



NSW Biodiversity Offsets Scheme conflict of interest protocol

Department of Climate Change,
Energy, the Environment and Water



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Environment and Heritage

Department of Climate Change,

Energy, the Environment and Water

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 1300 361 967 (Environment and Heritage enquiries)

TTY users: phone 133 677, then ask for 1300 361 967

Speak and listen users: phone 1300 555 727, then ask for 1300 361 967

Email info@environment.nsw.gov.au

Website www.environment.nsw.gov.au

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1. Introduction

This protocol outlines mandatory requirements for employees of the Department of Climate Change, Energy, the Environment and Water (the department) relating to the declaration and management of conflicts of interest arising from the NSW Biodiversity Offsets Scheme (BOS).

1.1 Context

The BOS was established by the *Biodiversity Conservation Act 2016* and is administered by the department. It is a market-based conservation mechanism through which the biodiversity impacts of development and land-use change are offset with gains in biodiversity at biodiversity stewardship agreement (BSA) sites.

BSAs create biodiversity credits, which reflect a gain in biodiversity values. Credits are bought and retired against obligations to allow for development.

The Planning, Offsets and Threatened Species and Ecosystems division (POTSE) within the department is responsible for entering into BSAs with landholders under delegation from the Minister for the Environment, and it administers the transfer and retirement of credits under the BOS.

POTSE also administers the Biodiversity Credits Supply Fund, which buys and sells biodiversity credits to improve the liquidity and functioning of the credits market.

The NSW Biodiversity Conservation Trust (BCT) is responsible for overseeing the management of established BSA sites, including managing the Biodiversity Stewardship Payments Fund, and acquitting offset obligations transferred to it via payments into the Biodiversity Conservation Fund.

1.2 Purpose of the protocol

The purpose of this protocol is to:

- set mandatory requirements for employee declarations of defined interests in the BOS, to address relevant integrity risks for which the department has regulatory and administrative responsibility
- establish rules and processes for the consistent management of conflicts of interest associated with the BOS, including prohibiting employees from acquiring or holding interests in biodiversity credits in specific high-risk circumstances.

The protocol is underpinned by the following principles:

- all employees have an obligation to act ethically and in the public interest, and to observe standards of behaviour prescribed by the *Government Sector Employment*

Act 2013 and the Code of ethics and conduct for NSW government sector employees.

- the department is committed to protecting the public interest and public trust in the exercise of its functions. These values, together with transparency and accountability, are integral to the administration of the BOS.

This protocol is modelled on the NSW Independent Commission Against Corruption (ICAC) guidelines for managing conflicts of interest in the NSW public sector, which include specific guidance for managing conflicts of interest for higher-risk functions and activities.

Employees should rely on an ordinary and commonsense interpretation of words and phrases used in this protocol. They should also keep in mind the overarching objective of the protocol, which is to require employees to declare their direct and indirect financial and non-financial interests in the BOS, even where those interests are relatively remote from the employee.

1.3 Employee declaration requirements

The *Code of ethics and conduct for NSW government sector employees* requires all employees of the department to make a conflict of interest declaration at least annually. For the purposes of this protocol, ‘employees’ include ongoing employees (full-time and part-time), temporary employees, contractors and contingent workers, secondees and volunteers.

Employees with a defined interest in the BOS must declare their interest as part of the department’s conflict of interest declaration process and establish an agreed management plan with their manager where applicable.

Employees must also notify their manager of any change in circumstances that may impact their defined interest in the BOS, including a temporary or ongoing change in role. This must occur within 14 days of the change in circumstances impacting the employee’s defined interest and is mandatory for all employees.

Employees are also required to declare interests arising from actual or intended participation in the BOS by a person with whom the employee has a close personal or business relationship. However, this is limited by the extent to which the employee can reasonably be expected to know of such interests. Where an employee’s interest arises from participation in the BOS by a person with whom the employee has a close personal or business relationship, sufficient information must be provided to enable an assessment of the nature of the interest.

Further guidance on completing a conflict of interest declaration via the department’s Ethics Portal is provided at Appendix A.

1.4 Determining if an employee has a defined interest

A 'defined interest' means any interest, whether financial or otherwise, arising from actual or intended participation in the BOS by an employee of the department or by a person with a close personal or business relationship with an employee of the department.

Employees are required to consider any capacity in which they participate in the BOS. This includes, but is not limited to, when the employee owns, benefits from or advises on assets as an owner or joint owner, partner, beneficial owner, trustee, director of a business, owner of a company or business and/or board representative of a business.

Participation in the BOS includes activities related to BSAs and biodiversity credits. Examples of BOS related activities are provided in Table 1.

Table 1 Examples of activities related to the Biodiversity Offsets Scheme

Area	Activities
Biodiversity stewardship agreements	<ul style="list-style-type: none">• Purchasing land with an intention to enter a BSA• Applying to enter a BSA• Inheriting a BSA• Owning or holding an interest in land subject to a BSA, irrespective of whether biodiversity credits have been or will be generated• Applying to vary a BSA, including:<ul style="list-style-type: none">- where the variation is expected to create additional biodiversity credits- to alter management requirements without creating additional biodiversity credits• Applying to vary a BSA to adapt management of an existing BSA to address a proposal by a public authority under section 5.16 of the BC Act
Biodiversity credits	<ul style="list-style-type: none">• Owning biodiversity credits, whether as the original or a subsequent owner• Inheriting biodiversity credits• Acting as an authorised person, witness or contact person in the sale of BSA or land subject to a BSA or the sale or retirement of biodiversity credits• Providing advice, whether for a fee or at no cost, on the operation of the BOS, except when undertaken as part of a person's employment with the department• Advising on sales or other transactions (including retirement of biodiversity credits), executing sales or other transactions, brokering or otherwise building relationships between potential buyer or sellers of biodiversity credits or land subject to (or with the potential to be subject to) a BSA• Managing land that is wholly or partially subject of a BSA, irrespective of whether the person is the owner of the land or a party to the BSA• Acting as a commercial or pro bono accredited assessor

Area	Activities
	<ul style="list-style-type: none"> Acting to prepare a commercial or pro bono expert report to be considered as part of a biodiversity assessment report Participating on a board associated with the BOS

1.5 Close personal or business relationships

Employees must consider their personal and business relationships when assessing and declaring their interests in the BOS.

1.5.1 Close personal relationships

Persons with a close personal relationship with an employee include:

- relatives of an employee, such as a:
 - spouse
 - de facto partner
 - parent
 - grandparent
 - in-law
 - sibling
 - uncle/aunt
 - niece/nephew
 - lineal descendant
 - adopted child of the employee or employee's spouse or de facto partner
- close friends and associates of an employee, such as:
 - a former spouse or de facto partner of the employee
 - another person living in the same household as the employee
 - persons with whom the employee has a relationship arising out of involvement in sporting, social, educational, professional or cultural groups and associations.

Closeness is defined by a range of factors, such as the nature and duration of the relationship and the frequency of contact.

1.5.2 Business relationships

Persons with a business relationship with an employee include persons with whom the employee engages in a commercial, financial or legal capacity, including where the person or the employee is:

- a shareholder, board member, beneficial owner or director of a company
- trustee or beneficiary of a trust
- partner in a partnership agreement
- otherwise represented on a governing body or a beneficiary of an entity.

2. Assessing the risk associated with a declared defined interest

The risk associated with a defined interest declared by an employee will be assessed by the employee's line manager to determine the strategies required to manage actual, potential and perceived conflicts of the interest.

All declared defined interests will be assigned a risk rating of low, moderate or high. The risk assessment should be documented and attached to the employee's conflict of interest declaration made via the Ethics Portal.

The risk assessment for defined interests will consider 2 principal factors:

1. the nature of the defined interest in the BOS, including:
 - a. the degree of control over the interest exercised by the employee
 - b. the extent to which the interest is a pecuniary (financial) interest
2. the proximity of the employee's role to the BOS, including:
 - a. the extent of the employee's involvement in BOS regulatory and administrative functions
 - b. the extent of the employee's access to sensitive or confidential BOS information, including direct or indirect access to market sensitive information relating to biodiversity credits and credit transactions.

Interests in the BOS held directly by employees (direct interests) are generally considered higher risk than interests held by others in a close personal or business relationship with an employee (indirect interests) as employees have a lower degree of control over indirect interests. Pecuniary interests are considered higher risk than non-pecuniary interests.

The risk associated with defined interests declared by employees whose roles include the exercise of BOS regulatory and administrative functions are considered higher risk than defined interests declared by employees whose roles are remote from the administration of the BOS.

In assessing conflicts of interest, employees and managers should also refer to ICAC's Guidelines for Managing conflicts of interest in the NSW public sector, which includes broader guidance on high-risk areas of public administration.

Figure 1 may assist in determining the level of risk associated with a defined interest in the BOS.

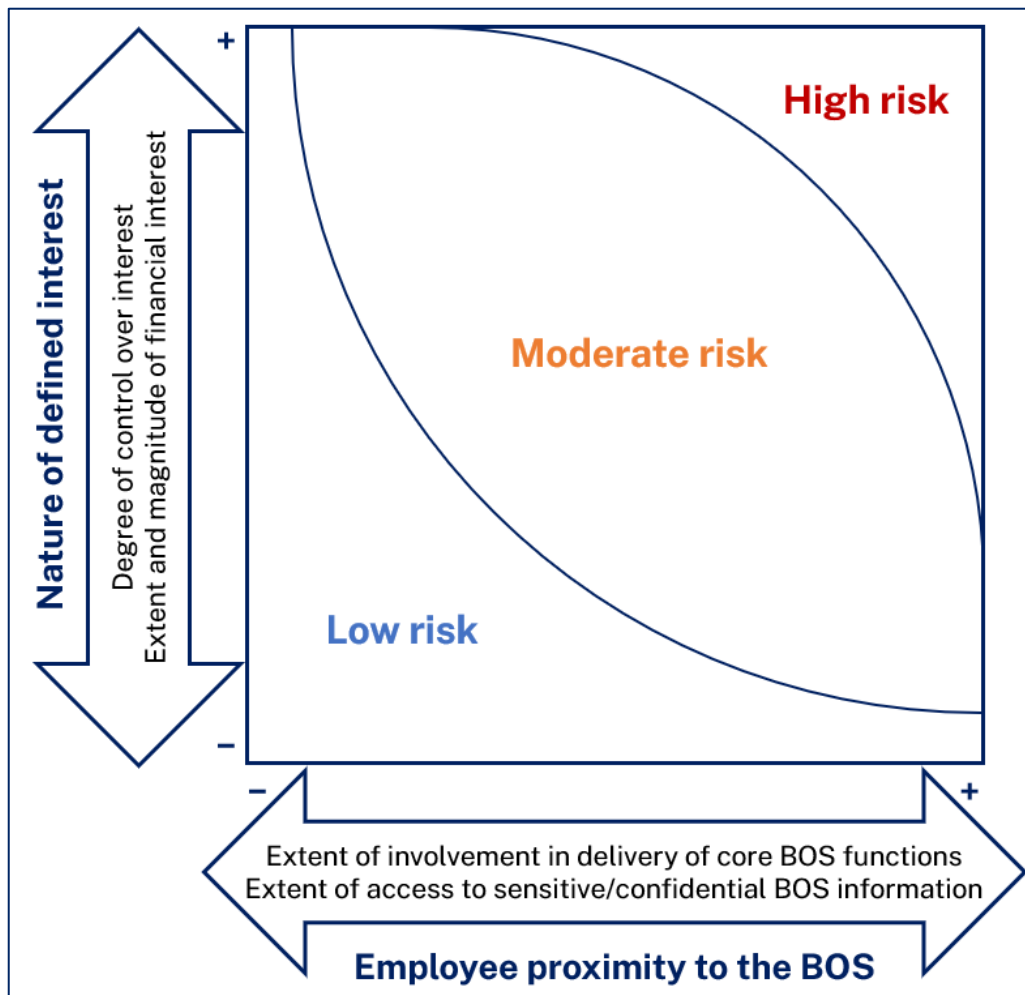


Figure 1 Risk matrix for determining a conflict of interest in the BOS

2.1 Criteria for high-risk defined interests

Employees are prohibited from acquiring or maintaining any high-risk defined interest in the BOS that may impact the integrity of the scheme.

Before assigning a defined interest risk rating of 'high', line managers must first seek endorsement from the department's General Counsel and the relevant Deputy Secretary (or equivalent) responsible for the business area to which the employee is allocated.

A defined interest declared by an employee must be assessed as high risk if:

- the interest is held directly by the employee or, if held by a person with a close personal or business relationship with the employee, the employee exercises either a high degree of control over the interest or will directly benefit from the interests – for example, if the interest is held by a spouse or de facto partner
- the interest arises from high-risk participation in the BOS
- the employee's role sits within a high-risk business unit
- the employee's role involves the exercise of BOS regulatory and administrative functions.

2.1.1 High-risk participation in the Biodiversity Offsets Scheme

High-risk participation in the BOS includes:

- applying to enter into a BSA
- being a party to a BSA
- inheriting a BSA
- owning or holding an interest in land subject to a BSA
- purchasing land with the intent of applying to enter into a BSA
- owning biodiversity credits, whether as the original or a subsequent owner (except where required to meet a credit retirement obligation)
- inheriting biodiversity credits
- being nominated as the contact person for the sale of biodiversity credits
- being the owner (or a beneficial owner) of a company, a member of the board of a company or a director of a company that owns biodiversity credits.

2.1.2 High-risk business units

High-risk business units include:

- the BCT
- corporate and enabling services business units, including the Digital Information Office/ICT, Governance and Legal Services, People, Culture and Safety and the Delivery Office
- business units within the Conservation Programs, Heritage and Regulation (CPHR) group excluding the Natural Resources Access Regulator (NRAR) and Heritage NSW.

As NRAR and Heritage NSW have no purview over the BOS nor involvement in scheme administration, employees of these business units who have a defined interest in the scheme are not by default considered high risk. However, their interest must nevertheless be risk assessed to determine the nature and magnitude of the risk.

2.1.3 High-risk BOS regulatory and administrative functions

High-risk BOS regulatory and administrative functions are summarised in Table 2.

Table 2 High-risk BOS regulatory and administrative functions

Function	High-risk activities
Biodiversity assessment	<ul style="list-style-type: none">• Developing, advising on, updating or refining the Biodiversity Assessment Method (BAM), including supporting guidelines, data or policies for delivery of the BOS• Administering the accreditation of persons to apply the BAM• Administering or coordinating the listing of experts or other persons to assist with the delivery of the BOS and/or who are authorised to

Function	High-risk activities
	<p>provide an expert opinion regarding the presence or absence of threatened species</p> <ul style="list-style-type: none"> • Reviewing biodiversity assessment reports, including Biodiversity Stewardship Site Assessment Reports (BSSARs), Biodiversity Development Assessment Reports (BDARs) and Biodiversity Certification Assessment Reports (BCARs) • Assessing a biodiversity development assessment report on behalf of a consent or approval authority
BSA processing and monitoring	<ul style="list-style-type: none"> • Assessing BSA applications and associated information • Administering BSAs and former BioBanking agreements, including liaising with landholders and monitoring implementation of agreements • Reviewing applications for and issuing determinations of reasonable credit equivalence • Conducting annual site audits and making annual payments to BSA holders • Providing financial advice or services related to the BOS
Biodiversity credit market and transactions	<ul style="list-style-type: none"> • Establishing and administering policies relating to the Biodiversity Credits Supply Fund, including the evaluation of bids to purchase credits • Buying credits including managing tenders to buy credits • Administering biodiversity credit transactions and retirements • Administering the department's Stewardship Support Program and/or providing information to assist landholders to identify and access opportunities to participate in the BOS • Having access to, preparing or advising on the use of market sensitive information received by the department, including forecasting of future credit supply and demand • Administering and advising on information on biodiversity credits including credit registers • Administering and advising on data sources underpinning the calculation of biodiversity credit prices
BOS systems and governance	<ul style="list-style-type: none"> • Advising on, updating and developing functionality in administering systems that support the BOS, including but not limited to the BAM Calculator, Biodiversity Offset, Agreement Management System, the Biodiversity Offset Pricing Calculator (this includes emerging systems and tools) • Making or managing investments and/or providing advice relating to the Biodiversity Stewardship Payments Fund, the Biodiversity Conservation Fund or any other funds that may be set up to manage investments associated with the BOS • Taking payment of fees and Total Fund Deposit amounts and managing annual management payments to landholders

Function	High-risk activities
	<ul style="list-style-type: none"> Engaging in compliance, law enforcement and audit activities related to the BOS Being a member of board or other advisory group providing advice to or in association with the BOS
BOS policy development and reform	<ul style="list-style-type: none"> Administering, negotiating, refining or developing legislation, regulations or policy frameworks related to the BOS or which may impact on the operation of biodiversity offsetting in NSW

3. Managing high-risk defined interests in the BOS

3.1 Management plans for high-risk defined interests

Employees with a defined interest in the BOS must work with their line manager to put in place a management plan addressing identified conflicts of interest within 6 weeks of the interests being declared.

Employees are unable hold a high-risk defined interest in the BOS while being employed in a high-risk role. For such employees, the management plan must include one of the following management strategies:

- the employee divests or deals with the interest within an agreed time period, with interim arrangements to be put in place to reduce risks to the scheme – for example, divesting may include retiring the biodiversity credits or transferring (selling) them to an unrelated third party
- exits employment with the department within an agreed time period
- transfers to a low-risk role within the department where such a role is available. Where an employee can transfer to a different role, consistent with departmental recruitment policies and procedures, an employee may be able to retain their interest in the BOS, subject to assessment of the risk associated with the new role. This requirement also applies to existing employees being considered for a new role within the department if the employee has a defined interest in the BOS that would fall into the high-risk category if the employee commenced in the new role.

Current employees may from time to time acquire a high-risk defined interest through no fault of their own. For example, this could occur a result of a machinery of government or internal business unit change, inheriting biodiversity credits or needing to purchase/retire credits to satisfy their own offset obligations. In such circumstances, a 12-month transition period will apply to give the employee a reasonable opportunity to become compliant with the protocol.

3.1.1 Exception to the prohibition on acquiring or holding high-risk defined interests

Employees of the department may acquire biodiversity credits in circumstances where doing so would otherwise be considered acquisition of a high-risk defined interest if the credits are purchased to meet a credit retirement obligation in accordance with the *Biodiversity Conservation Act 2016*.

The obligation must be imposed as a condition of a development consent being relied upon either by the employee or by a person with whom the employee has a close personal or business relationship.

3.2 Prospective employees with a high-risk defined interest

The department has processes in place for considering BOS conflicts of interest in recruitment processes.

Prospective employees with a defined interest who fall into the high-risk category must take steps to divest or deal with the high-risk defined interests before taking up their role with the department. Alternatively, the prospective employee may seek appointment to another role in the department where the interest will no longer be high risk. As such, alternative appointment is at the discretion of the department.

3.3 Leaving or changing employment with the department

Employees with a defined interest in the BOS who are planning to leave their employment with the department to pursue a professional or business interest that would have been a high-risk defined interest if the employee had continued in their position must submit a conflict of interest declaration to enable potential integrity risks to the scheme to be assessed. This includes, for example, risks associated with access to information related to the BOS that may potentially be used inappropriately in another business or professional context.

Employees who move from a position where continued employment would have prohibited them from acquiring a high-risk defined interest to a new position within the department are prohibited from acquiring a high-risk interest in the BOS for a period of 12 months.

Employees with a defined interest that was formerly a high-risk defined interest who have moved positions or left the department to comply with this protocol may maintain their defined interest. Maintaining their existing interest includes managing an existing BSA and making variations to that BSA, including variations to create additional biodiversity credits, as well as selling credits generated under that BSA.

3.4 Use of consultants with a defined interest

Consultants with a defined interest in the BOS (including contractors engaged via a procurement process) may be engaged by the department to work in an area or subject matter with no impact on the BOS, including within defined high-risk business areas.

Such engagements, especially those in high-risk business areas, should be risk managed to ensure the integrity of their engagement is isolated from any involvement or exposure to information or activities that may impact the BOS. Such risk management plans are required to be approved by the relevant Executive Director or above.

Consultants with no declared interests in the BOS may be engaged by the department to work in defined high-risk business areas or in an area or subject matter that may impact the BOS, on the condition they be:

- prohibited from acquiring a defined BOS interest associated with the BOS area or subject matter for a period of 12 months
- subject to a confidentiality agreement restricting the use of any relevant information gained during their engagement.

4. Managing low- and moderate-risk defined interests in the BOS

A low- or moderate-risk defined interest in the BOS may occur where a defined interest exists but nature of the defined interest and/or the employee's proximity to the management oversight of the BOS is limited. For example:

- the employee is not the direct owner but the ex-spouse or ex-partner of the owner a BSA
- the employee owns credits but works in a business unit not involved with the BOS.

Low- and moderate-risk defined interests must be included in conflict of interest declarations. A commonsense approach should apply to the assessment of such interests (see section 2).

4.1 Managing moderate-risk defined interests

Conflict of interest declarations for employees who have declared a moderate-risk defined interest in the BOS must include strategies to manage actual, potential and perceived conflicts associated with the interest. Management strategies may include, but are not limited to:

- restrictions on direct communications with developers about buying, selling or retiring credits that employees own
- placing credits or land the subject of a BSA in a blind trust or similar structure
- limited access to departmental records relating to their or other specific biobanking agreements, BSAs and/or map review applications
- provision of conflict of interest declarations and management plans to relevant team members and management staff
- strict requirements for the maintenance of confidentiality of departmental information not available to the public that could financially benefit themselves or anyone else in the BOS.

4.2 Managing low-risk defined interests

All other conflicts of interest that arise for employees are considered low risk. These require declaration by the employee and management strategies implemented. For example, an employee who works in People, Culture and Communications may have a family member who is an employee of a consultancy firm that prepares or provides advice on biodiversity assessment reports.

4.3 Employees with voluntary conservation agreements

Employees who have entered into a voluntary conservation agreement, while separate from the BOS, are also required to declare that interest. This is due to the perception of a potential conflict, and consequently they are required to submit a declaration, together with a management plan approved by the relevant Executive Director or above.

4.4 Selling credits to the department or the BCT

Where an employee owns credits, or has a close personal or business relationship with someone who owns credits, that will be offered for sale to the department or the BCT through Biodiversity Credit Supply Fund or Biodiversity Conservation Fund credit procurement processes, the employee must comply with requirements set out in Appendix B.

5. Breaches of protocol

Employees are obliged to demonstrate the ethical and behavioural standards set out in the Code of ethics and conduct for NSW government sector employees and this protocol. Employees who fail to meet those standards will be subject to management action in accordance with the Code and the *Government Sector Employment Act 2013*.

6. Use of information about employee defined interests

Information contained in employee declarations of defined interests in the BOS may be made available to the employee's manager and executives to whom the employee indirectly reports and to business areas responsible for the administering the Code of Ethics and Conduct and conflict of interest management arrangements.

Information may also be made available to teams involved in the administration of the BOS where doing so will assist in the efficient and effective delivery of core BOS functions.

7. Further information

Key documents relevant to this protocol are as follows:

- Code of ethics and conduct for NSW government sector employees (November 2024)
- NSW Biodiversity Conservation Trust Policy on Staff Participation in BCT Programs
- ICAC Guidelines for Managing conflicts of interest in the NSW public sector (April 2019)

For further information on the management and implementation of this protocol, please contact ethics-dcceew@environment.nsw.gov.au

Appendix A: Making a conflict of interest declaration

As soon as an employee becomes aware of an actual, perceived or potential conflict, a conflict of interest declaration should be made via the department's Ethics Portal.

In consultation with their manager, an employee's declaration should include all the relevant information describing the circumstances of the conflict to ensure risks can be clearly identified and adequately managed.

All relevant sections of the conflict of interest form must be completed, including declarer details, employee disclosure, a detailed description of the conflict and related management strategies.

Depending on the individual circumstances, the standard and degree of detail expected to be provided by an employee declaring their BOS related interests will include:

- a description
- a summary of the identified BOS interest
- a relevant property address/Lot/DP number
- the date of property purchase
- a Land Title reference number, listed ownership and conditions under the schedule
- the biodiversity stewardship agreement (BSA) reference number and date of commencement
- identification and details of all parties listed under the BSA reference, type of credits and species
- dates of any prior contact, incident, inspection or agreements relating to the BOS interest
- the full name(s) of any family and/or close associates linked to the BOS interest
- the full name and/or ABN/ACN of any businesses, companies or trusts linked to the BOS interest
- the type of relationship or association with any linked parties or entities
- the term or length of the employee's relationship or association
- any role or actions taken in applying for and/or participation in the BOS interest to date.

Copies of the Land Title and BSA should be attached to the conflict of interest declaration form.

Expected role/duties

All employees are to provide a full and detailed description of their role and duties as an employee of the department and any function of their employment affected by the

conflict. Specifically, any involvement in BOS activity or work that may impact BOS outcomes must be clearly identified and associated risks defined.

Management strategy

Where an employee has not provided the required standard of information within the above sections, managers should return the declaration form to the employee for completion before progressing to its review and implementation of management strategies.

Using the guidance contained within this protocol, both the employee and manager should work together to develop and implement the relevant management strategies. It is essential the employee has a clear understanding of their obligations under each management strategy. Ongoing compliance with the management strategies must also be appropriately monitored by the manager.

Further guidance on completing a conflict of interest declaration can be found on the department's conflict of interests intranet pages or by contacting the Ethics Branch at ethics-dcceew@environment.nsw.gov.au

Appendix B: Selling credits to the department or the BCT

This appendix sets out the requirements employees must meet if:

- they or someone they have a close personal or business relationship with:
 - owns biodiversity credits
 - expects to own biodiversity credits in the future
- actual or prospective biodiversity credits will be offered for sale to the department or the BCT through Biodiversity Conservation Fund or Biodiversity Credit Supply Fund credit procurement processes.

Ownership includes acting as a director or shareholder of a company or trustee or beneficiary of a trust.

Where credits are owned by someone an employee has a close personal or business relationship with, the obligations in this appendix are limited to the extent the employee can reasonably be expected to know of the interests and the intention to participate in the relevant auction process.

Employee obligations

The employee must:

- if the employee is the owner of the credits, declare their employment status and conflict of interest in completing the bid application
- regardless of whether the credits are owned by the employee or a close personal or business relation of the employee:
 - before the bid is submitted, notify their manager and the appropriate Deputy Secretary, that credits they have a defined interest in will be offered for sale in a Biodiversity Conservation Fund or Biodiversity Credit Supply Fund process
 - immediately notify their manager and the appropriate Deputy Secretary, if the bid results in an offer to purchase the credits
 - update their conflict of interest management plan to reflect their change in circumstance – noting that, the management strategy must include:
 - that the employee commits to not using their department account or departmental contacts to seek to access information about the purchase processes
 - if an employee unintentionally receives information, such as through an email or discussion in a meeting, the employee must immediately notify their manager and the appropriate Deputy Secretary
 - the employee will not use their departmental email or phone number as the point of contact for the bid (these can be used to make the relevant internal notifications of changes in circumstances).

Department obligations

The POTSE division and the BCT will:

- provide a bid application/bid form that allows for the clear and consistent disclosure of conflicts of interest and, if they receive a bid to which this appendix applies, and they become aware that any of the above requirements have not been met, they will:
 - ensure that the bid is not progressed to purchase of credits
 - notify the relevant employee of the reasons for the bid not being progressed
- ensure the evaluation of bids includes consideration of declared conflicts of interest and advice on the appropriate management of those interests, including relevant probity advice and compliance with established probity plans.

Governance and Legal Group will:

- provide advice as needed to the employee in completing their conflict of interest declarations and developing management strategies
- provide advice to POTSE and the BCT as needed on whether an employee has appropriately completed their declaration and management strategy
- provide any further advice as needed on the management of an employee's conflict of interest.

The Deputy Secretary, CPHR will:

- receive notifications from an employee (as per the employee obligations above)
- make this information available to executives responsible for relevant business areas within POTSE and the BCT.