

26 April 2021

NSW Department of Planning, Industry and Environment
 c/-Michelle Chung
 Director Biodiversity Offsets Scheme
 Environment, Energy and Science Group
 Locked Bag 5022
 Parramatta NSW 2124

By email: biodiversity@environment.nsw.gov.au; michelle.chung@environment.nsw.gov.au

Dear Michelle,

UDIA Submission on Proposed Changes to BOS / BOPC

The Urban Development Institute of Australia, NSW (UDIA) is the leading industry body representing the interests of the urban development sector and has over 500 member companies in NSW from across the full range of the industry. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

UDIA welcomes the opportunity to comment on *Strengthening the Biodiversity Offsets Scheme: A new approach to developer charges* (BOS consultation paper) currently on exhibition. UDIA strongly believes that good growth requires close collaboration between government and the development sector and accordingly we are grateful to engage with the Environment, Energy and Science Group (EES) of the NSW Department of Planning, Industry and Environment (Department) in considering changes to the Biodiversity Offsets Scheme (BOS).

UDIA has deep concerns with the application of the NSW Biodiversity Conservation Act generally, including pricing issues which this consultation seeks to address, as well as the Avoid, Minimise, Offset hierarchy within the planning process more broadly. We seek further engagement on all these issues. We offer the following recommendations to the BOS consultation paper, which are expanded upon within our submission.

- 1. Any changes should focus on providing more certainty, more transparency, and more credit creation within the system.**
- 2. UDIA supports public tender for BCT services, with clear and public KPIs to hold the process to account.**
- 3. Removal of the Calculator from public view is not supported without an adequate substitute for immediate pricing information. If the Calculator is to be removed from public view, then a BAM Spot Price Index must be in place to replace it.**
- 4. Any quote provided by the BCT should have the option to remain valid for up to 5 years.**
- 5. The BCT must be appropriately resourced with the right skill set to understand the commercial needs of its credit-creating and -purchasing customers and deliver timely responses with a customer focus.**
- 6. The transition period should be a minimum 12 months.**
- 7. The BCT should utilise the Fund to stimulate credit supply by considering purchasing surplus credits from Stewardship sites, and/or subsidising the TFD on proposed Stewardship sites.**

Background

When the Biodiversity Conservation Act (BCA) was being developed, UDIA called for the creation of a simple, fast and affordable option for offsetting biodiversity obligations. The idea of the Biodiversity Conservation Trust (BCT) was welcomed, and industry hoped it could fulfill such an option. However, we have expressed concern from the start about the complexity, unpredictability, and opacity of pricing under the BCT. We appreciate the consultation with industry currently underway to consider ways to improve the system as an opportunity to make it easier for our industry to achieve environmental objectives and outcomes.

This is essential given:

- The housing and construction sector accounts for approximately 7.5 per cent of the NSW economic output – and directly and indirectly generates 260,000 jobs;
- There is a consensus among all three tiers of government that peri-urban growth is essential to help meet the demands of growing state and local communities;
- The industry fully supports the principles of Ecologically Sustainable Development (ESD) as it is the best approach to align environmental goals with economic and social objectives;
- The industry makes a disproportionately strong contribution to creating jobs at a rate of 9 jobs per million dollars spent and supporting Australia's economic recovery from COVID-19; and
- The property industry is the largest user of the assessment and offsetting processes under the BCA.

During meetings with yourself as well as Mr Mike Mrdak on this topic, we have emphasised the need to provide industry with more certainty, increase the supply of available credits and improve government's understanding of the development sector's commercial needs to support the Premier's objectives of putting the customer first and addressing housing affordability.

The consultation paper under consideration, *Strengthening the Biodiversity Offsets Scheme: a new approach to developer charges* introduces the term "developer charges" with respect to biodiversity offsets. This seems to represent a notable shift in government's ethos on biodiversity offsets. UDIA points out that any biodiversity offsets and other "developer charges" increase the cost of developing land and are ultimately passed on to the consumer in the form of higher prices. "Developer charges" work against the priority to make housing more affordable in NSW.

UDIA advocates that developer charges / contributions should be spread among all beneficiaries. It is unfair to ask the new homeowner to bear the highest cost burden, whether it is paying for new infrastructure which benefits the wider community or conserving our precious ecology. Biodiversity conservation benefits all people in NSW and Australia, and accordingly, the cost burden of improving biodiversity and offsetting development which is required for a community's growth should be shared by all beneficiaries.

At the moment, the greenfield housing market is experiencing unprecedented growth in sales, and supply cannot keep pace with demand, which is resulting in higher housing prices. This is due in large part to a combination of record low interest rates and government incentives. Inevitably, those conditions will change, and development projects will face higher risks, and many will become less viable. The current burst of activity is producing a severe reduction in land supply for both housing and employment. Particularly in the regions where the BCA applies, almost all land that may be considered for future housing or employment development will be subject to significant biodiversity offsets. Therefore, it is critical that the biodiversity offset system is fair, transparent, easy to use and affordable.

Rationale for Changes

UDIA agrees the BOS and Calculator are in need of changes. However, we question the rationale for the changes outlined in the consultation paper related to negative impacts resulting from public access to the Calculator. In our experience, the total biodiversity offsets payment calculator (Calculator) charge is being used as the maximum price benchmark for project feasibility analysis because that is exactly what it is: the maximum price benchmark. The BCT is clear that it adds an administration cost and risk premium to its price. The development industry understands that the Calculator represents a pricing “worst case scenario” (at that point in time) for feasibility purposes. As a general rule of thumb, the development industry rationally assumes that private credits will be priced at around 80% of the total Calculator charge price. It is unclear how this transparency and consumer activity leads to “poor market dynamics” and a stifling of the BOS market.

We propose that the proper rationale for changes is to bring more certainty, more transparency, and more credit creation to the BOS.

Recommendation 1: Any changes should focus on providing more certainty, more transparency, and more credit creation within the system.

Transferring administration of the Calculator from DPIE to the BCT

The consultation paper proposes that the BCT will take charge of the Calculator and quoting process. Essentially, the BCT would control the whole process. The BCT would:

- Set credit prices
- Serve as the major purchaser of credits
- Serve as the consent authority for Stewardship sites providing the credits

UDIA does question whether this much control in one place is advisable. We appreciate that the consultation paper poses questions around assurance arrangements and promoting confidence in the BCT’s role. To that end, UDIA recommends that a review be undertaken of the BCT’s current and proposed functions, with an eye to those services being tendered out to assure optimal performance. The BCT could tender to provide all or some of the functions. Whether those services remain with the BCT or not, the provider(s) should work with clear and publicly visible key performance indicators to hold the process to account, including timeframes for providing quotes.

Recommendation 2: UDIA supports public tender for BCT services, with clear and public KPIs to hold the process to account.

Removing the Calculator from Public View

It is proposed to remove the Calculator from public view, while maintaining public access to the BioBanking public registers, the BOS public registers (for Biodiversity Assessment Methodology [BAM] credits), and the Spot Price Index for the BioBanking Assessment Methodology (BBAM) credits; as well as maintaining the option for proponents to contact the BCT for advice, enter negotiations with landholders directly or seek information through their agents or accredited assessors.

Again, UDIA emphasises the importance of providing certainty for the development industry. At present, it is possible to log onto the Calculator and get immediate credit costs at that point in time, providing useful data to inform investment decisions. Removal of the Calculator leaves insufficient options for adequate information. The Spot Price Index (SPI) tool only incorporates BBAM credits, providing limited and diminishing value over time. It needs to include a BAM credit portal as well.

We commend the Department for working to develop a BAM SPI and encourage its quick release. We also support the extension of the SPI with trend analysis tools for users of the SPI, improved mapping, and information on the cost-of-supplying credits in addition to the trading price of credits.

The other available public registers are clunky and difficult to navigate. Using them is less time- and cost-effective than using the Calculator. This loss of efficiency would increase costs for development projects.

For reliable pricing information under the proposal, a developer would need to obtain a quote from the BCT. This introduces problematic timing for the development industry:

- the potential variation in cost of a biodiversity offset obligation can be enormous. A reliable indication of the cost is needed as early in the development process as possible, in order to conduct a reliable feasibility analysis and make a decision whether to invest further.
- Under the proposal, a quote would not be available until the developer has a Biodiversity Development Assessment Report (BDAR). This is a large investment to make without some indication of site feasibility and will reduce productivity for the development industry.
- The consultation paper states that the BCT “would **aim**” (emphasis included) to provide the quote within 30 days. This added time only hinders the project feasibility process and ultimately slows down delivery of sites.

In short, UDIA is concerned that the market will be less efficient if the Calculator is removed.

Recommendation 3: Removal of the Calculator from public view is not supported without an adequate substitute for immediate pricing information. If the Calculator is to be removed from public view, then a BAM Spot Price Index must be in place to replace it.

BCT Quotes

The consultation paper proposes a new system whereby a developer would make an application to the BCT to obtain an offset obligation payment quote. A quote could be provided either after a BDAR is obtained, or after development approval that includes an offset obligation. For larger projects, which would apply to most of UDIA’s members, the BCT would **aim** to supply the quote within 30 days.

UDIA maintains that the Calculator should remain in public view to provide pricing information and we are concerned by a new quote-reliant system for the following reasons:

- Pricing information is needed very early in the development process to aid in the feasibility analysis and inform investment decisions. Under the proposal, the quotes are not available until after a BDAR or development approval. Both scenarios are too late in the process, adding unacceptable risk by requiring too high an investment without adequate information.

- Pricing information is needed quickly. The BCT is not currently equipped with an adequate skillset or understanding of the urgent commercial needs of its developer customers. Adding another month to the process adds holding costs, and we are not confident that quotes would always be provided on time. Experience with every other government agency shows there is a very real possibility of delay in administrative processes.
- How long would the quote be valid for? A valid period of less than 5 years would undermine confidence to proceed with development.

Development is a long, risky and costly process. Every project begins with a feasibility analysis which starts with broad inputs and expected fluctuation rates that are refined to enable sound investment decisions. While most inputs are easily known, the biodiversity line item ***is not known at that time***, and the potentially large price fluctuation can kill a project from rezoning to commencement.

For comparison, a road might have an expected fluctuation of 10-15%, which can be managed. However, because of the volatility in the BOS, once an offset obligation is established, the fluctuation in biodiversity offset pricing can be 200%, which is unmanageable.

UDIA strongly urges the Department to make the most of the opportunity and provide the option for a 5-year quote from the BCT. Proponents may choose a 5-year quote to take a project from site feasibility analysis through to approval. UDIA analysis shows that in NSW, it takes between 7-10 years to bring a development from initial feasibility to delivery of new houses; about two-thirds of that time involves getting to an approval before starting the actual subdivision construction. See Appendix which outlines the process in detail.

Hence, 5 years is a reasonable quote timeframe to boost confidence to deliver sites and provide the certainty needed to enable critical financing. This is especially true in regions where available land supply is now mostly constrained by high biodiversity values.

Figure 1. NSW Residential Land Development Process



A long-term quote would boost the attractiveness of utilising the BCT and paying into the Biodiversity Conservation Fund (Fund) to fulfill offset obligations. We acknowledge this has the potential to reduce interest in private Stewardship sites. However, we believe the Fund could be used strategically to stimulate private credit supply. Please see our recommendations in that regard detailed below under “Market Support”.

Recommendation 4: Any quote provided by the BCT should have the option to remain valid for 5 years.

Recommendation 5: The BCT must be appropriately resourced with the right skill set to understand the commercial needs of its credit-creating and -purchasing customers and deliver timely responses with a customer focus.

Transitional Period for Further Refinements

A transition period of 6 months is proposed, during which time further consultation will occur.

UDIA does not believe 6 months is long enough to fully address the complex issues, nor for the development industry to pivot to the new system. As outlined above, development is a long process and changes to assumptions can easily derail a project. We encourage a period of at least 12 months.

Recommendation 6: The transition period should be a minimum 12 months.

Market Support

Please read our comments above regarding the removal of the Calculator from public view. We emphasise:

- If the Calculator is to be removed from public view, then the BAM Spot Price Index must be actively in place to replace it.
- A State of the Market Report, whilst useful and supported, is not a replacement for making short-term feasibility decisions.
- A Compare the Market service sounds interesting and positive. UDIA would be interested to discuss this in more detail.
- For transparency, UDIA would support making quotes publicly available on the BCT website.

UDIA encourages the Department to consider ways to stimulate the supply of credits in the private market. As stated earlier, the development industry prefers certainty and to minimise risk. Currently, it is easier and less risky to settle offset obligations by paying into the Fund rather than setting up an offset site or finding private credits. This is primarily because of financial disincentives to setting up Stewardship sites, where the cost versus return is not balanced. Many good conservation sites are not viable under the current system, leading to low supply and difficulties in finding matching credits from a trusted source.

The Fund has received \$30 million in developer payments as of March 2021 which the BCT will use to settle the pertinent offset obligations. UDIA encourages the BCT to explore the potential to utilise the Fund to stimulate more credit supply and support the maturation of the private credit market. The Department should consider:

- The BCT could purchase surplus credits from private Stewardship sites.
Setting up an offset site for the purposes of retiring credits has been likened to purchasing a whole car for parts; some parts are utilized, but the rest is mostly unused and often has little present value to the landowner in the credit market. This reality is a disincentive to set up an offset site. The unused credits could be sold to the BCT at the Spot Price, and the BCT could stockpile these credits until demand is presented. Such a system would provide confidence that the site would be fully utilised and generate greater interest in establishing offset sites overall. We note that the development industry is well equipped by virtue of skill and land holdings to participate in supplying credits if the proposition is commercially viable.

- The BCT could subsidise the total fund deposit (TFD) on proposed Stewardship sites for a period of time. This would make more Stewardship sites viable and thereby create more supply. That in turn would lead to more private trades. More trades would provide the increased data flow that the credit pricing model seeks to improve its operations.

Recommendation 7: The BCT should utilise the Fund to stimulate credit supply by considering purchasing surplus credits from Stewardship sites, and/or subsidising the TFD on proposed Stewardship sites.

Conclusion

The UDIA appreciates this opportunity to offer our recommendations aimed at improving the Biodiversity Offset Scheme and addressing pricing issues; however, we maintain our strong concerns with the application of the Biodiversity Conservation Act in general. The BCA has added uncertainty, complexity and cost to development in NSW. The application of the Avoid, Minimise, Offset hierarchy is particularly problematic for industry, while it does not seem to be delivering optimal ecological outcomes.

UDIA seeks further meaningful engagement with the Department on not only pricing issues, but the application of the BCA more generally. We request that the Department work with UDIA to set up a development industry workshop with the aim of improving the BCA to bring more certainty for industry and better conservation outcomes for all of NSW.

Please contact Elizabeth York, Regional Manager at eyork@udiansw.com.au or 0434 914 901 with any questions and to arrange further engagement.

Yours sincerely,



Steve Mann
Chief Executive
UDIA NSW

cc: Paul Grimes PSM, Coordinator-General EES

Appendix



NSW Residential Land Development Process Map

