversity Credits Market in NSW**

The Urban Development Institute of Australia NSW (**UDIA**) is the leading development industry body, representing more than 450 member companies and agencies across the public and private sector. We invest in evidence-based research to inform our advocacy to Government, which enables our members to create liveable, affordable and connected smart cities.

UDIA welcomes the review by IPART into the NSW biodiversity credits market and we are pleased to offer our comments to the *Issues Paper on Monitoring the Biodiversity Credits Market in NSW (Issues Paper)*. We submitted comments in November 2022 to the draft Terms of Reference for this IPART review, which can be found at [this link](#).

UDIA acknowledges the Terms of Reference for this review, including the relevant consideration of the “incentives and impacts of the Scheme on existing and potential market participants, including developers...” We recommend that IPART’s review take into account the impact of the market’s performance on facilitating the delivery of ecologically sustainable development, including the housing, jobs and critical infrastructure required to fulfill the objectives of the NSW strategic planning system under the Environmental Planning and Assessment Act (**EP&A Act**).

UDIA maintains significant concerns about the operation of the credits market in NSW and continues to advocate for reform. UDIA’s most recent recommendations about the system created by the *Biodiversity Conservation Act 2016 (BC Act)* can be found in our submission to the statutory 5-year review of the BC Act at [this link](#).

In general, biodiversity has become the major constraint to delivering housing in regional NSW and the credit market challenges are a considerable reason. UDIA’s 2022 [Greenfield Land Supply Pipeline Report](#) revealed that 62% of greenfield lots in the development pipeline are held up due to biodiversity constraints in the Lower Hunter and Central Coast. The low supply of credits in the market increases the cost of credits, and correspondingly adds to the cost of delivering housing, employment land and infrastructure, and contributes to making housing more expensive. For

example, work done by UDIA in 2021 (through EMM and based on the Biodiversity Offset Payment Calculator [**BOPC**] pricing at the time) suggests that biodiversity offsetting adds at least \$14,000 to the cost of delivering a new housing lot in the Lower Hunter. With the BOPC removed, we are unable to calculate 2023 offset costs; however, we are aware that recent reforms to the Biodiversity Conservation Fund (**BCF**) Charge System have increased prices of some credits up to 500%, so we believe our 2021 estimate is low. A copy of the EMM report is available at [this link](#).

While reforms to the BCF Charge System and the establishment of the Biodiversity Credits Supply Taskforce (**Taskforce**) are welcomed as efforts to support the establishment of a functioning market, there is still significant room for improvement in the operation of the market. In UDIA's view, the credits market would benefit from further investment in the work being done by the Taskforce to enhance its ability to acquire biodiversity credits on a large scale. This would increase the supply of credits and allow a more strategic approach to establishing biodiversity stewardship sites, producing better overall environmental outcomes.

UDIA responds to the questions posed by IPART in the Issues Paper as follows.

**1 What contribution should the biodiversity credits market make to achieving the Biodiversity Offset Scheme's purpose?**

As the Issues Paper notes, the purpose of the Biodiversity Offsets Scheme (**BOS**) is not explicitly stated in the BC Act. However, UDIA understands the purpose to be to facilitate ecologically sustainable development through offsetting residual impacts from development projects (after avoiding and minimising impacts to the extent possible). The Issues Paper states a preliminary view that "a well-functioning credits market would bring together credit buyers and sellers to enable transactions at a price that signals the true cost of biodiversity." While we do not disagree with the aspiration of this statement, we believe it is too narrow and incomplete for this review. We believe strongly that the market is still too immature to meet this test and that the practicalities of achieving adequate supply are still too burdensome.

Currently, market pricing is tied to scarcity of credits, but that can be assumed to be largely a reflection of the barriers to market entry for potential credit-generating Biodiversity Stewardship Agreement (**BSA**) landholders. That is not the same as scarcity of an ecological entity in itself. Unless the barriers to entry to facilitate supply are non-existent, it should not be assumed that the price of credits can signal "the true cost of biodiversity".

UDIA believes the market should contribute to the purpose of the BOS by providing adequate supply of offset credits to meet demand from approved development at a price that is affordable to the buyer. That scenario would enable ecologically sustainable development, consistent with aims of the BC Act and the EP&A Act. Until this equilibrium is achieved through a mature and highly functioning market, the BOS and the offsets credit market will continue to constrain development and increase the cost of new housing in NSW.

Credits must be traded on a 'like for like' basis to achieve the purpose of the BOS; however, this creates issues because it becomes difficult for developers to find offset sites that produce the exact credits to meet their requirements. The specific necessary credits can be very hard

to find if they are available at all. At present, there appears to be little private sector participation in the offsets market other than through the Biodiversity Conservation Trust (BCT) and more recently the Taskforce. The Taskforce is better equipped than the private sector to secure strategically significant biodiversity stewardship sites, because it could effectively 'warehouse' any credits purchased that do not have an immediate market. If the market is left solely to private transactions, it is likely to produce a piecemeal offset approach. The biodiversity credits market would better achieve the Biodiversity Offset Scheme's purpose if it had a greater focus on strategic rather than piecemeal conservation.

**2 Do the outcomes in Table 3.1 accurately depict a well-functioning biodiversity credits market? What other factors should we consider?**

The credits market would be well-functioning if the outcomes in Table 3.1 could be achieved. Factors to be considered include the difficulty in generating enough supply by relying on individuals and bodies to enter into BSAs when this currently poses a significant financial risk. Possible solutions should focus on ensuring there is adequate supply for a well-functioning market that is largely available to development proponents when needed.

**3 What are the main challenges facing the credits market? What evidence is there that might suggest the market is not working as efficiently as it should be?**

The main challenges for the credits market are:

- The lack of supply for in-demand credits, and a lack of demand for the vast majority of credits in supply.
- The complexity of establishing BSA sites, and the fact there is effectively no financial return to the landholder until the Total Fund Deposit has been paid.
- Capital gains tax issues making landowners reluctant to participate.
- Poor understanding of the system.

The low level of direct private sector interest and participation in the market is the main evidence that the market is not working as efficiently as it should be. Further to our points under #1, we believe current pricing is reflective of low participation, versus scarcity of biodiversity entities.

**4 What published information would help you buy or sell credits in the market more efficiently?**

Full published market information is required, including current credit demand and current credit supply and pricing. The BOS public registers are a good start, however UDIA's members do not have confidence that they are comprehensive and/or sufficiently current.

Providing further information about what credits are regarded as 'in demand', would provide a signal to landholders to create BSAs that can generate those credits. The Taskforce is operating to meet this principle; however, there is no comprehensive or efficient mechanism to feed this information to potential suppliers. UDIA has provided suggestions to the Taskforce

and facilitated engagement with the urban development sector to gather more of this information.

Developers need to be able to quickly and easily access accurate information about credit supply currently available on the market, including their prices. This would make retiring credits a cheaper and easier option than paying into the Biodiversity Conservation Fund (BCF) operated by the BCT.

UDIA maintains the strong position that the BCF payment option must remain a viable option for acquitting a credit obligation. Since the implementation of the BC Act, the BOS imposes considerable additional costs and delays on development. It is vitally important to maintain the BCF payment option as a streamlined and timesaving means of limiting further delays in delivering much-needed housing, jobs and infrastructure.

Since the BCT's Biodiversity Offset Price Calculator was removed, there is very limited pricing information available. UDIA supports the ability to obtain a BCF quote from the BCT that is valid for 3 years, and we emphasise the critical importance of maintaining this practical tool to provide certainty for development proponents. Currently in practice, a developer will obtain a quote from the BCT for the biodiversity credits they need and use that quote to determine whether their project is feasible. If that quote makes the development feasible then it is likely the proponent will simply opt to acquit their offset obligation by paying into the BCF, rather than undertake the more arduous and uncertain process of seeking credits on the market. If the BCT quote makes the project not feasible, it is more likely the developer will abandon the project rather than trying to find a cheaper source of credits on the market. These responses are due to the high barriers to accessing market information on credit supply and the subsequent private negotiation process involved in purchasing credits.

In that sense, the quote system is effectively setting the market in the same way the BOPC did. Therefore, we believe that access to transparent information on current market supply and pricing should not be restricted.

UDIA strongly supports the work of the Biodiversity Credits Supply Fund and Taskforce, and we recommend that the Taskforce should publish transparent, comprehensive and up-to-date credit demand, supply and pricing information. We also recommend investigating an enhanced role for the Taskforce to further facilitate credit market transactions through warehousing at scale and on-selling credits as demanded.

**5 Have you ever used a broker to buy or sell credits? Tell us about your experience.**

There is very limited evidence of the use of brokers in the urban development industry. Most developers, assisted by their ecological consultants, will opt to get a quote from the BCT rather than engaging brokers to find credits for them. This is further evidence of the development industry's lack of confidence that a timely, complete, and affordable outcome can be found by investing the effort to engage in the trading market.

**6 How clear are the biodiversity credits market rules and objectives? Is there appropriate oversight of brokers and other intermediaries?**

The rules seem fairly clear, however transactions in market credits still tend to be bespoke and need to be prepared by lawyers. This is partly because final pricing needs to be negotiated (versus a simple payment into the BCF where the price has been quoted). For that reason, the market transactions tend to be costly. It could help if there was a standardised approach with simple forms or a template.

There is very little evidence of misconduct by brokers or other intermediaries.

**7 What other information should we consider to tell us how the market is performing?**

The main indicator of how the market is performing is the number of transactions occurring that do not involve either the BCT or the Taskforce. Transactions via the BCT (i.e., payments into the BCF) indicate no direct market transaction between the developer and credit supplier. Transactions supported by the Taskforce indicate Government-sponsored support was necessary to generate credits and/or bring together the developer and supplier.

Based on UDIA member feedback, it is likely that there are very few transactions that do not involve either the BCT or Taskforce, suggesting the market is not currently working very effectively.

The other key indicator is how many BSA sites are being registered that do not involve direct support from either the BCT or the Taskforce. Of those sites, it would be useful to consider how many have paid the full Total Fund Deposit (which is an indication that credits generated from those sites have been used or sold).

If the numbers in the above categories are low, it indicates the market is not performing as intended.

**8 What affects your decision to enter into a Biodiversity Stewardship Agreement? If you have inquired or applied, but not proceeded with an agreement, tell us why.**

Based on UDIA research and member feedback, the main factors affecting the decision to enter into a BSA are the upfront assessment cost, the potential capital gains tax liability, the burden of meeting the Total Fund Deposit requirements, the technical nature of the process, and the imperfect information about demand which adds to the substantial risk associated with not being able to sell all credits generated. Each of these factors tend to discourage landowners from participating in the market.

**9 Have you wanted to terminate or vary an Agreement, or sell land under a Biodiversity Stewardship Agreements? What were the reasons?**

This issue has not been raised by UDIA members.

**10 Have you found you could not sell credits at the price you need to manage your land under your Biodiversity Stewardship Agreement?**

This issue has not been raised to any great extent with the UDIA but probably only because so few people are participating in the market. The inability to sell all credits is a major risk for landowners and consideration should be given to making the Taskforce the 'buyer of last resort' in the event a BSA is entered into but there is no current market for all credits.

**11 Do you have unsold credits under your Biodiversity Stewardship Agreement? Are you confident you will have adequate funding to carry out management actions under your agreement?**

The limited extent of participation in the market makes it difficult to know whether future funding for management will be an issue.

**12 Have you found it difficult to find credits in the market? What were the reasons?**

Many of UDIA's members have found it difficult to obtain credits. As per our answer under #4, credit supply information is difficult to ascertain, and the investigation process can be lengthy and therefore costly in consulting fees.

In some cases, there is insufficient supply of the 'like for like' required credits. Collapsing the thousands of like-for-like "mini-markets" into a smaller number of groupings, or otherwise expanding the variation rules, would make credit matching more attainable in the market.

In other cases, the price of credits is unacceptable (including those credits available through the Taskforce) and effectively make a proposed development project unviable. This could well be an undesirable outcome for development and the environment, as long-term conservation is the best outcome for both.

**13 Have you decided not to proceed with a development because credits were too expensive or not available?**

Feedback from UDIA members indicates that the cost of biodiversity credits has a material impact on the financial viability of proposed projects. There will be many projects that have become unviable because of the significant cost of the biodiversity credits. As we stated in our introduction, the rising cost of credits adds to the cost of delivering housing, employment land and infrastructure, and contributes to making housing more expensive. For example, work done by UDIA in 2021 (through EMM and based on the BOPC pricing at the time) suggests that biodiversity offsetting adds at least \$14,000 to the cost of delivering a new housing lot in the Lower Hunter. With the BOPC removed, we are unable to calculate 2023 offset costs; however, we are aware that recent reforms to the BCF Charge System have increased prices of some credits up to 500%, so we believe \$14,000 per lot is a low estimate. A copy of the EMM report is available at [this link](#).

UDIA looks forward to reading the annual reports produced from this review and is interested to see IPART's recommendations about the operation of the biodiversity offsets credit trading market.

If you have any questions or require further information, please contact UDIA NSW Regional Manager Elizabeth York at [eyork@udiansw.com.au](mailto:eyork@udiansw.com.au).

Yours sincerely,

Kind regards,

A handwritten signature in black ink that reads "Steve Mann". The signature is written in a cursive, flowing style.

**Steve Mann**  
**CEO**