



Biodiversity
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Trust

Biodiversity Conservation Fund Charge System Stage 2 Consultation Report

August 2022

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Introduction

The Biodiversity Conservation Trust (BCT) has developed a new Biodiversity Conservation Fund (BCF) Charge System to replace the existing Biodiversity Offsets Payments Calculator (BOPC). The BCF Charge System sets the price that a developer must pay if they choose to meet their offset obligation by making a payment into the BCF. This is one of several options available to a developer to secure their offset.

Detailed consultation has been undertaken with offset scheme participants and other interested stakeholders over the last twelve months to inform the development of the BCF Charge System. This report outlines the key findings of the consultation process and the BCT's response to these findings.

Stakeholder engagement and consultation process

Consultation with Biodiversity Offset Scheme participants and stakeholders has occurred in two stages. In the first half of 2021, the Department of Planning and Environment (DPE) conducted stage 1 consultation seeking feedback on the proposed changes to the BOPC. The BCT participated in this consultation. The outcomes of this consultation are outlined in a [Submissions Report](#) (DPE, 2021).

The BCT led stage 2 of the consultation process, commencing in June 2021 and concluding in April 2022. This was a detailed process involving:

- Multiple webinars and Q&A sessions open to all interested stakeholders
- Release of an issues paper
- Meetings with peak stakeholder groups and interested parties
- Interviews with 55 landholders and a landholder webinar and Q&A session
- A series of four workshops with accredited assessors
- A series of four workshops with an industry reference group
- Final public submissions process
- Meetings with peak stakeholders to discuss their submissions

There was strong participation in the consultation process. There was very high attendance at the webinars and active representation and participation in the workshops and meetings. This was complemented by informal engagement via phone calls and emails throughout the consultation period.

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Stakeholders represented in the process included:

- Development industry representatives:
 - Urban Development Institute and members
 - New South Wales Minerals Council and members
 - Cement, Concrete and Aggregates Association
 - Clean Energy Council
- Biodiversity Stewardship Agreement (BSA) landholders (including prospective landholders)
- Accredited assessors via a nomination process
- Ecological Consultants Association
- Infrastructure providers
- Peak environmental groups:
 - Environmental Defenders Office
 - Nature Conservation Council
- NSW Farmers
- NSW Government agencies
- NSW Local Government representatives
- Native Vegetation Panel

Ten submissions were received during the final public submissions process. These were from development industry representatives, ecological consultants, peak environmental groups, landholders and infrastructure providers.

Key issues and BCT responses

The following section summarises the key issues raised by stakeholders throughout the process.

There is a need for enhanced biodiversity credit market information

The strongest and most consistent view expressed throughout the stage 2 consultation was the challenge of obtaining market information if the BOPC was removed from public view. This was expressed by development industry stakeholders, infrastructure providers, ecological consultants, landholders and environment groups.

Most stakeholders understood the rationale for not having BCF Charge System pricing publicly available, due to the potentially distortionary market effects. Additionally, many participants highlighted that the public BOPC price and its volatility has distorted the market and prevented proper price discovery.

Nonetheless, members from all stakeholder groups expressed the need for enhanced market information to fill the information gap left with the removal of the BOPC and to enhance understanding and transparency of the new system.

The two major stakeholder concerns with not having BCF pricing information publicly available are:

- the need for early pricing information in project planning to assess the feasibility of development projects and BSA sites and to support developers to implement the avoid, minimise, offset hierarchy.
- asymmetry in market information if landholders are unable to access BCF charge information in the same manner as a development proponent requesting a quote from the BCT.

Ecological consultants also provided specific recommendations around additional market information and improvements that could be made to existing tools.

BCT Response

In response to the strong and consistent stakeholder feedback, the BCT is proposing to make the following sources of market information available:

- Provide a credit price-estimation service to both developers and landholders (or their agents) on a modest fee-for-service basis based on a simple, low-cost ecological assessment.
- Publish relevant, aggregated market information including typical BSA management costs, credit yields and allocation of species against the species credit model classification.
- Publish details of all BCF charge quotes issued (irrespective of whether the payment is made) after six months so the lag time on information on BCT charges is reduced.
- Publish type and number of credits paid into the BCF (without the charge) at the time of payment.
- Continue to publish BCT purchases on the public registers at time of purchase.
- Continue to publish the BCT acquittals report, reporting on credits purchased including purchase price and delivery costs.

DPE has also released and will continue to release a number of market tools to build on the existing spot price index and public registers, including the market sales dashboard and credit pricing guide.

The BCF Charge System will produce biodiversity credit charges that are too high or too low

There were strong and contrary views expressed that the charges issued by the new system will be too high or too low.

Industry groups and infrastructure providers

Industry groups and infrastructure providers highlighted the potential for significant cost increases under the new system relative to the current BOPC prices or the costs of establishing BSA sites themselves. They outlined the impacts this may have on project viability and house prices.

They argue that these cost increases are not sufficiently justified, in terms of the inputs to the cost-structure tools, the risk premiums and the BCT delivery fee.

They made specific recommendations that:

- The proposed 15% delivery fee was too high for large projects and should be capped.
- The proposed risk premiums (~25%) were too conservative and not commensurate with risk premiums in other settings such as insurance (10-20%).
- The land valuation method over-predicts land values.
- The cost-structure tool needs to include a larger BSA size category to reflect the efficiencies in management costs that can be achieved at this scale.
- The indexation method is volatile and potentially too high.
- The BCT requires total fund deposits (TFDs - the management money for BSAs) that are too high and this has flowed through to the cost-structure model.

Landholders and environment groups

In contrast, some landholders and environment groups expressed the view that the BCF Charge System may produce charges that price credits too low and that it favours developer interests over landholders and biodiversity. Landholders highlighted the impact this has on the viability of BSA sites as an alternative to other land uses such as agriculture or development. They noted that the charges set by the system need to help drive a sufficient market value for biodiversity.

Environment groups raised concerns that prices will be too low to provide sufficient incentive for developers to avoid and minimise impacts on biodiversity. They were also concerned that the models did not truly price ecological scarcity into the charge.

Both landholders and environment groups made specific recommendations that:

- Land valuation approach used was not appropriate as it had not kept pace with significant increase in land value in recent years.
- The cost-structure tool relies on using average factors such as land value and management costs. This is not appropriate as the BCF should be a premium option so above average figures should be used.
- The cost-structure tools need to adequately account for the in-perpetuity nature of the agreement and the opportunity cost to landholders of foregoing other potential income sources from their land in-perpetuity.
- The return to the landholder should be significantly larger than the TFD (management costs).
- The TFDs used as the basis of the cost structure model may not necessarily be sufficient. A process should be incorporated into the model to exclude TFDs found to be insufficient.

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- The cost-structure tool does not account for taxation implications for landholders, such as upfront capital gains tax.
- The system does not account for the landholder's holding costs.
- Landholders carry the risks associated with BSAs.

BCT Response

The BCT has considered the range of feedback provided and will make the following changes:

- A reduction in the delivery fee from 15% to 5% or \$120 (whichever is higher).
- A reduction in the risk premium from the proposed 26-30% down to 13-16%.
- A 20% cap on price increases, relative to the BOPC price, for credits price \$5000 or more under the BOPC, for a 12-month period.
- An adjustment to the indexation approach.
- A small change to the land valuation approach.
- Inclusion of a larger BSA size category in estimating management costs.
- Introduction of a price estimation service by the BCT, on a modest fee-for-service basis, available to landholders and developers.

The BCT has engaged experts to provide the best available land valuations as an input to the model. These valuations will be updated annually.

The BCT has used data on available TFDs as the basis for estimating management costs. These have been indexed to account for time of establishment, as well as adjusted to account for new components required for a BSA (e.g. ecological monitoring). The BCT's view is these represent the best available data. This data will be updated to incorporate new sites and indexed annually as an input into the cost-structure tool. The method allows for TFDs to be adjusted for future changes in the Biodiversity Assessment Method or the discount rate that may affect TFDs.

The cost-structure tools account for opportunity costs, holding costs, risk and capital gains tax to landholders by incorporating margins on both TFD and land value. These margins are commensurate with typical previous market performance.

The market soundings approach should be more clearly defined

While there was some support for using market soundings to help inform a charge, there were concerns expressed from environment groups and development industry stakeholders that there was not enough clarity or certainty around how the BCT would use market soundings.

Some landholders indicated that there should be a much stronger focus on market soundings in the model. In particular, where there are credits available in the market, information should be sought directly from these credit suppliers to understand the real cost of supplying the credits to inform the charge.

In contrast, environment groups, development stakeholders and infrastructure providers were concerned about the potential for inappropriate or vested influence over charges through the use of market soundings. They recommended a clearly articulated and documented process to manage market soundings.

BCT Response

The BCT will work closely with probity experts to prepare a rule to govern the market soundings process to be published on the BCT website. A key focus of this rule will be on managing risks of inappropriate influence over credit charges.

The use of market soundings will be subject to the independent assurance process.

Species credit model

There was a strong stakeholder view from all stakeholders that the categorisation of species in the species credit cost-structure tool should be made publicly available.

There was a concern raised from environment groups that the categories the BCT has used to inform the species credit categorisation do not have any biological meaning and the process does not consider the need to maintain a minimum viable population.

Some development stakeholders suggested that the separate cost for species credits fails to recognise that securing habitat through ecosystem credits will deliver conservation outcomes for species credits.

BCT Response

Following stakeholder feedback, the BCT is committed to making the species credit categorisation publicly available. The BCT will consider feedback provided on the categorisation annually, and if necessary amend the categorisation based on this feedback and expert advice.

The BCT has used the best available data, consistent with the threatened biodiversity data collection database, to assign categories, after considering advice from multiple independent experts. The BCT will adopt a continuous improvement process.

The BCT agrees that some BSA sites will have both ecosystem and species credits present, however:

- that species credits are those that cannot be assumed based on habitat presence and so not all BSA sites will have the species credit, despite suitable habitat being present, and a BSA cannot assume presence as can occur on a development site.
- the BCT has no guarantee that any payment for species credits will have an associated ecosystem credit so needs to calculate a price that is sufficient to allow that obligation to be met.
- Species credits have their own costs to supply, independent of the ecosystem credits, including costs to survey to determine presence and ongoing monitoring requirements.
- Currently 75% of BSA sites do not generate species credits or only generate credits for one species.

The current BOPC is problematic

Many stakeholders highlighted concerns with the current BOPC throughout the consultation process. These include price volatility, uncertainty created by quarterly price updates and anomalous pricing that does not reflect the cost of generating credits. Stakeholders raised issues with relying predominantly on a model based on credit-trade information when there had been such limited credit trading for the majority of credit types and most credit types have not yet been generated.

Landholders also raised concerns about credits being under-priced in the BOPC, with BOPC prices not sufficient to meet required management costs nor provide a landholder return. Environment groups expressed concern about the deficit being accrued by the BCT due to under-priced credits and the impacts of this on

biodiversity outcomes and/or government subsidising the true costs of biodiversity impacts rather than developers.

Conversely, many major project proponents and other developers indicated that current BOPC pricing was too high and expected to be able to meet credit obligations more cheaply via their own acquisition processes.

There was a general consensus that moving to a new system, with a cost-structure approach as a key tool, made sense in the current market conditions.

BCT Response

The BCT and DPE are committed to improving the current process for calculating payments into the BCF in response to the recommendations of the independent Port Jackson Partners Report ([2020](#)) into the BOPC. The BCT agrees that it is appropriate to predominantly use a cost-structure approach to calculate credit prices where there is limited credit trading and other market information available.

BCF Charge process

Development stakeholders and infrastructure providers both raised concerns about the length of time a quote for a BCF Charge issued by the BCT would be valid. The BCT had proposed a period of 12 months, which was deemed insufficient by stakeholders noting the length of time it takes to have a project approved and commenced. Instead, stakeholders advocated for quotes to be valid for a period of 3-5 years, so they had certainty of their biodiversity offset costs through project approval processes.

Ecological consultants raised concerns about the time period proposed for the BCT to issue a quote, noting an instantaneous quote is currently available under the BOPC.

As outlined in the biodiversity credit market information above, all stakeholders sought access to a quote for a BCF Charge without requiring a biodiversity development assessment report to help inform early project planning. Ecological consultants and landholders strongly advocated for landholders to be able to access a BCF Charge System quote as well as development proponents, to be used for BSA feasibility purposes and to reduce information asymmetry.

BCT Response

In response to stakeholder feedback, the BCT will extend the time a BCF Charge System quote remains valid from one to three years. Indexation will be calculated monthly on the predicted price to the time of payment. The exception to this is for credits affected by the 20% increase cap. The quote for these credits will only be valid until the cap expires in October 2023, after which proponents will need to seek a new quote.

Three years is shorter than the stakeholder request for quotes to remain valid for up to five years but is considered a suitable compromise. It balances the certainty stakeholders are seeking with the need to manage risk to the BCT of significant market changes over the life of the quote.

As outlined in the biodiversity credit market information section, the BCT is committed to offering a price estimation service to both landholders and development proponents based on low-cost, simple ecological information. This will incur a modest fee-for-service to cover the BCT's costs. Priority will be given to preparing quotes that are being used to allow payment to the BCF by a proponent.

Transparency and assurance processes

There were strong stakeholder views expressed that there needed to be transparency and assurance built into the system.

Environment groups, ecological consultants and development industry stakeholders all identified the need for stronger transparency. They recommended publicly releasing more of the information that will be relied upon to calculate the charge and providing a statement of reasons with each charge issued, including identifying which tools had been used to calculate the charge. Ecological consultants recommended that the BCT should publish which tool will be used for each credit type at the outset. Stakeholders also expressed the view that clear thresholds for transitioning between the tools should be set, such as the number of trades before a credit would trigger the statistical (econometric) tool.

Stakeholders supported the need for a strong assurance process, independent of both the BCT and DPE. Some stakeholders recommended this be undertaken by the Audit Office and believed the assurance reviews should be made publicly available.

BCT Response

The BCT is committed to enhancing the transparency of the new system in a way that does not distort market functioning. As outlined under credit market information

above, the BCT has committed to publicly release a range of information that will be relied upon to calculate charges. The BCT has also agreed to publicly release all quotes for charges six months after they are issued and publish the details of all credits paid into the BCF.

The BCT does not think it is appropriate to define clear thresholds for when the different tools will be used for different credit types or practical to publish a statement of reasons with each charge. Nor do we think it is possible to publish which tool will be used for each credit type definitively ahead of implementation. The system is built on the concept that the BCT may triangulate a price using a combination of tools, based on the market characteristics of the credit type at the point in time we are issuing the charge.

The BCT's commitment to transparency has also been evidenced through the detailed and open stakeholder consultation process that we have run in the development of the BCF Charge System.

DPE is designing an assurance process to oversee the BCT's implementation of the BCF Charge System. More information will be provided on the assurance process by DPE.

Credit scarcity and supply and demand

Some stakeholders, including landholders and environment groups highlighted that credits which are scarce and difficult to generate should have a higher cost. As credit availability declines due to the combination of ongoing development and other areas being secured in BSA sites (and their credits retired), then prices should naturally increase. Accordingly, they suggest that scarcity and credit supply and demand imbalance are factors that should be incorporated into the BCF charge.

Environment groups expressed a view that scarcity should be given sufficient weight in the model to drive developer behaviour to reduce biodiversity impacts.

BCT Response

The biodiversity offset scheme is based on the hierarchy of avoiding, minimising and offsetting impacts. The relative scarcity of ecological communities and threatened species is embedded into the Biodiversity Assessment Method.

The BCF Charge System does or can consider scarcity in a number of ways. This includes the market tightness factor in the econometric model and the predicted

relative availability of the credit type considered in both cost-structure tools. Market soundings can also be used for particularly rare or hard to source credits to better understand the likely cost of achieving offsets for these credit types.

The BCF pathway distorts the market

Landholders and some ecological consultants recommend that the BCF pathway should be an option of last resort for developers to meet their biodiversity offset obligation. In their view, developers should first be required to try to buy credits directly from credit sellers and/or prospective BSA holders to fulfill their offset obligation before they can make a payment into the BCF.

There were concerns expressed that the lack of liquidity in the market, the requirement for offsets to be met before development can commence and low BOPC prices for many credits mean the BCF pathway was becoming the routine means for developers to meet their offset obligations, to the detriment of landholders and market functioning.

Conversely, while some development proponents and infrastructure providers' preference is to buy credits directly from landholders or work with them to establish BSAs, they wanted the BCF to remain available as a first option to meet their offset obligation.

BCT Response

The BCF was introduced in response to development stakeholders requests for a fund to be available to meet their offset obligation. This has the benefits of enabling development proponents to meet an offset obligation quickly and outsource the delivery of the offset to an organisation experienced in delivering offsets and able to achieve strategic outcomes. It was initially foreshadowed under the 2014 Biodiversity Offsets Policy for Major Projects, but first introduced under the Biodiversity Offset Scheme in 2016.

The legislation enables the BCF to be available as a first option for developers. By including a delivery cost and risk premium above the credit price, the BCF Charge System should ensure the BCF sits at a price above market trading prices. Many development proponents may still choose to use this option, to reduce their own transaction time and costs or when credits are not available in the market.

When payments are made into the BCF, the BCT then seeks to purchase these credits from landholders or to work with landholders to establish new BSAs, acting

as a market intermediary.

Other issues

A range of other issues related to the BCT and the biodiversity offset scheme were raised throughout the consultation process. While these issues are outside the scope of this consultation report, the BCT and DPE are committed to exploring these issues further to see where improvements can be made to the BCT's program and the scheme.