

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 7 - PLANNING AND
ENVIRONMENT**

INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

CORRECTED

At Jubilee Room, Parliament House, Sydney, on Thursday 9 December 2021

The Committee met at 1:45.

PRESENT

Ms Cate Faehrmann (Chair)

The Hon. Catherine Cusack
The Hon. Shayne Mallard
The Hon. Taylor Martin
The Hon. Mark Pearson (Deputy Chair)
The Hon. Penny Sharpe

PRESENT VIA VIDEOCONFERENCE

Mr Justin Field
The Hon. Rose Jackson

The CHAIR: Welcome to the second hearing for the Inquiry into the Integrity of the New South Wales Biodiversity Offsets Scheme. The inquiry is examining a range of issues, including the effectiveness of the scheme to halt or reverse the loss of biodiversity, the administration and regulation of the scheme and the use of offsets for major projects. Before I commence I would like to acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the land on which Parliament sits. I also acknowledge the traditional owners of the lands from which all meeting participants join us today. I pay my respect to Elders past, present and emerging, and extend that respect to all Aboriginal people watching.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being held virtually and in person and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about your comments you may make to the media or to others after you complete your evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness can only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days of receipt of the transcript.

Finally, a few notes on hearing etiquette to minimise disruptions and assist our Hansard reporters. Could I ask Committee members to clearly identify who questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking and members and witnesses should please avoid speaking over each other so we can all be heard clearly. I now welcome our first witnesses.

JEREMY LEES, Director, FAP Nominees Pty Ltd, sworn and examined

BARRY BUFFIER, AM, Adviser to FAP Nominees Pty Ltd, sworn and examined

The CHAIR: Thank you. Are one of you or both of you making a short opening statement?

Mr LEES: I am making a short opening statement.

The CHAIR: Mr Lees, please proceed.

Mr LEES: FAP Nominees was issued 52,168 Tetratheca Juncea [TJ] BioBanking Assessment Methodology [BBAM] credits when Biobank 393 was set up in July 2018. In the agreement, the Office of Environment and Heritage [OEH] stated that the total value of all issued credits in the biobank was \$5.84 million and FAP calculated that the value of the 52,168 TJ BBAM credits was \$5.55 million. FAP were advised by the Department of Planning, Industry and Environment [DPIE] to use the spot price index as a guide to the value of the TJ BBAM credits. In August 2020 this was \$160 per credit for a total of \$8.34 million.

When the Threatened Species Conservation Act was replaced by the Biodiversity Conservation Act, a policy of reasonable equivalence was introduced for the protection of investors in the earlier Act. FAP believes that the policy of reasonable equivalence equates to reasonable financial equivalence as well as ecological equivalence. In late August 2020 the OEH and the Biodiversity Conservation Trust [BCT] biodiversity offset program team advised FAP that their 52,168 TJ BBAM credits were equivalent to 66 TJ Biodiversity Assessment Method [BAM] credits and that their value was a minuscule \$9,390—a loss in value of 99.9 per cent of the \$8.34 million on-the-spot price quoted.

We have never received an explanation as to why the BCT offered FAP a price of effectively 18¢ per BBAM TJ credit whilst in the public arena the Government was quoted \$160 on the DPIE spot price. FAP Nominees holds more than 50 per cent of the issued BBAM TJ credits in New South Wales, which means that a developer could buy all the TJ credits in New South Wales for less than \$20,000. At this value, the cost of setting up a biodiversity site to protect the TJ species would be a financial disaster. FAP complained to the BCT and the DPIE and met with staff at executive manager and CEO level seeking restitution and compensation. As no satisfactory progress was forthcoming, in January 2021 FAP submitted a claim for compensation to the NSW Ombudsman. This investigation is ongoing and the details of the complaint are included in our original submission, No. 41, to this inquiry.

In October 2020 FAP engaged the services of an international arbitration expert, Mr Charles O'Neil. He has provided us with his opinion. FAP has provided to Mr O'Neil the documentation that accompanied the letter to the Ombudsman and other information he requested. This information is attached to his opinion. I quote his findings from the opinion:

My independent opinion on FAP's proposed compensation claim.

I find that the Government has not complied with its own legislation, is in breach of the contract in three respects. The actions of the DPIE in the BCT did not comply with requirements of the Act. The actions of the BCT in the DPIE have prevented the FAP agreement being performed as contemplated by effectively destroying the free market pricing and trading of BBAM TJ credits and reducing FAP's investment in the TJ credits by 99.9 per cent from the published SPI price of \$160, at the same time eliminating the financial incentive to protect the BBAM TJ species. The primary cause of this was that the Government ignored the financial and commercial aspects of reasonable equivalence regulations. In respect of FAP's proposed compensation claim, I find that the evidence substantiates and justifies FAP's proposed claim for compensation and that the compensation should include the following sums which are appropriate for breach. I find that FAP's claim based on an evaluation of 52,168 TJ credits at \$160 each, being a total of \$8,346,880, is justified. I find that the interest on the original invested sum at the statutory rate applies dating from 31 July 2018 and that all legal and related cost of both parties should be paid by the BCT.

On 25 November this expert opinion was provided to Dr Paul Grimes, Coordinator-General of Environment, Energy and Science in the Department of Planning, Industry and Environment, with a request for a meeting to discuss the issue of compensation. Dr Grimes responded on 3 December indicating that he would await the completion of the Ombudsman's consideration. FAP has been seeking restitution and compensation from the BCT and the DPIE since September 2020. We believe we have been victims of the bureaucratic run-around. We ask that the Government and the upper House assist us in swiftly bringing this saga to a conclusion. I ask leave of the Committee to table Mr Charles O'Neil's opinion.

The CHAIR: Thank you. Yes, we have leave, I would suggest, to do that.

Document tabled.

The CHAIR: Have you finished your opening statement, Mr Lees?

Mr LEES: I have, thank you.

The CHAIR: Yes. Thank you very much for that. We will now go to questions. Mr Buffier, you do not have an opening statement as well.

Mr BUFFIER: No, I do not. Thank you.

The CHAIR: We will go to questions from the Opposition. Ms Penny Sharpe.

The Hon. PENNY SHARPE: I am interested in what is the current status of the Ombudsman's inquiry.

Mr LEES: That is a very good question. He told me two days ago that they were meeting with the DPIE and that he would ring me and tell me what had happened, but he has not done so so far.

The Hon. PENNY SHARPE: Obviously he will meet with them and then there will be some sort of report. What is your expected time line, or you just do not know?

Mr LEES: It has been a year or so, so far. He has been extremely a pleasure to deal with and he tells me things like, "We have got to take due process." And I say, "Well, it is pretty straightforward." We have tabled Mr Charles O'Neil's opinion, which we gave to Mr Grimes and we also gave a copy naturally to the Ombudsman. I am hoping something is going to happen soon.

Mr BUFFIER: Could I just comment that the Ombudsman has made it very clear to us and the department that they do not need to wait for any final position from him in order to come to some agreement on this issue. They are free to negotiate with us outside of that process. And I think he would welcome that, has been the impression I have had. Mr Lees?

The Hon. PENNY SHARPE: The Ombudsman is an interesting vehicle to be pursuing the issue of compensation. Normally that is not really their role. Their role is to oversight the administrative aspects of how this issue has come to pass—clearly a significant one.

Mr BUFFIER: This goes to the issue of maladministration in the department, and the maladministration relates to the equivalence process and the changes that were instituted in the scheme and moving from one scheme to another and the prices that are offered in the market. We have been trying to get the department to respond to those issues, and they have not responded. So we are now at the point where we have assessed what the compensation would be due.

Mr LEES: Perhaps I could comment on that. The Ombudsman was very clear with me when I first put my submission in. You have a copy of the total of the submission which we tabled to yourselves—not this, but before. He said, "We are not here to look after that, but we are here to see if the people in the BCT, DPIE have not performed correctly." They went away and found all that, and they came back and said, "Yes, we agree that this is a case we should take on." And then six months later, after we provided a lot more, they said, "The case has now been relegated upwards to a 'significant' case." That was two months ago. As I say, they have met again but I do not know the result.

The Hon. PENNY SHARPE: The whole thing points to many problems in the process—the changeover obviously. I am particularly worried about the fact that online the spot price says one thing and yet three days earlier you were told it was worth something else.

Mr LEES: Not the spot price.

The Hon. PENNY SHARPE: Yes.

Mr LEES: No.

The Hon. PENNY SHARPE: The BCT spot price on 30 August, you say in your submission, you basically said your credits were worth about \$8.34 million. But you are saying that three days prior, the BCT advised that the changes had been made. Can you take me through that process and how you found out? It is curious to me that the online price says one thing but you were told three days before—

Mr LEES: Just prior to them advising of that price that you are talking about, they sent me an email, which I will just look at the dates here.

Mr BUFFIER: It was 27 August, I think.

The Hon. PENNY SHARPE: That is right.

The Hon. SHAYNE MALLARD: It is in the submission.

Mr LEES: On 23 July—I have just got to get this right.

Mr BUFFIER: That is the email there.

Mr LEES: Yes, that is right, but that is not the one.

Mr BUFFIER: Okay.

Mr LEES: On 23 July we received an email from Vanessa Owen of the BCT giving us the new TJ equivalence. That was the one where they change the equivalent from 52,000 credits to 66 new credits. Right? On 30 July we received a—sorry, I have got that wrong—on 27 August we received a letter from Claire Kerr of the BCT programs department and they said that we have been successful in selling some BAM credits to them and that gave a price per BBAM credit of 18c a credit. That was on 27 August. In the same time, the BBAM spot price, which we have been told to use by Lucien McElwain, was \$160. I don't know why—

The Hon. PENNY SHARPE: That is what I am trying to understand. I am trying to understand how you are getting advice on the one hand that says that it is 18c but publicly the price is \$160.

Mr BUFFIER: I think it would be fair to say we are still trying to understand that too. We are absolutely incredulous that you could have a price in the public arena of \$160 of BBAM credit, and we have provided copies of that, and then in the same week get something saying, "We are offering you 18c". I mean, it defies logic. So we are at a loss. We have not had an answer to that question.

The Hon. PENNY SHARPE: That is essentially what the Ombudsman needs to unpack.

Mr BUFFIER: Yes.

The Hon. PENNY SHARPE: I am playing the devil's advocate here. I assume that the Government will argue that it had made the change but it had not updated the website.

Mr BUFFIER: It stayed at \$160 for many months, I think, didn't it, Mr Lees?

Mr LEES: Yes.

The Hon. PENNY SHARPE: It is a big problem.

Mr LEES: The \$160 is the price somebody paid—the last price that was paid for TJ credit to BBAM credit.

The Hon. SHAYNE MALLARD: Then it became 18c. Someone paid 18c. Is that what you are saying?

Mr BUFFIER: No, they are offering the equivalent of 18c.

Mr LEES: No, no, no, 18c is the price they have calculated.

The Hon. SHAYNE MALLARD: It was not a market price that had been offered to you?

Mr BUFFIER: No, but this was an offer from the BCT—18c. So what we are saying is the last price in the market was \$160. In the same week the price that was offered by BCT, when you bring it back to a BBAM equivalent, is 18c. Did nobody look at what was available as the last price and where did that figure come from?

The CHAIR: Did you get any explanation at all behind the decision-making process to halve the number of BBAM credits? Firstly, you said it was quite an arbitrary figure. Did you get any explanation from the department as to why?

Mr LEES: No.

Mr BUFFIER: We think that was a mistake, don't we? The 26,000—

Mr LEES: They said it was something to do with equation six, but I have no idea what it is. I would like to read you an email I sent to Vanessa on 30 July.

The Hon. PENNY SHARPE: Sorry, Vanessa who? You just need to explain who that is.

Mr LEES: Vanessa Owen.

The CHAIR: At the BCT?

Mr LEES: Yes. "Your email of the twenty-third of the seventh has reduced the number of TJ credits owned by FAP Nominees from 52,000 to 66 BAM credits. Using the calculator, this effectively reduces the value of FAP Nominees' credits by \$5,670,427. Obviously we cannot agree with this and we do not accept your action. Whilst we have been disappointed with the equivalency process, the lack of consultation and financial impacts on the viability of the site, we accepted the environment agency head determination of reasonable equivalence for biodiversity credits issued with the biodiversity statement of 26 June for 26,084 BAM TJ credits in accordance with clause 19 of the biodiversity conservation regulation. We are now further advised the equivalency is now 26,000, has disappeared and is now at 66. This was made without any consultation or any clear justification for

revision, particularly as this species was an area species at the time of initial reasonable equivalence provided in June 2019. Whilst we understand the environment agency head could make the equivalency under the BCT 2016 BC regulation 207 transitional arrangements, there is no reference to the environment agency head having the powers to apply multiple revisions to equivalency assessment that it provides."

The CHAIR: Thank you, Mr Lees. Can I suggest that you table that? It is going to be a lot easier if we make a copy rather than read out all of the technical jargon, if that is okay.

Mr LEES: I will table this and the other—

The CHAIR: We have limited time.

Mr LEES: I have got more.

The CHAIR: Essentially, the BCT officer was expressing concern in that email about what was happening within the department itself.

Mr LEES: No, I never got any reply.

Mr BUFFIER: No.

Mr LEES: You will see her replies are there, we never got any.

The CHAIR: Was that an email from Vanessa to you or was it you to Vanessa?

Mr BUFFIER: That was Jerry to Vanessa.

The CHAIR: Okay, sorry.

Mr LEES: Vanessa just advised me. That was my reply to her.

The CHAIR: I have one last question before I throw to other members. The common name for the threatened species is the black-eyed Susan. Does this then suggest that either the department has given up on protecting it or it just does not see it as valuable to protect it anymore? This may be policy decision in some ways but it does not seem financially feasible now for any landholder to work to protect the black-eyed Susan under the State's Biodiversity Offsets Scheme.

Mr LEES: We agree, but my own feeling is they did not think through what they did. They made no attempt to look at the financial equivalency. They thought that they would just give it a bit of a change in area measurement. It turned out to be a number called 66 and they sent that off to me without even thinking of the implications. I am pretty sure that is what happened.

Mr BUFFIER: As a species, it is still classified as a vulnerable species.

Mr LEES: You are quite right, the species is destroyed.

Mr BUFFIER: So you would assume that the intent is still to protect it.

The CHAIR: I will move to questions from Mr Justin Field. I also welcome the Hon. Taylor Martin, who has joined online.

Mr JUSTIN FIELD: You note in your submission a loss of 99.9 per cent, which is substantial. Have you realised that loss yet or are you still holding the credits?

Mr LEES: At this stage of the day, we are still holding all the credits. However, the BBAM credits are now probably useless because all new projects containing tetra-theca juncea will be assessed under the BAM credits. It is obvious to us that the Transport for NSW tender, which finished a while ago and which was for a new extension to the freeways in Newcastle, was the last large project that needed BBAM credits. So any new projects will be BAM credits and that, of course, means that all of my 52,168 credits are now worth 66, according to the BCT and the DPIE. Effectively we are holding them but we do not know what to do with them now. The whole thing has become almost a goodbye for them. Effectively we would never have entered the BioBanking system if this had been apparent. We entered the BioBanking system in 2018, and they apparently brought in these regulations that brought this about in 2016-17 but we were never told. We were never approached by the Government or the department to say, "By the way, do you know this is going to happen?" We did not know until we got the equivalency in August 2020 that—"Oh, really?" First it is 26,000 and then it is 66.

Mr BUFFIER: Could I comment on that particular question, because I think it goes to the heart of the matter about the scheme? The scheme is a very complicated financial investment scheme, and in any other environment it would only be available to sophisticated investors and it would require a product disclosure statement attached to it. There is nothing in here that warns the investor about the potential problems with this

scheme and the multimillion-dollar losses that are possible, which is bad enough for the investor but the implication also goes to the species. As you can see here, there is absolutely no incentive to protect black-eyed Susans—none.

Mr JUSTIN FIELD: To be clear: That is based off the 18c figure that you have been quoted. What was the last sale price for credits of this type?

Mr BUFFIER: It was more than a price that was quoted; it was a price that was offered by BCT to buy credits.

Mr JUSTIN FIELD: You do not need to sell them? [Disorder].

Mr BUFFIER: No, agreed, but here is the Government standing in the market offering 18c.

Mr JUSTIN FIELD: [Disorder].

Mr BUFFIER: What message does that send to the market? I think Jerry can answer the next question—there has been a tender.

Mr LEES: The 18c is a calculation and it goes like this—

Mr BUFFIER: Jerry, just answer the question about the latest tender because we do not have a lot of time.

Mr LEES: Yes. First of all, the \$160 Spot Price Index was a real price paid by somebody for TJ credits. That is how that goes. However, the 18c came from the fact that the calculator being used by the DPIE for BAM credits gave the price of one BAM TJ credit as \$143. When we got our equivalence, our 52,168 credits equalled 66 BAM credits. If you do the mathematics and divide the \$143 by 52,168 you get 18c. That is where it comes from.

Mr BUFFIER: Yes.

Mr JUSTIN FIELD: They didn't send you an offer saying, "Here's an offer for 18c"?

Mr BUFFIER: Yes, they did.

Mr JUSTIN FIELD: This comes about as a result of a calculation based on the equivalence.

Mr BUFFIER: No, the BCT made an offer to buy 40,000—

Mr LEES: No, not 40,000—well, yes.

Mr BUFFIER: The equivalent of 40,000—

Mr LEES: Yes.

Mr BUFFIER: —at 18c each. That is they offer they made.

Mr JUSTIN FIELD: [Disorder].

Mr LEES: In your—

The CHAIR: Order! We are speaking over each other a bit and when that happens that means Hansard gets nothing. Mr Justin Field, did you say something that you wish to have on Hansard, because we did not catch it if you did?

Mr JUSTIN FIELD: I was trying to ask another question, but I realised I cut off the witnesses so I stopped. I have another question, unless there is anything else you wanted to add.

The CHAIR: One more and then we will go to the Hon. Catherine Cusack.

Mr JUSTIN FIELD: I am interested in what drives people to get into the scheme. If I am reading it correctly, your submission suggests that you have gone into it basically because you identified land that was on the market for less than what the potential credits on that site were valued at by your consultants. This was a commercial undertaking for you. You found some land where you thought the credits were worth more than the price of the land so "let's snap it up and enter the investment market". Is that right?

Mr LEES: No. In my submission to yourselves it is all laid out. Myself and five other superannuants loaned money to a company which went bankrupt. The only asset it had was this land and we held a second mortgage on this land. We were trying to get our \$2.64 million back somehow. I went to Lake Macquarie council. They suggested I consider a Biobank because they knew that the land had good prospects for threatened species on it. Then I hired WorleyParsons—in those days Parsons Brinckerhoff—consultants and they produced a

feasibility report, which I have here. That showed that there was a potential for it to be worth a lot of money, certainly enough to encourage us to continue and spend another \$800,000 or so getting the Biobank set up and running. That is how it happened. We did not snap up a bit of land; we were forced into trying to make—

The CHAIR: Thank you. We will move to questions from the Government. The Hon. Catherine Cusack.

The Hon. CATHERINE CUSACK: Following on from that and to understand this correctly, when you say the cost—Pacific Alliance Finance, it says the cost to you was \$3.4 million for the land. How did the debt that you have to the former owner relate to that \$3.4 million? Is it in that number or is it in addition to that number?

Mr LEES: We had lent Pacific Alliance Finance \$2.65 million. They went broke. Unfortunately the owner was blown up in the Bali bombings and they did some things and the other directors went to jail. So it was in receivership. Our only asset left for our investment was a second mortgage on the property, that whole rented property. That is why we investigated—"Well, can we get any money back for this property?" The answer was because it was zoned environmental we could not build the housing et cetera and there had been a big land case about it, and that is all in the stuff that you have got. So the head of the department at Lake Macquarie council, as I said a moment ago, suggested we might consider forming a biobank, and that is what we did.

The Hon. CATHERINE CUSACK: Did you purchase the land? Did you pay additional money for the title of the land?

Mr LEES: Yes, we had to buy the first mortgagee out.

The Hon. CATHERINE CUSACK: How much was that?

Mr LEES: Another \$200,000.

The Hon. CATHERINE CUSACK: So you had loaned them—

Mr LEES: It was 2.65.

The Hon. CATHERINE CUSACK: You had loaned them \$2.65 million, but the value of the first mortgage was only \$200,000.

Mr LEES: That is what he would take for it. We had to make an offer to the first mortgagee for having to sell to us so that we could own the land so we could form a biobank.

The Hon. CATHERINE CUSACK: Sure, but if you—

Mr LEES: We then had to buy the land as well.

The Hon. CATHERINE CUSACK: How much money was he losing out of that?

Mr LEES: I beg your pardon?

The Hon. CATHERINE CUSACK: How much money was he losing?

Mr LEES: Was he losing?

The Hon. CATHERINE CUSACK: He is the first mortgagee and he has relinquished his rights to it for \$200,000. I am confused by that.

Mr LEES: The first mortgagee was a person who owned a huge amount of land in the Redhead area. I am wondering how I can put this. He just wanted to get rid of the land. We said, "We'll buy this from you. How much do you want for it?" He said, "I'll sell you the first mortgage for \$200,000", because he knew we had the second mortgage.

The Hon. CATHERINE CUSACK: Okay, so how much money were you out of pocket then in total?

Mr LEES: You mean for the whole biobank opening?

The Hon. CATHERINE CUSACK: Yes, for the cost of the investment that went bad and then the \$200,000. What does that add up to?

Mr LEES: It is \$2.8 million.

The Hon. CATHERINE CUSACK: In your submission you say that the cost was \$3.4 million.

Mr LEES: The rest is the formation of the biobank—the thing plus the trust fund deposit plus everything.

The Hon. CATHERINE CUSACK: This advice that you have received, which is attached—I am not sure if I have got all of the advice. There seems to be a blank page, but I am not quite sure if it is all of it. It seems to be indicating that the credits have a potential value of up to \$17.5 million.

Mr LEES: Correct.

The Hon. CATHERINE CUSACK: So you were hoping to turn that loss of \$3.4 million into a potential windfall of up to \$17.5 million?

Mr LEES: Correct.

The Hon. CATHERINE CUSACK: Would you describe this as a speculative investment on the basis that you were in a bit of a corner?

Mr LEES: Not according to the consultants. The minimum price they put on was \$12 million. That was their minimum. These people who wrote this thing for us—Parsons Brinckerhoff in those days—were the premium consultants in this area in Australia. We did not think it was speculative at all.

Mr BUFFIER: Can I—

The Hon. CATHERINE CUSACK: But they do talk about potential, and they do give a fairly wide range.

Mr LEES: They do.

The Hon. CATHERINE CUSACK: It is not clear to me that they are saying the onus is on the biobank to actually make the offer. It appears more to be about the market offsets.

Mr BUFFIER: Could I just comment on that?

The Hon. CATHERINE CUSACK: Please.

Mr BUFFIER: When the agreement was signed, OEH estimated the value of the credits to be \$5.8 million, okay? So when they entered into this agreement, that was an expectation created by OEH. So the \$17 million was, yes, the upper end of what might be possible, but in terms of signing a contract and entering into a biobank, it was largely based on the reliability of that estimate of \$5.88 million. For that to become \$10,000 at a price offered by the Government is beyond anyone's expectations of an investment.

The Hon. CATHERINE CUSACK: How long have you been involved as an adviser on this project?

Mr BUFFIER: Twelve months.

The Hon. CATHERINE CUSACK: So this was already a bust when you stepped in to give the advice?

Mr BUFFIER: Yes.

The Hon. CATHERINE CUSACK: The big problem here is the consultant's advice initially that had those numbers of up to \$17.5 million. Have you taken this up with the consultant?

Mr LEES: They are horrified.

The Hon. CATHERINE CUSACK: Because I do not understand how this advice is the fault of the Government.

Mr LEES: Many times, yes. They are pretty horrified as to what—as you know from the attachments to the submission, they are one of the main consultants that wrote the letter to the Government about the poor performance of the new schemes.

The Hon. CATHERINE CUSACK: I do understand that. I am not sure that you have any background in environmental—

Mr LEES: Me? No.

The Hon. CATHERINE CUSACK: I know that Mr Buffier does. This just seems like a scheme that did not work out for you, if I can put it like that, in terms of the market. It does not say here that the Government will be obliged to purchase these credits from you at that value. It appears to be implying that other developers in the market who are looking for credits—that they could be valued up to that amount.

Mr LEES: Yes.

The Hon. CATHERINE CUSACK: But it is just a valuation.

The Hon. SHAYNE MALLARD: It is not a guarantee.

Mr BUFFIER: Well, it is a little bit different to that.

The Hon. CATHERINE CUSACK: And the fact that there is no kind of—when you are into financial speculation, the fact that the prudential supervision of the scheme—I think that is a really valid thing for us to be considering here.

Mr BUFFIER: Yes.

The Hon. CATHERINE CUSACK: Just in terms of disclosure.

Mr BUFFIER: So the key question—

The Hon. CATHERINE CUSACK: But we are trying to investigate the effectiveness of the scheme in relation to the environment.

Mr BUFFIER: Exactly. So maybe you could ask the operators of the scheme why, when the last price for BBAM credits was \$160, they came and offered to buy four-fifths of what was owned by FAP Nominees for the equivalent of 18c. The Government creates that market. That was the price that the Government offered, so why would you destroy a market and then say, "Oh, bad luck, investors. Tough titties. Just take what you get"?

The CHAIR: Mr Buffier, what was the project again? Was it a particular project that was being offset? Where was the black-eyed Susan being cleared?

Mr BUFFIER: We do not know.

The CHAIR: Is it more convoluted than that?

Mr LEES: We do not know.

Mr BUFFIER: We do not know for that one because this was money that was acquitted to the BCT and the BCT was wanting to buy some credits.

Mr LEES: They only wanted to buy 246 credits.

Mr BUFFIER: So they offered 18c.

The Hon. CATHERINE CUSACK: But to me it looks like you are really dreaming that maybe you could get \$17.5 million for the environment for an outlay—

Mr BUFFIER: No, but he did think \$5.8 million was feasible.

The Hon. CATHERINE CUSACK: For an outlay of about \$3 million. To me, that, all by itself, is of concern, and then when that was not realised—

Mr BUFFIER: No, the estimate from OEH was \$5.8 million.

Mr LEES: We were trying to get back—we are all superannuants, nearly 80 years of age, average. We were only interested in trying to get back our \$2.65 million. That is what we were trying to get back. All of this other thing just assured us that there was a large cushion, that we had a good chance of recouping our money.

The Hon. CATHERINE CUSACK: Have you offered to settle it with the Government for that amount?

Mr LEES: We have not had—

Mr BUFFIER: We cannot get to talk to them.

Mr LEES: The Government has not even decided to slightly talk to us about anything.

The Hon. CATHERINE CUSACK: Basically, now you are stuck with land that cannot be developed, but you knew that.

Mr BUFFIER: Yes.

Mr LEES: Yes. We are awaiting the Ombudsman.

Mr BUFFIER: And he entered into a biobanking arrangement.

The Hon. MARK PEARSON: Just a simple question: Are there any other companies? Is there another company that has contacted you or is wanting to join you in this action for similar reasons?

Mr LEES: No.

The Hon. MARK PEARSON: You are not aware of any other company that is facing this predicament?

Mr LEES: I am surprised but I do not think—there are five owners of TJ credits listed, issued credits. We are one. We own more than 50 per cent of them. One is Lake Macquarie council. They do not want to sell theirs because they use it to offset other things they buy. There are, therefore, three other people. One of those is—I know they just sold some of the credits for less than \$10 a credit, which I think is remarkably what has happened to the whole market for TJ, and I think the other two probably do not know this has happened. The whole selling of credits thing is not vibrant. You need somebody to come along with a big project.

The Hon. CATHERINE CUSACK: That is the risk that you take, is it not?

Mr LEES: Our consultant Parsons Brinckerhoff were telling us, "This could take some time to sell, but don't worry, you'll sell them in the end."

The CHAIR: Oh gosh.

Mr LEES: But now they have changed the whole thing and there is nothing to sell.

The Hon. MARK PEARSON: It is a good example of how crazy it is.

The CHAIR: Was your question answered, Shayne?

The Hon. SHAYNE MALLARD: Well, no. This follows on from Mr Pearson's and Ms Cusack's questions. This sounds like a litigation matter to me. Have you started any litigation on this issue?

Mr LEES: No, we are relying on the Ombudsman.

The Hon. SHAYNE MALLARD: The Ombudsman, okay. That is unusual. Secondly, and I think you have answered it—I make it clear that Mr Pearson asked the question. Are you aware of other investors in other funds in this scheme with similar grievances?

Mr LEES: No, I do not think so. I think the problem is that we are such an outlier. We have an enormous number of credits, and I also think what has been very unusual is that we received from the Government an offer to buy them, which gave a price that was so ridiculous that stirred it all up.

The Hon. SHAYNE MALLARD: We understand that. Okay.

Mr BUFFIER: But I think we are aware that there are violent fluctuations in the prices in the scheme, which are not disclosed.

The Hon. CATHERINE CUSACK: I will just mention that the other credit owners are listed as Orica Australia, Cape Otway Pty Ltd and Lake Macquarie Council.

The Hon. PENNY SHARPE: My final question is really about the advice that you were given. The timing of this would mean that the law had already changed—we had gone from the Threatened Species Conservation Act to the new Biodiversity Conservation Act, and there was going to be a change in the way in which credits were applied. Do you know why the original advice did not really pick that up? You just relied on the fact that the spot price was there in terms of the calculations of what potentially it would be worth? Having unpacked a bit of this now, one of the missing pieces to me seems to be there was clearly a change in the law—and I accept the real issues around transparency and understanding what that would mean, but in terms of the calculations that you were relying on, they did not seem to pick up the fact that the law was changing.

Mr LEES: We were unaware of the spot price until after all this happened and Lucian McElwain from the DPIE sent us an email saying, "By the way, the spot price is the most reliable area for prices for TJ BBAM credits." That is when I went there, which was—

The Hon. PENNY SHARPE: But that was BBAM as opposed to the new BAM.

Mr LEES: Correct, yes.

The Hon. PENNY SHARPE: That decision point has completely changed the assumptions that you had in terms of what was going to happen.

Mr BUFFIER: But I think the key point here is this issue of equivalence. So, yes, they might have been BBAM credits, but when you talk about an equivalence in BAM credits, there is an expectation that equivalence is equivalence and there is no way in the world that the change that occurred from 52,000 to 66 represents anything like financial equivalence or any other form of equivalence. So, yes, they might have entered into it under the old scheme—

The Hon. PENNY SHARPE: But your view is the Government is arguing that—well, the department would argue, not that this is being litigated yet, that the equivalence is not a financial equivalence in terms of people and their land.

Mr BUFFIER: Well, they might argue—

The Hon. PENNY SHARPE: It is about the environmental equivalence.

Mr BUFFIER: That is not the view of the arbitrator that was appointed.

The Hon. PENNY SHARPE: Well, no. I am just looking at that, but I just wanted to be clear that is where we think this is going.

Mr BUFFIER: Yes.

The Hon. PENNY SHARPE: Okay. Thank you.

Mr BUFFIER: But leaving that aside, if you look at 52,000 equivalence into 66 and they say that, "Well, you will adjust your price per unit," it would have to be \$120,000 per unit to even come close to what it was before. The key question is why did the BCT destroy the market so drastically in offering a price such as that?

The CHAIR: At any stage did the BCT or departmental officials visit the property?

Mr LEES: No.

The CHAIR: Or is it just GHD who did the on-ground assessment?

Mr BUFFIER: Well, they must have when they came to [disorder].

Mr LEES: Yes, because they were on the property with the consultants when they did the—

The CHAIR: But BCT—

Mr LEES: Yes, counting et cetera, yes.

Mr BUFFIER: That would have been OEH, wouldn't it, Mr Lees? That would have been OEH on the property, not BCT.

Mr LEES: I am not too sure whether it was OEH or BCT who were there, but certainly when you go to get these things credited, there are representatives from the department that will credit them. There was an argument—our consultants thought there would be 69,000 credits and they were forced to agree that they could use 52,000.

The Hon. PENNY SHARPE: But there was some on-the-ground truthing of what was there and that this species was there and all of that.

Mr LEES: Yes.

Mr BUFFIER: Yes, absolutely.

The Hon. CATHERINE CUSACK: But OEH had said five million at the time.

Mr BUFFIER: Wasn't it 5.88?

The Hon. CATHERINE CUSACK: Was it 5.80? The Valuer General values the land at \$1 million or something, I think—\$1.2 million.

The CHAIR: We might need to leave it there, if that is okay.

The Hon. CATHERINE CUSACK: All right.

The CHAIR: Did you have one less pressing question, Catherine?

The Hon. CATHERINE CUSACK: No, I am sorry.

The CHAIR: That is okay. All right. So that is certainly something to pursue potentially with BCT and the department. Thank you very much for appearing. I do not believe you took any questions on notice.

Mr BUFFIER: No, we did not.

The CHAIR: Thank you very much. The secretariat will be in touch if there are any supplementary questions for you.

Mr BUFFIER: Thanks very much.

(The witnesses withdrew.)

(Short adjournment)

STEVEN HOUSE, Director, Meridolum, before the Committee via videoconference, sworn and examined

The CHAIR: We welcome our next witness, Mr House. Do you have an opening statement to make for the Committee?

Mr HOUSE: Firstly, I would like to pay my respects to the Gadigal people, on whose land we are located, and to the Elders past and present. I am a director of Meridolum, which was established in 2017 to invest in properties for conservation across New South Wales. I was formerly a director of one of Australia's most respected environmental consultancies, Eco Logical Australia. It is a position I retired from in January 2017. I want to be clear that I have no ongoing association with Eco Logical Australia, and I am not in any way representing that great company. I am representing myself, and my thoughts and my evidence are my own.

In my opinion, biobanking was a great opportunity to address the death by a thousand cuts afforded by the threatened species impact statement processes. The introduction of the quantitative, repeatable assessment methodology, backed by long term funded conservation outcomes, was the scheme that I had great belief in as being able to address the loss of biodiversity. In western Sydney, with the publicly announced Growth Centres conservation under \$397 million in 2007, followed by airport and associated infrastructure announcements from 2012 onwards and Commonwealth immigration policies underwriting ongoing urban development, it was clear that the management of biobanking credits was going to be robust, particularly once the scheme became compulsory for a broader class of developments under the Biodiversity Conservation Act.

The ethical investment opportunity in saving critically endangered ecological communities led to my investment in two properties in 2013 and 2015 and led to the formation of Meridolum in 2017. The Cawdor Heights property was purchased by Meridolum in January 2017 after it had been advertised on realestate.com since 18 September 2016 and had been passed in at auction without a bid on 19 November. After purchasing the property, Meridolum faced an expression of interest from the public biobanking expression of interest register on 21 March 2017. Meridolum later sold credits to State and Commonwealth agencies via public expression of interest processes. My employment at the time was fully disclosed to potential purchasers prior to EOIs being submitted. Meridolum is very proud of implementing best practice conservation and restoration ecology techniques on this property and the outstanding conservation results that have been achieved. Meridolum plans to be a long-term owner of this property and is committed to achieving the highest level of conservation outcomes.

The run-up in the price of credits in western Sydney, peaking at \$35,000 in 2018, no doubt raised concern within the Office of Environment and Heritage about the long-term sustainability of the biobanking scheme, hereon referred to as the old scheme. Substantial changes were made in the new scheme, including an approximately 70 per cent reduction in credits allocated to stewardship sites and the equivalence conversion effectively cancelling a similar proportion that exist in biobank credits. The credit prices were calculated by the biodiversity offsets payment calculator at approximately the old price, reducing the cost of offsetting by approximately 70 per cent. Red flags were replaced with the less onerous serious and irreversible impacts test, and there were easier avenues for avoiding like-for-like offsets.

The changes had the effect of making it substantially cheaper and easier to destroy biodiversity, discouraged registration of stewardship agreements, pushed up the price of credits in the short term and, predictably, led to market failure. The Biodiversity Conservation Trust's 2020 annual report identifies that only four stewardship agreements were signed in that year, and whilst 18 offset obligations had been met, the BCT had accepted the liability of a further 231 offset obligations that had not been met. Other changes to the scheme, including the replacement of red flags with the more subjective "serious and irreversible impacts" test, are easier and omit the non-like for like offsets, undermining the integrity of a scheme that is meant to result in no net loss. The BCT has recognised these challenges and commenced a thorough review of the scheme prior to this upper House inquiry. I refer Committee members to my submission, which identifies a number of technical issues and provides suggestions on how to improve the biobanking scheme.

The CHAIR: Thank you, Mr House. That was quite an extensive opening statement. Are you able to table that for Hansard and for the Committee?

Mr HOUSE: Yes, certainly.

The CHAIR: I will start with a few questions. Mr House, what involvement did you have in the development of the State's Biodiversity Offsets Scheme?

Mr HOUSE: My involvement with the scheme was limited to participating in some forums that were run by the Office of Environment and Heritage for environmental consultants. From memory that was two forums. There were a lot of consultants at both those meetings. That was the limit of my involvement.

The CHAIR: I want to move to the Hardwicke property. There is an article in *The Guardian* from 28 April that says that you excluded yourself from negotiations of offset sales from the Meridolum and Hardwicke properties due to conflicts arising as a result of your interest in three biobank sites. At what point did you exclude yourself?

Mr HOUSE: The exclusion commenced on—let me check my dates. If you can bear with me one moment, I should be able to give you a reasonably accurate one.

The CHAIR: That is okay. If you could get that, that would be good. Are you looking through things now?

Mr HOUSE: Yes. I am sorry, I will not be able to give you an exact date. I can certainly come back to you with that one on notice, Madam Chair.

The CHAIR: Thank you, that would be good. You were at Eco Logical—at what point did you cease at Eco Logical? Can you remind me when that was?

Mr HOUSE: I stepped down as a director of Eco Logical in either January or February 2017. I completely ceased employment with the company about a year later—early 2018 would be my best estimate.

The CHAIR: Okay. I am looking at the biodiversity offsets requirements from June 2016 for the Western Sydney Infrastructure Plan. Are you aware of that report that Eco Logical did, Mr House? This was prepared for the Roads and Maritime Services [RMS].

Mr HOUSE: The two reports that I am aware of are the 2015 report that *The Guardian* referred to and the 2016 report that *The Guardian* referred to. If it is one of those I am aware of it because *The Guardian* sent them to me. I am not aware of any other reports.

The CHAIR: Yes, that is the one. This is the 2016 one. It was released by the RMS, I understand, after *The Guardian* made inquiries about it. This was in 2016 and you were at Eco Logical at that time. This RMS document lists properties that you had an interest in. It lists Hampden Vale as well as Hardwicke as potential biodiversity offset sites. Was that usual for Eco Logical to recommend biodiversity offset sites that were held by one of its directors? Was that a usual practice of Eco Logical?

Mr HOUSE: I think the usual practice of Eco Logical was to look at the properties that were located on the public expression of interest register at the time and recommend all of those properties to potential purchasers that they were advising. Those two properties were there. The Hardwicke property was listed on 29 July 2014 and the Hampden Vale was listed on 20 October 2016, so I assume that is where that information came from.

The CHAIR: So there were no safeguards in place, or were there? I suppose the question is around safeguards. Were there safeguards in place at the time to prevent a conflict of interest between your role as director of Eco Logical and what later became the purchaser of land and director of Meridolum. What was in place?

Mr HOUSE: Yes, absolutely there were extensive safeguards in place. When I purchased those properties my interest was disclosed to the board of Eco Logical. We had independent directors and an independent chair on the board. Eco Logical set up Chinese walls internally. I was not permitted to speak to anybody in Eco Logical about my properties except for a nominated officer who acted as an intermediary and reported directly to the CEO at the time.

The CHAIR: So as one of the directors of Eco Logical, what were the Chinese walls in terms of being able to access reports? When you say Chinese walls, what did they look like in practice?

Mr HOUSE: Chinese walls are—basically you are not allowed to talk to anybody about them, so you cannot discuss them. I was located geographically in a different office from where this work was being undertaken: I was based in the Wollongong office and these projects were run out of the Sydney office, so physically it was obviously quite difficult and quite well separated. Really there is not much more to that, other than everybody being made aware of my interest in those properties and not talking to people about them.

The CHAIR: Was there anything in terms of access to files? I do know, for example, that some companies' conflict of interest protocols will restrict access to certain files, so electronic files would be kept in a different filing system. Did that happen?

Mr HOUSE: I cannot be sure of that. I know when Eco Logical first started working for RMS—and it was not on either of these projects that you are referring to—that as part of that obligation we had to set up password-restricted access to RMS projects. I assume that this project was also password restricted. But I am not the IT officer, so I cannot confirm that that was the case.

The Hon. PENNY SHARPE: Before I ask my questions, I make a declaration that I did not know Mr Lewis, Mr House's lawyer, would be here. He is someone I know, through him being a Labor councillor on Waverley Council. I thought I would say that up-front so that everyone knows.

The Hon. ROSE JACKSON: I add that I make the same declaration.

The Hon. SHAYNE MALLARD: I do not know him.

The Hon. PENNY SHARPE: I want to move away from your role in terms of the issues raised by Ms Cate Faehrmann. The situation that you have found yourself in, Mr House, lends itself—you make some quite good suggestions in your submission about the way forward for this scheme. Do you have a view about the difficulties that we have where we have people doing assessments and people then being brokers in terms of finding land to find those offsets? I am interested in your view about how that can be improved, given the difficulties that have been expressed.

Mr HOUSE: I am very big on disclosure. I guess to wind back a step, I have seen some of the recent policies that the BCT have issued around their staff and excluding staff from participating in the scheme. I think that environmental professionals are the most passionate and some of the most experienced people in this sort of area. They are exactly the sort of people that you want in the scheme. If you are committed to getting conservation outcomes, experienced restoration ecologists should be encouraged to be in the scheme.

The Hon. PENNY SHARPE: But how do we manage then those different conflicts where you have people consulting for a project? Whether they know the details or not, they know that this is going to be an issue and they are able to go and look for land. It does seem extraordinary to me that people can consult, then also be the brokers, and then also have land that they own being able to be purchased under this scheme, with very little checks or balances.

Mr HOUSE: The first thing that I would recommend is that there needs to be a public disclosure register. I think if you look at my circumstances—and I am sure you are all aware of some of the reporting—I made all the disclosures to all the agencies every step of the way. But there is no register. But if there can be a register of that information that is publicly accessible, then you are probably going to get ecologists, restoration ecologists, environmental practitioners getting involved with it. I know there are restrictions on ecologists accredited under the scheme—I am sorry, I do not know the exact title. They seem to be doing their job, from what I understand. I think that if there is a better mechanism for disclosure, you can more appropriately deal with these sort of things.

The Hon. PENNY SHARPE: Obviously we need people to be able to do these different jobs. Is it the case that there needs to be more separation, that people should not be working on projects that they then go on to be brokers for?

Mr HOUSE: It depends on what your client wants, really. So if you have got a developer that you are working for, you know, you do all the analysis, you work out what credits they want, and then they turn around and say, "If you look [inaudible] property", then that would seem reasonable to me.

The Hon. PENNY SHARPE: I want to go to your submission. You make some strong statements in relation to, I suppose, the old scheme versus the new scheme, where you basically say the new scheme encourages clearing, discourages stewardship agreements and will need taxpayers to partially fund that. Can you unpack that for the Committee, please?

Mr HOUSE: Prior, the old scheme—the biobanking scheme not the stewardship scheme—there was a rule of thumb. There was between 11 to 14 credits issued per hectare that was being protected under a biobanking agreement. Under the new scheme, that was reduced to three to five credits per hectare. At the same time the biodiversity offsets paying calculator was brought in and it capped the price at a price that was similar to the old scheme. So you had a massive reduction in the number of credits being allocated to stewardship sites.

The Hon. PENNY SHARPE: So the price was essentially the same but it was just that there were fewer credits given under that scheme.

Mr HOUSE: Fewer credits.

The Hon. PENNY SHARPE: Yes.

The Hon. SHAYNE MALLARD: So devalued.

Mr HOUSE: You still had the same or some were even higher part A contributions; you still had the same land costs. You are just getting a lot lower return for your biobank site. Initially that price was set below the cost of producing a credit, and, not surprisingly, stewardship agreements died quite quickly and very few were registered. That has been progressively increased over time. I understand in 2020 that that was increased from

three to five credits per hectare to an average of five to eight credits per hectare and that the price has been allowed to increase as well. I think it was only two weeks ago that the first Cumberland Plain Woodland transaction under the new scheme occurred. So maybe there are some green shoots there and some things are coming back into balance. But I guess my rationale for saying that it is encouraging clearing is that by setting the price of clearing so low, it makes more financial sense to clear the vegetation than to go through the avoid, mitigate, offset hierarchy.

The Hon. PENNY SHARPE: I want you to comment as well on the no net loss test. I think your submission essentially says that it is not being met. Do you want to talk to us about that?

Mr HOUSE: The whole premise of no net loss is that vegetation that has been removed is being offset by other vegetation or other habitat that has been protected in perpetuity and managed back to a high state, and that that protection and that increase in quality offsets, I guess, the loss in geographic area of other habitat. If you have got a situation where the like-for-like rules have been varied, when you have got developers paying cash into a fund and that fund is not actually able to meet those offset obligations, then you are losing vegetation at the same time as you are not actually achieving any offsets, or very little offsets. You cannot possibly meet no net loss under that scenario.

The Hon. PENNY SHARPE: My final question—I am sure other members have questions, but I have one more—is about your proposal to deal with credit offtake contracts, which is, I suppose, trying to give certainty and transparency, or greater certainty ultimately for people entering into the stewardship agreements. Can you talk us through that, please?

Mr HOUSE: Yes. I have seen that there have been quite a few people suggesting in submissions to this inquiry that the BCT or another government body should be going out and purchasing land and setting up stewardship sites on their own. There is a massive financial cost associated with that and obviously there will be a lot of additional staff and resources required to facilitate that process. I think a much better way would be for the BCT to be entering into contracts or even running an expression of interest process with landholders, landholders saying, "This is the return we would like per hectare", and the BCT entering into a contract with them to buy those credits over a set period of time.

That might be a three-year period, it might be a five-year period. But it would underwrite, I guess, two of the biggest issues with entering into a stewardship agreement. That is the risk, firstly, that you enter into one of these agreements and you are not going to be able to sell your credits. The second risk with stewardship agreements—and these are a very significant risks—the moment you sign that agreement, you are liable for the part A per fund deposit contribution and you are also liable for any tax that is due or that is payable at the time that you create the credits. It is not based on when you sell those credits. It is at the time those credits are created.

So you have to value those credits at what they would be in the current market and pay tax on that in that tax year, regardless of whether you sold a credit or not. If you can set up the system where a landowner knows that they are going to have sufficient funds coming in to be able to meet both the part A and the tax obligations, you are going to get a lot more participation in the scheme. If you get more participation, you get more supply, you have got a greater chance of meeting your like-for-like offsets, and you have got a greater chance of the scheme working.

The Hon. PENNY SHARPE: Thank you.

Mr JUSTIN FIELD: Thank you for your attendance today, Mr House. Obviously we have all seen *The Guardian* reports and the reports of substantial profits that were made on those properties, but I want to go to your submission and follow on from where Ms Sharpe was. You indicate that you are opposed to the idea that has been put forward by some people of the BCT purchasing and establishing its own stewardship site. Given in some instances the substantial profits that accrue over quite a short period of time to some landholders or people who have purchased land and entered into the market, would it not have been more in the interests of State biodiversity outcomes for the BCT to have purchased that land and to be able to have sold those credits, particularly where there are government agencies that are looking to buy?

Mr HOUSE: Sorry, can I just confirm that you are talking historically and we are not talking about forward, and it is actually the past transactions that you are interested in?

Mr JUSTIN FIELD: No, I guess I am using the experience of some past transactions as the indicator that possibly it makes sense for the BCT to purchase those sites. I am bringing that up because you specifically reject that notion in your submission. If some landholders—and we have had other evidence today to suggest this has been a terrible investment for some landholders, but for others they have made what some would describe as "windfall gains". I am wondering why you are resistant to the idea of the BCT effectively making those purchases themselves.

Mr HOUSE: I am not necessarily resistant to it. I just think it will be a very expensive way of doing it. I think it would be a much more capital-efficient way for the Government to enter into contracts with existing landholders, and then they will be in a better position to match their pricing into the Biodiversity Offset Payment Calculator [BOPC] because they will know what credits are coming in and what price they are paying. If the BCT were to step into the market now and buy real estate, I would expect that a seller of that land would at the very least be factoring in lost opportunity costs, particularly in somewhere like western Sydney where they would be forgoing any future development. They would look at what a developer would be prepared to pay for that land currently, which would be substantially more than what they would get for biobanking their bush bulk or something like that. I just think it would be a substantial capital investment by government that would be required to make a significant difference to the number of credits available, and that money would be better spent by facilitating existing landholders to enter into these agreements.

Mr JUSTIN FIELD: You are drawing a distinction then between going forward but if we look back a little bit, in instances of those two sites that were referred to in *The Guardian* article purchased by Meridolum, with BCT and the Government more broadly having paid for the credits for public infrastructure, it possibly would have been in their interest to purchase those sites over—given the price that Meridolum was able to purchase them for, it would have made much more sense for the BCT to identify the opportunity of those sites, would it not, and to be able to then take that money that would have been paid by the agency and put that into future purchases or better biodiversity outcomes through the BCT's other operations?

Mr HOUSE: I guess at the time the BCT did not exist.

Mr JUSTIN FIELD: Sure.

Mr HOUSE: If you look at the OEH, their focus was on, I guess, State significant level properties and not 100 hectares in western Sydney. They would not touch that with a 10-foot pole because it is a management nightmare for them. RMS could have gone and bought their own land and that was certainly an option that they had. I think we can see with things like the M7 and the offsets for the M7 that maybe they are not the best placed organisation for doing that sort of thing. So, yes, I guess historically they are probably some of the reasons why it did not happen. To get more detail on that you are probably better off asking some of the government agencies directly on why they chose not to.

Mr JUSTIN FIELD: I certainly will. Do you think this sort of windfall gains that some purchasers have enjoyed historically under the old scheme are possible now?

Mr HOUSE: Currently, no. I am the first person to admit that we have made some profits that were substantially above what I was expecting. That was just a function of, I guess, the supply squeezing the market and the changes to the scheme at the time that reduced the amount of credits coming through and pushed the price up. I think with the changes that have been made, there is no real value in doing this. I had a very quick look at the recent transaction on 25 November and the pricing and the calculating is probably at a point now where you are getting a rural land value plus your part A covered, but there is certainly no profit in it for brokers or land investors or the like right now.

The Hon. CATHERINE CUSACK: What would happen if the Government vacated this space and developers went back to having to organise their own offsets?

Mr HOUSE: That is a good question. I think right at this point in time if that were to happen the price of credits would skyrocket and you would wind up in a position where developers could not find credits because the demand would quickly outstrip supply. I think that the other big problem in the scheme is that it takes a year or more to register for stewardship agreement, whereas you are getting approvals for clearing within a month. So you have got this real disconnect timing-wise in terms of credit demand and credit supply. I would expect that you would have a massive increase in credit prices and developers would simply not be able to find the supply to offset developments and things would probably grind to a halt pretty quickly until the market had time to respond to the demand.

The Hon. CATHERINE CUSACK: Can you see potential for more of a mixed system whereby—as I understood it, when this scheme came into play, it was meant to be a last resort for developers who could not access offsets. But it seems to have turned into the main game. Is there merit in trying to get it back to the original concept potentially over time? I think the evidence we are hearing is that just suddenly announcing massive changes to the scheme that take place overnight has had some perverse outcomes as well. Is there some kind of a plan to get us to a better place?

Mr HOUSE: From a conservation perspective, the two changes I would focus on straight up would be the like-for-like provision. If you are not having like for like, you are basically winding up the transfer from high real estate markets like western Sydney and the Hunter to regional real estate markets or regional ecosystems,

because the way the prices are set at the moment are just not going to encourage people to protect their land in western Sydney. If that money is getting paid into the BCT, then the taxpayer is going to have to top that up to get like-for-like credits, or it is going to have to go to other conservation priorities across the State. I think the first thing you need to address is that like-for-like to close that opportunity. That will have a flow-on effect for prices for the credits, which will at some point result in a supply response.

The other thing we used to have was red flags. Red flags were no-go areas that could not be cleared. They could only be cleared—sorry, I will wind back. There were three sub-schemes within biobanking—biodiversity certification; biodiversity assessment methodology, which was the major projects and infrastructure methodology; and then you have the BBAM, which was your more standard part 4 assessments under the old scheme, so property developers and the like.

Red flags could only be varied in the biodiversity certification process or in the State significant infrastructure process. State Government had the opportunity to vary those things, whereas local council, through the part 4 assessments, could not. Once those red flags were removed and were replaced with the serious and irreversible impacts test, there was scope for these more important things to be varied or approved to clear at multiple levels. I think the red flags were definitely a better system and had a lot more rigour to them.

The Hon. CATHERINE CUSACK: That is, better for the environment?

Mr HOUSE: That is, better for the environment.

The Hon. CATHERINE CUSACK: I just wanted to be clear. I have one other question. In your submission it says:

With regards to other changes made in the new scheme, it is noted that the avoid/mitigate/offset hierarchy has statutory teeth as shown in recent Land and Environment Court cases ...

You have listed three cases. Could you just explain that a little bit more? I am not clear on what you mean about the statutory teeth and I am not familiar with those cases.

Mr HOUSE: All of those cases found in favour of the councils, not the developers, and all of those cases made reference to the "avoid, offset, mitigate" hierarchy and that it had not been applied in those cases. In the case of *IRM Property Group v Blacktown City Council*—I am pretty sure it was that one. They also referenced the serious and irreversible impacts test as not being met, as well. There are clauses within the legislation that do have statutory teeth, if you like. It may just be a case of it being a new system and maybe local government not being fully aware of how to use these new statutory instruments.

The Hon. CATHERINE CUSACK: So there is not a consistency in how this is operating around the State? That seems to be the implication.

Mr HOUSE: I couldn't say for sure. I left the industry a few years ago. How it is working right now—I am relying on what I have heard through my contacts, so I couldn't say what is happening across the State at this point in time. I am sorry.

The Hon. CATHERINE CUSACK: That is okay. Is it appropriate for public reserves to be used for offsets? I just thought they would already be protected.

Mr HOUSE: If they are done in the right way then arguably they could be, but it does depend on how much additional improvement you are going to get in your biodiversity outcomes within those reserves. There is a risk that they also distort the market. I know under the old biobanking scheme that council reserves were issued a much lower number of credits per hectare. At the same time, you had Commonwealth approvals referencing offsets in hectares, not in credits, so it was actually cheaper to buy State Government credits at a council reserve at a much-inflated price because you were protecting so many more hectares and meeting your Commonwealth obligations.

The CHAIR: Mr House, I just wanted to go back to the article in *The Guardian* from 28 April. It goes through some detail as to the history of Eco Logical's involvement in firstly developing—no, sorry. The Government contracted Eco Logical to do the 2007 conservation plan for Sydney's growth centres. Are you aware of what I am talking about there?

Mr HOUSE: Yes, I am aware of that.

The CHAIR: What involvement did you have with that? That was back in 2007, but that clearly would have been quite a big project for Eco Logical, I assume. That is a huge area, those growth centres.

Mr HOUSE: It was a very significant project. It was largely a desktop project. I was not closely involved with that project. I may have reviewed draft reports but I cannot be sure of that, given the passage of time since then. I was not project managing it. I was not involved at any significant level in that one.

The CHAIR: Being a director of the company, you would have had some kind of an idea of those growth centres and the infrastructure required. Bulldozing of habitat for new suburbs—it says here "... 181,000 new houses". You would have had a fairly good knowledge of the clearing of all of the Cumberland Plain Woodland and the offsets that would be required from your work at Eco Logical.

Mr HOUSE: Yes. Look, it is certainly a project that I became very familiar with, but I was not involved in the actual preparation of the conservation plan itself.

The CHAIR: But in those years from 2007 through to 2010 and 2013, 2014 and 2015, the company that you were the director of did a hell of a lot of ecological assessments for major projects in western Sydney that were going to clear Cumberland Plain Woodland. Is that correct?

Mr HOUSE: Yes, absolutely. We undertook, I would say, the vast majority of the precinct planning studies within the growth centres, and I was either the project manager or the project director on most, if not all, of those. I was very familiar with what was going on in the growth centres.

The CHAIR: You were very familiar with what was going on in the growth centres. When was it that you started purchasing land? The companies that you were director of purchased what is known as Hardwicke and Hampden Vale, for example.

Mr HOUSE: Hardwicke was exchanged on 13 December 2013. Hampden Vale was 28 October 2015. The Cawdor Heights property was 27 January 2017.

The CHAIR: At this stage you are still director of Eco Logical that is doing ecological assessments for the Government. How big are those properties, Hardwicke and Hampden Vale?

Mr HOUSE: Hardwicke is 600 acres—sorry, 240 hectares. Hampden Vale is 105 hectares.

The CHAIR: You are assuring us that you were very clear that there was no conflict when you became director of Meridolum but were still at Eco Logical. You said that there were Chinese walls and everything. Is that correct?

Mr HOUSE: That is correct.

The CHAIR: Remind me as well of the time that you became director of Meridolum.

Mr HOUSE: It was January 2017.

The CHAIR: I am sure you are aware, Mr House, that the New South Wales upper House did a call for papers to have a look at what was going on between the department and Eco Logical, just to see what was going on behind the scenes. You did say to *The Guardian* that you were not involved in negotiations, but I have emails that show that you were inquiring as to what offsets the department may be interested in from the Hardwicke property. From the emails I have before me from December 2017 and 6 November 2017, you were actively still inquiring. Right up to 13 August 2018 you were inquiring to the department about purchasing credits from Hardwicke and Hampden Vale. So what does excluding yourself from negotiations look like?

Mr HOUSE: Okay. Firstly, yes, I totally was making inquiries to the Government. Excluding myself from those negotiations was actually related to concerns that we identified that my involvement across three properties could fall foul of the cartel provisions of the Corporations Act. That was when we first met with Western Sydney Airport, which—I do not have the date but I would be thinking it was late 2017, possibly late 2018. I just remember it was late in the year. It was in that sort of area. My involvement was basically to make sure that the three properties were competing with one another and were not colluding with one another and that we were meeting our obligations as directors under the Corporations Act.

The CHAIR: So it was more a concern about collusion between the three properties as opposed to any concern that you may have had access to all of this information as a director of Eco Logical? There was no concern there that you would then—still as a director at Eco Logical, contacting the department, selling and trying to put in front of them the offsets from Hardwicke and Hampden Vale—proceed to make tens of millions of dollars?

Mr HOUSE: Can you be more specific about "all of this information" that I had access to, please?

The CHAIR: Sorry, when you say the information you had access to—

Mr HOUSE: With respect, Senator, you just said I had access to "all of this information". Could you be specific about what that information is, please?

The CHAIR: I was just talking to you about from all through from 2015, 2016 and 2017, as director of Eco Logical, knowing that there were a hell of a lot of major projects being assessed that would need offsets—you were purchasing property at the same time. You have said publicly that you put in place measures to ensure that you were excluded from negotiations, but I have emails that still have you as director of Eco Logical and actively pushing your offsets to the department.

Mr HOUSE: With respect, Senator, I have just explained what those measures were about. They were about the cartel provisions. Now, with regards to communications with government authorities about selling these credits, my employment with Eco Logical and my ownership of those properties was fully disclosed to the government authorities prior to that happening. In fact, the government authorities, certainly RMS and Western Sydney Airport—in the very first meetings I had with them, I disclosed that information and both of their responses were, "We already knew that." So this was not some big secret. This was information that was well known. The procedures at Eco Logical were in place and were working.

The CHAIR: Did it give you an unfair advantage, do you think, over other property owners in the area that may have been wanting to sell their credits and biobank their land? Do you think you had an unfair advantage?

Mr HOUSE: No, not at all. All of these properties were placed on the public expression of interest register. I would assume that anybody who wanted to enter into an agreement or had entered into an agreement would have placed their properties on the register as well. Certainly, with these bigger infrastructure projects, the report that you referred to earlier in 2016 had a list of the properties that were on that register. The GHD reports to the airport also had a list of the properties. I was in the same boat as everybody else with the properties being out there and being publicly known.

The Hon. CATHERINE CUSACK: Maybe a slight difference to the questions that the Chair has been asking—but do you think that your work for the Government as a consultant gave you information that informed which properties you purchased and which investments you made? Was a lot of the information that you used in making these investment decisions derived from your work as a government consultant?

Mr HOUSE: The projects that I was working on at the time with the growth centres were the precinct planning—the rezoning stages of the various precincts within the growth centre. The way that the growth centres' biodiversity certification order works is that any offsets identified during that precinct planning process had to be sourced from within the growth centres. All of my properties are located outside of the growth centres. It is not possible for any of the projects that I was working on to actually buy my credits. So, no, the projects that I was working on—I did not have any additional information. They literally could not buy credits from my property. It would have been inconsistent with the biodiversity certification order.

The Hon. CATHERINE CUSACK: What motivated you to purchase those particular properties? Did you see an opportunity there? Because they were investments, weren't they?

Mr HOUSE: The first property—I actually purchased that as part of a consortium with a client, a property developer who needed to find an offset. They engaged me to talk to landholders to try and get their neighbours to enter into offset agreements and I actually could not convince anyone to do it. They just saw it as something that was too risky. So that developer asked me to find a property of about 30 hectares in size to biobank and to do it himself. I was just searching realestate.com and the Hardwicke property came up. It was 240 hectares in size. I went back to the developer and said, "I think this one would do for you." But it was too big for him. I asked if I could come in as a partner in it. So that is how that started.

In all honesty, in doing that one, I probably realised just how little I knew about biobanking. I was never an accredited assessor. My only involvement with the actual biobanking scheme was during those consultants forums that I mentioned at the start of this session. I have got a passion for restoration ecology. I set up the bush regeneration team and the land planning custodianship team when I was at Eco Logical. It was something that—it was my philosophy. I just saw it as a really good opportunity. Certainly at that time the credit price was not that financially attractive. But, yes, it did march up from there and became quite a good financial investment as well.

The CHAIR: I have just got another line of questioning then around the 2016—this is the other one that was mentioned in *The Guardian's* article: the 2016 environmental impact statement for the Western Sydney Airport that was prepared by GHD, the consulting firm. That named Hardwicke and Hampden Vale as potential biobanks from which the Federal Government might purchase offset credits. It also says here that "neither had been a registered biobank at this time". What was the process there? They were not registered biobanks. What was your process with GHD?

Mr HOUSE: I have gone through that report as well. I have also gone through *The Guardian's* comment—to quote from *The Guardian*:

But neither had been a registered biobank at this time – in fact, GHD wrote that it was alerted to Hardwicke through personal communication with another staff member at Eco Logical Australia.

That statement is factually untrue. GHD does not write in anywhere in the report that they were alerted to the property via Eco Logical Australia. On page 33 of the report they actually state the methodology that they used to identify these properties. Their first step was to look at the public biodiversity credits register. The second step was the biobanking expression of interest register. The third step was the biobanking assessment reports and the fourth step was consultation with private landholder and government agencies. That was in 2016. I think I mentioned to you before that Hardwicke was placed on the biobanking expressions of interest register on 29 July 2014. Hampden Vale was 20 October 2016. The first contact we had with GHD regarding the airport was from their senior ecologist that emailed us on 15 July 2015. The email starts with, "Dear Steven. I got your details from the biobanking EOI register. I am preparing an offset package for a developer-client who needs the following credits listed on your entry on the EOI register." It is really obvious that they got our details from the EOI register, I think.

The CHAIR: Hardwicke and Hampden Vale—what did you purchase Hardwicke for? Both of those properties—what did you purchase them both for and how much have you received in biobanking credits for those two properties?

Mr HOUSE: I have already explained Hardwicke property and how that acquisition came about. The Hampden Vale property I bought as an investment. I had intended to biobank some of it. I did not actually intend to biobank as much as I eventually did. I am sorry but I do not have details on the actual credit sales or the quantity or the value of the credits that I sold on either of those properties, but I can certainly get those to you on notice if you would like them.

The CHAIR: Okay, that's fine. I thought that would be something that you would have quite to hand but that is okay. We will go to Mr Justin Field for questions.

Mr JUSTIN FIELD: I want to go back to the line of questioning I was on before. I had asked you if you thought that the sort of windfall profits that you acknowledged you were surprised by, and I am referring to the Razorback sites really—you did not think that was possible under the scheme these days. I might have cut you off in your answer there but my understanding of what you said was basically now the prices are there but also it seems to me people have more of an awareness of the value of these properties as well. Would that be correct?

Mr HOUSE: Yes. The first indication of that was when I saw properties advertised by real estate agents marketing them as biobank sites. So I think once the real estate agents know about it, it changes things quite a bit.

Mr JUSTIN FIELD: But you would admit that someone sitting on land, even if it had those sorts of biodiversity values and potentially could become part of the offset credit market—an average landholder would not have the ability to do the work to bring it to market in that way. It would require quite a lot of money to be spent on land, correct?

Mr HOUSE: Sorry, to be spent on land or—

Mr JUSTIN FIELD: Sorry, to be spent on doing the credit assessment on the land.

Mr HOUSE: Yes, it would be quite a bit of money. I am not an accredited assessor. I had to pay consultants to do the work for me and I also had to pay for a second round of consultants to independently audit the reports as well, so I was in the same boat as any other landholder in that regard.

Mr JUSTIN FIELD: For example, the Razorback sites, Meridolum would have made a judgement—I guess the first question is did you see that those sites were on the market and you were aware of what might be in the pipeline for government in terms of potentially wanting to purchase sites and you saw an opportunity there, or were you out talking to landholders about the opportunity and sort of pitching?

Mr HOUSE: I spoke to one landholder who was my neighbour at Hardwicke who was not interested in biobanking due to the risks and concerns about the future loss of value in the property. The remaining properties, I just found them advertised on realestate.com.

Mr JUSTIN FIELD: We are talking about 2018 for the Razorback sites I think, if *The Guardian* story is correct. At that stage there would have been quite a bit of awareness of biodiversity offsets, of the biobanking scheme and of large government projects out there. Were those landholders aware of the likely value of those properties once the credit assessment was done?

Mr HOUSE: I know that the Cawdor Heights owners were made aware of them. Their property was subdivided. That was an inheritance. One of the siblings retained 100 hectares and the other two siblings sold their 200 hectares to us and, as neighbours, we have got to know the other sibling quite well. He has been quite

[inaudible] telling his sisters to biobank this property and that it was worth doing but they chose not to. Our neighbour to the south at Cawdor Heights already had a biobanking established years before we purchased the property. My neighbour at Hardwicke was in the process of establishing a biobank before we purchase that property. Their biobank has been established as well. So biobanking is quite well known in the area. The Office of Environment and Heritage had been actively going around and marketing the biobanking scheme to landholders for several years by the time those properties were purchased.

Mr JUSTIN FIELD: Sorry, but I guess the property I am primarily looking at is that last site at 519 Old Razorback Road. What is the name—that is not one of the properties you are referring to here, is it?

Mr HOUSE: We call that Cawdor Heights—that is the Meridolum property.

Mr JUSTIN FIELD: When you purchased that, there was not a biobanking agreement on site at that stage. It had not gone through its credit assessment process at that point, right?

Mr HOUSE: Yes.

Mr JUSTIN FIELD: It was quite short period of time between purchasing the site, you banking it effectively in the offset scheme—it was quite a short period of time before those credits were then onsold to the RMS. Is it just a case there that you were in the right place at the right time, or you had an awareness RMS was going to be in the market for something very close to this very soon?

Mr HOUSE: It was about an 18-month process. I had no awareness about when the RMS would be in the market. I was fairly certain that at some point they would be, unless they sought to do their own offsets or do a deal with councils or do a deal with Western Sydney Parklands. My bigger focus was always on the longer term Growth Centres conservation fund and the Western Sydney Airport. I think their announcement was in November 2015 or something like that. They had a \$140 million estimate of what their offsets were going to be. So it looked like there was going to be a bit of a substantial increase in demand when the airport came on board.

Mr JUSTIN FIELD: You say it was an 18-month process but I think—and *The Guardian* story notes—that from the time it was, they call it, "banked" in the offset scheme, but I guess that is the time it was registered, it was a month later that RMS purchased those offset credits from Meridolum. Is that right?

Mr HOUSE: Yes.

Mr JUSTIN FIELD: A really small window of time.

Mr HOUSE: Yes. The RMS went through an expression of interest process. Once they identified the properties that they wanted, they entered into options agreements to purchase the credits. In the case of the Cawdor or Meridolum property, they purchased the credits once the biobank had been registered. As a landholder you would be absolutely mad to enter into a biobank agreement if you did not have some sort of guarantee the credits were going to be sold. And that is because of the issues I raised earlier with the total TFD becoming due as soon as you enter into the agreement and also the taxation implications for entering into the agreement. So it was common sense for us to enter into an options agreement with the RMS so that we had some certainty that we would be able to sell credits and they had some certainty they would be able to buy the necessary credits.

The CHAIR: Mr House, could you just explain TFD—that acronym—for Hansard?

Mr HOUSE: It is total fund deposit. It is also part A. It is basically the management funds for the property.

Mr JUSTIN FIELD: Do you still own that site?

Mr HOUSE: Yes, we will own that for the long term. We are very, very committed to the conservation works on that property. I am a passionate restoration ecologist. I love being out there and I love what we are achieving.

The Hon. MARK PEARSON: I apologise in advance because my head is finding it very difficult to get around this whole scheme and understand it clearly. Perhaps if you could just clarify something for me. I have heard—and some of the evidence has been given to us and I think you may have said the same thing—that sometimes clearing a bio offset land makes it more valuable in terms of a bio offset than planting trees. Is that true?

Mr HOUSE: It would depend on, I guess, where that was occurring. Certainly in western Sydney a cleared piece of land is a lot more valuable than a vegetated piece of land. It might be a bit different in other places. For development land you would be looking at \$2 million to \$3 million per hectare. For vegetated land in Sydney you would not get a tenth of that, that is for sure.

The Hon. MARK PEARSON: But does that not go against the very principle of the purpose of the scheme to replace harm to biodiversity with protecting it?

Mr HOUSE: I am very sorry, Senator, I think I have misunderstood your question. Could you rephrase that or just ask it again?

The Hon. MARK PEARSON: My understanding is that the reason these are purchased is because there is going to be a development or a project which is going to remove habitat or cause damage to the environment and the purchasing of the biodiversity offset is to try and replace that. Just like you said, you think the rule should be like for like. I thought that statement came from a concern that the clearing of land. What is making it more valuable? Is it biodiversity offset as opposed to planting trees and making it more environmentally healthy?

Mr HOUSE: I am sorry, I thought you were talking from a financial perspective.

The Hon. MARK PEARSON: No.

Mr HOUSE: It is much more valuable biodiversity-wise if you are removing the weeds, if you are planting trees and if you are managing all of the other impacts to biodiversity.

The CHAIR: I just wanted to ask about the process then for—turning now to the Western Sydney Airport—the offsets for Western Sydney Airport. I have here as well that over a two-and-a-half-year period there was more than \$100 million in offsets sold across all of the properties you own or have an interest in, Mr House, including, I understand, \$37.5 million for the Western Sydney Airport. Does that sound about right?

Mr HOUSE: Senator, that sounds reasonable. I do not have those numbers with me right now. That certainly does not sound unreasonable to me.

The CHAIR: Remind me, which of your properties are the offsets for the Western Sydney Airport?

Mr HOUSE: All three properties are offsets for Western Sydney Airport.

The CHAIR: I am just trying to work out in terms of the offsets. Who originally undertook the assessments on, for example, Hardwicke? Who undertakes the ecological assessment to determine what biodiversity credits are on there? Who did that?

Mr HOUSE: Eco Logical Australia undertook the initial assessment.

The CHAIR: When did they do that? When was that initial assessment?

Mr HOUSE: It was during 2014. It would have been a six- to 12-month process to get it [disorder]—

The CHAIR: Did anybody peer-review that assessment?

Mr HOUSE: Yes, they did.

The CHAIR: Who was that?

Mr HOUSE: We had the OEH and I think there was a consultant but I am not sure which one it was. I would have to go back to the records on that to find out [disorder]—

The CHAIR: That is a formal peer review by OEH, is it or is it another assessment entirely? What does that peer review look like by the OEH?

Mr HOUSE: The peer review included—I know they inspected the site to review the vegetation mapping work that had been done. They certainly reviewed all the calculations and the credits, and I do not know if there was a report or anything like that done. I was not privy to that information.

The CHAIR: The original assessment you say was done by Eco Logical Australia at the time that you were a director of that company. That was for Hardwicke. Did Eco Logical do the ecological assessments for the other properties that you have an interest in?

Mr HOUSE: With Hampden Vale, I own Hampden Vale on my own and so I thought it was not appropriate for me to actually use Eco Logical because there was no separation. With the other properties, they were project-managed by other partners in the relationship. I used GHD for Hampden Vale and that report was peer-reviewed by Parsons Brinckerhoff. With Cawdor Heights, because we had other directors in Meridolum who were not employees of Eco Logical, they project-managed that process. They used Eco Logical to do the initial assessment, and the audit and peer review was done by GHD for that one.

The CHAIR: That is pretty extraordinary really. Let us go back to Hardwicke. I understand that you and Mark Adams as well were directors of Eco Logical. Is that right? Is Mark Adams also a director of Meridolum?

Mr HOUSE: Mark is a director of Meridolum. I am not sure if he was a director of Eco Logical in 2014.

The CHAIR: Sorry, that is what I meant—my confusion. Yes, he is a director of Meridolum. You thought it was not okay because you are the sole director of Hampden Vale to have Eco Logical assess it. Why do you think it was okay with you as a director of Hardwicke that Eco Logical assess that? Do you not think that itself is enough of a conflict of interest to get another consultant to assess the property that you were going to stand to benefit millions from depending on what credits were found by the assessor that did it?

Mr HOUSE: No, I do not. With the two properties where Eco Logical Australia was used, we had other directors of Hardwicke and Meridolum that were project-managing and liaising with Eco Logical Australia and I had no involvement with Eco Logical Australia during that process.

The CHAIR: Obviously we will have a lot of questions for the Government tomorrow about how such a situation like this could have arisen, a situation where the company that you were director of was able to undertake the assessment, which you said was a very extensive assessment. Was that right?

Mr HOUSE: Yes.

The CHAIR: You said it was like 18 months or something—

Mr HOUSE: [Disorder]

The CHAIR: —because it is such a big property.

Mr HOUSE: The approvals process was in that 18-months realm. The actual assessment, I would only be guessing if I gave you a time frame on that.

The CHAIR: But it was an extensive on-ground assessment.

Mr HOUSE: It is a substantial amount of on-ground fieldwork undertaken by extremely experienced ecologists with way better field skills than I have ever had. It is a very specific quantitative methodology. It is complicated. It is not easy and there is a lot of work that goes into it.

The CHAIR: You must have surely worked out that you were really on a winning ticket so to speak with being director of the company that undertakes assessments and knowing that if you bought the right land and got the right species, you were going to make tens of millions of dollars. This is what was going on. Were you advising your mates and everybody else to get on board too?

Mr HOUSE: Frankly, Senator, with all due respect, I find that ridiculous. There was no guarantee at all that I was going to make a cent out of this. There was every prospect that I was going to wind up with a massive liability out of this. I think that is a disgraceful suggestion.

The CHAIR: What was the likelihood of you ending up with a big liability as opposed to making tens of millions of dollars? I do not understand that. It is a genuine statement to you. It sounded like you had a hell of a lot of knowledge to be able to make a lot of money.

Mr HOUSE: There was every chance that the airport or RMS was going to buy credits from any other provider of credits in western Sydney. There was also every chance that I was going to get caught up in the change from the old scheme to the new scheme, my credits were going to get reduced by 70 per cent or more and I was going to get left with a massive tax liability that I would have had no way to pay.

The CHAIR: Thank you very much, Mr House. That is the end of our time and the end of our questions. I appreciate you agreeing to appear before this inquiry. I believe you have taken some questions on notice, which the secretariat will get in touch with you about. You will have 21 days to get those back to us.

(The witness withdrew.)

(Short adjournment)

ANGUS ATKINSON, Member and beef farmer, NSW Farmers Association, before the Committee via videoconference, affirmed and examined

CLAIRE DOHERTY, Policy Director, NSW Minerals Council, before the Committee via videoconference, affirmed and examined

The CHAIR: Let us commence our next session. Ms Doherty, would you like to make an opening statement? I assume you do as well, Mr Atkinson.

Mr ATKINSON: That would be great, thank you.

Ms DOHERTY: Yes.

The CHAIR: If you want to kick things off, Ms Doherty?

Ms DOHERTY: I would like to acknowledge that today I am on Gadigal land and pay my respects to the Elders past and present. I would like to thank the Committee on behalf of our NSW Minerals Council members for this opportunity to contribute to the discussion on the integrity of the Biodiversity Offsets Scheme. The New South Wales mining industry has been a long-term supporter of reforms to biodiversity offsetting that increase consistency and base all assessments on a robust scientific and repeatable method.

The CHAIR: If you would pause for a second please, Ms Doherty. Could you move yourself slightly closer to the microphone? You are coming across a bit muffled. If you can move the computer closer to you—

Ms DOHERTY: Sorry if I will be sitting very close. Is that better?

The CHAIR: It is. Do you mind starting again?

Ms DOHERTY: Yes, I can start again—of course. I want to acknowledge that I am on Gadigal land today and pay my respects to their Elders past and present. Also I would like to thank the Committee on behalf of our members for this opportunity to contribute to the discussion on the integrity of the Biodiversity Offsets Scheme [BOS]. The New South Wales mining industry has been a long-term supporter of reforms to biodiversity offsetting that increase consistency and base all assessments on robust scientific and repeatable method. We were the early contributors to the development of the BioBanking scheme, with some of our members following voluntarily acquiring BioBanking for use on their projects to facilitate a better understanding of the scheme. One of our members created and continues to own and manage one of the State's earliest BioBanking sites. We contributed constructively to the review to the BioBanking scheme and the development of the biodiversity offsets policy for major projects and the framework for biodiversity assessment. We participated in consultation around biodiversity conservation reforms. We supported the development of mechanisms that provide in perpetuity protection for offsets.

Overall, the BOS is much more rigorous than previous schemes. It drives much higher offset requirements for projects and implements a much higher standard of security and management for offsets. The introduction of the BOS was a large and complex reform. Not surprisingly, a number of issues have come up since it began operation. The year 2021 has been one of considerable scrutiny for the scheme. This inquiry has been influential in the Government's review of aspects of the scheme. In addition, issues around the supply of biodiversity credits, the price of credits and the state of the offset credit market have come to a head and are getting government attention. The Biodiversity Conservation Trust is redesigning the developer charge system and the Government is looking to address that in the offset market's supply of credits. Both the BCT and the Government are, for the first time, considering the barriers to entry for private landholders, what this means for the offset market and how the Government will need to adjust its approach to unlock the supply of credits.

A number of issues have been raised before the inquiry relating to offsets in the mining sector. I expect the Committee will have questions about these issues. It is important to note that because of the long time frame for mining projects, although the BOS commenced in 2017 recently decided projects have proceeded under older offsetting regimes. Additionally, some issues, including delaying finalising security for offsets, have largely been caused by changes to the offsetting regulation and policy regime. Again, centred on approvals under earlier offsetting schemes, it is crucial not to conflate the process for registering an offset against the title of a property with the acquisition and management of that property, which goes on despite delays around security and exits. It is also important to recognise that many of these transitional legacy issues will not arise under the BOS. Under the BOS offsets now need to be secured in perpetuity and the costs of the management paid up-front to the Government. Development cannot begin until credits are retired and the critical payment is made to the Biodiversity Conservation Fund. It is appropriate that the scheme is being subject to scrutiny and review. We are cautiously optimistic that in 2022 we will start to see a resolution of some of the issues that have become evident since the operation of BOS.

The CHAIR: Thank you very much, Ms Doherty. Mr Atkinson?

Mr ATKINSON: My name is Angus Atkinson. I am a cattle farmer from Coonabarabran. I am a member of the NSW Farmers Association and I am the chair of the National Farmers' Federation Sustainable Development Committee. I am speaking today on behalf of the NSW Farmers Association. Biodiversity and other natural capital services have been clearly identified by the National Farmers' Federation as an important part of agriculture's \$100 billion 2030 target. Therefore, programs like the New South Wales biodiversity offsets program are an essential part of that target. Getting them right will help deliver a more sustainable agricultural sector. Like climate change, farmers have already done a lot of the heavy lifting when it comes to biodiversity. Farmers have been forced to retain the last areas of vegetation for the community good and have not received any compensation. Properly set up and managed, offsets give farmers the opportunity to be more drought resilient and provide a valuable source of income during dry periods. Also, compared to buying an entire farm and then locking it up, offsets provide the community with a reliable source of income while maintaining and improving the property's natural capital and benefits to the local community.

We believe that conservation should be all about including people, not excluding people. Given that my family has been farming at our farm and in our area since 1958, sustainability is at the centre of our business. It is really important to remember that the majority of native vegetation in New South Wales is located on private land. For schemes that seek to conserve and improve this biodiversity to be successful, it is vital that private land managers have a seat at the table. Getting the scheme right for landholders will increase their participation and the effectiveness of the programs in achieving no net loss.

My family have had significant impact by biodiversity legislation without any compensation. Like many farmers, our property rights have been significantly affected, and this situation must be addressed through schemes like the offsets project. Landholders are already providing environmental services, and they should be offered some type of incentive and reward for doing those. The last thing any government should do is punish landholders who have done the right thing. An example for us is the koala legislation at the moment—the regulation. Landholders with koalas should be rewarded, not penalised with greater regulation and loss of property value.

I will briefly outline the main barriers limiting what we believe is the current effectiveness of the offset schemes and a number of issues regarding the biodiversity offsets scheme: the lack of recognition of existing biodiversity—"additionality" is a phrase that we hear quite often; the lack of information regarding the market for the biodiversity credits; a lack of independent advice for landholders; again, concerns regarding a small number of projects that have been funded by the government through the BCT which are extremely expensive versus some voluntary projects that are offered at very low per-hectare rates; the lack of ownership for where the total fund deposit goes once it has been collected; and linkage into other natural capital services, like carbon sequestration.

We were concerned, and again I understand there has been reform to the BCT's calculator, which again has given some people false expectations of pricing. There is a lack of progress in division 6 of part 5A of the Local Land Services Act 2013. A real issue for us is comparing agriculture and development on agricultural land for agriculture to a car park, where there is permanent change. Agriculture—basically it is lumped in as if we were a car park, and we find that to be just something that is unreasonable.

My personal experience with the offsetting programs—I have got a longer statement here, but I will try to summarise. We bought a farm in 2002. Unfortunately for us, that farm was caught up in the listing under an ecological community. When we bought it at auction it was not. By the time of settlement, which was six weeks later, it was. That was an 820-hectare farm. The whole farm was under that. In 2019 we put an expression of interest in to the Inland Rail to provide biodiversity offsets to the new railway line. After a considerable time, representatives of Inland Rail advised us the property could be potential for an offsetting site. We repeatedly contacted them, Inland Rail, but we never heard anything about it. In 2020 we decided to investigate the New South Wales Biodiversity Offset Program. Once again, we repeatedly tried to contact the BCT, and we were just unable to do that. Sadly, we had to rely primarily on the advice we were getting from our consultant.

We contacted an environmental heritage consulting company to discuss the possibility of using one of our farms. The consultant advised us that the area was very suitable. It was 820 hectares of plant community types that existed and were in demand. We paid for a half-day site visit by an accredited BSSAR assessor. That confirmed the plant community types, and the report that they produced advised us that we would produce approximately 2,000 biodiversity credits worth an average of \$3,000.

As you can see, that is a reasonable amount of money. We were advised that to do that we would have to spend \$85,000 to get a BSSAR done, and once we had done that we would be in a position to sell those credits. Of the money that we generated, the Government would have to retain \$2 million to \$3 million of our total fund deposit. Due to the lack of information that was available, again with the BCT, the real value of those credits was not right. I, and I suspect our consultant, used the BCT to estimate what the developer would have to pay for our

particular plant community types, but that assumed that we would be able to sell them, and that is what we have not been able to identify yet.

Despite this, we decided to go ahead and we signed a contract to complete a BSSAR, costing about \$85,000. After the first week of site inspections, things started to go wrong. Our ecologist warned that some of the plant community types that were meant to be on the farm actually were not and that it would take an additional week of survey work, costing another \$17,000. Reluctantly, we thought, "Well, we're committed now," and we understood that we were early adopters so we needed to take a risk. But at the same time the consultants that we were dealing with had won a contract to supply the Inland Rail with biodiversity offsets. I asked the ecologist if he knew about our expression of interest in the Inland Rail project, and I was eventually told that the consultants that we were using—one of their, you might say, sister companies—had looked at our expression of interest and determined that our property was not suitable for that. At no time did Inland Rail or the consultant advise me in writing what and why our expression of interest was declined.

I was extremely concerned that a big project in my area, the Inland Rail, and also the Santos gas project, which I thought would have been potential buyers for my credits, required none of the plant community types that I would have created. At the same time, the BCT released one of their fixed-price offers and, sadly, the plant community types that they wanted were in other Interim Biogeographic Regionalisation for Australia subregions, not where my farm was located, and therefore I could not participate in that part again.

So at that point I was looking at it thinking, "Wow!" I really wondered whether I had been caught up in a Nigerian scam where I just needed to keep spending more and more money to try to get my money back, to be honest. I am not accusing, in any way, the consultants that I have engaged. They were just using the information that they had available. Now I have suspended that project. We have probably spent \$70,000 so far, and I have been told by the consultants that unless I pay the relatively small amount of money that I owe them for the work they have completed, they will retain all the data that they collected.

The major lesson for me personally regarding that was that there was simply not enough information regarding the demand for credits that were going to be done for me. There was no readily available service to get independent advice on the biodiversity credits, and also there was an obvious conflict of interest between the consultants that had been paid to estimate the value of projects and also then doing the assessment of that project. Again, I am not accusing the guys that I did it with, but I am just saying they were just telling me—really, the better picture they painted, the more likely that I was to go ahead. Again, that was purely my decision. I understood that. I took that risk, and I am not blaming anyone. That was my decision. At a government level, it is really important to remember that in the review of the biodiversity legislation in New South Wales by the Independent Biodiversity Legislation Review Panel, which was chaired by Dr Neil Byron in 2014, he stated that:

We are not aware of anywhere in the world where long-term conservation of historical, cultural or biophysical resources has been successfully achieved solely through exerting the coercive powers of government.

That is a really important point because, once again from a farming point of view, we think it is really, really important that farmers are part of this, not just on the outside. Regarding the integrity of the scheme, it is essential that adequate resources are spent with the landholders that are involved with the offsetting scheme to ensure that maximum benefit of the scheme is achieved and that any resources should not be limited just to the participants but also should include interested neighbours. If it is properly run, the offset scheme will allow government to restore some trust that was lost when the focus on outcomes was replaced by process. Both the State and Federal governments have moved away from working with landholders to a more regulatory-focused approach.

Again, a classic example of this is New South Wales vegetation mapping. From the very start of the process, NSW Farmers' representatives, including myself, warned the Government that the maps would have very little value and would increase the distrust of government. NSW Farmers warned the Government that the maps would not be accurate enough to provide real outcomes instead of the tens of millions of dollars that would have been better spent on programs like this offsetting scheme. Unfortunately, the millions were spent on mapping, with no outcomes. An example on my farm was a molasses tank and a willow tree were mapped as koala habitat; African lovegrass and Chinese elm trees were mapped as native vegetation. If governments could offer landholders reasonable assistance with environmental works, without the negative [inaudible], the outcomes would be far better. Thank you very much for your time.

The CHAIR: Thank you very much, Mr Atkinson. We will now go to questions, and we will start with the Opposition.

The Hon. PENNY SHARPE: Thank you very much for attending, and thank you for your submission. I want to ask you first about aspects of the submission from NSW Farmers. You make the point in your submission that loss of biodiversity due to land management can be beneficially offset through a combination of social and economic regional benefits as well as strategic environmental protection. What do you mean by that?

Mr ATKINSON: What we mean by that is—again, at a regional level, instead of focusing solely at the individual farm level, if we look at the regional level, we are adamant that we can get a much better outcome than just simply focusing on the one farm and we need to look at our regional base to maximise the benefit to the community.

The Hon. PENNY SHARPE: So in terms of offsetting, you are talking about some lateral thinking in relation to where the offsets are found within a given region. Is that what you mean?

Mr ATKINSON: Absolutely. Again, in the north-west of the State there are a lot of landholders that have got land that they would quite happily involve in these schemes to ensure that they can manage—they can have other areas that can be developed.

The Hon. PENNY SHARPE: Okay, I get that part of it. But when you talk about social and economic regional benefits, is that separate to offsetting? Are there other things that you think that money should be put into that would be better than direct environmental offsets? Is that what you mean?

Mr ATKINSON: No, it is a combination. We think that the offsetting program by itself has some significant benefits but also the fact that by having a scheme that enables a balance, with the development of some areas and with also the retention of other areas, will have community benefits. The example there is if the farm is financed to be more viable, then they can contribute to their local community, and that makes all the difference.

The Hon. PENNY SHARPE: When you say "contribute to their local community", what specifically do you mean? The reason why I am asking is the biodiversity offsetting is supposed to be about—we are losing habitat, for whatever reason—development or on-farm work or any of those things—and the idea is that you then replace as much as you can like for like or you look at increasing the amount of area elsewhere that is protected. I just do not quite understand whether you are suggesting that that process could be used for other things that are not directly about finding and protecting similar habitat elsewhere.

Mr ATKINSON: Once again, I am sort of struggling. So your question is that—I am just trying to make clear what the question is, sorry.

The Hon. PENNY SHARPE: My question is, are you suggesting that biodiversity offsetting is not just about protecting habitat? Habitats are going to be cleared and it is offset elsewhere. My reading of the submission and what I am trying to explore is whether you think—and it is mentioned several times in the submission, "augmented by socially and or economically valuable projects". I am asking what you mean by that. Are they projects that are not related to preserving habitat elsewhere if it is cleared?

Mr ATKINSON: No. Again, my reading of that is the fact that the offsetting programs can provide a valuable resource for the local community [disorder].

The Hon. PENNY SHARPE: But they can be used more regionally. That is great, thank you. I am not trying to be tricky.

Mr ATKINSON: No.

The Hon. PENNY SHARPE: I was trying to understand what that meant. Thank you for that. You said in your opening statement about properties that have koalas on them—and I know most farmers are usually pretty happy about that—and you made the comment it should be rewarded rather than subject to further regulation. How do you think that should work?

Mr ATKINSON: Again, it is no simple thing. I suppose the simple thing is the fact that at the moment the real problem with that is under the current methods, the koala mapping, for example—so if a farmer gets identified that they have koalas on their land, instead of them being offered some type of incentive or reward, at the moment all that is offered is greater regulation and a loss of property value. So it is really important that the negative of having koalas is removed and it is actually incentivised.

The Hon. PENNY SHARPE: But is that not what the Biodiversity Conservation Trust and other things are supposed to be about? The idea is that if you are identified, then you are eligible for these programs, which then means you can get some other income that supports the restoration and care of that habitat.

The Hon. SHAYNE MALLARD: In perpetuity.

Mr ATKINSON: That is right. That is what we are trying to point out. It is schemes like this that do benefit folks that do have the goods, the higher value stuff, that there is a process for them to be rewarded and not just further regulated. That is where a scheme [disorder].

The Hon. PENNY SHARPE: Are you really talking about the land clearing regime versus the biodiversity conservation scheme?

Mr ATKINSON: Not so much one or the other. We are just saying for a farmer that has got a particular area and she is identified that she has got some koalas, what we are trying to do is make sure that there is a reasonably simple process in place to reward them for that and to encourage further adoption of practices that will encourage native vegetation and flora.

The Hon. PENNY SHARPE: I think there is furious agreement that we want to make it as easy as possible for landholders to be able to access these schemes. In your experience that you outlined in your opening statement, it clearly indicates that there are some real problems there and a lot of uncertainty and it makes people hesitant to sign up.

Mr ATKINSON: Yes, the greatest problem is—and koalas are a really good example—the fact that for a farmer, it is really a two-edged sword. Everyone that I know loves the idea of having them. If they have them, then it is great. But they really do not want to put their hand up because then they are going to get identified and then they are going to have more issues to deal with. So they just sneak under the radar and don't tell anyone. And that is not a good outcome.

The Hon. PENNY SHARPE: No, it is not a good outcome for anyone or for koalas. Yes, I agree.

Mr ATKINSON: No. That is exactly right.

The Hon. PENNY SHARPE: I know other members have questions. I might ask another one and come back to it. Your submission is extremely critical of part 5A of the Local Land Services Act and the changes and the work of the panel in relation to native vegetation. You indicate that there has only been one successful application in more than four years. Can you unpack that for us and give us a bit more information?

Mr ATKINSON: Yes. I am sure the Committee does have a reasonable understanding of this particular Act. That particular part of the reforms was meant to provide landholders in areas where they might have significant amounts of native vegetation already and they would like to develop a reasonably small part of it. So they might have, for example, 8,000 hectares, and there are plenty of places in the far western like that. They have 8,000 hectares of vegetation and they may want to develop 1,000 hectares of that, to go and get compensated, because it is much more productive and much more profitable. They would have to go through that particular system.

The rules under that particular system make it absolutely—you could not afford to do it. Most of the offsets you would have to tie up at least eight to one, and you would have to pay into the BCT for the species that you have destroyed. That makes it completely unworkable for farmers, given the fact that in those examples they have already got significant areas of native vegetation and they are just expected to keep it for the community. There is no avenue for them to go down for a way of improving their long-term viability. And that is where there was frustration.

It is quite a unique position. It does not apply to very many parts of New South Wales because of the developments that have gone on. But for the farmers that are in those situations, they are enormously frustrated. They look around and they say, "We have got 90 per cent of our farm is native vegetation, we want to improve 10 per cent of it, but we just can't." There is no real way to do that and so there are frustrations that there are no real avenues. Again, for people who have significant areas of native vegetation that is really frustrating.

The Hon. PENNY SHARPE: Thank you for that. That is helpful.

Mr JUSTIN FIELD: I might go to Ms Doherty. Do you think that mines should be able to pay to the BCT instead of themselves buying offset sites or directly engaging with the market?

Ms DOHERTY: Yes.

Mr JUSTIN FIELD: There is a real concern that the BCT has taken a really long period of time up until now to acquit offset obligations that it does not have the ability to not take on. If someone wants to [inaudible] and pay [inaudible] they can. So we can have a situation where the impact occurs up-front once the project starts—the mine or whatever—but those offsets are not even identified and found and acquitted for some period of time. In the instance of mines, which are very high-value projects but a relatively constrained space, would it not improve the integrity of the system to, at least for those projects, have them purchase the offsets themselves?

Ms DOHERTY: I think it depends upon the individual project. Some projects will still probably purchase their own offsets and it depends on the individual circumstances of that project—where it is, what the concerns might be for the community and others. I do not see why mines should not have the same options as every other developer or look any different. But individual mines will make the decision on the circumstances of their project about which avenue for offsetting is best.

Mr JUSTIN FIELD: I know a lot of mines in New South Wales have offsetting obligations under a range of different historical programs. You would be aware, no doubt, of *The Guardian* story that highlighted that a number of mines in New South Wales, primarily coalmines, received multiple extensions to their requirements to deliver offsets under their approvals. I am not asking you to provide specific comments on specific mines unless you can and are prepared to, but do you think it is appropriate that mines that are currently operating should be able to be given multiple extensions on the delivery of offset obligations?

Ms DOHERTY: I think there are a couple of things in this. There are a number of projects out there that have had some delays around finalising their security for their offsets. I cannot think about individual projects because they have different circumstances. It kind of depends on what scheme they were assessed under and the timing. What I can say generally is that there are a couple of things. Firstly, we need to be careful not to conflate security—registering the offset on the title of the property—with acquiring and managing the offset. You would be well aware that previous schemes did not really provide a lot in terms of paying to funds; it really was a requirement that mines go and secure their own offsets.

That is still the case today because, frankly, the Biodiversity Conservation Fund is not an economic means of securing an offset for mining projects. We cannot buy the credits on market because the market does not have enough liquidity in the type and number of credits people [inaudible]. So mines are still going out and securing their own offsets and they have been doing that for a number of years. I think we need to be careful and we need to recognise that security is a different thing from acquiring an offset. You will find that most [inaudible] offsets were acquired at some point during the environmental impact assessment [EIA] process or maybe shortly after. They might have bought them before they commenced their project approval process because it is a way of reducing a risk, and when the properties are available you need to buy them. So it is not unusual for companies to have banked land ready for projects. That is a really important thing.

Most of these projects that you are thinking about, whether they have been raised or are legacy projects, already have offsets that they own. They are usually owned by the time the project is approved. There are conditions in the project approval around the management of those offsets: they are required to provide a biodiversity management plan and they are to manage in accordance with that. They are required to report on their offsets and they are subject to compliance activities by the department of planning. So I think it is important to understand that the actual security provides for the long-term protection of that offset, but it does not mean that that offset is not in existence and being managed.

Mr JUSTIN FIELD: Sure, but the implication of that is that in most instances they have not been signed off as delivering the biodiversity obligations—i.e. the BCT may not have accredited it as delivering against its obligations or it might not have been deemed to be rehabilitated to the degree that was expected. Is that more like—

Ms DOHERTY: We are just talking about offsets; we are not talking about rehab. What is—

Mr JUSTIN FIELD: [Disorder] rehabilitation, though. In some cases the offset site's restorations are clear of it, yes. But that is the issue here: Land is being acquired but we are not delivering a biodiversity obligation to this point.

Ms DOHERTY: No, that is not right. In the case of pre-Biodiversity Offsets Scheme projects, which is basically every mining project, that land is acquired during the EIA process. The mines undertake an assessment of that land during the EIA process and that assessment is part of the submission for the Office of Environment and Heritage, now Environment, Energy and Science. They will assess that land and verify that the values are there that are required to meet the impact for the site. Under their EIS there would be an explanation about active management and other management they were going to undertake, but also a commitment and approval conditions provided by the biodiversity management plan. The biodiversity management plan sets out how they will actively manage that site. All of that happens pending security being finalised. The security puts into place an agreement that reflects what the proponent has said they will do during the EIA process and through the biodiversity offset management plan.

Mr JUSTIN FIELD: Yes, but when you say security, you mean effectively—one example might be the BCT accrediting that as a biodiversity offset site and establishing an in-perpetuity agreement. That is what you mean by security.

Ms DOHERTY: Yes, or—

Mr JUSTIN FIELD: Why haven't—

Ms DOHERTY: [Disorder] the legacy sites are much more likely to be a conservation agreement. There are very few biodiversity stewardship agreements [BSAs] that have been created at this point. They are created

under the Biodiversity Offsets Scheme. Those are coming through probably in the next year to two years, but at the moment we are still largely dealing with conservation agreements and with legacy projects, so it is important to understand that. Yes, it is the security. It is the thing that prevents the offset from being developed in the future; it is not the ownership of the offset. It is not on its own the management of the offset because the biodiversity management plan provides for the management of the offset even before the agreement is finalised.

Mr JUSTIN FIELD: What is the delay on the security, though? What has been said to me is that often whomever is the appropriate assessor goes out and realises that that site might not be delivering the expected outcome or that the management plan, despite being in place, may not have been delivered on and there are disagreements about the adequacy of the site, which is slowing the process of finalising the security. Am I wrong? Are the people telling me that wrong?

Ms DOHERTY: No. I think the biggest problem has been the regulatory and policy churn around offsets in New South Wales. For mines in New South Wales we have probably been through a bit more than other types of developments because in 2014 the Government brought in the biodiversity offsets policy for major projects. That policy required mines to use a biobanking agreement to secure their offset. Traditionally, we had been using conservation agreements and we had to transition to using the biobanking agreement. There was some delay because there were projects that simply had not been assessed using BBAM. If you have not been assessed using the BBAM, you cannot apply a biobanking agreement, so there was a delay while there were negotiations with the Government about what to do about those problems.

Largely those sites are still using conservation agreements. Then within two years of the major project biodiversity policy being released, we had the commencement of consultation around the Biodiversity Offsets Scheme. It was very clear that the BioBanking scheme was going to disappear, that biodiversity stewardship agreements [BSA] would then replace biobanking agreements and that we were going to have a new assessment methodology. The BioBanking Assessment Methodology was replaced with the Biodiversity Assessment Method, which is significantly different. You need to have a BAM assessment of your offset in order to apply a BSA.

Since 2014 there has been this a really significant churn. There have been delays where people have stopped because it was clear that there was going to be a new type of security that was going to be required. So there has been a slowdown. Let's stop and reassess what we are doing. Do we need to do a new type of security? We are frequently told that we will have to do it and then backtrack to a different type of security because it cannot actually be done. I suppose that is the background to a lot of these delays. The other thing that is really important is that we had a change of agency as well. In this period of time the legislation—the biodiversity conservation legislation—commenced in 2017. We had a whole new agency, the Biodiversity Conservation Trust, that had been set up to deal with the applications for these agreements. So the early conservation agreements, the BSAs, they had to start from scratch.

They had to completely upskill, bring on people and there had been delays with them. There were different expectations that we now have to meet as well. I think that has led to some back and forth between mining companies, that have been using voluntary conservation agreements, and the BCT, which is now asking for different management. Before that we could negotiate to both protect the mining company's project and look at their offset through their environmental impact assessment process and we also were responsible for assessing some of the biodiversity conservation agreements [BCAs]. We now have different agencies and it has led to some complications.

Mr JUSTIN FIELD: Chair, if I could just ask one last question?

The CHAIR: Sure.

Mr JUSTIN FIELD: Ms Doherty, I put these questions to the Government around the delivery of mining offsets. The most recent answer I got back was that of the 41 projects approved in the past decade—and this is specifically related to coalmining projects—one did not require offsets, 14 have not yet triggered the requirement for offsets so they might not have commenced that part of their project, so of the ones that have, 17 have, they say, substantially finalised in perpetuity security arrangements—they do not specify what "substantially finalised" means—and nine have land set aside which has been approved in accordance with individual biodiversity management plans and further work is underway to secure land in perpetuity. My reading of that is that not one of the 41 coalmining projects approved in the last decade have secured the offset obligations they have. Am I reading correctly?

Ms DOHERTY: It is wrong because I know there are conservation agreements approved. I do not know—you are referring me to that thing I do not know. You can ask the Government again, don't forget, tomorrow. But my understanding is that I know members who have signed off conservation agreements. So, I am not sure what date you have got that information on, but I do not think that can be right.

Mr JUSTIN FIELD: I got that last week.

Ms DOHERTY: Did you? Okay.

Mr JUSTIN FIELD: Thanks, Chair.

The CHAIR: Thank you. Ms Doherty, I will ask you a few questions about mine rehabilitation, if I can, being used as offsets. Is that an increasing incident now that more and more mine rehabilitation is being used to offset mines? Is that recent in terms of the increase in that happening?

Ms DOHERTY: Can I just be clear about who is speaking? Is that Ms Sharpe?

The CHAIR: No. It is the Chair, Ms Faehrmann.

Ms DOHERTY: Sorry. I cannot see you.

The CHAIR: Sorry.

Ms DOHERTY: No, that is fine. Look, I know and I have read the submissions of some of the environmental groups and I have read their evidence in their transcript. There seems to be this sense that there is more rehabilitation used. I think, no, actually it is probably going to be not what was said but probably ecological rehabilitation as an offset, and it is going to be less likely to be used now than it has in the past. Obviously, the biodiversity offsets policy for major projects and now the BOS provides specifically and explicitly for rehabilitation to gain offset in credit. But prior to those schemes, there was always that part of a mine's rehabilitation that would be part of their offset package. It is something that has been credited but perhaps not explicitly for a number of years, but I would say that under the Biodiversity Offsets Scheme it is less likely to be used.

What the Biodiversity Offsets Scheme does, it sets up a very robust way of assessing what offset in credit can get with ecological rehabilitation and it is really significantly discounted. So of the four elements which can generate offsetting credit—security, averted loss, standard management and active management—you can only get credit for one of those, which is the active management component under the BAM. So it really is quite a significant discount. That is the No. 1 thing that I suppose you need to take into account when you are thinking about whether this is attractive to proponents. The other thing is that you are going to have to—

The CHAIR: Just to jump in there, though, if there is clearing of a particular vegetation type that is going to be extremely hard to offset because it is so threatened, then it would be attractive at some point for the mining company to have an offset obligation, which is rehabilitating a mine site, would it not? I understand that some companies have got—

Ms DOHERTY: Yes, but—

The CHAIR: If I can just finish—and I understand that some mining companies have the ability to offset the same mine, say, 20 years in the future. Is that correct as well?

Ms DOHERTY: What do you mean by "offset the same mine"?

The CHAIR: Offset the mine—the clearing that is going to take place as a result of a mine. I will give you an example. I understand that Glencore's Mangoola mine—the habitat destruction by that mine—will be offset by the future rehabilitation of the same mine site. Is that correct?

Ms DOHERTY: That you will impact on a mine and then you will be able to get some credit for the ecological rehabilitation you do on that site?

The CHAIR: Yes, the habitat destruction caused by the construction of that mine, you will be able to offset that by rehabilitating in some part—whether it is 20 per cent, 30 per cent of your entire offset obligations—but the future rehabilitation of the same mine site will be counted. Is that correct? Is that able to happen?

Ms DOHERTY: Yes. That is it in a nutshell.

The CHAIR: From the same mine site. Are there examples—

Ms DOHERTY: Why would they use different mine sites? I do not understand.

The CHAIR: Sure. Are there examples of successful rehabilitation, for example, of intact woodland communities in terms of mine rehabilitation? Has that been proven yet that that can occur?

Ms DOHERTY: Can I go back to answering the first question? I would just like to tell you—I would like to explain to the Committee why I think it would be less. I have gathered from the fact that there is a reduction of credits. Also you have to undertake what is a very difficult type of rehabilitation so we acknowledge that, and

we will come to answering the next question as well. You also have to demonstrate that it is feasible and likely to succeed, which again, Chair, comes to your next question. Also there is a significant risk that proponents have to take on board. They take on board the risk that at the end of 20 years that they will not be successful; that they will not meet their completion criteria. That is a risk that they need to take on.

Because of that risk, they have to not only undertake the expense of undertaking that rehabilitation but they also need to provide a bond which covers the cost of securing offsets if they are unsuccessful at 20 years. So, effectively you could end up paying twice for that rehabilitation. All of these things, the things that I have outlined, they do make it relatively unattractive and they do mean that it is really only likely to be big operations that have sophisticated rehabilitation practices and who have been successful in undertaking this type of rehabilitation in the past that will commit to it. So I would very much say that it would be less rather than more. And to your next question about research—

The CHAIR: We have just got two more minutes.

Ms DOHERTY: Okay. I know that some answers—

The CHAIR: I can put some questions on notice. I am just conscious that Government members have questions. Mr Mallard?

The Hon. SHAYNE MALLARD: Ms Doherty, I am surprised to hear that rehabilitation of a mine site is a valid offset on the project. I always thought that there would be an obligation for the destruction that the mine causes. Is that a historical situation that is coming forward from previous regimes of approvals for mines that there is an offset or is that embedded in the current policy of the Government?

Ms DOHERTY: It is part of the Biodiversity Offsets Scheme.

The Hon. SHAYNE MALLARD: The current one?

Ms DOHERTY: Yes.

The Hon. SHAYNE MALLARD: To your knowledge, how many mines have availed themselves of that option? You said before it could be 20 per cent or 30 per cent.

Ms DOHERTY: Under the Biodiversity Offsets Scheme?

The Hon. SHAYNE MALLARD: A component of their offset being the rehabilitation of the mine site in 20 years' time.

Ms DOHERTY: I do not know.

The Hon. SHAYNE MALLARD: Can you take that on notice maybe and have a look at that? Thank you.

Ms DOHERTY: I think that is probably a question that would be better to ask the Government because I do not have approval authority. I think you should ask the department of planning when they are before you tomorrow.

The CHAIR: With that, I am very sorry to say that is the end of the session. I am sorry, Mr Atkinson, that we did not get to ask you more questions. Time unfortunately got the better of us. I am not sure if any questions were taken on notice, but the secretariat will be in touch if there are any supplementary questions for either of you as witnesses. Thank you very much for appearing today.

(The witnesses withdrew.)

The Committee adjourned at 17:00.