

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 Friday 10 December 2021

The Committee met at 9:00.

PRESENT

Ms Cate Faehrmann (Chair)

The Hon. Catherine Cusack

The Hon. Rose Jackson

The Hon. Peter Poulos

The Hon. Penny Sharpe

PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato

Mr Justin Field

The Hon. Mark Pearson (Deputy Chair)

* Please note:

[inaudible] is used when audio words cannot be deciphered

[audio malfunction] is used when words are lost due to a technical malfunction

[disorder] is used when members or witnesses speak over one another

CORRECTED

The CHAIR: Welcome to the third hearing of 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. I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the land on which the Parliament sits. I also acknowledge the traditional owners of the lands from which all meeting participants join us today. I pay respect to the 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 broadcast 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 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 have more time or with certain documents at 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. I ask Committee members to clearly identify who questions are directed to and I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Members and witnesses should avoid speaking over each other so that we can all be heard clearly.

CORRECTED

SCOTT PHILLIPS, Chief Executive, Local Government NSW, before the Committee via videoconference, affirmed and examined

SUSY CENEDESE, Strategy Manager – Environment, Local Government NSW, before the Committee via videoconference, affirmed and examined

STEVEN PEART, Group Manager – Development Services, Port Stephens Council, before the Committee via videoconference, affirmed and examined

KIMBERLY BAKER, Environmental Planner, Port Stephens Council, before the Committee via videoconference, affirmed and examined

MARY-ANNE CRAWFORD, Manager – Development and Environmental Services, Singleton Council, before the Committee via videoconference, affirmed and examined

ZIGGY ANDERSONS, Coordinator – Environmental Services, Singleton Council, before the Committee via videoconference, affirmed and examined

The CHAIR: I assume that one person from each council will be making an opening statement. Mr Phillips is nodding. We will start with the Local Government NSW. Is Mr Phillips or is it Ms Cenedese giving an opening statement? I think you might be on mute. Can you hear me, Mr Phillips? I will move to the Port Stephens Council for now. Who is providing that opening statement?

Mrs BAKER: I will be making the statement for the Port Stephens Council. Thank you for the opportunity to address the Committee today and discuss our submission made on the inquiry into the Biodiversity Offsets Scheme. My name is Kimberly Baker, Environmental Planner for Port Stephens Council. I am also a Biodiversity Assessment Method accredited assessor. With me today is Steven Peart, our Development Services Group Manager.

Port Stephens is an internationally recognised tourist destination focused around the region's unique biodiversity values and our famous local koala population. Recent community surveys also identified the natural environment as an important asset to our community, with a specific focus on the local koala population as well. The Port Stephens Council was the first council in New South Wales to prepare and adopt a comprehensive koala plan of management under the then State environmental planning policy [SEPP] 44 in 2002, which is still active today.

Our local government area contains a variety of sensitive ecological values and biodiversity assets which are often managed and assessed through the Biodiversity Offsets Scheme [BOS]. In assessing developments subject to the BOS, council has observed that the scheme is generally effective. The avoid, minimise, offset hierarchy of the Biodiversity Conservation Act [BCA] 2016 provides a powerful framework for ensuring that important biodiversity values of a site are first protected locally before then being offset. The other strength of the BC Act is having the five thresholds that trigger development into the BOS, and these two aspects make the scheme more effective than previous provisions under the Threatened Species Conservation [TSC] Act.

Although the council is supportive of the BOS, we have also observed that there are several inadequacies with the offsets scheme. We have focused our submission on three major items, which we are predominantly concerned about. Firstly, the BOS does not require species credit species to be offset locally. This is particularly problematic for Port Stephens Council in managing its local koala population, as an important koala habitat for species credit species can be offset anywhere in the State. This general approach to the BOS to manage threatened species at a statewide scale does not align with the objectives of the New South Wales koala SEPP to support a permanent, free-living population of koalas over their present range.

This issue could be resolved by requiring species credit species offsets for koalas to be secured locally or within the local government area [LGA]. This approach could provide better alignment with the New South Wales koala SEPP and our comprehensive koala plan of management, and reduce requirements for double offsetting. Secondly, issues have been identified with regards to the streamlined assessment module of the Biodiversity Assessment Method, or BAM. This part of the BAM prescribes when a streamlined biodiversity development assessment report [BDAR] can be prepared and the requirements of that report. Currently streamlined BDARs are not available to be prepared for biodiversity value-matched areas that consist of core koala habitat.

Within our LGA, core koala habitat is often mapped as occurring in small pockets across urban and peri-urban areas, particularly within areas zoned large lot residential, or R5. We have observed several instances where the interaction between small-scale development and the ability to use the streamlined assessment module has led to disproportionate financial and time burdens for families seeking to build a home. It is our

CORRECTED

recommendation that the inquiry investigate the opportunity to allow for the use of streamlined BDARs for areas of core koala habitat, particularly within residentially zoned land, by adding in koalas as a species credit species. We also recommend that the inquiry review the streamlined assessment module to ensure that it provides a robust assessment for all protected species.

Lastly, council does observe the extensive clearing of vegetation on rural zoned land prior to lodgement of rezoning or development applications, presumably to avoid triggering BOS clearing thresholds or to reduce the residual offsetting obligations of the project. These clearing actions are often undertaken on land with no agricultural operations under the proviso of allowable activities under the Local Land Services [LLS] Act 2013. There is an opportunity for the New South Wales Government to provide support and guidance to councils by amending the Local Land Services Act 2013 or providing a more clear pathway to limit vegetation loss on development lots and to strengthen the compliance provisions available within the LLS Act and the Biodiversity Conservation Act. Thank you again for considering our submission and for the opportunity to address the Committee today.

The CHAIR: Thank you very much, Mrs Baker. That was a very good opening statement. We will go to Mr Phillips now, who has rejoined us for his opening statement.

Mr PHILLIPS: Good morning and apologies for cutting out there [inaudible].

The CHAIR: Mr Phillips, you are very faint. Is there anything you can do about your volume? You have got your headphone on but maybe just moving closer to the microphone on your computer may help.

Mr PHILLIPS: Is that better or not?

The CHAIR: Yes, that is better. The computer is picking up your voice. It is much better, thank you.

Mr PHILLIPS: Good morning and apologies again for cutting out. Danish wi-fi is not as secure as I had hoped. Thank you for inviting Local Government NSW to address the Committee in relation to our submission. As you would be aware, local government has an essential role in contributing to biodiversity conservation, including through planning and approval processes, community education and engagement activities and as public land managers. At the outset, let me put on the record that local government supports the conservation of biodiversity and supports the Biodiversity Offsets Scheme in principle. In saying that, however, the scheme requires changes to improve its functioning and its outcomes.

Councils have expressed a concern that biodiversity offsets are not leading to net improvements in biodiversity. In particular, there are concerns in relation to biodiversity loss in rural areas of New South Wales where the interaction of the scheme and other vegetation management frameworks are inconsistent or unclear. Structural problems with the system include differences in rural versus urban applications and outcomes, lack of defined thresholds—for example, the serious and irreversible impacts—and no ability to link offsets to the same region that is experiencing impacts. From an administrative perspective, councils have identified difficulties with the scheme such as an incomplete backing for guidelines and a poor understanding of the scheme by proponents and the wider community.

Our submission makes quite a number of recommendations to address these issues and to improve how the scheme operates. Our more fundamental recommendations call for greater focus on applying the avoid and minimise principles before offset, greater emphasis on requiring like-for-like offsets, offsets being procured locally wherever possible, improvements to the scheme and broader land management frameworks to prevent incremental clearing, more concerted efforts on scheme education and on compliance and enforcement in relation to accredited assessors, and greater support to encourage the establishment of stewardship sites, or the credit supply, as it is often referred to. Thank you again for this opportunity to discuss Local Government NSW recommendations and the possible pathways towards improving the functionality and outcomes for the Biodiversity Offsets Scheme.

The CHAIR: Thank you very much for that, Mr Phillips. Finally, we will go to Singleton Council. Who is giving that opening statement?

Mrs CRAWFORD: Thank you, Madam Chair, that will be myself today. Thank you for the opportunity to make a statement today. The Singleton LGA includes 381,779 hectares of national parks and State forests and comprises 92,302 hectares of coalmining leases and exploration licences, making it one of the largest State significant mining areas in New South Wales. The known area of mapped biodiversity offsets in the Singleton LGA is approximately 16,000 hectares, or 3.28 per cent. Six per cent of the land in the LGA comprises vegetation that is classified as being an endangered ecological community.

In 2020 Singleton Council adopted its Local Strategic Planning Statement [LSPS]. This statement set the strategic policy positions regarding biodiversity in the LGA. Council's policy outcomes are to advocate for

CORRECTED

significant local biodiversity corridors and to ensure that where development of land is likely to disturb or harm biodiversity, adequate justification will be required, including the consideration of alternative options. Council's assessment of the effectiveness of the scheme is the main consideration of these policy decisions. Whilst council is supportive of the scheme, there are ways in which the scheme does not align with the outcomes in our adopted LSPS. Today I would like to highlight two of those.

Firstly, the most important misalignment is the application of the serious and irreversible impact refusal provisions, which are crucial to the long-term viability of many at-risk species and communities. These provisions only apply to local development and not to major projects of infrastructure or agriculture. Consideration of serious and irreversible impacts should form part of the assessment process for all development types. In that regard, cumulative impact of biodiversity offsetting is often left to council to impose on its community, as the assessment process in particular for major projects constrains those impacts to the individual project level. Mapping of offsets within an LGA and providing public access and scrutiny to offset outcomes would improve the concerns around the cumulative effects of multiple projects within a locality.

Secondly, strategically locating offsets in the areas of biodiversity importance within known biodiversity corridors provides positive biodiversity outcomes. Where offsets are not strategically located or, as is the case in Singleton, are concentrated within a region, the consequences on biodiversity and strategic land and planning outcomes could be quite significant. Finally, council also raised concerns regarding like-for-like rules, credit pricing, consistency in the application, particularly between Local Land and the Department of Planning, and transparency of the scheme across all development types in the submission that we made to the inquiry. These concerns are consistent with those that have been raised here this morning by Local Government NSW and Port Stephens Council. Again I would like to thank you for your time in making this submission today.

The CHAIR: Thank you very much, Mrs Crawford. We will go to questions starting with the Opposition, the Hon. Penny Sharpe.

The Hon. PENNY SHARPE: Thank you for your submissions; they are extremely helpful. Mr Phillips, I might go to you first. Thank you for the work that you did, bringing all those councils together. There are some very clear themes emerging but also real regional differences in terms of the way the system is operating. My first question—and I do not know whether you know the answer to this—do we have any data on the number of sites, I suppose it is development applications [DAs] where in terms of the hierarchy there is avoidance, then there is mitigation, and then there is offsetting? Is that broken down council by council, or do you have an overview of that?

Mr PHILLIPS: Thank you for the question. Unfortunately, no, I do not. I would be happy to take the question on notice and provide any data that may be available to assist the Committee.

The Hon. PENNY SHARPE: Yes, thank you. It goes to this issue of the system being about no net loss, and most of the local councils have raised the issue that they are not at all convinced that there is no net loss. In fact, it seems like there is accelerating loss with a lot of gaps, with some good outcomes at the end. So that would be very helpful; I would appreciate that. I also want to say thank you for the list of suggestions. You have summarised almost all of the submissions to this inquiry in terms of the issues. So I am not going to ask you about them because I think they are self-evident. I just wanted to indicate I appreciate that.

I did want to ask though, and this might be to the other councils as well, as obviously with Port Stephens the peri-urban development and cost of land issue is massive, and Singleton clearly has the mining issue. I will start with you first, Mr Phillips. Is there interaction between the LLS land clearing laws and biodiversity offsetting in those kind of regional areas? Can you just take us through the issues that councils are raising about that?

Mr PHILLIPS: Thank you. Yes, I can. Councils are particularly concerned that the scheme is resulting in a loss of biodiversity in their own local area. We are finding that is often the case in coastal areas where there is quite considerable development pressure and there are less offset credits currently available for purchase in those areas where there is limited potential for stewardship sites to be established. It really depends on the LGA but there are quite considerable pressures in a number of those council areas.

The Hon. PENNY SHARPE: I might go to Port Stephens. Do you just want to comment on that? Obviously you have a lot of development pressure, not a lot of land available. Obviously koalas are a big issue in Port Stephens. Can you just take us through? I suppose, as you are assessing what is coming through, where are you really struggling to try to find local sites? Is it because land is too expensive?

Mrs BAKER: I can talk a bit to the pressures in our LGA. Koala habitat is co-located on the urban fringe quite a lot and it is difficult to balance the offsetting on the site with any of the locality with balancing development. The real issue we are having is the interaction with the LLS Act, as you asked me previously.

CORRECTED

The Hon. PENNY SHARPE: Yes. Could you give us a couple of practical examples of where you have seen that and what that looks like?

Mrs BAKER: Yes. It is all different types of frictions we are seeing with the LLS Act. I would say, for example, with residentially zoned land there are several lots that have been in consultation with council about a planning proposal to rezone that rural land to residential land. They have now used the land clearing codes to go and clear 12 metres on each side of their property and degrade that habitat under the proviso of agricultural activities. That land is not actually used for agricultural activities. It is used for residential already.

The Hon. PENNY SHARPE: Just to be clear, there is no-one monitoring that, is there? Essentially they can say, "Look, we're zoned rural. We are clearing on 12 metres on each side of the fence. We're allowed to do that under the code," even though there is no agricultural action being taken. They are really just preparing for residential up-zoning. Is that it?

Mrs BAKER: Correct. That is how it would appear, yes.

The Hon. PENNY SHARPE: But, again, council has no mechanism to do anything about that, do you?

Mrs BAKER: Compliance on rural zoned land sits with Local Land Services and council only has compliance control over residentially zoned land and non-rural zoned lands.

The Hon. PENNY SHARPE: Have you raised that with the LLS? Obviously you meet regularly about a whole range of land management issues. Surely they are aware of that. First, have you raised that with them? Second, what has been the response?

Mrs BAKER: We have discussed it with them in an open meeting once and we had the opportunity to meet other local officers. I think that perhaps there was a little misunderstanding between what might be perceived as development in the future. Their argument was, "Well, it's not development now. That clearing purpose does not facilitate development." They considered that because it is rural zoned land and there were a couple of sheep or goats or something on that property that it was considered to be an existing agricultural activity. But in our opinion that land was not actually being used for a commercial or agricultural activity. It was for residential purposes. I guess there was a bit of a disagreement in that regard.

For another example, there is rural zoned land outside of that urban interface and there was a case where the proponent had come to council in a pre-lodgement meeting to build a structure that needed a DA consent. They then went away and got a land clearing permit from LLS to clear that portion of the land that was being remapped, or would have been over the clearing threshold, sorry, to then clear that land under the land clearing code—the permission from LLS, sorry—and then they came back to council and then lodged the DA for that infrastructure in the same footprint that LLS had allowed them to clear. So they essentially avoided triggering a BDAR and offsetting through the BOS by going through LLS. When we contacted LLS to ask what was the context of their approval, they said that he said he was just clearing for grazing. He mentioned he may be expanding his other activity, but the LLS said that could happen in five years, two years, 12 months, three months. They were not able to take that into consideration in their assessment at that time so they just had to assess it on face value, which was cattle grazing.

The CHAIR: Just for Hansard's purposes, there are a lot of acronyms in this business, BDAR again is?

Mrs BAKER: Biodiversity Development Assessment Report.

The Hon. CATHERINE CUSACK: I also have some questions for the Port Stephens Council, being a bit familiar with some of the issues. Thank you for your submission and thank you particularly for focusing on wildlife because the habitat that we are trying to protect is of course for wildlife. I think that is something that we do need to focus on in the inquiry. You kind of made the link that protecting species such as koalas involves local action and that to look at statewide or sort of offsets that extend well away from the location of the development is going against that, sort of, but it also does not align with the concept of koala management plans, which is about having local strategies.

My first question relates to 2017. I know the threatened species council made a preliminary determination that Port Stephens koalas were endangered. I am sorry to bring this up but I think this goes to the heart of the issue that you are bringing before the Committee. Then a decision was made that we are not going to have local species being defined as endangered; it is going to be all on a statewide basis. I just wonder if you could comment on that having an impact in relation to council's capacity to protect habitat.

Mrs BAKER: Yes. Thank you. I can make a comment on that. Are you talking in regards to an endangered population listing?

CORRECTED

The Hon. CATHERINE CUSACK: Correct. It was headed for that listing but then the methodology changed and they decided not to list the local populations anymore. I suppose the evidence that I would like to hear is that it would have been beneficial to Port Stephens koalas if they had been able to get that listing. I am not putting words in your mouth.

Mrs BAKER: Yes. Thank you. I agree that it is a shame that the Port Stephens koala population was not listed as an endangered population under the TSC Act then. I understand from the determinations and the findings that I have been exposed to that it would have been a successful listing had the change in legislation not have gone through at that specific time, but, unfortunately, because the BC Act commenced and the determination was not made before that, it did not—

The Hon. CATHERINE CUSACK: So would you say that the previous methodology that did permit local listings was better aligned with the concept of local management of threatened species?

Mrs BAKER: Yes. I think that is definitely an excellent finding, yes.

The Hon. CATHERINE CUSACK: Coming back to the koala SEPP 2021, as I understand it that is a document that is still a work in progress while people discuss what the final guidelines will be—sorry, the koala SEPP 2021 has been finalised but it only applies to metropolitan areas. The koala SEPP 2020 still applies to Port Stephens Council. That is my understanding. So that means that only 10 species of feed trees for koalas can be—do you have other species of trees that would have been protected had the list of 123 species been adopted?

Mrs BAKER: So the koala SEPPs, they have a provision in there that allows our Comprehensive Koala Plan of Management [CKPoM], which was approved under SEPP 44, to remain active. Under our CKPoM, we only have three koala feed tree species. The SEPP basically becomes our CKPoM in our LGA, so our LGA only has three koala feed tree species, but I agree that the new SEPPs have the 120, which is much more powerful and more relevant to our LGA.

The Hon. CATHERINE CUSACK: There was that 2021 SEPP and was adopted for Sydney and certain areas around Sydney, like the Blue Mountains area. If that was adopted in Port Stephens, if that had been applied to Port Stephens Council, would that have resolved many of the issues that you have raised with us today?

Mrs BAKER: Perhaps not because we have still got our CKPoM that works on the SEPP 44, so the SEPP 2020 and 2021 essentially do not change the way we work in Port Stephens.

The Hon. CATHERINE CUSACK: The principal issue relates to rural zoned land.

Mrs BAKER: Yes.

The Hon. CATHERINE CUSACK: The owners would be looking at urban development, which was actually the land that, it was agreed, would be sanction free that we would be protecting.

The CHAIR: I might move to ask a couple of questions of the Singleton Council, firstly. Mrs Crawford, in your opening statement you said that the situation with offsets in your area is that they are kind of all occurring in the one place or in the region. Could you just explain what you mean by that and what that area is?

Mrs CRAWFORD: The situation in Singleton is that a majority of our offsets are not locally acquired offsets. They are generally acquired through the major projects State significant development planning process, which kind of puts council at a little bit of arm's length around the selection and location of offsets through that process. Quite often they can be opportunistically, I guess, secured rather than strategically secured.

But one of the things that we have identified within our local planning provisions is the need for us to be a little clearer around what the biodiversity corridors, in particular significant biodiversity corridors, might be in our local government area and that is a body of work that we are working through at the moment. The concern that we have around that is the relationship between that local planning outcome, the biodiversity benefit versus the way in which the Department of Planning may apply conditions of approval, or an applicant themselves may seek offsets well in advance of their development, or outside that local planning provision process.

The CHAIR: Thank you. So Singleton is massively impacted by open-cut coalmining, of course, and this is probably much of the major projects that you are talking about. So what involvement, then, do you have with planning when various mine applications and extensions kind of go through with these offsets? I think you were just indicating then that there is not much of a relationship there, is there?

Mrs CRAWFORD: Sorry. Please do not misunderstand. We do have a relationship, a very good relationship, with the Department of Planning in the way in which we work collaboratively together in the approval process for major projects, but we are not a regulatory authority in that process so we really just provide an advisory function, as does any council in State significant development. The concern for us, I suppose, is the

CORRECTED

extent to which that advice may be taken on board and we have certainly been doing a lot of work with the Department of Planning over recent times to promote the need for us to be able to have a greater voice around, particularly, biodiversity offsetting and other land use planning outcomes that are a result of major projects in the LGA. Sorry, I did not mean to mislead you in relation to that.

The CHAIR: No, that is good, thank you. We heard yesterday about the "significant" situation in relation to offsetting mines, so offsetting the clearing that will take place within a particular mine with the rehabilitation of that mine or another mine. Is that an area that the council has concerns about—the fact that the mine can clear habitat—you know, the life of the mine can be 40 years—and some of the offset is around some potential future rehabilitation of that mine?

Mrs CRAWFORD: In our submission we did express a concern in relation to the timing of when offsets can be provided, particularly in the major projects approval process. Quite often those offsets are not provided up-front. They can be provided at periods of time further down the post-approval process, which could be months or years after the development has been approved. That would also relate to the way in which rehabilitation is used from the offsetting perspective as well because obviously that is not going to occur until some point into the future. The uncertainty, I suppose, that would be attached to that is something that the offsets scheme does not really speak to.

The CHAIR: In your submission you also give one example of a threatened critical habitat—an endangered ecological community, if I understand it properly—which is the Central Hunter Grey Box-Iron Bark Woodland community. When that is cleared now within the LGA, I assume that is almost impossible to offset within the LGA, firstly, and is it possible to even offset it elsewhere?

Mrs CRAWFORD: I might refer that question to my counterpart, Mr Andersons, if that is okay?

The CHAIR: Excellent, yes. Mr Andersons?

Mr ANDERSONS: As I alluded to in our submission, that community is also a Federal community and that Federal community was able to be—the offsets were enforced by the BC Act and they provide strong like for like. We are seeing good strong like-for-like outcomes. But that community, due to the Hunter Basin's fairly unique layout, it flows from us out into the great sheep-wheat belt that flows right throughout New South Wales. Now that we have the bilateral, that community can now be offset with what is essentially the same community which extends throughout inland New South Wales. So, yes, those offsets can now be sourced a lot further afield and that has been acknowledged by the Biodiversity Conservation Trust [BCT]. I have had the conversation with them, that that bilateral agreement now opens the opportunity for them to offset a critically endangered community with a community that also could be endangered but is not like for like. It is a very different community. It just falls under the banner of that or a community of the box grey woodland.

The CHAIR: When did that change take place that you are saying? So it is a broader community of—what woodland was it?

Mr ANDERSONS: Grey box woodland. So what it was, when the bilateral agreement was signed between the State and Federal governments to allow Federal matters of environmental significance to be under the Biodiversity Conservation Act, it would essentially draw a whole heap of Federal communities that were very geographically specific. That woodland is very specific with relation to the Central Hunter. It was only listed based on its geographic location, so, yes, it has characteristics of a community that extends throughout inland New South Wales but the listing was based on the edge of its extent within the Hunter Valley. Now it is under the bilateral, it can be considered under the Biodiversity Conservation Act. It is now brought into that broader community and takes the biogeographic context of that community.

So what we are seeing is that we are seeing the mines are searching into the upper Hunter Valley for their offsets. It is cheaper land prices so we see a lot of offsets occurring, beginning at the Hunter and Muswellbrook shire, and the Goulburn River, so further far-flung communities that sort of meet that variation rule in regards to the interim geographic regions—the Interim Biogeographic Regionalisation for Australia [IBRA] Bioregions. I always get the acronym wrong. Basically, there is provision within variation rules to allow in the IBRA or adjacent and that picks up that further-flung vegetation in the Goulburn River and the Hunter. That is where we are seeing the offsets being sourced.

The CHAIR: Thank you. That is fascinating. I will keep asking questions about that, but I just have time for one more before I throw back to Ms Sharpe. Local Government NSW, in your submission on page 9 you talk about non-additional offsetting:

Councils acknowledge that establishing stewardship agreements in large council reserves and other areas with limited development potential provides limited net biodiversity increase.

CORRECTED

You also write:

The choice for a council can be to either establish a stewardship agreement on reserved land and accept the obligatory 20% discount in credits and the resulting net loss in biodiversity, or see offset credits leave the LGA or region altogether.

Could you expand for the Committee what the 20 per cent discount in credits is? This is a very complex scheme, as I think every witness has said and with which all members agree. What is the obligatory 20 per cent discount in credits if you are using an existing reserve? Could you just explain how that works?

Mr PHILLIPS: Thank you for the question. I may have to defer that question to my friends in the councils. I note Mr Andersons has put his hand up. I just apologise. It is has been some time since I practically applied the scheme.

The CHAIR: That is fine.

Mr PHILLIPS: With the Committee's indulgence, I will do that.

The CHAIR: Of course, yes. Mr Andersons, do you want to take that one too?

Mr ANDERSONS: Yes. There are discount rules within the scheme for when you generate credits and those rules depend on the existing management obligations of the land. I am probably going to get the terminology wrong but I think it is based on the classification of the land, whether it is community land or operational land. Then within that there is an obligation on councils to manage that land accordingly and that incurs a discount on the credits. I think that is the 20 per cent discount that is raised by New South Wales. It is based on existing [inaudible].

The CHAIR: Does that provide more of an incentive because it is the credits? Is that more of an incentive to use existing reserves, or less of an incentive?

Mr ANDERSONS: Less of an incentive and often councils are required to change the classification of the land so that they can avoid that 20 per cent penalty as well, so there are quite a few councils on the coast that have changed classifications so that they can avoid that penalty in credits. But I think the question goes to the fact that, if there is a penalty applying to councils providing offsets versus those offsets leaving the region and there is a disproportionate application—

The CHAIR: Sorry. I have to ask this question for clarification. When you say the councils are changing the classification of the land, can you give an example of what that means? Is that from a public reserve to—

Mr ANDERSONS: From operational to community or round the other way. It is one or the other. Some of the other councils may be able [inaudible] to remove, but the classification of the land under council ownership determines what management the council should be doing under the plan. Therefore, that is what tends to generate a reduction in credit.

The Hon. PENNY SHARPE: I have just got two quick questions. The first one really is given the importance of local government to land management across the State—and I think in your submission for Local Government NSW you suggest that there used to be some government support for officers in councils to work through this very complex scheme—has that been withdrawn or is there some support from State Government?

Mr PHILLIPS: Thank you for the question. Look, there is some support from the Government. There is certainly some support from the State and councils work collaboratively with the agency in that respect. However, it should be said that a number of councils do not necessarily have the staff or the skill set to properly implement the scheme. The members' experience and limited exposure to the scheme does create those complications for councils.

The Hon. PENNY SHARPE: Can you also describe to me, given that most of it has now been handed over to the BCT, where councils go to for help in relation to these issues?

Mr PHILLIPS: Thank you for the question. Could I defer that question also to the councils with us today who would practically be dealing with that on a regular basis?

The Hon. PENNY SHARPE: Sure.

Mrs BAKER: We are happy to answer on that. We are lucky enough to have two BAM accredited assessors on staff. However, it is quite difficult for councils to secure staff that have the appropriate experience or technical skills to help assess these reports. When they are not available you have to go to the biodiversity conservation division and you can hand your BDAR to them and they can provide an independent review back to council. Or the other option—which is most councils, I guess—is using consultants that are accredited to provide an independent review for them.

CORRECTED

The Hon. PENNY SHARPE: I imagine that if you sent it to the department it could quite a long wait before you get that ticked off, which would impact in terms of development times and costs.

Mrs BAKER: That does happen from time to time but, yes, it can be lengthy, depending on their workload and who is available in their team. Their support system is quite difficult sometimes. It is just a BAM support online form or email. There is no ability to just call someone and ask a question. A lot of consultants have raised that as an issue with me previously—that they are hard to contact to get advice out of.

The Hon. PENNY SHARPE: Do you find issues of consistency in relation to receiving advice? Is the advice consistent enough?

Mrs BAKER: Yes, I think the advice is consistent enough. It just takes too long to come through.

The CHAIR: Thank you. That is unfortunately the end of our time with you. We knew it would be very stretched to have all the councils in this and the next few sessions, but we wanted to make sure we heard from as many as possible. Thank you so much for appearing today. Rest assured if you did not get all the questions out, your submissions have been very helpful as well. The secretariat will be in touch with you if you have agreed to take any questions on notice or supplementary questions, which will need to come back to us within 21 days. Thank you so much for appearing.

(The witnesses withdrew.)

CORRECTED

BIANCA KLEIN, Environmental Services Team Leader, Wollondilly Shire Council, before the Committee via videoconference, affirmed and examined

GORDON CLARK, Director City Futures, Shoalhaven City Council, before the Committee via videoconference, sworn and examined

KAREN LOVE, Strategic Environmental Projects Coordinator, Port Macquarie Hastings Council, before the Committee via videoconference, affirmed and examined

The CHAIR: You all have opening statements, so we will go to each of you in the same order. Ms Klein, do you have a short opening statement to make?

Ms KLEIN: Yes, I do. Thank you for the time today. The comments provided are based on the experiences of council and the local community it represents in regard to their experiences with the Biodiversity Offsets Scheme since its introduction to Wollondilly in 2018 following the transitional arrangement period. The Wollondilly council is generally supportive of the intent of the scheme and its biodiversity conservation goals of facilitating a no net loss of biodiversity. However, there are a number of concerns raised in our recent submission in relation to the application of the scheme and its ability to deliver intended conservation outcomes.

I will summarise a few of these concerns quickly. We believe that there is not adequate protection of biodiversity at a local scale. Offsets are often not acquired locally within the LGA and Wollondilly is vulnerable to being subject to a net loss of biodiversity as a result of the offsetting rules. An ability for developers to pay directly into the Biodiversity Conservation Fund is sometimes perceived as an easy way out and contradicts the principle of the biodiversity assessment method to avoid, minimise and to only consider offsets if the first two outcomes are not able to be achieved for development. We also believe that the cost of preparing a biodiversity development assessment report for impacts to land within the biodiversity values map encourages illegal clearing. The cost of a fine, if legal action is enforced, is likely to be cheaper than preparing a BDAR and retiring credits for those impacts. So that is just a summary. I am happy to answer questions.

The CHAIR: Mr Clark, do you have a short opening statement?

Mr CLARK: Thank you for the opportunity to appear before the inquiry and provide input on behalf of council. Council made a submission to this inquiry, responding to the specific term of reference point "any other related matters". We wish to highlight a specific issue that is of particular concern to the council in regard to the Biodiversity Offsets Scheme and the Biodiversity Conservation Act more broadly. Our concern stems from the impact that retrospective application of the offsets scheme is having, and will continue to have, on long planned local development opportunities. The specific scenario highlighted in our submission relates to the impact on potential employment generating development in Shoalhaven in areas that have been agreed on, planned and zoned for a long period of time—well prior to the offsets scheme being introduced.

Because the scheme was introduced after the employment land had been planned and zoned, there is no strategic framework or regime in place to support development in the areas affected. As a result, it means offsetting is considered in a piecemeal approach as part of every individual development application. This is resulting in an outcome that makes the intended development unviable and an important job generating opportunity could be lost. It is also likely that suboptimal biodiversity outcomes will occur because there is no priority framework in place within which to consider the best targets for application of any offsets.

A specific example in this regard is the South Nowra industrial zone. Much of the area was zoned for employment generating development in 1985 and this was reconfirmed in 2014. The area is one of two banks of significant employment land in the Illawarra-Shoalhaven region, and it is recognised in the Government's regional plan. Industrial zones like this were previously excluded from the operation of the New South Wales Native Vegetation Act, one of the Acts that the Biodiversity Conservation Act replaced and from which the offset scheme now flows. Approximately half of the over 300-hectare area was developed prior to the offsetting requirements. The requirements that have resulted from the retrospective application of the Act have cost and time implications for individual development applications.

Significantly, the offset requirements, specifically the purchasing of required credits, can be more than the employment land is worth. This is impacting on the viability of development. For example, in one case it is likely that upward of approximately \$1.5 million in ecosystem and threatened species credits would be needed before a development could proceed. This is having a real impact, rendering development unviable and meaning that previously desired and agreed planning outcomes are not currently being pursued or may not result. Council is extremely concerned about this situation and has resolved to request the New South Wales Government to exempt employment and commercial land from the offset scheme.

CORRECTED

Council has made representations to the New South Wales Government in this regard and recently took part in a deputation to the New South Wales Parliamentary Secretary for the Environment, along with affected owners seeking removal of such land from the offset scheme. Thus, it is requested that the Committee strongly consider council's request that areas zoned for urban development, particularly employment and commercial zoned land, be exempted from the Biodiversity Offsets Scheme as part of its deliberations.

The CHAIR: Miss Love, do you wish to make a short opening statement?

Miss LOVE: Before I begin I would like to acknowledge the Birpai people as the traditional owners and custodians of the land on which I live and work and I am currently addressing you from. I would also like to thank the Committee for inviting me to give evidence today on a system that is currently failing to address biodiversity loss in New South Wales. I sincerely hope that this inquiry bears more fruit than the last inquiry on koalas and their habitat that I gave evidence to last year. Let me be very frank. The Biodiversity Offsets Scheme, or BOS, is currently failing. Not only is it failing, it is an elaborate, resource-hungry and complex accounting system that facilitates development at the cost of the environment. In other words, it has failed to halt the loss of biodiversity, and worse, it actually enables it. The reason why? The very principles on which it rests—the avoid, minimise and offset hierarchy, which is resoundingly supported—is not being used in practice.

Where offsets should be the last resort they are, in fact, the first port of call. This means the integrity of the BOS has been undermined before we even get into anything else. It appears to have been set up this way as the principles were never defined in the legislation. Furthermore, serious and irreversible impacts have no quantifiable impact thresholds where development cannot be approved. Numerous examples of this exist in our LGA, including littoral rainforests and critically endangered local flora. Due to a lack of these thresholds, the impacts on such entities are assessed subjectively. Further, any decision on the impacts can be turned over by the Minister. Our most precious entities, in essence, have little or no protection.

What we are seeing in the local government area is development paying for the loss of biodiversity through credit retirements to the BCT. Those credits will never be realised in our LGA as we have no stewardship sites. They have gone forever. Of even more concern is whether certain species and ecosystem credits ever have or ever will exist. The increasing pressure of development along the coastal strip of New South Wales due to COVID has escalated the price of land where biodiversity stewardship will now never be an option. The land is worth too much to develop. As a fair amount of it is rural land, it can be cleared under the LLS Act, private native forestry [PNF] or the new rural boundary clearing code and then be rezoned for development.

Of critical concern is the scant information provided thus far regarding trades, where the majority of trades are those that have not occurred—some 952 species credits and 310 ecosystem credits. Will these ever be realised? If so, then where and when? If not, then what happens to the money? The BOS appears to be the monetisation of species and ecosystems into credits that may never come to fruition. I ask the Committee to seriously consider these matters and also, as a result of this inquiry, answer three questions. One, where is the report that provides information on which species and which ecosystems are required to trade credits? What trades have actually been made and where? Two, where is the data that shows the credits required at this moment can ever be realised? Three, and probably most importantly, who is assessing the long-term and cumulative impacts of the biodiversity loss that has been facilitated through the BOS? Thank you.

The Hon. PENNY SHARPE: Thank you all for your extremely helpful submissions to the Committee. You have given practical voice to the complexity and failures of the scheme. Mr Clark, I am familiar with the Nowra area and its desperate need for employment lands and the long-term planning of that South Nowra precinct. The solution that you have come up with is that those lands should just be exempted. Is part of the issue the fact that you cannot look at that all in one go and come up with some sort of biodiversity offsetting plan that could be dealt with as a job lot as opposed to having to deal with each individual lot? Would that be useful? Are you prevented from doing that at the moment?

Mr CLARK: Thank you for your question. It is a very valid one. First and foremost I would say that we went through a strategic process with the State Government to actually identify the industrial zoning of the location. Essentially what we are saying is in good faith the community and the broader council have gone through that process but we now have a real risk that some of our key industrial land for the future will be difficult, if not impossible, to realise because of the impost of the scheme. The problem, as I said in my opening comments, are that it is being considered DA by DA, site by site. There is no localised strategic biodiversity certification process underway and certainly that potentially would provide an avenue to assist if there was a will amongst particularly government—obviously council will always have a will to assist—playing a key role.

The Hon. PENNY SHARPE: Forgive me, this is a dumb question from my end. Is the ability to do that just prevented in terms of the design of the scheme and the way that the legislation is drawn, or is it just that there is a lack of will to actually come to the table and try and work through that?

CORRECTED

Mr CLARK: I do not think there is any lack of will on council's part.

The Hon. PENNY SHARPE: I am not suggesting lack of will from you.

Mr CLARK: I think that type of assessment, essentially we would argue, needs to be driven at a higher level. There is absolutely no point in going through it unless you can get, I guess, an outcome at the end of it. Essentially we would hope for buy-in from government in that type of strategic process either to help fund it or alternatively fund and run it with council and landowner input.

The Hon. PENNY SHARPE: Yes, that all sounds quite sensible to me. I will ask the department later this afternoon, but does the structure of the legislation not allow that? I am trying to work out is if there is a design flaw in the legislation that means you cannot come to a sensible arrangement in your situation, or is it just that there is a lack of will to bring people to the table and work through that process together?

Mr CLARK: My simple understanding of the legislation is that that mechanism does exist but it is really about herding the cats, so to speak, and getting everybody to commit to that process and actually underway with it. From council's point of view, we go through that process. We do not want to get to the end of it and actually still be arguing the outcome. It would be good to agree on an area outcome or a regional outcome rather than, as I said at the moment, where we are kind of dealing with the issue DA by DA, site by site, and we have got landowners there, some of them who have held land in an industrial zone for a long period of time, basically frustrated.

The Hon. PENNY SHARPE: I think that is right.

Mr JUSTIN FIELD: Ms Sharpe stole my thunder a little bit. It is good to see Gordon Clark on the video. I thank everyone for their participation today. I also have questions about the Shoalhaven submission, which stands out a little bit in terms of the various councils' submissions in the approach that it takes and the concerns that it raises. Did the submission go formally through council or was it put together at a staff level?

Mr CLARK: Thank you for the question, Justin, and it is good to see you again. As per usual how our council operates is we operate off council resolutions, as you probably all appreciate. Essentially this submission was triggered by two resolutions earlier this year from the council that raised concern around the impact that the Biodiversity Offsets Scheme was having on employment zoned land. Yes, the staff prepared the submission but it was based upon two council resolutions that, as you would all appreciate, we as staff have an obligation to enact.

Mr JUSTIN FIELD: Has there ever been a council resolution to actually seek an application for a strategic biodiversity certification? Because my reading of the legislation is you can do that. I appreciate you might need to organise with various landholders but that approach is available for council to simply, as a planning authority, make the application to the State Government to start a process on a strategic biodiversity certification.

Mr CLARK: Justin, again thank you for question. Again, it is a valid one. That could be an approach that ultimately comes into play. Yes, I acknowledge that it is something that council can do. But, like I said earlier, at what cost? Also it is really yes, it is something we can do, but from a council perspective we want buy-in from the government agencies along the way so that if we go through it we come out the other end of it with an outcome and it is not just a process that, as we have experienced in the past, just goes around in circles. It could be an outcome that the council ultimately takes at some point in the future, depending on how its deputations and representations on the request for the exemption is currently received by the inquiry and ultimately by government.

Mr JUSTIN FIELD: I appreciate this is still relatively new and we have really only seen one major strategic biodiversity certification process even attempted in Sydney. But have at the very least yourself or through resolution of the council sought advice from the Department of Planning, Industry and Environment [DPIE] at a regional level about how should we go through this process? What does it look like? What is the likely cost or the time frames? What work has council done to actually work out whether or not this is a process that you should go through?

Mr CLARK: Again, to reiterate, we currently have resolutions of council which really focus on requesting the general exemption of employment and commercial land from the offsets scheme. So that is our current focus. To my knowledge the council has not passed any resolutions or similar decisions around moving into potentially looking at a regional offsets scheme, but it could well be a step that the council takes, depending on the outcome of the kind of representations we are making. In terms of have we done any work? We have not done contemporary work but I can assure you that, as part of identifying those industrial lands, particularly in 2014 through our Local Environmental Plan [LEP], a whole series of work went behind those lands. Yes, it is obviously now dated but it could assist. I guess the point I am trying to make is that the land was zoned based upon a set of information at the time. We have a scheme later on that effectively comes along and essentially compromises a long-term zone that was agreed to, in our minds, with the State Government.

CORRECTED

Mr JUSTIN FIELD: Even if this scheme had not come into force, if it was vegetated land that had been zoned for industrial or commercial use and a DA was put in that was going to require the clearing of substantial areas of habitat, whether it be threatened species or endangered ecological communities or otherwise, there would have likely been conditions of consent that would have required offsets or some other form of protection of other environmental land. These costs have not just been put in place because of this scheme; it is just that now there is a sort of much clearer defined process for how those costs and those biodiversity impacts would be addressed through a DA process.

Mr CLARK: Again in response, I do not necessarily know that that is fully the case because I think, as we note in our submission, one of the previous Acts that was in play before the Biodiversity Conservation Act was the Native Vegetation Act and urban land, which included industrial land, was exempted from that Act. Essentially, industrial land was part of that. We would have had developments occur in that area within a period of time, not that far away, where essentially the type of implication that we are now seeing was not there. I think the big implication that particularly a lot of the current owners are struggling with is, as I said, one offset cost was in excess of \$1.5 million. Essentially, given the size of the industrial block, it basically renders the development of that particular block almost effectively unviable. People are just basically stuck and not proceeding with anything because they just do not know how to proceed from a financial viability point of view. [Inaudible].

The CHAIR: Thanks, Mr Clark. We will go to questions from the Hon. Catherine Cusack.

The Hon. CATHERINE CUSACK: Thank you very much. A quick question to Ms Klein: In your submission, talking about biodiversity values mapping, which appears to be problematic, which is very disappointing—we hear this in many of our inquiries. One of the comments you make is:

The cost of preparing a BDAR for impacts to land within the Biodiversity Values Map encourages illegal clearing- the cost of a fine, if legal action is enforced, is likely to be cheaper than preparing a BDAR and retiring credits.

First of all, can you just clarify what a BDAR is for me, what that acronym means? Secondly, can you talk me through the cost of the fine and the cost of preparing the map and time issues?

Ms KLEIN: Yes. No worries. Sorry for the acronyms. The BDAR is the biodiversity development assessment report that a developer needs to prepare when entering into the Biodiversity Offsets Scheme and this is generally quite costly. They usually start at a minimum of \$15,000 to \$20,000 to prepare, and that does not include the credits that need to be offset after that. In a few instances in Wollondilly council we have been working with the department to amend a few areas of inaccurate biodiversity values mapping. We appreciate that support, and that is ongoing. But there are still a few instances where a certain property is covered by the biodiversity values map where the property owner need to clear, say, up to 10 trees, and then they approach council and get told that they need to prepare this biodiversity development assessment report and retire credits. They are not happy about this, due to the cost. I think word is getting out around this—it is generally the smaller, private landowners that the cost of preparing these reports can be quite prohibitive so the other option is to clear the trees anyway and hope that either no-one notices or that if there is compliance action often the fine is cheaper than what would be spent for the BDAR or [disorder].

The Hon. CATHERINE CUSACK: What sort of a fine would you be looking at for illegally clearing 10 protected trees?

Ms KLEIN: Probably about \$10,000 or \$15,000 if it did go to court. The unfortunate circumstance we sit in is the compliance section is under-resourced. Many councils are faced with that same situation. Sometimes no legal action is taken in those instances, which is a shame but something council are continually trying to improve on. But, yes, that is just one of our concerns about the scheme encouraging illegal clearing.

The Hon. CATHERINE CUSACK: Thank you very much for that. Can I just ask Port Macquarie Council. Thank you for your passionate submission, Miss Love. I note that Port Macquarie unfortunately has not submitted its koala plan of management. I am not sure where that is up to and I know that that is beyond staff control but I just want to comment that that is disappointing.

Miss LOVE: It is—agreed.

The Hon. CATHERINE CUSACK: The land that I want to ask you about is in Ruins Way. I understand about a third of it or two-thirds of it is zoned rural land at the moment. The issue you have raised of coastal land and these historic zonings of rural are bringing it under a different set of rules in terms of—

Miss LOVE: Legislation.

The Hon. CATHERINE CUSACK: Correct, yes. I live in a coastal council as well and we have exactly the same problem: that it is not really rural land, is it? In terms of the properties that we are talking about which are peri-urban, they have not been operating as rural properties for many decades, and some never have, but they

CORRECTED

have still got this rural zoning. So I wondered what the solution is to that. I understand Port Macquarie has actually mapped its population footprint, if I can put it like that, or if you can explain that to me. But there has been a kind of proposal for the city limits of Port Macquarie, if I can put it that way, for housing and how that sort of mapping could potentially be used to deal with this problem of these legacy rural land zonings that mean that some rules for rural property are being inappropriately applied to what are really urban areas.

Miss LOVE: It is a rather difficult question. There are not a lot of things that we can do. The planning proposal process where we identify those types of land and get them zoned appropriately is a long-term solution and it will take a fair amount of resources. We already have a list of those types of properties that are inappropriately zoned. However, what we come up against is the owners of those lands realising, "Oh! Actually, I can build a subdivision in here," and, "I am zoned rural, so I can use the other legislation to clear it, and then rezone."

The Hon. CATHERINE CUSACK: To me this is absolutely the iconic issue up and down the coast of New South Wales in relation to clearing. Nobody supports this sort of clearing. It is not farmland. It is not forestry. It is just about the value of the property because of the zoning that is on it.

Miss LOVE: Yes. And we have got no recourse, as council, to stop them because the LLS Act is out of our remit.

The CHAIR: Can I just jump in, just on that same issue? Because you see these very large blocks of land around the outskirts of Port Macquarie and, as Ms Cusack said, right up and down the coast. A lot of them are reasonably significant in terms of the vegetation they have and what they contain, aren't they, Miss Love? Are there any examples you would care to highlight for the Committee about what is being lost?

Miss LOVE: I can give you some stats actually.

The CHAIR: Great.

Miss LOVE: Private and native forestry in the Port Macquarie Hastings Council, 58 per cent of it is potential koala habitat; 58 per cent of it we have no control over because it is already approved to be cleared. So where do we go from there?

The Hon. CATHERINE CUSACK: Can I prompt you maybe on Ruins Way, because my understanding is that that is a very strategic block of land in relation to the corridor for movement of koalas.

Miss LOVE: Absolutely.

The Hon. CATHERINE CUSACK: So basically losing that part of the corridor will destroy—it is not just about that piece of land. It completely sterilises and destroys urban koala populations in Port Macquarie by cutting them off from—

Miss LOVE: That is the main population. The last I read, and it may be out-of-date now due to the fires, but a population of 500 koalas, which is probably the main population in Port Macquarie, is right next to a national park. That corridor is critically important to that population. I cannot speak to the rest of it but [disorder].

The Hon. CATHERINE CUSACK: Do you have any thoughts about how corridors can be protected? Because you can—

Miss LOVE: That is the main thing that we need to do now. We are not going to see the ability to actually make a koala plan of management because we have got two SEPPs running that are still undefined. There are no guidelines for them. My main aim will be to get corridors identified and protected. The only way I can see that council can do that is through the LEP—so, again, a long process.

The Hon. CATHERINE CUSACK: Thank you.

Miss LOVE: I can't see any other way. Can you?

The Hon. CATHERINE CUSACK: I am feeling very depressed, actually.

Miss LOVE: [Inaudible].

The CHAIR: Sorry, Miss Love, had you finished? We have government representatives this afternoon, so what would your recommendation be to them in relation to those corridors that need protecting? You just mentioned the very frustrating situation of the koala SEPPs and wherever that is up to, but what would be your recommendation to how we can get what I suppose is a broader application of laws and policies to protect corridors?

CORRECTED

Miss LOVE: I notice that the SEPPs are being remade. Perhaps there is something in the new SEPP that Stokes has put forward that will happen in March. Maybe we could have a SEPP for corridors. I do not know if that will work. I am not a legislative clerk. Otherwise it is an LEP, and that is a two-year process.

The CHAIR: In your submission you talk about the species credits, which you also mentioned in your opening statement. You talk about a recent webinar to discuss the new developer charges and that that was the first time that any information regarding transactions for ecosystem credits and species credits had been relayed to the council. Will you explain a little bit further where you say:

Of concern was the trading transactions that have not occurred, where 952 species credits transactions and 310 ecosystems credits have had no trades.

Will you explain, firstly, the 952 species credits and 301 ecosystems credits. Have they been what the council has accumulated in terms of clearing in their area? What are both of those credits?

Miss LOVE: The webinar was across New South Wales. It was not just for our local government area. It was discussing the developer charges and how we can change them. That is the first time they have actually issued any type of information on what had been traded and what had not. I cannot tell you off the top of my head. It was a slide that I took a screenshot from because it was horrifying that they had only had perhaps five species credits actually retired properly, whereas it was 900-odd that had not been retired. The same with ecosystems credits. Again, I cannot remember what had been made but it was in the single digits as opposed to those that had not been, which was the higher number. That is across New South Wales and that was in June, so there are probably more now.

The CHAIR: Thank you for clarifying that. It will be very useful this afternoon as well. All of you might want to comment on this. In terms of recommendation for conservation would Wollondilly Shire Council consider tax-free thresholds for the stewardship site funds so that landholders are more incentivised to encourage participation and conserve land? Would each of you like to comment a little more about what recommendations you would like to see to encourage landholders to conserve land more?

Ms KLEIN: That was one that we have received feedback on from a few private landholders who were investigating the opportunity of setting up a stewardship site on their property. After going through a few feasibility assessments and doing the number crunching they then realised that any gains are still taxed. That hit their budget a little bit. Yes, in order to promote conservation it would be nice if something like a tax-free threshold on profits on the stewardship site was considered. The other thing that could help financially is maybe the Biodiversity Conservation Trust can provide services free of charge to private landholders to do a feasibility assessment on their properties. I know consultants charge a fee for this type of service in our area. So just financial assistance from the department or BCT or some support for councils to do that with private landholders would help.

The CHAIR: Yes, they are very good suggestions. Miss Love, do you have anything to add?

Miss LOVE: I think the system is overly complex for normal landholders to apply. Getting that report is very costly and time consuming. If they could somehow streamline that process that would perhaps make it more viable. But as I said in my opening statement, the land is now worth too much money. Stewardship, I think, is out of the picture for this area on the coastal strip anyway because it can be developed. Yes, it is problematic, and that has got nothing to do with the system, it is just the way it is and I think it has become more and more because of COVID. Our land down here has tripled in some areas in the last six to 12 months.

The CHAIR: Mr Clark, do you have anything to add to that question?

Mr CLARK: I will reiterate some of the points that have already been made. I think the system as it currently now stands is way too complex. I think I reflect back on a lot of the rhetoric around when the Biodiversity Conservation Act was coming in, it was about bringing a number of Acts into the one to simplify things. I think, if anything, as we quite often see, things have just become even more difficult to understand and navigate. If I put myself in the shoes of one of the landowners in the South Nowra industrial estate, by and large they are essentially individual landholders—they are not businesses.

This is an area that was strategically identified some years ago and rezoned from rural residential because it adjoined our main industrial estate. So these people are essentially not businesses. They are not companies. They do not have a lot of money sitting behind them to carry out a whole heap of investigations. Yes, they find the system really complicated. I think if anything we could do it would be to try to simplify things for everybody would be a really good start because I do not understand it and I am a professional working in the field.

The CHAIR: I have one final question. The Committee has heard from most of the councils and from Local Government NSW this morning, who said that while they support the Biodiversity Offsets Scheme there

CORRECTED

are improvements are to be made generally. Mr Clark, from the evidence we have heard this morning it sounds like it has been a gross failure, to be honest, to meet what was originally the objects of the scheme. Can it be fixed, Miss Love? It is a very big question but can it actually be fixed?

Miss LOVE: I think we need to start with an audit and actually look at what we need in terms of credits that have already been accumulated and paid for and then go from there. Whether those credits will ever be realised is a key part. If they cannot be, then it needs to be thrown out and start again. If they can be, which I hope they can, otherwise we have lost that biodiversity forever, then an overhaul and maybe simplification. We have got two biodiversity assessment methods running at the same time. We have also got new plant community types coming in next year. So we will have two biodiversity assessment methods and two plant community types to deal with. That is even making it more complex.

The Hon. CATHERINE CUSACK: It is a finite process, is it not? We cannot go on offsetting forever, can we?

Miss LOVE: No, offsets do not work. We know that.

The CHAIR: Ms Klein or Mr Clark, do you want to comment on that? We are almost out of time.

Ms KLEIN: Yes, I am happy to add. I agree with Miss Love in terms of an audit being a great first step. A couple of other suggestions that would tighten up the credit trading rules would be to tighten up the variations allowed for the like-for-like credits. That is an issue we see in Wollondilly a lot. Impacts to very rare critically endangered ecological communities like Cumberland Plain Woodland and shale sandstone transition forests—they are getting impacted in Wollondilly and being offset elsewhere. So that is a loss to Wollondilly for those communities. There is not an infinite supply of these communities in the Greater Sydney, so they are just getting chipped away piece by piece and being offset with the money paid into the fund. There is a great concern whether the Biodiversity Conservation Trust will actually be able to offset those specific communities, as an example, in the Greater Sydney in the future. So I think an audit would, regrettably, be good for identifying those.

The CHAIR: Thank you so much. I am sorry to say we are out of time once again because we could have kept going. Thank you so much for your excellent submissions, views and thoughts. They are very much appreciated. The Committee secretariat will be in touch if you have taken any questions on notice or if there are any supplementary questions by members.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

KATE WOOLL, Business Manager, Strategic Planning, Goulburn Mulwaree Council, before the Committee via videoconference, affirmed and examined

BRIAN FAULKNER, Environment and Biodiversity Assessment Officer, Goulburn Mulwaree Council, before the Committee via videoconference, affirmed and examined

SALLY WHITELAW, Team Leader, Biodiversity, Coastal and Flooding, Coffs Harbour City Council, before the Committee via videoconference, affirmed and examined

SCOTT LENTON, Manager, Environment and Regulatory Services, Clarence Valley Council, before the Committee via videoconference, affirmed and examined

HEATHER MITCHELL, Biodiversity Officer, Clarence Valley Council, before the Committee via videoconference, sworn and examined

The CHAIR: Welcome to our next witnesses. We will now go to opening statements. I assume each council has a short opening statement to make. Who is giving that for Goulburn Mulwaree?

Mr FAULKNER: Brian Faulkner. Basically Goulburn Mulwaree Council's experience is that the Biodiversity Offsets Scheme is not preventing net loss of biodiversity. We have found it is impeding loss to a degree but it is not halting it or reversing it by any account. There are a lot of reasons for that, which we might be able to cover later. We have identified there are really three major issues contributing to this. One is that the legislation is incredibly complicated and basically people involved in clearing do not understand it. When I say people I mean landowners, real estate agents, property developers, builders, earthmoving contractors, all the stakeholders who might be involved in clearing native vegetation. Routinely they do not understand it. They find it really difficult. I spend a lot of my time having a lot of conversations explaining the legislation. So, as a consequence, a lot of them do it through ignorance. It is not that they are being bad or misleading or that they are deliberately violating the law. It is just they genuinely do not understand.

The second biggest issue we have here is we have a lot of rural properties and a lot of remnant bushland. Some of that is zoned rural, so RU1 or RU2, and some of it is zoned environmental management. There are different rules and different regulations that apply to those two zones and again there is a lot of confusion. But people on rural properties are using the Local Land Services Act and the provisions, allowable agricultural activities, and then using them and Rural Fire Service land clearing codes to clear huge amounts of vegetation prior to submitting development applications. So effectively they are clearing huge amounts of land then they put in a DA and they can avoid the BOS completely because they are way down through the clearing threshold because it is already cleared, or because they cleared habitat, or, if they had threatened plant species, they are clearing that, so there is nothing there that they need to consider. So the Biodiversity Offsets Scheme is not being implemented in any shape or form in those instances.

Then the third biggest issue we have encountered is the inability to enforce compliance. We locally have had a huge influx of people coming in and buying rural properties and wanting to clear. And equally there has been a huge spate of activity in the DA sphere with people with existing property wanting to clear and build dwellings. A lot of clearing has happened. Our compliance team are overworked by reported allegations of illegal or unauthorised clearing. We work closely with other agencies, so we work closely with Local Land Services and the DPIE, and their Biodiversity Conservation compliance officers. We work with Crown Lands, we work with Fisheries, with WaterNSW and so on. And right across the board the story is the same: woefully understaffed, woefully under-resourced. They simply cannot keep up with the enforcement.

As a result, what has happened is there is a bit of a triage system where they will only take action if they are absolutely guaranteed an outcome. The way it was explained to me recently by a DPIE compliance officer was that there has to be a threatened species clearly present, there has to be clear evidence of it being damaged, and there has to be clear evidence that the person who did it, did it deliberately. That is the only way you will guarantee a successful outcome of a prosecution of law enforcement. As a result, there is clearance of land happening that, yes, it is investigated, but people get a bit of a slap on the wrist, saying, "Don't do that again. You're so naughty." But there is no actual real serious enforcement. Those three issues combined are causing huge issues for us and overall, as I said, it is our experience there is a net loss of biodiversity and the Biodiversity Offsets Scheme is not working. So that is our opening statement, I guess.

The CHAIR: Thank you so much, Mr Faulkner. We will now proceed to Ms Whitelaw. Do you have an opening statement as well? Please proceed.

Ms WHITELAW: I do, thank you. I have worked in local government for 15 years in roles relating to environmental planning and assessment. That means that I worked with both the former Threatened Species

CORRECTED

Conservation Act and the Biodiversity Conservation Act. It has been my experience that the impact under the former Threatened Species Conservation Act was very rarely assessed as being severe enough to be significant and therefore needing a species impact statement [SIS]. Even when an SIS was required, the outcomes were not consistent or arguably based on sound science. On a positive note, I found that the offsetting scheme under the Biodiversity Conservation Act has resulted in development that can be encouraged to avoid impacts, as the additional costs of entering the offsets scheme, both by preparing the ecology reports and retiring the credits, can be formidable and applicants typically want the easiest pathway to determination.

The principle of avoiding impacts upfront rather than offsetting has also recently been found to be upheld in a number of Land and Environment Court judgements. I do have concerns with the lack of a robust credit market, particularly outside metropolitan areas. This results in developments in regional areas being approved in the knowledge that it is highly unlikely the required credits are going to be retired in the same bioregion. Additionally, the continued increases in the value of coastal real estate mean that popular coastal areas are likely to become a biodiversity sink, with credits retired in less expensive areas.

Entry into the offsetting scheme can also be avoided via the staging of development or, in rural areas, via clearing permitted under the Local Land Services Act prior to lodgement. I also note the inconsistency of assessment requirements for vegetation removal under the LLS Act, such as private native forestry agreements that are approved without the appropriate ecology reports and are exempt from offsets. Council also has concerns with the lack of willingness by the New South Wales Government to accept data from council to update the New South Wales Biodiversity Values Map, despite regulations stating that councils can submit data for consideration. I understand this is a resourcing constraint.

In regards to the role of the Biodiversity Conservation Trust, it would assist councils if an annual report on a LGA basis could be generated that detailed the credits generated and retired. Councils could then review local controls to better respond to the impacts. The BCT is also responsible for the assessment and administration of biodiversity stewardship sites. Landholders report that establishing stewardship sites is complex, costly and outside their capacity. Additionally, given the lack of trading in the credit market, it is difficult for landholders to approximate the financial incentives. The BCT should be better resourced to assist landholders through this process. Thank you.

The CHAIR: Thank you very much, Ms Whitelaw. Finally, Clarence Valley Council, who is giving that opening statement?

Ms MITCHELL: That is me. Thanks for the opportunity to appear today. Clarence Valley Council initially made a submission to this inquiry as we have concerns that the current scheme is contributing to biodiversity loss in our area. We have three main concerns—a net loss of biodiversity across the LGA through the application of the Biodiversity Offsets Scheme. The BOS is based on the "avoid, minimise, offset" hierarchy, with biodiversity gained at a stewardship site theoretically compensating for biodiversity lost at a development site to achieve a no net loss of biodiversity. However, the application of the scheme has seen a loss of threatened species and habitat across the Clarence and there are several reasons for this.

Firstly, there is a lack of emphasis on the "avoid and minimise" and all too often developers choose the offset option first—because they can. Secondly, the BOS is overly complicated for all users, and often the offset option of paying into the fund is the easiest and most time-efficient way of satisfying an offset obligation. Thirdly, of the four offset rules listed by the BOS, the first three often do not apply in the Clarence. Hence developers are left with payment as the only offset option. Our second concern is a lack of stewardship sites in the Clarence. As discussed, payment into the fund is generally the path taken to offset development. However, the first offset rule is to retire like-for-like credits generated at a stewardship site. This is next to impossible in the Clarence with only two stewardship sites established. Hence a very small percentage of credits for our flora and fauna species can be retired locally.

Following from this, landholders seeking to establish a biodiversity stewardship site on their land are met with a costly and complicated process. In addition, the eligibility rules often exclude landholders in the Clarence from establishing these sites as the area of remnant vegetation falls below the size recognised for conservation programs under the BCT. To date, only one development has locally offset credits within the Clarence. The rest have paid or are paying into the fund. Our third concern is a lack of opportunity for council to negotiate better biodiversity outcomes, apart from payment into the fund. The second offset rule includes funding a biodiversity conservation action under the ancillary rules, with a corresponding reduced credit obligation. However, the list of species in the rules is very select and does not include any Clarence Valley threatened flora or fauna, so council has no opportunity under the current scheme to negotiate biodiversity conservation actions with a developer. With little to no local credits available, payment into the fund results in a loss of biodiversity in the Clarence and there

CORRECTED

is no indication that the payments are then returned by the BCT into the Clarence in the form of conservation programs, compounding local biodiversity loss from the scheme.

We have four recommendations: firstly, strengthen the "avoid and minimise" options to discourage offset as a first choice; secondly, alter the eligibility requirements of the stewardship agreements to enable smaller areas of vegetation to be included in conservation agreements by the BCT; thirdly, allow councils to determine biodiversity conservation actions that reduce the payment into the fund, and thereby allow for locally driven meaningful conservation actions; and the BCT should be transparent regarding where the funds from credit offsets are spent. Thank you.

The CHAIR: Thank you very much for all of those excellent opening statements, which are essentially confirming what a lot of other local government witnesses have also said. Thank you for your excellent submissions. I will go to the Opposition first for questions, the Hon. Penny Sharpe.

The Hon. PENNY SHARPE: Thank you very much for your submissions. I particularly liked the worked examples from the Goulburn Mulwaree example, which I think show very clearly the difficulties. The theme has been the same throughout all the councils, with the tweak of where you are in terms of where your pressures are. We have got the Government coming in this afternoon. You have kind of touched on this. How do we fix the mess that we have found ourselves in? How have we ended up with such a complicated scheme and what do you think are the practical things that need to happen? In the previous session, people talked about an audit of available credits. People have talked about the need for like-for-like to be closer to where they are. You sort of touched on this, but if you were asking the questions this afternoon, what would you be asking the Government? I do not know who wants to go first.

The CHAIR: Let us start with Goulburn and then we will go from there.

Ms WOOLL: I am a planner, not an actual biodiversity person. I think my main concern is that a lot of our most significant biodiversity is actually in the rural zones. Effectively having the two-tier system of one set of rules for the rural area and another set of rules for all of the environmental and urban areas is a clear weak point in terms of trying to work out responsibilities and having some clarity or consistency of rules across environments, which is causing clear, poor outcomes because effectively the way it is at the moment, you have rural areas where the LLS provisions are very light and a lot of clearing can occur. Then almost next door you can have an environmental zone where you have to go through the whole BOS scheme and it is all the more technical difficult to do anything.

This is also an issue in terms of the fact that with our urban areas there is an expectation that there is going to be growth and high level of pressure on biodiversity in urban environments, which is very hard to protect and conserve. So this is where the biodiversity scheme is stronger, yet in our rural areas, where we actually have expanses of really good environments, we cannot protect them. That would be typically where I would have expected we would protect them. I think effectively going back to a regime where there is one piece of legislation that covers the environmental zones and the rural zones would be a good start.

The Hon. PENNY SHARPE: Thank you, that is actually very helpful. Anyone else?

Mr FAULKNER: Can I just add a little bit to that? I particularly like the Clarence submission about the problems with stewardship sites. They have got two biodiversity stewardship sites in Clarence Valley, apparently we have none. The big issue here is people may well have met their offset requirements but they cannot fund locally. They cannot buy credits locally. Another issue—I get a lot of feedback from landowners. The locals say a lot of rural properties have good native vegetation. One of the things that I always do while I am talking to them is encourage them to investigate the possibility of establishing a stewardship site. Inevitably what happens is they go and do some research and come back and say absolutely not. It is too hard, too complicated. It is going to cost me lots of money up-front. [Disorder].

The Hon. PENNY SHARPE: How much does it cost? Can you give me a sense for a property? Are we talking \$50,000, \$100,000, more than that?

Mr FAULKNER: You are going to have to get a biodiversity assessment report done. That is the first part of setting up a stewardship site and we are usually looking at between \$20,000, \$25,000 for a consultant to do that properly up-front.

Ms WOOLL: That is for a small site.

Mr FAULKNER: That is for a very small site. Basically the way it works when you do a BDAR, what you have to do is set a certain number of BAM plots and typically set out one plot per hectare. If you have got a really big site, yes, it is scaled, but the amount of effort required by the consultant and the consultants are charging a lot of dollars per hour to do it, that makes the cost prohibitive. [Disorder].

CORRECTED

The Hon. PENNY SHARPE: For a single landholder who thinks "I have got this nice bit of bush on my site", is the sense that you get from landholders that they are very open to it, but the up-front costs and the barriers to participation, particularly the uncertainty at the end, that you could go through all this and still not actually be accredited?

Mr FAULKNER: Yes and also just how complicated it is and how long it might take to get some money back. It sounds like a great idea, it is perfect bushland for a stewardship site set up and I will get money coming in to maintain it and keep it as I want it. It sounds brilliant but then they look into it and they say, no, it is too hard.

The CHAIR: I might go to Clarence Valley Council as well, if you want to comment on this issue too.

Ms MITCHELL: Yes, sure. For us, definitely it is that like for like. An example of this is we have had two BDARs recently that are impacting the endangered coastal emu. There is no locally available credits, so they have to offset into the fund, which is over \$3 million. There is no cause for us to be able to negotiate with that developer. Do not pay all that money. Instead, let us work with you to develop some really local enduring actions to help recover the species on ground. That money would go so far, but there is just no option. The other thing is, we cannot get an answer out of the BCT. Does that money come back here? We have only got an "I hope so." That is not an answer.

The Hon. PENNY SHARPE: But there is no guarantee. You do not have a stewardship site.

Ms MITCHELL: No.

The Hon. PENNY SHARPE: The coastal emus are extremely specific in terms of where they live. It is not like there are other places that you can be looking at.

Ms MITCHELL: That is right. No, they have a very restricted area. That goes for a lot of our species and our vegetation communities. All that is left generally on a flood plain are smaller areas of vegetation and these fall below what the BCT considers worth protecting. Whether that is even for a conservation agreement, say outside the BOS as well, that is too small. You can trigger the BOS by clearing a hectare but you cannot secure a hectare of these endangered ecological communities in a stewardship site agreement. We are always going to have this loss. I think if I could pick one thing, that would be it. It would be able to say that okay, we cannot secure this, then let council work with the developer to get some actions on ground.

The Hon. CATHERINE CUSACK: Sometimes one hectare might be very strategic in relation to a corridor, for example?

Ms MITCHELL: Yes, definitely.

The CHAIR: I will give Ms Whitelaw an opportunity to respond to this same issue, if you want to.

Ms WHITELAW: Yes, that would be great. I guess the way I see it, yes, the scheme is complex. Back to my opening statement about the former Threatened Species Conservation Act, I actually do not have a problem with the complexity of actually doing ecology reports, doing the BDAR, because it is a complex issue. I think that by that assessment, finding out and calculating it and putting the value on it, actually shows us the value of biodiversity. I kind of break it into two issues. I do not have an issue with the assessment. Definitely when it came in, consultants and the industry and even councils were very much finding it hard to figure out. I feel as though everyone is finding their feet a little bit more, both the consultants, developers and councils with how to assess these things. But that is the assessment side of stuff; I do not have an issue with its complexity. What I do have an issue with is probably what we are all talking about—how the credits actually happen.

I echo the points of the other councils here today about the stewardship sites. I have been looking on behalf of Coffs Harbour City Council at actually establishing a couple of stewardship sites on council land. Every time I look at it, it is so complex and so time consuming and so expensive. If I cannot figure out and get the energy to find my way through it, how is a landholder meant to do it? I feel as though there needs to be more resources put into the BCT actually helping the landholder to do this. I do not have a problem with the complexity of the assessment side because, having worked in the Threatened Species Conservation Act, I would not want to go back to something that was broken. I guess what I am saying is I thought the assessment side has improved.

Mr LENTON: I will just add, the statement that Heather Mitchell read out, we had some recommendations there. So in answer to your original question, what would we suggest to fix it—

The Hon. PENNY SHARPE: I got those, yes. They were very good, thank you.

Mr LENTON: The process just needs to be made on the stewardship side of the equation. If the intention of the BOS is to not result in a loss of habitat, then that fundamentally does not appear to be successful. Something

CORRECTED

seriously has got to change in the way the BOS operates to achieve that objective. I guess that is probably the bottom line, really.

Ms MITCHELL: I just want to add to that as well, one of the other stewardship sites—not every landholder who has the land that could be set aside wants it set aside for a stewardship site to offset development either. That can be another factor in this as well, just because it is available or could be turned into one, they do not always want it for a development offset.

The CHAIR: Yes, and that comes back to incentives in some ways, does it not, for some landholders anyway—the value of that land in terms of doing other things.

The Hon. CATHERINE CUSACK: Can I just ask Clarence Valley Council a question that I have been very curious about. When the Pacific Motorway was put through east of the old route, were those environmental impacts offset? I know it carved straight through koala habitat. What happened to those offsets?

Ms MITCHELL: That was a different system. It was almost like a tender, where you put forth your land. I guess it was sort of similar, but it was outside that BCT program. I think the monetary returns were very attractive for landholders. They would put out advertisements for particular types of veg and for species habitat, that kind of thing. That is how they did that.

The Hon. CATHERINE CUSACK: Did that come back to the valley?

Ms MITCHELL: Yes, that was locally, generally—I think, yes, they were looking for local offsets there.

The Hon. CATHERINE CUSACK: I am curious about that system. Did they have different legislation that enabled them to have more flexibility in terms of doing this?

Mr LENTON: Certainly the offset system that operated in association with the highway predated this legislation. I am not 100 per cent sure of the exact pathway, whether it was biobanking or some other media, but most of the offset or a lot of the offset does appear to be local. There are a number of offset sites in the valley.

Ms WHITELAW: I guess just bringing it into the current framework, the Coffs bypass is going to be commencing shortly and we are happy to work a little bit with Transport for NSW. They are retiring credits through the current scheme for the bypass, which will kick off shortly. I can say that most of the credits are in the bioregion. Not all of them are in the Coffs local government area, but they are in the local bioregion. I think Transport has made a big effort to do that and have been able to succeed with most of the credits. That is a really good example though in terms of Transport with lots of resources has actually facilitated landholders to establish stewardship sites. It is not impossible if you have got the money, you have got the resources and know-how and there are landholders willing to do it, as evidenced by Coffs bypass, but they need a lot of help to get through that process, which Transport was able to facilitate.

The CHAIR: Could you expand upon the help you are referring to in terms of the resources that Transport for NSW has and what they have been able to do differently as a result?

Ms WHITELAW: I think what happened at a guess—I have not seen it firsthand, but what I understand from talking to some of the Transport staff is that they actually facilitated the setting up of the stewardship sites on behalf of the landholders. Yes, the landholders needed to be involved and interested, but they coordinated the ecologists. I do not know if they helped the landholders out financially as well, but it was my understanding that they did. I do not know to what extent. But they facilitated that process. It was not the individual landholder engaging ecologists and dealing with the BCT. It was all very much facilitated by Transport.

The Hon. CATHERINE CUSACK: Just back to Clarence Valley Council again if I may in relation to the coastal emu. I know there is a lot of community action starting to spring up to protect it, which is wonderful. Do you have any engagement at all with the trust in relation to how those funds are expended or what the strategic priorities would be of council in relation to the use of the offset?

Ms MITCHELL: Absolutely none. There is no communication at all with the BCT when it comes to the funds. They are difficult enough to get on the phone. They are lovely when you can speak to one, but, no, we have had no indication whatsoever that that money will get spend on the emu.

The Hon. CATHERINE CUSACK: Is there any consultation at all at any level with councils or any opportunity to make an input to the BCT in relation to what their priorities are? Is there transparency around how they determine those priorities?

Ms MITCHELL: Not that I am aware of.

Ms WHITELAW: Not that I am aware of.

CORRECTED

The Hon. CATHERINE CUSACK: In relation to the coastal emu, can you give a bit more evidence about how endangered it is and the tipping point we appear to be at in terms of the future survival of the emu? The region is looking at a local extinction, is it not, which is disastrous for a species as a whole?

Ms MITCHELL: Definitely. I think at the last count there were 46 emu. They are very restricted in their geographical distribution and their range has really contracted, even in the last five or six years. They really are just in the Clarence, around Bruce Head. Very restricted distribution. Because they are a ground nesting bird, they are vulnerable to feral pigs, foxes and dog attack, not only where they are nesting but with the chicks as well. There is a prolonged period where the chicks are very vulnerable as well, and then car strike too, and bushfire. Let us not forget bushfire.

The Hon. CATHERINE CUSACK: They just lay their eggs on the ground and walk away, don't they, which reflects the landscape before it was—

Ms MITCHELL: That is right. In terms of a species that has traditionally a very wide range, they are very important in seed dispersal up and down the coast, and to have them restricted like that is quite a travesty.

The Hon. PENNY SHARPE: Again, my question is for each of you because the issues that you have raised around private land, particularly rural land and the importance of the biodiversity that is on it comes directly into conflict with the evidence that we had from NSW Farmers yesterday, which is that ongoing conflict about this is their land, they have a right to farm it and the incentives. For a whole range of reasons the system does not work for them. I would argue that there is some resentment about trying to deal with that. In some ways I think the way the legislation is set up through LLS and that division reflects the political tensions within that.

I am interested, as councils, you would be dealing with this all the time through DAs and that cross part of it. Aside from making it easier for landholders to get involved in the system, do you think there is this general resistance to doing this or do you think that the system is so hard to navigate? You practically work with this particular issue all the time. I am trying to get some perspective from you on the willingness of farmers and landholders to do this, because my sense is there is actually a great willingness and interest. Is it just that it is too hard or do some of them just say, "This is not our problem. This is our land and we want to do with it what we want"? I am trying to get a sense about how you are dealing with that conflict because the legislation that we see I think is the political compromise of that conflict.

Ms WOOLL: I think it is interesting. We have got a culture here where farmers have had a long history of involvement with Landcare groups and have been actually very active in trying to conserve more sensitive parts of their properties and are very mindful of the benefits of retaining a certain amount of biodiversity on their properties. Where we are actually having trouble is not so much genuine farmers who have pretty much already cleared all the land here historically years ago which is suitable for agriculture; it is lifestyle developments and chopping properties up for smaller lot sizes for rural residential properties for lifestyle lots and then having to comply with the asset protection zone requirements and all the rest of it, or they just want to have a property that looks like an English countryside like the other historically cleared properties. In actual fact, it is not really the genuine farmers here who we have an issue with. They are actually quite well educated and very proactive in the Landcare groups. It is all the people coming from the cities who want to live in a little piece of English heaven by the looks of it.

The Hon. PENNY SHARPE: They want to clear that block so they can build their house. Yes, Mr Faulkner, go on.

Mr FAULKNER: As Kate Wooll said, historically the good country around here has been cleared. The remnant vegetation is mostly on like hilltops and ridges, the steeply sloping land, really poor soil, highly erodible, highly fragile. A lot of it is classed as land capability class 6 or 7. It is not suited for cropping at all really or clearing. It should just be left alone. The long-established farmers, the farming families, the people who have been here for generations, they understand that, they value it and they have no intention of clearing it whatsoever. It is mostly people coming into the area, cashed-up people from the cities like Sydney and Canberra, buying those blocks and then wanting to clear it. They have this perception that cleared land is more valuable.

They have this perception that native vegetation is dangerous, it is bushfire prone, it is full of snakes and nasty bitey things. So there is this huge pressure of people coming and wanting to clear. Some people seem to have this idea they can clear it all and put in olive groves or apple orchards or truffle plants. They just do not understand that the country is not suited to it. As Kate says, the real farmers, the genuine farmers, would not clear it. The real farmers do like to see the wildlife. They do actually like to see koalas in the trees and things like that.

The Hon. PENNY SHARPE: Yes. My comments were not trying to say that. I just think there is a conflict here around how this issue is talked about. What you have just said is exactly the experience. I want to be clear, I am not having a go at farmers. I am just interested that the representative groups often have a more

CORRECTED

aggressive approach to the way they talk about these things and that is not necessarily reflected. You have given me very good information. I might ask the other two councils as well, because they have slightly different issues, depending where they are at.

Ms WHITELAW: I can only speak for Coffs Harbour, but I think there is what you describe as a philosophical point of view. I think that is true. For Coffs it is not necessarily about new people coming to the area—different to Goulburn—but there is that philosophical view that this is my land. I might have owned that land or it might have been in the family for generations and I want to do what I want to do with my land. I should be able to do what I want to do with my land. You definitely see that with vegetation and biodiversity management, and you also definitely see that when you start to talk about the vexed issue with environmental zones as well. That comes up a lot. That is a very difficult issue.

I think some of it is just a core philosophical point of view—my land, I will do what I like. But I guess what I am saying is I would like to think if it was profitable or viable to establish stewardship sites—I think that most of the time from a point of view where if it is easy to do and there are enough incentives to do it, you would find some of those philosophical issues would die away and people would go, "Yeah, okay, maybe my back paddock there which has always been vegetated or has regrown"—if it was viable, they would consider stewardship sites or other incentives. Then some of those philosophical issues might die down.

The Hon. PENNY SHARPE: I think that is right. You have also got the challenge of private native forestry. There are competing opportunities for different use of the land. Thank you for that. It has been very helpful. Clarence Valley Council, do you want to jump in on that one?

Mr LENTON: I guess going back to what the community thinks about the environment, our community has shown in recent community satisfaction surveys that they are certainly wanting the environment prioritised and given much greater weight in the decision-making of this organisation. If we look at where there is hesitance around the scheme, I would say it is coming more from the development industry, like Goulburn has indicated.

We came from a system before where, as Sally Whitelaw from Coffs Harbour has mentioned, the Threatened Species Conservation Act did not really put a great obligation on developers in real terms. Now the BOS is actually making them address the real cost of their development from a biodiversity point of view, which is a reasonable thing to do. There is certainly some strong dissatisfaction, I would suggest, from a good part of the development industry around the new process, because it is a relatively new process and it does require them to invest more capital into up-front studies and the like to determine what the real impact of their development is. I would say it is not so much an issue with our rural community because the rural clearing does not typically trigger the BOS, I would suggest. It is really the developer-related clearing.

The Hon. PENNY SHARPE: Thank you, that is helpful. All three of your answers have covered the diversity of the pressures. That was really helpful for me. Thank you very much.

The CHAIR: We heard from the previous witness from Port Macquarie Hastings Council about the impact of private native forestry in the area. Ms Whitelaw, your submission states the impact of PNF and the fact that private native forestry is exempt from any offsets under the Biodiversity Offset Scheme. Would you care to comment about that and whether you think it should be? Would it help with ensuring that the impacts of PNF were offset, if possible?

Ms WHITELAW: Yes, look, it is a really tricky issue and back to the point we talked about before; you definitely get a lot of objections to that. It is a huge concern, private native forestry. When I look at the areas that are affected or approved private native forestry approvals across the LGA, it is huge. Obviously, they are the vegetated areas, otherwise farmers would not want to be logging it. That pressure is just skyrocketing because of the construction industry, with housing ramping up and the demand for it, and after the bushfires there is increased demand for timber. So PNF is massive, and I am really concerned about the impacts. It is not even just about the offsets for it. It is even about the assessment. The assessment is negligible, I can really say that. They do not do targeted flora and fauna reports. I know we are still waiting on a revised code of practice, which does not seem to be coming any time soon.

Going back to what has been said before, there really are two different systems. One, you have got the development, under Part 4 of the Environmental Planning and Assessment Act, having jumped through a lot of hoops. Then right next door you might have private native forestry or a rural boundary clearing code. That was the other thing that came in recently that has had big impacts in Coffs Harbours—25 metres inside the boundary fence being cleared with no assessment. It just seems like there are two different systems, and I am really concerned about the impact. Whether or not you could do offsets through a PNF agreement—I mean, they do avoid riparian areas and rainforest, but it just seems like there is a real risk of biodiversity loss.

CORRECTED

The Hon. CATHERINE CUSACK: I would just like to ask Goulburn Valley Council, again referring to your submission, you have spoken about the need for greater education and listed the different people who need education. You have given an example of somebody who was actually doing their due diligence on the purchase of property before exchanging contracts. Contrary to the information they had been given by the real estate agent that the land was basically ready to develop and council supported that, in actual fact it turns out it has got high biodiversity values. In terms of raising awareness and this idea that ignorance is a defence, I guess—I am just trying to address all of those issues. What is the solution? Should we be, as part of the conveyance process, putting biodiversity values on the land as part of being attached to the title of the land? Should we be asking councils to undertake education? I am totally agreeing with your recommendation but I wonder how you would implement it.

Mr FAULKNER: We have recently had a media campaign where we got the mayor to say, "If you want to clear out vegetation, for goodness sake ask someone first." We try and explain what rules apply to what land. We had a bit of a campaign on Facebook too. One of my roles is just getting out there and explaining that message. We are definitely doing as much as we can but my feeling is that it needs to come from higher up, so the Biodiversity Conservation Trust and possibly, as you said, part of the whole DA process and all the paperwork. It needs to go out to all stakeholders. [Inaudible]. My feeling is it has to come from higher up and probably Kate Wooll might want to elaborate on that. [Disorder].

The CHAIR: I am so sorry to do this, but the time is up for this session. As usual, we could keep asking our fabulous local government representatives questions on this all day. Thank you so much for appearing before the Committee today, for your work in this space and for your excellent submissions. The secretariat will be in touch with any questions you may have taken on notice or supplementary questions. Thank you again for appearing.

(The witnesses withdrew.)

CORRECTED

RUBY DYKES, Private Individual, affirmed and examined

PETER DYKES, Private Individual, affirmed and examined

GREG STEENBEEKE, Director / Public Officer / Ecologist, Henribark Pty Ltd, before the Committee via videoconference, affirmed and examined

JUDY STEENBEEKE, Director / Company Secretary / Financial Manager, Henribark Pty Ltd, before the Committee via videoconference, sworn and examined

ANDY DAVIES, Member, Landholder Biodiversity Interest Group, before the Committee via videoconference, affirmed and examined

LOUISE DAVIES, Member, Landholder Biodiversity Interest Group, before the Committee via videoconference, affirmed and examined

The CHAIR: We welcome witnesses to this next session. Witnesses have an opportunity now to make a short opening statement before we proceed to questions from members of the Committee. Ruby and Peter, we will start with you. Do you have an opening statement there, Ruby?

Mrs DYKES: Yes. Firstly, I would like to acknowledge the Gadigal clan of the Eora nation, whose lands we are meeting on today. Also I would like to acknowledge my ancestors and my Elders past, present and future. Secondly, I want to express an opinion that biodiversity conservation is not just about the preservation of plants, animals and stones and bones; Aboriginal cultural landscape also plays a major role in this vast environment. We have our Aboriginal spirituality enveloped in our dreaming tracks and our sun lines, our birthing places, our waterways. Landforms and plants and animals are our emotive, spiritual beings and they are everywhere. The earth is our mother that gives us life. The sun and the waterways are the providers that sustain us and the whole environment. Please, when considering our submission, consider our cultural landscape, which encompasses our Aboriginal spirituality.

The CHAIR: Thank you very much. Peter, did you also have an opening statement?

Mr DYKES: Yes. Thank you for allowing us to speak at this inquiry. We are an Aboriginal family, where 15 members have a very strong cultural link to Tricketts Arch and an extended family network of not less than 40 persons having a strong cultural association with the property. We have owned Tricketts Arch for 40 years and it has cost both of us dearly to keep it. For me, it cost my first marriage and our house in Orange. In May this year I stood with my daughter at her mother's grave in Condobolin to say goodbye. For Ruby and I, it has cost Ruby her house in Bourke, all our life savings, all our super money, plus a great deal of stress and heartache and emotional strains to keep the property we both love in family ownership. We now live and manage on Centrelink pensions while looking after our grandchildren, Michael and Matthew.

We undertook a biobanking conservation agreement because we wanted to firstly have the funds to properly manage the property, to pay for the fencing, the weed and pest control, the provision of fire breaks and maintenance of access tracks, the rehabilitation of degraded and cleared areas and lots of other things needed to manage a rural property for biodiversity conservation. Secondly, because we wanted to provide for our children and our grandchildren the means to keep the property in family ownership. At the heart of our problem is the lack of money to manage a property for conservation. We were completely dumbstruck to find that the Kyoto treaty excluded native vegetation from being used for carbon abatement credits and, in effect, consigned it to economic garbage. Since the beginning of the biobanking process in 2008, with funds provided to keep the land alive, to say that we have struggled to sell our biodiversity credits is a huge understatement.

We have had to go into battle against a bureaucracy and a community that by and large do not believe in biobanking and/or that landowners should be paid, let alone make a profit for managing biodiversity. The advent of the BCT in late 2017 and its current foray into the biodiversity credits market has made a very hard situation into an absolute nightmare for us. Here I would like to table a spreadsheet and an email I sent to a department office to show just how difficult it has become. Also I would like to table a one-page document on what we see as essential changes needed in the biodiversity offset credit administration.

The CHAIR: Thank you very much. That will be very helpful for us. Is that the end of your opening?

Mr DYKES: That is it.

The CHAIR: Thank you very much. We will get to questions for you soon. We will just go to the opening statements of Mr and Ms Steenbeeke, you have an opening statement to make?

CORRECTED

Mr STEENBEEKE: I do, thank you Chair. I seek to dedicate my appearance here today to my friend and colleague Glen Turner. Glen was murdered by a landholder who saw habitat as a hindrance, not an asset. This view is held by many people in regional areas who do not see advantages of having native biodiversity under management. This inquiry largely arose from reports about windfall gains made by people with expertise. There are many errors, mistakes, omissions and untruths in the reports. Returns for caring for the land are a tenth of those developed into small acreage lots, as abound in Razorback. It would have been lost to any conservation outcome and no-one would have batted an eyelid. It is specialist knowledge, as is designing roads, undertaking surgery or providing legal advice. Yet engineers, surgeons and lawyers can own practices to present these skills without any expectation of operating at arm's length. Planners in government and real estate agents can own property and know of development plans, but not be excluded from ownership. Assessing biodiversity and doing something that protects it should not be separated from each other.

The Department of Planning, Industry and Environment recently introduced a protocol to restrict employee interaction with people who have knowledge of the Biodiversity Offsets Scheme from a lived experience viewpoint. Their submission is now in error and misleading. As an expert ecologist and a biodiversity stewardship agreement [BSA] owner, I cannot advise employees of things that will improve the scheme. Even as a volunteer I am considered an employee. While not perfect, BOS provides an opportunity to address ongoing loss and claw-back losses of what land is best managed for outcomes with a basis in nature. It is still maturing in its application and as yet is barely in play. The BOS is a means of valuing impacts of biodiversity. Its purpose is economic, not ecological. For projects where BOS is triggered, it is doing the best job possible towards halting loss. Some think the scheme applies to all clearing, but it does not. It is also hard to judge a scheme when media speak to a previous process or one totally separate.

The Kunming Declaration has been signed by the Australian Government. It calls for financial implications of biodiversity interactions to be considered and is likely to be mandatory for financial institutions by 2024. The BOS provides a way to value nature-based financial disclosures and helps achieve conservation efforts. Use of the scheme ensures that biodiversity impacts are assessed by someone skilled at the task. A plumber can look at your arteries and see them as pipes, but would you trust them to undertake bypass surgery? Why should biodiversity be considered as 'anyone can do it' simply because we all have an ongoing and lifelong experience of it. Biodiversity is very complex. A BSA has the same status in terms of security as a national park. It is perpetual on the land title and binding on the landholder. Unlike a national park, the costs for all future management forever is put aside early in the process and drip-fed back to the landholder to cover costs.

There is no risk of Treasury or the Expenditure Review Committee reducing or rejecting the funds required to manage it. The costs of all future management are borne by the developer whose impact needed the offset. No funding comes from taxpayer funded sources, unless they are the developer. Private landholder participants consider lost productivity, costs of entry in participating, taxation, risk and the demand for their credits. A credit is a measure of the unit of effort to improve habitat up to a limit the tools say is achievable in 20 years. After 20 years, if more improvement can be achieved by more effort then that should be allowed for. After all, why leave a job half done. The role of the Biodiversity Conservation Trust is complex and influential, well beyond its remit. They stymie the market by acting as a middleman in almost all transactions and charging developers best average cost rather than the premium price they were meant to, so degradation continues.

The cost of credits is not an impediment to developers. The highest priced credit in benchmark condition will still only add at most \$370 per square metre to the cost of development, but development rarely impacts best condition habitat. If costs of impact were higher, more avoidance would occur. Actions undertaken on the sites help to build and maintain skills in the community and create employment. Farming biodiversity is a term I use for stewardships, and that is how they should be viewed—biodiversity as a financial asset. Thank you to the Committee for hearing me out on this extended opening statement. I am sorry I did not have time to make many recommendations, but look forward to that opportunity.

The CHAIR: Thank you very much for that comprehensive opening statement, Mr Steenbeeke. We will now go to the Davies. Who is making the opening statement?

Mr DAVIES: I am.

The CHAIR: Please proceed.

Mr DAVIES: Thank you for allowing us to speak at this inquiry. We represent a group of landowners from south-west Sydney and north-west New South Wales. The pre-2016 biobanking scheme operated as a free market. Under this scheme I have seen multigenerational farm and landowners take out farm debt, invest in improving farm infrastructure, renovate homes and be able to plan for the future without the threat of subdivision or sale of their land. I have seen small businesses created and increased investment in regional areas. I have seen increased understanding of the value of native redress systems and their role in whole farm systems. I have also

CORRECTED

seen developers' profit margins impacted by less than 1 per cent. With the introduction of the Biodiversity Conservation Trust, the new biodiversity assessment method and the biodiversity offsets payment calculator, these opportunities have been severely impacted and transparency [inaudible].

The biodiversity assessment method returned roughly one half of one-third the number of credits per hectare in comparison to the old biobanking assessment method. This reduction in saleable product, along with the reduction in credit price per hectare, a price determined by the application of the biodiversity offsets payment calculator, has resulted in a less profitable scheme and, in my experience, a reluctance to engage in conservation agreements. An opportunity to bring about real conservation regeneration of native ecosystems, along with increasing investment in regional areas has been curtailed through government involvement in the market control. Previously, direct communication was possible between buyers and sellers, with the assistance of government agencies.

However, it now appears that interference by government agencies has seen government agencies positioning themselves as the only buyer of credit. An increase in lack of transparency, for example a total lack of communication regarding [inaudible] for annual payment, no information on how credit prices are being calculated, massive delays in annual management payments and great [inaudible] BCT. The manipulation of the free market will lead to more outcomes and a lack of real conservation statewide. There has also been a complete lack of landowner involvement in [inaudible]. While some dodgy deals have brought the scheme into disrepute, as [inaudible] biodiversity we feel this is a minor issue. The real issue [inaudible] free-market operation of the scheme with government involvement. Thank you.

The CHAIR: Thank you very much for those opening statements. We will now proceed to questions. I just want to go to you both, Mr and Mrs Dykes. Thank you so much again for making the effort to come and talk to us. I am very glad that you did get wind of our inquiry. I understand you heard about it a bit late in piece. Could you just explain a little bit about the particular species, Tricketts Arch buttercup doubletail? Can you talk us through what happened with that? You have got the land and you found out that you had this particular threatened species on your land. Talk us through what happened then.

Mr DYKES: I will give you a little background. I am a caver, and I have been since I was 16. I visited the Tricketts Arch property in 1973. I got the opportunity to buy the property in 1982. It is 360 acres. It has a unique limestone karst feature, which is the arch. It is not really an arch, it is a limestone bridge. We were unaware, as a caver I was unaware of the biodiversity value. When we undertook—in 2008 we got funding from Land Alive to actually do an ecological assessment. That began in 2009. It was in November/December 2009 they came back to look over the property and found that we had identified buttercup doubletail, *Diuris aequalis*. At that time there had only been 200 individual plants found at 20 sites and they found 431 at our place, in what amounts to one large site. That has now been increased last year to just under 500 individual plants. We made a big mistake. As well the ecological assessment identified a number of bat species and the powerful owl. As a caver we had some biologists. I knew there were bats on the place and powerful owl. We should have got credits for the powerful owl and the bat, because we could have sold them.

We decided the buttercup was so rare that we went and got an ecological assessment done with Land Alive funding and created 910 credits. We have never been able to sell those credits basically because no-one really wanted them. It is interesting, Greg has made me aware that under Saving Our Species, the Commonwealth funded some program to look at saving this species, and I have only just become aware of that in the last week. Literally no money ever came to us. What we did, we tried initially to sell the credits. Land Alive came around about—

The Hon. PENNY SHARPE: Can I stop you there? I am just interested. When you say that you tried to sell the credits, how do you do that? Do you put it on line? Just take us through that.

Mr DYKES: That has been bloody hard—excuse me saying that.

The Hon. PENNY SHARPE: No, that is exactly what we are trying to understand.

Mr DYKES: We had anticipated that when we got funding for Land Alive we had two very, very capable Aboriginal Elders running it—Marcia Ella-Duncan and Robert Clegg. The program came around in 2008-09 and by the end of 2010 it was gone. We thought that they would help us make contact to sell the credits. Always our market was a philanthropic market, a company willing to put money into biodiversity. Of course, after that as part of that process we developed a booklet—which I have—that went into everything that is on the property.

The property not only has biodiversity, as we have said, it has got Aboriginal sites, it has got pioneer heritage mining sites on the place and it has got large cast area, with approximately 80-odd cast features. We thought we would be able to sell it but once Land Alive was gone no-one seemed to want to help us—neither the

CORRECTED

Department of Agriculture, the Department of the Environment, which were the two; not anyone, Planning, no-one. That made it very, very difficult.

The CHAIR: I was wondering actually whether you could talk us through a little bit. You have got the spreadsheet here.

Mr DYKES: Yes.

The CHAIR: Would you explain it a little bit to us, is that okay?

Mr DYKES: Yes, the spreadsheet actually highlights the problems that Greg and the other lady, the other person, are actually talking about.

The CHAIR: Great.

Mr DYKES: The top part of our spreadsheet in the first bit lists our credits. We have made two sales. The bottom part shows the sales. The first sale we made was to NorthConnex and we sold 48 credits to NorthConnex. I should say the two things: There is biobanking, which are called BBAM, and then there is BAM credits. If anything is more confusing—

The CHAIR: Yes.

Mr DYKES: Anything that is likely to say, I do not know who dreamed it up. I would like to take them out and shoot them—it is not meant physically but that is how I felt. We sold them at \$2,000. If you notice it is HN5901197. Right? It is on the bottom of the second spreadsheet.

The CHAIR: Yes, I have got that.

Mr DYKES: We sold them for \$96,000. However, because there were no workshops, no nothing in 10 years, we were unaware that the BCT calculator was actually \$4,600 for BAM credits, not biobanking. So the next two coloured, the yellow and the purple, they show what we would have got if we had sold the whole lot of our remaining credits, which were 50 at \$2,000. We would have got \$100,000. However, that \$100,000 equates in BAM credits to \$3,226; that is the purple. If you sold the 50 biobanking credits you get \$100,000 and if you sold the same, which are 31 BAM credits, you get roughly the same amount. But that is less than what the BAM credits are worth. Right? We were, politely, taken as suckers—that is my view.

The CHAIR: Just to be clear then because we heard from a witness yesterday with a completely different species and we were wondering whether this had occurred with other species. So it is very fortuitous that you are here today explaining this to us. So it is the \$3,226 there that you would have realised if you had sold everything?

Mr DYKES: What I am trying to do is—you have got two systems and two-system pricing and you have got to try to figure out how the two merge. If you look at our remaining 50 BBAM credits, that equates to 31 BAM credits. So 50 credits times 2,000 gives us \$100,000 and 31 BAM credits at \$3,226 gives you \$100,000. So we were, in a sense there, currently 4,006 we would have lost but here is where it really gets interesting. We then had the BCT earlier this year, or late last year at about this time, offer a fixed price offer to buy credits. We had HN558, the narrow-leafed peppermint. We sold 46 of them and that 46 gave us two at \$6,000. We finally said these things are under-priced and let us sell them for \$6,000, and they did. Ruby and I nearly dropped over. We sat down and had a little heart attack in the kitchen when they actually accepted it. We then figured that the whole 109 credits that we had, biobanking credits, were worth \$654,000. However, if we had sold the remaining ones to get the same amount that BAM credits we would have to get \$17,211. But the current price for that remaining is actually \$4,600. So if we had sold them at the current calculated price, we would make a loss of \$479,218. Right?

The CHAIR: Yes.

Mr DYKES: That is sort of explained in this email I sent to Benjamin. I have got no problem with Ben; Ben asked for me to send this to him as part of an investigation. Now things get actually really interesting because, in effect, the remaining other credits do not appear to be able to be sold. One of our problems is that we have under-costed our total fund deposit. Instead of 1.74 million, it should have been two million because, again, we did not realise that. When you allow for all of this, we ended up with a payment of \$502,000 if we sell all the credits at the current BAM calculated price. That \$502,000 sounds a lot but we have got to build another house on the property. We have got to have a tractor and agricultural equipment and we have got to fix up the existing residence. In effect, \$502,000 is going to go out just to do all of that. But the really interesting thing—

The CHAIR: Thank you.

Mr DYKES: Hang on, there is one last thing I need to say. The really interesting thing is in July this year a lady from an assessor contacted me to buy the same credits—HN558PCT963, the narrow-leaf peppermint. I said to her, "It is \$6,000." She was there discussing whether to buy our credits or put them in the calculator. They

CORRECTED

evidently decided to put them in the calculator. So recently, only in the last fortnight, the BCT has offered—got a fixed-price offer, looking for these credits, PCT 963 narrow-leaf peppermint. I have 22, but it is looking for 37 of those credits at approximately—they have put in at \$4,600. Their total payment is \$170,200.

If they had bought our credits, or bought what they need at our price, they would have paid \$636,400. The BCT has got a payment of \$170,000 when it should have got a payment of \$636,000—put their mark-up. Someone is going to take a half-a-million dollar loss. It is either us or the BCT when they try to fulfil their credit requirement, and that is the problem, to put it in real perspective, of why we want the calculator thrown in the garbage tin.

The CHAIR: Thank you very much, Mr Dykes. That is very well explained. Is this your work—the spreadsheet?

Mr DYKES: Yes, that is my—

The CHAIR: Well done, that is excellent for us.

Mr DYKES: You need to read it with the—

The Hon. PENNY SHARPE: Yes, that is very helpful.

The CHAIR: Yes, we will sit down and certainly go through that. I am conscious of time and that we have other witnesses online and members to ask questions.

Mr JUSTIN FIELD: Mr Steenbeeke, in your submission you make a comment towards the end that you have been seeking to go through the variation process to add certain species credits to your agreement. You indicated that you have been stymied by the Biodiversity Conservation Trust for a period exceeding eight months. Could you expand on that? What is going on there? What has your experience been with the BCT?

Mr STEENBEEKE: Up until September I was an employee of the Department of Planning, Industry and Environment in a number of roles. But, basically, for the last 27 years I have worked for it and the 15 government agencies that have, in our case, predeceased it since I started with the Department of Water Resources in 1994 in Dubbo. I then became a departmental employee, complied with all of the required conflict of interest declarations and all of that to ensure that my processes were all available to the staff who were undertaking management inquiries and so on. So there was no hiding of my involvement in the scheme. In February last year, as the site was recovering—we were fully burnt out on 8 October 2019 by the Busby's Flat bushfire. Literally all of our 213 hectares were burnt. We put into the BCT, when we started noticing the recovery, that we had a number of threatened species. We are up to over 40 threatened species on our site now, which is pretty impressive when you consider it is 213 hectares.

We had another species turn up, where there is a potential for credit sales to be undertaken, such as red-backed button-quail and *Rotala tripartita*, which is a serious and irreversible impact species but which we believe should still be in the market. The initial opening discussions were held with one of the BCT staff in January of 2021 to try to clarify putting in a variation, including one of the species that is on their fixed-price offer list and has been since that time, being *Persicaria elatior*, which we have on the property—and we have a number of plants on the property. I started talking about doing a variation on our agreement to add five more species and vary the numbers on two, which had—because of the initial way in which the application was done we under-counted our slaty red gums because we knew that there were 2,500 plus, but we could only realistically say comfortably that there were at least 1,000, which was half of one standard deviation value below the mean, based on the analysis of the number of plots. So I worked out that roughly 1,000 could be used by our assessors.

We had all of our work undertaken by third-party assessors. Even though I am an accredited assessor and have been involved in the design and construction of the schemes for the last 14 years, I stepped aside and provided technical input and expertise, as an ecologist, but it is not my work that is actually what is presented. So our ecologist consultancy decided that it was safest to ask for only 1,000 individuals of slaty red gums be counted, even though we could say that we had probably around about 2,500, but the standard deviation—the variation within statistical means—was around about 1,000. So we could say that we were comfortable, but there was a 97 per cent chance we were wrong. That 97 per cent chance was that there were more than 1,000 on the property. I have since counted 2,240 and I still have 15 per cent of the property to go, so I was well and truly under. That variation we put in to get to add these species, and the person at BCT said, "Yes, sure, I'll get back to you."

In April we got a response saying, "It's gone up to the BCT administration to have them make a determination of whether you are actually eligible to seek a variation because you are a departmental employee." Even though everything is done under conflict of interest and it was all openly declared, and I excused myself from meetings where the species were involved and all those things, they still wanted full probity on it, which is fair enough too. But to actually stymie and exclude me from the process simply because I am an employee of the

CORRECTED

third largest department of the State, which also happens to have that BCT under its same umbrella but operating as a separate entity, is, realistically, a little bit of a situation where they had tried to apply a discrimination that was not established and was not based in any legislative option. Therefore, when it came through to continue it and pursue the variation, it was not until a month after I left the department—so in mid-October this year—they actually said, "Yes, you can actually do the variation."

To do the variation without getting any penalty—because we still have our site not yet active, so we are not doing any management activity beyond what we have to do to maintain the site. We still owe—it is about \$2 million until we break even on our site. That is paying for the total fund deposit and to pay the assessors and to pay for the cost of purchasing the land in the first place. So we have \$2 million of sales yet to happen before we even make a penny out of the site. All of that—they said in October, "Yes, you can do it now," but the trouble is we have until mid-January of next year, so basically 2½ months, to do the full assessment required for these seven species—to get them written up in a full Biodiversity Stewardship Site Assessment Report, a full BSSAR—to apply for the variation. So we have acquired the services of a local consultant to do that work for us, but that consultant is, again, behind the eight ball because there is this tiny little period of time in which that variation can be done, and it is only now being allowed to be done because I am no longer employed by the department. But as I—

The CHAIR: Thank you, Mr Steenbeeke. I am sorry, but we are really pushed for time. I am sorry to interrupt you, but I am conscious that we have more questions and more witnesses to speak to. I want to assure everybody that your submissions are also taken into consideration, and they are excellent, as we will not get enough time to ask you everything we want to ask you. I want to go to our other witnesses, the Davies. I know it is in your submission, but verbal evidence is very good in this regard. You stress the manipulation of a free market, if you like, and you mention in your submission the key points around market imperfections. It is probably safe to say that most people on this Committee are not all that great in terms of knowing what all that means and looks like. You are the experts in this area. Can you expand upon some of those key points in relation to the market imperfections of the Biodiversity Offsets Scheme?

Mr DAVIES: The offset system is basically there to at the end point make it prohibitively expensive to clear an ecosystem entirely. That is what was happening under the old scheme, particularly with Cumberland Plain Woodland—the price was going through the roof because of demand and supply. What has now happened with the Biodiversity Conservation Fund under the new Cumberland Plain Conservation Plan is that there is the biodiversity certification, which is basically a lump sum to log, I believe. The developers pay that into the Biodiversity Conservation Fund and then move on; they do not actually need to offset anything before they clear. What that is actually doing is playing around with the demand and supply metrics so demand is only coming from one buyer, being the BCT, as opposed to multiple buyers interacting with multiple sellers. You have one buyer cherry-picking which credits they want to buy.

Mr DYKES: The problem is that one buyer has now become a monopoly. The best way to describe it is developers—whoever they are and wherever they are in the State—no longer try to source credits either from people with existing biodiversity credits or people who have an expression of interest to create biodiversity credits. In effect, they go to the calculator and if it is \$4,600 for BAM credits they say, "We need 10, here is your \$46,000—you beauty," and go and do the development. The BCT then has to find those credits. It goes back to the marketplace and someone says, "We are not going to sell them for \$4,600; we want \$10,000 a credit." Someone is taking a loss—either it is the BCT or the individual. As I put in one of my recommendations, the developers should test the market and the calculator should only be used when there are either no credits on the market or there are no expressions of interest by landowners to create credits. That gives—we would get the full market price.

The other problem is that in creating a biodiversity site such as ours, for instance, there are a lot of credits that may never be sold. Each site can have multiple numbers of vegetation communities, some of which are obviously not going to be sold because they are on rocky hills, and who wants to clear a rocky hill? If they are along a river course, you cannot clear along a river course because you have to come back 30 metres or 50 metres. So it is really the credits that are on the plain and on the slopes in the landscape that are wanting to be cleared. Most properties have a multitude of those credits over different types of landforms. On top of all of that, the BCT is canvassing for philanthropic donations and running the stewardship agreements. It is literally a textbook monopoly straight out of Adam Smith and John Maynard Keynes textbooks. We as individuals are fighting a monolithic group to try to sell our credits.

The CHAIR: Thank you. That is very powerful evidence. Mr Steenbeeke, I understand you had your hand up as well.

CORRECTED

Mr STEENBEEKE: I did. I just want to support what Mr Dykes said. The BCT is realistically only required to come in when there is market failure—that is, when there are no credits in the market or no EOIs available for those credits. The way they operate to get best average price stymies the market; it provides an artificial price on the market. Originally, they were intended to provide a premium price. They should only be buying obligations from people who cannot source the credits from the market, otherwise they have to get them from the market themselves, whether they create a site or whether they buy them from suppliers like ourselves. My recommendation is that the BCT should only be able to provide credits that are not in the market, and there are others, as I said. I am happy to take on notice other things I would like to recommend.

The CHAIR: Thank you. Mrs Davies, did you have your hand up as well?

Mrs DAVIES: Yes, I did, following on from on from what Mr Steenbeeke was saying. We are flying blind because they are [inaudible] price—the BCT. There is a fixed unit price; there is no negotiation at all. They are setting the price and that is a big mistake.

The CHAIR: I understand, thank you.

The Hon. PENNY SHARPE: I just want to say to the Davies that they have a very detailed submission and I did not get to ask them very much about it. But I have read it and there were lots of things in there that we will pick up. We have run out of time, so I will not get you to expand, but thank you for your efforts because it has been very useful.

Mr DYKES: Can I just say one thing? With these biobanking agreements, some people are not selling all their agreements—in our case, for over 10 years. The total fund deposit was based on prices in 2010, which is now irrelevant, and some people do not sell any of their credits. It took nearly eight years for us to sell our first set of credits. I agree with Mr Steenbeeke that there needs to be a low-cost administrative procedure to reprice the credits and reprice the total fund deposit. Particularly where a biobanking site does not have a total fund deposit after 10 years, the whole economics of that site need to be reassessed and done in a low-cost way.

The CHAIR: Thank you. I am sorry but we have run out of time for this session. Thank you all for your submissions and for appearing. We will take into consideration your submissions and evidence, and we may be in touch to discuss these issues further given how short this time was today. I assure you that despite the fact that some of the witnesses probably feel like you did not get much in, we will absolutely be in touch. The secretariat will contact you with any supplementary questions that members may have and about any questions you may have taken on notice. Thank you again for appearing.

(The witnesses withdrew.)

(Luncheon adjournment)

CORRECTED

PAUL ELTON, Chief Executive Officer, New South Wales Biodiversity Conservation Trust, affirmed and examined

DEAN KNUDSON, Deputy Secretary, Biodiversity, Conservation and Science Directorate, Department of Planning, Industry and Environment, affirmed and examined

MICHELLE DUMAZEL, Executive Director, Biodiversity and Conservation Division, Department of Planning, Industry and Environment, affirmed and examined

LOUISA MAMOONEY, Director, Biodiversity Offsets Scheme Branch, Department of Planning, Industry and Environment, affirmed and examined

The CHAIR: We will now kick off our next session with our next witnesses. Thank you all for appearing. There is an opportunity to make opening statements. Mr Elton, you are nodding. Would you like to begin?

Mr ELTON: Yes, thank you, Chair. I would like to make a short opening statement. I would first like to acknowledge the traditional custodians of the land where we are meeting today but also right across New South Wales and pay my respects to their Elders, past, present and emerging. The terms of reference say this inquiry is considering the role of the Biodiversity Conservation Trust in administering the scheme and whether the trust is subject to adequate transparency and oversight. Appendix C in the New South Wales Government's submission to this inquiry provides extensive information about the BCT's roles and how the BCT is governed.

Just to be clear, it is the Minister and the department that administer the Biodiversity Offsets Scheme. The BCT does not administer the scheme. Instead, we have four specific roles under or as part of the scheme under the legislation and regulations. So our four roles are that we enter biodiversity stewardship agreements with landholders who may be wishing to generate biodiversity credits in accordance with the requirements of the Act and regulations. We manage the Biodiversity Stewardship Payments Fund and, subject to compliance, we make annual payments to agreement holders. We acquit offset obligations transferred to us from development proponents by way of payments made into the Biodiversity Conservation Fund. Finally, we procure biodiversity credits under various place-based offset schemes, such as the Western Sydney Growth Centres Program, when we are commissioned and funded to do so by the department.

Appendix C in the submission goes into greater detail as to how we fulfil those four roles and the outcomes we have achieved to date. The terms of reference also ask whether the BCT is subject to adequate transparency and oversight. I contend that the BCT is subject to the highest standards of governance, integrity, transparency and accountability. The BCT is required to operate in accordance with the business plan approved by the Minister and we are required to produce an annual report tabled in Parliament. We are managed by a governing board comprising independent directors, which is in turn accountable to the Minister. The board receives advice from an audit and risk committee, including an independent chair and independent members on financial management, funds and investment management and audit and risk matters, and we are subject to numerous governance requirements or instruments, including a board-approved risk appetite statement and risk management framework, internal audits, probity frameworks and external audits by the NSW Audit Office.

So I hope we have demonstrated the BCT is subject to very rigorous transparency and oversight. I would just like to quickly clarify two matters that have arisen in the hearings to date. Some witnesses to this inquiry have suggested that paying into the BCF is somehow not an offset, and that is not accurate. The Act establishes a legislative obligation for the BCT to acquit offset obligations transferred by development proponents. We must apply the amount paid into the Biodiversity Conservation Fund towards securing and retiring the relevant number and class of biodiversity credits transferred to us in accordance with the regulations. So paying into the BCF does not, therefore, in any material way diminish the requirement for an offset obligation to be met.

The other issue that has arisen is the time taken by the BCT to acquit offset obligations transferred from development proponents by way of payments made into the BCF. There have been suggestions that the BCT has acquitted less than 20 per cent of the obligations and is taking five years, or a very long time, to do so. That is not the case. The BCT board has adopted a policy that the BCT should aim to acquit a median of offset obligations within three years and all offset obligations within a maximum of five years. To 30 September 2021, the BCT has received 242 payments from private and public development proponents into the BCF, totalling \$55.9 million, transferring 668 offset obligations to the BCT. This includes payments to support large-scale infrastructure projects, schools, hospital redevelopments, wind and solar farms, tourist facilities, mining projects and smaller-scale residential developments. By bundling offset obligations, the BCT can acquit them in a manner that optimises environmental outcomes.

CORRECTED

To 30 September 2021, the BCT has acquitted 47 per cent of these offset obligations where "acquitted" means the credits have been retired or credits have been secured for retirement. To date, on average, the BCT is taking about 15 months to acquit offset obligations, as measured by number or dollar value. The BCT publishes details of offset obligations that have been fully acquitted. For these fully acquitted offset obligations, as at 30 June 2021, the median offset acquittal time frame was 10 months. We do expect that those time frames will increase somewhat over time because there are still offset obligations that we have not acquitted—that we have held for longer than that—but we remain very confident that we can operate within the BCT board's policy of acquitting median of offset obligations within three years. There have been a few suggestions made about the BCT during the hearings. Many of them have been accurate; many of them have been not so accurate. I am happy to answer any questions you may have about some of those suggestions that have been made. Thank you.

The CHAIR: Thank you very much. There another opening statement from Mr Knudson? Is that correct?

Mr KNUDSON: Yes, that is correct. Thank you, Chair. I too would like to acknowledge the traditional owners of the land on which we are meeting and the Elders, past, present and emerging but also highlight that there is a particularly important role that Indigenous people can play in helping us understand how to effectively manage our land and also ensure that we are leaving a legacy for future generations. I would like to thank the Committee for the opportunity of appearing before this Committee. The New South Wales Government, as Mr Elton referred to, has provided a comprehensive submission on the role which the department plays but also the Biodiversity Conservation Trust and, as well, the Minister.

As a department, we have strategic oversight of the scheme, set the rules, provide the scientific assessment method, manage the systems and undertake the accrediting of assessors. Mr Elton has already laid out the BCT's role in terms of the scheme and certainly consent authorities also have an important role to play as they determine development applications, set the conditions of consent which aim to avoid, minimise and offset impacts, and as well manage the compliance associated with those consent orders. While each of us has different responsibilities, the Government agencies do work closely together to deliver the scheme. The few examples I would highlight are that we have a broad-based interdepartmental reference group, which meets on a regular basis to look at our overall delivery of the scheme. As well, my group provides extensive advice on biodiversity development assessment reports for major projects to the planning area of the department.

Finally, we help to support local governments in their consent role by providing information and support services. We set out in our submission how the scheme improves on previous approaches. I would like to add that, from my personal perspective, I worked for about 10 years with the Commonwealth Government before taking a role with New South Wales about eight months ago and certainly can comment on the respective strengths and weaknesses of schemes, not only as far as the Commonwealth goes but also with respect to other jurisdictions to a point. In my experience, and one of the reasons why I decided to come to the New South Wales Government, is that the scheme that exists in New South Wales is the most advanced and comprehensive across Australia.

The scheme builds on more than 15 years of work in implementing market-based approaches to biodiversity conservation and the acceptance of biodiversity offsetting arose from the Government's need to better address the environmental impact of decisions to improve development and to provide greater certainty, not only to developers but also to the broader community, on how the rules will be applied in a consistent manner and by a consistent method. Importantly, the State Government has chosen to legislate this framework through the Biodiversity Conservation Act. That brings a level of transparency, consistency and accountability that is not as evident in other jurisdictions. No other jurisdiction has a single repeatable scientific biodiversity assessment method that quantifies biodiversity values at both the impact and the offset sites to achieve a no net loss standard. And that standard is important. I was involved very extensively in Graeme Samuel's review of the Commonwealth legislation and one of his key findings was that the lack of clear standards is a significant weakness in the Commonwealth approach.

The calculation of impacts and the gains of biodiversity credits also allows credits to be traded and gives proponents clear rules on how to secure offsets compared with other jurisdictions. The outcomes are not negotiated on a case-by-case basis, which is the case in the Commonwealth and a number of other jurisdictions. It also allows the public to closely scrutinise the expected impacts of a project. So the scheme's biodiversity credit market creates the opportunities for landholders also to earn an income from those offsets. Victoria is one of the few States which has such a market but it is not as advanced as the one in New South Wales.

The scheme ensures that offsets are secured in perpetuity through a legally binding biodiversity stewardship agreement rather than ad hoc arrangements. This too was something that we struggled with in the Commonwealth where we had offsets where the arrangements were for a more limited period of time, there was less security over them and there certainly was less oversight. Mr Elton undoubtedly will be talking about the

CORRECTED

audit program, for example, that exists on stewardship arrangements. The stewardship agreements ensure that there is a gain in biodiversity and that is because effectively the scheme is set up to generate three to four to one—three to four hectares of protection to one hectare of impact. And that has been done on the basis of science to indicate that that is what is required to yield a no net loss.

You also need to actively manage this land. Effectively this means removing weeds, fences and making sure that replanting happens, and the scheme ensures that there is sufficient money to undertake those types of important works if you are actually trying to yield biodiversity outcomes. Just to share one example of one of the outcomes that we are seeing on a fairly large project would be the Inland Rail project, in which you will see 1,020 kilometres of rail constructed or upgraded across New South Wales. It is the largest biodiversity offset-generating project in this State to date. Working through the scheme, the Australian Rail Track Corporation [ARTC] has taken significant steps to avoid and minimise its impact, while working closely with landholders to secure offsets for residual impacts. The ARTC expects to set up about 60 different offset sites covering 90,000 hectares and provide a steady source of income for participating landowners and conservation investment in regional New South Wales. While a lot can be done to avoid and minimise impacts on biodiversity, some impacts are unavoidable when delivering important infrastructure and the services that communities need.

All that being said, there is no doubt that there are areas where the scheme can be improved and we are fundamentally focused on making sure that that continual improvement occurs. I want to thank the stakeholders for their interest in the scheme and the inquiry. We have certainly found a number of the submissions and also the testimony provided very helpful and insightful, and that will guide our work going forward. Some of the areas I just highlight—and we can talk about this more during the session—that we are focused on are making sure there is a strong level of assurance with the scheme. It is a relatively new market that we are creating and with that comes risk. We are very aware that we need to make sure that we are managing actively conflicts of interest and also the protocols around the governance of the scheme. We think that there is still room to improve the transparency around the scheme's outcomes but this will be another area that I would say New South Wales is leading on. We have a biodiversity—sorry I have just drawn a blank.

Mr ELTON: The Biodiversity Indicator Program.

Mr KNUDSON: Indicator—I had investment in my head. The Biodiversity Indicator Program—this is the only jurisdiction that actually has something that maps not only the status of species and their habitat but also the trends. And it is that trend information that is particularly important when you are thinking about how the scheme fits into the government's overall approach on land management. In addition to the transparency provisions, we are focused on improving the pricing with a more robust and reliable charge system, and Mr Elton and his organisation are leading the consultation on a replacement for the existing mechanism. That is something that a lot of landholders and developers have expressed concern over—that is, the volatility with respect to the pricing drawing from the existing approach.

The final one that I would highlight—and it is probably the single most important one in my mind—is we need to increase the supply of credits. The reason for that is that if we look over the forward estimates there is about \$108 billion worth of major projects scheduled to start in New South Wales. The amount of biodiversity credits that will be required to be associated with that will be in the billions. That is going to require us to take a stepwise change in the scale at which we are identifying credits for those proposals. So I think we have a really significant work program trying to improve the supply of credits but also provide information to the market about where the demand for credits is going to come from so that if you are an individual landowner you know there is a market for what you have on your land. So I look forward to the Committee's recommendations. We absolutely will consider them very closely and we look forward to working with the Committee to further improve the scheme. Thank you for your time.

The Hon. PENNY SHARPE: Thank you for that introduction. Before we get into the submission can you just give me an update? My understanding is that there are various reviews in relation to the scheme and various investigations in relation to the scheme. Can you just give us an update of where each of those is up to?

Mr KNUDSON: Certainly. I will turn to my colleague in a second but in terms of the review of the scheme as a whole the department has commenced what we are calling an integrated improvement and assurance program which has a number of elements associated with it. The Minister at estimates referred to a review of the scheme. The main focus of that work is making sure that we comprehensively take a look at the various elements. In my opening statement I talked about a few areas; those are all embedded in that. That is with respect to the operation of the scheme. But quite frankly the work of this Committee will also inform that work. We will be looking for the recommendations and figuring out where do we have to move things along.

The Hon. PENNY SHARPE: I do not want to go over the things we talked about in estimates too much but I just am still trying to get an understanding. So the integrated assurance program assumes continual

CORRECTED

improvement. I am trying to get an understanding of what some of the time lines and the public reporting of those different elements are. Are you able to give us that information?

Mr KNUDSON: We can give you a sense of when some of those elements are going to come forward. One thing I would say is that this will be a program of work that will not just wait for a final product. We will be delivering different improvements over time. So one of the pieces, for example, that we have already delivered is an update to our conflict of interest guidelines for staff members et cetera who are involved with the scheme. But I will turn to Dr Mamouney in a second. The other thing that we can also cover off is your question about the investigations with respect to *The Guardian* articles et cetera. Ms Dumazel.

Ms DUMAZEL: We provided some of this information in response to a question recently so I will just run through some of that just to bring it to life. We had a review that was done that was started by Centium in April 2021 and then we had a law firm, Maddocks, that was then appointed to complete that review. Some of that information is still under review and there are some matters that are still under consideration by ICAC. In July 2021 we had Maddocks do a second review in terms of the management by the department itself in terms of the establishment and ongoing operation of certain biobank agreements, and that review has been completed. I understand from our governance and legal, I do not have the final details of that, and—

The Hon. PENNY SHARPE: Has that been released publicly or is it going to be released publicly?

Ms DUMAZEL: My understanding is that it has a lot of private information in that—

The Hon. PENNY SHARPE: Yes, I am sure it does.

Ms DUMAZEL: —so at this point governance and legal—I am not sure, but it is unlikely that the report will be released given that.

The Hon. PENNY SHARPE: I understand that. Will there be some public response from the Minister or the department outlining what the outcomes of that will be?

Ms DUMAZEL: Yes, certainly, and I have only become aware of that this week, so I am working quite closely with our governance and legal people on that in terms of what we need to do in administration of the scheme. The other aspect, which Mr Knudson mentioned, was the Centium review that looked at and primarily gave information on what we should be doing in terms of updating our conflicts of interest protocol, and we have recently just put the new protocol up on our website. I understand that review will be made public, but it is just in its final stages of—

The Hon. PENNY SHARPE: Just to be clear, that is protocols in terms of staff members.

Ms DUMAZEL: Correct.

The Hon. PENNY SHARPE: We had quite a lot of evidence around people who are working on projects. Consultants that are working on major projects in western Sydney, for example, are they captured by this or are they just governed by their accreditation as assessors and the conflict of interest provisions within that?

Ms DUMAZEL: There is a code of conduct for our accredited assessors. With the changes that we have made in terms of our conflict of interest procedures for our staff, we will also be thinking about what else we might need to do in terms of the code of conduct that we have for accredited assessors. In terms of the accredited assessors as well, I would also say, we have recently updated our whole training program for them, and so the requirements to actually become an accredited assessor, the training modules and then the actual fieldwork that you need to do to make sure that the biodiversity development assessment reports that they are undertaking, that accreditation process has become more robust over the past year.

We also have a re-accreditation process that we have just put in place in July this year. What that means is that to actually be re-accredited you have to undertake some modules again, and there needs to be some certainty from our perspective that accredited assessors know how to undertake the assessments, so we will be looking at that quite closely, and we have also got a complaints handling process. I just thought it would be useful, given that you just asked about the accredited assessors. Do you want me to go back to the review process?

The Hon. PENNY SHARPE: Yes. The issue obviously has been that there have been people who have worked, whether it is directly or indirectly, for a variety of consultants on a number of major projects. As Mr Knudson said, you have got \$108 billion worth coming down the pipeline; it is not small bickies. As accepted, it is a pretty small market at the moment. You have got 400 assessors; it is a pretty small group of people that have access to a lot of information. We have seen a case where individuals—and I accept that they would not necessarily accept that they worked directly on that or had professional knowledge, but they are clearly watching what is going on. They have been able to do that, and some also have been working in the department, they have then gone and they find themselves in a position where they either have access to sites themselves or they are

CORRECTED

providing brokering. It was put to us yesterday that the only way to deal with that is just through disclosure and that is the only requirement. Are you looking at beyond just people constantly saying, "Yes, I own this block of land and so therefore it is okay"?

Mr KNUDSON: For departmental staff, we have effectively said that you either need to—first of all, you are not supposed to be participating in the scheme. If you have historically, then we have given staff members a couple of options on what to do to effectively distance them from having any control or influence over that. But your question goes to a broader piece, quite frankly—

The Hon. PENNY SHARPE: Yes, a much broader piece. It is not just staff.

Mr KNUDSON: That is right.

The Hon. PENNY SHARPE: You have got some control over the issue—

Mr KNUDSON: That is right.

The Hon. PENNY SHARPE: —in terms of the integrity of the scheme. No-one thinks that it is a good idea that individuals are making windfall gains through the fact that it is a small scheme, and whether they are working directly on a project or adjacent to or as part of the same consultancy I think is a concern.

Mr KNUDSON: One of the things I would say that stands out for me, Ms Dumazel was talking about how we are positively trying to strengthen the role for accredited assessors. But I think that we are missing that we want to look at is also, what are the implications? What are the consequences for ongoing poor performance of an accredited assessor? Because meeting with few proponents over the course of my time with the State Government, it has come through that performance is variable just like performance of public servants is variable. Certainly not politicians; they are all absolutely aboveboard et cetera.

The Hon. PENNY SHARPE: I would not say that.

The Hon. ROSE JACKSON: You have lost credibility now, Mr Knudson.

The Hon. PENNY SHARPE: Yes, that is right, none of us is looking for that.

Mr KNUDSON: I went too far; I am so sorry. It is a Friday afternoon though. Anyway, we do want to take a look at what the consequences are, and I mean the negative consequences in terms of losing your accreditation et cetera. And certainly we take any matters where there is any insinuation that there has been perhaps illegal behaviour very seriously and would refer that to the appropriate authorities as well.

The Hon. PENNY SHARPE: I am not necessarily alleging that. It is more the issue of individuals making windfall gains. We have had some mum-and-dad landholders who are keen to do conservation really struggle in an uncertain market. I might move on because I have a bunch of other questions and I know that my colleagues have some as well. One of the biggest issues I have with the biodiversity offsetting is we say that there is supposed to be no net loss of biodiversity but, by virtue of the scheme, essentially we are pricing in the removal of biodiversity. As an example, in your submission on page 2 you talk about, to date, 211 landholders. Mr Elton, is that just the biodiversity trust or is that the scheme altogether? I was a bit unclear.

Mr ELTON: In terms of the number of people that have entered agreements?

The Hon. PENNY SHARPE: Yes, 211.

Mr ELTON: That is us, yes.

The Hon. PENNY SHARPE: That is you. Okay.

Mr ELTON: It is now 219.

The Hon. PENNY SHARPE: Great. The more the merrier, but they are protecting more than 27,500 hectares of land. Do we have the figure for how much land has been cleared?

Mr KNUDSON: Yes. I am just going to actually pull that up because I thought this question might come up because it is absolutely to the core of the land management biodiversity conservation reforms as a whole. I talked about in my opening statement that the Biodiversity Offsets Scheme hardwires in about a four to one ratio, right? The idea there is that you break even, but then you have to take a look at, as you have just mentioned, land clearing that is outside of the scheme. I think the last stats show that that has gone up from about 40,000 hectares a year up to about 60,000-odd hectares a year of especially woody vegetation. But we have to weigh that up against—there is another program within the BCT focused on private land conservation, and Mr Elton can talk about that. We have also had a pretty significant increase in the public estate beyond that through national parks, and I think the last figures were around 380,000 hectares over the past couple of years.

CORRECTED

The Hon. PENNY SHARPE: Yes, those two big properties in western New South Wales.

Mr KNUDSON: Right?

The Hon. PENNY SHARPE: Yes, very good.

Mr KNUDSON: But the other piece that fits in this also is, because not all land is going to be on public lands and not all land is going to be associated with a development, then you have got to figure out how do you get beyond that. That is why Saving our Species as a program exists to try and work with landholders to try and do that.

The Hon. PENNY SHARPE: Thank you, I appreciate that. That is not really my question though. My question is directly relevant. Two hundred and nineteen landholders have established biodiversity sites protecting more than 27,400 hectares. Yes, I accept that we have the two new national parks out west and there is Saving our Species and all of those things, but the biodiversity scheme is supposed to have no net loss. We have 27,000 hectares that have been protected under those 219. How much has been cleared—just that, not the land clearing?

Mr ELTON: I might break that down a little bit further, Ms Sharpe. In fact, of those 219, only 133 have become active, and that is only 15,500 hectares, which means that they have sold their credits to a development proponent. We are also in transition from an old scheme to a new scheme, so there are also the old conservation offset agreements. There are 108 of those over 38,000 hectares.

The Hon. PENNY SHARPE: But they were already established.

Mr ELTON: They were, yes.

The Hon. PENNY SHARPE: What I am trying to say is okay, we have set up the scheme, we are supposed to have no net loss.

Mr ELTON: Yes.

The Hon. PENNY SHARPE: So far we have protected 27,000, leaving aside the historical change.

Mr ELTON: Yes.

The Hon. PENNY SHARPE: What does that represent?

Mr ELTON: Of the 15,000 hectares that are active BSAs, as Mr Knudson has said, the average offset ratio by hectares is somewhere between three to one and four to one. The range is one to one through to 30 to one. But if we accept the average then it would be a quarter of that figure—so a third or a quarter of that figure of 15,000 hectares.

The Hon. PENNY SHARPE: About 4,000.

Ms DUMAZEL: I think it might also be useful for Dr Mamouney to add a little bit more about the process that we undertake.

The Hon. PENNY SHARPE: Please.

Dr MAMOUNEY: Thank you, Committee. I also acknowledge the traditional owners, the Gadigal people. In terms of no net loss the scheme sets up a process to avoid, minimise and then offset the impacts of development. We have a rigorous scientific methodology, the biodiversity assessment method, for accredited assessors to apply and determine the amount of impact that is proposed as part of those developments—and that is the biodiversity development assessment report that you have heard about earlier. In addition, consent authorities need to have a look at the serious and irreversible impacts that that development may cause. For local development, those consent authorities cannot approve impacts that will cause serious and irreversible impacts.

The Hon. PENNY SHARPE: We will get to that.

Dr MAMOUNEY: I am happy to come back. Then for major projects, they need to also consider serious and irreversible impacts. But the level of offsetting for major projects is decided by consent authorities.

The Hon. PENNY SHARPE: I get all of that. Basically you are saying—I just do not believe this, I am sorry, that only 4,000 hectares have been cleared and we have 15,000, and the delivery of that has been 15,000 bits of protected land when there is so much that is still unacquired.

Mr ELTON: I can perhaps help.

The Hon. PENNY SHARPE: Let me put this a different way, and I do not know whether this data exists. You might have to take this on notice, but if we take it from the point in time in 2017 when the scheme

CORRECTED

started—I accept all the transition, I am not trying to argue the toss on those issues—are we able to say, of all the things that have come under the scheme, how many hectares have been avoided in terms of clearing, how many hectares have been subject to minimisation arrangements and how many hectares have been offset?

Ms DUMAZEL: Yes.

The Hon. PENNY SHARPE: Do we have that data?

Ms DUMAZEL: We will take that on notice, but I will say one thing: In terms of when there is an environmental impact statement [EIS] and there is a biodiversity assessment report, in that report the expectation is that the proponent will explain what has been avoided and how they have minimised it, and then we understand the offset.

The Hon. PENNY SHARPE: And then the consent authority makes the decision about that. Who is monitoring that? Because the evidence that we have had for the past two days, and we had excellent evidence this morning from local government that they are finding that developers or whoever wants to—we will get to clearing in rural land, which is a completely separate issue. The development pressures, particularly up and down the coast and in peri-urban areas of Sydney—developers do not want to go through the process of avoiding or mitigating. They are basically going—their first option is to go, "How do I offset and how much do I pay?" It seems to me from the evidence we have got that essentially consent authorities are agreeing to that. Who has got eyes on how much avoidance and minimisation is actually occurring under the scheme?

Ms DUMAZEL: There is certainly an overarching aspect that we are considering in terms of administrating the scheme, that we need to think more about the overarching monitoring and review of the whole process.

The Hon. PENNY SHARPE: So at the moment you cannot tell us that?

Ms DUMAZEL: It would be useful for us to unpack this more in the next session with our planning colleagues—

The Hon. PENNY SHARPE: Yes, happy to do that.

Ms DUMAZEL: —because they are responsible for the compliance aspect. But certainly our planning teams, when they are looking at—we have planning teams across the State that look at the environmental impact statements to make sure that the proposal that is being put forward is in line with the requirements of the scheme.

The Hon. PENNY SHARPE: What is their role? They are looking at the EIS?

Ms DUMAZEL: Yes.

The Hon. PENNY SHARPE: Do they have any sort of consent? Their advice is, what: yes, we think they have done enough to avoid it; we think they have done enough to minimise it; or who decides whether people have done enough to avoid or mitigate?

Ms DUMAZEL: We provide that advice to planning and assessment. Our colleagues will be here this afternoon. The advice we provide is public, so the BDAR is made—

The Hon. PENNY SHARPE: But they do not have to follow it.

Ms DUMAZEL: But we work closely with our planning and assessment colleagues in terms of what our advice is and why.

The Hon. PENNY SHARPE: But you do not have any veto; you basically provide it. You are part of the process.

Ms DUMAZEL: We provide the advice.

The Hon. PENNY SHARPE: So you are looking at it?

Ms DUMAZEL: Yes.

The Hon. PENNY SHARPE: But no-one is giving me the answer.

Ms DUMAZEL: I will take that on notice but I will say that I hear what you are saying, and I think that is one of the things that we are thinking a lot more about. In terms of the overall framework, as Mr Knudson was talking about before, we do have the Biodiversity Indicator Program. So we do look overall in terms of the impact on biodiversity.

The Hon. PENNY SHARPE: But that is looking at all of it.

CORRECTED

Ms DUMAZEL: That is looking at everything.

The Hon. PENNY SHARPE: That is looking at land clearing, that is looking at national parks, but for this scheme there is not a centralised—Mr Elton, you have your hand up.

Mr ELTON: I might be able to help. It is important to recognise as well that there is a strong economic incentive to avoid and minimise, because offsetting often is not cheap because of the opportunity cost of the land.

The Hon. PENNY SHARPE: Yes, so we are seeing increases in lobbying to have that ignored.

Mr ELTON: Yes.

The Hon. PENNY SHARPE: That is not a problem for you but it is a problem for government.

Mr ELTON: I am certainly aware of developers, and ARTC is a good example, where they have actively sought to consider the siting of the project to try and avoid impacts that are going to be bad for the environment—

The Hon. PENNY SHARPE: Which is good, that is what you want.

Mr ELTON: —and also costly. So that is a very important aspect of the scheme. I would also like to add that on the supply side of the market it is our job to assess applications for biodiversity stewardship agreements. As part of our due diligence we ensure that the consultant has applied the BAM correctly in preparing the stewardship site assessment report before we enter into BSAs.

The Hon. PENNY SHARPE: Which is great. One of the things that we have heard from local councils—particularly, again, in coastal areas, where land values in the past 12 months have literally tripled—is that stewardship sites just are not available. We have had two good examples this morning of local extinctions. One was the local extinction of koalas in the Port Stephens area. If you have got land, the best thing you can do is put houses on it. That is where you will make the most money. There is real pressure there. The second one is the coastal emus up in the Clarence Valley. There are no stewardship areas because the land is too expensive and they are really small areas. Do we just have to accept that that is the way it is or are there ways that we can design the scheme? Because it seems to me that those councils have their hands tied. They are trying but they do not have the tools they need and the system of "avoid and mitigate" does not seem to be working for them.

Mr ELTON: On the supply, if I could give you some figures—we have still got 86 biodiversity stewardship agreements that have been signed where they have not sold any or some of their credits.

The Hon. PENNY SHARPE: Why is that?

Mr ELTON: There is some supply in the market. If you go to the credits available public register, there are landholders with credits for sale right now, 86 of them. We have another 54 BSAs with us at the moment that we are processing, so there is an active supply side market. But Mr Knudson is correct in his remarks earlier, the supply side of the market is an issue, and we are working very hard on a range of measures to further boost supply. There is a lot of work being done to look at the demand pipeline. It is going to need to ramp up, so we are going to have to do more to support the supply side of the market. But I just wanted to make that point, that there is supply in the market and there is more supply coming into the market.

The Hon. PENNY SHARPE: It is a little bit varied, is it not? It depends on what you are in the market for, like certain spaces do not work or certain ecological communities—there is not an easy match around that.

Mr ELTON: Sure.

Mr KNUDSON: I just want to make one quick point. One of the key things that is really important behind this scheme is because it creates a biodiversity credit, which has got all that rigour of the scientific assessment under the BAM, that is why you can have assurance that if the system says you need 47 credits it is because of the science behind what you are impacting and what needs to be protected elsewhere. Because it is market based that means that the price, even if the value of land has gone up in coastal properties, that is where the credit exists in terms of koala habitat et cetera, so will the cost of that credit. So that is one of the key strengths of the system.

The Hon. PENNY SHARPE: But that only works when there is actually a stewardship agreement in place. The issue that has been raised is that people are getting squeezed out in terms of the establishment of new stewardship credit, and there is a whole other issue about entry to the scheme and how people can actually get themselves ready to be able to provide the supply that we need.

Mr KNUDSON: And there is absolutely a piece in this. I met with Regional NSW on a number of local government areas where if you are a relatively unsophisticated or a smaller either landowner, LGA, business, you are going to have trouble entering the scheme. So we have got to do work to make it simpler. We have got to make

CORRECTED

it easier for people to figure out what they have got on their lands and what it could be worth in the scheme because that is not as transparent and predictable as it could be. So we have got a number of things that we will need to do in that space.

The Hon. PENNY SHARPE: It is also very expensive at the moment. We have again had evidence that the cost of getting the assessments is often worth more than the development that people want to do on it, which makes it unviable.

The CHAIR: Thank you. Mr Knudson, I might just go back to something you said in your opening statement, which was that the department has taken some action to ensure that staff no longer hold interests in biobanking sites. Is that correct?

Mr KNUDSON: Well, it is that they no longer have an ability to influence those sites. We can walk you through the details of the conflict of interest. Dr Mamouney?

Ms DUMAZEL: I will answer that one.

Mr KNUDSON: Okay, sorry.

Ms DUMAZEL: With the protocol—and we can provide a copy of that as well—

The CHAIR: Great.

Ms DUMAZEL: —where there are staff who have more involvement in the scheme—for example, if they were working in the Biodiversity Offsets Scheme branch—they are not able to participate in the scheme. So we have been quite clear about that now and they are prohibited from participating in the scheme if they have a significant interest in the scheme. If they are working in the scheme they cannot.

The CHAIR: Sorry, just to be clear, if they have a significant interest in the scheme and they are working in the scheme, that means that they no longer have a job in the scheme. Is that what you—

Ms DUMAZEL: No, they got 12 months. At the moment, we do not have anybody working in the Biodiversity Offsets Scheme branch that has any interest in the scheme, but if they had they would have had 12 months to divest of their holdings. But we do not have that case and we have said that if you are working in the Biodiversity Offsets Scheme that you cannot participate in the scheme.

Mr KNUDSON: I just add, divestiture is one option; they can also put it into a trust. We can provide that information.

The CHAIR: That is the Biodiversity Offsets Scheme—it is a question probably for Planning later.

Dr MAMOUNEY: The protocol will apply to other departmental staff that may have a conflict of interest as well. It is not just specifically to staff that work in the Biodiversity Offsets Scheme; so it will apply to other regional staff or even consultants or contractors that are working for us, so that we know up-front and they have to declare their conflict of interest and we have to put arrangements around that. Any new staff, on the arrangements, they are not allowed to hold those interests in biodiversity stewardship sites or in the credits or the credit trading aspects of the scheme.

The CHAIR: So that is any new staff and then historical ownership, like existing staff. It is kind of like a divest of those interests or you do not move out of this particular area of employment. Is it that clear?

Mr KNUDSON: It is that clear.

Mr JUSTIN FIELD: Sorry, Chair, could I ask a follow-up on that?

The CHAIR: Sure.

Mr JUSTIN FIELD: Ms Dumazel, I think I heard you say there is not staff currently working in the branch now that have an interest in the scheme. Does that mean that there have previously been staff working in that branch that have stewardship sites?

Dr MAMOUNEY: Not in my team.

Ms DUMAZEL: Not in the Biodiversity Offsets Scheme branch.

Mr JUSTIN FIELD: Not in the past either?

Dr MAMOUNEY: Not in the past.

Ms DUMAZEL: In the department, yes, but not in the branch that is responsible for the Biodiversity Offsets Scheme itself. But I will not go through the details of individuals.

CORRECTED

Mr JUSTIN FIELD: I will go back to you, Chair.

The CHAIR: Okay, thank you. I just wanted to go to you, Mr Elton, about the capacity of the trust in some ways. What is the budget for the BCT? What are you working on in terms of just your operational budget, I suppose?

Mr ELTON: I can get the precise figure if I take that on notice, but just to give you a sense, we receive \$70 million a year from the Government for our private land conservation program, which is separate to the topic of this inquiry. And then on top of that we generate revenues for our roles under the Biodiversity Offsets Scheme. So that typically derives from fees charged to landholders, developers and government agencies that commission us to procure offsets. But that is all done on a cost recovery—

The Hon. PENNY SHARPE: Could you give us a breakdown just in terms of those three groupings on notice?

Mr ELTON: Yes, I will take that on notice, thank you.

The CHAIR: With that as well, taking on notice probably, in terms of the organisational structure and staff, if that is okay.

Mr ELTON: Sure.

The CHAIR: We have heard quite a bit of evidence about how difficult it is for landholders and people wanting to understand the scheme, how complex the scheme is—which is a different issue entirely—but just being unable to get somebody to talk to sometimes because there is just not the staff there. Do you think that there is a resourcing issue within the trust?

Mr ELTON: I do not think there is, and in fact we have got quite a positive track record on customer service. We have done landholder and program participant surveys and we have had very positive feedback. I could take that on notice and give you the results of that feedback if you wish.

The CHAIR: Sure.

Mr ELTON: I think there may have been confusion in some of the evidence given earlier in the hearings as to who people may have been trying to contact and whether that was, in fact, the BCT or not the BCT. I mean, look, in any organisation like ours there will sometimes be issues, but I think we have got a pretty strong track record and a very low level of complaints as an organisation. We have got a very strong commitment to customer service—we have a customer service charter, a guarantee of service, we have a dedicated customer relations officer answering the phone, an inquiry line. I am aware of a few instances where there has been some breakdown in customer service, as you would expect in any organisation, but overall I think we have a very strong and positive track record.

The CHAIR: Okay. We heard from one local government officer today about attending a webinar a few months ago, I think in June, by the BCT or the department, with the 952—maybe the department—but I will give you the information anyway, which I am sure you can help me with, Mr Elton, which was that there were 952 species credits across the State, which have not been able to be retired, if you like. We have talked about this before, but do we not get to a situation where those species credits just cannot be retired? At what point? We have talked about this in the koala inquiry as well.

Mr ELTON: I think that may have been a confusion. This would have been one of the webinars we have run on consulting on the design of the new Biodiversity Offsets Payment Calculator or the BCF charge system as we are going to call it. Some evidence was presented by us about the range of species credits that exist and the fact that a vast majority of those have never been traded. So that is quite a different question to whether they are able to be acquitted. So I think that might have created a confusion there. There are many offset trading groups, ecosystem credit types and species credit types; the vast majority have never been traded—i.e. there has never been demand for those types of biodiversity credits to be retired.

Putting that aside, yes, we have had a number of payments into the Biodiversity Conservation Fund for species credit obligations. We have acquitted some of those but some of them are more difficult to acquit than others, and we are looking at various ways to induce supply of those species credits. We run a series of different credit procurement mechanisms. We run competitive open tenders, we run open fixed-price offers and we also run targeted fixed-price offers. I am happy to go into detail, if you wish. We are not only seeking credits from landholders who already have those credits established under BSAs and for sale, but we are also running those mechanisms to induce additional landholders to set up BSAs and supply the credits we need.

We also have a credits wanted register. We have a standing open fixed-price offer, periodic, usually annual, credit tenders. We run credit tenders where there is a more competitive marketplace to supply those credits.

CORRECTED

Then we run targeted fixed-price offers where we really need to induce credits that might be quite difficult to source in very geographically constrained locations, for example. Ecosystem credits generally are easier to find and acquit. Species credits is more complex, but we are gradually working through that and finding ways to acquit those obligations.

The CHAIR: One of the issues, and I know Ms Sharpe talked about it as well, is we heard from some of the coastal councils today about the fact that land has just increased astronomically in the past couple of years and that developers—people are going to be paid a hell of a lot more to clear that land and to obtain credits in the LGAs where that land has been cleared is near impossible, is what they are saying. Many of those are offset elsewhere. It is now cheaper to offset particular habitat hundreds of kilometres west, for example, because the land is potentially so much cheaper. What are some recommendations? You have just talked about offering incentives. I think they would have to be very big incentives, would they not? This is a failure of the system, surely. It is a failure of the design that it is just not keeping up with how much developers are able to make clearing the land. It is a big issue, isn't, Mr Elton? Recommendations for reform, you are talking about the fact that internally there are reviews.

Ms DUMAZEL: Yes.

The CHAIR: I am sure, as good public servants, you have fed into this. If you have any suggestions, feel free to tell us. Although I am sure you will restrain yourself.

Mr KNUDSON: The one thing that I would say that is already built into the system is that you have regions—again, it is another acronym that I have not got my head around, IBRA. There are biodiversity regions, basically, around the State.

The CHAIR: What is that acronym? We do have to say what that is.

Dr MAMOUNEY: Interim Biogeographic Regionalisation for Australia. It is a very established biodiversity-appropriate regionalisation. It is quite different to local government areas, but it is publicly available and it is used by many scientists.

The Hon. PENNY SHARPE: Why is it interim?

Dr MAMOUNEY: That is a good question.

Mr ELTON: It has been interim for about three decades.

Dr MAMOUNEY: Yes, that is right.

The CHAIR: That is why it begs the question.

Dr MAMOUNEY: It is a complex space.

Mr KNUDSON: The key thing is that there is science behind saying that region has similar characteristics, right. If you are looking at an outcome for a particular species, you are saying, "Well, within that region that is basically representative of the habitat."

The Hon. PENNY SHARPE: There are limits to that.

Mr KNUDSON: There are absolute limits, and I acknowledge that.

The Hon. PENNY SHARPE: Coastal emus being one we talked about this morning.

Mr KNUDSON: What the system does reinforce is that offsets, if they are to be secured, are supposed to be within those regions. That can be tightened, that can be loosened et cetera. That will have price consequences as well, but that is what the system is fundamentally built around.

Ms DUMAZEL: It might be worth having Dr Mamouney go through a little bit more about the biodiversity assessment method. What it does, it takes into consideration what might be happening at an ecosystem level as well as a species level. So how many credits are required will increase depending on what is happening at this point in time for a particular species. Certainly if it is an ecosystem credit required, it is to try and keep it as close to a geographical area as possible. There is quite a lot built into the scientific method to actually then determine how many credits are required for it. It might just be worth Dr Mamouney unpacking that a little bit more.

Dr MAMOUNEY: I will start off with serious and irreversible impacts. That allows us to identify those species. We talked about the endangered population of emus earlier today. Those populations are covered by this framework for serious and irreversible impacts. It allows for consent authorities where there are very small populations or ones that are particularly threatened by habitat destruction to be treated differently, and for them

CORRECTED

to not approve the development on the grounds that they are serious and irreversible impacts. That relates to species with very limited geographic distributions. It relates to species and communities that are unlikely to respond to restoration methods as well. There are a range of principles that those serious and irreversible impacts are around.

The CHAIR: We did hear from quite a few local council officers right up and down the coast, for example, and elsewhere that say that is just not being applied.

Dr MAMOONEY: We provide guidelines and support for local councils and we are just about to roll out some new training for them, which will go into this in more detail. We are also establishing a help desk that will be available for local councils, as well as developers and landholders looking to enter the scheme as well.

The Hon. PENNY SHARPE: Just to go directly to that.

The CHAIR: Mr Field has some questions as well.

The Hon. PENNY SHARPE: I will let Mr Field go.

The CHAIR: We will go to you, Mr Field.

Mr JUSTIN FIELD: Thank you, Chair. It follows on from that last question. My understanding is that the green and golden bell frog offsets for WestConnex were sourced on the North Coast. That seems extraordinary to me. It is a classic example of the loss being experienced in one area and it is very difficult to see how, despite the habitat being suitable to that animal, it can be a similar area of biodiversity. Can you explain how that would be allowed to happen?

Dr MAMOONEY: I am going to start off with a little bit about like-for-like offsets, because that is a critical component of the biodiversity assessment method. Then I might turn to Ms Dumazel for a comment on the specific issues. In terms of like-for-like offsets—this is under the Biodiversity Offsets Scheme and the project that you referred to was under the former scheme—the stewardship site, compared to the development site, must be in the same or adjoining IBRA subregion, or a region within 100 kilometres. So in the general geographic location. If it is a threatened ecological community, it must be the same threatened ecological community.

If it is not a threatened ecological community then it must be of the same class—i.e. there must be a match in, I guess, the degree of threat that that ecological community is experiencing. If the development site is a site with hollow-bearing trees then the offset site must also have hollow-bearing trees. For species credits—and that would relate to the green and golden bell frog—the like for like is more straightforward. It must be the same species as impacted, but offset credits can be from anywhere within the species' distribution. I will just refer to Ms Dumazel in terms of the specifics.

Ms DUMAZEL: I will have to take the specifics on notice, Mr Field.

Mr JUSTIN FIELD: In this instance, obviously you could totally lose a population of a particular species in one area and that loss—i.e. in Sydney—is offset by protecting an area of species hundreds and hundreds of kilometres away, and that is okay?

Dr MAMOONEY: Under the current Biodiversity Offsets Scheme, the serious and irreversible impacts would apply—although for major projects that is something for consent authorities to consider. For councils, they must apply the serious and irreversible impacts requirements.

Mr JUSTIN FIELD: What you are suggesting is that offset would not be allowed under the current system unless the planning Minister, consent authority for a major project, agreed that that was suitable? Am I understanding correctly?

Ms DUMAZEL: If it is a development that the consent authority is local government and it is serious and irreversible impact, then that is not approved. If it is a part 5, for example, then consideration needs to be given to serious and irreversible impact and then a decision in terms of what would be required would be included in that. That is correct.

Mr JUSTIN FIELD: We have had quite a few people mention the need for what has been described as either red flags or red lines here where either certain habitat types or species impacts just should not be allowed to be offset. Is that being considered within the department or in any reviews that are being undertaken into aspects of this scheme? Is there a need, do you think, for us to look into this question that some areas are simply being made unable to be offset?

Ms DUMAZEL: The red flag kind of concept was the term that we used in the former biobanking scheme. In the Biodiversity Offsets Scheme the serious and irreversible impacts are the red flags. Dr Mamouney earlier referenced the work that we have been doing in terms of providing more guidance, particularly to consent

CORRECTED

authorities and local councils, in particular, around how to work through that. There is some more guidance that is coming out soon because we have recognised that that is an issue that consent authorities are still trying to understand. We recognised that we needed to provide some more guidance in terms of serious and irreversible impacts, but from our perspective that concept of the red flags is what we are seeing now in terms of serious and irreversible impacts. At the back of our submission too we just have some kind of pathways that demonstrate what happens or different planning pathways. In each of those kind of documents it then outlines what happens when you hit serious and irreversible impact. That might help.

Mr JUSTIN FIELD: Of course, that only matters if the approving authority is local government. In the event that it is a major project then it sits with the Minister or the IPC or whomever. Those impacts can effectively be overwritten, can they not?

Ms DUMAZEL: Yes.

Mr JUSTIN FIELD: There are no red flags when it comes to major projects?

Ms DUMAZEL: They have to be considered serious and irreversible impact and certainly—

The Hon. PENNY SHARPE: They only have to consider it?

Ms DUMAZEL: Yes.

The Hon. PENNY SHARPE: If it is serious and irreversible then the decision is do we accept that that is okay, and we therefore stop anything happening, or do we still facilitate? That is what we are trying to get to.

Ms DUMAZEL: That is right. Yes, I suppose one of the good things is that it is transparent. I think from our perspective having such a transparent method like the Biodiversity Assessment Methodology where the public can clearly see the impact of an ecosystem credit or a species credit—that it is not just kind of something that is negotiated, a negotiated outcome. They can actually see the credits that are required in the Biodiversity Development Assessment Report. That whole process is transparent. A decision can be made by the consent authority in terms of how that is treated but that process is transparent as well.

Mr JUSTIN FIELD: I would not mind coming back to this question of staffing and the ability for staff to participate in the scheme. I want to be careful that I understand. We were drawing some quite specific connections before. You were talking about staff that are operating within the biodiversity team. What are the conditions, if there are any, that apply more broadly to staff working within DPIE participating in the scheme? Of course, staff would be working on strategic planning, mapping projects and other things where they would have quite specific and specialised knowledge and advice. Will you explain what the requirements are from this point forward? What were the previous requirements for declaring conflicts?

Mr KNUDSON: Sure. What I will make sure of is again that we definitely do get all the members a copy of the protocols. I will be clear about this. I have been heavily focused on the implications for my staff. So, in effect, Dr Mamouny talked about those working within the branch. But I run a directorate of around 800 people. All of those individuals, with the next conflict of interest protocol, are not allowed to have any participation in the offsets scheme from a personal standpoint.

They can be involved professionally in acquitting their responsibilities but they cannot own or participate in a Biodiversity Stewardship Agreement or anything along that line or a private land conservation agreement. So that is very clear. That is different from what it was. Quite frankly, we took that insight from the protocols that the Biodiversity Conservation Trust put in place. We have applied that. That is what is new for the staff within my directorate and that is beyond the branch that Dr Mamouny leads.

In terms of the rest of DPIE—and I do not want to mislead the Committee, so I am a bit reticent because I will not have the exact language in mind—effectively it says, "Listen, if you are at a relatively high risk that you have got effectively access to key information, et cetera, then you should not participate in the scheme and here is what you need to do." But it would be better for me to come back to you, Mr Field, with the specific elements for other staff outside of my area and what the implications are for them, just so I do not mislead.

Mr JUSTIN FIELD: I appreciate that. Without naming any individual staff—I am not asking for that at all—do you know how many staff who have previously worked for DPIE were participants in the scheme whilst they worked for DPIE?

Mr KNUDSON: Yes. I will come back with the exact number, but it is less than five.

Mr JUSTIN FIELD: In an earlier session this morning with local government concerns were raised by Shoalhaven council about land that had been rezoned a number of years ago for effectively industrial commercial development in a sort of jobs precinct really. That land was rezoned in a negotiation with the State planning

CORRECTED

department. The feeling down there was that the impost of the Biodiversity Offsets Scheme now made that land difficult to be developed for economic purposes. We are having a discussion about the ability of council to go through a strategic biodiversity certification process. I want to ask if it is possible for a local council like Shoalhaven council to, on behalf of the various landholders in that precinct, try to engage in a strategic biodiversity certification process?

Mr KNUDSON: It is. One of the things I would say is that I was in the Central West last week and met with a couple of local government authorities there. Similar sort of dynamic associated with Inland Rail—there is a cash-flow problem if you are a local government authority. They are looking at trying to realise an economic opportunity but most of the liabilities with respect to biodiversity have to be incurred up-front whereas the revenues from any development come later. That has been done purposely by this system. Again, in the Commonwealth we had the exact opposite problem, where the offsets came eventually, maybe hopefully, but the impacts happen now. So New South Wales made a decision when it put this scheme in place to bring those impacts forward. I think there is still a tension there that we need to sort out. The example that you are talking about for Shoalhaven would speak to that as well.

Mr JUSTIN FIELD: I know there have not been many strategic biodiversity certification processes as it is relatively new. Is it difficult for councils to engage in that process or is it still just in the early stages? They seem to think it was very complex and it was an uncertain process to go through. I am trying to get an indication of whether it is workable for councils like that.

Ms DUMAZEL: Certainly with the strategic biocertification process that is something that the Minister for planning would be bringing forward. For example, the Treasurer has just received the application for the CPCP, the Cumberland Plain Conservation Plan, which is the kind of strategic biocert that we are looking at at the moment. It is a complex process. The CPCP is the one that we are working with at the moment. The biocertification process is one that is more likely to be one that councils could engage in. I know there have been a few of those, but I do not have the detail in terms of the numbers on me right now for that. The strategic biocert is a much bigger process that is put forward by the planning Minister.

Mr KNUDSON: We would be happy to reach out to the local council as well and try to work through options that make best sense for them.

Mr JUSTIN FIELD: I think they would appreciate that. Chair, I have one more question before I hand back to others. I have others; I can keep going if you need. *The Guardian*, obviously, has run a number of pieces that raise some pretty significant concerns in my mind and of others about the windfall profits that have been available to some investors in the scheme, particularly where it has involved government agencies purchasing credits. I am just wondering whether there is any advice that the department provides. Are there any directions or directives that have been given, essentially by government agencies, about how they should participate in the scheme? It seems extraordinary, for example, that Roads and Maritime Services would pay four times the value of land purchased by an investor just a year before for the credits on that land when it could have purchased the land itself. I am just wondering how do agencies make decisions about participating in these schemes that cost a fair bit for the taxpayer and get the best value for biodiversity outcomes?

Ms DUMAZEL: Firstly, there is an attachment to our submission where Transport outlined their processes and what they do in relation to working with communities to find the credits that they need for their projects. I think that is quite a useful document, which I think they have also got on their website as well. They have made quite a concerted effort with their projects to engage with local communities to try to secure those offsets up-front. We have certainly in the past year expanded our remit to support agencies in their process to navigate the scheme and to understand how to go through the process, firstly, of developing their report and also what they need to do in terms of securing the offsets.

I think Mr Knudson earlier had mentioned we have an interdepartmental reference group, so we have the main departments that have major projects. That group, as well as looking at overarching governance and policy for the scheme, is also a way for agencies to be able to understand from each other around what makes sense in terms of obtaining their credits and how to work within the scheme as well. We are finding more and more that agencies are actually now reaching out to each other in terms of, say, for example, where Transport might have led the way. They did quite a lot of work, for example, on the North Coast for the highway work, and we kind of linked them with WaterNSW in terms of the work that they are trying to do—so just trying to expand the knowledge across agencies. We are trying to facilitate that process as well.

The other thing that we are looking at is—Mr Knudson outlined we are thinking about the pipeline of projects. We are really starting to do some work around the demand analysis—Dr Mamouny could go into this in a lot more detail—so that then we can actually think about the demand required because the projects that government agencies might be undertaking can be quite large. So we are looking to see then how we can marry

CORRECTED

that up with the supply side and how we can work with landholders, specifically in regional locations, to try to get on the ground with local landholders, because we have found particularly local landholders who have engaged with the scheme have then been able to have that diversification of income as well. So we are really trying to work on that demand-supply side.

Mr KNUDSON: If I can just add one very quick thing, Mr Field. You talked about the costs that Transport paid. It is one of the things that we are really concerned about, quite frankly, in terms of making sure that there is a cost-effective way of meeting environmental outcomes but also in a way that facilitates development and a rigorous system. The BCT actually has also led the way in terms of trying to do some advance purchase of offsets. That means that they are looking for the lands that make the biggest difference ecologically. But getting those credits secured and available to developers in advance, we think, is pretty important for dealing with the issue that you were talking about—about perhaps government being in a position or the private sector being in a position where they are trying to secure offsets at the last hour.

That is less than ideal. You want to get these things done in advance. You have got the certainty of your developer, but also you are getting better value for money. So that is one of the things that we are taking some inspiration from what the BCT—and trying to figure out is that part of the solution for dealing with the supply and demand issue as well but also the price.

Mr JUSTIN FIELD: That is where my question really goes to.

The CHAIR: We are at the afternoon tea break. We might need to leave it there and come back. We have another session at 2.45 p.m. with government witnesses. I understand Mr Elton and Ms Dumazel will be here for that session as well. I thank those government witnesses who will not be returning at 2.45 p.m.

(Mr Knudson and Dr Mamouney withdrew.)

(Short adjournment)

CORRECTED

DAVID GAINSFORD, Deputy Secretary, Assessment and Systems Performance, Department of Planning, Industry and Environment, affirmed and examined

FELICITY GREENWAY, Executive Director, State Policy and Strategic Advice, Department of Planning, Industry and Environment, sworn and examined

DAVID WITHERDIN, Chief Executive Officer, Local Land Services, before the Committee via videoconference, affirmed and examined

BRENDAN COOK, Executive Director, Strategy and Policy, Department of Regional NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back to our final session for today's hearing. Is there any additional opening statement to what we heard earlier?

Mr GAINSFORD: Yes. I thank the Committee for the invitation to appear before it and to give evidence to this inquiry. My division is responsible for the independent assessment of State-significant development and State-significant infrastructure projects under the Environmental Planning and Assessment Act 1979. Ms Greenway's area is responsible for the policy settings relating to the biodiversity and land management framework, including administration of the State Environmental Planning Policy (Vegetation in Non-Rural Areas)—or the Vegetation SEPP. The department assesses a high volume of major projects every year. In 2020-21 some 426 major projects were determined, facilitating a total of 88,901 jobs with a capital investment value of \$38.6 billion. Each one of those projects is subject to a rigorous assessment process, which includes significant consideration of biodiversity impacts where these are likely to occur.

The department issues requirements for proponents to examine biodiversity impacts as part of their development application, consults with the community and other government agencies on those impacts, works with proponents to reduce the impacts of their projects through avoidance and mitigation and, where necessary, requires biodiversity offsets through the conditions of consent for approved projects. The Biodiversity, Conservation and Science [BCS] division of the department is one of the key government agencies that provides advice throughout the planning and assessment process, including providing recommendations to ensure that biodiversity impacts are avoided and mitigated where possible, and appropriately offset where this is required. The department considers BCS's advice in recommending the determination of projects and setting the conditions of the approval.

The department has been utilising biodiversity offsets in consents going back over a decade. Prior to the introductory of the Biodiversity Offsets Scheme, the department negotiated offset arrangements with individual proponents on a case-by-case basis but in accordance with the various previous policy frameworks on offsetting, such as the previous biobanking scheme. Regardless of the previous offsets policy, conditions of consent relating to offsets were comprehensive in all approvals and typically include stringent performance criteria for the offsetting of each impacted species and community, a requirement for a biodiversity management plan [BMP] to be approved by the department, a requirement for a conservation bond covering the cost of implementing the offsets and a requirement for the offset lands to be secured in perpetuity. In 2016 the introduction of the Biodiversity Offsets Scheme brought in a single scientifically-based transparent method for assessing biodiversity impacts and a single offsets policy to be applied to all development.

Compared to the previous system, the Biodiversity Offsets Scheme has facilitated increased repeatability, consistency and transparency of decision-making around biodiversity offsetting, and provides a framework for continuous review and improvement. Importantly, the scheme is based on the fundamental philosophy of avoid, mitigate and offset as a last resort. That philosophy informs the way the department assesses biodiversity and works with proponents to reduce the impacts of their developments. Throughout the assessment process the department encourages proponents to consider redesigning and reconfiguring their developments to either avoid biodiversity impacts entirely or mitigate impacts significantly. However, that is not always possible with all projects. There will always be certain projects and types of development that are unable to be moved, often due to the location of the resource, such as wind energy projects that need to be located on windy ridge lines, or hydro-energy projects, which need to be located on flowing rivers.

For those projects there will inevitably be a certain level of residual biodiversity impact even after all options to avoid and mitigate have been exhausted. Fundamentally, biodiversity offsets allow for those unavoidable residual biodiversity impacts to be compensated for by committing to improve biodiversity outcomes elsewhere in perpetuity. That does not mean that all biodiversity impacts are acceptable with some level of offsetting. Potential biodiversity offsetting is one of the considerations that the consent authority must consider when determining whether the impact of a project is acceptable. The scheme has also undergone a number of

CORRECTED

improvements since it was first introduced, with Planning and Assessment and BCS working closely to continuously improve how the scheme interacts with the planning system.

That includes changes that allow the Australian Government to endorse the Biodiversity Offsets Scheme as part of the assessment bilateral agreement between New South Wales and the Commonwealth, significantly reducing red tape and duplication of assessment for major projects which require approval under both jurisdictions. However, there is some more work to do to ensure that the scheme delivers the best biodiversity outcomes possible on major projects. Planning and Assessment and BCS are currently working to improve compliance and enforcement of the scheme so that offsets for approved projects are retired within an appropriate time frame and any outstanding offsets are finalised as soon as possible. We are thankful to the many individuals and groups who have appeared before this inquiry already for their valuable input. We can assure the Committee that that information will be used to facilitate ongoing improvements to how the Biodiversity Offsets Scheme is implemented on major projects. We are happy to answer any questions the Committee may have.

The Hon. PENNY SHARPE: Thank you for coming in today and for your submission. The flowcharts have been extremely helpful in terms of working out who decides what and when. My first question is a follow-up from the last session. In your submission on page 14 you talk about the scheme providing opportunity for Aboriginal stakeholders and Local Aboriginal Land Councils [LALCs]. Are you able to tell us how many agreements are in place with Local Aboriginal Land Councils?

Mr ELTON: Biodiversity stewardship agreements?

The Hon. PENNY SHARPE: Yes.

Mr ELTON: I would have to take that on notice; I do not know how many may exist to date. I can add that there are a number of LALCs that we have been engaged with for a while now who are very interested in participating in the scheme on both sides of the market both in terms of activating their land for development and using some of their land to supply credits that they may need themselves or credits they could sell in the market. That includes a couple of land councils in and around Sydney and some on the coast as well. So there is definitely active interest. The other witnesses may wish to add to that.

The Hon. PENNY SHARPE: Yes, we were not sure that there were any. My second question is, who supports the LALCs? Again, in the previous session we talked about the substantial up-front costs to get certified to be able to put credits on the market. I am aware that the Local Aboriginal Land Councils have significant land holdings throughout the State and so there is a massive opportunity there. Does the Government provide support for them going through that process?

Ms DUMAZEL: We have been working with individual LALCs and certainly providing support. We are wanting to provide more support because there are a lot of opportunities there. We have been doing it on a case-by-case basis and we have been also working with our Regional New South Wales counterparts in terms of how we can do that. We have also included Crown Lands in that process of trying to understand the biodiversity value on the land because it can be expensive for LALCs to be able to identify that. I think we want to do more and the approach we are looking at in terms of trying to marry up the demand and supply side we see as a good opportunity to do more work to support Aboriginal Land Councils realise the economic and social development that they want on their land and take advantage of the biodiversity, given their knowledge.

The Hon. PENNY SHARPE: I suspect this is probably not a question for you, but you can tell me if it is not. You talked about Crown Lands being involved. There is obviously the massive backlog of native title determinations and perhaps an awareness also that this sort of work could be included in that—I would have thought would generate a bit more interest. Thank you for that. This question is probably to you, Mr Gainsford. We talked in the last session—my concern through all of the evidence that we have heard in relation to this is that there appears to be reports that have been made that talk about biodiversity impact, and advice is sought from some parts of the department in relation to that but, essentially, it is advice; there is no veto on any of this. It is ultimately up to the decision-maker on a particular development, no matter which pathway they come through, about whether they accept that the avoid and mitigate in particular is acceptable or not. Is that the case?

Mr GAINSFORD: Ms Sharpe, it is obviously a very comprehensive process that we follow and perhaps through another question I can go through the process that we follow.

The Hon. PENNY SHARPE: I have looked through the thing.

Mr GAINSFORD: You understand the process, yes.

The Hon. PENNY SHARPE: Well, I would not pretend to understand the process. I can read the flow chart and probably get a basic understanding of it but the fundamental question for me is—and this is the biggest concern that I have through this entire process—that I think biodiversity offsetting is extremely important and

CORRECTED

I think there is a role for it. My concern is that whether the system we have got in place is genuinely delivering no net loss. I worry—and I will probably get to probably Mr Cook and Mr Witherdin in a minute—about the various different pathways that are at cross purposes in terms of actually protecting, fundamentally, biodiversity, which is what the scheme is about, leaving aside the need for development and all of those things. I am just trying to understand—and Mr Field touched on this in his questioning last time—at various points, if it is a major project, it is the Government that determines, ultimately, and it is usually the Minister. We can go through this great process but at the end of the day if the Minister decides that they do not have to do the offsets, they do not have to do the offsets. That is correct, is it not?

Mr GAINSFORD: I mean, maybe in answering the question, Ms Sharpe, I mean what I can say is that because it is a rigorous process and we do take the advice that comes through from both the experts and from our colleagues at BCS, we take that seriously. I think there is a bit of a, perhaps, misnomer that the Biodiversity Offsets Scheme has led to an automatic approach to go towards offsetting rather than the avoid and mitigate. I do not think there is any evidence of that.

The Hon. PENNY SHARPE: Can I say that there is not any evidence that there is not. I mean, the evidence that we have got is that we have got increasing numbers of developers looking to pay into the scheme. That has been shown on Questions on Notice and in evidence that we have had here. So far no-one has been able to show me or tell me—and I understand you have taken in on notice; it is not a criticism of you today. Where is the bird's-eye view that says, "We want no net biodiversity loss and through this scheme, this is the amount that has been cleared, this is the amount that we have said no to that is actually still in place as a result—there has been a DA on it and we have said no." I have got to tell you all of the evidence suggests—you know, planners at councils and various different landholders are saying, "Well, we're not seeing any real red flags.", if you want to use that terminology.

The mitigation methods—how much mitigation has really been there? It is obvious that it is inland rail and they have taken a different path—terrific. I just think that there is a lack—in terms of having confidence, that it is not just simply becoming "pay into the scheme". I think there is a lack of data coming from the Government, from the department, that gives us that assurance. You keep telling us that. In all of the evidence, people are just saying, "The first thing that developers are looking for"—and this is understandable—"is what is the easiest and quickest way I can get an approval and deal with my offset obligations?" If it is just paying in, of course that is what they have got to do. I am not blaming them for that. Of course they are going to do that.

Mr ELTON: I might just address that, if I may, Ms Sharpe. Paying into the scheme—so, this is an option once a development proponent has received a development consent and it specifies the offset obligations that they may be required to acquit. They can either do that through the market or they can do it by paying into the Biodiversity Conservation Fund. Either way, that offset obligation has to be fulfilled. If it is transferred to us, we are bound.

The Hon. PENNY SHARPE: Look, I accept that. I know that you sort of rail the suggestion that there is this magic fund and that somehow there is not being offsets. Our concern, though, of course is the length of time that it is happening and that some are still not retired after a very, very long period of time. Accepting that it is a new scheme and you are trying to make it faster, but there are still those gaps that it really is essentially is for the developer. They have paid in, they have cleared, they have built, and off they go. The BCT has got to fix the mess or find the credits, no matter how long it takes and whether they are available. My concern is just: How do we have confidence that there is no net loss? I do not think that we can show that.

Ms DUMAZEL: No net loss is per project, so in the biodiversity development assessment reports, the proponent has to work out or has to demonstrate what they are going to avoid and minimise and then offset. Certainly one of the things that we are doing is trying to work more at the start with major projects. So where we understand a proponent in a major project, we try and work up-front and to kind of help them navigate the scheme in terms of thinking, "Well, really, you could avoid a lot more if you looked at these different areas." We are trying to provide more of that service aspect before we get to the regulatory aspect. I think that is going to help.

What we do not do is actually—and I know I have taken this on notice and I will need to go away and have a think about it—that work we do where we advise at that point. We are not documenting then what we are actually avoiding now, but it does make a difference because proponents are also looking to reduce their costs. The more that they can avoid and then actually have their footprint on a part that does not have a high value biodiversity—that is the expertise that we provide to our planning colleagues as well. But there is something about how we actually document that part of it.

The Hon. PENNY SHARPE: I am not sure whether it is to Mr Cook or to Mr Witherdin—the interaction with the Local Land Services Act, particularly on those edges of rural land and peri-urban land, which was raised a lot by local councils this morning—I am hoping you are the right people who can answer this. There

CORRECTED

were some fairly serious allegations about, essentially, land being cleared, whether it is under the boundary codes or whether it is under the land management codes, that is not for agricultural purposes but is essentially done and then 12 months later there is a DA that goes in for development, which means that people have avoided having to deal with the BOS. Could you please let us know: (a) Is LLS aware of this? (b) Are you monitoring it? What action are you taking to deal with it?

Mr WITHERDIN: Sure. I am happy to talk to that. Part 5A of the Local Land Services Act applies to rural regulated land. There is a series of risk-based approval pathways through that. I mean, you start from the lowest risk level in terms of allowable activities that are allowed without any approvals. Then there are notification pathways, certification pathways, which provide or require a whole lot of analysis and then approval by us. Then, ultimately, when none of those is available then there is access through the Native Vegetation Panel.

The Hon. PENNY SHARPE: Just to be clear, we have been told that there has only ever been one approval through that process—through the Native Vegetation Panel. Is that correct?

Mr WITHERDIN: That is correct.

The Hon. PENNY SHARPE: So it is not really—it is not an active and important part of the system, given how few approvals have happened through that.

Mr WITHERDIN: There have certainly been a significant number of inquiries. There has been about 120 inquiries and there are a number of reasons why that has only led then to one approval, but to go back to your question around, I guess, in those peri-urban areas, what people are seeing there, my understanding would be that the sort of activities you are talking about there would either be allowable activities permitted under the code. But they are quite small in terms of what you can do in terms of clearing for fence lines and so on or maybe notification pathways there. I am not aware of any specific issues and if there are issues in terms of a compliance stance, the compliance framework sits with Environment, Energy and Science [EES] and they would be the appropriate ones to do that. I know that there are certainly avenues in terms of the analysis they do: the early change monitoring with satellite data and so on. But the requirements of part 5A are, I think, quite clear. We are there to provide advice and guide landholders through that, but, you know, we do not have a compliance role.

The Hon. PENNY SHARPE: Okay. I think I have misunderstood then. This morning we had evidence from councils who were talking about clearing that was occurring on rural land, obviously close to—basically being cleared for development but the justification for why the clearing is happening is that they are saying it is for agricultural purposes, probably under all those allowable and even notifiable issues. So it has been cleared. It comes to light that it has not been cleared for agricultural purposes. It is basically being cleared so that in 12 months time or 18 months time there is then development going onto it and they have been able to avoid that. So you are saying that LLS has really no role in that? If people are clearing, is it complaint space? You need to wait for someone to say, "Hey, my neighbour has cleared. They say that they are clearing for a shed," or whatever it is, "but that is not what they are doing." What are the triggers for LLS involvement in that?

Mr WITHERDIN: Triggers would certainly be landholders reaching out to us for advice around that to help them navigate through the requirements of the code. So we could certainly give them advice as to whether it is an allowable activity, whether it is a notification pathway or whether it requires an approval. They could certainly of their own volition undertake allowable activities. We would not know about that. If they overreach in terms of that then it is a compliance issue that would need to be dealt with by EES and the appropriate thing would certainly be—

The Hon. PENNY SHARPE: Okay, who reports that? If a neighbour goes to report this issue—say that it has come to their attention and they are concerned about it, or local government, for example, is concerned about it—they report to EES, is that right? And it is a land clearing compliance issue? I am confused because local government this morning said they had raised these issues with their local LLS people and there seemed to be some discussion at that level, but you are saying that that is the wrong pathway. I may have misunderstood. I accept it is Friday afternoon and it has been a long day.

Mr WITHERDIN: My expectation, Ms Sharpe, would be that they would raise that issue through the Environment Line. That would be the appropriate way to do that. They may well have contacted LLS officers and that is highly likely at a local scale for advice around that as to whether we have given approvals or so on. But I am not aware of any specific instances in relation to that.

The Hon. PENNY SHARPE: Ms Dumazel, my question then is—and you might have to take it on notice—whether this is an issue that people are actually making complaints to and seeking compliance of. As I said, several of the councils raised it today. It was not just a one off—"This happens." There were two allegations essentially being made. One is that people are clearing and then they are saying it is for agricultural purposes, but it is clearly not for agricultural purposes, and the next thing you know it is actually for a development to essentially

CORRECTED

avoid triggering all of the BOS. The other issue that people said was that in terms of illegal land clearing in some cases some large landholders are just basically happy to do the illegal land clearing and pay the fine because it is cheaper than going through the process of actually dealing with biodiversity offsetting. I know it is a little bit of a strange question but could you come back to us on notice about, in terms of the complaints, whether that is something you are aware of. I accept it is a fairly boutique loophole but again several of the councils have raised people genuinely doing this because they do not want to have to go through the biodiversity offsetting scheme.

Ms DUMAZEL: Certainly I will take that on notice and where there is a complaint that is made we do investigate that and make sure. Mr Witherdin outlined the early change monitoring which has made a big difference for us in terms of where—because we can more rapidly see where there might be clearing occurring.

The Hon. PENNY SHARPE: Is that still complaint space, though? Do you still need a complaints trigger to do that?

Ms DUMAZEL: No.

The Hon. PENNY SHARPE: So you are looking at the technology—

Ms DUMAZEL: We look at the satellite.

The Hon. PENNY SHARPE: Yes, okay. Eye in the sky stuff. Great.

Ms DUMAZEL: Yes, we look at the satellite information and our processes are getting a lot better so it could be within a week and we are able to actually then contact the landholder to say, "Hey, what is happening here?" So that process has been improving and we work quite closely with Local Land Services on that. This is one of the reasons we are putting in place the help desk for people to contact us direct around the scheme. I think there is still a lot that we need to do in terms of supporting landholders to understand the pathways into the scheme. I think the work that we are trying to do to improve particularly information west of the divide as well to landholders around their options—I think that is going to be really important. I know my team is looking at all the information that is being provided through this, so we will go back and have a listen to this morning.

Mr JUSTIN FIELD: I wanted to follow on from Ms Sharpe's line of questioning if I could. Mr Witherdin, good to see you here in a different context. I note just the simple approval under the rural area determinations through the Native Vegetation Panel. I am just using that as an example to understand how this in practice works. Because for that one example—and it is on the register and we can see the notice of determination—that particular impacted community that was expected to have to be offset, it has got a very, very long name and I won't read it here but, three ecosystem credits were required to be retired. When you read the determination it says that the panel decided in accordance with the Act to reduce the number of species credits that would otherwise be required to be retired from three to zero. And it did provide a couple of dot points for its justification there. What is the point of having that provision of the Act to require rural land clearing to fulfil biodiversity offset obligations if the panel can just simply write them off?

Mr WITHERDIN: Good to see you again too, Mr Field. We have sort of got a sample size of one to deal with here in terms of approvals and I would have to say even in terms of that it would not be representative. It is only 0.32 of a hectare, so you are talking 3,000 square metres. It was in south-western New South Wales to do with centre pivot irrigation.

Mr JUSTIN FIELD: It was the Liverpool Plains, wasn't it?

Mr WITHERDIN: I will need to—

Mr JUSTIN FIELD: It is the Liverpool Plains we are talking about.

Mr WITHERDIN: Yes, you are right. I have got my information crossed there, but it was certainly only 3,200 square metres which in terms of any centre pivot—any farming operation—is minuscule. It is sort of like a couple of quarter-acre blocks. Certainly there is the ability for the panel to do that under the Act but I would think it would be very much the exception rather than the rule. Part of the legislative requirement is for the determination to give due consideration to ecologically sustainable development, so I will not judge what the panel have done here. I will leave that for them to answer, but I think it is a reasonable provision.

Mr JUSTIN FIELD: That is the only determination that we have got. Do we know how many other applications have formally been made or are under consideration at the moment?

Mr WITHERDIN: I think we have had 120 inquiries. There have been four pre-lodgement meetings that each resulted in three site inspections by LLS staff. There have been four BDAR, the biodiversity assessment reports, prepared and a further three BAM, the Biodiversity Assessment Method—those desktop reports done.

CORRECTED

But that is as far as it has gone at this stage. My advice is that potentially there may be somewhere in the order of about eight to 10 looming, but there certainly has not been a big take-up and I think for a wide range of reasons.

Mr JUSTIN FIELD: I might come to the reasons in a minute, but can you just confirm, the BDAR that are done and the BAM assessment reports that are done—are they paid for and completed by consultants engaged by the landholders, or does LLS get involved in that process?

Mr WITHERDIN: No, by consultants on behalf of the landholders.

Mr JUSTIN FIELD: Paid for by the landholders.

Mr WITHERDIN: Paid for by the landholders, yes.

Mr JUSTIN FIELD: Some might consider that one of the reasons there has not been a lot of uptake here is that substantial amounts of clearing are possible under the code. Obviously we have seen now multiple reports. The woody vegetation tree cover reports have shown that substantial clearing has occurred. Much of it—I think as much as 60 per cent in the last couple of years—has been described as unexplained. Are there any concerns within government that clearing that should otherwise have been done under part 5A is just simply being done under the claim of the code and we are just missing it?

Mr WITHERDIN: Certainly not that I am aware of, and maybe that is a question that is better addressed to my colleagues in EES. But certainly what we are seeing in terms of the compliance data, the early change monitoring data and that sort of flowing through to prosecutions is not evidence of that. I think the unexplained clearing is a bit of a misnomer. As you would be well aware, the Natural Resources Commission [NRC] recommended as part of sort of that overall trigger review—one of the key actions of that was really to work through that, and in collaboration with EES we are really starting to break that down. My expectation in the future is we will have a much clearer understanding of that because we have got the ability with satellite data in sort of almost real time in terms of this early change mattering. We know exactly what is happening and where it is happening and where it is being done illegally that should absolutely lead to compliance action.

Mr JUSTIN FIELD: Mr Witherdin, I would be in favour of all of those NRC recommendations being implemented in full, but that is a different story.

The CHAIR: Mr Elton, you mentioned in your opening statement that the Government has indicated \$108 billion of major projects in the pipeline. You were talking about the need to get more supply and offer incentives. I think we really need to nut that out a bit more because there is a big issue and we are kind of also grappling with what to do there. What thoughts have the BCT and the department had in that regard? Can you share any with us?

Mr ELTON: I might refer that to my colleague because it was actually Mr Knudson who made that point about the \$108 billion—

The CHAIR: Sorry. Ms Dumazel?

Ms DUMAZEL: What we are looking at is trying to understand the pipeline of projects to try and better marry the demand and supply side. We know what major projects are in the pipeline over the coming years, so we have started to do some investigation into that, and that is where that figure came from, our initial analysis, and from that, if we are thinking about the avoid, minimise and offset regime and we know where those projects are going to happen, then we can start thinking about where we should be targeting additional—

Mr ELTON: Supply.

Ms DUMAZEL: Communication with landholders in those areas to generate supply. Then, for example—and this is where Mr Elton might want to make a comment—for a landholder to enter into a stewardship agreement, they will have to do their own assessments of it, and then as part of entering into the agreement they need a total fund deposit that will then support the management actions over the years. If we can then make sure that the demand is there for that process, then it means that—

The CHAIR: Can I just check on that. We have heard this process. Is there anything under consideration to reduce the cost for landholders that are having to do their assessments? That is what I think the Hon. Penny Sharpe was referring to as well in terms of the legal clearing. That can be thousands of dollars to undertake these assessments. That is a big barrier to some people who have blocks of land.

Mr ELTON: I can offer something there.

The CHAIR: Great.

CORRECTED

Mr ELTON: I will just add to something Ms Dumazel said as well. I think the Government is looking at releasing more information into the market about the pipeline of demand for biodiversity credits, and that will help landholders and the BCT respond to that so that we can get proactive in terms of inducing supply. In terms of the assistance issue, the BCT already has a financial assistance policy available for people that might be interested in establishing BSAs to sell credits to us.

It is true that there are those up-front assessment costs and then the landholder does not realise an income until later, and so we have an assistance policy in place where we can finance the up-front assessment costs and then recover that from the landholder when they have been able to sell their credits. We have also witnessed many examples where developers are providing that kind of assistance to landholders as well because they have a vested interest in finding the offsets that they need. The Australian Rail Track Corporation is a good example of where they are supporting landholders to participate in the scheme. That is a couple of things that we are doing in that regard.

The CHAIR: The financial incentive one that you are referring to that the BCT provides, what does that look like in practice? How easy is that for people to find out about and apply for?

Mr ELTON: We have not had much interest in it to date, I will concede, and we have promoted that on our website. We are trying to promote it to people. What it involves is basically that we would finance the up-front assessment costs with an interest free loan effectively—it is not a loan but it is financial assistance—and then we do our own due diligence to make sure that that is a viable proposition in terms of the landholder being likely to be able to sell credits. And if that is viable then we would offer them that assistance, and then we have a contractual arrangement where they repay it to us once they have been able to sell their credits. I would encourage anyone out there that is interested in getting into this world of supplying biodiversity credits to consider that as an option.

Ms DUMAZEL: Can I just add to that. At the back of our submission there is a part of the transport submission and in that it has got a section that says:

What happens if I respond to an expression of interest?

They have done some really good work about that up-front cost, and Mr Elton was referring to ARTC, and we are trying to encourage major proponents to really think about how they can engage with local landholders early on to support that process because that takes the risk out for the landholders and there is an incentive there for the proponent because it is a way of then securing the offsets that they need.

Mr ELTON: I can add that that is working. We have already signed several BSAs with landholders who are supplying credits to ARTC, for example, and there are several more applications in progress.

The CHAIR: There is no way within the scheme to measure the kind of cumulative impacts of multiple developments on threatened species, is there?

Ms DUMAZEL: It is all up-front and so it is built in the assessment method.

The CHAIR: Is it? For example, if you had 24,000 hectares of critically endangered ecological community left and then there is a development that clears 800 hectares and another development that clears 1,200 hectares, do those credits then become somehow more expensive or does the calculator calculate how much is left in terms of the cumulative impact?

Ms DUMAZEL: I will have to take that on notice because the calculator builds into the fact the threatened aspect of the species—critically endangered or endangered. That is built into the formula. It is reviewed regularly, so we update that based on whether there has been a determination as well. We do need to do some work, and we are kind of looking at our overall monitoring and evaluation framework to see whether it is robust based on what is required between the actual reports and the individual projects versus then the Biodiversity Indicator Program, which then kind of assesses loss overall in terms of the IBRA regions.

Mr ELTON: Ms Faehrmann, I might add to that, as we have discussed before, on average, biodiversity stewardship agreements are offsetting development at a ratio typically of four to one, and so where those critically endangered or endangered ecosystems are being protected under biodiversity stewardship agreements, those agreements are in perpetuity. They are permanent. That land can never be cleared or used for development in the future. I wanted to add that point.

The CHAIR: I wanted to use the example of the clearing of mines that is happening in the Hunter Valley, because I think that is where a lot of the—it is also happening in western Sydney in terms of cumulative impact and the loss of Cumberland Plain Woodland. For example, there is a forest community called Central Hunter Valley eucalypt forest and woodland. Mr Gainsford, is your department responsible for assessing those mine applications and the offsets there?

CORRECTED

Mr GAINSFORD: Yes, we are.

The CHAIR: The offsets for those mines, some of the evidence we have heard for this inquiry has been that—is it a fact that some of those offsets are rehabilitation offsets? So the offsets for the clearing of that mine—and, potentially, sometimes the same mine—will be factored in by the rehabilitation that might occur 40 years later. Is that what is happening?

Mr GAINSFORD: In certain instances, yes, rehabilitation can be a component of the offset component of the project. Perhaps I might ask Ms Greenway to explain the methodology around mine rehabilitation, if that is okay?

Ms GREENWAY: Thanks, Mr Gainsford. Yes, it is correct that mine rehabilitation can form a component of the offset requirement, but it is generally a small component. I cannot think of a circumstance where it is the whole component of an offset. It is only available to major mining projects, and this has only been since 2014 with the introduction of the then Framework for Biodiversity Assessment. It does allow proponents to receive up-front credits for rehabilitation, subject to meeting strict completion criteria in accordance with a rehabilitation management plan. We take advice from our colleagues in BCS on those management plans and, indeed, the offsets that are proposed. I would say that it is not, I think, taken up by all because the credits yielded by ecological mine rehabilitation are less than what you would yield from a stewardship site. That is to recognise the baseline state of the land. There is also a degree of effort involved as well in setting aside, storing and saving topsoil, collecting seeds, establishing nurseries and so forth.

The CHAIR: Why are certain companies choosing to rehabilitate their mines as part of their offset obligations then? Is it because there are no offsets anywhere else?

Ms GREENWAY: I think it is an opportunity but not all take it up to—it is an opportunity, I guess you could say, to have an improved biodiversity outcome at the end of the mine life.

Mr GAINSFORD: Maybe if I could illustrate one example that has been provided to myself in preparation for this. The Wilpinjong coalmine, which is up near Mudgee, is an example of where rehabilitation is part of the offset strategy. There was a specific targeting of providing habitat for the regent honeyeater. Specific vegetation communities were identified that could be incorporated into that rehabilitation. Similarly, the rehabilitation also has some very good landscape values that will assist with the connectivity between two other very high biodiversity areas nearby, being the Munghorn Gap Nature Reserve and the Goulburn River National Park. Picking up on what Ms Greenway was saying, it is used sparingly, and where it is used the specific biodiversity outcomes are driving the reasons behind incorporating that into the offsets.

The CHAIR: Is it the case that some mines can choose to offset the clearing through the future rehabilitation of that same mine?

Mr GAINSFORD: A proportion—that is correct, yes.

The CHAIR: Is there a rehabilitation policy within the department that is still being worked on? I am not sure if that is you, Mr Gainsford.

Ms DUMAZEL: We are in the process of finalising the ancillary rules for this. We have recently gone out to consultation and we are hoping to finalise that in the new year.

The CHAIR: Clearing, for example, habitat for the critically endangered regent honeyeater—under the policy that is currently being consulted on could that be 40 years down the track, because some mines have a 40-year lifespan? Is that not the case? So the rehabilitation of that land that is cleared now for the critically endangered regent honeyeater could be little seedlings planted in 40 years' time. Could that be approved under this system?

Ms DUMAZEL: There are a couple of things in that. Number one, it can only be a portion of it. What we would like to see is that the—

The CHAIR: But there is that cumulative impact thing again, isn't there? Because if it is a portion of the habitat for the critically endangered regent honeyeater—

Ms DUMAZEL: Yes. So we need to think about that within the overall—

The CHAIR: How do you think about that? That was a question I asked earlier and that is what I am getting to. "We need to think about it" is okay to say—

Ms DUMAZEL: That is why we have got the rules.

The CHAIR: —but what is the process?

CORRECTED

Ms DUMAZEL: That is why we are developing the rule base. We have been working with our scientists to see what makes sense.

The CHAIR: For cumulative impact, is that what you mean?

Ms DUMAZEL: If the rehabilitation is used as a component of the offsetting. I wanted to say that at the end of the life of a mine, while there is currently a requirement to make sure that it is a safe and stable environment, we would like to see that that is then rehabilitated in a way that is scientifically robust from an environmental perspective. The ancillary rules are being finalised at the moment, and that takes into account the requirements that would be needed. It is a portion of it. Certainly when we would be assessing it if it was to come through an environmental impact statement and it is part of a biodiversity assessment report, then we would be considering the totality of the approach.

Mr GAINSFORD: Perhaps I could add, Chair, that cumulative impacts are a component of any environmental impact statement. Part of that assessment of cumulative impacts is to look at other developments that might have impacts that accumulate. Our expectation would be that if there was that circumstance that you are hypothesising there, we would have information within the EIS to consider as part of that assessment.

The CHAIR: Thank you for clarifying that. So that would mean that if a certain percentage of this critically endangered community in this area has been cleared from other projects, that becomes part of the consideration?

Mr GAINSFORD: Both the accumulation of previous impacts but probably, more importantly, other planned projects at the time.

Ms GREENWAY: If I may, Ms Faehrmann, on 1 July the department released a cumulative impact assessment technical guide under the major projects reform work that we have been working on, which steps through in detail a methodology for assessing cumulative impacts for major projects by step-by-step identifying what the other relevant projects are, whether it is cumulative impacts of where you are considering just one factor or if it is cumulative impacts of multiple factors. For example, cumulative biodiversity impacts along with cumulative air quality impacts, for instance. So the technical guide does set out step by step that process.

The CHAIR: Thank you. I will just check with you, Mr Field. Do you have some more questions on this issue before I go back to Ms Sharpe?

Mr JUSTIN FIELD: A slight variation but, yes, I did. Mr Gainsford, it might be for you or to redirect. I asked some questions through the House recently about coalmine offsets and received an answer back that I was trying to seek some clarification on. It indicated in the answer that, of the 41 coal projects approved in the past decade, one did not require offsets, 14 have not yet triggered the requirement for offsets and, of the remaining ones, 17 have been substantially finalised in perpetuity security arrangements. I was wondering if you could provide on notice the 17 and could you give us an indication of what "substantially finalised" means?

Mr GAINSFORD: Yes, thank you, Mr Field. I am happy to provide some further details on notice. "Substantially finalised" in this circumstance means that for all intents and purposes the offsets have been secured and they have been completed. However, because of the nature of a number of these individual cases, there is some complexity to the complete finalisation, and I will give you a couple of examples. One is where, for example, a mining project has a number of modifications that are associated with that mining project. So it may well be for the actual consent, the original consent for that mine plus a series of modifications, that all of those offsets have been completed but there might be one outstanding modification that is currently going through the system and it has a small level of biodiversity impacts that have not been completed.

The other circumstance that, I guess, motivated us in using that terminology was the finalisation of legal arrangements that, particularly under the previous schemes, prior to the Biodiversity Offsets Scheme there was some flexibility in establishing those conservation bonds and agreements, and so different applicants have used different methodologies, and in some cases there are quite complex legal arrangements to secure those offsets in perpetuity, such as positive covenants and other types of legal arrangements. So, again, that reflects circumstances where some of those mines have not entirely, I guess I would describe it as dotting the i's and crossing the t's. But for all intents and purposes, there are land-based offsets, there are conservation bonds that are in place. That is why the term "substantially finalised" has been used.

Mr JUSTIN FIELD: Would it be possible, Mr Gainsford, when you provide that additional information on which of the 17 are substantially finalised, that an explanation is provided for each of those?

Mr GAINSFORD: We can, Mr Field. What I would say is because there are literally scores, if not hundreds, of modifications across all of these projects, it is quite a complex environment. But, yes, I am happy to take it on notice and to try and provide some more clarity.

CORRECTED

Mr JUSTIN FIELD: Talking about the 17, I appreciate there might be a lot of complexity in each of those, but an explanation is good because what you just said then for each would be useful and a bit of an indication, if you could, for what is the process to conclude those, because it is all well and good for you to say that—and I absolutely take you at your word on that and the use of "substantially finalised"—but in terms of meeting an obligation, some of these approvals are from a long time ago and they have not been met. I was just trying to understand how these get concluded.

For the nine that remain, where it says "nine have land set aside which is being approved in accordance with individual BMPs. Further work is underway to secure the land in perpetuity", could you provide on notice again which projects are included in that nine and whether or not they are on track or behind in the delivery of the work that is required under the BMPs? And can I ask you a question, and it might come across as well to Mr Elton, I think? I have heard that some of these offset obligations have not been secured because there are disagreements about whether or not the credits that are required to be secured through these sites are available on the sites, that they are not adequate in terms of biodiversity outcomes that were expected on those sites. Can you speak to that?

Ms GREENWAY: Perhaps if I could just answer the first part of the question, Mr Field. Yes, I am happy to take that on notice. Again, with regard to these projects that we have identified here, there are biodiversity management plans that are in place for all of those projects. I would like to see further progress made. I do not think that we have been as timely as we should be. I have asked my team to work with Biodiversity Conservation to make sure that we do not have these long delays. A lot of the delays are partly as a result of some of those complex legal arrangements that I was mentioning before in finalising the offsets for these projects; some of them are around transition—and I think that is what your second part of the question is getting to, which I will refer to Mr Elton—but, at the same time, that there are those reasons for why extensions and why some of the offsets have not been finalised and have taken so long. I am also not satisfied and I think more work needs to be done here and certainly I am committed to making sure that we can try and finalise as many of these as quickly as possible. But I might refer the rest of the question to Mr Elton.

Mr ELTON: Yes, thank you. Mr Field, in relation to the matters you are referring to, I think generally you are referring to offsets that have been or are still being established through offset conservation agreements rather than through biodiversity stewardship agreements. In fact, I answered a number of questions on this matter at the previous koala inquiry as well. Our role is to essentially make sure that there is rigour in entering into those conservation agreements, and we do that; we conduct due diligence to make sure that everything is correct, and there have been examples where we have had to seek additional information or revised mapping in some cases. We are very rigorous in ensuring that we do not enter into a conservation agreement until we are satisfied that all the details are accurate in terms of the mapping and the conditions of the agreement and so on and so forth.

Mr JUSTIN FIELD: But how many coalmine projects would you get this sort of situation where you are currently considering entering into a conservation agreement but you are still doing the work to work out whether or not they are good?

Mr ELTON: There are some in relation to the Whitehaven Coal Maules Creek Mine that I am aware of. We have settled a number of the conservation agreements for that project and there are still some to be finished. So that is one that I am aware of. I am not aware of any other significant areas of concern for other mining projects, but I could take that on notice and confirm that.

Mr JUSTIN FIELD: Just one more, Chair, if I could. Mr Gainsford, this suggests to me—the language in this answer—the 41 projects approved in the past decade, and you have outlined the four points there, that then means, if I am correct, that not one of the coal projects approved in the last decade in New South Wales has had their biodiversity offset obligations secured.

Mr GAINSFORD: No, I do not agree with that, Mr Field. There are land-based offsets for all projects that are actually in place and conservation bonds that have been required under the conditions of approval. We monitor compliance with those requirements and the conditions of approval. So I am confident that that is not the case and that in most cases the mining projects are following their conditions of approval and complying.

Mr JUSTIN FIELD: Thank you, Chair.

The Hon. PENNY SHARPE: Hopefully, these are not too long. I actually want to go to Transport. I am not sure, Ms Dumazel, if you are able to answer this. In part of your submission, and you pointed to it a couple of times—on page 6 of Transport for NSW's submission there is some useful information in there. I do want to unpack the issues. In the second last paragraph on page 6 they say, "Since 2011, TfNSW has purchased more than \$77 million of biodiversity and biobanking credits"—accepting that is obviously under the current and the old scheme—"and expended more than \$6 million to establish agreements over land owned by TfNSW." Great, and given more than \$5.8 million to Mr Elton's organisation.

CORRECTED

They continue, "Sydney Metro has purchased a further \$12 million in biobanking credits." Then they give us some information de-identified in terms of project by project about what that has cost. Are you able to actually tell the Committee how much? It is not dissimilar to Mr Field's question. How many of those have actually been fully accounted for and retired?

Ms DUMAZEL: I will have to take that on notice.

The Hon. PENNY SHARPE: Could you. I realise it is not your area. If you could do that and unpack that—there is a lot of numbers there but not a lot of information in terms of what is going on. You would be aware that there are media reports about previous offsets where it has been decades before they have actually been retired, and some still are not. Thank you for that. My final question for today is about the Warragamba Dam assessment.

Obviously it is going through the EIS process now. You would be aware there has been a lot of discussion about biodiversity offsetting and WaterNSW has chosen to take in their EIS an approach that says temporary inundation, which of course has major differences with if it was considered permanent inundation. I do not want you to take me to the details of arguing the toss over the intention or not. I am just interested in the pathway for advice and resolving the matter, as an example, through the planning process. Mr Gainsford, are you able to take me through that?

Mr GAINSFORD: Ms Sharpe, with regard to the actual impacts and offsets, is that what you are talking about?

The Hon. PENNY SHARPE: Yes.

Mr GAINSFORD: With regard to the impacts and offsets, obviously the environmental impact statement is on exhibition at the moment. That has some very detailed biodiversity assessment, biodiversity development assessment reports.

The Hon. PENNY SHARPE: Depending on who you ask, yes.

Mr GAINSFORD: Depending on who you ask, sure. Obviously, now being on exhibition, this is an opportunity for us to seek further advice from our colleagues as part of the review of that documentation. We will obviously expect to receive a number of submissions that will come through as part of that process. Those submissions and the advice that we will receive, we will obviously then ask WaterNSW to respond to.

The Hon. PENNY SHARPE: Through the usual process.

Mr GAINSFORD: That is right. And then we would expect a response to submissions that will need to address those issues, and then it goes into our assessment report. At the assessment report stage we would typically seek further advice as we are finalising the assessment. On occasion we will actually get our own expert technical advice to assist us with those assessments. It is quite a substantial and intricate process.

The Hon. PENNY SHARPE: Yes. Given that there is disagreement—and I am not asking you to comment. You will go through that process. There is a difference of view about temporary versus permanent, for example. Who makes the final determination on that?

Mr GAINSFORD: What I can talk to—ultimately the Minister—

The Hon. PENNY SHARPE: Sorry, I have probably been too specific about the specific project. I am trying to unpack those decision points where the advice comes in and who is the final arbiter. It is a big decision.

Mr GAINSFORD: It is. Ultimately the Minister for planning is the consent authority in this circumstance. So ultimately the decision is with the Minister. In terms of the temporary impact versus permanent impact issue, we have acknowledged and we have been working with our colleagues and WaterNSW to, I guess, make sure that the assessment has documented a conservative approach, making sure that the impacts themselves are fully ventilated through the assessment process. We acknowledge though that the temporary nature of some of the impacts is different to the usual assessment of—

The Hon. PENNY SHARPE: If you drown the bushes that the regent honeyeaters are in, that is not temporary.

Mr GAINSFORD: Yes. So obviously we need to take technical advice on those matters at the end of the day. WaterNSW has presented some evidence and some advice from their technical experts, and we will continue to seek expert advice from others.

The CHAIR: Over the last three days of hearings so far we have heard about the fact that it just seems to be easier for proponents to offset by putting money into the—paying, basically, to offset. In your view, is that

CORRECTED

increasing, Mr Elton? Is it the case that more money is being paid to offset as opposed to finding offsets? Is that a general trend?

Mr ELTON: Look, I do not necessarily see that, and Ms Dumazel might add to my remarks. The trend that we are seeing is that typically developers with relatively small offset obligations that may not yet be readily available in the market are paying into our fund. So we are receiving a lot of small payments.

The CHAIR: I think we heard that, for example, up and down the coast—for coastal areas instead of major projects.

Mr ELTON: Yes. We have had three or four larger payments associated with major projects but the vast majority at this stage of major project proponents are still tending to look to source credits directly in the market rather than through the BCT. Ms Dumazel might wish to add that.

Ms DUMAZEL: I cannot recall the correct percentages, but I think it is approximately 90 per cent of the offsets are done outside of that kind of payment into the fund direct.

Mr ELTON: It is 93 per cent.

Ms DUMAZEL: Thank you.

The CHAIR: Have you provided those statistics within the Government submission?

Ms DUMAZEL: No.

The CHAIR: Could they be provided on notice?

Ms DUMAZEL: Yes, I am happy to. So 93 per cent is—you know how they have the option of creating their own site, asking the neighbour, looking at the registers or paying straight into the fund.

The CHAIR: That is fine, if we can get that on notice. I just wanted to bring to your attention, Mr Elton, some of the recommendations from some of the councils that have appeared before us. I clarify as well that one council has said that they have found the Biodiversity Offsets Scheme support team—so that is probably within the department, is it?—

Ms DUMAZEL: Yes.

The CHAIR: —to be at all times extremely professional, helpful and a pleasure to deal with, but that it is abundantly clear that they are understaffed and have an enormous backlog of work. So we keep getting an urge to make recommendations about further resources being allocated to both the BOS support team and the BCT. One of the other recommendations is for resources to communicate Biodiversity Offsets Scheme-related legislation to the public. This council has said they would like the BCT to prepare a user-friendly downloadable guide for proponents written in plain English. I thought you would have something like that.

Mr ELTON: We certainly have a lot of resources in relation to our role, which is more to do with landholders and being able to enter into biodiversity stewardship agreements. We do not have so much of a direct role with proponents.

The CHAIR: We did get the feedback that it is very complicated. That was a big bit of feedback.

Ms DUMAZEL: Yes, and that is why we are in the process of getting a hotline in place for proponents, councils and accredited assessors. At the moment people can contact us around the actual assessment method but not on the scheme overall. Because there is so much confusion we want people to contact us.

The CHAIR: That is great. A hotline is one thing but the complexity of the scheme—is anything being done within the department to look at why it is so complex and to offer solutions and reform ideas to simplify the whole scheme?

Ms DUMAZEL: I think there is certainly more we can do to support landholders in this space and we need to simplify—while assessing biodiversity is a complex matter, there are things we can do to make it simple for people to engage with the scheme. I acknowledge we have a lot more work to do in that area. I think having Mr Mike Mrdak, who is our external monitor, oversee our whole program—honestly, we have been poring through all the submissions that have come through and we have the Audit Office coming in.

We are already working with the Audit Office and we are trying to think of all the different things we can do to improve the scheme because the foundations of the scheme and having a reliable, repeatable method that is transparent so the public can clearly see what the impacts of these projects are is really phenomenal. We want to be able to make sure that the scheme is simple and easy for everybody to engage with.

CORRECTED

The CHAIR: Thank you, Ms Dumazel, that is a good place to finish. Thank you so much for appearing before us today. You did take quite a bit on notice. The secretariat will be in touch with you about that and with any supplementary questions members may have. You will have 21 days to respond, or maybe a bit longer with the Christmas period. We will deal with that if we need to.

Ms DUMAZEL: Thank you. That will be good.

(The witnesses withdrew.)

The Committee adjourned at 16.01.