



# Biodiversity Credits Supply Fund: Operating Protocol

Department of Planning and Environment





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Cover photo: Walcha, NSW. Josh Smith/DPE

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See also [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

ISBN 978-1-922900-19-7  
EHG 2022/0551  
October 2022

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# 1. Introduction

## 1.1 About the Supply Fund

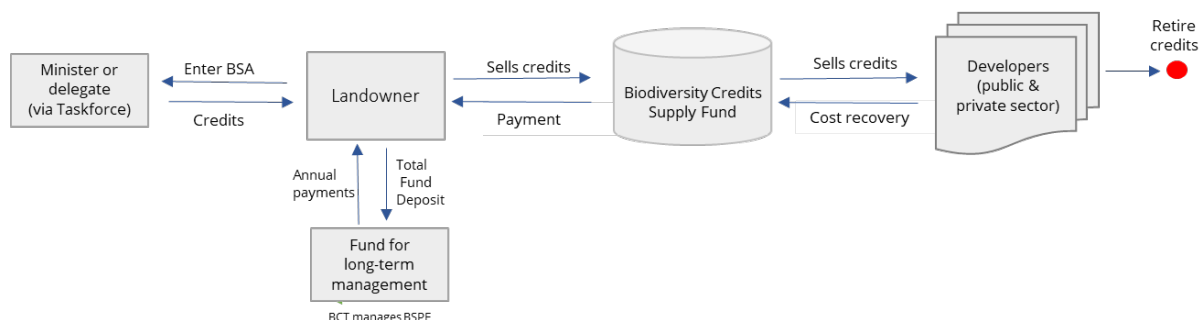
The Biodiversity Credits Supply Fund (Supply Fund) was approved as part of the 2022 NSW State Budget. The Supply Fund will buy credits upfront at competitive market prices based on forecast demand from major projects and infrastructure development. The credits will be re-sold to public or private sector proponents who need to buy credits to offset biodiversity impacts of their projects, or other buyers who may seek credits for philanthropic or strategic purposes.

The Department of Planning and Environment (department) will operate the Supply Fund as a revolving fund, with the sale of credits funding further credit purchases. An initial \$106.7 million of allocated funding will enable more than \$200 million worth of credits to be bought and sold over 3 years. Through the Supply Fund, the department will also be able to increase conservation outcomes by purchasing credits from more strategic sites.

The objectives of the department in operating the Supply Fund are to:

- lower the cost of biodiversity credits, compared to current forecasts, increase certainty and reduce delays for proponents
- reduce the need for proponents to pay into the Biodiversity Conservation Fund as a way to meet offset obligations
- improve liquidity and confidence in the biodiversity market and enhance the overall effectiveness of the Biodiversity Offsets Scheme
- enhance conservation benefits by targeting, where consistent with the focus on priority credits, the establishment of biodiversity stewardship agreements (BSAs) that contribute to regional and landscape-scale conservation objectives, integrating private and public land measures and contributing to a cohesive biodiversity strategy for the State.

The Supply Fund will operate from 1 July 2022 to 30 June 2025.



**Figure 1** Overview of the operation of the Biodiversity Credits Supply Fund

## 1.2 Operating protocol

This operating protocol sets out how the Supply Fund will be run and will form part of its governance arrangements. The protocol may be revised as needed to address learnings from operating the Supply Fund. Public consultation will be undertaken on significant changes to the protocol, including changes that have material implications for potential buyers and sellers of credits.

### 1.3 Supply Fund as a market participant

Through the Supply Fund, the department will operate within the market to buy and sell biodiversity credits. The Supply Fund will participate in the market in a transparent way and will operate in a manner consistent with the NSW Government’s commitment to competitive neutrality (see section 2.3). The role of the Supply Fund in the market is intended to be positive, by bringing forward supply, increasing liquidity and improving the operation of the market. The Independent Pricing and Regulatory Tribunal (IPART) will also be monitoring competition within the market, including as a result of participation in the market by government.

Through the Supply Fund, the NSW Government will not make an overall profit from buying and selling credits and will not engage in market collusion or anticompetitive behaviour (see section 2.2). The department will seek to minimise any conflicts that may arise through its participation in the market.

The department will work with the Biodiversity Conservation Trust (BCT) to consider opportunities to improve coordination between the Supply Fund and the Biodiversity Conservation Fund (BCF), such as coordinating operations and sequencing. This will not relate to price, in compliance with competition law (see section 2.2). The differences between the Supply Fund and BCF are set out in Table 1.

**Table 1: Supply Fund and BCF**

Feature	Supply Fund	BCF
Managed by	Credits Supply Taskforce (Taskforce)	Biodiversity Conservation Trust
Fund size (\$M)	\$107 million, revolving fund aim to purchase \$200 million over 3 years	Around \$138 million to date
Credits Targeted	Buy in-demand credits and <b>on-sell to proponents</b> (near future demand)	Meet credit obligations transferred to the BCT for development (past demand)
Reverse auctions/tenders	3 per year subject to operational needs	2 per year
Other purchasing	Standing offer (always available subject to approval)	Fixed price offer – 2 per year
On-selling of credits	Yes – public and private proponents (for offsets) and philanthropic/ESG purposes	No – retired to meet credit obligations
Status of credits	Existing or soon to be generated credits	Existing and proposed credits
Typical volume and type of credits	Larger volumes, targeted in-demand credit types	Smaller volumes, many credit types

## 2. Governance

The Supply Fund will be operated by the Credits Supply Taskforce (the Taskforce) in the Environment and Heritage Group of the department, in accordance with this operating protocol and any other relevant legislation or regulation. The Taskforce reports to the Coordinator General, Environment and Heritage Group. Decision-making for specific functions and responsibilities relevant to the Supply Fund are set out in this operating protocol.

Operation of the Supply Fund will be in accordance with the *Biodiversity Conservation Act 2016* (BC Act), which includes provisions to allow public authorities to buy and sell credits, and in accordance with established government practices, policies and other relevant legislation.

The Taskforce will report progress of the Supply Fund's operations to the Interdepartmental Reference Group, Stakeholder Reference Group and the External Monitor for the Biodiversity Offsets Scheme. This aligns with other established governance and reporting requirements, including through the department's annual report and periodic statutory review of the BC Act. The Taskforce may also publish additional progress reports and information on the Supply Fund's buying and selling activities to support transparency.

### 2.1 Probity

The Credits Supply Taskforce and Supply Fund operations are guided by the following probity principles:

- processes and decisions are fair and ethical
- operations are undertaken with full transparency, including information disclosure, public probity statements, role clarity and separation and operational documentation
- conflicts of interest (potential, active or perceived) are pro-actively identified, managed and addressed
- purchase and sales activities occur without conflicts of roles, collusion and profit-making by government.

Operations of the Supply Fund will also comply with the NSW Government Code of Conduct and the department's *Conflict of Interests Protocol*, and a probity adviser will oversee governance arrangements and operations.

#### Fair and ethical processes and decisions

The department will apply fair and ethical processes and decision-making when buying and selling credits through the Supply Fund. Opportunities to buy and sell credits will be made public through the department's website, with trading decisions made in accordance with the processes, criteria and methods set out in this operating protocol and other relevant guidance material. Public and private market participants will be treated in the same way.

#### Transparency

The department will operate the Supply Fund with full transparency, subject to considerations relating to privacy, commercial-in-confidence information and the public interest. Information will be made publicly available through the department's website.

## Conflicts of interest management

Department staff and contractors working in the Taskforce must comply with the department's *Conflict of Interests Protocol*. To prevent actual or perceived conflicts of interest, Taskforce staff and contractors are not able to buy or sell credits using the Supply Fund.

The teams within the Taskforce have clearly defined roles and responsibilities relating to biodiversity stewardship agreements, credit supply, fund management and reform activities. The Taskforce will ensure its operations are undertaken in a way that maintains the delineation of these roles and responsibilities.

Operation of the Supply Fund will be undertaken at arms-length from other government participation in the biodiversity market, including government proponents seeking to buy credits and government landholders seeking to generate and sell credits. Government and non-government buyers and sellers will be required to follow the same processes and be considered in the same way.

The Supply Fund is intended to support market development through buying and selling credits. It will do so in a way that maximises transparency and with a view to supporting participation and functioning in the market. Market participation is integral to the role the Supply Fund is proposed to take in market development.

## 2.2 Competition law

In line with the *Competition and Consumer Act 2010 (Cth)* (CCA), the Taskforce will:

- where possible ensure there is no coordination on pricing between the Supply Fund and Biodiversity Conservation Trust (BCT), except where coordination benefits market operation (e.g. coordination of methods of buying credits).
- operate with full transparency (as described in section 2.1), including information disclosure, public probity statements, role clarity and operational documentation. Demand and supply forecasting will be conducted through publicly available information or information that is available to all market participants, with appropriate consideration for privacy and commercial-in-confidence requirements.
- report on landholder support provided to incentivise supply as part of maintaining and promoting competition, including the scale and impact of the support (this support is being provided through the Stewardship Expressions of Interest (EOI) process and Optional Credit Supply Contracts).
- support IPART to closely monitor the overarching effect of the network of agreements and provisions entered into by the Taskforce to ensure that the cumulative effect of multiple agreements with landowners and proponents does not result in any anticompetitive effect over time, including ensuring that the Supply Fund is not in effect operating as a monopoly.
- ensure Credit Purchase Agreements with proponents (see section 3.1) and Optional Credit Supply Contracts with landholders (see section 3.2 and 4.1) comply with competition law and do not have an overall effect of excluding competitors of the Supply Fund from securing demand or supply and avoid any provisions that could:
  - give the Supply Fund exclusive rights to ongoing secure credit supply or demand
  - limit the ability of the landholder to supply credits to competitors of the Supply Fund
  - limit the ability of the proponent to acquire credits from competitors of the Supply Fund.

## 2.3 Competitive neutrality

Consistent with NSW Government Procurement Policy Framework and NSW Treasury's Policy Statement on the Application of Competitive Neutrality, the Supply Fund will be a buyer and supplier of biodiversity credits and must ensure its pricing and other terms and conditions, including access to information, are consistent with competitive neutrality principles. The Credits Supply Taskforce will seek advice from NSW Treasury and IPART to ensure it operates the Supply Fund in accordance with the NSW Government's position on competitive neutrality.

In operating the Supply Fund, the department will participate in the biodiversity credit market in a transparent way, ensuring the government is not afforded an unfair advantage, including using information internal to the government that could provide a strategic advantage over private sector participants. Applying competitive neutrality principles does not preclude government agencies from taking a significant role in the supply of services if it is more efficient or in the public interest.

The department will make credit supply and demand analysis used to support buying and selling credits through the Supply Fund publicly available to address information asymmetries between government and private sector participants. Methods used by the Supply Fund to select credits to buy and provide credits for sale will be conducted through processes that allow competition, demonstrate accountability and support public disclosure (for example, reverse auctions).



## 3. Identifying demand and supply

### 3.1 Identifying in-demand credits

To target support towards landholders most likely to be able to provide credits that are needed by proponents, the Taskforce must determine likely demand across credit types and locations. The Taskforce will identify demand in several ways, including:

- demand expressions of interest submitted by proponents to the Taskforce
- credit Purchase Agreements (see below)
- other sources of demand, such as the Biodiversity Conservation Trust's published Credits Wanted List
- other published information.

#### Demand Expressions of Interest

In-demand credits will be identified through Credit Demand Expressions of Interest (EOIs) received from proponents (public and private). Information on how to submit an EOI is available on the department's website.

When the Taskforce receives a Credit Demand EOI, it will determine if the demand indicated in the EOI will be added to the Taskforce's in-demand credits list. This determination will be based on the following criteria:

- the proponent wants to buy credits within the next 18 months
- there is a reasonable degree of certainty that the project will progress because:
  - there is a development consent in place or the project is likely to be approved
  - there is a clear government commitment to the project
  - a biodiversity certification has been conferred under the BC Act
- current supply forecasts indicate a shortfall of the required credits
- at least 50 credits within the relevant credit type are required (cumulatively across Demand EOIs received to date).

Current in-demand credits will be published on the department's website, and regularly updated to reflect additional credits that have been determined as in-demand.

The Taskforce may periodically review past Demand EOIs received, where the demand indicated was not added to the published in-demand credits list (in line with the criteria above). Should the demand subsequently meet the above criteria, the Taskforce may add the demand to the in-demand list.

#### Credit Purchase Agreements

A proponent who requires credits to offset their impacts on biodiversity may wish to secure greater certainty that credits will be available for purchase through the Supply Fund at a time that suits them. To provide this certainty, the department – through the Taskforce – may establish a credit purchase agreement with proponents. With this agreement in place, the Taskforce will prioritise seeking the credits required by the proponent, given the higher degree of certainty that there will be a buyer for credits purchased by the Supply Fund.

This type of agreement will provide flexibility for both parties, including if the Taskforce cannot find the required credits or if the proponent's circumstances change. Where a proponent enters into a credit purchase agreement, the credits required will be

considered in-demand by the Taskforce, regardless of whether the credits included in the agreement meet the in-demand criteria set out above.

## 3.2 Identifying potential suppliers of credits

Upcoming demand, identified as set out in section 3.1, will guide the Taskforce's efforts to engage with landholders who may be able to provide credits that are needed. The Taskforce will work with both public and private landholders to bring forward the supply of in-demand credits. The Taskforce will identify and encourage potential sources of credit supply in several ways, including:

- Stewardship Expressions of Interest (EOI)
- targeted analysis to identify strategic opportunities
- Optional Credit Supply Agreements

### Stewardship Expressions of Interest

Landholders interested in establishing a biodiversity stewardship agreement on their land are encouraged to submit a Stewardship EOI. Anyone can submit a Stewardship EOI, and information about how to do so is available on the department's website. When a landholder submits a Stewardship EOI, the Taskforce considers whether there is identified demand for the potential credits the landholder could generate. If so, the Taskforce may offer the landholder an Optional Credits Supply Contract (see below).

While there will be no strict area threshold requirement, the Taskforce may prioritise EOIs received based on size and capacity to generate a significant number of in-demand credits. Any criteria for prioritisation will be published on the department's website.

### Targeted analysis to identify strategic opportunities

Where a developer has entered into a credit purchase agreement, or there is significant development occurring in a particular area of the state or regions where there is a low supply of priority credits (e.g. proposed development associated with renewable energy zones), the Taskforce may take a proactive, strategic approach to sourcing credits that are likely to be needed. This will include considering where BSAs might be established to provide the best conservation outcomes while meeting credit demand.

Once suitable locations have been identified, the Taskforce may undertake targeted engagement with landholders in the relevant region, to encourage participation in the Biodiversity Offsets Scheme and establish a pipeline of credit supply.

### Stewardship Assessment Support Agreement

Based on a submitted Stewardship EOI which indicates potential for a site to generate of in-demand credits, the Taskforce may offer a Stewardship Assessment Support Agreement to the landholder. This agreement allows the Taskforce to provide a biodiversity assessment at no upfront cost to the landholder, repaid at point of sale of the credits to either the Supply Fund or another market participant (see section 4.1).

### Optional Credit Supply Contract

Where on-ground assessment confirms that a landholder will be able to generate in-demand credits, the Taskforce may offer the landholder an Optional Credit Supply Contract. The Taskforce may offer this regardless of whether the landholder obtained the on-ground assessment through the Taskforce (the landholder may have engaged their own assessor to complete the assessment).

The Optional Credit Supply Contract would provide the landholder with greater certainty of a buyer for their credits, by indicating that the Supply Fund will, at a

minimum, pay a floor price for any in-demand credits, once the BSA is established and credits have been generated (see section 4.1). This would not prevent the landholder from choosing other options for selling their credits.

### **3.3 Analysis of supply and demand**

The Taskforce will conduct analysis of the supply and demand to identify credit types at risk of potential undersupply or oversupply. This analysis will inform the Taskforce's targeted efforts with landholders and will be a consideration in determining whether credits should be considered 'in-demand'. This supply and demand analysis will be made public. As part of this, the Taskforce may analyse potential credit supply constraints relative to projected longer term demand. This will help identify genuine scarcity in the biodiversity market.

## 4. Buying credits

### 4.1 Buying methods

The Supply Fund will purchase in-demand credits in the following ways.

#### Credits selected through a competitive reverse auction (tender)

Through the Supply Fund, a reverse auction is proposed to run three times each financial year, subject to the operational requirements of the Fund. This will include publishing the type and volume of in-demand credits proposed to be purchased, seeking bid prices from credit owners willing to sell credits to the Supply Fund, ranking the bids based on price and criteria listed below, and deciding on the credits to purchase from the ranked list.

In deciding how to price credits to participate in a reverse auction, landholders should consider what information is available to help determine an appropriate price. Landholders may wish to look at recent market transactions, which are publicly available on the biodiversity credits market sales dashboard. The *Biodiversity credit pricing guide* provides further information on pricing.

Before each reverse auction, the Taskforce will release guidance for credit holders who wish to participate in the process, including further detail on the process and prioritisation criteria that will be applied to assessing bids.

A Supply Fund Purchase Panel will be established to consider the bids and make recommendations to the Coordinator General on selection of credits for purchase. The Panel membership will include the Executive Director, Credits Supply Taskforce, Director, Supply Fund and a member independent of the Environment and Heritage Group of the department. The panel will also be informed by a probity adviser.

A report will be publicly released on the department's website following the conclusion of the reverse auction providing a record of the reverse auction process, purchase price of the credits and decision-making.

#### Standing price offer

The Taskforce may also buy in-demand credits without running a reverse auction, based on a standing price. The department will specify which of the in-demand credits can be submitted for purchase through the standing offer. The standing price per credit is set in this operating protocol and is subject to change. Currently, the standing price per credit is set at:

$$\text{Price per credit} = \text{Total Fund Deposit amount} / \text{number of credits generated in the BSA} + 20\%^1$$

The Total Fund Deposit (TFD) amount is calculated based on the reasonable and expected costs of management over the long-term. TFD amounts are set using an established practice and protocol. The TFD amount is approved as part of a BSA and the actions set out in the management plan. Each year an annual payment is made from the TFD to implement the management plan.

As this is not a competitive process, the standing price is intended to provide a minimum price through which the Supply Fund will buy in-demand credits. Landholders may seek other opportunities to sell their credits, including the Supply Fund's reverse auction,

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<sup>1</sup> The 20% is to account for costs of entering into a BSA, and other factors; exclusive of GST



where bid prices may be higher or different bid prices may be given for different credit types. Landholders can also use a combination of methods to sell the credits from their site (reverse auction, standing price offer or private sale).

Credit sellers can request the Taskforce purchase credits at the standing price at any time. The assessment of these proposals will be undertaken using the following criteria:

- value for money
- likelihood of real and urgent demand

Standing price offers will be considered by the Supply Fund Purchase Panel, and recommendations made to the Coordinator General on purchase of credits. A report on the acceptance of standing price offers will be released on a quarterly basis.

## Residual purchase

Where the Taskforce agrees to purchase credits from a stewardship site, through either the reverse auction or standing offer from a stewardship site, and this leaves a proportion of the landholder's credits unsold (generally those credits that are not in-demand), the Taskforce may consider purchase of these residual credits at the request of the credit owner. The price for residual purchase is set in this operating protocol at:

$$\text{Price per credit} = \text{Total Fund Deposit amount} / \text{number of credits generated in the BSA}^2$$

A report on the acceptance of residual purchase offers will be released on a quarterly basis.

## Optional Credit Supply Contract

As described in section 3.2, in circumstances where a landholder has undertaken an on-ground assessment and determined they will be able to generate in-demand credits (as published on the Taskforce's current in-demand credits list), the Taskforce may offer the landholder an Optional Credit Supply Contract ahead of a BSA being finalised.

This contract would provide certainty to the landholder that the Taskforce will purchase in-demand credits generated by the landholder's BSA. This price would be set at the minimum standing price offer, as it is not agreed through a competitive process.

This contract would not prevent the landholder from participating in other methods of selling credits to the Supply Fund, as set out in this section, or other buyers. The agreement provides certainty that, at a minimum, a landholder will have an option to sell any in-demand credits they produce at a known price.

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<sup>2</sup> Exclusive of GST

## 5. Selling credits

Proponents seeking to use credits purchased from the Supply Fund will need to consider if the credits meet the requirements of their development consent, including application of the like-for-like rules and variation rules. The Supply Fund does not have the ability to apply variation rules (use of variation rules needs to be provided by the consent authority in approving a development consent).

### 5.1 Pricing of credits for sale

Credits will be offered for sale at the purchase price plus cost recovery (see below) through all methods except surplus auction, as described below. The method of pricing credits set out in this operating protocol will be applied consistently.

Where the Taskforce has purchased the same type of credits (class and location) at different prices through the same purchase activity (e.g. the same reverse auction), an average price will be used as the basis for the sale price for those credits.

For group release and residual sales (see 5.2 below), the price of credits available for sale will be published as part of running the sale process and in advance of buyers needing to make offers. For surplus auctions, the reserve will also be published in advance. Credit purchase agreements will have specific provisions on pricing and related arrangements.

#### Cost recovery amount added to sale of credits

The Credits Supply Fund is a revolving fund. The role of the Taskforce in seeking credits to meet demand from proponents effectively replaces the need for proponents to undertake credit search activities themselves. The Taskforce will therefore seek to recover the costs associated with operating the Supply Fund, through the sale of credits to proponents by adding a small amount to the purchase price of credits (less than 10%). This will include costs associated with

- processing and analysing Demand EOs and Stewardship EOs
- ongoing credit matching and forecasting of demand and supply pipelines
- entering into Optional Credit Supply Contracts with landholders and Credit Purchase Agreements with proponents
- running procurement processes to purchase credits from landholders and sell credits to proponents
- administering the Supply Fund (monitoring and reporting, etc.).

It will not include costs associated with the role of the department in receiving and assessing BSA applications, or other responsibilities in relation to regulatory approvals.

The total amount to be recovered will be estimated across the financial year in line with expenditure forecasts, and the required percentage mark-up on the sale price of credits will be estimated based on the expected volume of sales over the same period. This will be reviewed annually and adjusted as required.

### 5.2 Sale methods

Credits purchased by the Supply Fund from landholders will be made available for purchase as soon as practical after the credits have been purchased.

## Credit purchase agreement

Buyers with a credit purchase agreement with the Taskforce (see section 3.1), will have priority to buy credits that match their needs in accordance with the terms of those agreements. The Taskforce will offer credits to buyers with credit purchase agreements in order of the Taskforce receiving a signed agreement without following other methods set out below.

## Group release

Groups of credits for sale will be released (for example, following a reverse auction) and potential buyers notified of the credit type and number available, as well as the set price for each credit type. Buyers can submit an offer for the number and type of credits required. Buyers will be selected by lottery and offered the full allocation of credits for their needs as are available in the group release until there are no further buyers for the group release of credits.

Successful buyers will be notified and will have one week to provide payment to the Supply Fund. If payment is not received in time, then the credits will be returned to the group for the selection of other buyers, unless the buyer and the Taskforce agree on an extension to the payment deadline.

With each group release, proponents who have submitted credit demand EOIs will be offered credits for sale first – i.e. those who have submitted credit demand EOIs will form an initial lottery pool, before other potential buyers are considered through a second lottery pool.

## Remaining first-in basis

Credits that remain unsold after a group release (remaining credits) will be offered on a first-in basis. The availability of these credits will be publicly communicated. Buyers will have one week to make payment for the credits. If payment is not received in time, the credits will be available for purchase by another buyer (first-in basis).

## Surplus auction

Credits not sold through either a group release or remaining first-in basis may, after 6 months, be auctioned in accordance with surplus auction rules (to be published).

## 6. Monitoring and reporting

The Taskforce has established a program management framework, with the Taskforce Management Group accountable for the operation of the Supply Fund and delivery of other initiatives to improve supply of in-demand credits.

An evaluation of the Supply Fund, including of its performance and impact in meeting stated objectives will be undertaken.

Taskforce program management arrangements include regular progress reporting to:

- the Minister for Environment and Heritage
- the Coordinator General, Environment and Heritage Group
- the External Monitor for the Integrated Improvement and Assurance Program for the Biodiversity Offsets Scheme
- Interdepartmental and Stakeholder Reference groups.

Progress will also be reported through established corporate governance arrangements, including the department's annual report and review of the *Biodiversity Conservation Act 2016*.

The Taskforce will publish information on its operations and Supply Fund transactions (in addition to the publication of credit transactions on the public register) including:

- new supply (including number of new BSAs), the volume and type of credits held by the Supply Fund, turnover, pricing and price efficiency (quarterly summary report)
- management of probity issues (as required)
- acceptance of standing price offers for in-demand credits (quarterly report)
- acceptance of residual purchase offers for in-demand credits (quarterly report)
- outcomes of reverse auction processes (as required).

All personal information will be deidentified before publication.



## 7. More information

- [Biodiversity credit pricing guide](#)
- [Biodiversity credits market sales dashboard](#)
- [Biodiversity Credits Supply Fund and Taskforce](#)
- [Biodiversity credits market sales dashboard](#)
- [Biodiversity Offsets Scheme public registers](#)
- [Conflict of Interests Protocol](#)
- [Current in-demand credits list](#)
- [NSW Government Code of Conduct](#)
- [NSW Government Procurement Policy Framework](#)
- [Policy Statement on the Application of Competitive Neutrality](#)
- [Stewardship Expression of Interest](#)
- [Total Fund Deposit and discount rate](#)