

Inland Rail Biodiversity Offsets Program NSW



Inland Rail Biodiversity Offsets program – NSW

The Australian Rail Track Corporation (ARTC) must acquire biodiversity credits in order to meet the Inland Rail offset obligations for NSW.

During the construction of Inland Rail in NSW, there will be some unavoidable impacts to biodiversity.

To compensate for these impacts ARTC must buy biodiversity credits and retire them in accordance with the NSW *Biodiversity Conservation Act 2016* (BC Act) and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

What are biodiversity credits?

Biodiversity credits are created by protecting and managing native vegetation communities for biodiversity gain. Vegetation is protected in perpetuity under a Biodiversity Stewardship Agreement (BSA) and overseen by the NSW Biodiversity Conservation Trust (BCT). The credits, once approved by the NSW Government, are available for purchase.

There are two types of biodiversity credits:

Ecosystem credits - are associated with Plant Community Types (PCT).

Species credits - cover habitats for threatened species that are associated with specific habitat features (e.g. hollow-bearing trees).

To ensure ARTC delivers biodiversity offsets which comply with the NSW Government's Biodiversity Offsets Scheme (BOS), Inland Rail is:

- Assisting landowners to establish new BSA sites on their properties
- Purchasing existing biodiversity credits from the offsets market
- Entering options to purchase proposed biodiversity credits from landowners completing their own BSA application.

Biodiversity offset sites protect habitats for generations to come





Selling biodiversity credits to ARTC

There are two types of credits landowners can sell to Inland Rail.

- Existing credits are approved by the BCT and are currently available and listed on the Biodiversity Offsets and Agreement Management System (BOAMS).
- Proposed credits are created through a new BSA application or an amendment to an existing BSA site.

To view a list of the credits Inland Rail is seeking, visit the NSW Government's Credits Wanted Register. The credits wanted list is updated approximately every three months.

Applying to ARTC to sell credits

How do I approach Inland Rail to offer credits?

1. Submit a formal Expression of Interest (EOI) to Inland Rail through our various biodiversity offsets tenders.
2. Submit an EOI directly to Inland Rail. If you believe you may have existing or proposed credits which meet our requirements, please contact the Inland Rail Biodiversity Offsets team to discuss your property.

How do I submit an EOI to Inland Rail?

For open tenders, if you wish to respond to a formal tender, you must register via TenderLink.com/InlandRail to access the tender documentation and lodge your tender.

Alternatively, you can contact the Inland Rail NSW Biodiversity Offsets team with an EOI if you are wanting to sell existing credits or if you have proposed credits that could be generated on your property for ARTC to purchase.

What happens if Inland Rail proceeds with my EOI?

Depending on what credit types you have (existing or proposed), Inland Rail will begin a desktop assessment to confirm that the credits are the right ones needed for Inland Rail's NSW biodiversity offsets program.

If the credits are needed, the NSW Biodiversity Offsets team can explain how you can establish or sell credits.

Before any further discussions begin after the initial desktop assessment, a Confidentiality and Probity Deed Poll must be signed by all landholders of a proposed BSA site or owners of existing credits.



Checks by ARTC for proposed biodiversity credits EOI

Inland Rail completes due diligence on the property and on the registered landowner such as:

- Does the landowner's property contribute to local or regional biodiversity values (i.e., is it within a wildlife corridor or adjacent to a protected area?)
- Who owns the property? (i.e., is it a Crown Lease, or are there encumbrances such as a mortgage or other security interest?)
- Is existing vegetation already protected under other mechanisms, such as voluntary conservation agreements, or Property Vegetation Plans under the *Local Land Services Act 2013*, etc.
- ARTC completes a financial due diligence assessment on the registered landowner (financial statements are required).

We work with landholders to establish a stewardship site on their property and generate credits.

Contracting with ARTC

Selling existing biodiversity credits

After acceptance of your EOI, you will be asked to submit an offer to ARTC for the purchase of biodiversity credits. The offer must be an 'open book' style and provide breakdown of the offered credit price, including:

- Total Fund Deposit amount, if not already paid
- Opportunity costs, being the costs incurred by you to generate the credits, including profit.

ARTC will negotiate in good faith and in accordance with procurement and probity requirements.

ARTC completes a financial due diligence assessment on the registered credit holder (financial statements are required).

You will be asked to execute ARTC's Credit Purchase Deed, which is a legal contract setting the terms of credit sale, including the Purchase Price of the credits. ARTC will not accept amendments to the deed template. You can download the template deed and explanatory statement from

Inlandrail.artc.com.au

Once the offer is accepted and deed executed, the commercial sale of credits can occur.



Selling proposed biodiversity credits

We work with landowners regardless of whether you require assistance to develop a BSA site or if you plan to do so yourself. Please inform our Biodiversity Offsets team of your situation in your EOI.

In both circumstances, ARTC will ask you to sign an In-Principle Agreement. This is ARTC's commitment to a landowner that:

- ARTC may purchase the biodiversity credits subject to further assessment
- You can facilitate access to the property and
- You will not do anything that compromises the condition of the vegetation being proposed to offset.

The agreement also requires that –

- You, except with prior written consent of ARTC, would not permit any act that would impact the potential for biodiversity credits to be generated; and
- You would not initiate or participate in discussions/ negotiations or enter into agreement with any other persons for the sale of the same biodiversity credits generated at your property.

The agreement allows you to terminate the agreement, at any stage, should you wish to do so.

The In-Principle Agreement is a legal document that provides time allowances for the generation of credits for ARTC purchase.

Contracting with ARTC Continued

Confidentiality and Probity Deed Poll

ARTC will ask you to sign a Confidentiality and Probity Deed Poll. The deed poll will also allow you to declare any conflicts of interest with current suppliers to ARTC and Inland Rail.

The deed poll must be signed before ARTC can enter into a commercial transaction with you.

A Deed Poll protects landowners and ARTC so both parties can progress with confidence.



How do I generate credits?

Credits are generated through an application made to the BCT for a Biodiversity Stewardship Agreement (BSA).

Prior to applying, you will need to contract an Accredited Assessor (AA) to undertake field work on your property.

An AA will conduct field work in accordance with the Biodiversity Assessment Methodology (BAM) which will investigate the Plant Community Types (PCT) on your property, potential ecosystem credit generation and any credits that could also be generated through species habitat (if applicable). Note, not every site will have both ecosystem and species credits.

Your AA will then collate this information into a document called a Biodiversity Stewardship Site Assessment Report (BSSAR). This is submitted to the BCT with your BSA application for assessment.

Once the BCT have assessed and approved your Biodiversity Stewardship Site, the credits can then be generated and sold to ARTC.





Offer and Negotiation

You will receive an offer letter once ARTC complete its due diligence assessments and you have signed the Confidentiality and Probity Deed Poll. The offer letter contains ARTC's best offer to purchase the biodiversity credits from you and can include (if applicable) recognition of the investment made to prepare a BSA application on your behalf.

ARTC's offer will comprise two parts:

- **Part A** – Total Fund Deposit (TFD): This is a fixed amount that represents the Management Plan costs under the BSA on the land which the credits are generated. The TFD is paid annually to the landowner in perpetuity.
- **Part B** – Opportunity cost to landowner for entering into a biodiversity conservation land use. The Part B amount will be based on a 'rate per hectare' and will consider:
 - Your costs to enter into a BSA with the BCT including taxation, legal and accounting advice.
 - A diminution of land value from the land's current or best use to a conservation land use. No agricultural production is permitted within a BSA site (i.e. cropping, grazing).

If you do not agree with ARTC's offer, a counteroffer may be acceptable with justification provided (i.e., other costs incurred, land valuation report, etc).

Execute Credit Purchase Deed

A Credit Purchase Deed is a legal contract setting the terms of credit sale, including the Purchase Price of the credits. ARTC will not accept amendments to the deed template.

You can download a template deed and explanatory statement from Inlandrail.artc.com.au

Both parties must execute the deed. The landowner may withdraw from the contract provided, subject to ARTC's explicit consent.

Key terms

Biodiversity Stewardship Agreement (BSA) with the BCT

- The BCT is a government agency within the Department of Planning and Environment (DPE), with an independent Board
- A BSA is a legally binding contract between the registered landowner and the BCT
- BSAs are registered on the land title with Land Registry Services and publicly available in property searches
- A BSA may comprise some or all of your property or lots, providing that it is contained within a single property ID
- In managing your BSA site, you (or a contractor) will be required to undertake management activities outlined in a BSA Management Plan monitored by the BCT
- The TFD covers all expected costs for managing the BSA site for the life of the agreement (20 years) and then for maintaining the BSA site in perpetuity
- You will be obligated to undertake "passive management" when your agreement commences e.g., no interference with native vegetation or species habitat.
- Active management begins when the TFD is paid to the Biodiversity Conservation Fund (BCF) in full.

To learn more about biodiversity offsets and BSA's, visit the BCT website at bct.nsw.gov.au

Sale and transfer of credits

Once the offer is accepted and deed executed, the commercial sale of credits can occur once the BSA has been approved and the credits created and issued to you. At settlement, ARTC will make two separate payments:

- **Part A** – TFD will be paid directly into the Biodiversity Conservation Fund (from which you will be paid annually); and
- **Part B** – Opportunity cost will be paid directly into an account of your choosing.

The TFD funds the management actions required on the property as detailed in a BSA Management Plan.

How long can it take to assess my BSA application?

For proposed biodiversity credit sites, a BSA application can take up to 18 months to prepare and be assessed by the BCT.

If you have existing credits, this time frame has already occurred.

What is in a BSA Management Plan?

The following management activities detailed in a BSA management plan will be covered by the annual payments from the TFD:

- Fire for conservation management
- Native vegetation management
- Threatened species habitat management
- Feral pest activities
- Invasive weed management activities
- Monitoring and reporting.

Find out more

To learn more how you can participate in Inland Rail's Biodiversity Offset program in NSW and to register your interest, our NSW Biodiversity Offsets team on IRNSWBioOffsets@artc.com.au



Want to know more?

ARTC is committed to working with landowners, communities, state and local governments as a vital part of our planning and consultation work, and we value your input. If you have any questions or comments, please let us know.

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