

**REPORT ON PROCEEDINGS BEFORE**

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

**INQUIRY INTO THE INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME**

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney, on Friday 8 April 2022**

**The Committee met at 10:45.**

**PRESENT**

Ms Cate Faehrmann (Chair)

The Hon. Rose Jackson

The Hon. Mark Pearson (Deputy Chair)

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Scott Barrett

The Hon. Catherine Cusack

The Hon. Shayne Mallard

The Hon. Penny Sharpe

\* 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.



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**CORRECTED**

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**The CHAIR:** Welcome everybody to the fourth hearing for the inquiry into the integrity of the New South Wales Biodiversity Offsets Scheme. The inquiry is examining a range of issues including the effectiveness of the scheme to halt or reverse the loss of biodiversity, the administration and regulation of the scheme and the use of offsets for major projects. Before I commence I 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 Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander people watching.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. Therefore, I urge witnesses to be careful about comments they may make to the media or to others after they complete their 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 could answer only if they had more time or with certain documents at hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days of receipt of the transcript.

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**Mr GREG STEENBEEKE**, Director, Public Officer, Ecologist, Henribark, on former affirmation

**Mr ANDY DAVIES**, Member, Landholder Biodiversity Interest Group, on former affirmation

**Mrs LOUISE DAVIES**, Member, Landholder Biodiversity Interest Group, on former affirmation

**The CHAIR:** I welcome our first witnesses, who we had the benefit of briefly hearing from on 10 December last year. It was very brief, hence why they are back. I thank you for taking the time to appear again before this Committee. We have members of the Committee appearing remotely today. I know that you have made opening statements but you may wish to do so again.

**GREG STEENBEEKE:** I will make it very brief. I would just like to reiterate that a lot of the issues that I see in responses to the scheme have been largely to do with things that are not related to the Biodiversity Offsets Scheme, but related to other legislation that applies to Landcare in New South Wales. One of the big advantages the scheme has is that it provides the opportunity for landholders to gain and diversify income through getting an income from administering and farming biodiversity, as we call it in our business. The opportunities that this provides give landholders a desire or an interest in protecting the environment on their properties and it is that financial benefit that the scheme itself provides the best opportunity to address in the future. It also provides a guaranteed conservation outcome which meets the obligations that the Commonwealth has signed us up to under the convention for the preservation of biodiversity under the UN. With that I thank you for the opportunity to provide this hearing with another response.

**The CHAIR:** Mrs Davies and Mr Davies, would either of you care to give an opening?

**LOUISE DAVIES:** I would just really like to briefly. Andy gave an opening statement at the last hearing. We are here to represent up to 12 biobank owners or stewardship site owners who are spread throughout the State. Our submission does address the actual terms of reference, which we would like to talk about today or you can ask us questions. I just want to put our personal position because I think there is a misunderstanding. What has happened is that things have got a bit skewed. We are a multigenerational farming family from the Sydney Basin area. We inherited our farm, which was unprofitable. We were already interested in conservation so we had about 25 hectares that was already conserved, and that had expired. When biobanking came along, it gave us a great opportunity to expand that; we doubled it. We have had the biobank operating ever since. We are all really attached to it and it is just really a lovely area. We combine that really happily with our farming operations.

That was our driving force, to be able to continue and expand our conservation and actually have something to assist us to make an unprofitable farm into a profitable one. It was not an agreed thing that we take the money and run, it was actually what the scheme was set up originally to do. I just want to make it clear: That is where we are coming from. The others are scattered throughout the State and we have a fairly reasonable response to the terms of reference, I think.

**The CHAIR:** Thank you very much. Thank you both for your comprehensive submissions and the recommendations that are contained in them. They are very helpful for the Committee. I will kick off. Looking at your submission, Mr and Mrs Davies, you talk about "Market Imperfections - Government infrastructure agencies manipulating the price down (e.g. seeking extensions of time or flexibility over veg types instead of meeting the market) ..." Then you go on to also talk about developers being able to pay the biodiversity conservation trust for credits as a cheaper option instead of buying credits themselves. We have heard a fair bit about that. Do you just want to explain and go into more detail about how a government infrastructure agency is manipulating the price down, and what is the solution to that?

**LOUISE DAVIES:** Well, that is my stuff. It is his stuff too; he knows a lot about it. Our experience has been and our personal experience has been being approached by purchasers for credits asking us what our price is, which is based on the published price and being told, no, we can buy them for less through the BCT. It is pretty simply that the BCT—I could go on.

**The CHAIR:** Can you give me an example of specific credits you are talking about? Do you have that?

**LOUISE DAVIES:** Do you know I cannot remember exactly what they were.

**ANDY DAVIES:** Do you mean the intended credit types?

**LOUISE DAVIES:** Yes.

**The CHAIR:** Yes.

**ANDY DAVIES:** CPW, Cumberland Plain Woodland, Shale Sandstone Transition Forest—

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**CORRECTED**

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**The Hon. MARK PEARSON:** Could you move the microphone closer to you?

**ANDY DAVIES:** Cumberland Plain Woodland—

**The Hon. MARK PEARSON:** Excellent.

**ANDY DAVIES:** Shale Sandstone Transition Forest, River-Flat Eucalypt Forest; the higher, the most valuable credit types in the State. In particular Cumberland Plain Woodland, which is critically endangered and one of the most under-threat credit types or ecosystem types in the State. Its price reflects that. It is the most highly traded credit type so far, I believe.

**The CHAIR:** You have purchasers approaching you asking you how much you are essentially selling it for. How are you setting your price again?

**ANDY DAVIES:** The biggest influence on pricing at the moment is the biodiversity offset payment calculator, because that is a price ceiling that has been put in place. We know if we go above that, you are not going to get a sale. Prior to that it was the OEH-administered credit register, which had every sale recorded. You could go through there and see vaguely what past trades have been and then you can take into account your own personal issues in regards to the value of your land, how much you would get for it if you were to sell it to a developer, which is a viable option in the Sydney Basin. These are all the factors that you need to take into account to determine the price that you want for your credits.

**The CHAIR:** Cumberland Plain Woodland—you are saying you look at the calculator and set the price on a range of things and there is an upper cap?

**LOUISE DAVIES:** Yes.

**The CHAIR:** How is the BCT then, if they have Cumberland Plain Woodland credits, pricing you out? How is that working?

**ANDY DAVIES:** They are just an easier option.

**The CHAIR:** Do you mean, yes, in terms of developers just going—

**ANDY DAVIES:** Just chuck money at the BCT and move on. There is no need for the BCT to go through an assessment process, there is no need for them to employ a consultant, to then liaise with the consultant and the BCT to get that agreement across the board. There are none of the issues that can take 12-plus months to get to an actual registered biobank. The BCT just have the fund, money goes in there.

**GREG STEENBEEKE:** One of the issues that applies here is that the BCT does not actually have to hold the credits to sell the obligation for the credits. Whereas as stewardship holders we actually have to hold those credits before we are able to sell them or forward-sell them on the basis that we are going to get the agreement signed with the BCT. The BCT is operating to trade an entity it does not yet have that it then has to purchase from us and it will add its own administrative charges to what it buys those credits from us for. So no matter what that ceiling price that is set by the pricing calculator, it also acts to depress the market and the opportunity in what is a market instrument of the landholder to say, this is what it costs me to actually generate this credit, this is what it actually costs to do the weed control, the pest control, the administration of fire.

There are a whole range of activities in table six of the biodiversity assessment method, the BAM, that identify what it is the landholder that is in charge of the stewardship site has to actually implement to generate the credits. Then there is table seven in the BAM which is those activities that allow us to generate more credits per hectare to meet our obligations of those costs that are identified in the total fund deposit. Then you have got other factors on top of that, like taxation. Credits are subject to capital gains tax. So instantly 30 per cent of every trade goes to Canberra. Even though it might look like it is a sizeable transaction it is nowhere near that large when it actually lands in the bank account of the person trying to administer that conservation outcome.

**LOUISE DAVIES:** Is that enough? Okay.

**The CHAIR:** Yes. You have also got in your submission, and I think it is building on that. It states:

3.3 We are aware of apparent sharp practice by commercial developers landbanking and developing high value land parcels, but then monetising the need for offsets by leaving the BCT holding—

in your language—

a bag of money from a share of the developer's profits that did not fully cover the cost and effort needed for the BCT to acquire the necessary biodiversity offsets in the market.

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**CORRECTED**

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Developers are getting away with clearing a bunch of really threatened land. You have got that threatened land or threatened vegetation ecosystem type on your property but you are not getting enough money from the system, you are saying, to potentially—

**ANDY DAVIES:** We are not getting a sale.

**The CHAIR:** At all?

**ANDY DAVIES:** No, because the sale is going to the BCT and then the BCT are saying—

**The CHAIR:** When you are saying you are not getting a sale, what is stopping you then? You would be pretty tempted just from a purely commercial frame to want to sell that land to developers. Do not do that, because I am a Green. I do not want you to do that.

**ANDY DAVIES:** No, we do not want to do that.

**LOUISE DAVIES:** That was our actual, obvious purpose in entering a biobank agreement in the first place. We have got a rather extended family who all have a great interest and attachment and love for our farm. We could have subdivided it. We could have cleared half of what that area is that is biobanked. We could have just put a bulldozer through it, but our choice is to conserve it in perpetuity and to keep the farm in one piece.

**ANDY DAVIES:** I suppose one of the issues is that we are not getting the sale because we are not getting the exposure to the buyers. The only exposure to the buyers is the BCT. The fund is hoovering up all of the credit sales.

**The CHAIR:** Do you know how many credits there are within the BCT for Cumberland Plain Woodland, for example, that have not been exhausted?

**ANDY DAVIES:** There are no credits in the BCT.

**LOUISE DAVIES:** They do not actually exist.

**ANDY DAVIES:** They do not own any credits; they own an obligation.

**LOUISE DAVIES:** They are sort of like a paper—

**The CHAIR:** Sorry, wrong question.

**ANDY DAVIES:** The obligation they hold.

**The CHAIR:** In terms of the money paid by developers, are you aware of that? Is that transparent—

**ANDY DAVIES:** I do not know.

**The CHAIR:** —for the clearing of Cumberland Plain Woodland?

**ANDY DAVIES:** I think in their annual report they publish how much. I do not know whether they detail that.

**The CHAIR:** Mr Steenbeeke is shaking his head.

**GREG STEENBEEKE:** I am not sure whether that information is publicly available. There is a lot of—when the discussion in the earlier sessions was talking about insider trading, the BCT is in reality the only organisation that in this entire scheme has the potential for an insider trading role because they are asked by the developers to take on an obligation and they administer the sites and create or approve the creation of sites with landholders. So they know what credits are wanted and what credits are available. The BCT is the only organisation that actually has an insider trading role, or the potential for an insider trading role. I do not know whether they do or not, but they are the only ones who can, because a developer has to have its approval through the conditioning authority, which is either local government or the major projects division of Planning. The creation of credits only occurs through the BCT.

When a developer asks for the obligation to be taken on by the BCT, the BCT then gets sole observation of what credits are wanted by the market. By having this pricing mechanism that was established by DPIE-OEH, they have a price that they claim they have to put to those credits when the obligation is requested. That is a big part of the scheme's failure, that those prices are not necessarily reflective of the actual cost of doing the outcome. When the scheme changed from the BioBanking scheme to the Biodiversity Offsets Scheme and the imposition of those two tables that I mentioned before, table six and table seven, and BAM came into play, the actual obligations of doing those management actions was not reflected in the price of what the old credits, the BBAM credits, were selling for.

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**CORRECTED**

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It was because there was a very limited set of actions that you had to do in regard to that scheme, but now there are all these actions that you have to do that add to these costs. But they just looked at, or the economists at DPIE looked at, what the credits were selling for and how many were generated per hectare and how many were generated per hectare under the new scheme and said, oh, well, it is 10 under the old scheme, it is five under the new scheme, we will just double the price. But they failed to take into account the actual cost of generating those credits tripled. If you are only doubling it, then as with what happened with our site up north, we are expected to sell our credits to the BCT for a value that is 40 per cent of the production cost. The old pricing, which was already administered by—shall I call them?—internal trades administered by RMS, particularly for the Pacific Highway upgrade, resulted in them undertaking the surveys on landholder lands.

It gave the landholder a price for their TFD based on the activities costed by RMS and the landholder was given the obligation or the opportunity to sign up for it and then they were given an ex gratia payment to cover opportunities of drop in land value and things like that. But it never actually got reflected in the credit cost. The credits that we had when we entered into the scheme in 2017, when we commenced—we actually have our agreement from January 2019—we worked on the basis that our credits were going to cost us somewhere in the vicinity of about \$3,000 a piece to generate. It is about \$12,000 per hectare for in-perpetuity management for the activities that as an ecologist I see need to be done to maintain this vegetation in its best condition. It is that improvement that is what is actually sold, the management of improvement.

If you are trying to sell these credits at \$3,000 a piece and then the RMS sells the same credits or purchases the obligations from landholders that they have entered into an agreement with to purchase the same obligations at between \$700 and \$1,400 of credit, how can I compete? Those prices that the RMS traded for are what got recorded on the register as "these are the prices that these credits trade at".

**The CHAIR:** Can I quickly jump in there and then I will go to Ms Sharpe in a second for questions. The landholders you are saying are selling credits for \$700 to \$1,200 or whatever, compared to your \$3,000, is that because those landholders are not bothering with obligations that you would be doing in terms of improving the land, which you are saying that is basically what you are selling?

**GREG STEENBEEKE:** That I cannot answer.

**The CHAIR:** How do they get away with that? Do you know how they get away with that compared to you?

**GREG STEENBEEKE:** The reason they got away with it was because it was administered under the old scheme, the BioBanking scheme, where there was not that obligation of particular activities that had to be done to actually comply with the scheme. Under the new scheme there are these obligations under table six and table seven that add costs to generating credits. So when the landholders were—the way they did their trades is all the credits were generated for a property and then they worked out what the total fund deposit was, which is the amount that is required to do the administrative actions to get that environmental improvement and then the total fund deposit was divided by the number of credits generated.

That was a price that they traded the credits at for their processes under the RMS Pacific Highway upgrade. That price, as I said, did not take into account the costs. We acquired the costs of around \$200,000 to do the assessment of our place. That cost was borne by RMS, so it never actually got reflected on the cost of doing the credit. Production—the opportunity costs, the loss of income. We could have been grazing or timber harvesting off our property. It had been timber harvesting for the previous 70 years. That loss of income from that is not taken into account. All they were looking at was how much it cost to actually do that transaction of producing the outcome that was signed off.

**The CHAIR:** We might need to move on. Mrs Davies, you have your hand up.

**LOUISE DAVIES:** I just wanted to make a really quick comment.

**The CHAIR:** Sure, of course.

**LOUISE DAVIES:** A lot of what is happening too now under the BCT is they send out to all landholders to tender to sell their credits. It is like you are blind; you have got no idea.

**ANDY DAVIES:** There are either the tenders or the fixed price offers where you go, "I have got credits" and they go, "We will give you that much." That is it. That is the BCT.

**The CHAIR:** The BCT is the buyer then?

**ANDY DAVIES:** Yes.

**LOUISE DAVIES:** Yes.



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**CORRECTED**

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**GREG STEENBEEKE:** The BCT is the top buyer.

**ANDY DAVIES:** That is then trying to cover their obligations with the fund, but they are just offering us a price. The whole thing about this scheme is for it to be successful, it needs to be a free-market scheme. There needs to be a relationship between buyers and sellers and at the moment there seems to be a block between a relationship between buyers and sellers, which is the BCT and the fund. Instead of a buyer having a credit obligation and going and finding a seller who holds those credits or multiple buyers and multiple sellers creating competition, you have just got a one-stop shop where you just tip in the money and all of a sudden it is on the BCT to meet multiple obligations statewide.

**GREG STEENBEEKE:** Which also then means that the Government, as administrator of the BCT, is taking on the obligation of that cost. It is socialising the cost of development on the environment.

**The CHAIR:** Interesting. I am conscious of time. Ms Sharpe, I will go to you now.

**The Hon. PENNY SHARPE:** Thank you everyone for coming in. It is very important to hear your perspectives in relation to how it is actually operating on the ground and the environmental outcomes we may or may not be seeing. I think this is to Mr Davies. Again, in your submission—and you have touched on this already—is the issue of the way that the market operates. I wonder if you could just talk about your point about unregulated entry of vegetation brokers and explain to the Committee who they are, what their role is and what impact they are having on the scheme?

**ANDY DAVIES:** Basically, pre-2016 you had the OEH credit register, which displayed who had credits and who wanted credits. There was an easy way for people to be in contact. Because the waters have been muddied, all of a sudden there is a space there for people who know people to suddenly inject themselves into a transaction and become a broker. If we had a transparent system with a register administered by, for instance, the BCT, that relationship would be simple and easy. As it stands it is so muddy that all of a sudden you have got this new industry created of people who know people and you have just got brokers now. It is another margin put on the sale of credits, which is not going to the actual owner of the credits; it is going to another entity.

**The Hon. PENNY SHARPE:** The transparency of the credits is obviously the key change that seems to have happened from what used to happen. What has been the response of the department? This is clearly not a new issue or something that people are unaware of. Is the design of the system deliberately so there is not the transparency of the credits because they think that they are operating through this tender system and they want that to be however the market decides at that particular time? Is that the reason why it is there? What is their response to the lack of transparency?

**ANDY DAVIES:** There has been the strengthening in the Biodiversity Offsets Scheme which is a change to the way credits are being priced. At the moment we have got a biodiversity offset payment calculator which is publicly accessible, so everyone can have a look at that. That tells everyone what the price ceiling is. I know that when they created it, it was not meant to be a ceiling, but in not creating a ceiling they created a ceiling. What they are going to do to change that is they are going to have what is called an econometric scale for the highly traded ecosystem types, which is River-Flat Eucalypt Forest and Cumberland Plain Woodland. And everything else is going to be priced in a different manner taking in many other factors, including land value and so on. The other thing that they are going to do to make that more transparent and easier for everyone is to hide that price from everyone but the credit buyers. So as sellers we will not actually know what the biodiversity conservation fund is charging buyers.

**GREG STEENBEEKE:** Until 90 days later.

**ANDY DAVIES:** Until 90 days later. In terms of transparency, it does not seem like they are moving towards more transparency.

**The Hon. PENNY SHARPE:** I did not think so, but I was just interested in that. [Disorder]

**ANDY DAVIES:** There is also no real explanation as to why they are hiding that price. There is no real reason for doing that. What does it achieve? There is no benefit to hiding the price.

**The Hon. PENNY SHARPE:** We might ask the department that this afternoon.

**The CHAIR:** Mrs Davies, you also wanted to comment?

**The Hon. PENNY SHARPE:** I think we might go to that.

**LOUISE DAVIES:** I also wanted to comment on that consultation paper because it has been building up for some time that the whole scheme seems to have got a bit skewed. Just out of interest, I did a word count on that consultation paper, which was April last year. The word "developer" in that consultation paper that was sent

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**CORRECTED**

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out was mentioned 72 times; "landholder" zero times; and, "BSA site owner" once. So the whole paper was focused on looking through the lens of developers, it seemed to me. That is why I did the word count, just out of interest. I am just making the comment.

**The Hon. PENNY SHARPE:** It is quite a telling point. There is a lot of complexity in this scheme and rightly in some ways, because biodiversity is complicated and the assessment is there. I am just interested from your point of view, how much does it cost for you to get an assessment done? How many people are able to do that for you? Part of what I have learnt through this inquiry is that because it is so complicated there are actually a very limited number of people who are able to do that work. My interest in this is that I want landholders to be able to get this source of income and be incentivised and supported to keep biodiversity on their properties. I am concerned at the cost and complexity of that and how that actually is leading to a lot of these insider trading-type problems.

**GREG STEENBEEKE:** The register of accredited assessors identifies the number of people who are able to apply the biodiversity assessment method. I think it is about 300-odd members. I would need to look at it. That includes people who are both within consultancies and within government, and in local government. Anybody who is able to interrogate the complexity of the scheme basically has to be an accredited assessor. As I mentioned before, for our assessment we paid a consultancy about \$60,000 for our assessment. That was excluding the contributions that I made in doing things like an additional vegetation survey to assist them, so doing the preliminary work and also administering camera work. We did two years worth of camera work on our property and the only reason we stopped was because it burnt. The cost of doing our assessment was basically about \$200,000.

**LOUISE DAVIES:** And that is an upfront cost.

**GREG STEENBEEKE:** Correct.

**The Hon. PENNY SHARPE:** Yes.

**LOUISE DAVIES:** If you go to a landholder and say are you interested in it, that is an upfront cost. Then you have got all the other complications of capital gains and all of that and it scares people off, to be quite honest.

**ANDY DAVIES:** I did suggest to a member of the BCT board at one point that maybe the BCT could offer that up: The BCT could finance that for assessments and at the point of credit sale take that money back.

**The Hon. PENNY SHARPE:** I am very interested in that. It just seems to me that local landowners and particularly family-owned farming operations are very keen to do it, but that is a big upfront cost. If people are assessing do we do that or do we do private native forestry, the barriers to entry are much lower on that end. Thank you for that. That is very helpful. I have a couple of quick questions. I am very concerned about the small number of people that seem to have been able to exploit the scheme massively. In your submission you talk about the minority of proper takers. I am just wondering whether you can give us, without identifying where they are—you can do that if you want to—what is the process of the people who are the fly-by-nighters in this? How are they operating within the scheme and what is the impact of that?

**ANDY DAVIES:** The best way to talk about that is to talk about the other side of the coin. Private land holders and multigenerational landholders who are able to offset a portion of their land use the money generated from the offsetting of that land to invest in the rest of the property that they own, which benefits not only that landowner but it benefits future generations of landowners on that property. It also benefits the local community because you have an increase of money feeding in to the local community. Me personally, I started a bush regeneration company off the back of private landholder conservation, which I would not have been able to do without it. The fly-by-nighters—you buy a block of land; you offset the entire block of land; you take your money; you employ a bush regeneration company; and you go somewhere else. You are not actively involved in the future management of that land. You are gone.

**The Hon. PENNY SHARPE:** The issue then clearly is who is monitoring the improvements there. Can you take me through how that is working? Your submission suggests that basically government agencies do not enforce the agreements. They are done and dusted. What is the monitoring regime that people are working with?

**LOUISE DAVIES:** There is an annual management inspection by the BCT. An ecologist comes out and checks the management of the scheme. We are aware large areas of land—and the Sydney Basin is not that—we are supposed to be talking about the entire State here, but this is our experience around us of being bought by people. Part A of the management fund has been worked down so the part B that has gone into the pockets of the landowners has been worked up. There is not enough money left in the management to actually properly regenerate or clear weeds, but those people have moved on elsewhere.

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**CORRECTED**

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**ANDY DAVIES:** And now have put those properties on the market for someone else to buy and take on that obligation.

**The Hon. SCOTT BARRETT:** I will start with just a clarification question. You refer a lot in your submission to the multigenerational farmers and at one point there, Mr Davies, you actually corrected yourself because you left out multigenerational farmers. Why is that so important and is that almost discriminating against new landowners?

**LOUISE DAVIES:** No.

**ANDY DAVIES:** No, it is absolutely not. No.

**LOUISE DAVIES:** How could that be?

**The Hon. SCOTT BARRETT:** I just wondered why it is so important you get that?

**ANDY DAVIES:** Because I am a multigenerational landowner and I have worked with a number of multigenerational landowners and when you are talking about conservation, we are talking about a conservation stewardship agreement. When you biobank a block of land, you have conserved it but when you biobank a block of land with an invested landowner, in this instance a multigenerational landowner, you also have the steward coming with it. You do not just have a conservation, you have a conservation stewardship. Why we are talking about multigenerational landowners is because multigenerational landowners have a vested interest in that block. I am not saying that new landowners will not or do not. I am just saying that in this instance multigenerational landowners have a demonstrated vested interest in the long-term viability of a whole-farm system using offsetting and conservation agreements to benefit the whole-farm system, not just their back pocket and a small patch of conservation.

**GREG STEENBEEKE:** If I can add to that too, the additional factor to take into account here is that these are in-perpetuity agreements. The multigenerational landholder is not just those past but those future.

**The Hon. SCOTT BARRETT:** Your organisation, I think you mentioned, represents about 12 biobank owners. Are they scattered right across the State or are they mainly in the Sydney Basin?

**ANDY DAVIES:** We have got them about—

**LOUISE DAVIES:** About half-and-half.

**ANDY DAVIES:** —half-and-half. A number of them in the Sydney Basin and some up around the north-west.

**The Hon. SCOTT BARRETT:** My understanding is that there is a total of about 230 across the State. Is that right?

**ANDY DAVIES:** Biobank agreements?

**LOUISE DAVIES:** No idea.

**ANDY DAVIES:** Conservation agreements?

**The Hon. SCOTT BARRETT:** Sorry?

**ANDY DAVIES:** There are 230-odd stewardship agreements?

**The Hon. SCOTT BARRETT:** Landowners that have biodiversity stewardship arrangements?

**ANDY DAVIES:** Okay.

**LOUISE DAVIES:** Possibly, yes.

**GREG STEENBEEKE:** Yes.

**The Hon. SCOTT BARRETT:** I agree with Ms Sharpe, that we need that to be higher. Reading your submission, you actually have a lot of history in biodiversity and ecology and are quite well versed in university studies and publishing documents. Even in your submission it came through that this is not an easy process; it is quite a difficult thing to get involved in. I am thinking of people that do not have your background and experience. Is that complexity and difficulty a prohibitor to get that 230 up to a higher number?

**ANDY DAVIES:** Yes.

**LOUISE DAVIES:** Yes, definitely.

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**CORRECTED**

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**The Hon. SCOTT BARRETT:** Are there ways that we can simplify it for the landholder? There are 300 assessors. There are more assessors than there are landholders.

**ANDY DAVIES:** Yes.

**LOUISE DAVIES:** Yes.

**ANDY DAVIES:** That is correct.

**LOUISE DAVIES:** It is an industry.

**The Hon. SCOTT BARRETT:** Are there ways from a landholder point of view that could make this simpler?

**ANDY DAVIES:** Yes, subsidise the cost of assessment.

**GREG STEENBEEKE:** That would be the easiest way to simplify the system because as we mentioned before, the complexity of biodiversity is something that has to be addressed in the system. If you simplify the assessment process you are actually going to detriment the environment. You will potentially say this species is not as valuable as that one, therefore we can preserve this one and lose that one. But then why are we in a position to make that judgement? The complexity of the system has to remain, but the way and the complexity of entering and participating is what needs to be addressed.

**LOUISE DAVIES:** Can I just make a comment too? I think we have come up against a big block between us and I will call them bureaucrats, who administer the scheme. We have tremendous ecologists and we have the BCT. There is us in the middle there and we have not really been that well included in it all, except we have been told these are the changes that are being made to the scheme. We have suggested in our submission that someone like us be actually on the board, someone who has an actual stewardship site, a biobank site, that has actually got their feet on the ground. We have never had anyone come out and look at our biobank at all. They have no idea about it.

The other point too, which is indicative of the lack of understanding of the people administering it is that at the last session the Dykes and Barry Buffier, they had suddenly totally devalued a particular set of credits. If you go back a step, these were registered biobank agreements. Capital gains tax is assessed on the value of what they were at the time it was registered. If you suddenly devalue that, these people have already been assessed for a capital gain on that original valuation. If you are going to suddenly say they are worth less than 100 per cent or 99 per cent, or have deducted that much off them, then they have a major tax issue there. That is just done without any kind of consultation or thought about the impact on the landholders.

**The CHAIR:** I think Mr Mark Pearson, deputy chair, has one question.

**The Hon. MARK PEARSON:** I am finding this extremely complex.

**LOUISE DAVIES:** It is.

**The Hon. MARK PEARSON:** Excuse me if it is a bit of an ignorant question. After there has been an assessment done and the credits have been allocated for an area of land that you have cultivated or preserved, does the credit value of that land increase the longer that land is in perpetuity as the biodiversity is more complex, the flora is older—

**GREG STEENBEEKE:** No, because that is what the credits are.

**The Hon. MARK PEARSON:** —and more capable of preserving that. Is the value increased?

**LOUISE DAVIES:** No. It stays as the agreement.

**The Hon. MARK PEARSON:** At the beginning.

**ANDY DAVIES:** The point of a conservation agreement is to increase biodiversity. That is the actual value that you are—

**The Hon. MARK PEARSON:** It is the projected value?

**GREG STEENBEEKE:** Correct.

**ANDY DAVIES:** Yes.

**The CHAIR:** Mr Steenbeeke, you note in your submission—you are quite adamant—that ecologists should be able to participate in the scheme. Do you just want to address that for the Committee noting that you have also addressed that in your submission.

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**CORRECTED**

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**GREG STEENBEEKE:** Essentially for the same reason that you or members of the Parliament are trained lawyers and are participating in the development of the laws, why should an ecologist that ideally would understand how to administer the environment for the outcomes that are being sought through this process, why should they be penalised—

**The CHAIR:** Can I just jump in there, because you do have that in your submission.

**GREG STEENBEEKE:** Yes.

**The CHAIR:** But, for example, I think the issue is, isn't it, that if an ecologist goes on to a particular area and identifies, for example—

**GREG STEENBEEKE:** Threatened species.

**The CHAIR:** —that certain threatened species are there. Isn't there the potential for them to own a site with particular threatened species and isn't there potential for some ecologist to name too many species, for example, at the site that is going to be cleared? How is that addressed?

**GREG STEENBEEKE:** The species impact is determined in the same process as the species acquisition, shall we call it. The BAM process applies to both the development and the stewardship site. The ecologist's work is reviewed by someone else. The ecologist can say there are these species here but there is someone else who actually has to verify those species are there.

**The CHAIR:** Is that from a different company?

**GREG STEENBEEKE:** No. It is from one of the conditioning authorities. It will be either a local government approval authority or a major project approval authority saying that the species are there to be impacted. It is reviewed by those people. A developer can say, "We accept that this species is here even though we did not find it", which then makes an obligation to find an offset to provide those credits. There are developments around where they will say, "We did not find koalas but we assume that they are going to be here, so we make an assumed presence contribution or consideration for the impact." The opportunities that an ecologist has to find species in a stewardship site is through their training, through their expertise. But that finding of the species on the site, still then when the BCT is doing the approval of the credits, is that BCT staff are seeing those species or seeing evidence of those species on the site. The ecologist can say, "I've seen them there"—and I have, I have seen on our property up north we are almost closing on 50 threatened species—

**The CHAIR:** Just quickly, sorry, because we are out of time.

**GREG STEENBEEKE:** The capacity to say that there is this species here which just happens to have been impacted over here, can happen; there is no reason it shouldn't. These people on this side or the development on this side has its impact approved and the stewardship has its production approved by people that are outside that process.

**The CHAIR:** Thank you. Sorry to rush you at the end, but I did want you to get that on the record for us. Thank you very much for appearing. I do not believe that you have taken any questions on notice.

**GREG STEENBEEKE:** Not this time.

**The CHAIR:** Committee members may have additional questions for you and the secretariat will be in touch if that is so.

**GREG STEENBEEKE:** I hope that the recommendations that I provided are observed.

**(The witnesses withdrew.)**

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**Mr TOM FORREST**, Chief Executive Officer, Urban Taskforce Australia, affirmed and examined

**The CHAIR:** Good morning, Mr Forrest. I welcome you as our next witness. Do you have a short opening statement to give?

**TOM FORREST:** I do.

**The CHAIR:** Thank you, go ahead.

**TOM FORREST:** I welcome the opportunity to contribute to the Committee and I thank you for inviting me to your deliberations on the effectiveness of the New South Wales Biodiversity Offsets Scheme. By way of background, there is currently—and I am sure you know—a chronic shortage of housing stock across very much of New South Wales and particularly in regional New South Wales, something that is less spoken about than the shortages in the city. Since the arrival of COVID-19, population growth in many regional communities has accelerated. The subsequent lack of housing supply in regional New South Wales has inflated prices and squeezed many locals out of the rental market—often those who can least afford to be squeezed out of the rental market in those regional locations. That is not a good outcome for anyone. Urban Taskforce members fear that the Biodiversity Offsets Scheme, as it currently is, impedes investment and the delivery of new homes. In our view, the cost of the biodiversity conservation scheme should not be borne entirely by the new homebuyer through the levying of developers—and we will go into, if you wish, why it is that a levy placed on a developer ends up affecting the new homebuyer.

Those privileged folk who live in the inner city, the eastern suburbs of Sydney and the North Shore, for example, live in communities that have benefitted from historic, wholesale land clearance. New homebuyers on the fringe of Sydney, for example, should not be required to bear the full cost of repairing the environmental damage caused by that land clearance, and yet, as the system currently sits, they are. In many cases, particularly in regional locations, the cost of biodiversity offsets is simply prohibitive for land development. Any biodiversity offsets should be clearly established and stated at the point of rezoning. The Biodiversity Offsets Scheme often applies and seeks to identify matters of biodiversity protection well after the rezoning—therefore, a hidden cost for those that have invested in that property, and an unknown cost, which is almost impossible to put a premium upon.

The costs associated with those offsets should be fixed at the point of rezoning. There is a constant risk of review and change, which ultimately pushes up the risk and, therefore, the price associated with that regulatory regime. Opportunities from the broader tax base should also be explored. That goes to the point of equity that I mentioned earlier. Investment in infrastructure is investment in our future—so, too, is investment in biodiversity. It is the responsibility of us all, not just the new home purchaser or the developer. However, the current Biodiversity Offsets Scheme, by being so specific, so onerous and, indeed, expensive, is not an attractive option for many investors. It actually puts off investment in new housing in regional communities and on urban fringe communities because of the risks associated with it and because of the associated costs.

Our experience in attempting to access the scheme is that the species list is too long and, importantly, very specific, and in so doing it stops transactions effectively being completed. That is to say, the specificity of the particular species that is being listed on a particular site cannot be found readily on another site, therefore undermining the credibility and the viability of the Biodiversity Offsets Scheme and the associated credits scheme. That effectively is market failure. Urban Taskforce recommends that DPE create a gradation of classes of endangered species—you do not have to go to that specificity, but you have a gradation of classes of species—and then that those classes be priced accordingly. Species with a lower biodiversity value would be identified, classed together and priced accordingly. Species with a higher biodiversity value would also be grouped together.

I know that other submissions, including that from Local Government NSW, prefer a like-for-like species credit scheme, but that is the very problem that has caused the market failure that we currently see. Further, we submit that the scheme should include an opportunity for the allocation of credits to landholders for onsite works that improves or adds to the biodiversity outcome. Urban Taskforce recommends that the scheme only apply to developments of scale and impact with a threshold introduced for that to be applicable. Developments below the threshold, instead of requiring the identification and offsetting of species, should instead be required to pay a fee to contribute to the management and the improvement of national parks, or the broad pool of biodiversity. I note that Local Government NSW support that recommendation also. There is a range of other things that we have raised in our submission, but for now I welcome the opportunity to take questions.

**The CHAIR:** Thank you very much, Mr Forrest. I think you came in earlier and were aware that we have some of our other members tuning in via Webex today. I will kick off with a couple of questions to begin with. I wanted you to expand—and I think you mentioned it in your opening statement as well—perhaps being

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a little bit more specific where you say that Urban Taskforce members have reported buying and owning land that has been cleared and rezoned for urban development and then you say, "In the usually long and drawn-out development approval process, a species emerges on the site that requires offsetting." Could you give the details of what that species is, and are there one or more examples of that that you would care to give to the Committee?

**TOM FORREST:** Look, I cannot give you the examples of what the species is. What I was trying to explain, Chair Faehrmann, is that a number of our members have explained to me as the industry representative that this is a common occurrence. I can only go by way of example, but it can be in relation to a particular species of spotted gum, for example, or a—

**The Hon. MARK PEARSON:** Thylacine.

**TOM FORREST:** Exactly. But the difficulty is that at the time that they purchased it—and often we are talking large land parcels—they might not have been initially identified or understood then, and that is often the case with insects, with grasses, with those species which, unless you are an ecological expert, you are unlikely for it to be immediately apparent until you have had the experts go through the property and do the assessment. What we would like to see is that sort of biodiversity analysis being done as part and parcel of the rezoning process so that, before developers go in and buy, they already have a list of biodiversity species that they know they are going to have to be dealing with going forward. The idea that you buy and then you hope adds to the risk, and there is one thing that the development community do not like: It is the risk.

Then, if it is the case that a particular species of spotted gum has been identified through the process of the biodiversity audit that takes place, we feel that at the moment the requirement to precisely identify exactly that particular species of spotted gum—not something that is in the broad biological spectrum of that species, but something that is very specific, when often they are locationally specific—it becomes difficult to be able to actually offset that and therefore, effectively, it sterilises the land. If you are unable to be able to buy and pay for the protection of a like species elsewhere, effectively your land becomes sterilised.

We think it is too specific in the context of also the competing imperative—and no doubt this is something that you are dealing with, as our members are dealing with—the competition, if you like, between the sprawl of our suburbs, the sprawl of our cities, the growth of our regional communities and the need to preserve and protect biodiversity species. We would like to see something a little bit more flexible that hopefully enables the housing growth to develop as well as protecting those species in a more flexible way.

**The CHAIR:** You mentioned that if a particular species—you used spotted gum as an example—is found somewhere, it is very difficult to get like for like elsewhere, but that is the whole point of the scheme, isn't it, that we are very critical of it. A lot of development, of course, is not avoided or minimised in terms of biodiversity impacts—a lot of it is offset—but that is the definition of a threatened species really: When a species is found somewhere and they are not found in too many other places and there are not many of them. That is the definition of a threatened species. Are you suggesting, Mr Forrest, that the framework should be weakened to enable the easier clearing of threatened species?

**TOM FORREST:** Certainly not, no. I guess "weaken" would be one way of putting it; another way of putting it would be, I believe—and our members say—that the list is too specific and gets into the minutia to such an extent that it undermines the integrity of the whole system. Because if you effectively cannot buy or identify an offset, effectively you are then sterilising it and, ultimately, compromises have to be made. Do we just rule out development in that area? In which case—if that is the case—then let us not rezone it. The whole point and the major signal to a property developer that this area is okay and ready to be developed for a particular purpose is the signing off by the Government of a rezoning.

We are saying that if you are so concerned about a threatened species on that land and you honestly do not believe that it is able to be offset through the protection of another case of that species in another location, do not give the key market signal, which is a rezoning of that property, which immediately lifts the price of that property. Do not do that. Wait until you have worked out those things, and then when you have worked out those things then rezone the land with a list of what has to be protected. Then with full knowledge, the developer can go in there and choose "Yes, I think I can manage that risk" or, "No, that risk is too great. I won't get involved". That is the broader point that I am trying to make.

**The CHAIR:** Your recommendation, therefore, would be for the State Government or local government to essentially pay for the assessment by ecologists—the ecological assessment of land, for example, the South West Growth Area—but pay for that before rezoning. That is essentially what you are saying, so that when you come in and when developers come in they know what they are dealing with?

**TOM FORREST:** There are two types of rezonings. There are developer-initiated or applicant- or proponent-initiated rezoning processes. Where that is the case, the applicant would be paying for that assessment

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to be taking place, and that is regularly the case already where a developer is the applicant for the rezoning. And, to be completely frank, a developer who is applying for a rezoning who had not done a thorough ecological assessment probably is not really serious about the process of rezoning. But as a government identifies an area for potential rezoning, be that local government or State government, then it should be leading the process of doing that biodiversity assessment. That can be funded, as far as I am concerned, through consolidated revenue, reflecting the benefit that the broader community gets through the protection of the species.

**The Hon. ROSE JACKSON:** Could you be a little bit more specific about how your views on the operation of the current scheme are impacting house prices in regional areas? You said in your submission and in your opening comment that you were happy to talk about the current scheme and the costs associated with it were ultimately being borne by purchasers or prospective purchasers in regional New South Wales. Could you give us specifics about how that worked?

**TOM FORREST:** This goes to the broader question of all costs that are placed upon developers. Ultimately the way any feasibility analysis works is a developer essentially identifies a site, the potential yield, the cost of construction, the land purchase price and the cost of securing the capital—that is, the interest rates—and then it places a further premium on risk and ultimately a developer profit at the end of the process. If you cannot demonstrate to a bank that you are going to make a profit that covers the risk that is commensurate with that site, then the bank will not lend you money and you just do not get development. Either you can demonstrate that the market will pay for the increased price associated with any regulatory impost from government—and biodiversity is one of those imposts. The more that there is an opportunity for surprise to be brought into the equation, the more the bank will require that the margin at the end has to be bigger because it has to cover the potential for that surprise to be realised.

The challenge is to create a regulatory system that minimises the risk, which is why I am saying the more that we know up-front, the less we have to demonstrate to the bank that we have factored in the possibility that this might be discovered down the process. You have to demonstrate to the bank when we go to sell the product you will be able to pass that on to the consumer through higher prices. Either the bank will say, "No, the market's not there for that type of product in Wagga Wagga or Tamworth, or in south-western Sydney around Wilton or in north-western Sydney in those growth areas"—either it is or it is not. Right now the shortage in housing supply effectively pushes up the price for all the consumers. Right now lots of things can be levied on developers, and the market is there to be able to absorb that.

What we fear is we are setting ourselves up for a very difficult situation in the relatively near future if and when interest rates go up, and suddenly banks are starting to look to foreclose on people's loans because the market that was previously there is suddenly not. Suddenly then the imposts that are placed through any type of regulation, and therefore passed on to the consumer, are unable to be afforded and we further exacerbate what is already there, and that is a housing supply shortage. I know that is a little bit abstract but it is a real thing that is happening right now right across regional New South Wales.

Ironically there are lots of companies wanting to move to regional New South Wales and they get told by the mayors, "Sorry, we can't because there's nowhere for you to bring the new workers to live." In fact, there is a whole bunch of people in what used to be rental accommodation being forced out of the rental accommodation because properties that never used to be viable for sale are now being snapped up by people who are looking to move into those communities. Ultimately it is the poorest people who suffer from that. Often, sadly, people from First Nations backgrounds who have been living in sometimes subsidised rental accommodation, if the owner chooses to sell it because there is a sudden influx in demand from tree changers, they are the ones who suffer as a result of that.

The property development industry is often seen as people who rapaciously want to develop. To put another face on that, we rapaciously want to service the demand for the product that we build—that is, new homes—and the population is growing and therefore there is that product that we want to service. What we need to do is ensure that that is done in an affordable way in the medium and longer term, not just in the immediate term where we have those rising price values which are being supported by low interest rates.

**The Hon. ROSE JACKSON:** To be clear, as you say, it is clear that there is massive demand in regional New South Wales. So it is not the case right now that banks are not offering finance to developers who are looking to build stock in regional New South Wales because, in fact, there is so much demand that there would be no concern that there would not be able to be purchasers at the end for that product.

**TOM FORREST:** That is true, but that is not a sustainable long-term position. But what I would say is—and this goes back to the point that Ms Faehrmann raised—at the moment sometimes the specificity of the requirement for biodiversity offsets is so great that it simply slows down or even stops the process. While it might be affordable—and that creates a problem for another day should interest rates go up, but let us put that to one



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side, as you say—what you get then is a delay or a non-delivery of the housing stock, which exacerbates the very problem of rising prices in the first place. So we have sort of got dual problems which, in some respects, compete against each other.

**The Hon. ROSE JACKSON:** It is easy to say that in theory that development is not occurring because they cannot find a like-for-like offset, but can you give us specific examples? Where has that happened? Where has that occurred?

**TOM FORREST:** I would have to take the question on notice.

**The Hon. ROSE JACKSON:** That would be useful. I want to ask about the threshold, which was your recommendation four. What kind of threshold might you be looking for between a small site and a large site, and the different systems that you suggest would be applicable in those circumstances?

**TOM FORREST:** It could either be a value threshold in terms of the construction value or it could be a physical size threshold.

**The Hon. ROSE JACKSON:** Would you have a preference, Mr Forrest?

**TOM FORREST:** I would not have a preference. What we would be keen to do is to establish a system where at least there was some degree of a more flexible system for the smaller development community to be able to go forward. While it is obviously recognised that for very large land parcels there should be an application of a system where it is more specific, for the smaller folk often the identification of one item of biodiversity species on that land can cause mayhem. If there were an opportunity to contribute more broadly to national parks stock through a broad pool of biodiversity protection funding then that might be an opportunity to be able to progress those smaller land parcels without having to go through the strenuous rigours of the current system.

**The Hon. ROSE JACKSON:** In your recommendation five and in your opening statement you talked about the potential for the use of credits, as you describe them, for onsite improvements that developers might be able to make. What might some of those onsite improvements look like? What type of things did you have in mind?

**TOM FORREST:** The planting of protected species, the creation of natural habitat for fauna—both flora and fauna could be protected. There is no capacity at the moment for developers themselves to participate in the creation of opportunities for the expansion of biodiversity on their sites. It is almost presumed that we will clear it and then brick it or concrete it. But the reality of the world of development is far more sophisticated than that these days, and the creation of communities and opportunities for protection of threatened species often increases the value of those lands and, therefore, the saleability of those same things.

**The Hon. ROSE JACKSON:** Lastly, I wanted to ask about the recommendation that you made that the biodiversity requirements of any development is finalised at the rezoning stage—the Chair was asking some questions about this. How would you see that working? Once land is rezoned—even within a new zoning category, there are a range of different uses that it can be put to, some of which are perhaps much more intensive and much more impactful, while others are far less so, even within zoning categories. Would you view it that there would be a fixed cost, in a way, associated with any development on that land, consistent obviously with the new zoning, or would you accept that there would be potentially some flexibility amongst, "Look, it is zoned for this, but within the scope of that there are a range of different uses that it could be applied for," and you would not necessarily pay the same if it was used for one use as opposed to another that had a different impact?

**TOM FORREST:** I guess the question is, if there is a threat to the threatened species as a result of the development, it does not really matter if the threat is a commercial development, a farming development, a mixed-use development, a housing development, a rural land package development or a high-density urban development. If it is threatening the species, it is threatening a species. What we need to do is identify those threatened species before the impact and then, frankly, I would probably contest that most land uses that we are talking about—if it is rural, environmental land currently and it is being adjusted but into another zone that is similarly protective of rural and environmental land, I doubt you would need to go through the process of going through a biodiversity conservation species analysis.

But where you are seeking to change the zoning of the land for the purposes of the creation of the expansion of the city—that is, either for residential accommodation or, alternatively, employment land—it is in those circumstances where you need to go through the process because they are the types of land uses where you are going to have a degree of clearing, a degree of threat to those biodiversity species and, as a result, there is going to be a need. You do not want to make it too complicated where you have a table of a thousand "if, thens", but I would take the point that perhaps, if it was not going to have any practical impact, then you would not need to go through that process, and that would be sensible.

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**The Hon. ROSE JACKSON:** It is just that often it is not black and white. There is an area of land, it is perhaps changing, even from a rural or environmental use into some kind of residential or development use. It is not always black and white; species will be threatened definitely by any development or not. Often there are grades of these things. If you clear the whole thing and put up 20 storeys then, sure, it is going to be pretty impactful. If you are doing a much lighter touch, like low-density residential development, which maintains a lot of green space, that is quite different. They would not necessarily be caught in the same residential zonings, but you can see the point that I am making, that the zonings themselves have quite a lot of scope for different use.

**TOM FORREST:** They do, although the zoning table is quite specific from R1 through to R2 through to R3 through to B1—there is not going to be competition within the same zoning between a 20-storey building.

**The Hon. ROSE JACKSON:** That is true.

**TOM FORREST:** I would put on record—and you would be surprised if I did not—that you can get a lot more houses in a 20-storey building and therefore be able to protect a lot more of the environment than you would if you were to spread that out over a massive area and had to clear the entire subdivision. Thank you for that opportunity.

**The Hon. ROSE JACKSON:** That is a good point as well, though. There are a range of different ways that an impact in a parcel of land can be felt.

**TOM FORREST:** Yes.

**The Hon. ROSE JACKSON:** And the idea of fixing the costs at the rezoning stage, I am wondering whether that provides enough flexibility to actually make a decision about, "This is the specific development that is proposed for this site," but I think you have answered how you would see that working.

**TOM FORREST:** You have raised a very good point, and I might quickly respond—and I am thinking as I go. Ultimately, the key is to have the biodiversity species identified and the cost associated with the protection of that biodiversity species identified. If you can protect it with the development that you propose, you should not have to pay for the cost of the protection of that or the replacement of that elsewhere. And then that might influence the type of development that proceeds. But the key is—

**The Hon. ROSE JACKSON:** It is knowing, yes.

**TOM FORREST:** —from our perspective, knowing up front what it is that you are likely to be up for and not buying and hoping or, indeed, in some cases—and I certainly would not want to think that any of our members would do this—potentially buying and quietly clearing and hoping that nobody notices. That is the thing that we want to avoid the most.

**The Hon. SCOTT BARRETT:** Just coming back to the issues you mentioned are particularly pronounced—the challenges around the offset program—in rural and regional areas. Is there—and I am just going to make some numbers up—a proportional difference where the offset costs are going to be a lot higher proportionately on a \$200,000 block on the edge of Cobar than they would be on a \$1.2 million block on the edge of Penrith? Is that causing problems and, if so, can you elaborate with some real numbers, not made-up ones?

**TOM FORREST:** Yes. I completely take the point and I agree with you that obviously, if you have a fixed cost across the protection of all biodiversity species, it is going to impact on lower cost land more greatly than it is going to impact upon higher cost land as a proportion of the total cost. That said, the protection of species is the protection of species. If your object is to protect the particular species, it does not really matter if it is on low-cost land or high-cost land; it is probably more affordable as a proportion of the total cost. But, on the other hand, in the cities we are facing the situation where every marginal increase is making it more and more difficult for us to create both an economically and environmentally sustainable growth of those cities going forward, and that is a real challenge as we go forward. I think you raise a very good point, but am I able to provide specifics in relation to that? No, not at this stage, I cannot. I am afraid I cannot add further to my answer than that.

**The Hon. SHAYNE MALLARD:** Good morning and thank you for your submission, Mr Forrest. We are straddling between environmentalists who are very unhappy with us here and developers who are very unhappy, so it seems that we have a bit of a balancing act to do. I wanted to ask—following on from the criticism of earlier witnesses, though I do not know if you saw them—are your members critical of a lack of transparency in the scheme, or a certainty about the transactions?

**TOM FORREST:** Yes.

**The Hon. SHAYNE MALLARD:** If so, would you like to outline some suggested measures to make it more transparent—I was going to ask the last witnesses that same question—that we could look at?

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**TOM FORREST:** The current calculator mechanism is a bit of a black box and it does not have a degree of transparency. If I could compare it with another black box—but it is not quite as black as this one—that is BASIX. The way you calculate BASIX is there is a thing called a sandbox tool, and you have BASIX specialists, who are specialists analysts, and you plug in all your inputs into the construction of the building and it plugs out a BASIX number. You put in what type of glass you use and how much timber you are using and how much structural steel you are using and how much solar. You have a sandbox tool and it gives you a number. Any BASIX analyst is unable to give you that number. We find that you need to have a mechanism similar to that BASIX sandbox tool if something similar could be applied in this area.

To that end, we have tried to be constructive, Mr Mallard. Urban Taskforce recognises that this is a vexed issue but it is not going to go away. The question of biodiversity and protection of species is not going to go away, but nor is the demand for increased housing supply and pressure on the urban fringes in the regions as well as on the urban fringes of Sydney. The recommendations that we have made and the idea that you might pool groups of different species together—they have to be similar enough that you are still protecting a decent lump of species. But collectively it would only be if it were a highly threatened species and therefore of very high conservation value, and then there would a higher value attributed to that.

If all the species in that very high value have a large pool of funding going to it, there is a greater chance that the Biodiversity Conservation Trust would be in a position to be able to purchase land parcels which protect that very same species. At the moment you are not effectively getting the funds created through the transfer of those credits because they are so specific that you are unable to identify something similar and so nothing happens. And when nothing happens, that is the market failure that I am talking about. So we have tried to be constructive. It is a black box at the moment and we recommend any work that can be done to create a system with greater transparency would be beneficial for both the conservation community and those representing them, as well as the property development community. We would be supportive of that.

**The Hon. SHAYNE MALLARD:** We had some criticism of "vegetation brokers", I think that was the term that was used. I like the term "middlemen"—people navigating this complex area on behalf of property owners and then the purchaser of the offsets. Do you have experience around that merged area?

**TOM FORREST:** I am concerned about the question of poacher-gamekeeper. There should be a clear system where a conflict of interest is able to be expressed and identified publically. In fact, there should be a prohibition on anyone who is doing biodiversity ecological identification of land, and particularly species, for protection and also them owning parcels of land that might be able to be sold. That should just not be allowed. It would not be allowed in the case of a property developer. You would have to clearly identify those, and pretty well everywhere else in the administration of the law in New South Wales.

You try to separate those who are doing the assessments from those who might benefit from the assessment that is being done, and you do that by having them publically note, "These are the properties that I hold and these are the species that I'm looking to place onto the credit register." Therefore, if you are going to be doing an investigation of anywhere that might have any of those species, you rule yourself out. It seems to me to be pretty sensible and would protect this question of conflict of interest from arising.

**The Hon. SHAYNE MALLARD:** My last question is to flesh out the issue. The current iteration of the scheme is four years old. Your experience of the scheme—going back from the original scheme to this scheme, it seems to be constantly evolving and requiring refinement is a market mechanism. Would that be your view, that it is improving as we move forward?

**TOM FORREST:** I think that the knowledge of everyone of the system, the knowledge of what you can do and what you cannot do, and what is necessary for protection and where you might be able to identify species that might offset has all improved. I guess the frustration is always that the placement of additional items onto the register, as is the way in an environment, in a situation where species are increasingly becoming threatened—of course they go onto the list. That is life, I guess, but it is a frustration for development and it is a frustration for developers, and ultimately it is an additional cost for the consumers because, as I mentioned earlier, at the end of the day, the developer will not develop if it becomes unfinancial to do so.

That is just the reality that we face. It is an area that we understand as a development community is not going away. We would like to look to systems that make it more predictable and therefore more manageable, and that goes back to the very first question that the Chair and I discussed at the beginning of the discussion.

**The CHAIR:** I will check with the Hon. Penny Sharpe and the Hon. Catherine Cusack to see whether they have any questions. Catherine is not there.

**The Hon. PENNY SHARPE:** No, but everyone has asked most of my questions, so they have been covered.

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**The CHAIR:** That is the end of our questions for you, Mr Forrest. Thank you very much for appearing today and for your submission. It is good to get the perspective of you and your members. I do not believe you have taken any questions on notice. If you have taken something on notice, the secretariat will be in touch with you about that, and you may get some more questions from Committee members as well.

**(The witness withdrew.)**

**(Luncheon adjournment)**

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**Ms JULIE MORGAN**, Executive Director, Environment and Sustainability, Safety Environment and Regulation, Transport for NSW, affirmed and examined

**Ms INGRID EMERY**, Executive Director, Project Interfaces and Program Management, Water Infrastructure NSW, affirmed and examined

**Mr ATTICUS FLEMING**, Acting Coordinator-General, Environment, Energy and Science Group, Department of Planning and Environment, before the Committee via videoconference, affirmed and examined

**Mr DAVID GAINSFORD**, Deputy Secretary Development Assessment, Department of Planning and Environment, on former affirmation

**Ms MICHELLE DUMAZEL**, Executive Director, Biodiversity and Conservation, Department of Planning and Environment, on former affirmation

**The CHAIR:** Welcome to the final session for today's hearing. I welcome our next witnesses. I understand that you have the opening statement for your group, Ms Morgan.

**JULIE MORGAN:** I am pleased to appear as a witness before the inquiry in my role as Executive Director, Environment and Sustainability, within the Safety Environment and Regulation division of Transport. As the Committee may be aware, Transport for NSW is a major participant in the Biodiversity Offsets Scheme but our first priority in relation to environmental impacts is not to offset or impact but to avoid impacts on biodiversity and to mitigate any impacts to the greatest extent practicable. This is a core part of our assessment processes at all stages of development, and carries into the delivery of infrastructure. We are very conscious of the environmental impacts of our projects and endeavour to minimise those impacts at all stages. Where impacts cannot be avoided or mitigated, we work to secure any offsets as early as possible, particularly when we know that competition for biodiversity credits will be high and to avoid the long compliance tails that characterised previous schemes.

We actively assist in developing the credit market by supporting local landholders to generate credits and by using our own land to create credits. Transport has assisted private landholders to generate 16,400 credits across 2,022 hectares of land, and we have generated more than 17,300 credits across 1,400 hectares of Transport-owned land. We support a robust and transparent credit market by publicly advertising for credits through expression of interest processes, and by taking a consistent approach to offers for credits and pricing. Transport currently has four major projects under the biodiversity offset scheme. Two of those projects have fully acquitted their offset obligations, and the offsets for the other two projects are on track to be acquitted prior to project impacts.

The majority of State-significant Transport projects are under previous biodiversity schemes and have generated a range of biodiversity outcomes and benefits through conservation measures and offsets. WestConnex New M5, which is now called the M8, is a good example of where conservation measures were used to complement a biodiversity offset. The project was required to offset impacts to seven hectares of green and golden bell frog foraging habitat within Kogarah golf course. And, consistent with the rules of the scheme at the time, those credits were obtained from a site on the mid North Coast. However, the project conditions of approval also included the implementation of a green and golden bell frog plan of management to ensure the protection of the frog population in the vicinity of the project works, and the implementation of a habitat creation and captive breeding program.

During delivery, Transport avoided direct impacts to the small population of green and golden bell frogs present in a constructed pond on the site. The habitat creation and captive breeding program was implemented in partnership with Symbio Wildlife Park, and a population of green and golden bell frogs is now established in specially constructed ponds on a Transport site at Arncliffe and the green and golden bell frogs are also still being recorded in their original habitat on the golf course.

Another example of offsets is the Woolgoolga to Ballina portion of the Pacific Highway upgrade, which is the largest Transport biodiversity offset package to date. Woolgoolga to Ballina involved the construction of 165 kilometres of road, and the residual biodiversity impact after avoiding and mitigating impacts was assessed at 857 hectares. The \$50 million offset package includes 4,660 hectares of offsets over 30 properties, which meet the like-for-like requirements and which will have in perpetuity protection and management. These are just two examples of how Transport works within the scheme to offset unavoidable impacts of infrastructure development. However, our first priority remains to avoid and mitigate those impacts wherever possible. Thank you for the opportunity to address the Committee.

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**The Hon. PENNY SHARPE:** Thank you, everyone, for coming along today. I might just actually start with you, Ms Morgan. Thank you very much for your opening remarks. You mentioned the four projects; two are completed in terms of their rostered requirements and two are underway. Can you identify for us which ones those are?

**JULIE MORGAN:** Yes. Thanks for your question. Those two projects are the M6 extension stage one, which had 92 credits which have now been retired, and Sydney Metro Sydney International Speedway, which had five credits which have now been retired. The other two projects are the Western Harbour Tunnel, which has two species credits, and Sydney Metro Western Sydney Airport, which has 1,100 ecosystem credits and 1,300 species credits. Both those projects are in the process of acquitting their obligations prior to project impacts, which is when they must be retired.

**The Hon. PENNY SHARPE:** What is the time frame on that?

**JULIE MORGAN:** It is prior to project—

**The Hon. PENNY SHARPE:** When do you expect the impact to start?

**JULIE MORGAN:** The impact starts usually when construction starts or where there is impact to that particular species.

**The Hon. PENNY SHARPE:** Can you give us an idea about what that time frame is?

**JULIE MORGAN:** I do not have the details around that. I believe the Western Harbour Tunnel credits will be retired imminently. The Sydney Metro project I believe has—I am sorry, I cannot. I would have to take that on notice and come back to you and see what we can find.

**The Hon. PENNY SHARPE:** That is fine. You can take that on notice. That is no problem. Thank you. That is just helpful. Transport programs have a long lead time before they start, and I was interested in your comments about trying to avoid and minimise before you actually go to offset. Within Transport and your role or elsewhere, is there an oversight document that talks about forward planning for these projects? Some of them clearly you cannot avoid dealing with it. There is going to be a biodiversity offset requirement. How is that sort of tracked internally?

**JULIE MORGAN:** Thanks for the question. I think the best way to answer that is to say the biodiversity impacts are assessed on a project-by-project basis. Where there is a large program of works, we do do strategic assessments of the likely potential impact across a program of works. We do that because it is critical to understand the likely potential impacts to drive the avoidance. Having a good idea of what the impact might be and what the cost of offsetting that might be factors into all those early planning decisions around route options and other considerations and then it is continually factored into detailed planning and assessment.

**The Hon. PENNY SHARPE:** But it is done project by project; it is not a consolidated overview of the infrastructure pipeline.

**JULIE MORGAN:** It is done at a strategic level for programs, but then it also has to be repeated project by project because it needs quite a precise assessment of what the impact is for each project.

**The Hon. PENNY SHARPE:** Thank you very much. I think is one for you, Mr Fleming. My understanding is that the BCT's charge system is in draft form. Is that correct? Can you give us an update on where that is up to, please?

**ATTICUS FLEMING:** Yes. Ms Dumazel might add some additional detail, but the BCT has circulated a draft proposal seeking comment. I think they are in the process of still meeting with some key stakeholders, formulating a proposal that would be [audio malfunction]—

**The Hon. PENNY SHARPE:** [Disorder]

**The CHAIR:** Excuse me, Mr Fleming, I am just going to interrupt. Sorry, Penny, I am just going to interrupt. Your sound just cut out for a little bit there, which is going to make it extremely difficult for Hansard. Can you move closer to your computer and maybe just repeat the last thing you said, your last sentence, if you can?

**ATTICUS FLEMING:** Yes. I think what may have been missing was the statement that the BCT were in the final stages of consulting with that office, and there would then be a proposal that would be considered by Government. But Ms Dumazel can provide [audio malfunction]—

**The CHAIR:** Thank you. Mr Fleming, you are going to have to speak quite slowly, I think, and closer to your microphone so we catch every word. Ms Dumazel, are you wanting to—

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**MICHELLE DUMAZEL:** No, there is nothing further to add on that one. The BCT—

**The CHAIR:** Sorry, Ms Sharpe. Go for it.

**The Hon. PENNY SHARPE:** You do not have a time frame. This was supposed to be in place, I thought, by now. We are in a second round of consultation on the draft. I am not criticising extra consultation. I am trying to understand the time frame for this to be put in place.

**MICHELLE DUMAZEL:** Yes. I understand the BCT is just working through the final details of that and just going through making sure that they are taking on board the feedback from the stakeholders and getting the charge system right. I do not have an exact time for that, but they are working through the detail as quickly as possible.

**The Hon. PENNY SHARPE:** You are not able to take on notice a time frame in terms of when you expect that to be completed?

**MICHELLE DUMAZEL:** I am happy to take that on notice.

**The Hon. PENNY SHARPE:** Great. Thank you. I wanted to just get an update. I am not sure who the right person is; I suspect it is Mr Fleming. We have been through a number of these hearings now. On the issue of investigations and concerns around insider training and the arrangements for staff within the department to participate in the programs, I understand there has been progress there. Are you able to give us any update on where the various investigations are up to?

**ATTICUS FLEMING:** Again, I think that is a question for Ms Dumazel. I do not think we can comment on the external investigations, but on the internal investigations, Ms Dumazel might be able to provide an update.

**MICHELLE DUMAZEL:** Yes, I can give a further update. In terms of the ICAC investigation in relation to the department, the department was advised on 23 March 2022 that the commission had conducted an investigation into the matter, which included an extensive review of records and emails, along with numerous interviews. The investigation did not reveal sufficient evidence to suggest serious corrupt conduct had occurred. In the absence of further cogent information being received, the commission will not be taking any further action in relation to the investigation of this matter. In terms of our conflict of interest protocol, that is in place and our governance area has been providing support to staff in terms of making sure they have the information available to support them in their decisions.

**The Hon. PENNY SHARPE:** Thank you for that; that is very helpful. Do you have the number of staff that are participants in the program, whether they are owning land, trading credits and those kinds of things?

**MICHELLE DUMAZEL:** Yes. For the biodiversity conservation and science directorate, there are two staff and we are working through that process with them.

**The Hon. PENNY SHARPE:** Right. My understanding from the last time we talked about this was that they were going to have to make a choice of divesting or moving and that they cannot be active participants. Is that correct?

**MICHELLE DUMAZEL:** That is correct. And our protocols on our website as well, and that details there is a 12-month period to divest.

**The Hon. PENNY SHARPE:** Thank you. And that is two active staff. Are you able to tell us how many staff in total over the period of time since the program has been in place have been participants?

**MICHELLE DUMAZEL:** There have been four.

**The Hon. PENNY SHARPE:** You might have to take it on notice.

**MICHELLE DUMAZEL:** Yes, there have been four staff. But I will take it on notice.

**The Hon. PENNY SHARPE:** Across the entire—

**MICHELLE DUMAZEL:** I will take it on notice, but my understanding is that there are four staff.

**The Hon. PENNY SHARPE:** Is that just within the cluster? For example, National Parks and Wildlife staff are captured by that?

**MICHELLE DUMAZEL:** I would have to take that on notice.

**The Hon. PENNY SHARPE:** Thank you. The changes that were put in place were to extend biodiversity offsetting to more projects over time and included major projects and those kinds of things. There has been comment recently by some members of the Government and others about the cost of biodiversity offsets

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and there has been speculation that there are plans or ideas that State significant development and other types of projects should not necessarily be included. Has there been any work undertaken that would look at removing classes of projects from the scheme?

**MICHELLE DUMAZEL:** Not that I am aware of. The thing that we have been working on has been around improving supply, to support supply and looking at the pipeline of projects. So thinking about demand and then working to how we can increase demand to increase supply to support the demand that we are seeing through with the scheme.

**The Hon. PENNY SHARPE:** Thank you. It may not be your area, maybe it is Mr Gainsford's. Mr Gainsford, are you aware of any discussion or otherwise, or work being undertaken, that would look at changing the types of projects—and these are obviously government projects—that would be subject to biodiversity offsetting?

**DAVID GAINSFORD:** So, Ms Sharpe, I am not aware that there are any plans or any work ongoing about removing types of projects from their application to the scheme. I think in our evidence that we presented at the last time that we were here—and Ms Dumazel might want to add to this—we did talk about, I guess, what I would describe as some fine-tuning of the way that the system is working, particularly for linear critical State significant infrastructure, primarily around the timing of when those offsets are being provided. But there is no work that I am aware of that is suggesting that types of projects are going to be removed from the system.

**The Hon. PENNY SHARPE:** And when you talk about fine-tuning, the requirement, as I understand it, is that the credits need to be dealt with before the impact occurs. When you talk about fine-tuning, is that essentially allowing more—that basically the projects can start, the impact can start before the credits are acquitted?

**DAVID GAINSFORD:** In some cases that is correct, yes, that is one of the things that we are looking at. I am not sure if Ms Dumazel wants to add to my answer there?

**MICHELLE DUMAZEL:** The main aspect that we have been working on is thinking about how we can best support proponents, be that government proponents or external proponents, to try and think about their biodiversity requirements sooner rather than later. And the work that we have been doing around that is really trying to engage with proponents up-front so that they do not get to the end of their whole, kind of, planning period and then thinking about biodiversity offsets. Because if you can do it from the very start, you have got a better chance of doing that avoid-minimise aspect.

We are really focused on trying to support proponents and we have actually just put in place a hotline that anyone can call us now if they want to talk about how they can engage with the scheme. But then also, in terms of government projects, we are working much more closely with counterparts right up-front. Because then if you can think about what the overall costs are, and we can really kind of think about how you can avoid those high-value areas, then what it means is that those choices are made at the very start rather than at the end. So certainly from my perspective, that is the focus of my team, as well as other improvements that we are trying to undertake to help not only proponents but land owners who want to create biodiversity stewardship agreements. Because if we can then get that supply and demand, kind of, working much better together, then that will also mean that the offsets are dealt with sooner. So that is my priority.

**The Hon. PENNY SHARPE:** Thanks for that. In the last session we had the UDIA come in—obviously representative of developers. They made the point, which I did not think was unreasonable, that the earliest consideration of what the biodiversity impact is on any kind of land change use before you even got to the project stage is very useful, and does not happen. They were suggesting that there needs to be more work done up-front, as the rezoning is happening, for example, because we do not really get to the EIS stage—it is really at the EIS stage that the full biodiversity impact is dealt with. That is a long way along the process. Has there been consideration in terms of that up-front assessment at the rezoning stage?

If you like at the south-west corridor and the whole issue with koalas, we are playing catch-up. This land has been rezoned. It is worth a lot of money. There are thousands and thousands of houses going into an area we are trying to back deal, at the end deal, with the impact on koalas rather than before that was rezoned. There had not been a clear understanding of the impact, and I think it would have perhaps changed some of that. Is that a consideration anywhere in the mix, in terms of the changes?

**MICHELLE DUMAZEL:** Yes. Certainly thinking about it at that planning stage—Mr Gainsford might want to add more to this—as well as having the Biodiversity Offsets Scheme team with me, I have also got a planning team that works—an environment planning team that works with my planning colleagues. And one of the things that we are looking to do is really at either that regional planning stage as well as at the—you know, a proponent can do a bio certification at the start, and doing it up-front makes life a lot easier. It means that we can



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really think about the strategic environmental outcomes that we want as well as the work that the Biodiversity Offsets Scheme team is doing in terms of helping proponents when they are at that point where they are doing their biodiversity assessment reports. Also I have got a team that is really looking at what is the landscape and how can we work with our planning colleagues who are doing that regional planning, so that we can try and think about what are the strategic areas of biodiversity that we can, kind of, include at that planning stage, and we would encourage proponents in terms of that bio certification. But Mr Gainsford, I am not sure if you have anything more to add?

**DAVID GAINSFORD:** I would endorse what Ms Dumazel is saying there. Obviously, you know, there are mechanisms within the existing system with biodiversity certification processes, and there are examples of where this has been done in the past, such as some of the work that was done a while ago on the South West Growth Area and the North West Growth Area.

**The Hon. PENNY SHARPE:** Yes, Mr Gainsford, there is a lot of controversy about the backwards and forwards on that. There has been work done. Some people would argue very strongly that it has been chipped away at from the minute it was done. But sure, I do not expect you to comment.

**DAVID GAINSFORD:** No. So I guess what I would say is that, yes, we are always open to looking at mechanisms. I very much endorse what Ms Dumazel is saying that the earlier that you can consider these matters, the better.

**The Hon. PENNY SHARPE:** I am conscious that other Committee members have questions. Specifically to deal with that, there has been all this work done on the blue and green grid across Sydney; there is the Cumberland Plains Plan and that is all in place. How is that triggered in terms of the—where formally is it included in that? There is land that has got important biodiversity on it. It is also earmarked for development. How are those kinds of tools that have been done by government—where do they fit into the system where they are dealt with? Or is it just that as we are going through the very long EIS process, these things get incorporated along the way?

I suppose I am looking for recommendations for this Committee. I know that you are a public servant and that these are policy questions. I am not asking you to give your opinion, I am really just asking about what is the mechanism for things like the green and blue grid to be actively considered at the rezoning and those earlier stages of the planning process rather than when the land has been bought and when the expectations are made in terms of how much money is going to be yielded off that? Trying to bolt those things in later seems to be failing.

**DAVID GAINSFORD:** Ms Sharpe, it is not my area of expertise, I must admit, in terms of that work that has been done around the blue and green grids. But I can speak from a consideration from an environmental impact statement point of view, which is that there are requirements and certainly ones that we carefully consider in our assessment around the incorporation of that strategic planning work that has been done, both from a formal sense in terms of where it has been adopted as part of State environmental planning policies but also the non-statutory policies of government as well. So it is certainly something that is taken quite seriously through the EIS process.

**MICHELLE DUMAZEL:** I might add to that. In terms of the regional planning process, we have regional-based teams that work with Planning to look at a broader scale. They will provide advice to—it is a different part of the department from Mr Gainsford's area, but we work closely with them to provide them advice in those higher level strategic planning processes. So we feed information into that. We also have a mechanism under the Biodiversity Conservation Act called strategic biocertification. What that does is it allows us to look at it from a strategic landscape scale, and that is the process that is happening with the Cumberland Plain Conservation Plan. We are at the moment considering that plan and that strategic biocertification now. I think that is the mechanism to be able to look at what are the overall values that you want from a strategic landscape scale. Then the other aspect, to be able to look at it from that strategic biocertification, we really rely on our *Biodiversity Outlook Report* and the information that comes out of our science.

**The Hon. PENNY SHARPE:** Who does that? Who is responsible for that report?

**MICHELLE DUMAZEL:** The *Biodiversity Outlook Report* is through a group; it is our Science, Economics and Insights division in the Biodiversity Conservation and Science division in the Environment and Heritage group. The indicators for the outlook report were developed with CSIRO. We have had one outlook report released. I am not sure about the timing of the next one, but what we do is we look at that report and we work closely with our Science colleagues to see what is happening and what the trends overall are in biodiversity.

**The Hon. PENNY SHARPE:** I can imagine that none of the trends are good because all the other indicators on every other test are not good. So this is a standalone biodiversity report that, I suppose, provides a

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snapshot over how the whole State is tracking. This will be my last question, Chair, before I hand to others. I am aware that I have taken up a lot of time.

**The CHAIR:** That is fine.

**The Hon. PENNY SHARPE:** How does that get—it is incredibly valuable, and I think it is very good that you do it. My concern is—again, I am sure that it will be saying that there are problems everywhere—how that then translates to a project-by-project approach and how the biodiversity offsets system works to try to protect that critical habitat and land where we are under significant pressure.

**MICHELLE DUMAZEL:** We use that information and we feed it into our Biodiversity Assessment Method. The Biodiversity Assessment Method is the transparent way of assessing biodiversity at the project level but also at the landscape level too. So the information from those reports is fed in, and that is how we then take that into account.

**The CHAIR:** The latest *Biodiversity Outlook Report* was done, when did you say?

**MICHELLE DUMAZEL:** I would have to take that on notice.

**The CHAIR:** Was it some time ago? In 2017 or something?

**MICHELLE DUMAZEL:** No. I would have to take that on notice.

**The CHAIR:** Thank you.

**MICHELLE DUMAZEL:** Mr Fleming?

**ATTICUS FLEMING:** Chair, I cannot give you an exact date, but it was released post the 2019-20 fires. If I remember, there was a bit of extra work done to try to take into account the impact of those fires.

**The CHAIR:** I have a copy of it in front of me, and all the data seems to be up to 2017. But I note that you have referred to that both in your response today, Ms Dumazel, as well in the questions on notice in terms of how we are tracking. But looking at this in terms of data up to 2017, it would appear that this is potentially five years old. Would that be right, Mr Fleming, for most of the data in this outlook report?

**ATTICUS FLEMING:** I would have to take it on notice. It may very well be that the extra information to take out the fires was to supplement data that was a little older, so you may be correct. We will give you an answer on notice, if that is okay.

**The CHAIR:** Going back to the answers that were given in response after our hearing last year and the questions on notice provided by the Government, they do link to a question that I asked about the cumulative impacts of multiple developments on threatened species. Part of the response that the Government provided was indeed linking to this assessment report. This is the assessment report for the Biodiversity Indicator Program. I will let you know that it does say that this was published in June 2021. But, again, when you go through and look at the various indicators, it does suggest in everything that I have read in it that it is just up until 2017. Is there another outlook report that is due out soon?

**MICHELLE DUMAZEL:** I am not sure of the date that it is due, but there is an obligation to provide a regular outlook report. I would have to take that on notice on when the next report is due to come out.

**The CHAIR:** Does the report go into individual species in terms of the Biodiversity Indicator Program? When you look at this report, it is extremely broad. It highlights a few case studies of species, but I am just wondering in terms of the science behind it, does it go into individual threatened species?

**MICHELLE DUMAZEL:** I would have to take that on notice.

**The CHAIR:** Mr Fleming, you are not aware?

**ATTICUS FLEMING:** I think it is better for us to take on notice a detailed response for you. I would only add to comment that I think that report is intended to provide a statewide analysis and, as a result, is pitched at a relatively high level. But it is drawing data from many sources, and that would include data on individual species. That is my expectation, but we will confirm it.

**The CHAIR:** It is frustrating because it was a question that I asked in the last hearing. The question was that there is no way within the scheme to measure cumulative impacts of multiple developments on threatened species. This was a question that the Government took on notice—Ms Dumazel, you took it on notice. You have responded to that question on notice with this document, which does not seem to highlight anything in relation to individual threatened species. I am asking it again and you are about to take it on notice again. Is that seriously

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what is happening, that you cannot tell me whether there is any mechanism for the Government to be able to assess the cumulative impacts of developments on threatened species under the Biodiversity Offsets Scheme?

**MICHELLE DUMAZEL:** The outlook report looks at cumulative impacts across the State, so not just with development. The question—

**The CHAIR:** How does it do that?

**MICHELLE DUMAZEL:** I would have to take that on notice, because that is my colleague—it is a different part of the directorate that looks after that report. As Mr Fleming was saying, there is more detail. That is a high-level report but there is more detail that sits underneath that. But the questions you are asking specifically relating to threatened species, I would prefer to take that on notice so I am giving you the best—we can ask that part of the organisation to provide that information.

**The CHAIR:** Okay. Again just going through some of the responses to the questions on notice taken last time, does the Biodiversity Assessment Method take into account cumulative impact?

**MICHELLE DUMAZEL:** It considers the state of biodiversity now, like, in terms of the recent information, it gets fed into the—

**The CHAIR:** From BioNet?

**MICHELLE DUMAZEL:** Yes, into the assessment method, so that then when a proponent is preparing a report and how it will calculate how many species credits might be required, it is taking into account the existing information that we have got. I do not have the details with me now about how that process occurs. I do not have that information in front of me, but I know that they regularly feed the information in so that we have got the most up-to-date information that is available.

**The CHAIR:** What it seems, actually, is that the information is coming once the threatened species is more at threat. That is fed via departmental officials into a program—which could take years and years and years, I understand, in terms of being poorly staffed. They feed that information into BioNet. Let us take, for example, koalas—although there is probably a better example to use. That information is fed into BioNet, but in the meantime development after development can occur. For example, clearing of koala habitat—there is no database that you have that is maintained by the Government that is able to say, "Hang on, all of this has just been cleared. In the past two years we have assessed and approved 8,000 hectares—for example—and we know that 8,000 hectares of koala habitat has been cleared. That is probably a bit of a sign to not allow this application for 500 hectares to be cleared." There is nothing that says that. It is almost the other way around; it is like the species has to be incredibly at risk firstly through BioNet?

**MICHELLE DUMAZEL:** No, there are a couple of different layers.

**The CHAIR:** Please tell me.

**MICHELLE DUMAZEL:** There is the one around the status of the species and there is a hierarchy with that. So the Biodiversity Assessment Method considers that, and the method looks at it from a—so that is the kind of cumulative, you know, you are looking at it in terms of what the status is and what is happening there.

**The CHAIR:** Which is not cumulative impact.

**MICHELLE DUMAZEL:** Well, no, it is looking at—

**The CHAIR:** It is historical impact, I suppose, if they are threatened.

**MICHELLE DUMAZEL:** It is looking at the status of that and feeding that in in terms of the assessment method. But then it is around the actual site. So what are the values on that site? And then what is the intent of the proponent in terms of the development? So that then, for example, if you have got a large apartment block that might be going up and it is going to be impacting on high-value biodiversity—for example, it could have koala trees that are there—what the assessment method does is it takes you through the hierarchy in terms of the choices that you make to avoid it. So if you moved that apartment block—

**The CHAIR:** Yes, we have had that explained to us a fair bit. So if there are, say, 23 different applications across the State for different projects that are going to impact on a particular ecosystem or species that is at risk, at no point does anything get triggered that it is all happening together and it is a cumulative impact and we are going to have potential species extinction? It is still assessed individually, is it not, Ms Dumazel? That is actually what does happen. Because we have asked questions—I know that my colleague Ms Sharpe asked questions similar to this at the last hearing. It was all taken on notice and I have just gone through the answers. In fact, there is not any way for the department to assess the cumulative impact on threatened species with this scheme at the time of assessment and approval?

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**CORRECTED**

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**MICHELLE DUMAZEL:** The scheme fits into a broader framework. It is one element of the Biodiversity Conservation Act, and the Biodiversity Conservation Act has quite a number of different elements. This particular component, the Biodiversity Offsets Scheme, is to help proponents to discharge their responsibilities in terms of any biodiversity loss.

**DAVID GAINSFORD:** Maybe I can just add to this and hopefully it is helpful, Chair. I think when we last presented to you, we talked about the cumulative impact assessment guidelines that the department had released last year. It is certainly the expectation of those guidelines that when we are assessing an environmental impact statement, there is that consideration that is happening of potential future development, so it is not just based on historic. I take the point around individual threatened species. But from the department's point of view, there is a requirement to look at potential other projects that could have a cumulative impact with the project that is being assessed.

**The CHAIR:** Thank you for mentioning that because I was also going to bring that up. With the answers to the questions on notice, yes, there was a link. I tried to follow that link to the cumulative assessment guidelines and I could not get to the link; it had "Page not found". I tried to find it on Google. I found it incredibly hard and could not find it on your website. How is that going in terms of proponents accessing that? I assume that is a voluntary guideline. Explain how it works in terms of multiple developments.

**DAVID GAINSFORD:** Yes, it is a guideline, as you were saying there, but it effectively, I guess, brings rigour to an assessment process that was already part of the environmental impact assessment. Cumulative impact assessment is something that has always been an element of environmental impact assessment. So from an assessor's point of view, when they are assessing a project, they are interested both in site-based issues that might be accumulating. So, for example, probably the best example I can give is where there are impacts on a road system. If you have got a development that is actually generating a certain level of traffic and there are other developments that are happening in the area that have either got approval or they are under development, then there is a requirement to assess the cumulative impacts associated with those projects. But it also is not just based on a certain specific geography. It also does have requirements to look at broader landscapes, where they are relevant, as well.

**The CHAIR:** Thank you. Again, I am just trying to get a sense of how much land clearing, how much loss of biodiversity the Biodiversity Offsets Scheme is facilitating overall—how much loss of threatened species the Biodiversity Offsets Scheme is facilitating and how much it is actually saving. In your submission you say—there is a section there that says—biodiversity outcomes are being secured and delivered. I am looking at the evidence and I am just not sure that is the case. You suggest that—and it is great—the Biodiversity Conservation Trust, biodiversity stewardship sites, protecting over 27,480 hectares of land. That is great. But you provided a table in your answers to questions on notice, which says, "Table 1. Development and clearing activities - finalised biodiversity assessments (25 August 2017 to 19 January 2022)". For example, in that there were 206 major projects which have generated 694,632 species credits. And then in the stewardship agreement applications, finalised biodiversity assessments in terms of total species credits over the same time, in the agreement it is 176,923. That is a difference of potentially roughly 500,000 species credits.

Firstly, a specific question around that: Why haven't those 500,000 species credits for the major projects been put into biodiversity stewardship agreements yet? Do we know why? Why is there such a gap, and what does that mean for biodiversity outcomes?

**MICHELLE DUMAZEL:** I do not have those figures in front of me, so I would like to take that—

**The CHAIR:** Do you have a vague idea?

**MICHELLE DUMAZEL:** I would like to take that on notice.

**The CHAIR:** It is a lot.

**MICHELLE DUMAZEL:** What I wanted to say, though, was that the scheme itself has a principle of no net loss. That is the principle of the scheme, and then you have the decisions that are made around individual major projects. But I will take that on notice, about the specific numbers. I recall those numbers in the submission, but I would like to take that question on notice.

**The CHAIR:** Ms Morgan, do you have any idea? A lot of those would be Transport for NSW projects, wouldn't they? A decent number?

**JULIE MORGAN:** Thanks for the question. I suspect a lot would. I do not have that information to hand, though. I am sorry. I would not dare to speculate on it.

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**CORRECTED**

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**The Hon. MARK PEARSON:** Just for clarification, developers can buy these credits even though there are not in place yet landholders or participants who are going to be able to deliver the protection of species that those credits are purchasing? Is that the case?

**MICHELLE DUMAZEL:** A proponent has a number of different ways to discharge its obligations. A proponent can create their own biodiversity stewardship agreements on their own sites, or they can find someone close by to do it. They can purchase credits on the market, or they can pay into the BCT. Often, if a proponent is finding it difficult to source the credits, then the option to pay into the BCT is probably the best option.

**The Hon. MARK PEARSON:** So there are developments that can commence. You did mention that developments can actually commence, even though it is preferable that the offset requirements are analysed and concluded, the earlier the better. But you were saying that some developments are occurring and proceeding without those assessments being done. What is the requirement? When is it required that those assessments are made?

**MICHELLE DUMAZEL:** Offsets generally have to be made prior to commencement of construction. Offsets can be met through paying to the BCT; that has a time period to find the offsets.

**The Hon. MARK PEARSON:** If a landholder wants to participate in this and offer up some of their land for offsets for other developers, what is the process? Does your department do an assessment of the property for that?

**MICHELLE DUMAZEL:** A landholder who wants to develop a biodiversity stewardship agreement on their site would work with the BCT.

**The Hon. MARK PEARSON:** And how much does it cost them to have that assessment done by the BCT?

**MICHELLE DUMAZEL:** That would be a question I would have to take on notice for the BCT.

**The Hon. MARK PEARSON:** I am raising that because it was an issue raised earlier, that sometimes the cost can be rather prohibitive and therefore not attractive for this contribution for providing biodiversity offsets. It was argued that maybe there would be more participation if that cost was actually absorbed in the payment of the credits to the landholder. Has that been considered at all?

**MICHELLE DUMAZEL:** I would have to take that on notice. I would say that the BCT does have a loan facility, as well, for landholders who would be wanting to enter into a biodiversity stewardship agreement. Certainly, one of the things that we are really looking at is how do we increase supply and what are the barriers for landholders to participate in the scheme, to be able to set up a biodiversity stewardship agreement. We are working quite closely with the BCT on that, and I know the BCT have got their loan facility. But I will take that on notice.

**The Hon. MARK PEARSON:** Just one last question. Considering courts are actually now taking this into consideration in terms of impacts on the environment—but they are now taking into account climate change and the impacts on climate change—in the assessment of what would be the impact on species, rather than the actual in-situ impact on the land that is going to be developed, has it been considered to factor in what will be the potential impact on climate change by the clearing or industry that is going to be built there? Is that taken into account—the potential impact on climate change by the development, and the impact of that climate change on species?

**MICHELLE DUMAZEL:** I would have to take that question on notice. I do know that the Biodiversity Assessment Method does take into account changes in terms of what might happen in terms of the trends, in terms of temperature and so on. But I would like to take that on notice to make sure that I provide the best answer.

**The Hon. SCOTT BARRETT:** I would like to come back to that supply issue we were talking about before, Ms Dumazel, but you have been working pretty hard for a little while so I will give you a break. You can have a drink of water. Possibly, Mr Gainsford, we have heard little bit this morning and we have read about how often this scheme can disproportionately affect developments or people wanting to—or proponents, I think you referred to them before, in regional areas. We are talking lower-cost areas. The numbers I picked out before: \$200,000 block in Cobar versus a \$2 million block near Penrith, the biodiversity offset is going to be a much larger proportion of that development or that project. Are we seeing this proportionally in regional developments harder?

**DAVID GAINSFORD:** I am not actually sure I am best placed to answer that question, Mr Barrett. What I can say is that there are obviously a number of major projects which are in regional areas at the moment

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**CORRECTED**

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looking to secure offsets. One that comes to mind is the work that ARTC are doing around inland rail. I know there is a lot of discussions that are happening with landholders about potential offsets associated with those. I would not be in a position to make comment about the value of land. No, I am not best placed for that. Sorry.

**The Hon. SCOTT BARRETT:** Is there anyone who can talk to the effects on regional versus metro areas for this?

**ATTICUS FLEMING:** I cannot speak to the effect on regional versus metro, Mr Barrett, but I would just make the comment that one of the key objectives going forward is to increase supply. That obviously involves delivering benefits to regional communities who are able to develop these biodiversity stewardship agreements. So we are very aware of the need to reduce the barriers and reduce the costs so that there can be more biodiversity stewardship agreements, more credits, and therefore more income—funds flowing into regional areas as bases that buy these credits. There are always two sides to that coin, but we are acutely aware of the opportunity that exists in regional New South Wales and we are also aware of the need to tweak the settings to make sure that those opportunities are realised.

**The Hon. SCOTT BARRETT:** I guess in the initial work happening in that space, what are seen as the biggest hurdles for more landholders taking up biodiversity stewardship?

**ATTICUS FLEMING:** I think it would be reasonable to say that we need to reduce the barriers and streamline the process for developing biodiversity stewardship agreements. I do not think that is controversial to state, and the Government has committed to [audio malfunction].

**The Hon. SCOTT BARRETT:** Earlier we heard about it being too complex for landholders to do it. The people we spoke to were very well versed in ecology and biodiversity and they were struggling with it. I am guessing the bulk of our landholders in that area would struggle with that. Is that sort of the area we are looking at sharpening up?

**ATTICUS FLEMING:** Yes.

**The Hon. SHAYNE MALLARD:** Good afternoon, everyone. Mr Fleming, how are you? I just wanted to ask some questions following on from evidence we had today and previously around the calculator mechanism. I am not sure who would be the person to talk about that. I know the Government has done some work around this I understand recently. The Property Council [disorder] black box, for want of a better term, and they were suggesting a more open model similar to the BASIX model for development in terms of environmental, energy savings and sustainability of a building. Does someone want to talk about the work that is going on around the calculator at the moment?

**ATTICUS FLEMING:** I will make a very general comment. Ms Dumazel may be able to add some detail. The work is being led by the BCT at the moment. My sense of things, talking to some stakeholders, is that there is a general agreement that we need to improve on what is there and that the, if you like, replacement or the new version of whatever is put in place needs to be a sort of cost-based model. But I think it is fair to say, that is still a work in process landing that model in the right place. BCT has put something out for public consultation. I think what you are hearing is a response to what has been put on the table. I have received some feedback from other stakeholders. We are working through that feedback now, remembering that that is one pathway in order to secure your credits and it is the pathway through the BCT in effect. But we do need to [audio malfunction]. I am not sure if Ms Dumazel has anything [audio malfunction].

**MICHELLE DUMAZEL:** We clearly articulated the concerns we had with the calculator in our discussion paper last year when we were looking to take the calculator down. As Mr Fleming has indicated, it is meant to just be the price that is paid into the BCT. That is why the BCT is looking at the new developer charge framework. What we had seen was that the calculator has been having a perverse impact on the market and the intention was never that it would then be used as a signal for other ways of creating credits or working with landholders or trying to get credits on the market. We clearly acknowledge the issues with the calculator.

One of the things that we are looking to do when the new developer charge model is up and running for that component of paying into the BCT is actually having some market tools, some really simple tools that proponents and landholders can use to determine the best price that they should be paying for their credits because that can help them make commercial decisions about whether they try and source the credits from their own site or maybe make changes to the footprint of their development. But it would also help landholders determine what price they could get for credits that they might have on their site. One of the things that we are really working on is trying to have the right market tools that both proponents and landholders can use to make those decisions.

**ATTICUS FLEMING:** If I can go back to the question that Mr Barrett raised. If we are able to ensure that the barriers to a biodiversity stewardship agreement were reduced and that is an easier pathway, that will

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**CORRECTED**

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actually reduce the need to rely on that charge that the BCT makes. In other words, you will be buying credits from landholders rather than putting it in the BCT. That is one key to ensuring the benefits of the scheme are recognised in both regional communities but also in the environment. We need to [audio malfunction].

**The Hon. SHAYNE MALLARD:** There is the Property Council's approach, the BASIX model. Is that too simplistic? It is a little more complex than the energy savings from building a building.

**ATTICUS FLEMING:** I do not know the BASIX model. I am not sure if Mr Gainsford or Ms Dumazel [audio malfunction].

**The Hon. SHAYNE MALLARD:** [Disorder]

**DAVID GAINSFORD:** I have some familiarity with BASIX but I would not hasten to compare the two types of schemes if you like.

**MICHELLE DUMAZEL:** Yes.

**The Hon. SHAYNE MALLARD:** I think what the Property Council is calling for is more transparency and certainty in terms of calculations. I think the previous person said that there were distortions to the market caused by the calculator. We heard that from previous witnesses. They were looking for some consistency in terms of calculating their risk and exposure and their responsibilities I guess.

**MICHELLE DUMAZEL:** I think one of the things is—and it all goes back to the biodiversity assessment method—because it is a repeatable method of calculating the impact on biodiversity and it is transparent, over time it has been only a couple of years that this particular biodiversity assessment method has been used. We know we have a lot of work to support proponents to understand that because biodiversity is very complex. We have put in a lot more support for those accredited assessors. They are the ones that a proponent would use to do their biodiversity assessment report. One of the things that we have been doing over the last year is improving the training modules that are available so that accredited assessors have the right training and the right information so they can provide the best possible service to proponents.

Some of the things that we have put in place are still working through the system for proponents to feel confident in the information that are getting around the costs and around what they need to do. I think that is still actually emerging. We have put a lot of measures in place, specifically over the last year, but it is going to take us a little bit of time to see that work through. I think the fact that we now have a hotline that anyone can contact us on, I appreciate that because it is complex and biodiversity is not a simple issue that we are dealing with. The more that we can support people to navigate the scheme, the more that we can increase supply and work with landholders so that they can set up their biodiversity stewardship agreements and the more that we provide the training and support to our planning consent authorities and councils, all of those things will actually help to make the cost come down for proponents but also make sure that we meet the environmental outcomes that we are looking to achieve.

**The Hon. PENNY SHARPE:** I have a couple of last questions. This is really about some of things we heard this morning. We had landholders who are involved in the scheme. They have a significant number of concerns. One of the primary concerns is the perceived or otherwise different treatment of private landholders versus government when they are doing their own infrastructure projects. Basically, they are making the allegation that the large asset, transport-like projects and others are essentially depressing the cost of credits within the scheme. Can someone respond whether (a) that is an issue, and (b) if it is not, explain why that is not an issue? There were fairly strong allegations this morning and in the submissions in relation to this.

**MICHELLE DUMAZEL:** I have not done the detailed analysis on the difference in terms of the costs that proponents are paying for the scheme, so I might need to take that one on notice.

**The Hon. PENNY SHARPE:** Well, perhaps—sorry, Ms Dumazel, it is hard when I am not in the room. How would you explain the difference in terms of the cost of credits that government agencies are getting versus private landowners?

**ATTICUS FLEMING:** Can I ask what the evidence was, Ms Sharpe? I do not think any of us heard the evidence this morning.

**The Hon. PENNY SHARPE:** Yes, sorry, it is a bit difficult. I am trying to go to what they said. They did not give very clear, specific examples. Essentially they are saying that public sector developers are treated favourably, to the detriment of the free-market operation of the scheme. Obviously, they are some of the biggest players. The projects that Ms Morgan talked about are large projects in difficult brownfield sites, all of those things. But, essentially, they believe that the way the system operates means that it is favourable to government

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**CORRECTED**

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in relation to its influence over the price of credits rather than if it was just an open market scheme. I do not know whether that is true or not. I am just trying to test that with you, who I think would know more about it.

**MICHELLE DUMAZEL:** From my perspective, we certainly have a lot of work to do to make the market operate better and to help all participants participate in the best way possible. I think a lot of that goes down to the skill of the accredited assessors that a smaller scale proponent would use, or any proponent would use, and the advice that they are getting on their development. I would need to go away and have a think about that, but I do not have any information that would suggest that. I think it is more that, obviously, there are different players and there would be organisations who would use different accredited assessors to support them in their projects. Our job is to support all participants to access the scheme and to get the best possible outcomes that we can and to reduce the cost for all proponents.

**ATTICUS FLEMING:** I think we would need to understand the specific [inaudible]. Are they complaining that they are getting cheaper credit or are they getting [inaudible].

**The Hon. PENNY SHARPE:** Yes, part of the complaint is that somehow big players—this is developers, not just government—are able to, what they describe as, buy from the BCT off market. There is one allegation about the preferential treatment and impact of large government projects. The other complaint is about the operation of the BCT—and I know that Mr Elton and others are not here. The complaint is that developers are essentially being able to buy off market via the BCT and that smaller landholders do not get a look in in terms of even being considered for purchases because it is much easier for developers just to go straight to the BCT. I am not sure that you can comment on that though.

**JULIE MORGAN:** Ms Sharpe, I might be able to assist with that. Obviously, Transport is a major player in the scheme. Our preference, particularly where there are a large number of credits that need to be sourced, is to buy the credits from the market from sellers because payments to the BCT attract a 20 per cent premium. So, where we can, we purchase from the market, provided that the credits are available and we can negotiate a fair market price for those. We do a mixture of options around paying into the BCT versus purchasing credits. But generally, if we can, our preference is to buy from the market if the credits are there.

**The Hon. PENNY SHARPE:** Great, thank you. That is actually very useful. Thank you for that. I have two more questions. Your submission talks about there being about 400 accredited assessors. It was suggested sometime this morning that there are only 300 accredited assessors. That is quite a big difference. Someone might be able to tell me what is right?

**MICHELLE DUMAZEL:** I do not know the exact number as at today. I can take that on notice. But my understanding is it is close to 400 accredited assessors.

**The Hon. PENNY SHARPE:** Okay. Obviously, it is incredibly important. One of the big issues is about the time and the cost that it takes, particularly for smaller landholders who are looking to do conservation on their land. The assessment issue is big—we have a bit of a debate about whether there are too many, too few and is it too expensive. So, yes, if you could give me the number that would be great.

**MICHELLE DUMAZEL:** Yes.

**The Hon. PENNY SHARPE:** This is my last question. It is broadly about monitoring in the long term. There are two types of allegations. One is that commercial operators are land banking for a long time, they build up biodiversity credits, sell to developers and it goes to the BCT. Essentially, they take the money and run. The second allegation is about the need for longer term monitoring to ensure that people are not able to do that. How do we know that the biodiversity outcomes that are promised are being delivered?

**MICHELLE DUMAZEL:** With the biodiversity stewardship agreements, if you have got one of those agreements and you have got a site, then you need to provide an annual report on how you are going against the biodiversity gains that are expected. Certainly, the BCT could provide more information. The BCT has quite a rigorous regime around that reporting. So each year a landholder needs to put forward a report on what they are doing so that—

**The Hon. PENNY SHARPE:** Just to be clear, that report goes through to the BCT and it is the BCT's responsibility to analyse that? I am sure I will get another opportunity to talk to Mr Elton and others about this. People put in a report. What happens with the report? Is there actual on-the-ground monitoring of this?

**MICHELLE DUMAZEL:** That is a question for the BCT. I do know they have a rigorous program around their reporting and their—in terms of that. But I will have to take that on notice for the BCT. That is how the monitoring occurs, because once the site is set up—the site is set up in perpetuity and then you have the annual reporting.



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**CORRECTED**

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**DAVID GAINSFORD:** Ms Sharpe, I might add to that as well. In the context of major projects, we certainly look at those reports that come in as well and there are also quite often requirements for independent audits to be done. If that is demonstrating that there is noncompliance against the approvals, then our compliance team has the ability to take some action there as well.

**The Hon. PENNY SHARPE:** Okay. Is that for major projects only?

**DAVID GAINSFORD:** That is for major projects only.

**The Hon. PENNY SHARPE:** Terrific. Thank you. That is all from me.

**ATTICUS FLEMING:** Ms Sharpe, can I just add one comment related to your question, which is [inaudible] and ties a couple of the [inaudible] together. I think you are getting at maximising the environmental effects, or the ecological effects and getting [inaudible] the monitoring and ensuring that things are delivered under these biodiversity stewardship programs. But there is another level which we are looking at which is what government can do to try to ensure that if there is a certain level of demand that those credits are sourced in a way that there is a bit of strategic oversight. We are getting them in [inaudible] areas connected, you know, landscape [inaudible] approach. So I think that is something that we are looking at as part of maximising the ecological effects.

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

**The CHAIR:** I want to go back to the BioNet that underpins the biodiversity assessment methodology. It states here in a response to the questions on notice that we provided at some of the last hearings, which I referred to earlier, there is a part where you have said how BioNet is updated and when there is evidence to suggest an entity is under increased pressure, the department adjusts settings in the biodiversity assessment methodology to better manage this increased risk. Is it BioNet that suggests that species, for example, are under increased pressure? How is that determined? Do you know?

**MICHELLE DUMAZEL:** BioNet is where all the data gets fed in. Say, for example, we have accountable officers for threatened species and so they are constantly updating the data in BioNet, so there are different sources of information that will then feed into that and then the assessment method will use that.

**The CHAIR:** Okay. So the fire and environment report that was produced by the department after the fires, to which we referred earlier, the surveyed impact on multiple threatened species, that has been fed, as you understand it, into BioNet?

**MICHELLE DUMAZEL:** That is my understanding. But I am happy to take that on notice because I am not sure of the mechanics of it because it is a different part of the group.

**The CHAIR:** That would be useful. Will you also take on notice in terms of the questions I asked earlier in relation to the total species credits of major projects that have not made their way into biodiversity stewardship agreements, which is potentially roughly 500,000 there of major projects. Would you take that on notice?

**MICHELLE DUMAZEL:** I will take it on notice and we will work through it.

**The CHAIR:** There have been a few questions of multiple witnesses and concerns raised about the fact that if species are deemed to be at risk of potential serious or irreversible impact that that does not apply to State significant developments. Is that correct? State significant developments can basically be granted—they may have to consider it but they can also override that and proceed, is that correct, Mr Gainsford?

**DAVID GAINSFORD:** Yes. If serious or irreversible impacts are identified, there is a requirement to do further assessment work. But you are correct, it does not override the ability to grant consent. That is correct.

**The CHAIR:** Is there a central database, if you like, of how many species have been triggered under the serious and irreversible impact and have been cleared or where projects have gone ahead? Is there any kind of central database where we can get any indication of just how much has been destroyed?

**DAVID GAINSFORD:** Obviously on a project-by-project basis all of the information is documented in our assessment reports. What I can say is that doing some research into this topic is that this is a very rare thing for serious and irreversible impacts to come up on major projects. I am not aware of circumstances of where—but I am happy to take it on notice—we have effectively overridden a concern that has been raised about serious and irreversible impacts.

**The CHAIR:** That would be excellent.

**The Hon. MARK PEARSON:** How long has this offset scheme been operating in whatever form from the very beginning?

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**CORRECTED**

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**MICHELLE DUMAZEL:** It has been about 15 years of offsetting. This particular scheme has been in operation since 2017. In November 2017 it commenced but it did not become fully operational across the State until 2019.

**The Hon. MARK PEARSON:** There was no similar mechanism or system before 2017?

**MICHELLE DUMAZEL:** There was the biobanking. We are the only jurisdiction in Australia that, kind of, has such a systematic approach to calculating the impact on biodiversity. There was the BioBanking scheme beforehand, but the Biodiversity Offsets Scheme, it is now a requirement for all major projects—

**The Hon. MARK PEARSON:** Does that include forestry?

**MICHELLE DUMAZEL:** No.

**The Hon. MARK PEARSON:** If there is confidence that the system is working, was it alarming at all to discover that the koala is listed as a critically endangered species? Did that cause a serious question to be put to your department as to the efficacy of the Biodiversity Offsets Scheme?

**MICHELLE DUMAZEL:** I am also responsible for the Koala Strategy, so I am concerned about koalas generally. In terms of the offsets scheme, the scheme takes into account the listing of koalas and also—

**The Hon. MARK PEARSON:** Has it examined as to whether the Biodiversity Offsets Scheme has failed koalas, even though I take into account that forestry does not have to look at this issue at all. It just goes in and limit trees, or whatever, but has it caused an examination of the efficacy?

**MICHELLE DUMAZEL:** The offsets scheme is a very transparent and robust method of calculating the impact on biodiversity of particular developments. It takes into account all threatened species, including the koala.

**ATTICUS FLEMING:** Mr Pearson, could I add that I am also very concerned about the koala. I would like to put that on record.

**The Hon. MARK PEARSON:** Sorry, what was it that you wanted to put on record? I did not hear.

**ATTICUS FLEMING:** I said I am also very concerned about the koala. I wanted to add that the decline of the koala is obviously driven by a number of different factors, and many of them have been operating for much longer than the government scheme. I think it is relevant to ask the question as to how effective the scheme is in relation to the koala. It is a good question. But, in the broader context, the decline is [disorder].

**The CHAIR:** Thanks, Mr Fleming, that is fine. We have, of course, had 18 months of inquiry into this in a different inquiry. I might direct a couple of the final questions to you, Ms Emery, around water infrastructure projects. I am curious about, for example, the assessment for Dungowan Dam and the impact that Dungowan Dam will have in terms of biodiversity offsets. Is it just the footprint of the inundation area that is being assessed for biodiversity offsets, or is it the impact that the dam will have on, for example, downstream riverine and riparian environments or wetlands?

**INGRID EMERY:** The biodiversity impacts of dam projects can be separated into four components. There are construction impacts, so that will be the direct impacts during the construction period, and those credits need to be acquired prior to construction commencing. There are also the inundation impacts, which are the direct impacts under the BAM. That is up to the full supply level. There is also the flood surcharge area, which is between the full supply level and the probable maximum flood. That is the area that is subject to temporary inundation, and it is considered as prescribed or uncertain impacts. And it also does consider the downstream impacts arising from modified flows and flood behaviour, which are also considered to be prescribed impacts.

**The CHAIR:** So you are considering, for example, let's say with Dungowan Dam, the impacts of reduced downstream flows that particular dams will inevitably cause. How is that offset? Say for a wetland that gets less water or a river that becomes increasingly degraded, what do offsets look like for riverine environments in particular?

**INGRID EMERY:** There are two different types of offsets, as I am sure you are aware. There are the biodiversity, or terrestrial, offsets and then there are also the aquatic offsets. We need to take both of those into consideration. The impacts on the riverine environment fall exactly underneath the Biodiversity Offsets Scheme, so we still have to assess those impacts and either avoid or mitigate and then offset on a like-for-like basis.

**The CHAIR:** This has not been done before in New South Wales, has it? We have not had a major dam built for decades. Any sort of offset scheme has only been in place for 15 years, so you are basically looking at something that we have never attempted before. It is a question, even in terms of like for like. How are you going to improve, say, for example, a river? The Wyangala Dam, if it goes ahead, will have severe impacts on the

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**CORRECTED**

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Lachlan River in the Lachlan region on swamps and wetlands. That has never been done before. Do you know if there is research going on within Water Infrastructure NSW about this?

**INGRID EMERY:** Yes, you are a 100 per cent correct; this has not been done before under the current biodiversity offset scheme. So it is a very new field. I know that in the Department of Planning and Environment, the planning and assessments team is working very closely on ensuring that we are using an appropriate methodology to be able to assess those. What happens is that it will change the flow regime. So it will change the frequency with which some of these wetlands will be inundated, and it is about understanding how to assess those impacts and mitigate those.

**The CHAIR:** Can you enlighten us in any way about how exactly the Government is looking at ways in which to offset increasingly degraded rivers as a result of new dam projects?

**INGRID EMERY:** I would probably have to take that on notice, Ms Faehrmann.

**The CHAIR:** And whether we have successfully offset impacts on wetlands for internationally significant migratory birds—have we done that before?

**INGRID EMERY:** Sorry, just back to your previous question. There is the use of an agreed methodology with the Environment and Heritage based on the BAM methodology. And, yes, it has never been attempted before, and significant consultation with agencies is being undertaken to agree on the methodology and the offset calculation. With regard to the migratory birds, I may have to turn to Ms Dumazel. But my understanding is that migratory birds are not considered as part of the Biodiversity Offsets Scheme.

**MICHELLE DUMAZEL:** It is a consideration for the Commonwealth under matters of national environment significance.

**The CHAIR:** Mr Gainsford?

**DAVID GAINSFORD:** If I can add that my understanding is that both Dungowan and Wyangala are being done as an accredited process under the Commonwealth scheme as well, which means that, effectively, the assessment also needs to take into account the Environment Protection and Biodiversity Conservation Act element as well.

**MICHELLE DUMAZEL:** We will be looking at that.

**The CHAIR:** It has got a lot of attention that the offsets for these dams are actually quite expensive in terms of the inundation areas and then, of course, the impacts on rivers. So that is a lot of offsets where we are still not sure what is going to be offset. If it is like for like, if that is even possible, we are not sure where we are going to find the hundreds of millions of dollars potentially for the offsets.

**INGRID EMERY:** The modelling is still being undertaken for both the Dungowan and the Wyangala dam projects. The downstream impacts for the Dungowan Dam are anticipated to be relatively minor. This is based on the initial hydrological assessments, which show minimal impacts in the Peel River. There is a decrease in the base flow but there are higher spills, and there are substantial impacts in the Dungowan Creek. The impacts can potentially be mitigated through a more effective use of the Environmental Contingency Allowance, but there are no high-value biodiversity features downstream, including wetlands or flood-dependent vegetation. That is probably as much information as I have.

**The CHAIR:** It is very different for Wyangala, though.

**INGRID EMERY:** The assessment is still underway for Wyangala, and we are looking at opportunities to mitigate some of those impacts before we go with the Biodiversity Offsets Scheme. We are still doing the hydrological modelling to understand what those impacts are in terms of their scale but also in terms of how we might be able to mitigate those.

**The CHAIR:** I wish I had started this round of questions earlier because we are now out of time. Thank you very much for all appearing today. We have run out of time for this afternoon's session. I appreciate you making yourselves available. You have taken numerous questions on notice, so the secretariat will be in touch with you regarding those, which I believe at this stage you have 21 days to respond to once they contact you. We may also, of course, give you more questions on those supplementary questions as well.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:00.**