



Probity and transparency arrangements

Biodiversity Credits Supply Taskforce

May 2023

Biodiversity Stewardship and Credits Supply



Acknowledgement of Country

The Department of Planning and Environment acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

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This resource may contain images, or names of deceased persons in photographs or historical content.



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Background

The NSW Biodiversity Offsets Scheme is the legislated system for biodiversity offsets in New South Wales, requiring unavoidable biodiversity impacts from development to be offset by biodiversity gains. These gains, measured in biodiversity credits, are secured when landholders enter biodiversity stewardship agreements to protect and manage their land to conserve ecosystems and threatened species and their habitats.

Promoting a functioning biodiversity credit market is critical to the effective operation of the Biodiversity Offsets Scheme. As part of this, the Biodiversity Credits Supply Taskforce helps to:

- ensure biodiversity credits are available to offset development on a like-for-like basis
- provide a genuine alternative to development payments into the Biodiversity Conservation Fund
- reduce the cost and complexity of establishing stewardship sites without compromising ecological integrity
- improve the number of sites in active management through the sale of sufficient credits to receive management payments
- contribute to efforts to resource protection and restoration of strategically important biodiversity.

The Taskforce is working to fast-track a significant supply of biodiversity credits by proactively supporting landholders to enter into biodiversity stewardship agreements that generate priority credits, being those most likely to be in demand.

The Taskforce operates the \$106 million Credits Supply Fund to improve market functioning and market capacity to absorb the growing demand for biodiversity credits for energy and transport infrastructure and investment in housing and manufacturing, including in regional areas of New South Wales, and will operate initially until 30 June 2025.

The Supply Fund:

- buys credits up-front at competitive market prices based on forecast demand from major projects and infrastructure development
- sells credits at purchase price plus a small mark-up (cost recovery) to public or private proponents who need to offset biodiversity impacts
- reinvests proceeds to buy more credits (as a revolving fund), enabling the initial investment to be used to buy and sell up to \$200 million in credits over 3 years.

The Taskforce brings together Department of Planning and Environment staff with functions and expertise that closely align to the objectives and activities of the Taskforce, including from the Biodiversity Conservation and Science division of the department, the National Parks and Wildlife Service and the Biodiversity Conservation Trust (BCT).

About this probity statement

The Taskforce has put in place a range of measures to manage specific probity risks and issues relating to the operation of the Taskforce and Supply Fund and support transparent and accountable decision making. This document provides an overview of these measures and advice on how current issues are being managed.

Given the Taskforce's work program, arrangements have been put in place to proactively identify and respond to new probity issues as they emerge. The Taskforce has engaged an independent probity adviser, Centium, to support implementation of probity controls and provide advice on issues as needed. This document will be updated from time to time if new or revised arrangements are needed for emerging issues.

The Taskforce welcomes feedback on probity issues, including the measures outlined in this paper. This can be submitted via the EHG Credits Supply Taskforce Coordination Mailbox at cstaskforce.coordination@environment.nsw.gov.au.

Guiding principles for probity management

The Taskforce recognises that management of probity issues is critical to the successful operation of the Supply Fund and public confidence in the Biodiversity Offsets Scheme and biodiversity credits market more generally. The work of the Taskforce will therefore be guided by the following principles:

- processes and decisions are fair and ethical
- operations are undertaken with full transparency, including through:
 - public disclosure of information about Taskforce decisions and processes subject to legislative, government and commercial confidentiality requirements
 - appropriate record keeping and records management to ensure decision making is clear and auditable
- strong governance and role clarity to ensure accountability for decision making in accordance with delegations and decision-making frameworks
- conflicts of interest are proactively identified, managed and addressed
- purchase and sales activities occur within a clear decision-making framework, without competing priorities that could undermine efforts to improve market functioning, and are fair to buyers and sellers, without profit to the Taskforce.

The Taskforce will both apply and comply with requirements of the *Biodiversity Conservation Act 2016* (NSW) and associated regulatory instruments. The Taskforce and its employees will also comply with:

- the NSW Government's [Code of Ethics and Conduct](#)
- the Department of Planning and Environment's [Code of Ethics and Conduct – March 2022](#) and its conflict of interest requirements relating to the NSW Biodiversity Offsets Scheme protocol
- the NSW Government's [Procurement Policy Framework](#)
- the NSW Government's policy on competitive neutrality.

Fair and ethical processes and decision making

Taskforce activities, including the buying and selling of credits through the Supply Fund and approval of Biodiversity Stewardship Agreements (BSAs) under ministerial delegation, will be based on fair and ethical decision making and processes and complying with expectations of sound administrative practices.

Biodiversity Stewardship Agreements

The Taskforce has taken on responsibility for assessing and approving new BSA applications and for approving variations of existing BSAs since July 2022. The Taskforce is responsible for:

- assessing the eligibility of landholders to apply for a BSA
- assessing information submitted to support an application, including biodiversity assessment reports, management plans and Total Fund Deposit calculations
- drafting BSAs in consultation with applicants based on an approved template
- executing final BSAs under delegation of the NSW Minister for the Environment
- handing over executed BSAs to the BCT to support implementation and compliance.

In order to fast-track the supply of biodiversity credits that are in demand by proponents, the Taskforce is also implementing a range of initiatives to streamline the BSA application process and remove potential barriers to landholders entering into new agreements. These include:

- a stewardship expression of interest (EOI) process that includes initial Taskforce assessment of a property's ability to generate in-demand credits
- provision of biodiversity assessments to eligible landholders with in-demand credits, with costs to be recovered once credits are sold
- a time-limited waiver of BSA application fees to 30 June 2023
- streamlining key BSA documentation and processes, including simplifying the BSA and management plan template
- developing new resources to support landholders to understand the Biodiversity Offsets Scheme and the costs, benefits, risks and opportunities associated with entering into a BSA
- improvements to public information on credit demand and supply to enable credit holders to identify potential market opportunities.

The assessment of BSA applications by the BSA Negotiation and Delivery team is undertaken in accordance with the requirements of the *Biodiversity Conservation Act 2016* (NSW) (BC Act), with applicants required to meet the fit and proper persons test (section 5.8 of the Act). Proposed BSA sites must also meet eligibility criteria and be supported by a robust management plan for the site. The Biodiversity Stewardship Site Assessment Report (BSSAR), including the management plan, are reviewed to confirm that the assessment and identification of the number and type of biodiversity credits are based on the correct application of the Biodiversity Assessment Method. Assessment decisions are made in accordance with the Department of Planning and

Environment Delegations Manual and are fully documented and auditable using the department's records management system.

All biodiversity assessments commissioned by the Credit Supply Operations team are undertaken by assessors who are accredited under the BC Act to prepare BSSARs using the Biodiversity Assessment Method. Any assessment issues or outcomes that are contested by the Taskforce and the accredited assessor in a prepared BSSAR will be referred to a third-party accredited assessor for independent advice.

Taskforce staff engaged in BSA processes, as well as internal and external accredited assessors, are required to formally declare any conflicts of interest. The Credit Supply Operations team also works with assessors to monitor any conflict of interest issues that may arise in relation to specific assessments.

The procurement of external accredited assessors is undertaken in accordance with NSW Government procurement guidelines and includes the provision of evidence of accreditation, a scientific licence under the BC Act and agreement to comply with the NSW Government Code of Conduct and Department of Planning and Environment Code of Conduct. This includes considering privacy, commercial-in-confidence and public interest disclosure legislation and protocols and the department's accredited assessors complaints and management policy (accredited assessor quality assurance and feedback) and de-accreditation process.

Operation and market role of the Supply Fund

The purpose of the Taskforce and Supply Fund is to increase the supply of credits to meet existing and future demand, without adding further demand to the market. The operations of the Supply Fund are set out in the Biodiversity Credits Supply Fund: Operating Protocol. It covers governance, how demand and supply will be identified, methods for buying and selling credits, and monitoring and reporting. The Taskforce will also seek guidance and probity advice as needed, and specific market engagements will involve the close supervision of independent probity advisers. In operating the Supply Fund, the Taskforce will also adhere to the NSW Government Procurement Policy Framework.

The Taskforce will be transparent in its approach to pricing (buying and selling) and ensure that its influence on the market is transparent. The influence of the Supply Fund on the market is intended to be positive, by increasing market functioning. The Taskforce is committed to ensuring information is available to both government and private sector participants that supports the development, functioning and equity within the NSW biodiversity market in line with the public interest. The Taskforce will also support the Independent Pricing and Regulatory Tribunal (IPART) in its role in monitoring competition within the market, including in relation to the activities of the Supply Fund.

The Supply Fund is intended to support market development through buying and selling biodiversity credits that are in demand by developers and other proponents. It will do so in a way that maximises transparency and facilitates open participation in the biodiversity credits market. Operations will be undertaken in a manner consistent with the NSW Government's commitment to competitive neutrality, discussed in more detail below, and in line with the *Competition and Consumer Act 2010* (Cth).

Fair and ethical processes and decision making will be applied when buying and selling credits. Opportunities will be made public through the department's website, with trading decisions made in accordance with processes, criteria and methods set out in the Supply Fund Operating Protocol and Evaluation and Probity Plan. Methods used by the Supply Fund to select credits for purchase and provide credits for sale will be

conducted through processes that allow competition, demonstrate accountability and support public disclosure.

The Taskforce will engage with both public and private landholders who may be able to provide in-demand credits and work with them to bring forward supply. The pricing method for credits offered for sale to public and private proponents will be applied consistently.

As the Supply Fund intersects with both public and private buyers and sellers of credits, the Supply Fund will ensure that government and non-government buyers and sellers follow the same processes and are considered in the same way. In applying consistent processes across government and non-government market participants, the Taskforce will not create market advantage for government participants.

In keeping with the objective of improving market functioning and operation, the Taskforce will also work with the BCT to consider opportunities to improve timing coordination of purchasing of biodiversity credits between tenders for the Biodiversity Conservation Fund and reverse auctions held by the Supply Fund.

National Parks and Wildlife Service

Land may be acquired under the *National Parks and Wildlife Act 1974* (NSW) for the purposes of reservation, protection of threatened species, ecological communities or their habitats, or protection of cultural heritage. National Parks and Wildlife Service (NPWS) staff in the Taskforce undertake assessment of properties to determine their suitability for acquisition and reservation. There are established processes for these assessments and in dealing with landholders as part of acquiring land, including working closely with the NPWS Reserve Establishment Unit.

If NPWS becomes a participant in the NSW biodiversity market through entering into BSAs to create credits, it will follow the biodiversity assessment and stewardship site application processes in keeping with the Taskforce's probity principles, and only use publicly available information and processes to ensure that no unfair advantage arises. NPWS will follow the processes and requirements expected of private sector participants.

Any credits generated by NPWS will be subject to the assessment by an accredited assessor applying the Biodiversity Assessment Method and in line with expectations and requirements that apply to all BSA applicants in accordance with the BC Act. In processing BSA applications from NPWS, the Negotiation and Delivery team will treat NPWS as any other applicant.

Land acquisition for the national parks estate for the purpose of generating credits under BSAs will be done in the public interest and in accordance with the government's policy on competitive neutrality. The suitability of BSAs on these sites will be determined through the application of the BC Act and the BSA application review process, outlined above.

Guidelines supporting the framework for NPWS participation in the Biodiversity Offsets Scheme as a BSA landholder and credit supplier will outline operating principles to ensure value for money and demonstrable biodiversity gain. Specific objectives aimed at delivering on conservation and landscape values will support enhancement of the reserve system through NPWS participation in the biodiversity credit market. A framework will be established for fair and transparent operations as a supplier in the credit market, in line with requirements for other suppliers of biodiversity credits.

On NPWS-owned BSA sites, NPWS will implement the management plan in accordance with the agreement prior to gazettal under the *National Parks and Wildlife Act 1974*

(NSW). Following gazettal, NPWS will continue to implement the management plan to ensure biodiversity gains expected under the agreement and may incorporate management actions into the objectives in broader park management activities.

Transparency and information management

The Taskforce will ensure programs and information are administered in a way that is transparent and consistent with current Department of Planning and Environment practice in information management. This includes complying with the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) and Standing Order 52 notices.

Access to information that could provide unfair market advantage will be restricted within the Taskforce through business processes and protocols for document and information management.

The Taskforce will also work towards increasing the transparency of information relating to the outcomes, performance and integrity of the Biodiversity Offsets Scheme in relation to parts of the scheme for which the Taskforce has responsibility, including BSAs and the Supply Fund. Information may also be withheld where it has been provided to the Taskforce on a commercial-in-confidence basis or where information barriers are required to maintain the integrity of the reverse auction and government decision making in the public interest.

Conflicts of interest

Staff who work within the Taskforce will not be permitted to hold any financial or non-pecuniary interests in land under a Biodiversity Stewardship Agreement or biodiversity credits. The Department of Planning and Environment protocol on staff conflicts of interest will be applied.

The Taskforce will also ensure that its processes and programs support the identification and management of conflicts of interest by accredited assessors and private and public participants in the scheme. Probity advice on any issues that arise in relation to conflicts of interest will be obtained, and decision making will reflect the appropriate exploration, escalation and management of any conflicts of interest.

Competitive neutrality and competition

Consistent with the *Competition and Consumer Act 2010* (Cth), the NSW Government Procurement Policy Framework and the government's policy on 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 government policy on the application of competitive neutrality principles. 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.

Through the Supply Fund, the NSW Government will not make an overall profit from buying and selling credits and will not engage in anti-competitive behaviour. The Taskforce will establish programs and market interactions in ways that support

competition and actively promote, encourage and raise awareness of the fair and open use of market information, with the objective to improve the positive functioning of the biodiversity credit market.