Supplementary Submission No 35a

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Henribark Pty Ltd

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Supplementary submission to the NSW Upper House Inquiry into the Biodiversity Offsets Scheme

Dear members of Committee 7

Please accept this supplementary submission to the inquiry. I have listened to the presentations of many of the hearing participants and the lines of questions that have been asked by members of the committee. As a result of this – and my own inability to discuss much about the stewardship site we manage owing to time constraints – I have tried to prepare a series of discussion points which I present in the following paragraphs.

As many of these paragraphs relate in a spiderweb-like manner to others, it was hard to determine the best order in which to present them. If the thoughts appear to leap around, I hope that you will understand this and I look forward to further opportunity to discuss in greater depth if desired. I recommend looking briefly at the headings for each section to see if an idea is better developed elsewhere in this submission.

I trust that the committee will consider this extensive supplementary submission. I am very happy to discuss with the committee the matters raised here, and the mechanisms I have identified in the recommendations.

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Complexity of the underlying assessment process

There were a number of participants (from a variety of different organisations) in the hearings talking of the complexity of the system. I accept that they would like something more straightforward, but the truth is, biodiversity is complex!

NSW has more than 7,000 species of vascular plants, well over 1,000 vertebrate animal species and innumerable species in invertebrates, fungi and 'lower' plants. Yet, we consider that there are only about a thousand of these that are 'significant' and have listed these on the *Biodiversity Conservation Act 2016* (BC Act) as threatened. As a result, the habitats in which these live, and indeed the very locations they inhabit, need to be rigorously assessed to determine that the habitat is not only suitable, but in the instance of providing conservation habitat, prove their presence. Habitats range from having only a few dozen 'obvious' species per hectare (such as in the drier rangelands in the western parts of the state) through to maybe thousands of species – and often well above 100 vascular plant species alone – per hectare in areas such as the complex rainforests, richer-soil grassy woodlands and open forests and even the sandstone areas immediately around Sydney. In my work I have 'cracked' 90 species in a 20 m x 20 m quadrat on 4 occasions – once in a type of dry rainforest known as 'semi-evergreen vine thicket' (an endangered ecological community), once in a grassy white box woodland near Inverell (a critically endangered ecological community), once in the Cumberland Plain (another Critically endangered ecological community) and once in sandstone country north-east of Lithgow (not a listed community in any way). This shows how the need to do the assessment rigorously, and apply the appropriate searches, is a critical part of the complexity.

Habitat assessment in the Biodiversity Offsets Scheme (BOS) requires the consideration of at least 16 factors and often 18 factors at each assessment plot. These are the diversity and spatial area coverage of the 6 different plant growth form groups (trees, shrubs, grass and grass-like, herbs and forbs, ferns and a catch-all group 'other' where we park things like vines, twiners, cycads, grass trees, palms and mistletoes) – a data point for the diversity of each group and a data point for the combined coverage of each species in each of the groups; the diversity of tree stem diameters; the presence of canopy regeneration (taken to be tree seedlings / saplings with a stem of less than 5 cm diameter at breast height); the amount (in metres length) of fallen woody debris of more than 10 cm diameter; the presence of hollows; the amount of natural leaf litter on the ground surface; and the amount of high-threat weeds. Myself and others spent months working through the list of the vascular plant species in NSW and assigning each to the most likely growth form that species would show as an undisturbed, mature adult. This work was published in the scientific literature and remains a well-reference paper. Like other parts of the science behind the BOS and the Biodiversity Assessment Method (BAM) this work has been peer-reviewed, published as open access papers and underpins the science of the process.

Yes the BOS is complex – but you should expect nothing less for biodiversity and neither should you expect that – just because we all see and hear and smell biodiversity every day – it is something that just anyone can do. I spent 8 years in formal training at university to have the skills I have now, and

more than 30 years have elapsed since I published my first work on assessing and mapping native vegetation.

This complexity is often complicated by the consideration of 'like for like'. This term has a legislated meaning – the same threatened ecological community or the same vegetation class (a category that groups similar vegetation communities) at the same or higher extent of disturbed / cleared state, or the same threatened species when that is the point being considered. It is not that complex – certainly it is less complex than the biodiversity itself, but is a reasonable approximation of the more amorphous form nature shows. Additionally, the restriction on the ability to offset impacts to vegetation types to a spatially-limited area within NSW (though that area can be large as sometimes the same vegetation types extend across many hundreds of kilometres) means that the amount of variability captured in a trade is limited to being most similar. While species distributions may cover much of the state, the requirement for the species to be proven at an offset site, while it can be merely assumed at an impact site, mean that there is a gradual securing of more confirmed habitat for the species.

Additional complexity in the scheme arises when the 'variations' are followed. These are allowed only to the BCT and in a way dilute the value of the scheme and permit impacts to a threatened entity that don't result in the consideration of the same entity or even one closely related. An animal can be offset with another animal, and a plant with another type of plant, in each case at the same or higher threat status.

RECOMMENDATION: The committee recommends that the legislation be amended to require that the variation rule for a species credit be restricted to a species within the same family as the impacted species, and at the same or a higher threat status.

This will mean that the species are then treated in a similar manner to the ecosystem credits, and the pool for offsetting is restricted to those with a greater similarity and a higher threat, so that species avoidance gains a greater impetus in the design and delivery of impacts from development.

Long-term costs of conservation

Much is being made in this inquiry of the windfall gains made by some. This actually comes across as the committee making the inference that biodiversity has to be a socialised item – that is, no one should deserve to identify the value of biodiversity from a conservation outcome.

This attitude is actually working against getting the best outcome of the BC Act. You see, if credits are more expensive, leading to a higher return to the provider, then the costs of acquitting offset obligations by developers is also higher. As developers are generally driven by a profit motive, anything that works against them maximising that profit is not desirable. Higher credit prices means simply that there will be more avoidance. The avoidance is purely driven by costs of the development – not a desire to not impact on biodiversity. Sydney's suburbs are evident proof of the fact that biodiversity doesn't mean anything to a developer.

So, let us consider the costs of conservation. And not the immediate, election-cycle costs, but the costs in perpetuity. That is how long a national park or a biodiversity stewardship is considered to last. In the table below I will give a very basic example of three different types of biodiversity reserve. These are the classic, state-provided conservation area (national park, nature reserve, state conservation area); a biodiversity stewardship (BSA); and a not-for-profit conservation area (such as Bush Heritage) (PC).

State: These reserves are identified through act of state parliament; meet certain criteria (inscription on title, active and publicly visible management plans, provide to the 'comprehensive, adequate and representative' prioritisation criteria); require staffing (including the purchase of contractor services), maintenance and administration; revocation / part-removal (say for a road) requires approval of the party/coalition with most votes in both the lower and upper house (legislated instrument) (political); perpetual and binding on the state (although subject to potential political interference depending on 'priorities'). These are funded through the supply of funds from the government coffers, generally through the Expenditure Review Committee process and subject to an annual process of competitive haggling with other agencies, priorities, ministers and public-acceptance. National Parks and State Conservation Areas have public visitors which adds to the cost burdens of management through maintenance of facilities, roads, fences and other assets that are used by the public.

BSA: identified by a willing landholder and consented to by the head of the environment agency; meet certain criteria (inscription on title, active and available management plans often in the public domain, where credit-generating species are present those are managed for in a positive way); acquire and pay for the services of (mostly local) contractors to undertake management actions (or landholder can do themselves if physically capable, skilled and authorised); can only be revoked by agreement of both the landholder and the head of the environment agency (apolitical); perpetual and binding on all future landholders. These are funded through the sale of credits to development projects that result in a single transaction to cover all future costs. People may be invited on to the property, but it is not publicly accessible.

PC: identified by willing landholder (no involvement of the state); criteria indeterminate and often dependent on a decision of the NGO board; management plans can be requested (not publicly visible); managed for conservation outcomes and often science-driven; require staffing for maintenance, with no clarity on the requirements of those staff, their pay rates, their skills level or the tasks they will perform; can be revoked at any time if the land is sold (there is no requirement to inscribe on title); no obligations on future landholders should the NGO be wound up. These are totally reliant on the provision of funds through public donation, philanthropy and (as has happened to me several times while walking through shopping centres) targeted 'begging' by people who are paid to try and obtain more 'subscriptions'. People may be invited onto the property, but it is not publicly accessible.

Over time, the costs continue to add up for both the state and PC variants of the conservation spectrum. Indeed, if a state reserve has 1 staff member of moderate skill level, administration and manager, maintenance and monitoring, this can be well north of $150k per year for a small reserve in Sydney (check the costs of Mulgoa Nature Reserve for instance). Additionally, national parks and state conservation areas need to cater for visitors. They are dedicated on the premise that there will be people visit, with their rubbish, their noise and their expectation of clean toilets and adequate parking. After 20 years, the average small reserve, without any inflation pressures, has likely cost the state well over $3 million (20 x $150k). It is of note, of course, that these costs do not stop after 20 years, but continue indefinitely, adding the same amount (or more with inflation) every year to the cost of administering that reserve, and primarily for the public outcome, not the conservation outcome.

By contrast, a well-funded BSA (with an adequate Total Fund Deposit (TFD)) has a singular cost (all future transactions are bundled into one value). The investment of the funds received through the sale of credits (by the NSW treasury on behalf of the BSA) is providing for the perpetual

administration of that site. The management of the site should never again draw on the public purse or have a need to seek a suitor (through philanthropy) or the public directly (through subscriptions or donations). It is, however, this question of adequacy that has the most concern and is something the committee can recommend.

RECOMMENDATION: That the committee require the BCT to subject the costs identified in a BSA application for the TFD value to scrutiny by a suitably-qualified economist, such as an agricultural economist, agronomist, environmental economist or combination of these. True costs of implementing all of the required actions from BAM Table 6 and the relevant Table 7 actions on the site needs to be quantified, and an adequate buffer implemented to ensure that costs are not overwhelmed by inflation before the site becomes Active and payments from the treasury-managed fund commence to the landholder.

When is a reserve not a reserve

There is a lot of misunderstanding about the use of the word 'reserve'. The first thing to note is that the only category where a reserve is intended for the purposes of nature is a nature reserve, as constituted under the *National Parks and Wildlife Act 1974*. Council reserves, and other landholdings with the name reserve (including recreation reserves in Crown lands) are NOT meant for their nature-oriented outcomes. Indeed, recreation reserves are usually intended for sports fields, council reserves for picnic areas and playgrounds and crown reserve, which is land that has not been allocated into a 'final use' in the planning scheme.

The allocation of one of these forms of land into a conservation-oriented outcome is not 'double dipping', unless the land already has in its management plan that biodiversity conservation is what it is set aside for. To consider that a reserve is 'double dipping' when the council reserve may not be managed for its biodiversity is a disappointing misunderstanding. Just because a patch of bush remains doesn't mean that there is an intent to manage it. In many cases these areas are mown or slashed, their vegetation hemmed in by mown lawn full of weeds and surrounded by urban development. They are not sustainable into the future and will continue to degrade without sympathetic management, with most of their biodiversity qualities lost in the future.

When a council-managed area is brought into a stewardship agreement there is a 'discount' in the number of credits that can be created from that site. This starts at 20% and increases in increments as various 'required management' actions result in fewer and fewer credits being created. Council reserves have to be relatively large to be worthwhile – or the credit prices sufficiently high to meet the requirements of a reasonable TFD.

RECOMMENDATION: The committee recognise that there are instances where council and crown lands can be brought into Stewardship that will advantage biodiversity outcomes and provide for the ongoing, perpetual management of that land at no ongoing cost to the ratepayers and taxpayers. This is not 'double dipping' and there are practices and processes in the BOS that identify that there cannot be double-dipping as this was to be protected against.

Clearing regulated under the BOS

This is one of the biggest misunderstandings I recognise in presentations to the committee. The focus of the committee inquiry is into the Biodiversity Offsets Scheme. Many of the issues raised about clearing have been for processes which were approved or implemented before the BOS came into play, or through processes that the state government has no control over.

Offsetting clearing associated with the Western Sydney Airport has been entirely managed by the Commonwealth. The land on which the impact occurs and the land on which they sought to offset (Defence Establishment Orchard Hills - DEOH) are both Commonwealth Land, so it is likely the legislation of NSW does not apply. In regard to the heritage protections of the DEOH lands, that relates to the military history, colonial artefacts (an aqueduct) and land usage of the site. It does not relate to the environmental outcomes, and indeed there is no more requirement to protect it than the retention of the existing vegetation extent. Media suggested that there had been an arrangement to use the site for offsetting already, but that was not confirmed or substantiated, and seemed to rely on the word of someone who claimed to know what had been arranged. While it may have been discussed, it was not brought up at any stage as an existing arrangement when offsetting of the airport was being considered and I had experience of western Sydney for many years by then. The condition of vegetation at DEOH was likely not part of any requirement under management of the 'heritage values' of the site. By making the offset apply to the land, this vegetation is being managed to improve in condition, through paying appropriate funds for the ongoing management.

Other clearing that was mentioned and discussed relates to historical clearing permitted under council and state government agency approvals processes that have been replaced by the BOS, but that doesn't apply to existing approvals. An approval remains active once commenced, which can mean some decades elapse and therefore it might seem like it is occurring under the current legislation. In general, it is very unlikely that clearing seen to be occurring at a point in time by someone is going to be investigated to find what approval (if any) applies.

As some have mentioned, there is also an array of 'pre-approved' clearing mechanisms that do not ever enter into the BOS. Largely these affect agricultural lands, and will include allowances for continuing activities and fire protections and other measures that are often 'self assessed'. When you consider that the majority of clearing in NSW is occurring under this legislation (mainly Part 5A of the *Local Lands Service Act* but also under the *Rural Fires Act*), the impact of the BOS on halting vegetation clearing in NSW is negligible.

Additionally, the effect of the BOS process is to generate an offset in an area of land that has a very high level of oversight. Offsets are potentially visited annually by staff of the BCT who are trained in ecology. They are looking closely at the adherence to management plans, the improvement of the ecological functions and the appropriateness of any management regime – which is also revisited every 5 years to potentially incorporate improvements in procedures and methods. This does not happen in the LLSA regulated mechanisms. An area of land identified as a 'set aside' is probably visited once, if at all, and the landholder's management is relatively unregulated.

And the main concern I have with the LLS process is that the staff have no requirement to be qualified ecologists (in fact, a degree is not necessary according to a recent job advertisement where legislation – including land clearing legislation – will be discussed with clients https://iworkfor.nsw.gov.au/job/senior-land-services-officer-291582) and their expertise is not necessarily in management of a functioning ecology – it is in agricultural practices. In addition, with the majority of the process of determining whether an area can be cleared being left to 'self assessment' and the knowledge of the landholder – without any requirement to check relevant data sources, acquire and consider expertise from a suitably qualified ecologist, and where the 'change of use' requirements are often so broadly interpretable that if an area of timber is used for grazing before it is cleared, then there is no change of use to clear it and continue to graze it.

RECOMMENDATION: The committee considers an opportunity to get better consideration of the ecological impacts of land management considered and remove (ideally through funding appropriately-qualified staff) the ability of a landholder to have full autonomy on matters often beyond their understanding. They may not have truly considered the cost impacts of the clearing they wish to undertake in regard to the future productivity from the area affected, let alone any ecological impacts.

Additionally, to see to a tightening of the activities considered 'continuing use' and a better regulation and review framework in place to regulate areas of set asides and other supposedly protected areas of agricultural lands including a requirement of landholders to acquire and maintain for a minimum period of 7 years proof that the publicly-accessible datasets (Bionet and vegetation mapping) were reviewed and any species impacts and impacts to threatened ecological communities recognised before the activity is 'approved' by LLS.

Price of credits

A simple question is 'what should be driving the price of credits?'

The simplest answer for this is 'the costs involved in providing the same environmental outcome'.

We all know that 'construction of an environment' is neither cheap nor easy, is subject to an enormous amount of uncertainty, and rarely done successfully. Mining site rehabilitation provides an ample number of attempts. One of the main reasons for this lack of success is generally funding – in both the temporal and 'volume' sense. Most projects don't allocate enough funds, and those funds are generally tied to a relatively brief (ecologically speaking) period of time. In determining the costs of credits for the BOS, the input activities over the first 20 years, and those continuing indefinitely, are taken into account, costed and a quantum of funds stored for this through the government's processes (the Biodiversity Conservation Fund) and 'drip fed' back to the landholder to implement the actions decided at the commencement. These costs may be determined 10, 20, 300 or more years prior (if the in-perpetuity nature of the agreements is considered). The other thing to consider is this.

Whatever the credits manage to be sold for is all of the economic productivity that land will ever be producing from the agreement date onwards.

There is no capacity for cropping, grazing, harvesting timber, subdividing.

There is limited capacity for nature-oriented, very passive tourism.

There is a hefty tax bill to be paid on all of the credit sales (essentially, Canberra gets a third of the money as 'capital gain').

There is risk to the landholder of ending up with an asset that has no value for themselves or the later owners of the property.

When credits are 'cheapened' by the downward pressure of developers trying to 'cut input costs', it also leads to less funds circulating in the community. Developers tend to look at the profitability of their developments, which they get through developing the land, selling it off and not considering it any more. They get a single payment for their efforts and replicate their model across the landscape.

It is a different metric to those of the BSA owner, who may get a payment over and above the TFD for the land, but they are also retaining the land and being paid to improve its ecological condition. Why should they not be allowed to profit from their efforts in the same way as a developer? The

efforts of the developer advantage only themselves and their shareholders (if any), and often the impacts on the environment are serious and deleterious. The efforts of the BSA holder advantage all of the biodiversity they manage. They advantage the humans living nearby through the provision of greenspace vistas, cooling effects on the environment through transpiration and if appropriate, pest control, pollination, water quality and reduced aerosols. Surely these are advantageous things that if costed into the 'profit' of a BSA are worth the payment?

So, why are credit costs determined by what the development industry is willing to pay? Surely the costs of credits should be set by what the vendor is happy to take in order to provide these ecological services to the community. At the moment the DPIE-constructed pricing tool makes credits cheaper over time (see table further in this document), and advantages the developers.

The role of the BCT as a 'price mediator' is deleterious to a true market developing. Even under the potential model where they will seek a quote for credit supply, they will still be seeking the credits from the market and essentially become an agent for the developer. The price they will charge the developer will contain a fee for their service (as it currently does) and therefore the BCT will be paying the landholder a lower value for their credits than if the developer had been required to negotiate a price with a supplier. The only time BCT will be able to avoid seeking the credits from an existing supplier is if the BCT itself acquires properties and generates a BSA for the site. This is immediately identifiable as insider trading. The BCT knew what was needed (by the developer approaching them directly), knew whether this was available in the market for the price they had acquired the obligation, and was able to look for a suitable offset site in the market if it didn't occur.

Like anything else in a market, the price for an item should be set by the producer. Any costs acquired 'downstream' are transactional and are not part of the costs of generating the credit, but merely 'marketing'. The middleman is taking their cut – and for what purpose? In this instance, the middleman is taking on the obligations of the developer. However, the supplier / producer does not have the opportunity to negotiate with the developer over a price, or justify why the price needs to be at a certain value. It becomes 'take it or leave it' option with the BCT being the one organisation or purchaser a producer ever deals with. Essentially, the government has produced a monopoly in the creation of the BCT and permitting it to take on obligations that are not first tested in the market.

Biodiversity credits are essentially nothing more than an input cost to the developer. Like concrete for a wind turbine base or highway, or steel for a railway line or wind turbine, biodiversity credits become an 'input cost' to the developer. In the same way as the developer will seek the best cost on these input requirements from suppliers, so too they should be doing so from the market where a provider identifies a price. By example, if you are looking to make a concrete path at home, you would talk to the concrete suppliers, price up the bags of concrete at the local hardwar stores, and then make a rational, economic decision to acquire your materials from the best-for-cost supplier. That may be the truck delivering a mini-load, or through buying cheaper concrete bags from a large hardware twice as far away as the local supplier. These are rational economic decisions made on the requirements for the project.

It is the same with biodiversity. It is an input cost to the project, and suppliers should be seeking prices form the market. While ever the BCT provides a price – which they themselves are seeking from the suppliers – the effort and costs of finding the offsets needed by a developer has been pushed onto government. Surely this should eb a cost to the developer? Why should the taxpayer be subsidising their development – and the subsequent profits?

The current DPIE Biodiversity Offset Price – Calculator (BOP-C) tool distorts the market price significantly. It relies upon a certain volume of trades, but also has no inbuilt step to account for increase in credit prices over time. It fails to recognise biodiversity as finite resources so the price for the last available impact credit should be $infinite. The Spot Price Index tool gives prices of the old-system credits and these are (in value) about half the value of a BOS credit for ecosystem and threatened animal credits but also significantly lower (sometimes of the order of 1-10% of BBAM credit values) the value of plant species credits as was mentioned by one participant. That this 'loss of investment through risk' could be considered acceptable, as it means significantly greater loss of biodiversity as the credits are no much cheaper to acquire, is concerning and suggests that again, the member of the committee making that suggestion did not have a problem with making biodiversity loss a 'loose change' cost to the developer.

RECOMMENDATION: A 'trading desk' be implemented, where any developer can identify what credits they require but have been unable to find a provider, and that request has to be visible for a minimum of 40 work days unless a transaction removes that need in the interim (but the need remains visible in the dataset but marked 'resolved'). In this way, the monopoly role of the BCT is removed, and when a developer approaches the BCT to resolve their credit requirements, publicly visible proof that they sought a price from the market first can be seen.

RECOMMENDATION: The pricing for a credit that is in existence should be determined by the price the market is willing to pay, not by a tool that has suggested a price. If no price exists, the developer should seek the credit from the market via an openly-visible 'wanted credits' webpage (a spreadsheet was used by BBAM and worked well) and if no one comes forward that has that credit or has expressed interest in generating the credit, the BCT can then nominate a price that needs to be significantly higher (by multiples) than the value of the most similar credit that has traded. This will engender a market, or act to stymie the impacts of development through avoidance due to cost.

RECOMMENDATION: Get rid of the Spot Price Index or have it display prices in BAM-equivalent values so developers understand the true cost of providing offsets and do not try to weasel a vendor down to a price they say 'it was traded at this price, match it'. The power of the vendor setting the pricing needs to be recognised – the current system has it inverted (developer gets to pay a particular price, whether it is a fair and real price or not).

Costs of the provision of offsets – fees

One of the impediments to undertaking small-volume transactions is a minimum transactional cost of the credit transfer fee. Currently this is $1590 for any number of credits (that is, for 1 credit or for 3000, the fee is $1590). This acts as a disincentive to the functioning of the market. When a developer can source all their credits needs from a single source, they will likely pursue that one source. Likewise, when a single site can supply an array of credits against a development, there can be efficiencies.

But, if a developer needs only a few credits of a single species (as may happen in Sydney), then the costs of the transfer fee may far exceed the cost of acquiring the credits. A more reasonable fee for transfers would be for a percentage of the credit sale volume – maybe 1%. The retirement fee (separate to the transaction fee) can be retained at the existing fee value – this is likely still going to only occur once per development. It would also incentivise the market in that the risks of not getting all of the credits needed to permit the development to proceed would not act to have developers put 'holds' on credits, being able to on-sell the credits they acquired (like shares) for only a very minimal (if any) risk. In the meantime, the BSA is able to meet its TFD more readily and actually

provide the offset, through commencing management actions quicker and therefore providing the offset before the impact occurs. This would also suit to maintain a better environmental outcome.

RECOMMENDATION: The committee recommends that the fee for the transfer of credits be amended to be a percentage of the credit trade value (such as 1%) to incentivise the commencement of actions on the offset site and permit the market to function more in the style of a stock market with the units being traded being the improvement in environmental conditions in sites under management. Removing the fixed fee to trade credits will allow those with development intent to acquire and hold credits if needed, on-sell those they cannot use, and increase the likelihood of triggering the commencement of beneficial management on an offset site before a development impact has occurred.

The separate fee for retiring credits (which is what happens when development will proceed) should stay at the legislated fee value, or could also be for a fixed percentage (which would also likely increase the fee paid to DPIE to cover administration costs).

Costs of the provision of offsets – management actions

There is a suggestion that the provision of actions is cheaper in the regions and more expensive in the cities.

Or, at least, that is the inference that could be drawn from the process offered by the BCT and on the calculator for credits that are of essentially the same or similar vegetation. The Lower Hunter Spotted Gum – Ironbark community and the spotted gum – Ironbark community of the northern rivers are ecologically almost identical (they also equate closely to the Cumberland Plain Woodland). However, there is a suggestion that the value offered for the northern rivers community – well short of $2000 per credit) is adequate to cover the costs of the actions in-perpetuity, while the Hunter and Sydney versions are making 4 to 15 times that value. While the development pressures may be less in the northern rivers, the costs of undertaking the actions (often in the order of $5000 to $8000 per credit) are the same. Possibly, even, the costs in the regional areas are higher. This is because the pool of available contractors is smaller, they have further to travel, and fuel and equipment are more expensive.

When it comes to pricing the actions the requirement is to cost as though a third-party is providing the work. This largely arises because these sites are typically rural, and per-worker rates of fatality in the agricultural sector are second highest of all industries in Australia (behind transportation). This means it is likely that the person signing on to the agreement is not the same person who will be seeing it to completion in 20 years. The rates of disabling injury are the highest in the agriculture and forestry sectors – the very sector that BSAs are focussed into.

Therefore, the agreement needs to consider that the work will need to be done by a contractor, and appropriate rates provided – including recognition that there are Awards and other minimum pay rates and allowances that also need to be considered. The evidence from the prices BCT advertises for the private land conservation works would suggest that they seriously underestimate the amount of time and effort that land management demands. This equates to allowing for a much-reduced value in the credits they acquire. This will lead to financial problems for BSA holders in the future and add a further level of risk to the enterprise.

RECOMMENDATION: The Committee recommend that all activities for a BSA be costed using assay tables and that the rates identified are driven by relevant Award rates of pay, minimum hours expectations (including travel to and from site) and the rates not be regionalised but treated as a

standard price statewide (inducing the improvement of wage conditions in regional areas and acting towards community development outcomes using environmental improvements as the vehicle.

Opportunity costs and the value of risk

The value of entering into a BSA are purely able to be encapsulated by the value of the credit sales. The land has no other source of income. Given the size of land that is suitable for stewardships are of the scale that they would otherwise be used for agriculture or forestry, or nearer to the towns and cities, some form of urbanisation, the provision of a biodiversity offset is a finite and essentially unchanging bucket of money that the land is producing for all owners from the time the agreement is entered until the eventual demise of the planet. These are in-perpetuity agreements. They have no 'end date' after which another source of income could be sought.

So, why shouldn't a property generate $10 million worth of credits? What actually happens to that money? Using my own experience I will break it down.

$3 million goes in taxes. Capital gains, and income / company taxes particularly.

$4 million goes into the TFD bucket to be drip-fed back to the managing landholder – this is the only source of income the block will be able to provide – forever.

$1 million goes into sourcing the site (land value), the agreement assessment, the time and effort needed to get the agreement processed.

That leaves $2 million of 'profit' for the landholder.

If it is a 100 ha site, generating beef cattle, in the NSW coastal regions, the annual income from that site through grazing cattle is probably of the order of $20,000 per year. Sometimes more, as now while beef prices are sky-high, and sometimes less, but over a 10-year period the return is probably about $200,000 in today's money. So, in 100 years the site is producing more money for the owner from being a grazing land patch than a stewardship site. The land would also continue to be degraded and lose a lot of the biodiversity value. There would be 'tidying up' of the fallen timber (ground fauna habitat), maybe a few patches of weeds that come and go, minimal recruitment of trees (as the cattle graze them off) and also likely to not be any shrub patches providing cover for small birds. What is the value of this biodiversity lost? Certainly, in 100 years, the value to the human and ecological community of the biodiversity is probably more than the $2 million that the landholder has 'profited'.

If the property is adjacent to an urban centre the potential to subdivide into 'small acreage' is very lucrative. The same 100 ha block may produce 30 separate parcels of land for those who want to live 'on a big block on the edge of town'. These will likely sell for over a million dollars each, which leaves a return of $30 million to the landholder developer. Even with taxes and costs, the landholder is walking away with more than a third of the return as income / profit - $10 million. Sadly, those blocks become mown lawns with exotic gardens, clearings around the house, a big shed, some token trees for shade (but no seedlings) and an influx of exotic plants as 'lawn'. That same 100 ha is totally lost to conservation.

So, please, tell me how it is 'unreasonable' for a landholder to not want to make a much larger sum from caring for biodiversity than the current opportunities around towns and cities would lead them to consider – if they didn't care for the biodiversity outcomes.

What are the risks? The simplest is an inability to sell the credits. This mainly happens because of poor choice of site, or poor information from the consultant when they initially consider the

potential. However, for those sites with the highest credit prices, the push for urban development is making the credits very desirable, and also forces the prices up, as biodiversity is a finite resource. At least the impact site will be very much smaller than the offset site. Typically offsets are about 5 to 1 or more of the impact site in size, so losing 1 ha to permanently protect and improve 5 ha is a good deal, as otherwise all 6 ha will be degraded over time by the effects of weeds, grazing, lack of fire and – essentially – lack of economic value of the native biodiversity.

Another risk is that the TFD will be insufficient and the landholder will need to 'add funds' to meet the required actions. This happens when site TFDs are not given sufficient 'fat' in their budget to cover the true costs of providing the services and the landholder is expected to 'chip in'. As a result the landholder is likely to do only the minimum required, resulting in poor environmental outcomes if they do not have the specialised knowledge needed to manage natural areas. In addition, the developer has managed to devalue their input costs to the detriment of the environment. Higher credit prices will come about from higher TFD values. But the landholder may not make as much 'profit' upfront and that is often all that they see – or that is explained to them – as ecological consultants are unlikely to be economists. A higher TFD means that they can afford to obtain the expertise required through contracting the services, increasing the funds spent in the region making an adequate TFD and a BSA in general, a good source of reliable funding for the regions – very important as droughts are likely to become more frequent under climate change and agriculture will suffer as a result.

The biggest risk remains the likelihood of a development proceeding. For 'small' developments (low-yield subdivisions, clearing associated with a shed, etc.) the likelihood of it not proceeding is relatively small, but remains while ever they cannot secure the credits they need to offset their proposed impacts. For big projects (transmission lines, bypasses, windfarms, rail lines) the risk they will not proceed is greater, and so is the potential to sell to the developer the credits they need to commence. However, these are also high-yield projects, have large public profiles and remain evident in the public view for years if not decades (western Sydney airport was first mooted in the 1960s, the land secured in 1983).

RECOMMENDATION: The committee does not concentrate on the 'profitability' of a BSA and looks at the fact that this is the cost of acquiring high quality, managed biodiversity outcomes at no cost to the taxpayer. The funds are likely to remain in the community, or be used for other benefits locally, rather than potentially being exported as profit to another country by the developing company.

Extent / areas over which offsets can occur

There seems to be a lot of concern from various local government presenters about the provision of offsets 'locally'. While this may seem worthwhile, there are many reasons why that is flawed.

Initially, the scale of local government areas – in NSW these range between the smallest LGA (5.7 km^2 Hunters Hill) and the largest LGA (Central Darling, 53,300 km^2). To limit offsetting to a single LGA is nonsensical for other reasons – primary of these is that the biodiversity tends to follow land characters that don't define (nor are defined) by human-imposed boundaries. The similarity of vegetation across the 15 local councils in western Sydney is greater than that within just one of the adjacent councils (Wollondilly). However, the opportunities to offset in Liverpool and Fairfield are much less than the opportunities to offset in Penrith and Camden. In fact, trying to preserve small areas of vegetation in an urban matrix may be counterproductive. It may be thought that some great outcome is achieved, while the degrading factors continue to occur and in a few decades the areas left are mere shells of their former glory, and fragmentation and urbanisation have continued. At least larger areas of more intact vegetation and that which provides connectivity across the

landscape retains most of the ecological function and has greater resilience to disturbance and threats. It also provides for climate resilience.

Biodiversity works on scales largely determined by geology and rainfall and temperature. Sometimes these can be similar across relatively small areas (Cumberland subregion – western Sydney – is 0.3% of NSW), while others can be very large (those west of the Great Dividing Range). They form natural units within which there are many similarities. An area offset within the same subregion will be quite similar biologically, even if distant.

So, what is allowed by the BOS? What offsetting is allowed is variable but highly restricted. In the case of ecosystems and threatened ecological communities, it is into the same threatened community, or the same vegetation class (categorised by clearing extent), in the same subregion or an adjacent subregion, or within a subregion that is within 100 km of the outer extent of the development. As these are treated as a unit (type and location), this limits the pool of offsets available.

Species are a different matter, and can be offset wherever they occur within NSW. Given this is the closest similarity possible, and species presence must be confirmed, it ensures that the offset matches.

Things become more complicated when the BCT has difficulty finding an appropriate offset and can vary further – to a wider pool of communities or almost as wide as possible when dealing with species. In the latter case, the variation is too broad and should be narrowed.

RECOMMENDATION: The variation rules for species credits should be constrained to permit offsetting of an impact only to the same biological family of organisms, at the same or higher threat status, within NSW. In this sense, the variation will allow an orchid to trade for an orchid, but not a tree for a fern (as is currently allowed), or in animals, one of the threatened parrots for another threatened parrot, or a dasyurid for another dasyurid. It would mean for instance that koalas can only be offset by koalas, as it is the only species in the family.

Roles of the BCT

The BCT role in the BOS is very complex.

They have the role of approving the creation of the credits on the BSAs that are assessed by them.

They have the role of receiving funds from developers for 'obligations' they are asked to take on (and it is unclear if they can refuse to do so).

They have a role is establishing what they describe as a 'fair price' for credits (but that fairness appears to favour development as it is a 'best average' usually, and not a premium price). By setting 'best average price', they are not the 'last chance option' they were meant to be. The BOS is a market mechanism. When the BCT operates to an advertised fixed price, they intercede on the market as a monopoly player, setting prices above which no credit can trade, and incentivising decline in credit prices as the trade price (purchase) is equal to the trade price (acquisition) minus the administration fee. Therefore, as both prices get put into the calculation for the credit price, the average (being the value that is half way between each trade) is used by the tool as a means of identifying the next price the BCT can take an obligation for. That means, each subsequent trade will be less than the trade before in value. This is shown in the following table for a credit notionally worth $10,000 at the start of the scheme and a 5% administration fee charged by the BCT. After only

5 trading events mediated by the BCT, the value given on the calculator is reduced by nearly 10% - a very large saving for developers and a reason the current DPIE tool needs to be disposed of.

Time step 1	Obligation Purchase (from BSA)	Administration Fee (5%)	Acquiring developer obligation	Tool average price following trade
0	$ 9,500	$ 500	$ 10,000	$ 9,750
1	$ 9,262.5	$ 487.5	$ 9,750	$ 9,506.25
2	$ 9,030.94	$ 475.31	$ 9,506.25	$ 9,268.60
3	$ 8,805.17	$ 463.43	$ 9,268.60	$ 9,036.89

It is additionally worth noting that if these trades happened once each year, this is the equivalent of credits becoming even cheaper each year as inflationary pressure on prices are not considered by the tool (especially the delivery of offsets and the costs of the management actions). While the tool is a DPIE product, BCT often state that they are 'bound to use the prices it recommends'.

BCT has a role in sourcing properties, undertaking the BSA on them and then revolving them through the market, retaining the credits and selling those as obligations to the developers whose obligations they have 'acquired'.

By using a 'revolving fund' the government (through the BCT) is able to subvert the true market process, as well as provide credits where there is public funding. In essence – this is where the government funds development and destruction through selling the credits to those developers via the BCT. By acting as a broker (they buy and sell credits for a fee), the BCT is artificially distorting the market by buying the obligations from a developer for a price higher than they will purchase the offset from the supplier, but also denying the supplier the opportunity to sell to the developer through an open and visible market platform. A developer can go straight to the BCT without testing the price given by the market, and the BCT is not required to test the market before buying the obligation at a price which has been set through the BOPC 'calculator' – and which is often erroneous, driven by purchases and trades within a company, and does not reflect true market transactions.

The BCT needs to remove itself from being the monopoly trading desk that it has become. Developers go straight to the BCT with no testing of the market to see what prices credits can be sourced. The BCT therefore gets 'insider knowledge' on the credits that will be required, whether these are already in the market or have the potential to be, through the public register but also through the BSA applications they get to see from very early in the process.

The BCT notes that it is 'not for profit'. For unknown reasons this is being interpreted as 'funds received for credits must be spent on those credits' (an ultimate expression of 'like for like'). In fact, the NFP status of the organisation (dubious in the first instance as it is a government agency) is able to be measured across all of their activities. They could charge much higher prices for credits (the 'premium price' they should) and then whatever funds are remaining for the eventual price they do acquire the credits for could be spent on staff or activities that would benefit stewardship site holders and other conservation outcomes such as private land conservation outside the BOS (which they also administer). Despite offsetting running since 2008 in NSW, only one event has been held to bring BSA owners together (and that was very early in the Biobanking Scheme). There is no coordination, support, assistance or other beneficial output from the BCT in my experience with the organisation since its inception (2017), except for some token assistance post-wildfires that we were considered ineligible for AFTER the application process (which took a number of hours) because I was a DPIE staff member at the time.

The other advantage for biodiversity of charging a premium price to developers is that the financial costs may serve to induce more 'avoid' as the financial status of a development may then become more uncertain. After all, it is often the price at which a credit obligation occurs that in essence determines whether a developer is willing to create that impact in the first instance. The cheaper it is to impact on something, the more it is considered 'business costs' or even, dare I say 'petty cash', given the fact that the most any impact will currently cost is under $400 per square metre for impacts into intact Cumberland Plain Woodland or Shale Sandstone Transition Forest for land that sells for many multiples of that value (current land prices for new development in Wilton is about $1,000 per square metre). When the costs of impact are similar to the costs of delivering the developed land product, there will be avoidance. Valuing biodiversity on the same basis as social and economic considerations is the basis of triple-bottom-line accounting and Ecologically Sustainable Development. My personal feeling is that, while a developer is making a profit and the biodiversity is losing out, there is not equivalency in consideration.

RECOMMENDATION: Establish a requirement for the BCT to publicly advertise all obligations they have been asked to take on, including the contact details for the developer, as a publicly-accessible and online viewable spreadsheet on their website with a delay of no more than 5 days and a status of the request (unfulfilled; partly fulfilled; fulfilled). Obligations are to remain permanently visible.

RECOMMENDATION: The BCT must publish the prices they have offered to purchase credits from the market / suppliers, with a delay of no more than 5 business days following contract acceptance by both parties.

RECOMMENDATION: The BCT must not set the prices of a credit that has been created, or has a status as an 'expression of interest' from a proposed BSA site as this is market interference. The BCT must publish all obligations they are asked to take on with a delay of no more than 5 days so every credit holder can propose a price they will be willing to sell those credits.

RECOMMENDATION: Where the BCT identifies a price to a developer without advertising the need through publication, the price nominated to the developer should be many multiples of the highest price a credit has traded previously (if at all) or many times higher than the current price nominated on the pricing calculator.

RECOMMENDATION: The additional funds obtained from selling credit obligations to developers for a premium value be re-invested into other stewardship site support programs to maintain a 'not-for-profit' status across the organisation.

RECOMMENDATION: If the flawed DPIE pricing tool is to be used, the value of a trade acquired to satisfy an obligation must not be included in the trades as this will result in a decreasing average price. Only the price paid by the developer should be used in determining the price.

RECOMMENDATION: The DPIE pricing tool, if retained, should add a value at the very least equivalent to the higher of annual GDP or 5% to credit prices each year to counteract the effects of inflation and costs of delivering offsets.

Expert involvement

To focus on someone from the ecological field as being a participant that has a higher chance of profiting is disingenuous. You are, in fact, saying that the expertise and experience we hold should be no more valuable than a basic salary.

How would you feel, as legislators, if I said you had to receive only the minimum wage?

The expertise held in managing ecological outcomes is not a public benefit good. Your attitude to the potential to make some extra money from having this expertise in ecology suggests that there is no reason that biodiversity should have a financial value. I am sure that this is the exact opposite of what you wish to express – that the value of biodiversity cannot be justified in dollar terms.

But the basic fact remains. We live in a society where the basic value of something returns to the monetary value of the capital or effort. If you want biodiversity to have a value to the community at large, you need to accept that there has to be a high dollar value placed upon it.

Those with expertise are the ones you NEED to be involved in the scheme. They have the expertise to know when things are not going right. They can see problems as they emerge, and have the knowledge, training and understanding to find a solution before it becomes too much of an issue. We only have to look at the need for certain levels of expertise from the construction industry to see why there are certain buildings which have prominent names known through the press. Did you know it was not a requirement for engineers to be registered in NSW until 2021? What brought about that change? Do the names 'Opal' or 'Mascot' mean anything? Those are the requirements now for the registration and oversight of complex habitats for humans. Why not similar requirements for the complex habitat for other species? Maybe a long stretch, but you certainly would like to have those who spent years to decades gaining their expertise to apply it in these instances.

It is not possible for an expert in ecology to have any sway in the dollar value of credits (except through identifying the amount of actions needed to generate the offset actions) or the approval of a development project.

An ecologist prepares the environmental assessment for either the development site or the offset site. If the same ecologist does both, it is also not an issue, as they are not the ones who have the final say. That is the responsibility of the consent authority in the case of development, or the BCT in the case of the offset site. The ecologist will identify – using the established protocol, guidelines and method published by DPIE – the biodiversity attributes of the site. If anyone should be held to account, it is the consent authority (local government in almost all cases, or the Major Projects section of DPIE) who have the responsibility of ensuring that the assessment of impacts is adequate, meets the standards and is comprehensive. Likewise, for the offset assessment, the responsibility is entirely upon the assessment review staff in BCT.

If you want to exclude experts from having a role in the delivery of the offsets process then you may as well throw out the whole system and return to the heyday of having inexperienced, untrained and unknowing consenters saying yes to developments without any oversight of the outcomes and no formalised record keeping.

There are a number of facets of biodiversity loss and impacts that are going to be mainstream in the very near future. The Taskforce for Nature-related Financial Disclosures is going to recommend that impacts to biodiversity be considered as a mandatory inclusion in the annual reporting of companies. This is the most advanced of several considerations and schemes that come about from the Convention in Biological Diversity to which Australia is a signatory. If valuing and regarding biodiversity is regarded as being important at the global scale, then there needs to be a certain level of expertise involved in the system. After all, we don't expect financial experts to not make money from that expertise. In fact, if a financial adviser was not well off then there would be valid reason to question their expertise.

Until you are willing and ready to call out real estate agents for their ability to use their expertise to profit from developments, or financial advisors for their ability to live very lavish lifestyles, or heart surgeons to profit from their expertise with a single somewhat critical organ of the human body, or a concrete supplier who makes a very good profit from the supply of concrete to a major road project, then there should be nothing but regard for those ecologists who are 'willing to put their money where their mouth is' or 'walk the walk that they talk', and take on the opportunity to manage biodiversity using their own expertise at no cost to the community (apart from the fair price that a developer has to pay for impacting biodiversity).

RECOMMENDATION: The expertise that a person has in the scheme should be reason for high regard, with those sites administered by ecologists having the potential to earn an additional recognition for the quality of the management. There should be no 'victimisation' of an ecologist for participating in the scheme, which is the current attitude portrayed in the press and by the Committee's line of questioning of ecologist participants and by the recently-instituted DPIE protocol. The committee should recognise that the costs from selling credits generated at a site are determined by the market – by what the developer is willing to pay for the impacts that they cannot avoid. If an ecologist uses their expertise to know where to acquire sites through processes publicly advertised (developments are all well advertised or publicly notified in the Planning website or the council DA portals) then that is not something that should be considered 'insider knowledge', but the utilisation of their expertise to their own betterment, and realistically, to the biodiversity conservation outcomes sought under Article 8 of the Convention for Biological Diversity outcomes (including a target of land area in conservation estate – which may also be private conservation at the same level as a National Park, which a BSA is.)

Exclusion of people with scheme involvement

Surely the experience and expertise of an ecologist is desirable in the design, implementation and assessment of the scheme. The DPIE protocol recently introduced suggests that is not the case. It prohibits anyone having expertise that comes from implementing the scheme to be an 'employee' (which includes voluntary roles). It also sets a time limit on which those who have been involved in the scheme can advise clients of the BOS-related impacts of their development or offset opportunities.

Essentially, this becomes a restriction on trade. It is also discrimination that is not encompassed in the legislation. It is 'cutting off your nose to spite your face' – taking out of system the opportunity to participate in ways to provide feedback and involvement in the scheme from 'lived experience'.

This is one part of the delivery of the scheme that worries me. As I mentioned above, the involvement of experts is critical to getting the best out of the scheme. Ecology is complex. Management of the land for biodiversity outcomes is much more complex than the management for grazing or cropping or forestry, and certainly more complex than producing an urban development. Yet, those forms of land management are just 'accepted' as occurring. Why the concentration of interest into the management of land by ecologists?

As also mentioned above, the capacity of an ecologist (or any consultant) to have any sway in the monetary returns they could gain from involvement is tempered by the levels of bureaucracy required to navigate. Impacts are 'determined' by an authority at arm's length to the ecologist. Offsets are 'approved' by the BCT. Therefore, the only people who should be excluded from participation in the scheme are those who have an 'insider knowledge' of projects and processes. This would therefore be the planning approvals staff at the councils and DPIE, and the assessment staff at BCT. No one else needs to be excluded from participation in the scheme. In the case of

ecologists, their participation should be welcomed, as they bring a higher level of expertise, understanding and capacity to the management of offset sites.

The extent to which a project is in the public domain is dependent on two things. Initially, the project development may be in broad sense terms ('we are developing this land here for urban development'; 'this is the general route this new road will go through'). Many of these projects are flagged in strategic planning documents that are released on decadal timescales. It doesn't take much expertise to know that the road is going to be on a particular alignment, or the urban area will avoid creeklines and floodplains, so the vegetation not in these areas is likely to be at higher chance of needing to be offset to allow the development to occur. This is not 'insider knowledge' any more than knowing that 'houses will increase in value'.

RECOMMENDATION: The committee should recommend a minimum category of staff in approvals authorities (councils, DPIE teams and the BCT) who have reason to be excluded from the BOS as they have clear exposure to information **not** in the public domain. No other restrictions should be supported and the participation of experts in the scheme should be welcomed without victimisation, unfair treatment or apparent expectation that they have some access to information not in the public domain.

Proviso: Where a contractor to the department of a council or the BCT has access to insider knowledge, that contractor can be managed through contract conditions to not participate for a minimum period, or in projects unrelated to those where they have been exposed to information about a particular development that is not in the public domain.

The potential of Insider Trading

The BCT is effectively a monopoly operator and the only participant in the whole scheme that has a role which can be described as INSIDER TRADER. No one else has that potential, as at least two stages of the development process occur between the impact and the offset.

A developer has their credit obligations assessed by an accredited assessor using tools supplied by the Department of Planning, Industry and Environment. This produces a document outlining what the obligations will be, that is considered by the consent authority (a council or the DPIE planning divisions) and then given in the conditions of consent.

The identification of the potential credits that can be generated from a site are also run through tools developed by DPIE. These are the same tools as for impact assessment, but that is to allow the impact and offset to be assessed equally – so like is compared with like, using an emotionless process. The report from those credits, and the activities the landholder commits to have undertaken on the property by themselves, others under their employ/commissioning, and the subsequent landholders of that property, forever, is assessed by staff of the BCT to ensure that the correct processes have been followed, the activities required are identified and the costs are determined adequately. This last item is one with which I have concerns, as few of the staff seem to have much experience in the costs of land management actions.

So, the identification of what is present, and the quantum of these, is determined by tools, not by people. There are guidelines for the application of the tools, for the undertaking of assessments and the determining of habitats, but these rules are applied consistently and without emotion. For this reason, the same person can – and should – assess both the impact site and the offset site for the biodiversity. They are going to be paid the same amount for the work, so there is no financial advantage.

If a development decides that they can just 'accept' a species as present then they have to find the offset for that species and retire this before commencement. However, an offset site must have the species present. Therefore, it is to the advantage of the developer to adequately assess whether a species is present before assuming it to be so, and to the advantage of the species as the occupied habitat must be present, and be managed to be better habitat.

RECOMMENDATION: The committee should recommend the BCT exit from the market broker role, or have no role in setting prices of credits. The BCT must not participate in the market for credits that are in existence (created credits) or are in Expression of Interest (EOI) stage, as a landholder has committed to providing these credits should the market want them.

Impacts on development of credit pricing and BCT involvement

Essentially, the BCT enables development.

It does this through acquiring the obligations of developers where there is no proof required that the It provides a price for the credits to the developer without testing what the market is willing to be paid (although there are moves to change this to providing a quote to developers which the BCT will seek from suppliers in the market, and presumably from revolving fund sites it sets up with government funding).

The cost of credits has been driven for years by the BOP-C tool, not by the actual real-world cost of delivering the credits through offsets. As the prices of some credits have fluctuated wildly (see my original submission), there is no certainty to the developer of the costs. This should drive a market mechanism to supply these credits needed (certainly for major developments) by coordination between the BSA holder (the provider of one of the critical inputs to the development) and the developer (who need this input to undertake their development). Imagine trying to build a highway when you don't know what general price the concrete will be available for? And one thing is for sure, the supplier of the concrete to the highway is going to make a very tidy profit on the supply of concrete to the government project. Why should the biodiversity offset supplier be treated any differently?