

REPORT ON PROCEEDINGS BEFORE

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

**BIODIVERSITY CONSERVATION AMENDMENT (BIODIVERSITY
OFFSETS SCHEME) BILL 2024**

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At Room 814, Parliament House, Sydney, on Thursday 12 September 2024

The Committee met at 9:00.

PRESENT

Ms Sue Higginson (Chair)

The Hon. Stephen Lawrence

The Hon. Jacqui Munro

The Hon. John Ruddick (Deputy Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Sarah Mitchell

The Hon. Emily Suvaal

* 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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The CHAIR: Welcome to the first hearing of the Committee's inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples, and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Sue Higginson. I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of their evidence at the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

I note that various witnesses today will be participating via videoconference. Here are a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. If a participant loses their internet connection and is disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link provided by the Committee secretariat. I ask Committee members to clearly identify who questions are directed to, and I ask everyone to please state their name when they begin speaking. Could the witnesses on the videoconference please mute their microphones when they are not speaking, and remember to turn them back on when they are getting ready to speak. If a participant starts speaking whilst muted, I ask them to please start their answer again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other so that we can all be heard clearly. To assist Hansard, I remind members and witnesses to speak directly into the microphone and avoid making comments when their head is turned away.

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Mr GARY DUNNETT, Chief Executive Officer, National Parks Association of NSW, affirmed and examined

Mr SAUL DEANE, Urban Sustainability Campaigner, Total Environment Centre, affirmed and examined

Mr ADAM MUIR, Nature Positive Policy Manager, World Wildlife Fund, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome, and thank you for taking time to give evidence today. Would anybody like to begin by making a short opening statement?

SAUL DEANE: Yes, I'll make a quick statement. The Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 follows the inquiry into the integrity of the New South Wales biodiversity offsets scheme that we had in 2022. The amendments, on the whole, we see as an improvement, and therefore we commend those. The Total Environment Centre's submission to the inquiry in 2021 looked at what processes effectively secured habitat, and what didn't, in the Macarthur area in particular—so a localised application of these offsets. Offsets in this area were generally a remarkable failure in providing connectivity, in particular, and/or additionality to existing koala habitat. However, they did provide a general guide to the amount of area required to mitigate what was lost, so there was some benefit in it.

Since then, with the approval of the Cumberland Plain Conservation Plan, the biocertification process at both State, which was approved by the environment Minister James Griffin, and the Federal—Minister Tanya Plibersek—levels has effectively then removed the requirement for offsets within the Macarthur area. So the koala habitat destruction which will take place by Walker, Ingham or Mir Bros—which are the major landowners in Macarthur—will not be offset. While offsets are imperfect, they have a place, as sometimes habitat needs a monetary value so that it isn't invisible in the way that things are assessed in our system.

Obviously, offsets have two intrinsic problems. One is that they treat wildlife like a commodity, though wildlife is not fungible but location dependent. Secondly, they necessitate a government-generated market that is susceptible to bad governance, especially when management is outsourced to private contractors and bureaucrats et cetera. With that in mind, the 10 objects of the amendment bill that we see before us, on the whole, are generally an improvement. We welcome it, with those caveats.

The CHAIR: Thank you. Mr Dunnett, did you want to say something?

GARY DUNNETT: Yes, thank you. Clearly, the offsets amendment bill is focused on biodiversity offsets, and our submission takes a very narrow view of the implications of that as they relate specifically to protected areas. I'd just like to take the opportunity, though, to explain why we've taken that narrow view, and it really goes to the question of the limits that have been set around the consideration of reform of the offsets process. At present we have a system that generates a very mechanistic view of what constitutes conservation value. Effectively, it's a process that encourages planning authorities, government and proponents to have a primary focus on the dollar value of what they're about to destroy or what they're proposing to destroy.

What has been lost in that process is the broader consideration of environmental values which used to characterise the environmental planning and impact assessment processes in New South Wales. Clearly, we're not suggesting that threatened species and threatened ecological communities aren't extremely important. They are, and we need to have mechanisms to protect those, but we also need to recognise that threatened species are just those species that have been through the bureaucratic triage system that has accorded them a special status. They are not the whole width and breadth of conservation value by any stretch of the imagination, particularly as we go into a period that is going to be challenged by climate change and increasingly degraded environment. We need to be considering issues of resilience, we need to be considering issues of habitat connectivity and we need to think about the broad ecosystem processes that we all rely upon to generate clean air and water.

Unfortunately, what we are increasingly seeing in New South Wales is that planning authorities are treating the conservation question as simply being an issue of how many biodiversity offset dollars need to be paid. For that reason, we've focused our submission on one of the areas where that's a really inappropriate frame of reference, which is specifically protected areas. But I want to emphasise that it's not the only one. Similar issues relate to drinking water catchments; they relate to areas that have previously been set aside as part of the earlier generation of offsetting processes. But these are all places which the community has decided have value in those broader environmental terms, and yet we are reducing their value to nothing more than the cost of the threatened species they happen to contain.

We've given you a detailed example of the Snowy 2.0 project to try to illustrate that. I guess the key issue that we're trying to bring forward is that if we're stuck in this market process—and we'd certainly argue that it's not the most appropriate means of valuing nature by any stretch—we need to have a mechanism that provides a

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really strong incentive not to treat areas which have already been dedicated for conservation purposes as though they're simply another greenfield development site. That's why we've proposed a significant multiplier effect for any future developments that might impact on such precious areas.

ADAM MUIR: I'm still getting an echo, but I'm happy to go with it. I just wanted to make a short statement to provide a bit of context as to why this inquiry is important and, in the regulatory context, why the level of ambition needs to be increased. I apologise if my head is slightly turned to the side. I'm reading off a statement that I'll happily send through today for the Hansard reporters. Australia is defined by its unique and extraordinary landscapes, ecosystems, plants and animal species. However, Australia continues to have one of the highest rates of species decline among countries in the OECD. This trend of continuing biodiversity decline is occurring across all Australian jurisdictions.

The number of species listed as threatened in New South Wales continues to rise and the condition of most native vegetation continues to deteriorate. Out of all Australian jurisdictions, New South Wales is a leader in deforestation, ranked worst for tree protection and restoration on the WWF Australia Trees Scorecard 2023. Biodiversity loss and ecosystem collapse ranked as the third highest threat humanity will face in the next 10 years in the World Economic Forum's *Global Risks Report 2024*. In response, the 2020 United Nations General Assembly biodiversity summit issued a call to action for a clear and overarching nature positive global goal for nature. The G7 leaders subsequently announced that our world must not only become net zero but also nature positive for the benefit of both people and the planet.

The Nature Positive Initiative, a global science business and conservation coalition, defines nature positive as "a global societal goal defined as 'Halt and Reverse Nature Loss by 2030 on a 2020 baseline, and achieve full recovery by 2050'". The global biodiversity framework adopted by 196 countries in 2022, including Australia, gives effect to the nature positive goal and has 23 global targets for action for 2030. Environment Ministers across Australia agreed to work together to achieve a nature positive Australia aligned with the ambition in the global biodiversity framework and committed to develop ambitious targets in support of the framework, including zero new extinctions. Indeed, the response of the New South Wales Government to the Henry review opened with the following statement:

Biodiversity in NSW is in crisis. We must take urgent action to put nature on a path to recovery.

Government cannot simply be the manager of a steady decline—we must actively turn around the loss and restore habitat and biodiversity. Our goal is to leave nature better off than we found it.

These various commitments, goals and targets are not hollow words; they are real and measurable, just as the global biodiversity crisis is real, and those that have made them will be held accountable. To achieve the nature positive goal, we need to consider nature in all we do. Individual actions need to be nature positive, and we can allow very few to be nature negative. While the mitigation hierarchy is still relevant, avoidance has to now be given primacy with clearing and offsets absolutely the last resort. The designation of no-go areas, or unacceptable impact, is a prerequisite. All impacts need to be accounted for and offset, either by the proponent or, in the case of unregulated activities, by the Government, noting that unregulated clearing is a large component of land clearing in all States.

Offsets must demonstrably achieve a net gain, no longer a no net loss. The reformed biodiversity offsets scheme needs to therefore address these problems. Too much of the clearing across New South Wales does not require offsets, when in fact all clearing impacts should be accounted for and offset in some way. The current offset scheme is failing to achieve no net loss due to all the issues raised in previous reviews. A global and national biodiversity crisis and government commitments to address it requires an escalated response beyond no net loss and way beyond the failings of the current scheme. Finally, the amount of token clearing needs to be significantly reduced.

The CHAIR: Members of the Committee will have some questions for you. If the questions that are directed to you are broad, you are all very welcome to answer. Thank you very much for your submissions. Mr Muir, in your submission you speak about the need for standards to provide "objective quantitative thresholds and criteria" to "avoid and minimise steps of the mitigation hierarchy". Your submission, which I think is quite strong, talks about your concern for non-specific and non-binding language in the proposed amendments. Could you speak to that and expand on what you think to assist us, as members of the Committee? What could we be looking at in terms of recommendations around these objective thresholds and criteria and the specific and binding language? What sorts of things do you think we could be looking at? After you, Mr Muir, I would be very interested in the views of Mr Deane and Mr Dunnett.

ADAM MUIR: The general point is that we generally liked the commentary of the Henry review, the kinds of principles that were put forward and some of the specific changes that need to be given effect in the reformed scheme. When you look at the actual words in the amendment, it clearly picked up some of those ideas,

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but used more general and non-specific language to do that. That's probably the main point to make. In terms of the avoidance piece, we are not for a moment saying that this is a trivial problem to resolve, but if avoidance is to be given primacy, as the Henry review said it should—and we are certainly saying it should—it needs to be therefore better described in terms of what is and isn't acceptable practice for avoidance to assist proponents and regulators in determining whether "avoid" has actually been attempted and achieved, with some kind of reasonable test for that.

I think, historically, the mitigation hierarchy has generally been seen by a lot of proponents—not all, but a lot, and I'd probably include government proponents in this—as a tick-the-box exercise where we know that, if we can find a compliant offset, then we should be able to get the approval and the "avoid" and "minimise" steps were really just objective discussions to be had with regulators, or tick-the-box exercises. I think all we're really getting at is that we need to be as specific as possible, and some kind of a standard needs to be devised to hold proponents to account for that—and regulators.

The CHAIR: Are we talking about having very clear no-go zones—the red flags i.e. if a species or an ecosystem is in a particular critically endangered category? I think what I'm hearing is that you would have these "at minimum" set thresholds where they become the "must avoid" and you actually have to apply that hierarchy. Is that what I'm hearing? That's what I was reading in the submission, I think.

ADAM MUIR: Yes, I would agree with that as part of it. I think there needs to be some kind of commentary around to guide proponents as to how to do that—where to find that information and so on.

The CHAIR: Did either of you have anything to add in terms of that binding nature within a legislative scheme and what are commonly referred to in the submissions as "red flags" or "no-gos" or these serious and irreversible impacts?

SAUL DEANE: I agree. Obviously, when we're doing this hierarchy, a hierarchy needs a hurdle to be jumped at each stage. If you're doing "avoid", what's the point at which that kicks in, and what do you have to meet to ignore the avoided bit to then devolve it down into the next stages before you get to offsets? If it does become a box-ticking exercise, then it takes away the whole point of the hierarchy. We'd agree that the way you structure that hurdle that has to be jumped in order to move to the next stage down the hierarchy—that's the discussion point about how you'd do that. In many respects, it could be quite complex but, in order to make it applicable and to make it done, you'd probably want to try to make it fairly straightforward as well.

GARY DUNNETT: Obviously, there's a significant improvement in having the avoidance hierarchy actually articulated in statute. The question, though, would be where that's actually interpreted, and I think it's really disappointing that it's not in the legislation itself. If we think about other broad planning principles like the assessment of cumulative impacts or the assessment of alternatives, what we see is incredibly narrow scope for their consideration by planning authorities. In the case of things like cumulative impacts, we'll frequently be told it's only developments by the same proponent—in fact, within the same footprint—as a mechanism by which you consider those broader landscape issues. It's really critical that there is clear definition, either in the legislation or in the accompanying regulation, that makes it clear how you actually put some teeth into that worthy concept.

SAUL DEANE: Just to go on with that, in terms of thinking about what's simple, if something was endangered, then maybe that becomes the hurdle that can't be jumped and therefore that has to be—

The CHAIR: So it must be avoided.

SAUL DEANE: Yes, therefore it must be avoided. If it's critically endangered, then it's obviously—that has to be the hurdle, doesn't it, that can't be jumped as you move down to those. Otherwise, what's the point of having—part of the problem is that we get these "critically endangered" and "endangered", and they don't seem to make much of an impact. People create these management plans or whatever. This is actually where they could have an impact if they were tied to those hurdles as you move down to offsets.

The CHAIR: Back on definitional matters, I'm curious about your views on two things. Firstly, the hierarchy scheme only applies to local development and not the State significant development. Does that concern you? Secondly, the nature positive—where are we? We don't define nature positive, but we speak a lot around nature positive. Obviously, the Henry review had a definition or a view of nature positive. Have any of you given consideration to a definition of nature positive that could be applied in terms of local or regional landscape?

ADAM MUIR: A couple of things—firstly, the Henry review's definition of nature positive was a nice one and an appropriate one in terms of thinking about this amendment to legislation and also thinking about regulatory policies. I think that was good in that it contrasted the change from just minimising impacts, which was the traditional sustainable development view, to actually improving things, because the landscape needs to be recovered and repaired. It's going over and above. I think the net gain versus no net loss—and that might sound

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like semantics—is a really important point to make here. No net loss—even if we assume there's a robust way of determining that, we certainly do agree with the Henry review that that should be increased by some amount to make sure that, if there is an offset, it's demonstrably more positive. I'm not going say it's necessarily nature positive, but it's trying to be nature positive.

Nature positive, of course, as I said, is a global goal. It's a national goal. It's a net kind of concept, so it's really about the losses and gains balancing out and the gains overall far outweighing the losses. That might make you think no net loss is perfectly fine in the regulatory scheme because we're going to have all this landscape restoration and proactive work through public and private investment and so on. That's partially true, but the scale that we're talking about that that needs to be increased compared to historical levels is many, many times—probably a couple of orders of magnitude beyond—what the current levels of investment are.

If you think about the regulatory scheme as the underpinning floor, it also needs to make sure there's zero leakage from the system. In fact, it needs to be positive in some way. That's kind of what I'm saying in the regulatory sense is that, yes, we will achieve nature positive mostly through positive investment—voluntary private investment, public investment and so on. But the regulatory scheme, in terms of [audio malfunction] and through clearing and offsets, can't be the fact that we're just losing biodiversity through that process. We need to make sure that there is a solid floor and it's no longer just zero; it's a little bit in the positive. We're probably not putting a figure on that because I know there's a lot of considerations that go into that. Sorry, I'm not sure if that answered your question, Chair.

The CHAIR: That's really helpful. Did you have views on those things?

GARY DUNNETT: Just a small addition. I think, in terms of the nature positive, I'd reflect back to my earlier comments that it can't be constrained to threatened species or threatened species' habitats. It's clearly dealing in a much larger scale than that, and any definition needs to be just as much about issues like enhancing corridor values and increasing resilience to climate change as it would be about the precise threatened species issues. I guess one of the difficulties that we all have, of course, is that the prism that we currently have into what the final reforms of the Biodiversity Conservation Act are going to look like is this one small issue. I would have thought the issue of nature positive is actually part of the objects of a revised Act, which we don't have the moment. We just have the components that relate to the offsetting provisions. We certainly feel in the dark about what the broader program of reform is, and how far from the Henry review we're going to end up at this point in time.

SAUL DEANE: Obviously the net positive is quite a large area. Being very specific, making sure that there is no net loss and being quite tight on a specific so at least—again, out of the attributes to what make up something net positive—there's an area requirement of habitat so that there's more gained in habitat than lost. It's a very simple sort of basis on which you can then expand it and do other things. That has to be a positive part about it.

The Hon. JACQUI MUNRO: My question is related to this in the way that there is possibly limited definitions in some key terms in some of the amendments. I'm curious about how you think about the biodiversity assessment method, and whether that needs to be better defined or if there needs to be flexibility built into the Act, which basically allows the method to be changed at will by the Government and the Minister. As an assessment method, does that need to change fundamentally from what we've had so far? This is to anyone who wishes to take it up.

GARY DUNNETT: I'm happy to kick off on that, and to observe that it's absolutely critical that you've got standard methodologies for assessing biodiversity impacts. If you don't have those you don't have any comparability across different proposals. Most importantly, you invite the tick-a-box approach where people go into the field in totally inappropriate conditions, wave their hands and say, "We didn't see anything that was of interest." Having really well-defined, scientifically valid techniques for assessing biodiversity is absolutely fundamental. The concern is more that we don't have a complete set of methods at this point in time rather than that the principle of having methods is broken.

The Hon. JACQUI MUNRO: I guess that's what I'm getting too. What should the method be?

SAUL DEANE: This is part of that issue that I raised about creating a government market. You've got to be very careful, obviously, when you create a government market. I guess there would be four things that I think would be really important. What's the money going to be spent on? All of the offset money, where is it going to go? How do you make sure that a market is working? You've got to have a general number of buyers and sellers in order for a market to work effectively. Also, part of that process is obviously the transparency. Everything in that transaction has to be there. The loss of areas or habitat that's removed, where is that taken? Everyone should be able to go back and find out exactly where it is. It should be in a ledger that's publicly available. That's essential in terms of creating a government-created market.

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The harder one is obviously then the spatial component. We were all talking about connectivity. How do you make sure that you can meet all these offset requirements and yet still cut off connectivity, which is completely possible under this because it's spatially blind. Working within some sort of watershed environment, how does conductivity work across that landscape? Going to that idea of how does the market work, one of the big issues is obviously going to be with the Biodiversity Conservation Trust. If the money is going to there, do you have one buyer? If it comes down to one buyer, then obviously they set the price in the same way that one seller sets the price and it becomes a monopoly-type arrangement. You would have to be very careful about that.

And what is it spent on? We would say that because this is about habitat loss, essentially, the money that's accumulated from an offset should really only be spent on habitat gain. It shouldn't be spent on other things like research and land. Even going in, assessments and all this sort of stuff—there's a whole lot of things that could easily get attached onto this which will take away and remove the gain of, effectively, real estate for the habitats that have been lost. I think that has to be the primary, and almost the only, goal of the BCT in that sense. They would be my four considerations that would have to be front of mind.

The Hon. JACQUI MUNRO: Obviously that relates to the scheme's operation. In terms of the actual biodiversity assessment method, is that something that needs to be updated? That is kind of the fundamental first principle, I would have thought, as to how you get to your hierarchy. Is that framework currently acceptable?

SAUL DEANE: Frankly, no. Just before I came in here, I think a koala was going for \$450 to \$600. If anyone thinks that a koala offset is worth \$600, well that's the end of the conversation because we can't go any further. That's obviously ridiculous. Zoos across the world would be paying hundreds of thousands of dollars, or tens of thousands of dollars, for a koala. That goes to the point of the offset. If the offset is actually working effectively, these ideas of red-flagged areas financially arise. It will just become impossible to remove that area because it would be just ridiculously expensive. If that's not happening, then we know that the market in this place is not working effectively.

The CHAIR: We received a submission that actually talks and provides examples of the Bourke shire, the Murrumbidgee shire, the Bogan shire, the Wentworth shire, the Moree Plains shire, Narromine shire and the Tomingley Gold Project. There were a few examples given where the offset costs were prohibitive, in the submitter's view, to undertaking the development and the clearing of the land. Is that how a market is meant to work? I think that's kind of how you just described it, ultimately.

SAUL DEANE: That's the point of the market, is that you're getting a price mechanism that's telling you, effectively, that this is actually so expensive in terms of what the provisions are and what it needs, inherently or intrinsically, and that therefore it shouldn't be touched.

The Hon. STEPHEN LAWRENCE: Thanks to all the witnesses for their submissions and evidence. Starting with you Mr Deane, your submission talks about the idea of a blue-green grid and connectivity in respect of these matters in terms of the scheme. I was wondering if you could expand on that for us and explain what that means exactly?

SAUL DEANE: Yes. There's two parts to that. We've been really trying to push this idea of a blue-green grid just because of what we're seeing. We're in a different stage of the conservation debate in many respects, because large areas have been secured. That's been fantastic. What we're starting to really have to deal with is the fragmentation of the landscape. Obviously landscape starts to fragment. We have to make sure—especially as we go into climate change and things get hotter and so on—that animals and flora and fauna can move across the landscape in the same way that we access roads. There has to be some sort of corridor component in order for this sort of system to work. The blue-green grid is basically taking the watershed, which is the creeks and rivers and how they all run into each other, and using that as a spatial overlay in which you make sure that that is always greened, and that it always has a setback. That works as a corridor because it's a naturally occurring one. You basically leverage off that to make sure that we do get a spatial connectivity across the landscape.

The Hon. STEPHEN LAWRENCE: There's an idea in the National Parks Association submission, Mr Dunnett, that offsets from proposals impacting protected areas should be directed into a national parks fund. I was wondering if you could expand upon that for us.

GARY DUNNETT: I guess we were trying to differentiate between the current arrangement, where the Biodiversity Conservation Trust is predominantly in the market for incentivising landholders to manage their land appropriately, and any proposal that actually removes habitat from the national park. What we've tried to do is create a very direct link there, saying that if Government in future chooses to put forward such proposals, the only appropriate mechanism that in any way offsets the gravity of that impact is to create future areas that have all of the legislative protections that go with a protected area, theoretically, which is in-perpetuity protection. This is a

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significantly greater level than any of the stewardship or other agreements that we have available under the Biodiversity Conservation Trust at the moment.

The Hon. STEPHEN LAWRENCE: Mr Muir, I have a couple of questions for you. You said in your evidence that there are losses not accounted for, both in the current scheme and under the proposed bill. I was wondering if you could expand on that for us.

ADAM MUIR: Quite simply, there's a lot of unregulated clearing. There's a lot of clearing that does not trigger a regulatory response. There's the first point about where the regulations start, how many exemptions there should be and whether State significant projects should have a different requirement. I did say in my opening statement that we're aware that it doesn't necessarily mean that the proponent—for example, a farmer who might be legitimately doing some very minor clearing for some necessary thing that may be exempt from a regulatory requirement—needs to offset that. But there needs to be some way for the scheme, the system and the government to be accounting for all of those small losses, which add up to a lot.

It's often the government. Government work on public land is often a cause of those things, or necessary requirements to manage native vegetation for safety or for all sorts of different purposes. We're not arguing about that. But we are making the point that a lot of it is unregulated, but that does not mean it shouldn't be accounted for in some way and, if you like, offset—perhaps offset by sector or something like that. But we're currently just losing biodiversity and it's not accounted for. I suppose that's the main point.

The Hon. STEPHEN LAWRENCE: Lastly for you, Mr Muir, you said in your opening statement that loss of biodiversity has been identified as one of the top three threats to humanity. I was wondering if you could explain for us, simply, in what sense it is a threat to humanity.

ADAM MUIR: Sure. I was referencing the World Economic Forum's survey of business around the world, and that's the basis of that. You'll see the reference when I send through my remarks this morning. It's a risk to humanity in all sorts of different ways. It's a risk to human health. It's a risk to the fact that we rely on a healthy natural environment to provide ecosystem services, clean water, clean air and so on. You've heard of the One Health concept, increasingly, which is a response to the shrinking footprint of nature and the increasing footprint of humans. Therefore, interactions are happening more between wildlife and humans, disease is transmitting and some of the global pandemics are seen to be linked somewhat to that issue. So there's clearly an issue there. It's a really major impact to economies. There are large sectors of the economy—I can't put a figure on it right now; I'm happy to get back to you on that if you'd like—that are completely reliant on a healthy natural environment. There's a lot of science and economic analysis that has forecast what the level of impact will be on our economy as a result of decreasing health to the natural environment or decreasing biodiversity. They're the three points to make.

The CHAIR: We've got 35 seconds. I want to ask all three of you, if I could, to quickly comment. Ultimately, should we be engaging in a system that trades in like for like only, in terms of the offsets that we're looking at?

SAUL DEANE: I find this quite complicated. In the Macarthur area, the whole bio certification process is basically turned off as far as we can see—any requirement for offsets. So all the bushland that has been removed there is just a net loss. At the beginning, around Gilead, there was the requirement for an offset. That has actually been removed. As difficult and as problematic as it was in that area, at least there was some accountability or some ledger to recognise what was being lost. As difficult as like for like is, I think there is a component and need, sometimes, for an offset, just so that it's recorded in a way.

The CHAIR: To be clear, in terms of your evidence, you're saying if there is, then it should be like for like. That's what we should be aspiring to.

SAUL DEANE: Yes, and it should be applied all the time.

GARY DUNNETT: Absolutely—like for like. And like for like doesn't mean cash.

ADAM MUIR: Absolutely. Like for like is a critical principle. It needs to consider the temporal and spatial as well as the habitat suitability elements. But we do recognise it shouldn't be an overly complex scheme. It needs to be able to work and it should be consistent across all clearing types.

The CHAIR: Thank you very much. Unfortunately, our time has come to an end. If any questions were taken on notice, the secretariat will be in contact with you about that. We're very grateful for your time and your evidence today.

(The witnesses withdrew.)

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Mr GREG STEENBEEKE, Director, Henribark Pty Ltd, affirmed and examined

Mr ANDREW DAVIES, Landowner, Landholder Biodiversity Interest Group, before the Committee via videoconference, sworn and examined

Mrs LOUISE DAVIES, Landowner, Landholder Biodiversity Interest Group, before the Committee via videoconference, sworn and examined

The CHAIR: Thank you for being here today and for giving your time and your evidence. There is a slight delay in the technology, so I'm very sorry about that. Would anyone like to start by making a short opening statement?

LOUISE DAVIES: I'm going to start just by saying that, one, we're landowners. We're not bureaucrats or whatever attached to any departments. I said in my opening statement we seem to be constantly putting band-aids on this scheme, and it has been going on for years. It's like putting a finger in the dyke to stop a leak. All these amendments seem to be developer driven to me. But there are some very broad statements in there, which, like everything else, can be read either way to suit any circumstances. By "broad", I mean things like "in particular circumstances", the word "appropriate" [audio malfunction]. There are no definitions, so it's a subjective thing—what's appropriate, what's a particular circumstance and pay an amount into the fund "may" undertake prescribed biodiversity conservation measures. They're all very broad. I think the whole scheme has become so cumbersome and complicated. We've got so many different agencies and people. It has just got out of control. I'm going to hand over to Andrew now to say what he wants to say.

ANDREW DAVIES: At this point, the State is involved in all aspects of the market. At the same time as overseeing the scheme, issuing credits and credit obligations, the State is also setting prices through the Biodiversity Conservation Fund statewide and acting as a quasi-broker through the NMO. We, as the landowners and credit holders, are expected to discount our prices to remain competitive with the Biodiversity Conservation Fund, making our product, credits with real conservation actions attached to them, cheaper than a promise—a promise the State will now fill in three years, according to the legislation changes, which we acknowledge is an improvement.

With the developer charge price now no longer being published, we are further disadvantaged and, with ongoing discussions around offsetting within national parks, we have deep concerns about the market's ability to move to one with net positive biodiversity outcomes. This market has the opportunity to move to a nature positive position through private landholder conservation. The State's involvement should be limited to one of oversight via legislation and fostering contact between buyers and sellers, either directly or via a broker.

GREG STEENBEEKE: I am the sole director of Henribark and a director of Thesium, which also operates within the Biodiversity Offsets Scheme, providing offset credits. I'd like to recognise the Bundjalung people, on whose land our property is based. I'd also like to recognise the people of the Banbai, Gomerioi, Wiradjuri, Wonnarua, Ngarigo, Dharawal, Gandangara and Dharug, on whose lands we have other properties under the Thesium process. My points are that it currently operates not as a market. Vendors and buyers are not much in contact. The department and BCT have the market cornered by acting as brokers, setting a benchmark ceiling price and being unable to comply with the recommendations of IPART, the Henry review and this Committee previously.

A market only operates when there is negotiation, recognition that costs differ between suppliers as a result of ongoing changes to the scheme, such as added monitoring costs, inflation and costs of mandatory actions. Past prices of trades are not indicative necessarily and are problematic when applied. The agency should not be either coordinating a trade through DCCEEW or providing for a quick outcome through taking an obligation if suitable numbers and credits and matches occur in the market or are in development in BSAs under assessment. If a credit exists, the buyer should be forced to negotiate. If a developer states they cannot find a match but they exist in the market, but BCF should not be taking on that obligation. If it is because of credit price, then that should lead to more avoidance, the first step in the impact hierarchy.

The definition of a net positive outcome is admirable, but it needs definition. At the moment, none exists. Additionally, if the definition of "in perpetuity" is legally set by the Perpetuities Act 1984, which sets it at 80 years, this too needs clarifying in relation to conservation outcome on BSA sites. The department tells us we are priced too high for buyers. Yet only 3 per cent of the credits offered at auction get accepted. It seems that the buyers, and the department as their proxies, have unrealistic views of the costs of putting land into a permanent conservation outcome and forgoing ongoing income from farming, timber harvesting or other appropriate opportunities—all of which generally lead to an ongoing decline of the environmental condition.

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The consideration of application of conservation actions will lead to a loss of the cornerstone of the scheme, being the retirement of credits. If these actions are to occur, they need to be for many multiples of the value of acquiring the credits or else ongoing loss will be guaranteed. The migration towards net positive can occur over a longer period than most changes to activity in the BOS, with the example of rapid and, basically, "We're going to do this next week," information from the department being supplied to assessors. But by setting it within the legislation review period, it has a defined period for implementation. When the BCF has three years to acquit an obligation, that should also be including the response from the environment agency head. At present, that is unbound. This could just shift the existing slippage. I'm happy to discuss any other matters that I have raised in my submission that I provided last week.

The CHAIR: Thank you. We'll have questions. We'll just flow through them. I feel like I'm hearing you suggest that your experience with the system to date is that it's not a fair market, it's not a fair system and that there's lacking integrity in that system. Is that a fair summation of some of the things you've—

GREG STEENBEEKE: I don't know that lacking integrity is accurate, but it's certainly not acting as a market. A market relies on, as I mentioned in my opening statement, buyers and sellers interacting. At the moment, as I said also, the department provides us with one very short phrase response to the bids that we put forward in auctions. We've put forward tens of thousands of credits over the various auctions that the department has offered, and we've consistently brought our prices down each time to try to find the pricepoint at which the department is aiming for to "satisfy" the buyers. But the buyers aren't coming to us. It's very rare that we actually have a buyer come to us. We have, through Thesium, one of the largest credit holdings—if not the largest credit holding—in New South Wales, with more than 80 different types under assessment or under production. We feel that we certainly have an opportunity to interact with the majority of the major development side of the market, because our sites cover nearly 4½ thousand hectares.

We've got a significant area under management and, in discussions with the Davieses and with others that are involved in the market, we certainly agree that at the moment there is no market. There is still a ceiling price identified by the published prices from the Biodiversity Conservation Fund, which puts out every six months a statement of up until the previous six months how much the credits have traded—how much they've offered for an obligation to be acquired for. But that statement that they put forward itself is inaccurate because they put in small text at the start that this does not include their delivery fee, which is 120 per cent, or 5 per cent of the credit price, plus a risk factor that they add to the credit charge of between 11 and 20-odd per cent. Some of the charges we've seen have certainly exceeded even that value. Then we get the department, in particular, telling us that our prices are not competitive or not suitable—sorry, I'll get the terminology right. Our prices are too high for buyers.

We feel that the buyers are looking at these BCF published prices, which are not the accurate prices that the market is trading at. That is creating an artificial ceiling. As I said also in my opening, it's dealt with as though the credit that comes off this site that was developed in 2012 in the case of the Davies' sites, or in 2018 and 2019 for my own sites up in the Northern Rivers, both of which were developed under the BioBanking scheme, the previous scheme—the credits that we generated then when it was a voluntary scheme and which have been identified as being equivalent to or the statement of reasonable equivalence for the new scheme, which I'd also like to discuss later, if I can. The issue there was that there was a much smaller set of required actions that were required to be the cost basis for a credit.

A credit is effectively a recognition of how much effort has to go in to generate that improvement in the environment for the biodiversity that's under management. When the original version of the BC Act came out, the amendments came through and identified that there was to be an environmental monitoring module put in by the BCT, which effectively doubled or even tripled the amount of management monitoring that had to be done. It all has to be done by ecologists. Ecologists like me are not cheap. We would like to be cheap, but we aren't. I charge out at \$250 to \$350 an hour. That sort of cost going on the landholder, going onto the TFD, doesn't get accounted for. In our sites under Thesium we put in what we call a project management fee, which is a recognition of the income that the sites could generate from grazing, from cropping, from timber harvesting.

That has a cost because by putting the site into conservation you're foregoing any future income—not just future income for the next 20 years that the initial section of the scheme applies, but in perpetuity. If you think that at the moment stock's going through the saleyards at \$1,500 to \$2,000 a head, that's a significant return when you're getting one head per hectare for the 155 hectares that we have under management in the Northern Rivers. Admittedly, it's forested country so I'll say maybe one head per five hectares, but that's still \$30,000 or \$40,000 a year we're foregoing as a result of going into conservation. We have to recoup that cost to make it a viable outcome to participate in this, as opposed to continuing that ongoing non-conservation land use.

The CHAIR: Sorry to interrupt, but when you say the BCT or the Government advises you that the cost of your credit is too high, what is the impetus that you understand for the Government to be telling you that your

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price in the market is too high? Are they trying to placate a developer's complaint somewhere? Is that your understanding? I'm not sure where—

GREG STEENBEEKE: I don't know if that's necessarily the understanding that I have. My understanding is that the developers are getting an identified price from the BCF of "This is what you can resolve your credit prices for."

The CHAIR: Where in the calculator are things failing, do you think?

GREG STEENBEEKE: Things are failing in that the Government, by default, through charging fees for credit trades and by putting on an 8 per cent mark-up on the trades that they do through the NMO in their options, has become a default broker. But by becoming that default broker and by shifting to a social outcome, the costs that the developer has of finding these credit balances that it needs through its work, the developers are trying to reduce their impact on profits by saying, "Okay. Well, the Government can do this. We'll only buy credits at this price," rather than being engaged in discussions with the providers as to what the price should actually be and why the price is at that value. Developers can certainly, and do, establish their own biodiversity stewardship sites, but very few developers are actually in the business of long-term management outcomes for land under conservation management. So, yes, it might be cheaper overall for them to do that, but then they've got to look at the fact that they're going to be paying for that management forever—or 80 years, depending on whether the Perpetuities Act applies.

If that's the case, then they're certainly not looking at that sort of outcome for a 25- to 30-year renewable energy project, or urbanisation where it's in perpetuity effectively. The fact that the department and the BCT have provided this price, the Government is giving us this price saying, "You're priced too high for buyers." That's fine. We don't mind being told that we're too high for buyers. We don't get a pricepoint as to what the buyers are interested in providing, so there's no integrity in that side in that we're not told, "This is what the buyers are willing to pay." We might be out by \$50, we might be out by \$500, we might be out by \$5,000; we don't know. As I said, all the information we get is, "Your credits are priced too high for buyers." And that is uninformative in a market. As I said as well, 3 per cent of the credits offered were accepted for trade.

The CHAIR: I think that's where I was going with "lacking in integrity"—transparency is what you're concerned with.

GREG STEENBEEKE: Transparency is certainly not there.

The Hon. JACQUI MUNRO: I'll just ask one question about the statement of equivalence. How does that process work? Because we've heard already that the like for like is not necessarily working very effectively. I just wanted to understand how that works.

GREG STEENBEEKE: The statement of reasonable equivalence is what is applied to biodiversity credits that were generated under the BioBanking scheme, which was in place until this Act came into play in 2017 with the assenting of the regulation. The statement of reasonable equivalence says, "Okay, when your site was assessed, these were the credits and they were developed under a set of biodiversity communities that is not only the last one back, but the one before that," the old biodiversity veg types or BVTs. They took those and they said, "Okay, this is what they're roughly equivalent to. The number of credits generated is this. If we do some calculations, we end up with your credits are about this." In our case our ecosystem credits for going from NR244 to PCT1209 went from 1,366 to 738, or something like that. We effectively halved the number of credits that we were generating, yet we were still expected to sell them at the same price.

For species credits, it was even more of an impact. The species credits impacts that happen to my slaty red gum credits, under the original scheme I generated 7,100 BioBanking credits from 1,000 individuals. We said there are definitely 1,000 on site because we did the calculations and showed there's somewhere in between 2,800 and 3,200. I've since counted 2,980 and I've still got 20 per cent of the property to go—that's another matter. The number of credits considered equivalent for the Biodiversity Offsets Scheme was one-tenth of that, so I went from 7,100 credits to 710 credits. The credits, when we changed from the pricing under the BioBanking scheme to now the most recent price that we've received for those credits, have gone from \$288.82 per credit, when I had 7,100 of them, to \$210 per credit when I now have 710 of them—a 93 per cent reduction in value. Tell me how that incentivises people to participate in the scheme.

We've got that issue. With regard to the slaty red gum there was a trade that occurred through the Biodiversity Conservation Fund for \$240 a credit. At the time I was never asked did I have credits for sale, would I be interested in selling them, or what is my price. The BCT, through their process that identifies in the BCF what the prices are, is blind to the actual valued offers or the considered offers from landholders like me. This is our only source of income. We've taken the risk on of putting this land into permanent conservation, yet we're expected

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to do it for the value of the Total Fund Deposit, which, if you look at how it's meant to be calculated, is calculated as though it's actions undertaken by a third party.

When a landholder can do it themselves, that's fine. I can do the ecology stuff, I can do the weed control stuff, but I cannot do the pest control because I don't have a shooter's licence. I cannot do the road maintenance because I do not have the equipment. I'd need to spend another \$40,000-plus on obtaining that equipment, and that's certainly not calculated for in the TFD. The other thing, of course, is that workers in agriculture have the second highest rate of fatality and the highest rate of lost-time workplace injury of any industry in Australia. Therefore, you're looking at—

The Hon. STEPHEN LAWRENCE: Sorry, who do?

GREG STEENBEEKE: Agricultural workers—farmers, effectively—have the highest rate of lost-time injury and the second highest rate of fatality, only behind heavy road drivers. That's from the ABS data. We're looking at the chances that in 20 years the same person is doing the work. Start with the fact that most landholders are in their sixties, the fact that in 20 years you can expect this landholder would still be doing the weed control, the fencing, the track maintenance, all these other things, is probably a little bit far-fetched. So you know that the funds that go into the TFD are not part of the future value of the land. This is something which my brother, who works for Westpac as a loans manager, has said. He said, "The TFD is valueless as far as banks are concerned."

There needs to be additional value put in, and that's what we cover with our project management fee that we put in. We charge it out at the same rate the BCT provides for conservation outcomes for voluntary conservation areas of \$100 per hectare per year, which for a 300-hectare property is \$30,000 a year, which adds about \$1 million to a Total Fund Deposit value. But it's a guaranteed amount that indexes annually for that amount. So a bank can look at that land and say, "It's got \$30,000 a year coming in as income. That gives us an effective value of about \$800,000 at a 5 per cent interest rate". It keeps value in the land; it doesn't make the land valueless. If the land is only getting the TFD value for the actions, the land becomes valueless—and that's the word from my brother.

The Hon. STEPHEN LAWRENCE: I have just one question for you, Mr Steenbeeke. Could you tell us how you balance the conflict of interest of being both an accredited assessor and a participant in the market?

GREG STEENBEEKE: Only today. I stop being an accredited assessor today.

The Hon. STEPHEN LAWRENCE: Do you?

GREG STEENBEEKE: I do.

The Hon. STEPHEN LAWRENCE: Okay. Well, prior to today, how have you balanced it?

GREG STEENBEEKE: Prior to today, I basically turned down jobs where I had a potential for generating credits for a development that I also generated from the work. Basically, I do not work in New South Wales as an ecologist anymore, except on our own sites. That's simply because there is too much hesitation and conflict to work in the scheme when you've got the situation, such as myself, of an ecologist—a recognised expert ecologist, by the department. I sit on the Saving our Species technical working group. So I provide the 30-plus years of expertise that I gained whilst working for the department into that process, and provide that information back, effectively, at a much lower rate than as an ecologist I could charge. So that is provided. But when it comes to doing work as an accredited assessor, I did not do it.

There was a concern raised by the department that I'd been involved in providing information off our sites to the accredited assessor for the Thesium sites. But that information provided is captured from the wildlife cameras. We have 200 wildlife cameras that we've deployed across the six properties that we have under management, and another 20 that I have on Henribark. These cameras are out, effectively, all the time. We have cameras that have been out for more than two years and, as in the case of the Henribark camera, the week before we put in the final review of the site for generating its credits was when we found the brush-tailed phascogale. The cameras had been deployed for 11 months. If you go by the requirement of the department that a camera only needs to be out for a couple of weeks, then it would never have been picked up. So there are advantages to us doing that.

But on top of that, in compliance with my scientific licence, which I've held for the better part of 30 years, I am required to report to the State database, BioNet, all of my sightings, and especially any sighting I make of a threatened species. That helps with management outcomes, it helps with identifying where these species occur on the landscape. I am happy to support them with imagery from cameras, but in most cases it is just me, as an ecologist, identifying, "Yes, we've got this thing here." When it comes to the assessors, if I find a threatened plant, I will put a pin on a mapping tool and say, "Here it is here." We get them to confirm that that's what I saw. So it's not actually me saying this, it's been that. But the department still had a concern with me providing the information,

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even though I'm an expert ecologist, I'm on the sites a lot more than the assessors and I'm doing it at my own cost. If we had the assessors out there as frequently as I was, our costs of assessment would be \$400,000 or \$500,000 or \$600,000. We can't afford that. We don't see a reason to afford that.

The Hon. STEPHEN LAWRENCE: I have one more, but I think we're probably at time, are we?

The CHAIR: We are at time. Is it something we can put on notice?

The Hon. STEPHEN LAWRENCE: Yes. I was just curious what you think should happen with the Biodiversity Conservation Fund. You can take that on notice, if you wish?

GREG STEENBEEKE: I would like to see the resolution of the fund through the expenditure of the obligations that it's obtained, whether that means that the Government has to provide more funds to get those obligations through. But, by all means, as I said in my opening, if there is a credit in the market or in generation—and the department knows which credits are in generation because they've got access to the biodiversity assessment scheme method tool to see "Are these credits being generated?" They'll know that these credits are there. Therefore, they can say, "If the credits are here or already in production, then they shouldn't be able to be traded through the BCF." The BCF should be retained entirely for those credits that don't exist.

The CHAIR: Mr and Mrs Davies, I'm afraid our time is up, but if there are questions on notice they'll be presented to you.

GREG STEENBEEKE: Sorry, Andrew and Louise.

The CHAIR: The secretariat will be in contact with you in relation to anything taken on notice. Thank you very much for your time and your evidence today.

(The witnesses withdrew.)

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Mr JOHN BROCKHOFF, National Policy Director, Planning Institute of Australia, affirmed and examined

Mr DARREN HOLLOWAY, Hunter Convenor, NSW Division Committee, Planning Institute of Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you very much for making the time to give evidence today. Would either of you like to start by making a short opening statement?

JOHN BROCKHOFF: Yes, thank you, Chair. On behalf of the Planning Institute, we support the intent of the draft bill. We're pleased the proposed bill responds to the Henry inquiry and puts the New South Wales biodiversity conservation framework on a trajectory towards being nature positive. We continue to advocate for the bill, and the process in general, to be closely aligned with the regional land use planning process. We particularly support a number of aspects of the bill that require a nature strategy to be prepared to set goals and targets, including monitoring and public reporting; emphasising an explicit hierarchy to avoid damage from development and only offsetting, or funding offsets, as a last resort; closing various loopholes regarding rehabilitation of mines; addressing climate and cumulative impacts; engaging First Nations; and strengthening landholder support for biodiversity conservation capacity.

One thing I would like to point out, Chair, is that PIA have made six submissions on biodiversity assessment since 2016, since the threatened species Act. We are an experienced body of professionals representing the planning profession. Six submissions on this topic takes up a lot of our time and effort and it suggests that there are issues worth resolving. Many of those issues have been crystallised through the Henry review. But, in essence, PIA have been very concerned that like for like—while we support an economic tool to manage the assessments process and create a credits and offsetting market, that economic tool needs to function on sound principles. One of those principles is a like-for-like offsetting so that the system doesn't become a way of getting past what we understood was fundamental, which is around avoiding in the first instance and then using offsetting where it is appropriate, particularly where it is appropriate for the offsetting to be as like for like as possible so you don't have a default mechanism operating where you are basically paying for impacts, paying to get out of your obligations. That has been the fundamental basis of our six submissions over the last decade.

We are also keen that the reform bill and its associated implementation looks to put some impetus behind the preparation of regional biodiversity assessments, mapping agreements and just in general lead to a stronger reliance on some broader context, rather than reliance on individual BAM assessments. Also, recognition of offset credits in circumstances that represent different habitats or are very remote from habitats being damaged or impacted—that payments only be available for like for like. Also, the need for market certainty—the failure to establish a stable price signal in some offset credit markets is not good for our industry as a whole. The other thing that is curious with the development of the offsets regime is the sidelining of some well-researched work by local government—and providing a context for understanding and using, where appropriate, council biodiversity policies and overlays and supporting those councils that are doing great work in the biodiversity offset space, rather than being ignored in favour of the global process.

In general, we congratulate the New South Wales Government for crafting a bill that responds to the thrust of the Henry inquiry recommendations. We are pleased at this stage. I think our industry has been listened to, but we have been ringing alarm bells on this for a decade and it has taken us until now. I should just point out that the planning institute do have a corporate memory that probably extends beyond governments in some ways, and we do provide a valuable service in the public interest around keeping our eye and keeping practitioners' eyes on the way some of these processes are evolving. Thank you for your time, Chair.

The CHAIR: Thank you for such a succinct view. I think you are right: the 10 years of critiquing the system and the same themes coming over and over. I am really keen to understand. Obviously with your focus on the strategic application of this scheme—I think I heard this but please correct me if I am misrepresenting it. Are you suggesting that decades worth of variations and diversions from the original intent of the scheme that are required to engage in like for like and have these rules around it has meant that we've had uncertainty and that that can be attributed in part for the failure of the protection of biodiversity? Is that kind of where you were coming from?

JOHN BROCKHOFF: Yes. I think we've gone down a pathway of, leaving behind the threatened species conservation legislation, creating an economic tool, creating a market for offsets trading to get past some of the black-and-white issues involved with the TSC Act. But in doing so, in creating that economic tool, we've created a market that doesn't work using sound economic principles. There's not certainty in setting a price. The way in which offset credits are generated and traded doesn't represent some of the characteristics of a properly functioning market. You would expect to generate and trade like for like and result in no net loss of biodiversity. But the market hasn't worked like for like and there has been a loss in biodiversity.

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In some cases you might be impacting one habitat and be offsetting another, and sometimes quite remotely. It's very difficult to see a sound economic market operating when the signal the community are seeing is "Well, it looks like I'm paying to resolve an impact." Whereas it was our understanding, and indeed it's enshrined in the legislation, that there is a hierarchy of you don't just simply buy your way out of trouble but you plan to avoid, mitigate and then offset as the last resort. We are very pleased to see that the bill seems to be—I know that has existed in practice, but the bill seems to be elevating that concept and that's something we explicitly support.

The CHAIR: In some submissions on that point we have received some criticism that actually if you want to really achieve the implementation of the hierarchy the Government should put that in the legislation, not a regulation. Do you have any views on that?

JOHN BROCKHOFF: I don't have a view on the mechanism to do that, unless my colleague Darren has a view.

DARREN HOLLOWAY: I think whether you put it in the legislation or the regulation probably is not necessarily the issue here; it's establishing clear guidance on "avoid" first, minimise and then offset.

The CHAIR: Do you have a view on what that means in terms of real guidance on avoid? What would that look like in terms of instruction, say, or advice or guidance or a system for a potential proponent?

JOHN BROCKHOFF: Darren, could you answer that one?

DARREN HOLLOWAY: Yes, sure. You are talking about when an application is lodged on the ground here. You are talking about going through these principles or, if it's set in the legislation, avoiding, minimising and then offsetting. I think when this is rolled out you should be providing some clear, transparent guidance about how that works, because you don't want to get in the situation where a local council and the proponent are having ongoing discussions about what "avoid" actually means, then what "minimise" means. I think there needs to be some clear guidance around that in moving forward.

The CHAIR: I'm just curious. Do you have any understanding or experience about what "avoid" means, aside from just not doing the thing?

DARREN HOLLOWAY: I think you're talking about avoidance is you are trying to—if you've got threatened ecological communities, you've got significant riparian corridors, serious and irreversible impacts, and I think that's probably reasonable for most people. Then you get into is this a locally important corridor, or how does this function more broadly. I think that's where it starts getting—what's the word? It doesn't get very clear, particularly from a council's point of view. I take it that you will have boundaries or buffers to wetlands and all that kind of stuff. Those are kind of standard. When you get outside of that and you are talking about potentially a new release area, having to demolish a heap of vegetation and some of it is not threatened but some is—but you've got to put in infrastructure as well. I think there probably needs to be clearer guidance around that so councils also understand where they stand in that space.

The CHAIR: I'm just curious about whether you've got views in relation to, if you've got a proponent, you've got one small parcel or one large parcel of developable, private freehold land, and you've got three endangered ecological communities. Your void actually means that if you want to develop a tourist facility, it's just totally not applicable on that land or, actually, on this land you could probably put three residential units. It comes down to that, I suppose. Is that what you're suggesting in terms of what the avoidance advice would look like? Is this about actually saying no to certain harms and impacts early on? Is that what we're suggesting this scheme should be doing?

DARREN HOLLOWAY: Yes, absolutely.

The Hon. STEPHEN LAWRENCE: Mr Brockhoff, you talked in your opening statement about local councils that are doing well in this space. Were you suggesting that some are doing better than others? If so, could you maybe explain what you meant by that and what is happening in that space in local government?

JOHN BROCKHOFF: Yes. I was actually referring to a couple of examples from our members. For instance, Coffs Harbour had their own planning controls around overlays, wildlife corridors and the like. It researched a range of decision-making criteria when a development application was submitted; where it intersected with something that council had mapped or highlighted in their policies an important biodiversity resource, that they had a planning approach for assessing those sorts of applications. With the introduction of the biodiversity regime, a lot of that went out the window. That knowledge and that mapping, and that understanding at a local scale of what was important in terms of the way different ecological features of Coffs Harbour operated, that was really thrown into the black box of the biodiversity regime under the Act.

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There must be a way of using that knowledge, understanding some of the dynamics of how biodiversity is understood and dealt with by local government through, presumably, well-researched work, and not left on the side. It should be picked up in some of the biodiversity mapping, some of the biodiversity agreement work, maybe picked up in the Nature Positive Strategy, for instance, that might be prepared under this bill. It's just important that really well-researched, longstanding, valuable local government work on biodiversity is not lost, particularly when it is well researched and founded in strong evidence. This was an issue when the biodiversity regime dropped upon some of that local government work. I can't give you many examples, but I do know Coffs was one.

The Hon. STEPHEN LAWRENCE: That is really helpful. Lastly, you mentioned the value of regional assessments in your opening statements compared to site-by-site evaluations. I was wondering if you could expand on that and maybe talk about how that process could be better adopted and improved?

JOHN BROCKHOFF: I guess the thrust is that—and this is a common principle across planning in general, not just in biodiversity assessment—if you manage the risks at the regional, district or even precinct scale, it means you are taking a bit of the weight, and a bit of the hassle and the risk out of the individual site assessment. The less effort and the less burden that falls on an individual site assessment, I guess the better use of assessment resources there is. If you have dealt with some of the trade-offs, some of the regional opportunities, made some economical savings on regional mapping and regional understanding of the biodiversity resources, by the time you get down to the individual site assessment, in the way Darren was saying, you've made some of the trade-offs and you know what is meant by "avoid". You've done a regional assessment that gets, for instance, how well a threatened species is doing in a region and maybe this individual suburban block isn't going to be the be all and end all.

It's about making those trade-offs at that next level up, at that regional assessment level. Now the gold standard, of course, is having a regional biodiversity agreement and extensive biodiversity mapping. But even below the gold standard, you can be better than having no regional agreement, no regional mapping. There are some halfway houses around assessment for my context, to take the weight off each individual assessment having to do all the background work. Darren, do you have any comments on that; how you can make it easier rather than relying on every individual site assessment?

DARREN HOLLOWAY: I think you've summarised it quite well. [Audio malfunction] submitted to the relevant authorities as well. They can be made a bit more public so a lot more people can see what is going on. There are other ways, not just doing whole regional mapping of expensive projects, as John said.

The Hon. SARAH MITCHELL: I just have one question that goes to the final part of your submission. You talked about supporting a bill being implemented but wanting strong training and capacity-building initiatives and resources. You mentioned the availability of a planner and ecologist expertise. I was just curious if you could expand on that a bit more in terms of where you think the gaps are in that space, and what would need to be provided in order for this bill to be implemented well?

JOHN BROCKHOFF: I think Darren made a great point, the interpretation of "avoid" and the guidance around that, and training to understand how that hierarchy would be implemented. I think councils invariably get community inquiries about biodiversity issues and in matters of planning, even when they don't hold the expertise. Some sort of help desk or concierge resource, if councils can't provide the individual that expertise in house. Having some access to a—for want of a better word—hot desk, concierge, resource that can help them. There are many councils that don't employ a biodiversity officer. Having some access to expertise would be very useful. Where there is expertise or where councils need to be able to handle inquiries, some sort of training package to go along with the introduction of the bill would be very handy. I'm sure Darren would have some insights on the ground more than I would as to the sorts of skills that councils might need.

DARREN HOLLOWAY: There is a broader issue in rural and regional areas, where they might be understaffed—just trying to get engineers and planners and those kinds of services. For some councils, just to get an ecologist is even more difficult. There needs to be some assistance to those local councils in that space.

The Hon. JACQUI MUNRO: Does this relate to, essentially, the definition of what is considered an accredited person under the Act? Is there scope there to include some requirement, for example, for that accredited person to be public facing or that they are made available to people who need them?

JOHN BROCKHOFF: That is the next level down of detail, which I wasn't getting into. It was more that, as a planner, council planning officers, in particular, are the front line on just about every issue going, whether it's rubbish, where do I get my car registered or how do I get a biodiversity assessment done. I think there is a need for some generic support for councils that don't employ specialised officers, at that very general level. Ms Munro, I think there are some specific training needs that I haven't got an answer to. The answer I do have is

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that major important reform and a new bill that'll bring around new practices should be put in with a change management program, and that change management program should resource the gaps in training needs. I'd be asking for a change management program to actually identify the things that you've raised and to resource them accordingly. If you just simply have the bill land, its impact, which could be very positive, will be reduced, and its impact can be maximised by having a funded change management program.

The CHAIR: The bill, as it is proposed, continues to divide the scheme. Certain things will apply to part 4 local developments, and things won't apply, or the scheme won't apply the same way to State significant development, and there's certain exceptions and so on. Do you think that's a sensible way to undertake planning? I'm not talking about critical infrastructure projects. I'm just talking about State significant developments and part 4 as we've come to know them over the years, as local developments.

JOHN BROCKHOFF: Yes. Our submission hasn't covered that area in detail. I would leave those sorts of decisions on how the implementation of the Act applies in different contexts to a process of regional decision-making through some form of regional agreement, ideally linked to regional land use plans. If there was a regional agreement, regional land use plan that had evidence and presented an argument that the scheme should apply differently in different situations in relation to the outcomes that the public wanted for a region, then that would provide the authority for the differential application of the scheme. I haven't expressed a view, and our submission hasn't expressed a view on the question you've asked, Chair. At face value, I acknowledge what you're saying. A simple, straightforward response to all situations relating to biodiversity is appropriate. But we haven't responded to that point, in our submission.

The CHAIR: I think what raised it in my mind was in extension to your concern, which I thought was really important, about losing that kind of very well-researched local perspective, and my experience is the same. Local planners know everything and tend to be the closest facing to the community, who tend to understand their local environment better than anyone, as well, and it was more this notion of do we set up a potential perversity in the system, if you've got a State significant development system where, if you just up your development a little bit more, you can run a different scheme, as opposed to dealing with your local authority and working very closely to get a better and, in a developer's eyes—potentially—a more difficult or more onerous development up?

JOHN BROCKHOFF: I understand, Chair. I think the public interest may be served by having different approaches, but it needs to be a transparent acknowledgement that the community accept that to happen and that they've made the trade-offs at a regional level, ideally through some sort of open public-facing process that says, "We're happy with that approach." The community might say, "There are certain types of development that we think are so important that we are happy to acknowledge that a different process applies", but that should be a public process and land through a process of exhibited regional strategic planning, ideally supported by regional biodiversity work. Then if, on that basis, there's a public interest in having different processes, there's a basis for it. Without that process, it becomes less logical to have separate, arbitrary distinction of a separate assessment process.

The CHAIR: We've come to the end of our time. It seems to always go very fast. Thank you very much for your time today and giving evidence. If any matters were taken on notice or there's any further issues, the Committee secretariat will be in contact with you. Thank you very much.

JOHN BROCKHOFF: Thank you, Chair, and thank you, panel.

The CHAIR: We'll now take a 15-minute break.

(The witnesses withdrew.)

(Short adjournment)

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Ms RACHEL WALMSLEY, Head of Policy and Law Reform, Environmental Defenders Office, affirmed and examined

Ms CERIN LOANE, Special Counsel, Nature, Environmental Defenders Office, affirmed and examined

Mr JADEN HARRIS, Advocacy Manager, Nature Conservation Council of NSW, affirmed and examined

Ms JACQUELYN JOHNSON, Executive Officer, Nature Conservation Council of NSW, affirmed and examined

Dr MEGAN KESSLER, Nature Campaigner, Humane Society International Australia, affirmed and examined

Ms MEG LAMB, Animal Protection Campaigner, Law and Policy, Humane Society International Australia, affirmed and examined

The CHAIR: Thank you for coming and giving evidence. Would anyone like to start by making a short opening statement?

CERIN LOANE: Thank you for the opportunity to appear today at this inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. This bill, together with the relevant reforms set out in the *NSW Plan for Nature*, is intended to deliver on the Labor Government's commitment to fix the Biodiversity Offsets Scheme. Generally, EDO supports the intention of the bill and we welcome many of the proposed changes. However, we do want to stress up-front that, in our view, the bill does not go far enough to address some of the key criticisms about the scheme. For example, the bill does not do enough to strengthen like-for-like requirements, limit variation rules, and the use of indirect offsets; it does not set thresholds for where offsets should not be used; and it does not embed in law a set of scientifically sound principles to govern the operation of the scheme. That was a recommendation of this Committee back in its 2022 report.

Further action, including additional changes to the scheme, updates to the regulations, changes to the biodiversity assessment method, and a review of the intersecting legislation, will still be needed if this Government intends to comprehensively address the full gamut of concerns that have been raised about the scheme and its ability to deliver environmental outcomes. We note in particular that some of the recommendations by this Committee previously have still not been addressed. As you may have seen, our own submission highlights areas of the bill that could be further strengthened at this time to move us closer to the goal of fixing the scheme.

This includes legislating a set of scientific-based principles to govern the operation of the scheme; setting clear thresholds where offsets can't be used; embedding a net-positive standard into the Act now, while still allowing for a transition strategy to be developed; establishing a legislative mechanism to phase out the option to pay into the Biodiversity Conservation Fund, which is a recommendation of IPART; giving proper effect to the avoid-and-minimise hierarchy by implementing protections for avoided areas; removing or restricting provisions in the Act that allow the regulations to prescribe other biodiversity conservation measures and other actions as alternatives to the retirement of credits, because that's not like-for-like offsetting; removing or better safeguarding the discounting provisions in the Act; and ensuring the scheme applies to all part 5 development. We would be happy to provide more detail about our recommendations in the session this morning.

JACQUELYN JOHNSON: The Nature Conservation Council of NSW is the State's peak environment organisation. We represent over 200 environment groups across the State and we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of New South Wales. We welcome the opportunity to contribute to the long-overdue reform of the deeply problematic offsetting scheme in New South Wales. The diversity and character of native plants and animals in New South Wales is remarkable. Our shared natural heritage has evolved over millions of years and should be treasured. Biodiversity offsetting has an unequivocal role in legitimising the unacceptable legacy of destruction that is being left for future generations. It is stealing the future and selling it in the present. NCC is opposed to biodiversity offsetting. All biodiversity is non-fungible and unique. Achieving like-for-like offsets is difficult and often impossible in practice.

When time lags between destruction and the functional maturation of an offset is also considered, offsetting almost always delivers negative outcomes for nature. However, we are living in a system in which biodiversity offsetting exists and will continue to exist. Given that reality, scheme design must follow science-based best practice, be transparent, and include regular and comprehensive evaluation of its impacts. Offsets should only be used as a last resort and should never be permitted in high biodiversity value areas such as those with threatened species or ecological communities, or those that are important for maintaining landscape and habitat connectivity. The proposed reforms don't come close to this benchmark as they are. The proposed bill fails to tackle the fundamental problem that nowhere is out of bounds. There are places that cannot withstand any more destruction.

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In its current form, the bill would continue to allow for the approval of serious and irreversible impacts on ecological communities and species that are at risk. No-go zones are an essential part of protecting species and, without them, mitigation measures on a project scale simply cannot be effective. Our submission identifies ways the bill can be strengthened to a bare minimum of safeguards for nature, and advocates that implementation happen as soon as possible, because reform is urgent. Our final note in this statement is that net positive is not the same as nature positive. A standard with a clear definition of "net positive" should be embedded in the Act at this opportunity, and it must be delivered in a way that ensures positive outcomes for each impacted entity as well as overall. As Cerin mentioned, this is part of an election commitment to fix the BOS. Change needs to occur to lock in substantial improvements with the scheme. Without further amendment, as recommended to this inquiry by all of us and other environment organisations, it will be hard to see how the scheme can be fixed.

MEGAN KESSLER: Humane Society International Australia has watched with dismay as report after report has chronicled the deadly toll that the Biodiversity Offsets Scheme is taking on our wildlife and the places they call home. We strongly welcomed the Labor Government's commitment to fix the offsets scheme, so it is incredibly disappointing that the draft legislation that we are discussing today fails to address some of the most glaring problems with the scheme—problems that are driving our wildlife to extinction. The New South Wales Government must take the opportunity presented by this bill to implement measures that will immediately address the environmental harm that the scheme is causing and ensure that it transitions to a system that will support and facilitate the recovery of our threatened species. We ask that the Committee consider our written submissions and those of our colleagues here today, and recommends significant strengthening of the bill.

The Hon. STEPHEN LAWRENCE: I might ask a couple of questions first of the EDO, which is such a great organisation. EDO, you recommend legislating a set of principles that govern the offsets scheme. You have listed several of those principles. My two questions are: Are those principles already required under the offsets scheme, and what explicit impact would legislating those principles have?

CERIN LOANE: I would say that more can be done to ensure that those principles are in the scheme. The recommendation of this Committee, Ken Henry and us is to have them up-front in the scheme, to be really clear about what it is the scheme needs to do, but that alone is not enough. As I think you've realised, you need to operationalise them in the bill themselves. Some of the amendments that the Government has put forward today, for example, will go towards the first principle that we have listed there about the mitigation hierarchy. That's one way that the Government is trying to better embed that particular principle into the legislation. We do have recommendations about how the provisions of the bill could be strengthened around that.

The principle around like for like, I think this is one of the key concerns we have about the bill and the fact that the bill does allow quite a lot of variation to the offset rules—indirect measures and payment into the fund—which aren't consistent with that principle. It would be a matter of putting those principles in and then making further changes to the legislation to ensure that the legislation is meeting those principles. The same for the other ones. They are in there, to some extent, but much more improvement is needed. By putting them up-front in the legislation, it's really guiding the Government and the Parliament about what we want the framework to achieve, to guide how the scheme really needs to be implemented, and then the further changes that need to be made to the legislation. Does that answer your question?

The Hon. STEPHEN LAWRENCE: Yes, it does. That's helpful. Also for the EDO, you recommend that the principles and standards governing the requirement to avoid and minimise be adopted in the bill. Can you explain how and what this might look like?

CERIN LOANE: Yes. The bill does propose to put the avoid, mitigate and offset hierarchy into the bill. It's going to insert a new section that does that. From there, once you've got it in the bill, it's really important that you make sure it is properly operationalised. There are other components and consequential amendments to the bill that do that, but there are a couple of things where the bill could go further to ensure that principle is better embedded in the bill. I will talk to those things now. The first is that the bill suggests that there will be additional principles, standards and requirements about implementing that hierarchy in the regulation. We don't know what those principles, standards and requirements will be.

It would help if some of those were put into the bill up-front to guide how the hierarchy will be implemented and to guide what the regulation can and can't do in terms of setting those principles, standards and requirements. We also just note—and it's probably something that would be worth the department addressing when you speak to them next week—that there is a little bit of inconsistent drafting in the legislation about how the mitigation hierarchy is applied. There are different terms. "Genuine measures" and "reasonable measures" are used interchangeably and they're not defined. A bit more clarity around that would be useful. The terms "measures" and "steps" are also used interchangeably. A bit more clarity around that would be very helpful.

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In terms of the actual practical application of the avoid-and-minimise hierarchy, one of the things that I think is missing from the bill is how to properly operationalise the "avoid" component. You're asking individual proponents to indicate how they're going to do that. But there is no follow-up safeguard to ensure that any impacts that are avoided are avoided in the future. There will be a register, for example, that will show us where an individual proponent has said it will avoid and minimise impacts. But there is nothing that says that in the future a future proponent also has to avoid those impacts. There is nothing to suggest that a future decision-maker has to consider the fact that those impacts have been avoided for a particular development. There is nothing that actually says, "Now they have been avoided here we're going to keep them avoided in the long term." It's good that you've identified them up-front and you've got them on the register, but proper application of the hierarchy would say, "We need to do something more to ensure the longer term protection of those avoided impacts up-front."

The Hon. STEPHEN LAWRENCE: Thank you, Ms Loane, that's helpful. I will go over to Ms Johnson from the NCC. You provide in your submission—and I think you said it in your opening statement as well—that you're opposed to biodiversity offsetting. I am just wondering what alternative systems are really available to governments to regulate our biodiversity?

JACQUELYN JOHNSON: I think that's probably why we acknowledge the reality that we're in. We're able to have a principled position that acknowledges that you can't exchange one piece of nature for another, but at the same time we want the least possible harm to be inflicted by the system, which allows development where necessary.

The Hon. STEPHEN LAWRENCE: Could you elaborate on your third recommendation, which is in respect of making the offset hierarchy stronger than merely requiring genuine steps to be taken, as is contained in the bill? How would this be implemented and what specific changes to the regulation would be required?

JACQUELYN JOHNSON: I'll start by saying that any specific changes to the regulation I will leave to the lawyers. We're suggesting that we're at a point in the biodiversity and climate crisis where just proposing to not cause any further harm isn't enough anymore. There have been pieces of research done and more investigation is happening internationally where there is a mitigation or project hierarchy that can go beyond just not causing harm to actually engaging with revegetation and working out how connectivity can be re-established around a project. We've got a couple of suggestions that we can provide. It is, in our submission, because it is a point in time now where we can actually consider how projects can become nature positive or net positive by actively contributing to the biodiversity around the project.

The Hon. STEPHEN LAWRENCE: Now I have a couple of questions for HSI. Firstly, you make a range of recommendations to improve the bill. Could you elaborate on recommendation number five in respect of legislative guidance on the delivery of the mitigation hierarchy and what this might look like?

MEGAN KESSLER: Certainly. It's important to start with the fact that that recommendation doesn't stand alone. It sits in a context where we are saying that you need to have the areas that have to be avoided identified up-front and captured in the legislation. In terms of the hierarchy, that is the most important thing that we can do. The system that we see at the moment effectively makes the "avoid" step a bit of a tick-a-box. Making sure that we've got those principles and those very clear areas that we're going to be avoiding in the legislation sets the system up to perform much better than it is now, at least. In terms of the mitigation, one of our key concerns around that in this bill is that the language of things like "reasonable steps" and "genuine steps"—those are completely undefined terms. It's very vague language.

We know from previous experience that the way proponents will often say that they have taken reasonable steps is to have a paragraph that says, "We thought about this and we decided it wasn't viable." That's not good enough. The legislation needs to set out, or the regulations in terms of the proposal as it stands, what a proponent has to do and the information that they have to share to show that they've been through a process—that is reasonable not only in their opinion but could also be considered reasonable in an independent decision-maker's opinion—to think about the impact that they are having and how to best avoid it. We need to move away from a system where it's really all on the proponent just to say that they have done that. There can be a role for the decision-maker to say, "That's not good enough. Why have you not looked at these options?" Those principles and standards provide an opportunity to provide that guidance and the expectation that a decision-maker has about what information they will be given so that they can form that independent view.

The Hon. STEPHEN LAWRENCE: Lastly, in your submission under the heading "Additional measures required" you provide a reference to a 2022 Senate inquiry. I'm just wondering if you could elaborate on the findings of that Senate inquiry? It's on the seventh page of your submission.

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MEGAN KESSLER: At the moment the offset scheme has a number of outs, one of which is that it assumes that the environment will get worse in the absence of any further activity being done. The consequence of that is that a proponent is allowed to say, "If I do something, I should get credit for the environment to not get worse." There is a huge assumption in there that the environment can't look after itself. This idea that is built into the scheme that says the environment will get worse if left to its own devices allows proponents to get credit for really not doing anything that is additional to what would already happen in nature. That creates a system where the offsets that you are required to provide aren't necessarily creating the additionality that the system itself demands. The other part of that is that in offset sites or stewardship sites there is an assumption that bad things might have happened there as well if it wasn't otherwise protected. Again, we have laws that actually define what is allowed to happen in certain areas, so assuming that those laws won't be applied and getting credit for that is problematic.

I think in terms of the second point, that has been covered and that is a good thing. That is removing the option to use mine rehabilitation. Rehabilitation of mines already has a standard in the legislation. We would say that that standard needs to be changed so that mining companies are actually meeting current community expectations about what happens as part of their rehabilitation, and those expectations are much higher than the Mining Act currently requires.

The CHAIR: I want to ask a fairly broad question. From the submissions from the NCC and HSI, it's quite clear that there is an undertone that the current broken or failing system that has been identified over the decade through various inquiries and reports and so on has been contributing to driving species decline and environmental health decline. Can an offset system actually prevent extinction and environmental harm? It's a general proposition and I put it out there to any of you.

JACQUELYN JOHNSON: Jump in at any point, anybody, but I would say that what we were talking about just before—so only under some very specific circumstances could an offset scheme contribute to building biodiversity in the State. That is under a scheme where things like a mitigation hierarchy that included improving biodiversity as an expectation of developers and also that included really clear and firm no-go zones as well—

The CHAIR: When you say "no-go zones", is that similar to this idea of what a red flag is?

JACQUELYN JOHNSON: Yes, so there'd be no-go zones, red flags. There are probably some other terms that we've used to describe essentially a clear understanding for everybody where development needs to not go ahead because that ecosystem or species that exists there is unable to cope with any more habitat loss. So, yes, whatever various terms—I think all of the submissions from the environment movement that I have read include something along those lines.

JADEN HARRIS: Just perhaps to elaborate on that, I think it comes to the question earlier about what are the alternative systems. No-go zones are not an alternative but very complementary to the system. It's dealing with the problem that offsetting has become too prevalent. It's helping to facilitate developments in areas where they probably wouldn't otherwise go ahead because the impacts of that particular development in that area are so serious and so irreversible. So we think—and this is similar to the recommendation that Henry has had and a number of other inquiries over the years—that these no-go zone areas are really essential. We need to recognise that there are places of such high and irreversible biodiversity, ecological communities which are so few in their extent—they're of such high value that development cannot be allowed there.

That will help support as well a functioning and viable offsets market, because we keep running into these situations where credits are not available for a particular development because an ecosystem is so high value and there is no possibility of creating credits for it. We think that they will reduce cost uncertainty and complexity for developers up-front. Like I said, at the moment there are, for some types of development—if a serious and irreversible impact is found at a later stage of the assessment, it is a requirement for the decision-maker to refuse that development.

Not only is this creating a bad situation for biodiversity, but it is essentially wasting everyone's time and reducing confidence in the scheme from all stakeholders. We think that—as was Ken Henry's review panel's finding—having a system in place under this bill that will allow the Minister to create no-go zones is really important. We recognise that the Government has said that no-go zones require further consideration, but we think at this point the Act could be amended to allow the Minister to create that through the regulations and do further consultation with all stakeholders as to how exactly that might look and function.

The CHAIR: That's very helpful—so no-go zones; serious and irreversible impacts that feed into those no-go zones; and the hierarchy. Are there any other features that are essential? Obviously we've heard like for like, because, as we understand the system now, you can trade off like for like. You can do various other things.

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There are variations that we can do. No-go zones, like for like—are there other features of an offset system that could literally assist in avoiding extinction and driving further environmental harm?

MEGAN KESSLER: I think it's important to go back to first principles and remember what offsets are. They are a way of approving harm that would have otherwise been refused. They operate in a system and we need them to operate in a system that recognises that, first and foremost, we have to understand what we need to do to protect and recover biodiversity. We need to make sure that they're embedded in a system that has identified what needs to be protected, what needs to be restored to ensure that we can take all of those threatened species off the list and actually have them thriving in nature. That's got to be the first step. Once you get there, you can start to think about, "Okay, well, what harm can we allow?" And we can kind of identify already there are a series of things that we know should be hard noes up-front, our avoided areas. Then we can think about, "Well, how much more harm can we cause?"

You've identified a number of the problems in the existing—the exemptions. State significant development, State significant infrastructure can be varied enormously—don't have to apply the concept of serious and irreversible impacts. All of those impacts need to be brought into the same system to have the same standards so that we can actually cumulatively consider the impact that we're having on the environment. Then, if we are going to use an offset system, it has to be in the context of understanding the harm that we can allow without driving species to extinction, without inhibiting their recovery. Only then can we say, "Yes, this is something that can be offset." And if we want it to actually support recovery, that's when we start to get to things like the Henry recommendation around net positive and how much should we be expecting that, for the privilege of harming the environment, a proponent has to contribute to its restoration.

The CHAIR: With the net positive, do we get there through the concept of additionality and extra measures and things like that that become an essential and inextricable requirement on a proponent? Is that how we get there?

MEGAN KESSLER: In and of itself, an offset scheme should require you to deal with things like additionality, because those things are fundamental in terms of quantifying the harm and quantifying the impact and making sure that you are offsetting that harm. So to do more, to go further, we need to be saying, "It's not enough to have a no net loss standard, as we currently have. You actually have to have a positive standard." The offset system itself is inherently a quantifiable system. At that point you have a conversation about how much more. If we have quantified our harm, we have quantified our gain. Rather than no net loss, what is that positive standard that we expect the system to achieve?

The CHAIR: I might've read that you suggested this. Should we have a definition around nature positive in the actual legislation? Is this where we do that? Or do we leave that somewhere else? Is there a suggestion?

CERIN LOANE: It should be in the legislation. Right now there is a no net loss standard in the legislation. So it's not uncommon for there to be the standard in there and, if the intention is to replace that no net loss standard with net positive, then it needs to be in the legislation now. We understand the bill proposes a transition strategy to net positive but, if the policy intention is for it to be net positive, we think you can put that in the bill now to signal that intention and still do the transition policy. There is the underlying question of you're still left no net loss in the bill, so if you transition to net positive you're still going to have to come back and do something about that standard. So it should probably be addressed now. Our recommendation makes some suggestions about how that could be done.

The CHAIR: What is the difference between net positive and nature positive, talking Henry language? I feel like we're in this whole new territory. We've been playing with the definition of ESD all of our lives plus some. We've got all of these judgements and all of a sudden Henry has come along and said, "Okay, we're all going to be nature positive", and it's fabulous and feels good. But what do we do? Should we be looking at that as the definition? Does it have environmental measures and standards attached to it? Is this the time and place we do that?

MEGAN KESSLER: I think nature positive comes with a vast international conversation behind it and some clarity around what the expectation is. If you look at that international literature and what Australia has signed up to through the biodiversity agreement, we're looking at nature positive as being an improvement in the diversity, abundance, resilience and integrity of our native species populations and ecosystems. It sets a baseline, which is 2020, and it has a goal of halting and reversing nature loss by 2030 and achieving recovery by 2050. I think that that is a really tangible thing that we could incorporate into legislation.

It comes back to my earlier comment that the offset systems should sit in a broader ecosystem of environmental laws and requirements because, to achieve that, you're not going to get there through offsets, but a net positive offset system could be part of the delivery of nature positive. It could be one of the tools that we're

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using where we've decided to permit development. Net positive to me, in that sense, is very much about that quantifiable loss and gain that is calculated through the offset system. You can think about what you need to do to achieve nature positive for New South Wales and what contribution the offset scheme should be making to that.

The CHAIR: I want to pick up on the principle of non-aggression, and I think I may have discussed this in a previous inquiry. It was in the EDO's submission. Could you elaborate on what that means and how that would appear in this bill, if we were to suggest that the Government consider incorporating that?

CERIN LOANE: Our submission talked about the non-aggression principle in the context of the principles, standards and requirements for the avoid-mitigate-offset hierarchy. Once those standards are set—and the bill intends to set them in the regulation—a non-aggression clause would say that you can't then replace them with anything that would set a lower standard. It's to safeguard the intention now and to ensure that those principles can't be weakened in the future. We talk about it specifically in the context of that hierarchy, but you could talk about it in the context of the net positive standard as well, for example. It's a mechanism to make sure that you safeguard the policy intention now so that it's not weakened in the future.

The CHAIR: With the proposed register of the "avoid" and "mitigate" and how that works, what will it do? What does it mean? Yes, it will be great, and we might be able to see what people have done at a point in time. But I think there might have been a suggestion in a submission somewhere that perhaps it then needs to be a consideration for planning. What would that look like? Should it appear in the EP&A Act, or where does that go in terms of logistics?

CERIN LOANE: You could put it in the planning Act; you could probably put it in the Biodiversity Conservation Act as well, because it does talk to decisions that planning decision-makers make in parts 6 and 7 of the Biodiversity Conservation Act. I think it goes to the point I was making in the earlier line of questioning—it's good that we have the register and there's much more transparency around "avoid" and "mitigate". But to give proper application to the hierarchy, you need to then actually continue to avoid into the future.

The suggestion I had was, once they're identified in that register, do they then become no-go zones? Or is it an obligation on the decision-maker, either in the planning system or in the Biodiversity Conservation Act, that they cannot make decisions inconsistent with that register—or, at a minimum, at least consider the register? There does need to be that additional requirement in the legislation. We can take it on notice if you want some specific examples of exactly which provision you'd want to see it put into.

The CHAIR: That would be great, thank you.

The Hon. STEPHEN LAWRENCE: Going back to HSI, Dr Kessler, you said something in your evidence earlier about an assumption in the offset scheme that the law wouldn't have been complied with in respect of that land. Could you expand upon that? I think I know what you mean, but I'm not quite sure.

MEGAN KESSLER: Yes. The assumption is that things will get worse and that people won't actually protect their land in the way that they're currently required to under law. For example, there are requirements to control feral animals on a site. There are land-clearing rules. The assumptions in the actual methodology are that those kinds of things won't happen, so you can assume that site will get worse. I don't want to misspeak and say it's an explicit assumption, but it is built into the actual methodology that you can assume that degradation will continue to occur, for whatever reason.

Again, you immediately get credit for protecting a site, as opposed to actually thinking about what is going to happen in the real world on that site. Rather than assuming that it's going to be bad, we would say that you should assume that it's going to be the status quo, in the absence of any other reason to think that it will decline. By default, we have an approval system that says that it shouldn't decline in any dramatic way if it is appropriately managed or, in many cases, just left to itself.

The Hon. STEPHEN LAWRENCE: That's helpful. I'll go to the NCC. In your submission, you make a number of recommendations in relation to transparency. You recommend the creation of an online map function, a list of offset obligations being created under the LLS Act and regular monitoring et cetera, and a regular snapshot with statewide information. Could you expand upon those things?

JACQUELYN JOHNSON: I think that for quite some time now the environment movement has been asking for more transparency and more data availability about what's happening overall in the planning and offsetting schemes. What we've listed around transparency is sort of a list of things that would make it easier to understand cumulative impact, both for developers and also for other stakeholders who are interested in how things look. Did you have anything you wanted to—

JADEN HARRIS: Not particularly, no.

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The CHAIR: There's one recommendation in the EDO submission—and this has come up in other contexts—about landholder applications to amend the Biodiversity Values Map. Is it the case that only landholders can do that or that that is proposed? Obviously third parties should be able to make applications too. I think you had it as recommendation 18 in your submission, and I was curious about where that comes from in terms of the Biodiversity Values Map. Obviously that's very important and feeds a lot of the basic knowledge about what we are considering harming or protecting.

CERIN LOANE: That's right. The Biodiversity Values Map is one of the triggers for entry into the scheme, and the proposal in the bill is to allow landholders to apply to the environment agency head to have that Biodiversity Values Map amended. That would be if a landholder feels that the map is not correct. Our view is that an equivalent application process should be available for third parties as well. Local environment groups know their area well, and they would also be able to pick up errors with maps or provide additional information to the environment agency head if they too think that there's an error in the map. We would suggest that you make the process available not just to landholders but to any person who had concerns about that map so that the environment agency head could also consider whether that map needed to be amended.

The CHAIR: I've certainly asked about this, but at the moment the proposed reforms go to a very separate system, the part 4 local development assessment system and the State significant development system. Dr Kessler, you spoke a little bit about that, but what is your view in that context? Is it sensible that we would have a regime that determines how we get to improving biodiversity or avoiding extinction based on whatever the name of your development might be or the path it goes through? I'd be really interested in your views around that—both the integrity of the system and trying to get good biodiversity outcomes.

CERIN LOANE: I think, in terms of the integrity of the system, that's a really important point. You've asked us what additional safeguards should be in the scheme, and then you've also asked what else needs to happen. It would be to close those exemptions or loopholes where certain pathways of development have different standards or requirements, or the scheme's not applied in the same way. I'll give you a couple of examples. There are provisions in the legislation that allow the planning decision-maker to discount the number of credits for certain development. That's only available for a certain pathway—State significant infrastructure—but what that does is it undermines the scheme. You've got the scheme, and then you've got these provisions that allow the scheme exemptions and the rules not to be applied in the same way.

Similarly, you've got the serious and irreversible impact safeguard that is meant to give you that red flag when serious and irreversible impacts are identified. It requires mandatory reviews for part 4 but, in the case of State significant development or major projects, it's only a requirement for the decision-maker to consider it. Again, it's another exemption or loophole for a particular pathway. What those loopholes and exemptions do is it begins to undermine the scheme and it means the rules are not being applied consistently. I guess the answer to your original question is, if you're going to have a scheme and you want to work, you need to apply the rules consistently so that there's no variation away from like for like for certain pathways. Does that answer your question?

RACHEL WALMSLEY: I think I'd also just add that we make some recommendations about applying a consistent standard to part 5 as well because that's a gap in the current bill.

MEGAN KESSLER: If I could add that I think the other big loophole is the use of the fund: the ability for proponents to be able to pay into the offset fund and immediately discharge their liability, when we know that fund is completely incapable of actually delivering like-for-like offsets. There are a variety of reasons for that—some of which they're trying to address at the moment—but, at its heart, it is problematic because it actually takes all of those impacts out of this system and says, "We'll deal with them later." It lets the development go ahead and it has its own set of variation rules, which then allow that money to be spent in different ways.

There are some provisions in the bill to get the money out into the environment quicker, which—on the face of it—could help, but there is a real risk there that, again, there are no parameters around how that money would have to be applied specified in the bill. So you're moving away from those principles that Cerin spoke about earlier in terms of what makes a good offset scheme. You're not actually applying it through that system. There was a very clear recommendation from IPART that offsets payment should be phased out. We would very strongly support that. I think that the bill that you're considering now needs to set a really clear pathway for how that's going to be done.

JADEN HARRIS: If I could just add to the serious and irreversible impacts point as well, we agree that, ideally, the Act should be amended to mandate the refusal of all applications that have serious and irreversible impacts, as the EDO said. At the very minimum, there was a Ken Henry recommendation that the Act be amended to give the environment Minister call-in and concurrence powers in relation to that so that the environment Minister and agency can assess what those impacts are and how they should be mitigated or whether they should

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be approved. At a very bare minimum, that is a patch to the bill that we strongly support, and it's disappointing to see the Government not pick up that Henry recommendation.

The CHAIR: For that concurrence power and that call-in?

JADEN HARRIS: Yes.

The CHAIR: In terms of the payment and the phasing out, I think it seems to be a fairly consistent recommendation now, and those oversight bodies that have done the analysis realise this is one of the major causes of why we just keep having report after report as to why the system's not working and biodiversity is getting lost at rapid rates. We just heard from one submitter of evidence that, at the very minimum, any money in that fund must go to on-the-ground conservation and biodiversity improvement activities. There was a question of whether that money is used for things like assessment processes and other things that don't go to those activities. I'm curious about your views on that, too. Is that something you would agree with?

MEGAN KESSLER: The payments must comply with the same principles that somebody doing a direct offset themselves is going to be subject to. In the absence of that, it is actually undermining the system and it's undermining the market. It's bad for the environment and it's actually bad for the offsets market.

The CHAIR: Our time has come to an end, I'm afraid. I thank all of you very much for your time, your evidence and your very detailed submissions. If there was anything taken on notice, or if there are any supplementary questions, the secretariat will be in contact with all of you.

(The witnesses withdrew.)

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Mr STEPHEN HYND, Executive Director, NSW Aboriginal Land Council, affirmed and examined

Mr RAYMOND KELLY, Councillor and Chairperson, NSW Aboriginal Land Council, affirmed and examined

The CHAIR: Thank you very much for coming today to give evidence. Would either of you like to start by making a short opening statement?

RAYMOND KELLY: Obviously, the issue around biodiversity is an important one for us going forward, so I have a couple of remarks I'd like to make just to give some context to our evidence or our reporting here this morning. I understand that this building is called "this place". Interestingly enough, the concept of place for Aboriginal people in this country absolutely resonates around the notion of place: a place for this or a place for that, a place where you can find this or you can find that. Interestingly enough, we call that a gayi yayi site. A gayi yayi site means, literally, something of plenty is in this place. When we're talking about biodiversity, it gives me some sense of knowledge around this idea of what is in a place. To that end, Aboriginal people have cared for this country for millennia and beyond. The notion of 65,000 years of continuous practice is an important one for us to recognise.

Marking the notion of place, I want to begin by acknowledging the traditional people in this area and those present—in terms of their Eldership, past and present—and the continuing relationship to country for First Australians in this place. We recognise that there's been a sustained and managed range of communities living in this country. In this place we call that an economy. When I talk about the notion of a gayi yayi site or the sense of something in a place, it becomes the economy. A gayi yayi site could be a gayi yayi site for, let's say, jewfish, crab and—dare I say it—we even had a gayi yayi site for a cricket place. Now, in fact, that wasn't crickets that crawl on the ground—that was a cricket ground where people played. There was often plenty of cricket being played in that place. When we talk about place and country and people living in these places, it's very important that we begin to start to talk about this.

If I could, very quickly, I want to just go back. I was born in 1961. I was raised in a community on the outskirts of Armidale—an Aboriginal community at [inaudible], affectionately called Silver City—a shanty, humpy township built up from refuse from the local rubbish dump. In 1961, a range of new homes were built for Aboriginal people and took us from the rubbish dump. When I think about the notion of biodiversity, I am confronted with my own memory and my own reality of having to live in a space or place that sometimes doesn't always present good living conditions. Moving forward, I was born and raised in Armidale for the first 14 years of my life and then moved to Grafton and on to Newcastle. My awareness of the Aboriginal movement perhaps came during the earlier periods of the 1970s.

When we're talking about the Aboriginal land rights issue, then we have to go back to the Keane joint select committee, which provided a way for Aboriginal people that recognised that there are certain facts. That gave rise to Aboriginal land rights, which is the group we're representing here today. We grow up and we see things happen. New policies are created and new measures are delivered to support Aboriginal communities. Concessions are made, and I consider that the Aboriginal Land Rights Act was a concession. When we think about the land that is made available to Aboriginal people, people often think that the land that is available for claiming is land that we're claiming. But we're not claiming it; we're reclaiming it. When we look at the parcels of land that we have right across the State in relationship to the quantity of land that we once enjoyed, it's but a drop in the ocean.

When we think about the implications that might come with the biodiversity bill, then we've got to give great consideration to what opportunities might come our way. If we look historically, particularly to the Aboriginal Protection Board and then through to the Aboriginal Welfare Board—which is the period in which I was raised—Aboriginal people were, more often than not, removed from community, removed from industry, or moved with an industry to a place, and always put on the fringe of a community. That's our reality, but that's not where we are today. Where we are today is we're a thriving industry across the State. We've got land opportunities. We've got land councils with groups of people who are trying to make determinations for themselves in their own community. Then we look at this land opportunity that we have, and we're confronted with how do we manage to create for ourselves a future. It's very difficult when it might require us to put enormous amounts of money to work our way through this biodiversity challenge. We haven't got that money. We haven't got that backing. We haven't had the opportunity.

We've been removed from industry. Industry has taken our workforce and then removed us from industry in just about every industry that you can imagine. My father's people, in the 1880s, were at a place called Bellbrook in the upper Macleay Valley and gainfully employed in all industries—logging, the milking industry—and at some point the industry changes and we're spat out to the side. We've never had the backing, nor the bankroll, to be able to move with industry. We are then left to work with whatever opportunity comes our way. As a child, we

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were always employed seasonally. We'd be picking beans, picking potatoes or whatever we could. There was a time in the '70s where people were often employed in the cotton industry. Technology has moved on now. People aren't employed the way they can. That's just trying to give you a little bit of background. I might just let Stephen introduce himself for a minute, and then I'll come back.

STEPHEN HYND: Thank you to my chair and to Madam Chair. The State land council was established under the Aboriginal Land Rights Act passed by this place. We are the peak body for 121 local Aboriginal land councils right across the State. The key mechanism of the Aboriginal Land Rights Act—the one that my chair referred to—is the ability to reclaim land. That is limited to unused and unneeded Crown land. In practice that means that every freeholding event that has happened since colonisation has taken prime land out of Aboriginal hands. Every government agency, its utilisation for schools—they're all very important things. We don't begrudge those supports to community and society, but the reality is it means that the amount of land that is available for Aboriginal people—the amount of land that can be reclaimed—gets smaller and smaller and smaller.

It also means that those lands are less impacted by the pressures of society that also impact on biodiversity, which has the effect that where we find ourselves today, when we have need for not just a protective but a restorative biodiversity regime, that regime—even as a protective measure, let alone a restorative measure—disproportionately impacts on Aboriginal land rights land by the practical nature of that land claim mechanism.

We also have a somewhat historical precedent for this. The Keane committee report that our chair referred to, which gave rise to the land rights Act in 1978, also made the point that Aboriginal lands were, at that point in time, disproportionately affected by the planning regime. Obviously, they didn't have the language of biodiversity, or it was overly utilised by officialdom at that point in time, but you can see the analogy. The Keane committee report also recommended that Aboriginal land at that time should be subject to different planning ordinances because of that disproportionate effect. Yet while that was recommended in 1978, again, in this place, over time we've seen those problems exacerbated because the land rights Act has been treated in splendid isolation. When land use planning laws like the planning Act and the Biodiversity Conservation Act are established, they're not established with proper regard to Aboriginal land rights and how important that is for the economic sustenance of our Aboriginal communities.

Where we find ourselves today is the Aboriginal community is in a bit of a, dare I say, quandary because caring for country does have, in a western sense, biodiversity conservation at its heart. But it also has the reciprocal relationship in that the country economically, in a western sense, sustains communities. What we're really saying is that while we support and see the need for a nature positive restorative regime, we cannot see the current regime, which already doesn't intersect well with the land rights Act, and we can't see those obligations to protect biodiversity further impact, in a negative way, Aboriginal land rights and that ability for Aboriginal communities to economically activate the residual lands that are made available for that purpose.

Where we find ourselves is that Ken Henry's review made some positive comments about the need to integrate Aboriginal traditional ecological knowledge, but it also seemed to miss the point that we are talking about an economy for Aboriginal communities. Country, in a western sense, also provides that sustenance and an economic sustenance too. Marrying that with the land rights Act passed by New South Wales Parliament, we really need to see careful consideration, proper consideration and, dare I say it, even express protections for Aboriginal land rights in how this regime is established.

Obviously it's already established, but this provides an opportunity, in going to a nature positive, restorative regime, that we don't entrench or exacerbate the inequity that we see in practice. Frankly, we would recommend that the Committee support an express exclusion for Aboriginal land council land from the biodiversity regime. Failing that, we would like to see an express power for the Minister to exclude Aboriginal land council land on a specified case-by-case basis to provide at least a legislative pathway for land council land to still be activated as intended by the Parliament in 1983.

There are practical impediments that also impact, which are probably beyond the legislation. But it would be important for the Committee to understand that even where there are biodiversity considerations, the practical impact of that is that land councils are asset rich but cash poor. So they don't have the resources to even investigate more fully the biodiversity constraints that they face, let alone try to find offsets that they may very well have themselves. Not only does the legislation create a statutory bind, in practice, it shackles land councils to not even really actively manage country like I presume a nature positive regime would want to see.

The CHAIR: Thank you. The Committee members have some questions, if that's okay. Obviously, you can take anything on notice. Does the land council, or any of the local land councils, to your knowledge, currently engage in the biodiversity offset system as a stewardship—does it have stewardship sites? Or is it investigating that as a possible way of engaging with the system as it currently exists?

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STEPHEN HYND: There are a couple of examples across the State and there are a few more under investigation. We are very keen to see a greater engagement. It presents a real opportunity to actively manage country. Obviously, we've reiterated the consistency with cultural obligations to care for country. But, added to that, it also presents an opportunity to, in a western sense, actively land manage and provide employment opportunities. But it's piecemeal and ad hoc. That would probably be our primary comment on that. It would seem from the Henry review that that was also a bit of a challenge for biodiversity itself. The case-by-case, less than strategic approach to things creates some issues of connectivity from a biodiversity sense. Also, from a land council perspective, it creates a challenge of sustainability, in a very financial sense, about whether a conservation agreement over one parcel of land can sustain jobs sufficient to maintain those obligations or take them even beyond that one parcel of land. So it presents a challenge, but an opportunity.

The Hon. SARAH MITCHELL: Thank you both for your evidence so far. I want to pick up on one of the points you made, Mr Hynd. I was going to ask you, in practical terms, where the impact or delay comes on your land councils if you're looking, say, to build housing or community services in terms of the current Act. You talked about effectively an exclusion for Aboriginal land. Can you spell out for us why that's necessary and why that should be something that this Committee recommends?

STEPHEN HYND: I might start with answering the practical side of that first and hopefully that will illustrate the fundamental question of why we're seeking exclusion. It in the first instance, it almost happens at a self-selective point. On doing an assessment of land for any social or economic activation, the moment there is any significant vegetation seen, that's it. It's just put to the side.

The Hon. SARAH MITCHELL: It's not economically viable. Is that why?

STEPHEN HYND: It's even more fundamental than that. To take the next step, you need to engage consultants to go and do an ecological survey of that land to truly identify what biodiversity values need to be either offset or preserved by other means. That is an impediment in itself. Should you get through that hoop, the next challenge we have, particularly in regional areas, is that there is a market failure in terms of land activation. This is not necessarily a committee about housing, obviously, but I think everyone has read the papers and recognises the housing crisis we face. How that plays out regionally is that any additional cost burden to getting regulatory approval basically breaks the viability of any project.

At the heart of it is the very practical issue of how the claim mechanism works or, perhaps, doesn't work as well as intended. There is the 40,000-odd backlog of land claims. They take multiple years to determine. Some of them are 10 or 15 years old. Over that time scarcity kicks in, in terms of biodiversity. Scarcity kicks in, in terms of other land use planning considerations, which, again, means that the values that we all hold in terms of land and what we want to see in our communities are increasingly to be found on the unused and unneeded Crown land that we can reclaim. The practical impediment means that that burden is being shifted onto Aboriginal communities who are having their compensation hollowed out by these very real considerations. But it was compensation for all of the other land that has been utilised by everyone else that you see around. That's the broader context.

How that plays out in a very real sense—I won't name the places but I can give you very live examples. There are examples right now. That special activation precinct—I'm sure everyone is aware of what they intend to do. Within the boundaries of one special activation precinct, everyone else is getting the free kick—and not begrudged by us—intended by that mechanism, but the only parcel of land that will not progress is the land council land because it has a rare grass on it—again, by virtue of its historical circumstances that every other parcel of land has been used or has been needed. In fact, right next door is a big concrete slab, but, because of those circumstances, that land handed over for compensation in the very desirable circumstances of a special activation precinct are impeded. In that instance, the land council doesn't even have the money to do the studies to take it to the next step. Hopefully that explains our ask.

The Hon. STEPHEN LAWRENCE: Mr Hynd has already touched on this, Mr Kelly, but I wouldn't mind some more evidence on it. How much of an obstacle to participation in the offset scheme for Aboriginal land councils is the huge unresolved backlog of claims and the slow administrative processing of those claims? Would you want the Committee to make a recommendation around that issue?

RAYMOND KELLY: Let me try to give you an aerial view of how I see the challenges for local communities. As I said, there are land councils all over the State, and we have some fairly influential land councils on the east coast of the State. Some of the more rural and remote communities have a great challenge, obviously, to operate and deliver services to the broad range of community initiatives and outputs. People predominantly think that we have land rights. We have a responsibility to look after the interests of Aboriginal people right across the board. That becomes an issue, then, when we're trying to manage all of those affairs in local communities in smaller parts of the State.

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Having said that, we still have this major issue of developing up the ideas, of taking the land, working through that, finding the appropriate dollars and cents. I'll call it out. We've had some poor outcomes, historically. As I mentioned, there are sharks swimming in the water everywhere. When we get developers who come along and offer up opportunities and the like, the one thing that we've been saying to our communities is you need to be mindful about who you're working with, and you need to be able to make sure that you can measure all the way through the process that your dollars are being spent properly, that you're actually maximising what you can get out of that for your community, and that you're not being taken for a ride. That has happened, historically.

When I think about the parcels of land that now would fit into this scheme, there are a couple of really good ones, and they're good examples. We could provide evidence of whatever that might be, at some point. But the reality is there are—what is it, 38,000 or 40,000?—lots and lots and lots of land claims that are unrealised and that haven't yet been determined. When you think about that in terms of maths for your community, then it's about, "Okay, what can we offset to the process? What can we ask you to consider that we might be able to release some parcels of land?" Lots of that isn't for us. Lots of it hasn't been yet determined.

I would say that it's a major issue for us to imagine ourselves in 10 years time and 20 years time, because that's what we really have to consider here. In the short term, we're asking for certain considerations around activation of what we have right now, because there are some communities who could probably get started if there were some levers that can allow communities to develop their pitches or their projects without being weighed down by these policies and procedures.

As Stephen mentioned earlier, we're all for protection and preservation, but when we think about our communities, who are—we're living on the fringes still. We're still living in poverty in lots of our communities. We have to find a way to help activate an economic development or provide support in terms of housing or a range of other things. I would say the 38,000 land claims are always on our mind. There is not a meeting that we go to without it going "38,000 land claims".

The CHAIR: One of the things in another inquiry of this Committee that we looked at is actually as part of that land claims process the Government should be providing an assessment in that process at that point in time, in discussion with the land council and could do that assessment internally, and then any land claim that is finalised actually comes part and parcel with all of those assessments done and those potential uses of land, including whether it's for the purpose of biodiversity management and the costs associated with that. It's something that, clearly, we can consider here and how that works.

RAYMOND KELLY: I wonder if the 38,000 land claims could not be a consideration in terms of, maybe, offsetting. That would go to the point that Stephen had raised earlier about the Minister having certain abilities to initiate some opportunities around activation of land, because the \$38,000 in abeyance is just—we don't even think about it other than going, "Well, there are 38,000." We can't actively see that. We can't imagine what's potentially there. Dare I say, there's a hesitance amongst our communities to even begin to start to think about building larger dreams because there's a cost when it doesn't come; there's a cost to the community. It doesn't take long for one generation to be considered the older part of the group, which I'm now being considered in that, and yet it feels like only yesterday—

The CHAIR: Likewise.

RAYMOND KELLY: —I was a young man on the street outside here, agitating against the land rights movement.

The CHAIR: I'm afraid our time has come to an end.

The Hon. JACQUI MUNRO: Can I just ask—it's possibly something you could take on notice—how much land does land council land cover in New South Wales? How many square kilometres, for example?

STEPHEN HYND: It's about 250,000 hectares. That's probably a little out of date. If I may, can I just make one comment in relation to the land claim piece. It does present an opportunity and is really pertinent to the work here in terms of the biodiversity nature positive approach to look at land and land held by land councils or under claim in a very strategic way to provide for offsets and a conservation estate that works for Aboriginal communities to actively manage country and a resource to manage country, and provide the connectivity that biodiversity genuinely needs rather than an ad hoc "wherever development turns up, we'll find somehow to lock something up". A really strategic approach, but for our land councils, it is two sides of the ledger. People are very keen to provide some sort of conservation, to be resourced for conservation, but a pathway through the prohibitions and the challenges that we face in terms of development, it's a quid pro quo in terms of it is a real opportunity for the community to consider what that looks like in a new biodiversity regime.

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The CHAIR: Thank you so much for your time and your evidence. I'm sorry that our time has come to an end. If anything was taken on notice, the secretariat will be in touch with you.

(The witnesses withdrew.)

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Ms SUSY CENEDESE, Strategy Manager, Environment, Local Government NSW, affirmed and examined

Mr DAVID REYNOLDS, Chief Executive, Local Government NSW, sworn and examined

Ms CARYS PARKINSON, Senior Policy Officer, Environment, Local Government NSW, affirmed and examined

Councillor CRAIG DAVIES, Mayor, Narromine Shire Council, and Committee Member, Country Mayors Association of NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome to all of you. Would anyone like to start by making a short opening statement?

DAVID REYNOLDS: Thank you, Chair and Committee members, for the opportunity to appear before this inquiry today. Local Government NSW is the peak body representing all 128 councils across New South Wales, as well as related local government entities. I would like to pass on an apology from our president, Councillor Darriea Turley, AM, who is unable to join us today. Local Government NSW welcomes many of the amendments of the bill that align with the recommendations in our 2023 submission to the review of the Biodiversity Conservation Act. This includes the additional focus on avoiding and minimising biodiversity loss, restrictions on payments into the Biodiversity Conservation Fund, and greater public transparency.

Importantly, the proposal to amend entry thresholds for small, low-impact local development has the potential to address many of the concerns of rural and regional communities about issues of over-regulation. These thresholds will need to be set at a suitable level to address the significant challenges with the offsets scheme in rural and regional areas, where offset costs are often disproportionate to the price of land, making many developments unviable. We look forward to being involved in those ongoing discussions. It is not feasible to pass this substantial cost onto purchasers, as happens in urban and coastal areas where the high demand for land means the offset costs form a much smaller proportion of the final price. While Local Government NSW understands that this bill is the first in a set of changes under the New South Wales Government's legislative reform program, the bill, in our view, could have gone further to introduce some more substantial change.

In our submission, additional changes are needed to protect vulnerable species and reverse biodiversity decline at State and local level. This includes strengthening like-for-like rules for offsets to occur within the same local government area or region, and introducing restrictions on clearing critically endangered ecological communities and vegetation where offsets are not available. We welcome the bill transitioning the objective of the Biodiversity Offsets Scheme from no net loss to net positive. To ensure progress against the net-positive objective can be measured, we have recommended setting a baseline year in the legislation. It is also important that the associated net-positive strategy be delivered as soon as possible to guide investment and action to achieve the transition.

To further support the transition to net positive, biodiversity protections under other legislation must also be strengthened. This includes limiting allowable clearing without authorisation under the Local Land Services Act and the Rural Fires Act, closing loopholes with those Acts and the Biodiversity Conservation Act, and ending the logging of native forests, which is something that LGNSW's annual conference resolved to support in 2022. Consolidating the two chapters of the Biodiversity and Conservation SEPP would also simplify the framework for protecting and managing koalas. In our view, this bill certainly represents a good step in the right direction. Further amendments, supported by parallel changes to legislation and policy, will result in even more meaningful change on the ground. In closing, we acknowledge that this is a technical issue and we thank the Committee for its endeavours to simplify and spell out important matters. We thank you for your time today and look forward to answering your questions.

CRAIG DAVIES: Thank you, Chair, for the opportunity to be able to address your Committee here today regarding the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill. This is the most impactful legislation that we in rural and regional New South Wales face in terms of building and development across the rural and regional landscape. I've been broadening my knowledge of the impacts of this Act over the past three years, and it's clear that in the absence of common sense and an amendment to the Act, rural, remote and regional New South Wales will continue to suffer. These areas are the economic powerhouses of the State, supplying a disproportionate amount of our goods and services, and generating export income. It seems at odds to be trying to crush further development with this legislation.

Central Darling shire, which is part of the Alliance of Western Councils, is 80 per cent of the area of Tasmania. Bourke is 60 per cent of the area of Tasmania. We are not talking about inner-city suburbs or inner-city shires, whereby trees being knocked down make a significant difference. The Bourke shire is roughly 200 kilometres by 215 kilometres, so for them to be treated the same as a city shire just doesn't make sense. By way of explanation of some of the impacts that have occurred, I'll give a couple of examples. In 2018 in the Bourke

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shire, the Bourke Shire Council, being the only land developer in the shire, took the initiative to try to develop a number of 12- and six-hectare blocks to generate some economic activity and try to reduce the 9.5 per cent Indigenous unemployment rate, much of which is long term. These blocks were built and ready for sale, starting at \$48,000. The Biodiversity Offsets Scheme got involved and added a further \$480,000 to each block. So there was no development, there was no investment, no jobs created, and we've left a very disadvantaged demographic in the dust again.

The Bogan Shire Council at Nyngan was hit with \$339,000 of BDO estimates for a small housing development that it put together. This more than doubled the cost of every block and made them impossible to sell. The theme that I hope is coming through this is that it is shires that are doing the development in these areas. We are the only developers. Wentworth shire in the far south-west had a proposal for a gypsum quarry. Gypsum is used to soften clay in the orange- and citrus-growing areas along the Murray River. It was to replace an existing quarry that was being rehabilitated. The new quarry was six kilometres north of town in scrubby bush which covered 61 hectares. The BDOS costs were set at \$8 million to \$9 million. The project was shelved and 25 jobs and Indigenous royalties were lost. The project moved to Victoria. There are literally dozens more examples that I could go on with and won't. But we have the potential to get this right now, and I hope that is something that comes out of this inquiry. We desperately need an allowance in rural and regional New South Wales so development and biodiversity retention can live together.

The CHAIR: We will move to questions. Earlier on we heard some evidence from a planning professional body. They said that at times the very good, impressive biodiversity work that has been done by local government and their planners and their internal bodies has been sometimes—I might not do justice to his words but I think what he was trying to say was their work has been run roughshod over the top of by a biodiversity offsets system that has allowed all of these kinds of variations and allowances to destroy biodiversity that local government had worked hard to identify in need of protection over the years. Is that a theme that you may have come across from local councils and members?

DAVID REYNOLDS: You will see in our submission that one of the strong points we make is that we would like the answers to focus on local and regional solutions. I think to go to that point generally, without being able to give you specific examples or maybe to refer to the submission that most likely PIA made this morning, what we would suggest in our response to that is that there should be the ability to address the issue locally or regionally, as opposed to simply making a contribution to a scheme that might seek to have an impact down the track. I think that probably gives voice to those things that councils want to solve locally. They know their communities. They know their ecological communities onsite. They tend to know their vegetation. They probably know their biodiversity maps as well as, if not better than, many other players. They are in a good position to try and be part of that conversation.

I would suspect that that is the genesis of those types of comments—that good local work, we would like to be able to continue to solve that locally if development needs to go ahead in that way. We would acknowledge there is a tension between protection and appropriate offsetting and care for these environmental communities, as well as development. We are in a nature positive or a net positive environment, but in many respects the challenge is to be housing positive too. We've got a clear call to try and work collectively to solve that but to solve that well, not just to solve it. We would argue that there's some good local answers to these challenges.

The CHAIR: That comes with a recognition that biodiversity and nature positive outcomes might transcend local government boundaries. There is an acute awareness, is there, by council authorities around that?

DAVID REYNOLDS: Certainly from my experience in the planning networks as well as the networks of environmental officers in councils, they very much understand that environmental communities are connected and they don't respect local government borders. Sometimes in a geographical sense particular environmental features will be used as local government borders, but the forest will continue, the vegetation community will continue, the river will flow down from one LGA to another. Very much the councils, through their officers but also their ROCs—regional organisations of councils—or their joint organisations, have a very broad focus. I note Mayor Davies' comments—some of these focuses are very, very broad. I think his dimensions for Bourke were 200 by 240. There is very much a regional view.

The CHAIR: Earlier on we had some evidence from a participant in the biodiversity offsets market—and this might concern you, Councillor Davies—that the examples that are in your submission about the costs of engaging in the biodiversity offsets scheme for specific developments that you raise in your submission is evidence of a market that is working because if that's the cost of destroying biodiversity on that site, and it's very expensive, then that is a market, that's the mechanism, that's how it works. I recognise in putting this proposition to you that there is naturally a kind of conundrum if the council is the developer and is managing these economic realities. What would you say to the fact that there is evidence that that is evidence of the market working?

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CRAIG DAVIES: I'm just looking at the list of examples that I gave. The problem that we face with that suggestion is that the first five didn't go ahead. Clearly, the market is not working there. The cost of BDOS on those projects was such that they were canned, all of them.

The CHAIR: The evidence of the market working is not that the development didn't go ahead; it's precisely that the biodiversity remains intact. That's the proposition that's put forward. Is your evidence that the biodiversity remaining and having not been lost at the cost is market failure? I am trying to ascertain how we are measuring this in terms of these examples.

CRAIG DAVIES: What I'm trying to do is measure it in terms of the fact that it is killing regional development. We've got a number of examples there where shires and private operators are trying to invest money into regional New South Wales and they've been knocked on the head because of the cost of the biodiversity offsets scheme. When you've got Indigenous people in Bourke who have been out of work for years and this legislation stops them from getting a job because it's too expensive, then I think we've got a problem. And I don't believe for a second that development and biodiversity can't live together, because it can, and particularly in a shire as big as Bourke, 200 by 215 kilometres. It's difficult for us to understand why city people can't see what we see as being just very logical.

The CHAIR: Just for the record, I'm not a city person. Just putting it out there. Neither is Mr Lawrence. But I understand the proposition, thank you.

The Hon. STEPHEN LAWRENCE: A few questions. Firstly, maybe for Mr Reynolds. I was wondering if you could elaborate on your recommendation to contain offsets within local government areas.

DAVID REYNOLDS: Obviously, there is a series of other recommendations that go with that. I think where we are talking about trying to give effect to the core principle of looking after that piece of environment and benefiting the community that benefits from that environment in its place, we think that we should start locally. As is often our submission around matters of local government, we think it's local. If we can do better in the environment where the impact is going to be felt, then we think that's a better position to start from than a scheme that may see a pure financial contribution to a solution a long way away from the site that's giving rise to the need for the answer.

The Hon. STEPHEN LAWRENCE: Maybe a question for Mayor Davies. We have just had some evidence, Mr Davies, that you didn't see obviously, but it was from the NSW Aboriginal Land Council. They gave some evidence about the potential for Aboriginal communities to benefit from the scheme if more land was returned. There was talk about parts of land in regional New South Wales, for example. I am wondering if you have any insights into that or thoughts on that—the potential for Aboriginal communities to get more involved in the offsets scheme and to care for and manage country in a way that also provides a financial benefit?

CRAIG DAVIES: We have a situation here—where I live in Trangie, actually—where a block of land just opposite me, my own home, which is next door to a water tower, was the preferred site for a training centre for water operators. Within our Alliance of Western Councils, we are very short of those people. Many of these people are Indigenous. The logic was that we would establish a training centre on that site, but that site has now gone from being Crown land to a native title, and it's been granted.

We're now dealing with the local land council to work out ways and means of being able to utilise that land to continue down the track of providing training, not just in water operating but in all facets of local government work for people in regional New South Wales. That is one way that they can engage in this. They're not going to get any money out of BDOS, but it's one way we're engaging with them. They are now apparently taking charge of significant portions of Crown land through native title. If there's an opportunity for them to benefit from that, I think that's great. I really do.

The Hon. STEPHEN LAWRENCE: Back to Local Government NSW. Do you agree with the Government's intention to provide a level of flexibility for low impact local development? Could you maybe talk about how that's going to benefit regional communities?

DAVID REYNOLDS: I refer you to Mayor Davies' responses and opening statement as well. We think that some of the challenges with the scheme can be better informed by good local discussions. We think there should be certainly not open slather, but pathways where smaller scale or localised developments have the opportunities to progress without some of the impediments that have been spoken about today already. Certainly that's not a no-rules system. We understand that there needs to be parameters about that, and we look forward to being engaged in discussions around how to make that work well across a number of fronts. We also acknowledge drafting at the moment that has some categories of exemption, which I think are worthwhile, considering the terms of how that might be used now and in the future, because that may well be a very broad power; it might be narrow. There's just not a lot of detail on that at the moment.

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Again, we acknowledge this is the first step of discussions on these things. But, yes, sensible local solutions, whether they're about protecting ecological communities in place or about providing pathways for the types of development outcomes, there should be a discussion about the priority and the need of community and, in some of the examples Mayor Davies has given, just a pathway for that to happen, not a carte blanche for the environment loses and development wins, or development loses and environment wins. There's a scale of local activity that should be thought about. There's a scale of business activation that should be thought about. And, particularly for our rural and remote communities, there are dire needs around population, around the choice and availability of work and some of the business activity that goes with that. So, yes, a pathway to discuss those would be welcome.

The Hon. SARAH MITCHELL: Thank you to the witnesses for their evidence so far. Councillor Davies, I just want to start with a couple of questions to you, and thank you for articulating some of the ways that this legislation is challenging in terms of the handbrake that it puts on regional development. I was really interested in your recommendations, or those from Country Mayors, talking about having three geographical regions and almost a sliding scale. It was a recommendation in terms of the criteria and offset requirements that it recognise the difference between, say, a coastal community and western New South Wales. Could you talk a little bit more about why you think that is a good way forward and how we could maybe implement that in practice?

CRAIG DAVIES: I'm not quite sure how the legislation might look. The logic behind this suggestion is simply that the environment, for example, between the coast and the Blue Mountains is quite significantly different to what you find over the Blue Mountains. From the Blue Mountains to the Newell Highway is again a different environment to that beyond the Newell. You've only got to go 100 kilometres from the Newell Highway going north towards Bourke, for example, and you are in completely different country. Its environmental assets don't resemble anything along the coast: Basically, much of that country is untouched. It is in itself an environmental asset. I just hope that the State Government—they're working towards the logic of trying to take the smaller developments in regional New South Wales out of the picture, then that is a great step forward.

The Hon. SARAH MITCHELL: You also talk about having regional offices with the department, and the way that I interpreted that recommendation No. 9 was about having the environmentally supported project plan and identifying affordable offset credits. You talked a bit before about having development and biodiversity coexisting. Is that about trying to pre-empt the process so that either local council or a developer can work with the department early on and say, "How do we find a way to get these projects, whether it's housing or whatever it is we need in the bush, up and running", rather than it all being very bureaucratic and coming through towards the end? Is that the intention of that recommendation?

CRAIG DAVIES: Certainly part of the thinking. I guess the other part is we've seen the situation with Eurobodalla, who are trying to establish an off-river water storage. Their biodiversity costs have gone from \$300,000 to \$3.4 million, to \$9 million, to \$31 million. That's happened during the construction period. How people could possibly live with the scenario whereby you don't know what the final cost is going to be is beyond my belief. I'll leave it at that.

The Hon. SARAH MITCHELL: I have one more to Mr Reynolds. You spoke a bit earlier about getting the balance right and the scale, in terms of development and biodiversity coexisting as well. Do you have any thoughts on the proposal from Country Mayors around having different zones and applying different criteria and offset requirements based on that geographical split?

DAVID REYNOLDS: What I would formally respond today is that our board has not considered that position or resolved to support that submission out of Country Mayors, but I acknowledge Mayor Davies' explanation of how that might work geographically. I think what I'm very much able to acknowledge is that whilst there are challenges right across the State in terms of the application of the legislation and associated schemes, those challenges are clearly felt differently in different environments, but they're very much there. In the metropolitan and coastal regions, clearly their challenge is potentially more around issues of beach erosion or issues of waterway management or issues of critically endangered ecological communities, like the Blue Gum High Forest in the metropolitan regions.

How councils and/or developers appropriately give effect to the intention to deliver more housing is one of the really open questions in the Sydney metropolitan area. Again, to use Mayor Davies' split of the State, if you then go beyond the Blue Mountains out to the Newell—clearly different types of country to what are experienced on the other side. I think there's probably some practical sense in Mr Davies' position there, but it's not something that I'm able to formally indicate support on today. I might just check with my colleagues as well, whether they would like to add anything to that.

SUSY CENEDESE: No. Nothing further.

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The Hon. SARAH MITCHELL: I just have one more quick one then I'll be quiet, I promise. It goes to the recommendation—again back to you, Mayor Davies—about making sure that the credit cost is proportionate to the land value. I'm interested in any further elucidation on that point. I think you talk about a limit of 5 per cent of the land value. Again, I'm assuming that's to not impede opportunities for development.

CRAIG DAVIES: If you set in stone a figure based on the land value, then you know what the cost is going to be as you go through the project. There's not going to be some hidden cost that's going to come up and bite you after you've spent half your money or halfway through your development. This is giving certainty to what the cost will be for a development. Our blocks out here, if you add 5 per cent to them, you're not going to ruin the economic value of the project. If you go much above that, you start making it unlikely to proceed.

The Hon. JACQUI MUNRO: We heard evidence before from the planning institute about the possibility that local councils are not as well equipped as they could be to manage the practical implementation or assessment or undertaking of the scheme. Is that something, Mr Reynolds, that your members have expressed there is a level of complexity and perhaps interpretation that is required that is beyond some council staff across the State?

DAVID REYNOLDS: Ms Cenedese, would you like to answer that?

SUSY CENEDESE: Yes. We have heard from councils that, yes, obviously, this is a very complex space. Councils do have very skilled staff but not all councils have that luxury. I think behind some of our recommendations sits the premise that more support is needed. There already is a fair amount of training provided and resources available to councils, but it is still quite challenging to make decisions or make calls on matters. I think one of our recommendations is around thresholds for significant and irreversible impacts. Again, sort of taking it away from a more subjective—

The Hon. JACQUI MUNRO: Discretionary approach.

SUSY CENEDESE: —decision to having some guidance that helps that decision.

The Hon. JACQUI MUNRO: Do you think members would benefit from—I think the Planning Institute would have called it something like a hot desk. I think they were thinking about a helpline, almost.

SUSY CENEDESE: Yes. I believe the department has that, yes.

The Hon. JACQUI MUNRO: But does that work? Is that enough, is what I'm asking.

CARYS PARKINSON: I was just going to say this is something that came up in council workshops that we did last year where they'd really appreciate more regional support, more localised offices, so the same recommendation that they suggested. There's the BOS help desk, which I think is useful, but it doesn't give that kind of regional, more hands-on support. I think there have been various qualms with it in the past. I think it's still a useful resource, but definitely having that kind of regional support officer would be really useful.

The Hon. JACQUI MUNRO: Mayor Davies, you may want to comment on that as well.

CRAIG DAVIES: I think having regional support is something that would benefit all of us out here. We do have good staff, there's no doubt about it, but the complexities of this Act are going to take some time to get their head around and to be able to interpret it. Given that you can get any number of different outcomes by involving different people in the process gives rise to the fact that it needs to be simplified at every level, I think. The outcomes can be more predetermined than what they are now, because we've got no idea what the likely outcome of one of these valuations might be, and they do vary. I mean, we've got a successor shopping these days whereby those people who give reasonable assessments are more in demand than those who are making it tougher.

The Hon. JACQUI MUNRO: One more question to you, Mayor Davies. The twelfth recommendation spoke about national parks and Landcare being amongst a list of department-approved perpetual credit sources. I wondered if you could expand a little bit on that, please?

CRAIG DAVIES: I must admit that I didn't write the submission, but my guess is that there should be opportunities whereby the national parks could be used as perpetual credit sources so that you already have an asset that can be improved or can have some of these credits used within them, just to try to make the whole job easier.

The Hon. JACQUI MUNRO: If you wanted to take it on notice as well—if the author, Gary Fry, wanted to expand on those, if he wanted to?

CRAIG DAVIES: I can certainly ask Gary.

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DAVID REYNOLDS: I might be able to assist Mayor Davies with that one as well, Ms Munro. It comes after a couple of submissions by the Country Mayors Association around the use of the BCT, so the trust, which is obviously where the money is held. I suspect that their submission is going to where the State has control of sites, that it may be able to utilise the funds held in the trust. It's suggesting it do that practically, if that's of assistance, Mayor Davies.

The CHAIR: I note that you, in your submission, as a final point go to other legislation. I'm assuming you've put this in here because we're sort of here tinkering around with the Biodiversity Offsets Scheme when there's all this other legislation. You're not alone in that observation. You make some pretty clear recommendations there. Is that coming from that place?

DAVID REYNOLDS: Madam Chair, as you heard in our opening statement, we're appreciative of this being a first step and appreciative of the Government and this Committee's attention to the issue overall, but we think in dealing with the issue broadly that there's other legislation that should be thought about too. For example, the Local Land Services Act, consideration, potentially, of the allowable activities and the self-assessment pathway available under that legislation and how that interacts, potentially, with the Rural Boundary Clearing Code, the 10/50 vegetation code as well, and then the RFS. You've got asset protection zones that may come into conflict with the need to protect communities. They are probably three or four examples—just succinctly there—about a broad review of how this works collectively. It should cast a broader net rather than a narrower net around the other regulations or other pieces of legislation that should be considered to give good effect to the intent.

We're very strongly of the view that there is positive intent behind these reforms to deal with this issue better. There are hopefully some good suggestions in our submission and that of others around how to do that practically. These other pieces of legislation help that practical application because these become the points of tension in local decision-making. If you do have conflict in the legislation, it becomes harder for a council or a developer to know what to do. It becomes harder for whoever is doing the assessment to know how to deal with that. That, of course, can lead to litigation or it can lead to community issues or disruption. That's not an effective and efficient use of council resources or the resources of other levels of government either.

The CHAIR: I note that you've also got in there a recommendation to create a strategy to end native forest logging in New South Wales as well. I'm assuming that's because it will result in a biodiversity positive outcome.

DAVID REYNOLDS: Madam Chair, it was a motion out of our conference in 2022, so that's been a held position of our association for some time. We referenced that in our opening statement. We also reference koala habitat. We're conscious that a number of different topics come together well in this discussion, and that a good solution to these challenges should take account of a range of factors.

The CHAIR: I'm assuming, and correct me if I'm wrong—I'm making a bunch of assumptions here—the underlying motivation for councils around these well-considered things is that it actually contributes enormously to their local economies and the aspects, the social fabric, they are ultimately responsible for as councils.

DAVID REYNOLDS: Madam Chair, I'm nodding as part of your question but I'll put something on the transcript for you. Yes, but very clearly we have 128 councils which give us 128 different voices or different accents to an issue. The emphasis on some of those issues might differ from place to place, but councils generally are good land managers. They want to manage their economies well. They want to provide opportunities for both business activation but also recreation and amenity for their communities. Those things don't always produce the same outcomes in the same place, but councils generally want to manage their environment well, manage their community well, allow for prosperous activity and seek to harmonise those discussions and debates. The better the legislative or the regulatory framework is, the less tension there is because of uncertainty being reduced. The more certainty, the more understanding of how these things play out practically, the better and fuller that local discussion can be.

The CHAIR: Our time has concluded. Thank you very much for making the effort and giving your time to give evidence today. If any matters were taken on notice, the secretariat will be in contact with you in due course. That concludes our session for today.

(The witnesses withdrew.)

The Committee adjourned at 13:00.