



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

# Strengthening the Biodiversity Offsets Scheme

A new approach to developer charges

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**The NSW Government is consulting with stakeholders on proposed changes to aspects of the Biodiversity Offsets Scheme (BOS).**

**Proposed changes include:**

- **the way payments to the Biodiversity Conservation Trust (BCT) are determined under the BOS**
- **the way information about payments to the BCT is made publicly available.**

**This consultation paper provides relevant background, sets out the proposals and rationale for the changes, and poses focus questions for consultation.**

## 1. Introduction

The biodiversity offsets market has been successfully operating and growing in size since commencement of the BOS in 2017 (under the *Biodiversity Conservation Act 2016*) with over \$428 million of credits purchased in the market to date.

Responsibility for regulating and managing various aspects of the BOS is currently split between agencies. The Department of Planning, Industry and Environment (the Department) is responsible for the broad functioning and regulation of the BOS and the offsets market. The BCT facilitates the supply of biodiversity credits by entering biodiversity stewardship agreements (BSAs) with landholders, managing the Biodiversity Stewardship Payment Fund, and making annual stewardship payments to BSA holders. The BCT also offers a biodiversity offsetting service for those developers who opt to transfer their offset obligation to the BCT by paying into the Biodiversity Conservation Fund (the Fund).

The Department has been implementing initiatives to improve the functioning of different aspects of the BOS market since its commencement, in response to customer feedback and expert opinion. These initiatives include determining credit equivalence between Biobanking Assessment Method (BBAM) and Biodiversity Assessment Method (BAM) credits, updating the biodiversity offsets payment calculator (the Calculator) for BAM credits, updating the BOS public registers of credit transactions, and developing spot price indices for BBAM (existing) and BAM credits (under development).

The Department and the BCT have identified the need for changes to strengthen the arrangements for setting developer charges for developers who opt to pay into the Fund, and are moving to implement a new approach to developer charges in the first half of 2021. The proposed approach aims to provide greater confidence and stability in the setting of offset credit prices. This paper outlines these changes and invites feedback to assist with the development of the detailed arrangements to support an improved approach to determining developer charges.

The Department and the BCT recognise that there is significant stakeholder interest and expertise in the operation of the BOS, and wish to draw on the insights, expertise and experience of market participants and other stakeholders to carefully manage the necessary changes.

## 2. Options to meet offset obligations: Developer charges and payments to the Biodiversity Conservation Trust

Developers currently have four options to acquit their offset obligations. They may:

1. establish and maintain their own offset sites
2. purchase offsets privately on the market
3. pay the BCT to take on their offset obligation – this payment is known as the developer charge
4. in limited circumstances, pay what they would have paid the BCT for a project under the *Saving Our Species* program (the NSW threatened species conservation program).

The option to acquit an offset obligation by paying the BCT a ‘developer charge’ to take on their offset obligation was established as part of the land management and biodiversity conservation reforms implemented by the NSW Government in 2017.

This option is governed by Division 6 of Part 6 of the *Biodiversity Conservation Act 2016*. Division 6 provides for the Minister to establish a Biodiversity Offsets Payments Calculator (the Calculator) by order published on the NSW legislation website. In practice, the developer can determine a payment using the Calculator, and make a payment into the Fund managed by the BCT.

When a developer makes a payment into the Fund, the BCT issues a certificate under section 6.33 of the Act. This can be used by the developer to satisfy the consent authority that the offset obligation has been fulfilled, enabling the developer to proceed with their development.

This mechanism gives developers a choice for offsetting that did not exist before 2016. It is often used for developers with smaller offset obligations where the transaction costs of seeking offsets in the market or establishing new BSAs may be more expensive than paying into the Fund. It is also used by developers where the offsets needed are not readily available in the market, which is likely to lead to project delays.

As of 3 March 2021, 169 developers have paid \$30 million into the Fund, transferring 384 offset obligations to the BCT.

This mechanism also enables the BCT to bundle offset obligations and to acquit them in an efficient and environmentally beneficial way.

## 3. Background and rationale for changes

In 2016 the NSW Government accepted the advice of Acil Allen Consultants to adopt an econometric methodology as the basis for the Calculator. The Calculator provides a dollar amount that a developer pays to the Fund for the BCT to take on the developer’s offset obligation. The Calculator estimates what the BCT may need to pay in the future to offset this liability and includes a risk premium (for taking on the offset obligation) as well as an amount to cover the BCT’s credit acquisition costs. Several issues have been identified with the way that the Calculator is currently being used, along with proposed improvements.

First, it has become clear that the total Calculator charge is often being used as a credit price benchmark. The Calculator was not intended to be used this way. It includes the BCT’s costs of delivery and a risk premium, which should not be a consideration in price

negotiations between buyers and sellers. If credit negotiations are based on Calculator pricing, this can lead to poor market dynamics and stifle the BOS market.

Second, the number of transactions occurring in the open marketplace has, over time, become insufficient to support robust updates to the Calculator. As a result, calculated offset prices for some offset classes have been highly volatile. This could lead to the BCT receiving payments from developers that are insufficient to fully fund the delivery of the corresponding offsets. The Calculator is a sophisticated econometric model that has been subject to thorough independent expert reviews (in consultation with NSW Treasury). These reviews were undertaken by the Applied Economics consultancy group<sup>1</sup>. However, robust and reliable price estimates rely not only on having a methodologically sound model, but also on having sufficient information to feed into that model to produce high quality estimates.

Third, as a key market facilitator, the BCT arguably has the best access to the information required to determine developer charges and can balance the competing objectives of development and biodiversity.

## 4. Review of aspects of the Calculator and market

Given the emerging experience with implementing the Calculator, the Department commissioned EY Port Jackson Partners (PJP) to conduct a review of, among other matters, the Calculator.

PJP made the following key observations and findings:

The Scheme consists of a high number of distinct credit classes with few and infrequent transactions. There are 359 different OTGs [offset trading groups] for ecosystem credits and 983 different species credits. 88% of ecosystem OTGs and 97% of species credits have never been traded.

Lack of historical transaction data increases the difficulty of determining future prices. It is challenging for an econometric model to reliably predict future prices of credits for which historical transaction data does not exist. The cost of acquiring completely new or rarely traded credits may be more accurately estimated through a cost-structure model or consultation with market experts.

[A cost-structure model] would be based on the four components of landholder [BSA site owner] costs and margins:

[Total fund deposits] TFDs can be estimated without historical trade data by understanding the necessary management action costs.

Transaction and administration costs can be estimated and tend to be reasonably uniform.

Opportunity costs can be modelled using land value or discounted future cash flows.

Landholders' surplus margins (above the opportunity cost of the land) may be more difficult to predict but can be estimated through expert consultation.

Market activity is dominated by a small number of trading groups with relatively high trade volume. An econometric model generally becomes more reliably accurate with more historical transaction data on which it can base its predictions. Accordingly, an econometric approach

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<sup>1</sup> Two versions of the Calculator have been deployed since commencement of the biodiversity reforms in 2017. The initial Calculator utilised biobanking assessment method (BBAM) credits. An updated version of the Calculator was implemented in 2019 utilising biodiversity assessment method (BAM) credits. Applied Economics reviewed the econometric model underpinning both versions of the Calculator.

may be a more appropriate method of estimating future market prices in relatively liquid, data-rich markets like these.

That said, even in these circumstances we should be cautious if the observed market prices do not represent arms-length prices. Recorded prices for related-party transactions may not be representative of the cost of acquiring credits.

The BCT has the best access to the information required to determine developer charges as [a] market facilitator. In particular, its role in “seeking strategic biodiversity offset outcomes” as defined in the Biodiversity Conservation Act 2016 ... means that it is well placed to gather supply side information (e.g. by assisting landholders in entering into BSAs).

The BCT can balance the competing objectives of development and biodiversity:

As an independent body, the BCT is incentivised to not compromise on biodiversity outcomes; decision-making that affects individual developers is best done at arm’s length from government.

Balance between independence and government oversight is still achieved as the Minister appoints members of the Board for five year terms and retains the right to terminate appointment. Further, the Minister has power to direct the BCT if necessary.

Balance is ensured by the mandate that developer charges levied by the BCT reconcile over time with prices ultimately paid by the BCT in acquitting their obligations.

Based on its observations and findings, PJP made six recommendations to the Department to improve the way developer charges are determined. In summary, PJP recommended that:

1. The BCT should be responsible for determining appropriate developer charges.
2. The BCT should be required to provide developers with a quote within 30 days, except in exceptional circumstances.
3. To determine charges, the BCT should issue quotes based on a method that considers and weighs three sources – an econometric model, a cost-structure model and market soundings – according to the nature of the market for the credit class.
4. The method should calculate a developer charge that reflects a reasonable estimate of the cost to the BCT of acquitting the obligation in a like-for-like manner with a modest margin to account for risk.
5. The BCT should be allowed to take up to five years to acquit offset obligations.
6. The BCT should publish developer charges at the time of acquittal.

To inform this consultation process an extract of the PJP Assessment is provided as [Attachment A](#). The PJP Assessment also considered the broader financial framework, including actuarial parameters. This assessment necessarily canvassed commercially confidential information and remains subject to further consideration, including by Cabinet.

## 5. Proposed changes

The changes to be implemented are important to avoid poor market dynamics, provide stability, and ensure that prices charged are no greater than they need to be, but also no less.

Efficient and reliable pricing mechanisms are essential to achieve both economic objectives (by ensuring that developers are not exposed to unnecessarily high prices), and environmental objectives (by ensuring that biodiversity offsets can be reliably and sustainably delivered and, accordingly, prices are not set lower than necessary to support the environmental management actions required).



## 5.1 Removal of the Calculator from public view, including from Biodiversity Offset and Agreement Management System

Consistent with accumulated experience and with the PJP findings, the Department is moving to remove the Calculator from public view, including from the Biodiversity Offset and Agreement Management System (BOAMS system).

Developers will still have access to existing sources of information about offset costs, including:

- [the BioBanking public registers](#)
- [the Biodiversity Offsets Scheme public registers \(for BAM credits\)](#)
- [the Spot Price Index for biodiversity credits](#).

Developers will also be able to contact the BCT for advice or enter negotiations with landholders directly or through their agents or accredited assessors.

## 5.2 Developers to obtain offset obligation quotes by application to the Biodiversity Conservation Trust

The Minister would make a new order adopting a new developer charge model to be implemented by the BCT, subject to transitional arrangements (see below).

The new order would enable developers seeking to make a payment into the Fund would need to make an application to the BCT to obtain an offset obligation payment quote:

- Where a developer has a Biodiversity Development Assessment Report (BDAR) and is deciding whether to lodge their development application, the BCT will **aim** to provide a quote within 10 working days for smaller projects with small offset requirements and within 30 working days for larger projects, or longer if agreed in consultation with the proponent.
- Where a developer has been granted development approval that includes an offset obligation, the BCT will provide a quote to a developer within 10 working days for smaller projects with small offset requirements and within 30 working days for larger projects, or longer if agreed in consultation with the proponent.

## 5.3 Biodiversity Conservation Trust would administer the Calculator

The Calculator was developed and, to date, has been maintained and updated by the Department.

Consistent with the PJP recommendations, the BCT would take responsibility for the governance, maintenance and updating of the Calculator.

As a key market facilitator, the BCT has the best access to the information required to determine developer charges and can balance the competing objectives of development and biodiversity.

It is proposed that the BCT will conduct extensive consultation with scheme participants and stakeholders throughout the transitional period to refine the new developer charge model. In the short term, the BCT would rely on a new developer charge model that is consistent with PJP recommendations and subject to transitional arrangements (see below for more detail).

## 5.4 Assurance

The BCT has sound governance arrangements and, as the PJP assessment indicated, is best placed to set charges for developers to transfer offset obligations to the BCT.

The BCT must operate on a not-for-profit basis. To meet this requirement, the BCT Board has adopted a policy that it will aim to balance developer charges with offset costs over rolling five-year periods. The price the BCT pays for credits to acquit offset obligations is transparent. The BCT is also subject to the control and direction of the Minister.

The Department is seeking stakeholder feedback to inform consideration of arrangements to provide independent assurance of the BCT's approach to setting charges.

One possibility is that the Department appoints a third party to periodically review the service, process and quotes being provided by the BCT.

The assurance arrangements would ensure the BCT is acting consistent with any policy parameters approved by the Minister and promote confidence among market participants and broader stakeholders.

### Focus question

1. What arrangements should the NSW Government consider to promote confidence in the BCT's role?

## 6. Proposed transitional arrangements

It is anticipated that a new developer charge model would commence under transitional arrangements consistent with the PJP recommendations. An Order would be made for the transitional period which would enable the BCT to issue quotes based on a method that considers and weighs three sources – an econometric model, a cost-structure tool and market soundings – according to the nature of the market for the credit class.

This Order could include transitional arrangements for the BCT:

- to continue to rely on the existing econometric model until such time as it is able to develop systems and data to draw on a cost-structure model and market soundings
- to refine the econometric model based on expert advice
- to issue quotes within 10 working days for smaller projects with small offset requirements and within up to 30 working days for larger projects, or longer in consultation with the proponent.

Quotes issued to developers by the Department prior to the introduction of the new developer charge model would be honoured by the BCT.

Developers will still have access to other existing sources of information about offset costs. Sources of information that are already publicly available include:

- the BioBanking public registers, which include the Biobanking agreements register, BioBanking statements register, biodiversity credits register, biodiversity credit transactions and sales register, Biobank site EOI register and credits wanted register. These registers include information about location, number and types of credit, prices and dates of transactions.
- the Biodiversity Offsets Scheme public registers (for BAM credits), including the credit supply register, credit demand register, transactions register and the private land conservation register. These registers provide close to real-time information about all credit transactions including cost information.

- **the Spot Price Index for biodiversity credits.** This webtool provides information about current and historical pricing according to credit types. It reports on credit trades registered in the BioBanking public register, including a spot price for BBAM credits created under the *Threatened Species and Conservation Act 1995*, the number of transactions registered, the volume of credits transferred, the total market value, and the number of active Stewardship Agreements in New South Wales. It does not currently report on credit cost data relating to BAM credits created under the *Biodiversity Conservation Act 2016*.

Developers will also be able to contact the BCT for advice, enter negotiations with landholders directly or seek information through their agents or accredited assessors.

### Focus questions

2. What other transitional arrangements should be considered to minimise impacts on stakeholders?
3. During the transitional period and beyond how can the Department and the BCT best promote market stability and certainty?

## 7. Market support

As noted, it is important that changes in pricing arrangements are implemented carefully to minimise and avoid market disruption. Through this consultation process, the Department will draw on the insights, expertise and experience of market participants and other stakeholders to identify ways in which the market can be supported, and improved, as necessary changes are implemented.

### 7.1 Provision of additional market information to the market in the absence of the Calculator

The Department recognises that many stakeholders find it difficult to obtain relevant information on various aspects of the BOS market, including credit prices and availability. The Department is actively considering how better market information could be made available to all stakeholders.

The Department is specifically considering the following initiatives:

#### Enhancing the Biodiversity Assessment Method Spot Price Index

The BBAM Spot Price Index (SPI) (for Biobanking credits) was launched in November 2019 and provides the public with easy access to the latest credit prices and historical biodiversity market data, published in the BioBanking Public Registers.

A BAM SPI has been developed and is being readied for release.

The SPI could be extended by providing trend analysis tools for use by users of the SPI, improved mapping, or information on the cost-of-supplying credits in addition to the trading price of credits.

## A 'State of the Market' report

The Department could institute a regular 'State of the Market' report, which would put in a single document a detailed review of the scheme, core market statistics, as well as links to underlying data sources. The report could also include information on current economic conditions, trading trends and patterns, anonymised information on BCT tender outcomes, and information on possible future infrastructure developments and major projects.

## A 'compare-the-market' service

The Department could consider the development of a 'compare-the-market' service that a landholder/developer could use to automatically obtain buy/sell prices from multiple parties. This would make it quicker, cheaper and easier for buyers and sellers to find each other.

### Focus questions

4. In the absence of a public Calculator what tools or information would be most useful to you or your organisation and why?
5. Would a 'State of the Market' report be useful to you? If so, what information would you want to see included and why?
6. Do you have any feedback/experience on using the SPI or registers that could be used to improve support for stakeholders?
7. Do you have any other suggestions for improving market information?

## 8. Expected timeframes

Expected date	Proposed Implementation steps	Consultation stages
<p><b>Until 19 April 2021</b></p>	<ul style="list-style-type: none"> <li>• Invite submissions via information paper</li> <li>• Invite meetings with government agencies, industry peaks and environment peaks.</li> <li>• Submissions close 19 April 2021</li> </ul>	<p><b>Stage one (current stage)</b></p> <p>Stage one includes targeted stakeholder consultation with government agencies, industry peak bodies and environment peaks; and submissions invited via the Department Energy Environment and Science (EES) email lists and newsletters. Consultation meetings are being led by the Department EES with the independent assistance of Mr Mrdak, former Secretary of the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government.</p>
<p><b>14 May 2021</b></p>	<ul style="list-style-type: none"> <li>• The Department would remove the current public Calculator from the Department’s website and from BOAMS</li> <li>• The Minister would make a new Order adopting a new developer charge model, subject to transitional arrangements</li> </ul>	
<p><b>17 May 2021</b></p>	<ul style="list-style-type: none"> <li>• The BCT would take ongoing responsibility for governance of the Calculator under transitional arrangements.</li> <li>• Developers would be able to apply to the BCT for a quote to pay into the Biodiversity Conservation Fund. The BCT will issue quotes within 10 working days for smaller projects with small offset requirements and within 30 working days for larger projects, or longer if agreed in consultation with the proponent.</li> <li>• The BCT would commence consultation on improvements or refinements to the new method for determining developer offset obligation quotes</li> </ul>	<p><b>Stage two</b></p> <p>Stage two will involve detailed consultation to inform the longer-term approach to setting developer charges by the BCT.</p> <p>Stage two will be led by the BCT and include detailed meetings and workshops with scheme participants and stakeholders to seek input and feedback on the new developer charge model; webinars and promotion and advertising to stakeholders through BCT and the Department email lists and newsletters.</p>
<p><b>30 September 2021</b></p>	<ul style="list-style-type: none"> <li>• The BCT would finalise any refinements to the new developer charge model, following extensive stakeholder consultation.</li> </ul>	
<p><b>Late November 2021</b></p>	<ul style="list-style-type: none"> <li>• The Minister would make a new Order adopting any refinements to the new developer charge model developed by the BCT and to remove transitional arrangements</li> <li>• Developers would be able to apply to the BCT for a quote to pay into the Fund and the BCT would issue quotes within 10 working days for smaller projects with small offset requirements and within 30 working days for larger projects, or longer if agreed in consultation with the proponent.</li> </ul>	

## Why have a two-stage process?

A two-stage process provides the market with as much notice as possible about the proposed changes. It provides an opportunity for stakeholders to comment on the range of issues under discussion and allows transitional arrangements to be developed and implemented as soon as possible while providing for fuller consultation on the final developer charge method.

## How do I make a submission?

Submissions on the initial consultation questions in this information paper can be made directly through the Department's EES [Changes to the biodiversity offsets scheme: public consultation webpage](#) or by email to [biodiversity@environment.nsw.gov.au](mailto:biodiversity@environment.nsw.gov.au).

Submissions relating specifically to the development of the new developer charge model should be directed to the BCT by email to BCT at [info@bct.nsw.gov.au](mailto:info@bct.nsw.gov.au).

Respondents who would like part of their submission to remain in confidence should provide this information, marked as such, in a separate attachment. Legal requirements, such as those imposed by the *Government Information (Public Access) Act 2009*, may affect the confidentiality of your submission.

If you have any questions about the consultation process, please email [biodiversity@environment.nsw.gov.au](mailto:biodiversity@environment.nsw.gov.au)