



Guidelines for government agencies participating in the Biodiversity Offsets Scheme

Department of Planning and Environment



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Introduction

The Biodiversity Offsets Scheme is a key part of the NSW Government's approach to ecologically sustainable development. Government agencies can participate in the scheme through buying and selling biodiversity credits or entering into Biodiversity Stewardship Agreements (BSAs).

These guidelines are intended to promote transparency and consistency in the implementation of the scheme across government and to help government agencies participate in the scheme in a way that ensures the ongoing integrity of the market.

The guidelines do not address all aspects of scheme involvement and should be read in conjunction with other relevant policy and guidance materials.

The guidelines do not set new government policy but do reference existing government policies which may have mandatory requirements.

Each government agency is responsible for ensuring that it participates in the scheme appropriately, seeking its own legal and financial advice as necessary to guide its participation in the scheme.

Further information and support are available through the [Biodiversity Offsets Scheme Help Desk and support](#).

1. Government agencies should consider the NSW Procurement Policy Framework and the competitive neutrality policy

It is important that government agencies participate in a way that is transparent and operates without giving government an unfair advantage. This includes using information internal to government that could provide a strategic advantage over private sector participants.

As per the NSW Government Procurement Policy Framework, any government entity providing goods and services (that is, as a supplier of biodiversity credits) must ensure its pricing and other terms and conditions, including access to information, are consistent with competitive neutrality principles.

To ensure best practice, the Department of Planning and Environment recommends government agencies make credit supply and demand information publicly available (where applicable) to ensure a market price is obtained for their credits.

Some options for agencies looking to buy credits include using the public credit demand register, making a public expression of interest, engaging with the Credits Supply Taskforce expression of interest process or even undertaking your own reverse auction process. These options will help ensure private credit suppliers have an opportunity to sell their credits to government agencies through a transparent process.

Government agencies looking to sell biodiversity credits can place their credits on the public credit supply register to then engage in direct negotiations with credits buyers and/or participate in tender or reverse auction processes run by the Credits Supply Taskforce or Biodiversity Conservation Trust (or other buyers). The Biodiversity Offsets Scheme public registers provide a key mechanism to ensure transparency and accountability in the scheme.

Government agencies should also seek independent probity advice and consider reporting and transparency arrangements, including on-sale negotiations to proponents.

The Policy Statement on the Application of Competitive Neutrality is a longstanding NSW Government policy that seeks to ensure that government businesses selling a commercial service do not take a competitive advantage over private sector competitors by virtue of public sector ownership. Competitive neutrality applies on a case-by-case basis and each agency is responsible for considering and documenting how it has applied the principles.

Applying competitive neutrality principles does not preclude government agencies from taking a significant role in the supply of biodiversity credits if it is more efficient and in the public interest. NSW Treasury has established a competition policy mailbox through which government agencies can seek advice on competitive neutrality policy issues.

The Independent Pricing and Regulatory Tribunal (IPART) is currently reviewing the scope and effectiveness of the NSW competitive neutrality policies and processes, with a final report expected to be published in May 2023. When released, the findings of the report may prompt additional advice to be developed on the application of competitive neutrality for agencies participating in the scheme.

Separately, the Department of Planning and Environment has engaged IPART to monitor and report on the operation of the biodiversity credits market – see Monitoring the NSW biodiversity credits markets. This includes monitoring the performance of and competition within the market to support fair trading.

If government agencies are perceived to be operating in a way that gives them an unfair advantage, private sector participants can make complaints about competitive neutrality to IPART. The NSW Government Procurement Board is responsible for competitive neutrality complaints about tender processes (section 173 of the Public Works and Procurement Act 1912 (NSW) and sections 7 to 20 of the Public Works and Procurement Regulation 2019).

2. Conflict of interest protocols should be followed

Through participation in the scheme, government employees may have access to information that is commercially or strategically sensitive. The Department of Planning and Environment has developed a conflict of interests protocol for its employees. Other government agencies that participate in the scheme may want to consider developing their own protocols in line with the NSW Government Code of Ethics and Conduct to manage potential conflicts of interest within their own agency.

Similarly, accredited assessors who act as consultants for government have access to information that may be commercially and strategically sensitive. Accredited assessors are responsible for applying the Biodiversity Assessment Method (BAM) and documenting the results in a Biodiversity Development Assessment Report (BDAR). The Department of Planning and Environment is responsible for accrediting assessors and has an Accredited Assessors Complaints and Feedback Management Policy as part of the quality assurance for the scheme.

In addition to applying government agency procurement requirements, accredited assessors have requirements that address the potential for conflicts of interest (for example, owning biodiversity offset credits). Accredited assessors must follow the code of conduct and have a personal responsibility for managing any conflicts of interest. If an accredited assessor declares an actual, perceived or potential conflict of interest, the hiring agency has the responsibility to consider this prior to engagement commencing.

3. Government agencies should ensure transparency in their participation in the scheme

A higher standard of transparency will usually apply to government agencies participating in the scheme, given the use of public funds. Government agencies should report on their participation in the scheme as part of their annual reporting requirements and comply with any other requirements relating to the handling of government information.

When analysing the financial and budgetary impacts for proposed stewardship sites, it is recommended that government agencies assess fair market value, including use of independent land valuation and the in-perpetuity management of the site. Land tenure arrangements and impacts on other uses and interests on the land should also be considered.

Government agencies also need to ensure appropriate authority or delegation to sign a Biodiversity Stewardship Agreement (such as financial delegation for the transaction amount). The Department of Planning and Environment recommends that a copy of the financial delegation is attached to transactions for record purposes.

4. Government agencies must consider impacts on Aboriginal interests

Government agencies considering using Crown land to supply credits for their projects should be aware that native title may constrain the establishment of Biodiversity Stewardship Agreements.

The rights of Aboriginal land stakeholders through the inchoate (or unformed) interest in land conferred by an Aboriginal land claim or subsisting native title must be recognised and addressed against legislative and policy settings when dealing with Crown land.

To support the consideration of the impacts of Aboriginal interests on the entering into of Biodiversity Stewardship Agreements on Crown land, agencies should refer to the Biodiversity Conservation Agreements on Crown Land Policy. Where land is subject to a native title claim or a claim under the *Aboriginal Land Rights Act 1983* (NSW), creation of a biodiversity conservation agreement such as a Biodiversity Stewardship Agreement will only be appropriate under particular circumstances, as detailed in the Biodiversity Conservation Agreements on Crown Land Policy.

Agencies looking to use Crown land for the generation of biodiversity credits should work closely with local Aboriginal land councils where a land claim is present or where the potential for a land claim exists.

Further information for reserve managers on native title, Aboriginal land rights and Aboriginal heritage considerations can also be found at Aboriginal interests on the Crown Land website.

5. Biodiversity credits can only be generated through Biodiversity Stewardships Agreements applying the Biodiversity Assessment Method

The Biodiversity Assessment Method provides a scientifically robust, repeatable and accepted method for undertaking biodiversity assessment on development sites and stewardship sites. The BAM is supported by the Biodiversity Assessment Method Calculator, which accredited assessors use to enter field data and determine the number and class of biodiversity credits.

Government agencies wanting to establish a Biodiversity Stewardship Agreement to generate biodiversity credits must apply under the *Biodiversity Conservation Act 2016* (NSW). Applications are made to the Credits Supply Taskforce. The Credits Supply Taskforce reviews the assessment provided by the accredited assessor and develops the draft Biodiversity Stewardship Agreement for final sign-off by the Minister for the Environment.

Biodiversity Stewardship Agreements are legally binding, registered on the title of the land and in perpetuity. Once an agreement is approved, the Biodiversity Conservation Trust takes over the responsibility for overseeing the ongoing management of the agreement. Information about Biodiversity Stewardship Agreements can be found at Biodiversity Credits Supply Fund and Taskforce and in the Biodiversity Stewardship Agreement Landholder Guide on the Biodiversity Conservation Trust website.

It is recommended that agencies seek independent accounting advice on the potential impacts of establishing a Biodiversity Stewardship Agreement on the value of the land as an asset.

6. Additionality underpins the creation of biodiversity credits on public land

Government agencies creating biodiversity credits should be aware of the principle of additionality, which applies to both private and publicly owned land being considered for a Biodiversity Stewardship Agreement under the scheme. This is to ensure that existing government requirements to manage land are not counted as an offset.

The principle of additionality is that expected conservation gain (as measured in biodiversity credits) needs to be additional to existing expected management of the land being considered. This is factored into the application of the Biodiversity Assessment Method and development of the Biodiversity Stewardship Agreement, and takes into account any measure or action required under legislation or other legal obligations that already apply to the land (see page 61 of the [Biodiversity Assessment Method 2020](#)).

For certain types of publicly owned land, additionality is applied as a percentage reduction to the number of biodiversity credits generated where there is an existing obligation to manage the land for a public purpose. For example, a 20% reduction in credits is applied for biodiversity stewardship sites on certain classes of land under the *Crown Land Management Act 2016* (NSW) and the *Local Government Act 1993* (NSW) – see Table 9 of the [Biodiversity Assessment Method 2020](#).

Additional resources and support

A wide range of information, tools and resources can be found on the Department of Planning and Environment's [Biodiversity Offsets Scheme Helpdesk and support webpage](#).

For additional assistance, the BOS Help Desk is designed to assist with enquiries on the Biodiversity Offsets Scheme and Biodiversity Assessment Method and consists of a 1800 hotline and BOS Help Desk mailbox. The help desk is operated by dedicated officers with experience in the Biodiversity Offsets Scheme and the Biodiversity Assessment Method who are supported by subject matter experts.

BOS Help Desk mailbox: BOS.helpdesk@environment.nsw.gov.au

Hotline: 1800 931 717 (Tuesday to Thursday from 9:30 am to 4 pm)

Agencies may submit enquiries to the BOS Help Desk mailbox or the hotline.