



Biodiversity
Conservation
Trust

Statewide Biodiversity Credit Open Fixed Price Offer

Participant Guide | October 2020

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Glossary of terms

BAM	<u>Biodiversity Assessment Method</u>
BAM credits	Credits created under the BC Act using the Biodiversity Assessment Method
BBAM credits	Credits created under the former BioBanking Scheme using the BioBanking Assessment Method
BC Act	<u>Biodiversity Conservation Act 2016</u>
BC Regulation	<u>Biodiversity Conservation Regulation 2017</u>
BCF	Biodiversity Conservation Fund
BCT	Biodiversity Conservation Trust
Biodiversity Stewardship Agreement (or BSA)	An agreement made under Division 2 of Part 5 of the BC Act.
Biodiversity Stewardship Site Assessment Report (or BSSAR)	An assessment report that is required to accompany an application to enter into a BSA.
Credit class	A credit class is a group of credits that share the same attributes as described by the offset rules in the BC Regulation ¹ . The attributes comprise of; 1) IBRA Subregion, 2) Offset Trading Group and 3) Hollow-bearing tree presence/absence.
Credit class options	The range of credit classes that are available to acquit an obligation under either like-for-like or variation offset rules.
Credit sale agreement (or CSA)	A contract entered into between the BCT and the credit owner or landholder committing both parties to a credit sale.
DPIE	Department of Planning, Industry and Environment
Equivalence statement	An 'Assessment of reasonable equivalence of biodiversity credits' that is issued by DPIE for BBAM credits to determine the equivalent number of BAM credits.
Fixed price offer (or FPO)	An offset delivery mechanism in which the BCT offers a set price to purchase credits.
Hollow bearing tree (or HBT)	An attribute of a credit class as defined in the BAM
Like for like offset rules	Refer to clause 6.3 of the BC Regulation
Obligation	The obligation the BCT is under to secure offsets from the money paid into the BCF by a developer (refer to s6.2(g) of the BC Act.
Offset Trading Group (or OTG)	An attribute of a credit class, with OTG tiers identified in Table 5 of the BAM.
Subregion	Interim Biogeographic Regionalisation of Australia (IBRA) subregion
Variation offset rules	Refer to clause 6.4 of the BC Regulation.

¹ Refer to clause 6.2 of the BC Regulation.

1. Open fixed price offer

The guide aims to assist landholders and biodiversity credit owners who are interested in participating in a biodiversity credit open fixed price offer under the Biodiversity Conservation Trust's (BCT) Biodiversity Offsets Program.

The Biodiversity Offsets Scheme (the Scheme) introduced by the *Biodiversity Conservation Act 2016* (BC Act) delivers a transparent, consistent and scientifically-based approach to biodiversity offsetting in NSW. A key function of the BCT within the Scheme is to act as a market intermediary, to secure offsets on behalf of developers who pay into the Biodiversity Conservation Fund (BCF). The BCT's Biodiversity Offsets Program is responsible for securing biodiversity credits to meet these offset obligations.

An open fixed price offer is one of the delivery mechanisms used by the BCT to obtain biodiversity credits. Other mechanisms are described in Appendix 1.

2. How does the fixed price offer work?

The open fixed price offer (referred to as the Open FPO) is available on a continuing basis for credits on the BCT's Wanted Credits List. The list is updated monthly to ensure it remains current.

The Open FPO is available to existing credit owners as well as landholders who are interested in establishing a Biodiversity Stewardship Agreement (BSA).

The BCT's price offer is provided to participants upon application if they have demonstrated they have existing or potential wanted credits. For existing credit owners, if the BCT's price offer is accepted then the BCT will proceed directly with the transaction.

Landholders interested in establishing a BSA will need to submit a BSA feasibility assessment prepared by an accredited assessor with their application. If the BCT's price offer is accepted, the BCT will commit in-principle to purchase the credits, subject to a business case being prepared to confirm that the wanted credits are likely to be created. Both the feasibility assessment and the business case provide information that will assist in preparing the Biodiversity Stewardship Site Assessment Report (BSSAR). The credits are then purchased once the BSA site is established.

By participating in the Open FPO, landholders will have the BCT as a committed buyer of credits before proceeding with the BSSAR and before incurring additional assessment costs.

The Open FPO operates on a 'first in' basis. If the BCT commits to purchase credits then the credits are removed from the Wanted Credits List.

3. What are biodiversity credits?

Biodiversity credits are the units used to quantify biodiversity in the NSW Biodiversity Offset Scheme.

There are two broad categories of credits: **ecosystem credits** and **species credits**. There are many different types of ecosystem and species credits.

The credit types wanted by the BCT are identified by a set of attributes known as a **credit class**. A credit class comprises up to four attributes as described in the offset rules for the Scheme². The attributes are:

- the IBRA subregion³ of the wanted credits,
- the Offset Trading Group of the wanted credits - Offset Trading Groups are groups of credit types that have similar characteristics,
- for ecosystem credits, the vegetation formation or plant community type, and
- for ecosystem credits, the presence or absence of hollow-bearing trees.

In other words, a credit class sought by the BCT represents all credit types that are in the wanted subregion and are also in the wanted Offset Trading Group and, for ecosystem credits, are identified with the presence of hollow-bearing trees, if required.

4. What biodiversity credits are being sought?

The credits wanted by the BCT are represented by the credit classes listed in the BCT's Wanted Credit List (refer to the Biodiversity Credit Open FPO page on the BCT website). The list identifies the number of credits wanted by the BCT for each credit class. An applicant can offer to sell any number of credits up to this maximum number.

The Wanted Credits List can be searched by filtering the credit class attributes. For example, you are able to select the IBRA subregion of interest and then search for the required Offset Trading Group.

For existing credit owners, the credit class attributes are provided on the credit report or, for BBAM credits⁴, on the **equivalence statement**.

For interested landholders, the Open FPO webpage contains a link to a map to assist in determining the subregion in which your property is located.

² Refer to clause 6.2 of the BC Regulation.

³ The term 'IBRA subregion' refers to the Interim Biogeographic Regionalisation of Australia (IBRA) subregion, as defined in the BC Regulation.

⁴ BBAM credits are credits created using the BioBanking Assessment Method (BBAM) under the former BioBanking Scheme.

4.1 How does the Wanted Credits List work?

The Wanted Credits List identifies the number of credits that are wanted by the BCT for each credit class. The list is based on the obligations received by the BCT. The BCT can acquit an obligation with credits from a range of different credit classes in accordance with the BCT's offset rules⁵. The credits wanted for an obligation are therefore listed multiple times in each of the possible credit class options. The list is then compiled by summing the number of credits required from all obligations for each credit class (See Box 1).

Box 1 Example of how the Wanted Credits List works

The BCT has received an obligation for 100 credits. The obligation can be acquitted by five credit classes across five different subregions. The Wanted Credits List will therefore identify 100 credits as being wanted in any of these five subregions. If the BCT obtains 20 of the wanted credits from one of the subregions then the Wanted Credit List will identify 80 credits remaining as wanted in each of the five subregions.

The Wanted Credit List is updated on the first Wednesday of each month. The update will include any additional credits wanted for obligations received in the past month. It will remove wanted credits for which commitments have been made in the past month to purchase credits. These changes will affect the number of credits wanted and the BCT's price offer.

5. Who is eligible for an offer?

The Open FPO is open to applicants who:

- own existing credits created under the current Biodiversity Offsets Scheme (termed BAM credits); or
- own existing credits created under the former BioBanking Scheme (termed BBAM credits) and have obtained an **equivalence statement** to determine the equivalent number of BAM credits; or
- are landholders and have obtained either a feasibility assessment or a business case from an accredited assessor, or have submitted an application for a BSA.

Applicants for the Open FPO are also able to submit bids for a biodiversity credit tender. Section 6.1.2 describes the order in which Open FPO applications and tender bids will be considered.

All biodiversity credit owners that meet these requirements will be able to participate in the Open FPO, subject to the conflict of interest rules (see below).

Handy hint: If you own BBAM credits then make sure to allow sufficient time to obtain an equivalence statement before applying for the Open FPO.

⁵ Refer to clause 6.6 of the BC Regulation.

5.1 Conflicts of interest

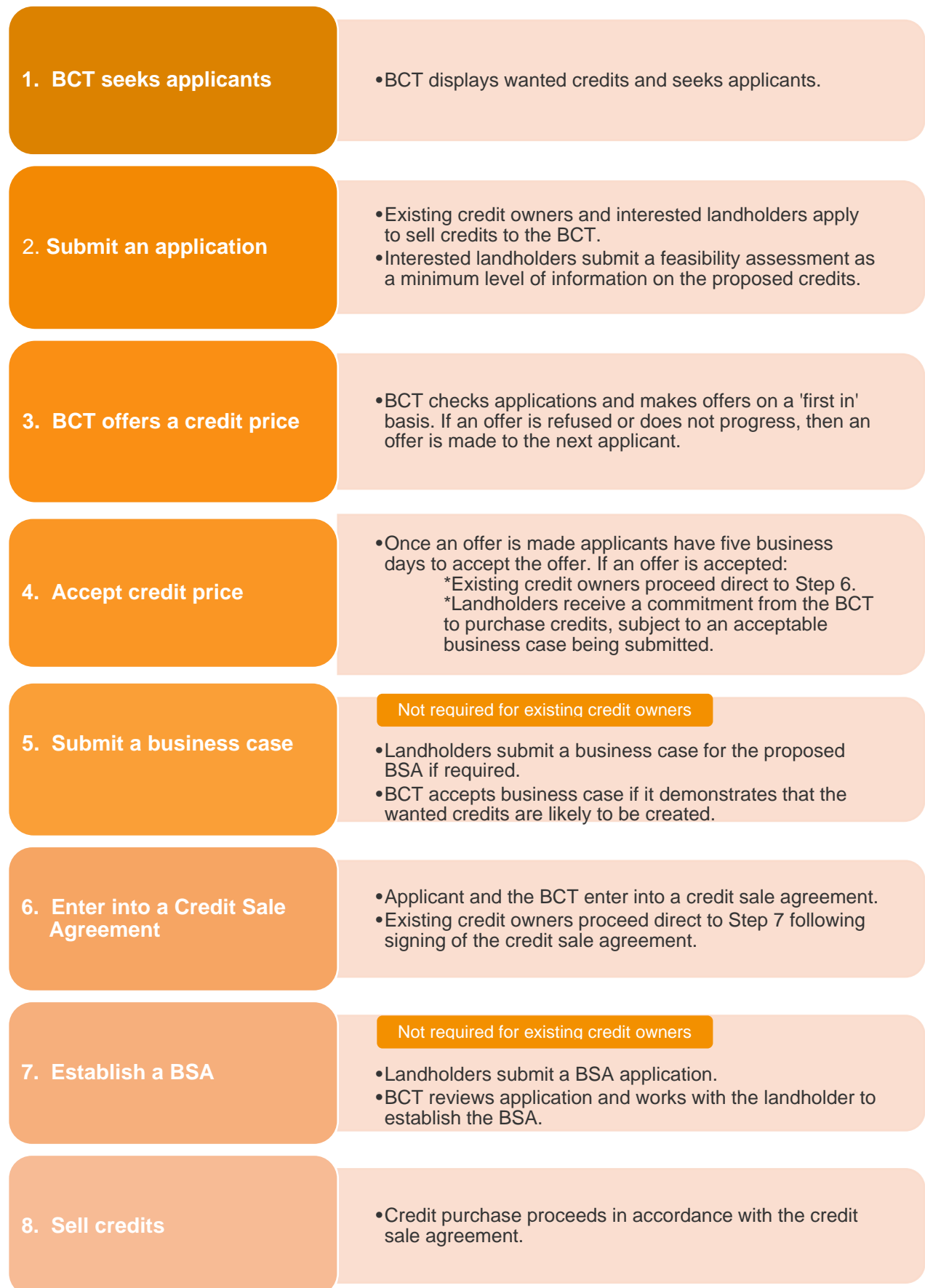
Applicants will be required to declare any conflicts of interest and how these will be managed. Applicants who have associations that are considered by the BCT to represent a conflict of interest which is unable to be managed, may not be eligible.

BCT staff and Board members (and their close family members) and delivery agents (contractors and directors of delivery agents) involved in the delivery of the Open FPO are not eligible to participate. Any offers received from such parties will not progress further in the process.

6. Fixed price offer process

The steps for participating in the Open FPO are outlined in Figure 1. Note that many of these steps are by-passed if you have existing credits or, as a landholder, you have already obtained a business case or applied for a BSA.

Figure 1. Steps to participate in the open fixed price offer



6.1 BCT seeks applicants

The BCT will seek applicants by promoting the Open FPO through general advertising, for instance, by notifying all accredited assessors and other market participants.

6.1.1 Use of the credit supply register

The BCT may contact participants on the DPIE Credit Supply Register who are likely to have specific wanted credits. The BCT will contact either existing credit owners, or all participants in the Credit Supply Register. It may also approach other credit owners that are not listed on the Register. Participants will be informed of the Open FPO and encouraged to submit an application.

6.1.2 Tenders held by credit vendors

Sometimes credits are sold by credit owners (or prospective owners) through competitive tenders. If the tender is for credits wanted by the BCT then the BCT may participate in the tender. The BCT will offer a bid of the same value as its Open FPO. If the BCT's bid is successful then the vendor's notification of acceptance of the bid will be deemed to constitute an Open FPO application. The deemed application will be considered on a 'first in' basis (i.e. in the order of receipt) as described in section 6.3 below. In other words, any Open FPO application received before the vendor's acceptance of the bid will be considered first. The BCT's offer price, as contained in the bid, will be valid for a three-month period. If the BCT's bid is accepted after this period then an updated price will be offered for consideration.

6.2 Submit an application

To participate in the Open FPO you need to complete and submit the application form that is available on the Open FPO webpage. The application must be signed by the registered owner of the credits or the landholder/s of the property for the proposed BSA.

The application must be accompanied by the documents outlined in Table 1.

Table 1: Documents required for an application to sell credits to the BCT under the Open FPO

Applicant	Documents required
Owner of BAM credits	<ul style="list-style-type: none">• Biodiversity Credit ownership report
Owner of BBAM credits	<ul style="list-style-type: none">• Credit ownership report• 'Assessment of reasonable equivalence of biodiversity credits' report
Landholder proposing a BSA	<ul style="list-style-type: none">• Either a Feasibility assessment,• or if available, a Business Case,• or if available, a BSSAR

Notes: Reports may be redacted to remove any commercially sensitive information.
The Open FPO application authorises the BCT to verify the credits with DPIE.

Feasibility assessments and business cases are to include the content described on the BCT's web pages (see [Feasibility assessment](#) and [Business case](#) links).

Applications can be submitted at any time and are considered on a 'first in' basis (see section 6.3).

An application can be submitted for:

- one or more wanted credit classes,
- any number of credits up to that displayed on the Wanted Credits List.

Applications are non-binding, meaning applicants can choose not to accept the BCT's price offer.

If credits included in an application are no longer available for sale then applicants are required to inform the BCT immediately.

Similarly, the BCT will notify the applicant as soon as possible if the credits are no longer being sought (refer to section 6.3.1).

The Open FPO operates on a continuing basis without a closing date. Applications can be submitted at any time via email to info@bct.nsw.gov.au with '**Biodiversity Credit Open FPO application**' in the subject line. Any queries regarding the Open FPO can be forwarded to the same email address.

6.3 BCT offers a credit price

The BCT will acknowledge the receipt of an application and will undertake an initial review to ensure the application is complete.

If an application is incomplete or provides insufficient information the applicant will be notified and will be given three business days to complete the application before it is rejected. An applicant can choose to submit a new application once the required information is available however the new application receipt date will apply.

A credit price will be offered to applicants in the order in which the applications have been received (taken as the date of the email containing the application).

In the exceptional circumstances that two or more applications are received at exactly the same time for the same credit class, then the BCT will give priority to applications that are considered by the BCT, at its sole discretion, to reduce its transaction risks (eg; existing credits preferred over proposed credits) and / or its transaction costs (eg; wanted credits obtained with minimum transactions).

A credit price will generally be provided within five business days of a complete application being received (see 6.3.1 for situations where this is not the case). Timeframes may be amended by the BCT at its discretion.

6.3.1 Price offers may be delayed or not provided

Applicants will be notified if the BCT delays or decides not to provide a price offer.

The BCT may delay providing a price offer if:

- numerous applications have been received for the same wanted credits. In this situation the BCT will conclude an offer to the earlier application before an offer is made to a subsequent application. This could cause delays depending on the number of applications in the 'queue'.
- applications are received during and following the BCT's regular statewide biodiversity credit tenders. Refer to section 6.3.2 for further details.

The BCT will not provide a price offer if:

- the application does not provide sufficient evidence that the credits are available for sale. For example, if the feasibility assessment or business case submitted with an application does not provide sufficient evidence that the number and type of credits are likely to be created then a price offer will not be provided.
- it has already committed to purchasing the wanted credits or if the credits are no longer being sought for some other reason, which is at the discretion of the BCT. In this situation the credits will be removed from the Wanted Credits List the next time it is updated.

If the BCT decides not to provide a price offer then the application will be terminated. Applicants can re-apply for the Open FPO if the credits are available on the Wanted Credits List.

6.3.2 Open FPO available at same time as credit tenders

A Credit Tender is one of the alternative delivery mechanisms used by the BCT to obtain biodiversity credits (refer to Appendix 1).

Open FPO applications will continue to be received and considered at the same time as credit tenders are held. An existing or prospective credit owner may submit an Open FPO application and, at the same time, submit a tender bid during the tender period.

Note that a tender bid from a landholder proposing a BSA must be accompanied by a business case, whereas an Open FPO application requires as a minimum only a feasibility assessment.

Open FPO applications received during the tender period may be held and considered at the same time as the BCT considers bids. Price offers may be made to Open FPO applicants prior to the notification of the outcomes of the tender. If the BCT's Open FPO price offer is accepted by an applicant then the wanted credits are committed for sale and the credits may no longer be available for purchase through the tender.

6.4 Acceptance of credit price

The BCT's offer price is non-negotiable.

The offer is accepted if the applicant provides emailed advice of acceptance within five full business days of the offer being made (taken as the date of the BCT's email containing the offer).

The offer is refused if either the applicant advises in writing via email that they refuse the offer or there is no response within five full business days of the offer being made. Refusal of the offer means that the application is rejected and will not be considered further.

Handy hint: Be prepared to receive an offer! When you submit an application give some thought to the minimum credit price you will be prepared to accept. You'll then be ready to respond to the BCT's offer within the five day period.

If the offer is accepted then the BCT will provide confirmation of its in-principle commitment to purchase the credits and details of the next steps in the process.

Applicants with existing credits will proceed directly to Step 5 – Entering into a credit sale agreement.

If the applicant is a landholder proposing to establish a BSA site then both the BCT and the landholder will commit in-principle via email to proceed with the intended credit transaction. The commitment is subject to a business case being prepared to confirm that the wanted credits are likely to be created at the required price (a BSSAR also serves this purpose). Step 5 is necessary for these landholders.

6.4.1 What are my options if I do not accept the offer

If you do not accept the BCT's price offer and / or the application is refused then you can:

- Re-apply for the Open FPO. The BCT's offer price for the wanted credits may change over time and you can re-apply as often as you like. Your application will be considered based on the new application date.

and / or

- Submit a bid for the BCT's statewide biodiversity credit tender. Tenders are regularly held and are available for either all wanted credits or a subset of these credits. Landholders proposing to establish a BSA will require a business case to participate in the tender. The tender is a competitive process and the BCT may accept bid prices that are either above or below that offered in the Open FPO.

6.5 Submit a business case

This step is not required for existing credit owners.

A business case is required if a landholder proposes to establish a BSA and has provided a feasibility assessment with their Open FPO application. The business case provides the landholder with information that is also required for the BSSAR.

The purpose of the business case is to confirm that the wanted credits are likely to be created at the required price. It assists the landholder in making an informed decision to proceed with the BSA. It also ensures the BCT is not committing to purchase credits that are unlikely to be delivered and so preventing other participants from having the opportunity to sell these credits.

The business case will need to include the content described on the BCT's webpage. It must provide sufficient evidence to substantiate the estimated number, type and required attributes of the credits that are wanted for sale from the proposed BSA site. The BCT will only be able to proceed with the intended purchase if sufficient evidence is provided.

The landholder will need to adhere to the timeframes outlined in Table 2.

Table 2: Timeframes for landholders without existing BSAs to proceed with a credit sale

Documents to be provided to the BCT	Required date
Evidence of engagement of an accredited assessor to prepare a business case	<ul style="list-style-type: none">• One calendar month following advice from the BCT of its in-principle commitment to purchase the credits
Finalised business case	<ul style="list-style-type: none">• Three calendar months following advice from the BCT of its in-principle commitment to purchase the credits

Note: *The required dates may be varied by agreement*

If tasks in Table 2 are not completed by the required date then the BCT may terminate the in-principle commitment to purchase the credits.

If information provided in the business case is insufficient then the BCT will notify the applicant and will provide ten business days (subject to any agreed variation) for the required information to be submitted. If satisfactory information is not received within this period then the in-principle commitment to purchase credits will be terminated.

6.5.1 BCT acceptance of business case

The business case (or BSSAR) is accepted if the BCT is satisfied that the proposed BSA is likely to create the required number and types of wanted credits.

If the business case is accepted the BCT will provide confirmation to the applicant of the intention to proceed with the credit transaction. The BCT will then enter into a credit sale agreement (CSA) with the applicant.

If the business case is not provided by the required date, or is not accepted, then the BCT will terminate the intended credit purchase. The wanted credits will then be re-displayed on the Wanted Credits List.

6.6 Enter into credit sale agreement

The CSA provides a contractual agreement in which both parties commit to proceed with the credit transaction.

The BCT will enter into a CSA with an applicant who has agreed to the BCT's price offer and has either existing credits or provided an acceptable business case or BSSAR.

6.6.1 What happens if the BSA does not create the required credits?

The CSA is a commitment by the landholder and the BCT to proceed with the credit transaction in accordance with the terms of the CSA. If less wanted credits are created by the BSA than expected then, subject to the terms of the CSA, the BCT will purchase as many credits as are created.

Important note: By entering into a CSA the BCT is not in any way committing to the landholder that the BSA will create the required credits.

The landholder is responsible for their decision to establish the BSA and to enter into a CSA with the BCT. It is recommended that the landholder carefully consider the advice from an accredited assessor on the number and type of credits likely to be created by a BSA, as well as any financial advice that is required for their decision. Valuable advice is also provided in the BCT's landholder guide for establishing a BSA.

6.7 Establish a BSA

This step is not required for existing credit owners.

The landholder will require an accredited assessor to prepare the BSSAR and other documents that support a BSA application.

The submitted BSA application is reviewed by the BCT through administrative processes that are independent of the credit transaction. This means that the BCT's earlier review of the business case to inform its decision to enter a CSA has no bearing on the subsequent review of the BSSAR that is prepared for the BSA application.

Landholders will need to demonstrate that adequate progress is being made to establish the BSA. The required timeframes will be specified in the CSA. Table 3 provides an example of these timeframes. If satisfactory progress is not occurring in accordance with the CSA then the CSA may be terminated.

Table 3: Example of timeframes for landholders to establish a BSA

Documents to be provided to the BCT	Required date
Evidence of engagement of an accredited assessor to prepare a BSSAR	<ul style="list-style-type: none">Two calendar months following signing of the credit sale agreement
Evidence of submission of an application to enter into a BSA	<ul style="list-style-type: none">Twelve calendar months following signing of the credit sale agreement

Note: *The above timeframe for submitting an application is an examples and will be specified in the CSA.*

6.8 Sell credits

For applicants with existing credits, the credit transaction usually proceeds within six weeks of the CSA being executed (subject to the terms of the CSA).

For landholders with a proposed BSA, the credit transaction usually occurs within six weeks of the BSA being registered on title (subject to the terms of the CSA).

7. Additional information

Further information on the Open FPO including the application form is available on the BCT's website www.bct.nsw.gov.au.

Additional information can be sought by contacting info@bct.nsw.gov.au. Please note, the BCT cannot provide any additional information that has the potential to provide the enquirer with a competitive advantage over other possible applicants for the Open FPO, but can provide procedural information on the application process.

Appendix 1 - How does the BCT obtain credits?

The BCT uses a suite of delivery mechanisms to obtain biodiversity credits to acquit the offset obligations it receives from developers (see Table 4).

Table 4 BCT delivery mechanisms for obtaining credits

Delivery mechanism	
Credit tender	<ul style="list-style-type: none"> • Reverse auction process where credit owners or landholders bid to sell advertised credits to the BCT. • May be open to both existing and prospective credit owners (e.g. new landholders willing to establish a BSA). • Prospective credit owners must submit a BSA business case with their bid.
Open fixed price offer	<ul style="list-style-type: none"> • Existing or prospective credit owners directly approach the BCT to sell credits displayed on the BCT's Wanted Credits List. • Prospective credit owners must submit, as a minimum, a BSA feasibility assessment with their application. • BCT offers to purchase credits at a non-negotiable fixed price. <p>Applications are considered on a 'first-in' rather than competitive basis.</p>
Targeted fixed price offer	<ul style="list-style-type: none"> • BCT offers to purchase credits directly from the credit owner / landholder. • May be open to both existing and prospective credit owners. • Will be used in limited circumstances and specific regions to obtain highly sought-after credits.
Revolving fund	<ul style="list-style-type: none"> • BCT purchases a property, establishes a BSA over the site to generate the relevant biodiversity credits which would then be used to acquit credit obligations. Property on-sold with BSA. • Likely to be used opportunistically.