

3rd May 2021

Department of Planning, Industry and Environment
c/-Michelle Chung
Director Biodiversity Offsets Scheme
Environment, Energy and Science Group
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Dear Ms Chung

Re: Strengthening the Biodiversity Offsets Scheme

I write regarding the consultation paper *Strengthening the Biodiversity Offsets Scheme- A new approach to developer charges* prepared by the Department of Planning, Industry and Environment (DPIE). The Urban Taskforce broadly supports the consultation paper, insofar, as it acknowledges the need to change the arrangements for setting developer charges to pay into the Biodiversity Conservation Fund (the Fund).

The current Biodiversity Offsets Scheme, by being too specific, onerous and expensive is not an attractive option to industry in meeting biodiversity development obligations. Further, the limited take-up of the Scheme has resulted in very few species credits being issued and subsequently negligible bio-diversity outcomes being delivered on the ground.

That said, our members have observed that the Biodiversity Conservation Trust (BCT) has historically been an incredibly risk-averse organisation. Accordingly, there is some concern associated with giving the BCT control of this process and in particular, concern that this could lead to a significant increase in offset costs through paying into the fund. This outcome would represent a disaster for the entire process and unless the system has a focus on cost reduction, the changes would not be supported.

Urban Taskforce members' experience in attempting to access the scheme is that the species list is too long and, importantly, too specific for a transaction to occur. This represents a market failure.

The independent review of the current scheme undertaken by EY Port Jackson Partners found:

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.

To address the market failure and limited outcomes commensurate with the current scheme, the **Urban Taskforce recommends** that DPIE creates different 'classes' of endangered species with subsequent grading and pricing based on the value of that class or collection of species. Species with lower bio-diversity value should be identified, classed together and priced accordingly. While species with higher bio-diversity values should be accordingly grouped or classed together. Where there is greater bio-diversity value for a collection of species, it would follow that the price to purchase credits would be higher than those with a less significant bio-diversity value. Further any improved scheme should include the allocation of credits to landholders/developers for on-site works that improve or add to biodiversity outcomes on the property.

Any scheme, overall, needs to be affordable, otherwise it simply represents an additional tax on the new home buyer. Effectively, the people looking to purchase new homes are being forced to pay for the regulatory failures of the past in terms of protection of biodiversity protection. This burden should be shared by all those who benefit from biodiversity conservation and be actively supported by the broader tax base supporting the New South Wales Government.

In relation to the many species where there is no effective market (or even activity), **Urban Taskforce recommends that the Government should step in and correct this market failure.** This is the role of government. The Government needs to make the market by setting a reasonable price and taking the risk of being able to procure the relevant species for that price. The alternative places all the burden on the production of new homes and represents an abrogation of government responsibility to facilitate economic growth.

In light of the comparative cost and time imposts in the operation of the offsets scheme on smaller developments, **Urban Taskforce recommends that the scheme only apply to development of scale and impact, with a new threshold introduced.** Development below the threshold, instead of requiring the identification and offsetting of species, is instead required to pay a nominal fee to contribute to the management and improvement of national parks.

The scheme should also be broadened to incentivise works and initiatives that deliver improved ecological outcomes outside of the offset arrangement. **Urban Taskforce recommends a system that allows 'credits' to be used on other sites or even different sections of the site be developed to incentivise the development industry to deliver optimum ecological outcomes.**

In relation to the proposed 5 years for the acquittal of offsets – **Urban Taskforce supports the extension – indeed, we believe that it should be longer than 5 years.**

Urban Taskforce is concerned that the proposal to have a periodic review to ensure probity appointed by the Trust is akin to a – poacher / game-keeper scenario.

Urban Taskforce recommends an assurance auditor should be appointed by the Minister and findings made public. The scope of this audit should include reviews of the administration costs of the scheme and outcomes of dispute resolution.

We note that the Commonwealth Bilateral Agreement with NSW under the EPBC Act allows the proponent to discharge their offset obligation by paying into the fund, but that obligation requires the BCT to purchase/develop like for like offsets.

As it currently stands, the BCT cannot refuse to accept a payment into the fund or influence the credit pricing to make it impossible to do that. This scenario provides proponents with a significant advantage at present as they can simply offset by paying into the fund (ticking NSW and CWTH offset boxes) and the BCT is left with the obligation to find the offsets – they currently have no say in rejecting this option.

We envisage that under the proposed scheme (if the broad categories of offset type is not established as we propose), the BCT will find it difficult to secure offset values (upland swamps / freshwater wetlands e.g.) a near impossible offset target and will hike the pricing or simply come back and say it can't be done unless the variation rules are invoked at which point the EPBC Act approval may not be satisfied.

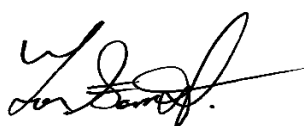
Urban Taskforce recommends that steps must be written into the new framework to ensure that this does not happen.

We have provided below a comprehensive response to each of the specific matters raised - see *Attachment 1*.

Table 1 includes a summary of all Urban Taskforce recommendations.

Urban Taskforce looks forward to additional engagement in finalising the Scheme so that both future development opportunities and practical conservation outcomes in NSW can be realised.

Yours sincerely



Tom Forrest
Chief Executive Officer

Table 1: Summary of Urban Taskforce Recommendations

	Urban Taskforce recommendation
1.	In relation to the many species where there is no effective market (or even activity), Urban Taskforce recommends that the Government should step in and correct this market failure.
2.	Urban Taskforce recommends that the scheme only apply to development of scale and impact, with a new threshold introduced.
3.	Urban Taskforce recommends a system that allows ‘credits’ to be used on other sites or even different sections of the site be developed to incentivise the development industry to deliver optimum ecological outcomes.
4.	In relation to the proposed 5 years for the acquittal of offsets – Urban Taskforce supports the extension – indeed, we believe that it should be longer than 5 years.
5.	Urban Taskforce is concerned that the proposal to have a periodic review to ensure probity appointed by the Trust is akin to a – poacher / game-keeper scenario. Urban Taskforce recommends an assurance auditor should be appointed by the Minister and findings made public. The scope of this audit should include reviews of the administration costs of the scheme and outcomes of dispute resolution.
6.	We envisage that under the proposed scheme (if the broad categories of offset type is not established as we propose), the BCT will find it difficult to secure offset values (upland swamps / freshwater wetlands e.g.) a near impossible offset target and will hike the pricing or simply come back and say it can't be done unless the variation rules are invoked at which point the EPBC Act approval may not be satisfied. Urban Taskforce recommends that steps must be written into the new framework to ensure that this does not happen.

ATTACHMENT 1 - Focus Questions

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

Better resourcing, supported by Consolidated Revenue. Currently there are significant delays in requests for technical assistance from subject matter experts. Making this process self-funding represents an additional cost to new home buyers.

An example of the current timeframes advised by our members includes a query lodged on 7 December 2020, which was answered on 22 February 2021.

Based on members feedback, Urban Taskforce is concerned that the proposed 10 and 30 working day quotation turn-around time periods will be achievable without additional support from Government funding.

The proposal that BCT will "AIM" to provide a quote to a proponent once they have a finalised Biodiversity Development Assessment Report (BDAR) within 30 days of seeking the quote needs to be mandated. Where a developer has an approved project (not just a completed assessment) the BCT is stating they will meet the 30-day timeframe. The BCT is currently significantly under-resourced and cannot meet any of their intended deadlines – Urban Taskforce members are concerned that they will not meet these either.

The Government's consulting notification on changes to the Biodiversity Offset Scheme was issued to accredited assessors via email on 24 March 2021 with submissions due on the 19 April 2021.

The published indicative timeframes indicate that the public Calculator will be removed from the Department's website and from the BOAMS on 14 May 2021. Urban Taskforce submits that this process is being rushed and this does not promote confidence, nor does it fulfil the purpose of consultation.

Further, changes are required to the making of applications to be an "approved expert" and the, more significantly, the removal of experts from the approved expert list. Urban Taskforce members advise that currently an expert can be removed by the Secretary (or anyone authorised by the Secretary) without any opportunity for appeal. This arrangement leaves the scheme open to corruption and abuse – running counter to promoting confidence in the BCT.

Additionally, Urban Taskforce members are concerned with the level of "ground-truthing" being undertaken in the identification and mapping of species to be offset. The success of any scheme will be dependent on the mapping of species being correct, with the opportunity for review where there is disagreement as to voracity of the species identified for protection or offsetting.

2. What other transitional arrangements should be considered to minimise impacts on stakeholders?

Urban Taskforce submits that the removal of the current calculator should not occur until the new developer charge model has been completed (in consultation with industry) to inform the longer-term approach. i.e., remove the current calculator on 30 September 2021 not earlier.

The summary of cost reports generated from the current calculator should be amended to clearly identify that the estimate provided includes administration costs etc. It should state that the calculator should not be used as a benchmark for setting available stewardship site credit costs and stipulate that formal quotes should be sought from the BCT.

The two-stage process is stated as providing the market with as much notice as possible about the proposed changes – while providing an opportunity for stakeholders to comment on the range of issues under discussion and allow for transitional arrangements to be developed and implemented.

However, a transitional arrangement is already necessary. It is already the case that accredited assessors are subject to ongoing uncertainties. For example, it is very difficult for an assessor to provide timely advice to clients at all stages of a development. In particular, in the due diligence phase where the development land is under acquisition consideration. Having at least a worst-case scenario of likely offsetting obligations is imperative to assessing commercial risks.

3. During the transitional period and beyond how can the Department and the BCT best promote market stability and certainty?

Ensure that all BBAM credits available on the market are assessed for a sufficiently broad range (or class) of reasonable equivalence and integrate all available credits uniformly into the proposed BAM Spot Price Index (SPI).

Provide more information on the current BOS credit supply and demand register, which is of little practical use as it stands.

4. In the absence of a public Calculator what tools or information would be most useful to you or your organisation and why?

Urban Taskforce members advise that the current calculator is comparable to a “black box” that is readable only by experts. Any tool or mechanism that calculates credits should be easily understood.

The BOPC pricing allows the development community to calculate a worst-case scenario for the Biodiversity offset cost. The reason this is worst case is that either a proponent will be able to find the offsets (buy property and turn into a Stewardship Site), haggle with the market of already available offsets, enter into an agreement with a landowner to pay them to set up an offset site on their property and then obtain the offsets you need at cost etc. **or** - pay into the fund at a known price.

Typically, on a large project, a developer would run a constantly updated model of offset costs comparing the BOPC Costs with the options listed above.

Members have expressed concern that under the proposed scheme the BCT will only provide quotes for paying into the fund once the BDAR is completed (in the case of most large projects the BDAR is constantly being updated until just prior to submission) or once the approval is granted. This would be years after the offset strategy discussions and scenario development would normally be worked through with the project team. So, in essence, the alternative offset options could still be investigated in the same way, however you would not have the BOPC to compare against which provides a ceiling price indicator.

The BAM SPI should be made available prior to any removal of the public Calculator. The BOS has now been in operation for over 3 years. This is an unreasonably long time after the change from BBAM to BAM.

Urban Taskforce members advise that at present, trying to locate potential available credits to meet Client offset obligations is extremely difficult and why so many developers opt to pay directly to the BCT. Removing the calculator from public view will not assist this.

5. Would a ‘State of the Market’ report be useful to you? If so, what information would you want to see included and why?

A State of the Market report will only be useful if the Scheme is actually delivering a market. I.e., there is no value of producing a report on the current market as there isn't one.

A State of Market report will be useful in gaining an evidence-based demand and supply analysis to better understand future market conditions, risks and opportunities. However, its usefulness will be dependent on the availability of sufficient Department and/or BCT resourcing to ensure reporting is available in a timely manner. Additional Government funding is necessary for this purpose.

6. Do you have any feedback/experience on using the SPI or registers that could be used to improve support for stakeholders?

As per focus question no. 4, the BBAM SPI is not helpful as it is not clear whether the credits have been assessed for reasonable equivalence and, if not, what the likely change to the spot price is likely to be.

For example, a BBAM spot price for a PCT unit may be in the order of \$25,000, whereas the BCT calculator will have the same PCT unit price at \$38,000.

7. Do you have any other suggestions for improving market information?

The public registers should provide contact information for direct liaison with the vendor or developer who has placed an expression of interest.

Similar to the stock market, one should be able to buy and sell independently of the BCT and this is not an easy process as it currently stands.

To minimise any potential negative effects on developers associated with the proposed changes, in addition to more comprehensive transitional arrangements proposed above, the existing BAM public registers require several improvements, including improved readability, and more frequent updates of latest transactions and credits available (both pending and issued). In combination with a BAM specific Spot Price Index, this information is crucial for a developer in managing their project. Further, information on the general process of credit transactions (transfers and retirement of credits) needs to be more readily available and simplified, including mandated processing times for transfer and retirement applications, to make the process of trading credits on the market smoother and a more lucrative option.