

**REPORT ON PROCEEDINGS BEFORE**

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

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

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney, on Friday 20 September 2024**

**The Committee met at 13:00.**

**PRESENT**

Ms Sue Higginson (Chair)

The Hon. Stephen Lawrence

The Hon. Jacqui Munro

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Sarah Mitchell



**The CHAIR:** Welcome to the second hearing of the Portfolio Committee No. 7 – Planning and Environment 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 respects 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 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.

**The Hon. STUART AYRES**, Chief Executive Officer, Urban Development Institute of Australia, sworn and examined

**Mrs ELIZABETH YORK**, Policy and Regional Manager, Urban Development Institute of Australia, sworn and examined

**Ms CLAIRE DOHERTY**, Policy Director, NSW Minerals Council, affirmed and examined

**Mr JASON KUCHEL**, State Director, New South Wales and South Australia, Cement Concrete and Aggregates Australia, sworn and examined

**The CHAIR:** I thank each of you for making the time to come and give evidence today. Would anybody like to start by making a short opening statement?

**The Hon. STUART AYRES:** I think I've drawn that straw on behalf of all of us, so I will provide a short statement. I'm joined today by Elizabeth York, UDIA's policy and regional manager, as well as Claire Doherty, the policy director at NSW Minerals Councils, and Jason Kuchel, the State director for Cement Concrete and Aggregates Australia. We'd like to thank the Committee for the opportunity to engage on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. Each of our organisations has made submissions, and we welcome the engagement on our recommendations. Collectively, our organisations represent industries which are vital to the economic and social growth of New South Wales, including the housing, construction and mining sectors.

Despite the fact that our industries represent a comparatively low percentage of overall land clearing in New South Wales, we are nonetheless high-volume participants in the Biodiversity Offsets Scheme, as many of our members' projects trigger the scheme's thresholds. We share many of the same fundamental concerns about the proposed bill. Our view is that the bill jeopardises the Government's ambitions and commitments, including delivering 377,000 new homes in the next five years to meet the New South Wales commitment under the National Housing Accord; achieving net zero by 2050, including through the delivery of renewable energy generation and transmission; and delivering infrastructure and construction projects necessary to support the State's growth, including \$1 billion in improvement to roads across Western Sydney and regional New South Wales.

For broader businesses, implications for all of the above sectors will have knock-on effects in terms of higher living costs, labour shortages, and more expensive energy and a lack of access to vital infrastructure. Our message is clear and consistent: The complexity and ambiguity under the proposed Biodiversity Conservation Act amendments combine to create a fundamental barrier for development, and severely limit the ability to deliver new housing, jobs and infrastructure in locations where New South Wales needs them. Unfortunately, in its current state, the proposed bill would make the situation worse at a time when the New South Wales Government is seeking to deliver more houses under the five-year National Housing Accord than we have ever been delivered in New South Wales' history and when we need more jobs, infrastructure and economic growth to support our State.

We consider the introduction of the biodiversity conservation bill to be premature as there has not been sufficient consultation with stakeholders during the drafting of the bill, and there is no information on how the provisions would be operationalised through regulation. Our experience is that the Government has spent the past 12 months arriving at these positions without meaningful consultation and it has now introduced the legislation without first testing the planned changes with key stakeholders, including the main users of the scheme such as the industries that we represent. There has not been enough genuine consultation aimed at understanding the wider impacts of the policy changes that are currently being contemplated.

Our position is that the legislation should not proceed unless and until proposed regulations are developed through an exposure draft process with stakeholders; with better regulation statements being produced and provided at the same time and accompanying the bill when it is debated in Parliament. We appreciate this does take time, but it's critical that we do get this detail right. I think it's fair to say that without those regulations we can't support the bill in its current form. We thank you for the opportunity to appear today to go through some of the recommendations in our submission, and we welcome your questions.

**The CHAIR:** It's no mystery or surprise that there has been report after report identifying that biodiversity in New South Wales is on significant decline and that we are in trouble in some wide areas of biodiversity conservation and health. Many aspects of the environment are on extinction trajectories. There have been a lot of reports recently about this. There have been a number of inquiries into the failings of the Biodiversity Offset Scheme and many findings on how it's failing and how to fix it. I'm curious about why you would be suggesting that there isn't enough information about what this would do and the attempts this bill is trying to make to remedy a small part of those failings. Is that something you've contemplated—the other materials that are widely known and publicly available?

**The Hon. STUART AYRES:** I'll make some comments but I also recognise there are multiple organisations being represented today. From a UDIA perspective, we recognise the need to coexist with biodiversity. Houses and the environment have to coexist in our communities. I think the main challenge that we see with the bill as it's currently proposed and would be voted on in Parliament, is that no member of Parliament would actually understand how this bill would be put into practice primarily because the regulations that need to be established to allow the bill to be functional are not visible to anyone. So I don't think the question for us is to commentate on the decline of biodiversity across the State. It's more about commenting on the way in which the bill is presented and how it will be presented to the Parliament. The challenge for parliamentarians is to find a regulatory setting that allows for housing to be built to meet the requirements there and at the same time provide suitable biodiversity protections.

**The CHAIR:** I know that you're about to comment, and I very much appreciate that, but what I'm trying to say is the parts in the bill that go directly to trying to improve the identified existing failures in the system. It's not like there is a system, this bill is starting. We're talking about a system that has been in place for a decade now. This bill goes to trying to fix some of those—for example, the hierarchy, the serious and irreversible impacts and those aspects of the bill. What I'm asking is: What parts of the bill do you say, in terms of those aspects, that you believe there is not enough information in front of you to support what's being proposed? I'm very happy to go to you, Mr Kuchel.

**JASON KUCHEL:** I think it's probably important to put on the record that certainly CCAA, and I think others here and some of us have made joint submissions, we have identified in those submissions that we also concur that there are issues with the current legislation. We're certainly not here to debate whether or not there is a need for change and a need for improvement. We would certainly concur. In support of what Stuart Ayres has just said, our issue is that the bill itself doesn't provide any of that information about how it intends to do that. In fact, in a number of aspects of the bill it is entirely within the purview of the Government to make those policy positions and either implement them or come back and consult with industry about those policy positions.

A number of those things don't necessarily need to be in an Act, but as Stuart Ayres has already mentioned, without the regulations we can't see how it's going to improve the very things that you mentioned. We'd like to see how that is going to work in practice. Many have made an attempt with this Act and/or policies associated with it. Some haven't necessarily been successful. I think it's entirely fair and reasonable both to industry as well as the decision-makers in Parliament that the regulations are visible before this bill is voted on.

**CLAIRE DOHERTY:** Can I just say something as well, and maybe address your point directly too? I think there have been a number of inquiries here. There has obviously been the BC Act review, which was undertaken by Ken Henry. But I think, importantly, out of all of that and in the report itself from the Henry review, they identified that from 2018 to 2021 more than 80 per cent of the clearing undertaken in New South Wales was for agriculture and it was regulated or unregulated under the LLS Act, not the BC Act. I think that's important. I know that our friends at the Farmers actually dispute those figures so I'm not seeking to throw them under the bus, but, importantly, development is a very small proportion of the impacts on nature in New South Wales. We need to remember that, firstly. Whether the BOS is the very highest priority in terms of making changes, I would question that.

Then you need to also remember that because the BOS requires all the impacts to be either avoided, mitigated or offset, our impacts actually come with compensation. If there is some sort of gap there, it's not the whole value of what's being cleared. That's important to remember as well. The net impacts from the BOS on nature are going to be a lot less significant than in other parts of the clearing economy. That's important to remember. I think the other thing that's very important to remember is that there was very little quantitative analysis done through any of these processes that you're talking about, including the Henry review, on the actual outcomes of the BOS.

There's really not a lot available to tell us what the BOS is doing in terms of outcomes and the government agencies will concede themselves that they don't know what standard the BOS currently meets—this was a couple of weeks ago, when we asked them verbally. They will tell us that they don't know whether it meets a no net loss standard, whether it meets a nature positive standard, or what standard the scheme currently meets. It does seem really premature to be looking at what we're doing about the BOS when we don't actually know what standard it currently meets. In terms of information, it would be really good to understand that, firstly. I think that's our answer to your question.

The other part of it is really about what information we have about the Government's intention in relation to these amendments. What results or outcomes do they intend out of these amendments? How will they be operationalised? Without the regulations, without a discussion paper, without something other than just the bare bones of the bill, we can't understand what they're intending to do through each of these amendments. It's really

important that we should have that, and that should either come in the form of a better regulation statement, some sort of RIS, a discussion paper—something that fleshes out where they're intending to go with this. Particularly around the "avoid, minimise, offset" hierarchy, there is already an "avoid, minimise, offset" hierarchy in New South Wales. We're already required to avoid impacts where there are opportunities to do so, then to move to minimise, and only then to offset residual impacts.

There's already good guidance in the Biodiversity Assessment Method about how you are meant to utilise those opportunities to avoid impacts on biodiversity values. There's already good guidance in the BAM about what you're meant to do to minimise. So there's not really a clear need for these standards that we're talking about and, if there is, it hasn't really been made out that that is the solution. We haven't really explored what the problems are in getting avoidance on projects. Our projects in the mining industry have fixed resources. We have really limited opportunities to avoid—and it is about opportunities to avoid. The "avoid, minimise, offset" hierarchy isn't about cutting your project in half and leaving half of that resource in the ground. That resource is owned by the State Government. The royalties that come from it go back towards the State and go to communities in New South Wales.

That is not what "avoid" is about. It's not about setting up a red flag for protection of particular entities. Entities are protected through the listing system and through their potential listing as entities which need to be considered as "serious and irreversible impact" entities, not through requiring particular standards around avoidance. Avoidance doesn't come at different levels. There isn't a hierarchy of avoidance. It's about what are the opportunities in your particular project to avoid. It's going to be extremely difficult to codify that through standards. We don't have any document that will tell us how the Government thinks they can codify avoidance through a standard.

All of our industries here have different projects in different regions with different resources in different circumstances. They all have different opportunities to avoid. How are we going to codify that into a standard which then becomes a strict standard that has to be adhered to? It really is something that needs to be fully unpacked through a proper consultation process to see whether it is something that can be codified and whether we can introduce standards. Our view is that if further guidance was required, then guidelines would be sufficient. There is no need for this amendment to the Act. We shouldn't be amending the Act unless we know that there is a good case for making that amendment. We shouldn't be making regulation that is not required.

That's our answer to your question. As we go along, I'm sure I'll be able to address some of the other amendments in the bill. But many of them are premature in a similar way, without the background, the attention, the Government's outcomes—without anything that's going to tell us how it's going to be operationalised. Some of them are just unnecessary—for instance, the introduction of the provision around a transition of the BOS to a nature positive standard and the drafting of a strategy. There's absolutely no need for this to be part of the regulatory landscape.

If the Government wants to transition the BOS to a net positive, then they simply put together the strategy and then amend the legislation next year, when they say that they are going to do at least two tranches of amendment of the legislation. They'd be better to do that work, understand what standard the BOS meets, consult with community and stakeholders, allow the Parliament to have a better understanding of what it is that they want to do, complete the strategy, and then come back and change the legislation. There's no need for legislation. It's just a signal. It's not required for them to complete the strategy. There are a number of other examples in here that are very similar. They don't have the detail, they're premature and they may not be necessary in the long run, after consultation.

**STUART AYRES:** I might just add from a housing perspective, or from my perspective and UDIA's perspective—and I dare say there are plenty of people who work in this building that feel the same way—the creation of more homes in New South Wales is the single biggest social and economic challenge before the State. The New South Wales Government has set a clear housing target as part of the National Housing Accord and this bill creates a level of ambiguity that makes it harder to deliver those homes. In not an unsimilar way the concept of zoned land also represents a resource to the State. These are the parts of land in our State where houses could be built. But that zoned land doesn't represent a complete use of that site, particularly if there are additional constraints on that. It's really critical that we don't add more complexity and more ambiguity to a system that is already delivering nowhere near enough homes.

I spent a lot of time in this building with bills being presented to the Parliament and the critique coming from the Opposition at the time around those bills not being able to be assessed properly because you couldn't see how they would be operationalised because of lack of regulations. From a UDIA perspective, and I think the message from the three organisations that are before you today, there is definitely a willingness to collaborate on those regulations. To understand how they will be implemented, where the constraints will be and understanding

what the regulatory impact would look like. Then being able to provide guidance to allow the Government and the Parliament to be able to create a system that allows industry to take place, homes to be built and suitable environment protections to be in existence. But at the moment if this bill went before the Parliament without those regulations available to anyone, we wouldn't be able to answer those questions. I have to say, fairly forthrightly, neither could you.

**JASON KUCHEL:** Just to pick up on a word that Mr Ayres said, which was "uncertainty". I guess that defines what this bill is for those looking to make investments—whether that is investments in quarries or housing or mining, or whatever it might be. A lot of the terms aren't actually defined well. There isn't definitions provided for terms such as "biodiversity conservation measures" or "avoid, minimise and offset hierarchy" and so forth. If there isn't really clear definitions, then industry will pull back on their intentions around investment. If the Government is wanting to achieve all those homes, we actually need to see industry putting the money in to be able to actually achieve all those homes. In our sector, where we are providing the raw construction materials for homes, for new subdivision development, for the infrastructure, for renewable energy projects, we know that in many cases for renewable energy projects we just simply don't have enough quarry materials available to provide those materials where those renewable energy projects are located.

**The CHAIR:** Thank you. Sorry to interrupt. I hear what you are saying, but is it your proposition that there is an assumption that we will continue to lose biodiversity so that your sector and your member groups can continue to use biodiversity or lose biodiversity as you go through the system and do the things that you are saying need delivering—housing, renewable energy projects? Are you saying the current system, where you would just get to pay money into a fund, as Henry has identified, where we don't really know how to equip that money in a system because the rules are broken and there is no like for like, that system is the one you would prefer? We keep going as we are.

**JASON KUCHEL:** Not at all. In fact, I think we made the point that the Government has actually proposed additional tranches of legislation to change the Biodiversity Conservation Act next year and possibly even the year after. What we are saying is that this is premature. There needs to be more definitional work, there needs to be those regulations. We will absolutely work constructively with the Government to actually try and make those changes. In answer to your question about the biodiversity specifically, in the case of quarries I can say that it is relatively rare for us to want to buy those offsets because, firstly, they are incredibly expensive to do so. I met with one of our members just yesterday who estimates that they save more than a million dollars by doing it themselves. They've bought land adjacent to their quarries and they are spending a lot of money making sure they can meet all of their biodiversity offset obligations on that land. Of course, in the case of quarrying and mining—and Claire can speak to that—we rehabilitate as well. We're actually looking to leave the place ultimately better than we found it.

**The CHAIR:** What do you say about the fact that this part of the Government's intended rollouts of reforms means that mining rehabilitation won't be able to be considered as an offset as such? Rehabilitation will be a requirement, obviously, as you say, and you take pride in that rehabilitation of mine sites. What do you say about the fact that that will no longer be able to be used in the offset scheme?

**JASON KUCHEL:** I'll probably defer to Claire because quarries and mines—quarries often have long lives, 50 or 100 years, so it's probably a little bit different, and they're usually smaller in scale relatively speaking, so I'll defer to Claire.

**CLAIRE DOHERTY:** We make no secret of the fact that we think it's a massive loss of opportunity for the environment. I think you know that. We came to the BOS integrity inquiry, we produced evidence there about the success of mine rehab. Who else is restoring large scale ecological communities in New South Wales? Really no-one other than the mining industry.

**The CHAIR:** I think farmers would say they are too. I'm just saying that's what they would say.

**CLAIRE DOHERTY:** Possibly at a small scale through the offsetting scheme, but who's doing active management, Chair? That's the issue. When you look at it, no-one is really doing the active management actions under the BAM that can score you additional credits because it's not economic to do so. That was one of the Henry review's findings—that you don't get enough credits for those actions to make it worthwhile. And we know that as an industry because we've committed to doing active managements on our biodiversity offset sites and are out of pocket because of that. We understand that. But no-one else is really doing active management and restoring ecological communities. We're doing it. We're doing it across the State. We're doing it with a high level of success. We have sites that are recognisable and sustainable as communities in New South Wales.

**The CHAIR:** But isn't that because your sector is having one of the most dramatic impacts on land, like permanently disfiguring landscapes and that sort of thing? Isn't that the quid pro quo?

**CLAIRE DOHERTY:** Well, no. Let me answer that. What the Mining Act requires is that rehab is safe, stable and non-polluting. Within that there's a huge range of things that you can do. I could tell you there is a lot less risk and a lot less expense and a much shorter timeframe in putting back pasture, and there's also huge demand in communities to put back types of rehabilitation which will generate jobs and income for communities. A lot of the impact is on derived native grassland, so areas that were farmed prior to mining. They have been profitable, even though those are areas that now have to be offset. It's not automatically a choice that there will be ecological restoration done on these sites. Without some sort of incentive, then I think that there will be less ecological restoration done on mine sites. Currently under the Act there is this small incentive to undertake ecological restoration, but what you need to know is that the ancillary rules which set out the circumstances and the value of that ecological rehabilitation, which have never been finalised, have a significant discount rate.

The credits that you can generate off a hectare of rehabilitated ecological mine site are very significantly discounted. At the end of the day it was always a significant discount. I would say that removing that provision from the regulation, because it's through the regulation, not through the Act, will have this much impact on nature in New South Wales. It will be negligible. But removing the opportunity to incentivise restoration is really significant. There has been a huge amount of understanding built through the process that the mines have undertaken and that will pay dividends. There are going to be some really good sites that will be completed over the next 10 years and be able to be returned to conservation. That is my view on it. I just think it's really short-sighted and sad that that's going to happen, unfortunately.

**The Hon. STEPHEN LAWRENCE:** Mr Ayres, in terms of the housing issue, could you talk us through some of the main obstacles that your members have in getting housing developments up and give us a sense of how significant an obstacle, if you put it that way, the biodiversity scheme is?

**The Hon. STUART AYRES:** The best way to think about this is that having land zoned is just one of the preconditions that is required to be able to develop a house or a home. Beyond that, that land needs to be serviced by infrastructure—mostly enabling infrastructure. It then needs to be serviced by State infrastructure—say, a road—and beyond that there are potentially environmental constraints. Those environmental constraints could be sites that are impacted by flood impacts. They could be areas that are restricted because of the higher risk nature around bushfires. On top of that, there is the need to protect biodiversity as part of the planning system. One of the things that we would look to seek out of any piece of legislation, instead of regulations, is something that creates more certainty within the system. At the moment, what we would get out of this bill in its current form, without those regulations, is more complexity, more uncertainty and more ambiguity.

There are opportunities where you could, through this process, particularly around registers and the provisioning of avoidance—having that happen only once in the system, identifying what needs to be avoided at the rezoning phase so any future buyer of that land, any future developer of that land, understands what the constraint is, and therefore, they can price more effectively. They can remove risk, and they're more likely to be able to bring a house to market. I think things like that—utilising the registry system to create a single point where avoidance can be identified—would be a good way to utilise this bill. But the primary things that are constraining property at the moment are feasibility of apartments in the infill landscape. When it comes to greenfield development opportunities, it is access to zoned land, access to service land and being able to manage the environment constraints.

**ELIZABETH YORK:** I might add a couple of extra points there. In the greenfield space, UDIA has done some research recently that shows that about 25 per cent of the greenfield housing pipeline in the State is constrained by not having answers on the biodiversity question. We're not saying it's land that can't be developed because of biodiversity. It's land that should be able to be developed, but we haven't been able to get the answer yet. We're still working through that process. In Western Sydney, of course, you have the Cumberland Plain Conservation Plan. That creates certainty. That allows the developer to know exactly where they can develop and what the cost to develop, in terms of biodiversity offsetting, will be. That's very clear. We did that in the growth centres years ago, as well.

That's the gold standard if you're going to try to find that balance between where you're going to have your conservation and where you're going to have your housing and your infrastructure and everything else that's required. Where we don't have that—and we don't have that in regions at all—about 60 per cent of our pipeline is currently constrained. The main problem is the ambiguity around the "avoid and minimise" question. Right now, nobody seems to have a good answer to that. It's really unclear as to what you have to do to avoid and what you have to do to minimise. In local development, because it comes down to discussion with your consent authority, which is typically the council—you have a lot of councils across the State. Every individual that you sit down with within that council—if the four of us sat down and had a discussion about how to avoid on this piece of zoned land, there would be four different opinions.



We have the Biodiversity Assessment Method. It's scientific. It's meant to guide the biodiversity development assessment report. But what we find is that there is a lot of contention around interpreting that BDAR and coming to an agreed position on how to avoid and minimise at the end of the day. It is those situations that are holding up a lot of this development. We have said, in terms of avoidance, we need a much better definition around avoidance. I know in the bill they've used a couple of different terms, neither of which are defined, and that is a problem. There is "reasonable measures", and there is "genuine measures". If you had to choose one, we would choose "reasonable measures". "Genuine measures" is much too subjective. Definitely please do not use that.

**The CHAIR:** It definitely hasn't been helpful. In terms of all the submissions we've received—

**The Hon. STUART AYRES:** I think everyone has identified that.

**The CHAIR:** And that happens, I suppose. That is why this inquiry is important. But that has been incredibly unhelpful, I can certainly add.

**ELIZABETH YORK:** But that is easily fixed, right? But what we would say is please go a step further and bring into that consideration around avoidance trying to get regard to the project outcome there, as well. The difficulty that we're finding is that the BC Act operates in isolation. The only consideration is around getting that biodiversity outcome. That is important, but understand that it works within the context of the EP&A Act. The whole reason we are in the Biodiversity Offsets Scheme is because we are trying to get a development outcome on this land. But that is not in the consideration of avoid and minimise. It's "What can we avoid on the biodiversity side of things?" It's really the only question that they want to be answered.

**The Hon. STEPHEN LAWRENCE:** Also for UDIA, could you please explain your proposed changes to the biocertification process, as detailed in your submission, and how a greater reliance on biocertification might benefit the property industry?

**ELIZABETH YORK:** I think everybody can agree that if there was more biocertification across sites, that would benefit everybody. That answers the question early. It answers the question up-front. There is strategic conservation planning—that is the big, strategic biocerts, like in your Cumberland Plain Conservation Plan and a couple of others—but, for our members, a standard biocertification is typically what you are trying to get on an individual parcel of land. We've been having some very productive conversations with the department about this issue. They've told us—I think at the moment there are about 20 biocertification applications in the system. Most of them are stalled. You've only had eight since the BC Act was implemented. You've only had eight actually come through. A lot of interest, but most of them stalled. That is for various reasons, mostly going back to this, "How do you avoid and minimise?"

One thing I wasn't able to get to in my earlier response was around the definition of "avoid and minimise". We would go beyond just reasonable measures, and we would bring in, again, that regard to trying to get a development project outcome on that site. We would say "reasonable and practicable", or "reasonable and feasible", but some additional word that concentrates the mind on we are all sitting here trying to get a good, balanced outcome on the site. In terms of the recommendations we have in our submission on biocertification, there are a number of things we could do in regulation, which we probably don't have to get into here today. I know the department is doing some good work thinking about that. But in legislation we would suggest you probably need to do a couple of additional things. We think that a right to appeal on a certification determination is important. It comes back to having the ability to have somebody navigate the potential differences of opinions that might come through the interpretation of the BAM through that process.

What has become evident is that even if you have the certification onsite, there are some local development controls that potentially could override that where you might be called upon to do some additional avoidance. We are looking into that more thoroughly. We don't have specific examples of where that has occurred, but it has sort of raised some flags that it possibly could, so we are just trying to shut that down as well. The other issue is in the standard biocertification. There is no bilateral, Federal EPBC assessment that goes with that. For strategic conservation planning they tend to try to get the bilateral, but not on a standard. What you find is you get your New South Wales biocertification and then, if you're kicked into EPBC—we actually have a live example right now—where now the EPBC wants additional avoidance, that's throwing the whole master plan development footprint out of whack, so those types of practical things that we need to work on.

**The CHAIR:** Do you mind if I ask which one that is that you were saying? Would you provide that example of the one where you said you've got a live one now?

**ELIZABETH YORK:** Can I take that on notice and just ask the proponent if they're willing to provide that?

**The CHAIR:** Yes, thank you.

**The Hon. STEPHEN LAWRENCE:** I have a question for the Minerals Council now. Can you explain some of your proposed amendments to the new power for the environmental agency head to direct accredited assessors?

**CLAIRE DOHERTY:** This is a power which we don't agree with. We don't think that it solves the problem. I think it's pretty common ground between all sides that the process of getting a BDAR finalised is very frustrating, and becoming more frustrating and more difficult and more complex as it has gone along. If you look at any major project, you can see that the first submission from the environment department in relation to the BDAR is usually just a very long litany of issues with the way the BDAR has been prepared.

The problem essentially comes down to the fact that the Biodiversity Assessment Method is a raw set that the Government aims to impose on ecology, but ecology isn't black and white. It's many shades of grey; there's a lot of subjectivity to it. In applying that fairly rigid set of rules there needs to be an acknowledgement by all sides that there's complexity and there's subjectivity. That's been further exacerbated by just the many, many documents and guidelines that hang off of the BAM. I'm not sure whether you've had the opportunity to read the submission from Umwelt, an ecological consultancy, but on page 3 of that submission they set out all the many things that go with the BAM. They say:

In addition to the BAM ... there are three operational manuals, general notes on survey requirements for hundreds of species in the BioNet Threatened Biodiversity Data Collection (TBDC) (which are often updated or populated without notice), seven formalised survey guideline documents (with more committed to), seven other published guides relating to the BAM, 30 Biodiversity Offset Scheme update newsletters, 53 BAM Update newsletters and 34 recorded webinars.

All of these many things are required to implement the BAM. There's just a huge volume of complexity, and within each of those things there are subjective decisions that need to be made. There are guidelines which, in many cases, the department require to be followed strictly but are not capable of strict application. We put some examples of those in our submission to the review in April last year. I'm not sure if these have been resolved since then, but, for instance, there was a reptile survey guideline that recommended survey methods that would have required ecologists to handle venomous snakes. There are surveys for amphibians, which require a number of surveys within certain amounts of rain, which could end up being impossible within the periods of time where you survey. There are a lot of guidelines which are incapable of strict application, but not much appetite in the department for justification and for an engagement on how you would deal with that.

There are other issues around assessment. For instance, there is a shrub that was thought to potentially be occurring on a mine site. It had to be surveyed after fire. There has been no fire. The only other way to get an opinion on that was to get an expert. There are no experts for this shrub. There are many, many complexities that go into this. To think that a simple direction from the environment head is going to solve all of those, really, is inappropriate. We've been given some indications from the department that it would be a power that would be used sparingly anyway. It's not going to resolve the problem. I think you've heard from the ecological consultants of New South Wales. There are quite a few consultancies who put in submissions. The problems are less at the extreme end where a direction will resolve it; they are more in the complexities and that engagement that's required to get a BDAR and to deal with all those subjective decisions along the way.

Our view is that what the Government should be doing is going back to brass tacks. They should be sitting down with accredited assessors, including those who work for industry; with the planning department; with their own accredited assessors; and with their own regional planning teams, and saying, "What are our problems? How do we resolve these? How do we identify these pressure points of complexity and subjectivity and put in place something that will resolve those early in the process, rather than proponents lodging BDARs that then need a large number of changes before they can be accepted by the department?" There's an accreditation reset program happening within the department, but it has jumped to solutions rather than starting at this point of saying, "Where are the real problems? How do we fix those problems?" and working to develop a shared understanding within industry, and with the accredited assessors who are working on this, as to how those things can be resolved.

**The Hon. STUART AYRES:** I'd make the comment that, in many cases, rules are the enemy of merit. The capacity for professionals to be able to have these discussions early and establish pathways forward—that's almost the gold standard in the planning system that we don't operate within. Claire has just read thousands of pages of documents and guidelines. It's impossible to have that many rules and guidelines that don't conflict with each other, so you then end up with a situation where it's very difficult for people to be able to navigate that path. On the directions component, we would be strongly encouraging people to be engaged early in the process rather than putting directional powers into an Act.

**ELIZABETH YORK:** We really do not think that this is the answer. This is a huge, outsize hammer to try to solve this problem. It actually creates an additional real problem for development in that if your BDAR can't

be certified—if the environmental agency head holds it up and says, "You can't proceed with this BDAR until you've addressed whatever"—it means your development application is not complete until you have that BDAR. You can't lodge it. It can mean that you can't even get your DA into the system to start having those conversations through requests for information and this, that or the other, which occur through the regular assessment process. What it also does is completely removes your adjudication right under the EP&A Act. If you can't lodge your DA then you can never potentially get a refusal or a deemed refusal, and you can't then lodge an appeal in the Land and Environment Court.

**The Hon. STUART AYRES:** And there's an assessment and application process that's already in place.

**The CHAIR:** What do you say, then, about what Henry said, which was that this is going to keep on going and keep on going? We're going to keep on going around in this circle, losing biodiversity, until we deal with primacy. Does primacy give you the certainty that your member groups and bodies need—i.e., the environment, loss of biodiversity and that consideration will take primacy over all other considerations? Ultimately I suppose we're talking about their red flags, and I know Ms Doherty said there shouldn't be red flags. Is what you're suggesting that your industries and sectors need a level of certainty or a level of clarity? Does that clarity come with "These are the red flags; don't even bother"? Whether we're talking about critically endangered communities or critically endangered ecology, is that the certainty and clarity you're looking for? Or does it come down to "any biodiversity destruction is negotiable through the assessment and the continued use of variations"? Is that where we're at with the certainty?

**The Hon. STUART AYRES:** I'll let Elizabeth say a couple of things in a second around a little bit more detail, but maybe it's a good concept to come back to some first principles here. If you look at the Housing Accord target for New South Wales, 322,000 homes out of the 370,000 homes have to be delivered in what is mostly called by the department "the Sydney mega region"—the lower Hunter, Central Coast, metropolitan Sydney, Illawarra, Wollongong and Shoalhaven. The overwhelming bulk of the housing numbers are going to have to come out of what is a relatively small part of the State. Claire mentioned earlier the figure around over 80 per cent. Acknowledging the contestability that comes from farmers, the bulk of the clearing issues are relating more to agricultural activity. So the Parliament and the Government have got to really create some of their own priorities here.

**The CHAIR:** You're making this assumption about nature as if you can compare one biodiversity region to another. I'm curious about that. I think that is the struggle that the science brings—to suggest that farmers out west are more culpable than housing developers in Western Sydney. I'm trying to understand that.

**The Hon. STUART AYRES:** No. It's almost the exact opposite. It is that the housing demand won't exist in the regional communities at the same level that it will exist within the Sydney mega region.

**The CHAIR:** I understand that, yes.

**The Hon. STUART AYRES:** It's not to say that there is a culpability. It's that where people will want to buy a home is much more easily identifiable and is in a smaller, more constrained part of the State. So when you are thinking about how does biodiversity and the delivery of new homes coexist, I would point you back towards Cumberland conservation management plan. I would say working closely around strategic planning and creating a framework in which you can exist in an environment like what is happening in Western Sydney, where Cumberland conservation planning and mapping has taken place, has created a much stronger degree of certainty.

So in areas like the Hunter or the lower Hunter, which is a strong area for housing growth in the State, and areas across the Central Coast, being able to work within a strategic framework that allows biodiversity and housing to coexist gives more certainty to everyone. That is what I would describe as the gold standard. It's not trading one off against the other. We've got to find a way to allow biodiversity to exist, but we've also got to be able to meet our social and economic requirements. I subscribe to the concept of the human right of people being able to have a home. Those areas are more confined in the State of New South Wales. So being able to invest more effort, time, resources in getting that strategic setting right will provide a much, much stronger framework for councils, State governments, agencies and communities to understand where their biodiversity is going to be protected, and where we can develop homes.

**The Hon. JACQUI MUNRO:** I've got a question for Ms Doherty about the avoid, minimise and offset hierarchy. In your submission you mention that it doesn't exist in other States. Can you explain how it works in other States that they are able to protect their biodiversity without this hierarchy?

**CLAIRE DOHERTY:** What our submission says is that it is not legislated, not that it doesn't exist.

**The Hon. JACQUI MUNRO:** Okay. Can you explain to me then is it effective outside of legislation? How do you comply with those requirements outside of legislation?

**CLAIRE DOHERTY:** There are not standards legislated in other States, which is what is being proposed here. Similar to here, it would be in guidelines.

**The Hon. JACQUI MUNRO:** My point is getting to the idea of are we over-regulating this area? Other States and Territories are able to engage in this space without having legislated hierarchies. Therefore, you are able to still comply with biodiversity requirements outside of legislation. How do you do that?

**CLAIRE DOHERTY:** At the risk of repeating myself, and my apologies to the other Committee members, our view is that the avoid, minimise, offset hierarchy is already required in New South Wales. The biodiversity assessment method sets out good guidance about how you should take those opportunities to avoid and what types of things are acceptable actions to minimise. Our view is that this is a very difficult area to codify. Our industry, for instance, has fixed resources. It's very difficult for us to avoid impacts. Where we can, we do. We put infrastructure, roads, transmission lines, railways, as much as we can, in areas of lower biodiversity value or no biodiversity value. But, at the end of the day, we have to get to the resource. Avoidance is about opportunities to avoid. What I said before was not that there shouldn't be any red flags.

What I said was it's a difference. The "avoid, minimise, offset" hierarchy is a different thing from listing, and from potentially listing things as having serious and irreversible impacts. They are two different ways of dealing with it. If you want to prohibit impacts, then you list them in a way that prohibits impacts altogether, but "avoid, minimise, offset" is about taking the opportunities not to impact that thing. They are different. Obviously, different industries and different projects have different opportunities to avoid. There's a real risk to trying to codify that into a standard that then requires strict compliance across different industries, across different projects with different opportunities.

**The CHAIR:** I am really fixed on this and trying to get more certainty, because I think it is really important and I hear it over and over. Are you suggesting that if there was more clarity and lists around "serious and irreversible", that would provide more certainty as well?

**CLAIRE DOHERTY:** No. What I'm saying is that current process around serious and irreversible impacts deals with those communities, those entities, which are at significant risk of extinction. That's already provided for in the system. The "avoid, minimise, offset" hierarchy is a separate thing from that. That's what I'm saying.

**The CHAIR:** What I'm asking, though, is if that category was defined more broadly, because it is very narrow—

**CLAIRE DOHERTY:** It's already hugely broad. It's a massive list.

**The CHAIR:** We have submissions that say otherwise in terms of the effort to try to reduce biodiversity loss. Your answer to that would be, no, don't make it any broader.

**CLAIRE DOHERTY:** It's a massive list and the current interpretation by the Government of it is extremely broad. There are entities like box gum woodland, which is all over the State—there are tens of thousands of hectares of it—where the department will say you could have nil impact without it being SAIL.

**The CHAIR:** Can I just ask one more thing, going direct to your submission, where you're asserting that the changes aren't urgent, and we should delay until the first quarter? I think that's in your submission, Ms Doherty. Are you able to inform this Committee how much clearing of habitat is proposed via State significant development approvals from your member organisations between now and, say, that period?

**CLAIRE DOHERTY:** No, I'm not.

**The CHAIR:** Is that something that you have a lens on? Would you be able to take it on notice to assist us in any recommendations around delay?

**CLAIRE DOHERTY:** I suggest that you ask the department of planning, who are coming in at 4.30. Just to clarify that, we're looking at two years. It's been two years since the review was commenced. We were given this bill—there was 24 hours notice before it went to Parliament—as were other stakeholders. There was then a period of several weeks to provide a submission here. This Committee has had a really limited amount of time. You had, what, three clear days to look at submissions before hearings started on Thursday. I think, in the big scheme of things, whether this bill gets passed in October this year or sometime early next year after some proper consultation takes place, it's really going to have a limited impact.

If you think that this bill getting made and then the regulations getting made sometime next year when those things will be operational, I think it's a bit of a cute point that you're trying to make about how much clearing will we do between now and then, because a lot of that clearing might still be permissible. We just don't know, because we don't know what's going to be in the regulations. It makes no sense to pass this bill in a hurry this year

when the key provisions of it are not going to be operational until the regulations are available anyway. I think it really is the killer blow for the Government saying they've got to pass this, this year. Why not do the work on the regulations, consult properly, come back to the Parliament next year and pass the whole lot together? It will have nil impact on the environment.

**The Hon. STUART AYRES:** I might just add to that. I love upper House committees. I think they are fantastic. But I'm not sure they are a great way of saying, "We've undertaken community consultation." I think this Committee is effectively the primary mechanism of consultation undertaken for this bill.

**The CHAIR:** I think that is pretty clear, yes.

**The Hon. STUART AYRES:** Would I describe that as great parliamentary practice? No, I wouldn't. There is a lot of peak organisations—the people that are on your hearing list—and the opportunity to engage with them, the opportunity to work through a regulatory statement, to understand the impact of regulations. We all want to participate in that exercise. No-one is asking or arguing for the removal of a biodiversity Act or not responding to Henry. What we are saying is let's work together to get a better outcome. Lobbying it up on relatively short notice and then calling an upper House inquiry or an upper House committee hearing to then be able to say that we've undertaken community consultation is only going to lead to more challenges. You can do this a lot better way than what you have.

Just to Ms Munro's comments before about the avoidance arrangement—this was said earlier, just before you walked in. Definitely from a housing perspective, and I think something you could look at more broadly, is you've got to have some understanding of the project outcome that you are trying to achieve. Elizabeth mentioned in some of her earlier evidence that the only reason why we are undertaking a biodiversity offset discussion is because something is going to be built there. So let's put the project outcome in that process so that you can then understand what are we trying to achieve, and then what do you have to do from an avoidance perspective. Without putting the project outcome in that process, it's a vacuum.

**JASON KUCHEL:** I think you asked the question in a number of different ways around biodiversity outcomes. At the end of the day, we want better biodiversity outcomes as well. We are all wanting the same thing. What we are saying is we have a chance here to get it right. We just can't determine from this bill whether or not it achieves that. CCAA has been calling on the Government to do a heavy construction materials plan. A lot of that is actually about identifying where we can safely and sensibly take resources for where those resources are needed to build the houses, to build the renewable energy projects and so forth and make sure we protect those zones so that can actually be done for the future. That is so we're not trying to fight over different parcels of land, and perhaps finding that the only place left is where there is strong biodiversity that needs to be protected. We are very keen to work with the Government proactively on plans—certainly in our case a heavy construction materials plan—which will actually help the Government meet its targets as well as help ensure that we look after our environment in the best way we possibly can.

**The CHAIR:** Thank you. I'm very grateful to all of you for your submissions and your evidence and for taking our questions. I think something was taken on notice, so the secretariat will be in contact. There will be a process after that. Thank you, all of you, very much.

**The Hon. STUART AYRES:** Thanks for allowing us to attend. I think my final comment would be that in the middle of a housing crisis the Government and the Parliament should be very, very cautious about introducing laws that make it harder to solve that housing crisis. Hopefully, we've helped you with a bit of our information.

**(The witnesses withdrew.)**

**Dr STEVEN WARD**, Associate Ecologist, EMM Consulting Pty Ltd, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Would you like to make an opening statement to the Committee?

**STEVEN WARD:** EMM Consulting appreciates the opportunity to provide comment on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. EMM is an Australian employee-owned business operating from nine offices across Australia and Canada. We lead the preparation of environmental assessments and have a wide range of technical experts, including a biodiversity team with 40 people, of which 16 are accredited assessors under the Biodiversity Assessment Method, or BAM. We have extensive experience on biodiversity assessment and offsets, including projects such as Snowy 2.0, Hunter Transmission Project and Oven Mountain Pumped Hydro Storage Project, which like many of the large projects that we work on have complicated biodiversity assessment and offset requirements.

EMM is broadly supportive of the objects of the amendment bill, in particular, to establish the avoid, minimise and offset hierarchy as a key principle in legislation, and transitioning the Biodiversity Offsets Scheme to net positive biodiversity outcomes. EMM does not, however, support the proposed directions powers to allow the environment agency head to issue directions to accredited assessors in relation to the preparation of biodiversity assessment reports under section 6.10A of the amendment bill. EMM has strong concerns with regard to these proposed new powers. The need for these powers is unclear. The independent review panel led by Dr Ken Henry did not identify deficiencies in the quality or consistency of the work carried out by accredited assessors. The need for seeking these powers is ambiguous and unclear.

EMM is also concerned that directions will reduce consistency. Ecology assessments are complex and in many circumstances are not fully addressed by the BAM. Directions regarding assessment approaches issued may not be consistent with the BAM or other assessments. EMM regularly receives inconsistent advice on similar issues from different New South Wales government offices. There is a high risk that directions will similarly be inconsistent, particularly as the power to issue directions could be delegated under section 14.4 of the Biodiversity Conservation Act. EMM believes consistency and certainty would be better achieved by use of policies and guidelines—measures which can already be effectively deployed. EMM is also concerned about the potential reputational risk to accredited assessors.

The personal nature of the directions threshold is unnecessary and is particularly concerning when there is no right of appeal after a direction is issued. We believe that if a directions power is required, it should be limited to amending a biodiversity assessment report to be compliant with the BAM. In summary, EMM believes that the need for seeking the power to issue directions to accredited assessors is unclear, can reduce consistency and could create reputational risks for accredited assessors without a right of appeal pathway.

**The CHAIR:** Thank you for your submission. We have a series of questions if that's okay. It is a bit unclear, but I think that the motivation to provide the environment agency head with a power is, I suppose, a bit of a safety net in relation to potential unanticipated consequences that might eventuate through the application of the BAM. Do you have any other reason to believe or any idea why the legislation would be seeking to provide that power?

**STEVEN WARD:** I don't have insight as to why that power is being sought. It was, to be honest, quite a shock when I became aware of that power being sought.

**The CHAIR:** I'm trying to understand it a bit too. Do you see any relation to that, and perhaps Henry's recommendation that there be concurrence powers for certain aspects? Do you see that is potentially the motivation around it?

**STEVEN WARD:** I am not clear as to whether that might be the motivation. It's not clear to me whether that would be the case.

**The CHAIR:** I was just curious; I know you've worked very closely with the scheme and the system to date. In terms of the BAM and the application of the BAM, we've had some submissions so far about the contests between biodiversity assessments reports that are provided and the application of the BAM, and the discrepancies between different reports. In your experience, what's the best way to resolve competing views and competing applications about impacts as a result of different BDARs?

**STEVEN WARD:** Firstly, I would note that I believe it's not restricted just to BDARs. It affects both sides; it affects both BDARs as well as stewardship—biodiversity stewardship assessments reports. I have seen inconsistencies in the directions given, as indicated in my opening statement, from various government departments. Ecology is an incredibly complicated, difficult area. We are seeking to come up with a scheme and

a system with various boxes in which to put ecology. That inherently is a struggle, and frequently the ecological attributes just don't fit or, potentially someone has undertaken a particular approach, and for whatever reason, there may be a different point of view. As indicated in my opening statement, in my view, a better way will be to seek to have clearer guidance on various aspects within the BAM, so that all parties—both accredited assessors as well as those within government agencies—are clear on the intended approach.

**The CHAIR:** I'm just trying to understand how that would work in practice. Where does that guidance happen? Does it happen discretionary from the department to the expert? Where does that happen in the process?

**STEVEN WARD:** I guess my view is that on a project-by-project basis, there is the opportunity for an accredited assessor and the department to sit down and engage on matters and to discuss them. Frequently ecology doesn't fit into boxes, so it's talking through the specifics of that scenario and options around how it could be approached, and seeking to come up with an agreed pathway and way forward. Aside from the project-by-project basis, accredited assessors are actually reaching out to the Government to seek to engage on these items.

I'm not appearing here today in this role, but I have been, until the middle of this year, the chair of the Environmental Institute of Australia and New Zealand Biodiversity Offsets Community of Practice. In that role, we, as that group, were reaching out and engaging with the Government on how various attributes within the scheme are approached—what is the mechanism?—and trying to seek to come up with consistent methods by which that could be undertaken. That was completely outside of any particular projects. So there were no projects at stake, but just seeking clarity and consistency for all.

**The CHAIR:** In that work, are there specific examples of areas where contest and dispute is happening? Is there a pattern of inconsistencies or disputes or complexities? Or is it across the board?

**STEVEN WARD:** There can be various items across the board. One of the areas, for example, that has come up with particular discussion is around the delineation of what's called species polygons. What is the extent of habitat of a species on a site? Now that can be a development site or it can be a conservation site, a stewardship site. The approaches taken by departments can be different—different between different regions, different between a development site, a BDAR, and a stewardship site or conservation site, a Biodiversity Stewardship Site Assessment Report. The basis behind that is not clear to accredited assessors and can cause a great deal of frustration and, I believe, frustration at the Government level as well, because frequently for many threatened species there is not a consistent approach to delineation of those areas of species polygons.

**The CHAIR:** What is your experience in terms of the department's approach to and use of variations?

**STEVEN WARD:** Variations to what in particular?

**The CHAIR:** To any of the rules that are applied, or the supposed rules that apply.

**STEVEN WARD:** It is variable. In my experience some within the department will be prepared to discuss them. Sometimes that can be quite a lengthy discussion process depending on exactly what the issue is and the circumstances and background behind it. In other scenarios it can be, I guess, more adversarial and, in essence, no, it must be done in this particular manner. Obviously in various instances accredited assessors will not agree and it's a case of seeking to try to work through and resolve that.

**The Hon. STEPHEN LAWRENCE:** Thanks, Mr Ward, for your submission and your evidence. Do you see any duplication between the role of the assessor and the role of the environment agency in terms of both providing biodiversity assessment advice? Do you see any way to address that or minimise that?

**STEVEN WARD:** The role of an accredited assessor as I see it is to undertake the detailed site assessment and to provide a fair assessment of the biodiversity values present on land, whether it be a development site or a conservation site. I don't see that there is duplication of the role of the environment agency. They need to review that material, check the adequacy of the assessment prepared, and obviously at times there may be different points of view and to work those through.

**The Hon. STEPHEN LAWRENCE:** The offsets scheme is really complicated and there are methods, calculators, guidelines and probably other things I'm not aware of. How would you simplify the process while maintaining its integrity?

**The CHAIR:** The billion-dollar question.

**STEVEN WARD:** I believe that the Biodiversity Assessment Method is very rigorous. The multitude of different operational manuals, survey guidelines, other guidance material which is provided make it very difficult to understand and to be on top of the full complexity of it. In essence, seeking to simplify that down would be desirable. It is, however, very difficult to do in practice. As mentioned, many ecological aspects or other site-based factors are difficult to deal with. And there can be ones that will affect the ecology of the site—fire,

flooding and things like that—which are not actually about the ecology per se, but they will affect the biodiversity assessment.

**The Hon. JACQUI MUNRO:** Thank you for coming along today and for your submission. I wanted to draw out a little bit more on this idea that many matters and circumstances are not fully addressed by the BAM because of the complexities of the natural and modified environment. I am just wondering if you could give me an example of how that is the case.

**STEVEN WARD:** I mentioned a couple there where things such as fire or flood may create issues. Another may be lack of access to land—so where a site assessment cannot be undertaken. That may be due to a landholder not permitting access, or just purely to the physical attributes of the land. Very steep cliffs, for example, can create work health and safety issues to ecologists assessing those areas, or accessing them. There can be, I guess, other matters that aren't fully dealt with. There have been some policies being released in draft recently by the Government—things like indirect impacts on biodiversity values and how they should be dealt with and managed, or assessed in biodiversity assessment reports. There are many of them. Others include—these are frequently dealt with in survey guidelines, where the window in which a species will be detectable may be very short and narrow. It may depend on seasonal or weather characteristics, such as having had sufficient rainfall, for example. There is a whole plethora of factors which can make biodiversity assessment quite challenging in nature.

**The Hon. JACQUI MUNRO:** You go on to write that you regularly receive inconsistent advice on similar issues. How does that relate to the evidence you've just provided? Some officers might say "Well, yes, you can't access that site, but we're just going to take your word for it," or others might say, "You can access that site, therefore we're not going to approve."

**STEVEN WARD:** That is correct. There can be others, all the way back to the mapping of vegetation. There can be different points of view as to how vegetation should be mapped. In particular, with biodiversity assessment reports, you are often dealing with highly degraded areas. They may have, for example, scattered trees within a highly cropped landscape, or otherwise highly degraded, and there can be differing advice given on that. There are differences in regard to things like indirect impact assessments. What is the distance from a particular proposal that should be assessed in terms of its indirect impacts? What is the scope and scale of indirect impact that should be applied to that area? What are the particular survey techniques that should be used? Those, though, tend to be dealt with more via the survey guidelines more broadly. But they do not cover all species groups in detail.

There is a whole range of issues. Another area is, in particular, the application of species polygons—where a threatened species has been detected on a site, the scale and scope or size of the area to be applied. We have, for example, in some instances on impact sites, biodiversity development assessment reports, been provided advice that it should, in essence, wherever there is the associated vegetation community, be treated as being all of that. But then, when it comes to doing a stewardship site assessment, that same approach may not be applied. Or what is the number of sightings required—is it one, two or three—to show that a species is in fact present, and the extent of that habitat presence.

**The Hon. JACQUI MUNRO:** Is it better that there be flexibility embedded into the system to ensure that the specific requirements of different locations are respected or taken into account through these processes, rather than a statewide approach to what are essentially unique ecosystems?

**STEVEN WARD:** Yes, I would say that there should be the ability for there to be flexibility within the scheme and the system to cope with individual site characteristics. I do believe, as per my opening statement and submission, policies and guidance are still required on a broad scale. In particular, I have mentioned the threatened species—the processes to identify the extent of habitat for those both on the impact sites as well as the conservation or stewardship sites. I guess a mix of the two would be beneficial.

**The Hon. JACQUI MUNRO:** There is no requirement the directions be consistent with the BAM when it comes to the agency head making directions after an assessment. How does that work currently?

**STEVEN WARD:** In terms of the ability for comments to be made on a report?

**The Hon. JACQUI MUNRO:** Yes. In your comments you say that, obviously, the objective of BAM is to ensure that consent authorities have clear and consistent information and you also have a clear set of outcomes from the BAM. I understand you're suggesting that the bill doesn't link those two aspects of the BAM together—the actual findings and the outcome?

**STEVEN WARD:** I guess the submission was that in the directions, the ability to issue directions is not tied to or limited to being consistent with the BAM.

**The Hon. JACQUI MUNRO:** Is that the case now also?



**STEVEN WARD:** Comments can be made by government agencies on matters. In general they will be seeking consistency with the BAM. There can be different points of view at times as to what the requirements of the BAM are. As was mentioned before, it is a complicated system and scheme. I guess, broadly, there is some ability at the moment for comments to not be restricted to the BAM. If a direction is being issued to an accredited assessor, then it's quite a significant outcome. In my view, as an accredited assessor, you would tend to expect that the direction issued should be consistent with the BAM.

**The Hon. JACQUI MUNRO:** What I'm trying to understand is what your intention is in making that comment in your submission. Is it something that's not working now that needs to be fixed in legislation or is there a risk that if it's not in legislation that you think there would be directions made that don't align with the BAM?

**STEVEN WARD:** I guess the comment has been made—it is unclear to me as to where this seeking the ability to issue accredited assessors directions is coming from. The fact that it won't be limited necessarily just to being consistent with the BAM creates a lot of uncertainty as to what exactly could this consist of. Again, there is no right of appeal pathway for accredited assessors. If you are issued with this direction, it has the ability to have a significant outcome or an assessment report. I guess the other one is that it may also be that in discussions, as mentioned, ecology is such a complex topic that potentially the department might threaten to issue a direction to an accredited assessor and that may, in itself, stifle discussion of what is really quite a complex topic and seeking to reach an agreed outcome.

**The CHAIR:** I don't think it's in your submission, but I'm just curious about your view in relation to serious and irreversible impacts, whether you have any view on the scope of serious and irreversible impacts, whether you think there's scope to improve how we view that through a lens of trying to achieve our objective—that is, conserve biodiversity—and through the view of Henry that we're currently not doing that under the current system.

**STEVEN WARD:** This is obviously not covered by the submission made, so I guess any comments here are my own personal views. I guess the comment I would make first is, as identified in the Henry review, 83 per cent of land clearing happens under the Local Land Services Act for agriculture. The outcomes under the Biodiversity Conservation Act—and as assessed by accredited assessors—in my personal view, are at a higher standard and give greater biodiversity outcomes in the way of offsets and the like. I guess the amount of clearing—if you have 83 per cent happening for agricultural purposes, then that is the vast bulk of the clearing in New South Wales. In relation to serious and irreversible impacts, you will have a lot of impacts that are not going through that process and not going through the Biodiversity Conservation Act process currently. That is the majority of clearing in New South Wales.

In terms of the SAII processes, again, my personal view is that the legislation currently has the principles. The assessment pathway tends to refer back to those principles, and it tends to be quite circular in nature. My view is that it would be better to have the principles identifying the entities to be listed as SAII entities and then to have a separate assessment process. What is it that is being impacted upon? What is the significance for that particular entity? So frequently in ecology, context is key. If you have, for example, a development, are you losing one threatened plant or one animal out of 10 or 100, or is it one out of 10,000? The context is vastly different and is crucial to understanding how that will affect that particular species or local population.

**The CHAIR:** Given your expertise, do you think the threshold of "Is a local population or a species likely to become extinct because of the development", particularly referring to the old seven-part test—do you think that is something that is still relevant in terms of the BAM, the assessment criteria? Do you think that becomes a red flag?

**STEVEN WARD:** I guess the biodiversity assessment processes have changed a lot from the days of the seven-part test. I guess what I see currently is a lot of projects, in particular major projects, usually requiring a biodiversity development assessment report. So it is more common than not, even if there is very little or minimal biodiversity values on the site, or impacted, to still trigger a biodiversity development assessment report. The level of assessment I see is usually quite high.

**The CHAIR:** Thank you so much. I don't think there was anything taken on notice, but if there was, the secretariat will be in touch with you. We are very grateful for your time and your evidence today.

(The witness withdrew.)

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

**The CHAIR:** Thank you very much for your time today and for coming along. Would you like to start by making a short opening statement?

**TOM FORREST:** The Urban Taskforce supports the Biodiversity Offsets Scheme, a clear point that I'd like to state right at the beginning. That said, all schemes are subject to review and can be improved. We welcome the opportunity being given by this hearing to be able to contribute to that. We're committed to working with the Government and with DCCEEW to make this legislation work as best as possible for the expansion of regional towns, for the growth of our larger town centres, for the provision of jobs and for the creation of people's homes, and yet at the same time for improvements to be realised in the performance of conserving biodiversity through a net positive agenda.

But we start with a note of concern regarding the proposed hierarchy of avoid, minimise and offset. While in principle it's a sensible thing, it's a sensible way to proceed and it sounds great, but we believe that a better overarching principle would be a more case-by-case applied philosophy that simply states what's best for ecology is the best way to proceed. What do I mean by that? Well, sometimes in a desperate desire to preserve a relatively small clump of species, which are in themselves potentially at danger, through the idea of making the first principle to avoid any damage to that biodiversity conservation opportunity, you potentially lose a much greater opportunity for the provision of another social good. I'll come back to that in a moment, but I think you'll guess, if you know anything about anything I've ever read, I'm probably talking about housing supply.

Let's get it right up-front is one of the points I'd like to make. What do I mean? Land that's assessed as holding high ecological value should be zoned for conservation. We shouldn't have a situation where land that has high-value biodiversity species is then zoned for development, therefore sending a market signal to the entire property development community that "Hey, this land's going to be serviced at some point with infrastructure and it's where we've targeted for the urban growth of our population and for new employment opportunities." Then you come back, having presumably paid a fee as a property developer, with that greater expectation of development potential—you've driven the price up, if you like—only to find at a later stage of development "By the way, there's a whole series of high-value biodiversity opportunities for conservation on this land and you're not allowed to develop it at all."

Sorry, what? You can't do that to the private sector is what I would say. I'd say get the high-value stuff nominated right up-front and preserve that. Preserve that through the zoning process or even segment it out so that it is clearly not an area that's able to be—don't surprise us later. That's a role for councils, it's a role for government and it's a role for the private sector, of course, also to contribute in that way by sharing in the studies, by working with the principals to ensure that those areas are clearly marked out up-front and then we can work together on minimising the impact or offsetting the impact in areas that are zoned for development at the point when a DA is lodged. Do the big stuff up-front and then deal with the detail later.

We're concerned, as I mentioned at the beginning, that the rigid application of the hierarchy may not yield the best ecological outcome and has the potential to adversely impact on housing supply. We need to be careful to ensure a flexible approach in applying the avoid, minimise, offset criteria—avoiding it to ensure that we don't get a manifest conflict between two competing goods. The current requirement for multiple ecological assessments is something that's of concern. What do I mean by that? Well, you often have an ecological assessment undertaking at the rezoning stage. You have a further ecological assessment at the rezoning stage. The local panel might ask a series of questions. You'll of course have an ecological assessment undertaking through the council consultation process.

If you lodge a development application there will be further calls, sometimes completely different calls, because they are different teams. The people who do rezonings are strategic planners; the people who do development application assessments are statutory planners. They often have completely different views of the interpretation of anything that is vaguely ambiguous in legislation. It's a note for the Committee that we want to ensure that we avoid ambiguity as much as possible. Yet this is the conundrum: We want to ensure flexibility as well, so that we can get the best possible outcomes overall. Easing the financial burden on housing supply is obviously something that, in our view, will generate a double benefit.

The more housing supply we have at a lower price—it has a potential to protect a net positive agenda. How? We would like to see the Government putting money into the biodiversity conservation offset scheme. Put up some grants to support areas where the Government sees there to be an opportunity for development of new communities. It's almost like back in the days of Bob Debus, Frank Sartor, Morris Iemma, Bob Carr and Craig Knowles, when the Growth Centres Commission was established as a bio certified conservation area. Bob Carr preserved massive swathes of national park in close consultation with Jeff Angel and with lots of environmental

groups along the way. I know I worked very closely and personally with Mark Aarons, Lisa Corbin and Simon Smith back in those times, about ensuring that we could chew gum and skip rope.

**The CHAIR:** Those were the good old days, weren't they?

**TOM FORREST:** We were delivering certainty for the private sector in terms of where they could develop houses and new employment centres. At the same time, we were making a genuine contribution to biodiversity conservation through that biodiversity certification process. It was giving both. What I'm concerned about—and I see a little bit of in some of the bill's drafting—is the pursuit of one agenda, but not necessarily with full cognisance and understanding of the impact that might have on that other agenda, being the other thing that we read about in the newspapers every day, partly thanks to me: the housing supply crisis—without wanting to over-dramatise it.

Further regulation under the New South Wales plan for nature could have uncertain effects on many greenfield locations in the outskirts of not only Greater Sydney, but regional towns right across the State. In fact, in regional communities where the land value is lower, it's quite often the case that the biodiversity conservation offsets are of such significant magnitude that they make development of those regional communities completely unachievable and unfeasible. We're talking areas like Tamworth, Armidale, Wagga Wagga, Parkes and even Nowra. I don't go close to mentioning them all. There are areas in the Hunter, in the Illawarra, on the South Coast, North Coast, in central western New South Wales and the Northern Tablelands.

All of those don't have the higher values that Sydney's got, but they have similar costs associated with biodiversity conservation. When you start stacking that all up together, you actually end up with a situation where you are working against regional decentralisation. You are actually forcing everyone—all the homes to be built back in Greater Sydney. That has its own problems, as I'm sure you're all aware. So we have a conundrum here that appears to be a conflict between two competing, virtuous policy imperatives. The task before us, and one that we are happy and willing to participate in, is working towards treating one and the other together, and not at the expense of each other. Thank you.

**The CHAIR:** Fantastic, thank you. That is incredibly helpful.

**The Hon. STEPHEN LAWRENCE:** Thanks for your evidence, Mr Forrest. As part of the plan for nature, the Government is going to develop a map of high biodiversity areas to guide decision-makers. In terms of what you were talking about earlier, would that go some way to flag biodiversity areas early on? Is that something that could be used as a guide for investment in terms of what you were talking about earlier?

**TOM FORREST:** Certainly, yes. Whenever you do a high-level analysis, you tend to end up with a massive, dare I say, splodge, of areas that are ruled out for investment. What that requires then in many cases is that the private sector take those maps away, and they disprove what is presumed to be higher biodiversity conservation areas. There's a presumption once you've got that splodge on your area of land, then there's a reverse onus of proof. Unfortunately, what we've found in the past is those splodges tend to be incredibly broad. It's a little akin to the flood mapping. A difference of three or four metres mightn't sound like much, but it makes a huge difference in terms of the development opportunity in a particular area. If you do the same thing with biodiversity conservation, you end up ruling out potential opportunities for new housing supply, or a new employment opportunity, and it's very, very difficult and often very, very expensive.

That said, it's better to have something than nothing. If this is a start to ensuring that we're starting to identify high-value biodiversity conservation areas and that leads to a more strategic approach to do we want to develop in that area, or is it just too expensive to provide for the offsets, or the ecological community loss is just too great to justify it, then let's nominate that as early as possible and have that on the table as early as possible. In my recent meetings with DCCEEW we note that we're dealing with a considerable legacy issue here, where land has previously been zoned for future urban growth and housing supply, and yet now that we're doing proper and more detailed and rigorous examination of that land we're finding high-conservation-value species.

We'll have to go through a process of resolving those sorts of issues and identifying, and that's where the Biodiversity Offsets Scheme is so valuable in assisting people—not completely neutralise the investment that they might have made in good faith and in conjunction with the indicators from the government of the day at the time. I'm not saying anyone did anything wrong; nonetheless the rezoning, as I mentioned earlier, pushes the value up—pushes the price up. So developers buy it with an expectation of development and it's a bit of a shock if you go in and say, "Actually, no, you can't do it." We've got to get over those legacy issues and then we want to have a more sensible open-book way of proceeding as we move forward.

**The Hon. STEPHEN LAWRENCE:** Just lastly from me—and again it's in terms of the housing issue—can you give us a sense of what is the proportion of offset costs compared to the total capital expenditure of a housing project? How much of a deal breaker is this stuff really, is what I'm asking.

**TOM FORREST:** It depends on the level of biodiversity that you find on your land. The average biodiversity credit—and Dr Mamouny will be able to advise you further if you ask her—probably the cost of every single credit on every single different area of land. But my understanding is that a single credit is valued at something in the order of \$2,200. Then the number of credits that the scheme now requires you to provide in order to offset any degradation of biodiversity on that land will add up to an amount. You can do that one of two ways: You can do that through a fixed credit purchase process, or you can do it through an open market negotiation, which the trading scheme enables. It can be quite considerable. Obviously where it's very, very high you probably have a large amount of high-value biodiversity and we're probably, in those cases, moving more towards the avoid scenario. But, of course, you've always got to balance that against the need for supply of housing, the need for development of community et cetera.

It's a quasi-economic argument. We like the idea that at least if you know up-front that something's going to cost a certain amount, that gets factored into the land price and, hopefully, reduces the land value. Because you know that if you are going to try to develop on that particular land with higher conservation biodiversity species contained within it, you know that you're going to be paying a large amount of money into the offsets scheme in the effort to minimise the impact on that species. We like that. As I mentioned before, though, we're dealing with a large amount of legacy land which has previously been zoned and what we want to see is find a way in which we can not rip out the value of those opportunities. I think that perhaps government support for development in areas which have potential for high growth or potential for urban development, we could do that and have some contribution from the private sector but also have a contribution from the Government towards the environmental objectives.

**The Hon. SARAH MITCHELL:** Mr Forrest, I was interested when you were talking about the challenges in regional areas. I'm in Gunnedah today, where I live, so I know that there are certainly housing pressures in regional communities as well. But one of the participants that we heard from last week, the Country Mayors Association, gave some examples of particular housing development projects that had been, effectively, not worth going ahead with so they'd been stopped—just because of the costs of the biodiversity offsets. They were proposing a potential way to move forward would be to have the costs as a percentage of the land value. So I guess it was relative to the difference, say, in western New South Wales versus in other areas. Would you have a view on an approach like that?

**TOM FORREST:** Certainly from the property development perspective that would be much favoured—very much favoured. Probably from those who are trying to build up a pool of funds in order to preserve and conserve biodiversity, I would be surprised if they agreed with that. Nonetheless, that is the nature of the conundrum. Because, as I mentioned, particularly in regional areas, the rental vacancy rates are incredibly low, significantly lower than they are here in Greater Sydney. The delivery of new housing stock almost necessarily means you're starting to impact on native flora in particular. That then impacts on native fauna, because once you get rid of the flora you almost necessarily have a massive impact on the fauna.

You have a genuine problem, and the costs associated with those offsets effectively then exacerbate the housing crisis, which then negates the opportunities to grow those regional communities, which is something that, hitherto, we've always thought was a good thing. In fact, governments of both political persuasions have worked very, very hard to try and expand our regional communities and our regional areas, and stop the difficulties associated with urban sprawl. Yet now we've got a bill which has the potential—if not well applied and carefully thought through—to work against precisely that.

**The Hon. SARAH MITCHELL:** In terms of the planning system, the fact that you've got the same system and assessment for, say, a housing project as you would with the other end of the scale, like a large mining project, which obviously has different scales of environmental considerations—do you think that adds to the complexities as well?

**TOM FORREST:** To be fair to the planning department, they are not completely hopeless at differentiating between the needs for the secretary's environmental requirements on a large mine compared to a housing development. Generally speaking, when you get down onto council community land they are not dealing with large mine applications; they are going through the SSD stream. So those important and big ones are going through the professionals within the planning system that have the capacity to deal with that. But you are right in this important way: We need to start thinking about having some subsections of the planning Act which specifically are targeted at addressing the development of regional town centres and regional communities, housing supply, land use issues.

Lumping everything together conflates some of the difficulties we have in urban areas, with completely the opposite difficulties that we might have in regional communities. That is a nuance for perhaps a different parliamentary discussion, but one that I would be pleased to talk about. There is one thing that I wanted to raise—

that is, the question of the ministerial concurrence that's referred to in this legislation for SSD assessed projects. There are clearly some projects where you would want to have a bit of an environment Minister's oversight, or at least DCCEE's oversight—things like large private dams, wind farms, mines. Clearly, you're going to have impacts on the environment and it's important that the right people look at that and ensure that biodiversity conservation is progressed in a net positive way.

There is a lot of development now, I say pleasingly, of homes and housing supply that is now done through the SSD stream. We're talking about infill affordable housing with a value over \$75 million and only \$30 million in regional communities where you have that affordable housing component. We're talking about all the TOD developments over \$60 million and, again, a lesser amount in the regional communities. I'm not sure that having an additional concurrence power requirement to an additional Minister in those circumstances is entirely appropriate. Everyone says, "Don't worry about that. It'll just be a bit of a tick and flick where there's not going to be any significant environmental biodiversity offset issues to be addressed, and it won't take very long."

But you know what, every time you add an additional government-based concurrence to a housing application which is worth over \$75 million, while it might start going through the system in two weeks, I'll be staggered if it doesn't take six months in two years time. I raise that as a cautionary note. I'm not saying it definitely shouldn't be there, but I think maybe we should turn our attention to limiting that concurrence power to where it really should be targeted and, that is, those areas where you are going to see some sort of significant level of biodiversity offset. Again, I thank the staff of DCCEE for helping me understand exactly the intent and the intended operation of that, but I nonetheless raise that concern.

**The CHAIR:** Can I just ask about the Cumberland Plain Conservation Plan and those certified instruments? We've heard from previous submitters that they believe that's the kind of gold standard with this. I'm assuming your view is perhaps the same, but as they say, assume nothing.

**TOM FORREST:** Yes, it is the gold standard of the way I think we should be going. When I talked about opportunities for the example shown through the north-west and south-west growth centres and the biocertification of large areas of land there for the purpose of certainty for investment and development potential, and indeed the Western Sydney employment lands, which is now basically the aerotropolis, in each of those areas there was a degree of certainty and now we're seeing the same. It took a long time to come about as different governments, both at State and Federal level, all put their own print on it and ran their own rulers over it. It's taken a long time to evolve, but we think the Cumberland Plain management plan is a sensible model for moving forward.

I'd like to see both the departments of DPPI and DCCEE working together, a little bit like I alluded to earlier with Lisa Corbin within the department of environment and the department of planning working together hand in glove—and with Jennifer Westacott as well—to ensure that the Government puts out a process which addresses both of the imperatives that we've spoken about simultaneously and in a way that has the least negative impact on the other—the maximum positive for both and the least negative for both. I think the Cumberland Plain management plan and the biocertification processes associated with the north-west and south-west growth centres are a model of how that can be done.

**The CHAIR:** Our time has come to an end. Are there any final things, anything you missed out, Mr Forrest?

**TOM FORREST:** Nothing that I haven't raised in the submission that I gave. If you wish to ask me any supplementary questions at any time, you're welcome to, but at this point I have nothing further to add. Thank you very much for the opportunity.

**The CHAIR:** Thank you very much for your time and your evidence.

**(The witness withdrew.)**

**Mr ANDREW LOTHIAN**, President, Ecological Consultants Association of NSW, before the Committee via videoconference, affirmed and examined

**Ms REBECCA HOGAN**, Vice President, Ecological Consultants Association of NSW, before the Committee via videoconference, affirmed and examined

**Mr JAMES TREZISE**, Director, Biodiversity Council, before the Committee via videoconference, affirmed and examined

**Professor MARTINE MARON**, Member, Wentworth Group of Concerned Scientists, before the Committee via videoconference, affirmed and examined

**Ms DEBBIE MEDARIS**, Acting Director, Wentworth Group of Concerned Scientists, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Thank you all for attending today to give evidence. Would anybody like to start by making a short opening statement?

**REBECCA HOGAN:** On behalf of the Ecological Consultants Association, firstly, I would like to thank the Chair for the opportunity to appear today. There is widespread concern about the Biodiversity Offsets Scheme failing to meet conservation outcomes while, at the same time, increasing costs and delays to the assessments of developments. You might say we are in a lose-lose situation. Ecological consultants are uniquely placed to best understand why the legislation is failing, on both counts. The ECA of NSW for years has been seeking to engage with government to avoid ongoing releases of legislative instruments which, from our unique perspective, are destined to fail from the outset, like this one. Many of the issues that now need to be fixed could have been avoided if there had been genuine and representative industry consultation. We're in support of most of the reforms proposed but are deeply concerned by the lack of definition around phrases and terms used. The industry needs clear direction and interpretation guidelines. There are loopholes all over the place.

We are particularly concerned by the proposed object to enable the environment agency head to issue directions relating to consulting reports. The wording appears to empower a single person to bypass, at whim, procedural fairness and our democratic legal system. The object is based on an assumption that the environment agency head or their delegated representative has a comprehensive and perfect understanding of all aspects of the legislation and its correct implementation. This is not the experience reported by members of the ECA. ECA members can provide examples of where department advice has been proven incorrect and examples of where different consultants have been provided with opposing advice from the department. The objective is not derived from any recommendation of the independent review but appears to be offered as a solution to improve inconsistency of reports.

We put the outcome would be better achieved through ensuring that new instruments are properly developed in consultation with practitioners to ensure they can be implemented effectively, and that they are released in conjunction with clear interpretation guidelines. We also put that this is a minor issue compared to the bigger fails of the BOS market, and extensive land clearing still permitted under the Rural Fire Service policies and the Local Land Services Act. As a final note, the consulting industry is currently under immense pressure due to the constant updates, tweaking and changes to this legislation. A recent survey found that in the past five years nearly one in four consultants have sought help from a doctor to manage their stress, and 63 per cent of accredited assessors are currently considering leaving the industry. We are losing our most experienced consultants at an unsustainable rate. This should be of concern to conservationists and developers alike.

**DEBBIE MEDARIS:** My opening statement is on behalf of the Wentworth Group. We all know that biodiversity in New South Wales is on a steady trajectory of decline. There are almost 500 species predicted to face extinction in the next 100 years. Habitat loss is a key driver and yet land clearing rates remain high. The Biodiversity Offsets Scheme is the primary tool intended to ensure that the impacts of clearing and development are appropriately offset with biodiversity gains elsewhere, yet numerous reviews have highlighted significant shortcomings with the scheme's effectiveness, transparency and integrity. In 2022 this Committee identified serious flaws and recommended sweeping overhauls. The Wentworth Group welcomes the Government's stated intention to improve biodiversity outcomes from the Biodiversity Offsets Scheme. However, we are of the opinion that the bill, as it is currently drafted, will do little to demonstrably improve biodiversity outcomes.

The key question we have to ask ourselves is whether New South Wales is going to make genuine efforts to deliver better outcomes for nature, or whether we're going to allow the Biodiversity Offsets Scheme to continue to facilitate the ongoing decline of the New South Wales environment in the name of progress. We have recommended several amendments that could vastly improve the bill, and thus biodiversity outcomes under the scheme. The full details are in our submission, but to give you a sense of what our recommendations could achieve

we are proposing amendments that would ensure that the transition to net positive would result in real, measurable and absolute gains for biodiversity. As it currently stands, the proposal to move to net gain could still mean continued declines, just not as steep as now, or it could mean turning around those declines.

We need to clearly define in legislation which it is, as these different futures will have very different requirements. We also need to ensure that these gains benefit the specific species and ecosystems which are being impacted and that our irreplaceable biodiversity values are genuinely protected, not lost forever. This means that we can only allow the further destruction of nature if it is something that we know we can replace. We also suggest practical mechanisms for avoiding the problems that plague so many offset funds across Australia by putting in place safeguards that would stop the Biodiversity Conservation Fund from continuing to accrue offset obligations that it couldn't possibly meet.

We acknowledge that the measures proposed in our submission do not comprehensively address every flaw in the scheme identified to date, but they do provide a considerable improvement compared to the current bill. The New South Wales plan for nature recognises that biodiversity in New South Wales is in crisis and that we must take urgent action to put nature on a path to recovery, but before we can achieve recovery we must first stop ongoing decline. By strengthening this bill we can take a significant step in the direction of leaving nature better off than we found it.

**The Hon. JACQUI MUNRO:** You've mentioned the lack of consultation in this process and that there are things in the bill that are not at all well defined. Is there merit in delaying this legislation until parts of the legislation have been clarified, there's been a strategy written, there are definitions included and there has been appropriate consultation? It seems that all parts of affected civil society are concerned about not having had their say. What's your sense about this bill actually needing to be delayed?

**ANDREW LOTHIAN:** From the Ecological Consultants Association perspective, yes, I think it should be delayed until we can actually look through this properly. Otherwise, we're just going to repeat the same mistake as when this bill came in in the first place, where it's not quite finished, and there are some issues with it. We need to nut those out before it gets rewritten, rather than afterwards. Otherwise we'll be back here again in a couple of years.

**The Hon. JACQUI MUNRO:** Are there other groups that would like to make a comment on that?

**MARTINE MARON:** I suppose it doesn't go to the timelines, but the recommendations obviously would require some delay to be able to appropriately reflect those.

**JAMES TREZISE:** I guess it's a tricky one, because it's a broken system at the moment, as people have pointed out. There are tweaks that are coming through in this piece of legislation that, in our submission, may make some incremental improvements, like a focus on avoidance and mitigation. We don't really see that in the current system, or a legislative process for driving that across offset systems across Australia. But the fundamental issue is that this bill has some flaws in it. We would actually like to see it strengthened in a number of ways. So to that extent, what is the pathway to strengthening the legislation and addressing some of the fundamental flaws that I guess others on the panel have acknowledged and that, I'm assuming, are in most of our submissions.

**The CHAIR:** Can I ask your views? I think it goes to the point that, clearly, all your submissions are really concerned about potentially how little this bill does in terms of reforming such a—in your terms—broken system. I don't think it's any secret or surprise that is a fairly consistent view from every independent report that's looked at the system since it commenced. I'm just curious about what you would say to the fact that none of this bill addresses the view of the Henry review that if we are going to at all, in earnest, address biodiversity loss and try and reverse the trajectory, biodiversity conservation legislation, in the scheme of all legislation, would need to have primacy. I know that is not what has technically been asked here but, given your submissions are critical of what we are looking at, I would be very interested in your view around that point of his review, which seemed to be so important.

**REBECCA HOGAN:** I think there is a general view that it would be good for the biodiversity legislation to have supremacy. There is a lot of confusion between different laws as to what which one does in different situations. That causes some of the inconsistency of application that we do see. I think in making it supreme to that extent, it's important to look at how it's going to be implemented. Because one thing that consultants are regularly having to explain to clients is how is the system fair. That is something that doesn't get well addressed in the system. It's inherent to some extent, that some people will have higher values on their land than other people, and so they are then burdened more than other people by the implications of the scheme. It would be good to consider that as part of the process of making that supreme, so we have that higher level of biodiversity conservation but the cost of that is not borne by individuals at a small scale.

**ANDREW LOTHIAN:** I'll just add to Rebecca's statement there. If we're looking at making everything better, there are loopholes in how native vegetation is managed through the RFS Act and the Local Land Services Act, and potentially with State significant developments and infrastructure here. I think we need to address all of these instruments and look at the interaction between them because it's quite complex. If you want to stop stuff falling through the gaps, we really need to close up some of the issues between these integrations.

**MARTINE MARON:** I was just going to add that the bottom line is that nature has always come second, or third, or worse in decision-making and that's why we're seeing net losses of tens of thousands of hectares of threatened species habitat every year—hundreds of thousands Australia-wide, and that's in net terms. Absolutely it is self-evident that we cannot keep doing what we're doing and get anywhere close to even genuine no net loss, let alone actually turning that ship around. Something really significant needs to change. I think that's partly why a lot of people might have been a little shocked that this bill, despite the ample evidence of the problems with the offsetting system, is really tinkering around the edges.

**The CHAIR:** In terms of trying to achieve the objectives of turning the trajectory around, even if we're here tinkering with the bill—I think it was in the Wentworth Group's submission—you say as an absolute minimum any offset that does take place must be like for like. I would be interested in your views around your knowledge or experience in relation to variations and how the scheme even permits not like for like at the outset. When we look at the integrity principles of an offset scheme, when we're looking internationally and elsewhere, like for like is a rule. What is your understanding of how we've got here with this system? I recognise reports have tried to identify this, but I'd be interested in your views on the like for like. I'm happy if you want to also comment on red flags in the system as well.

**MARTINE MARON:** I would also love to know how we got here. When I speak to my colleagues internationally—I was involved in the writing of the first international policy around biodiversity offsets and the establishment of those best practice principles—often they think of New South Wales, or they've heard that that's a place that does best practice, isn't it? When they actually look at the practice as it is, they're quite shocked at the performance and the failure to adhere to international best practice. The variation rules appear, to my reading, to allow koalas to be exchanged for some other species. How many of one species are worth how many of another species? I find that really baffling. The like-for-like rules are there for a really good reason; they're not arbitrary. It's to make sure that this approach of offsetting responds to the entities that we have decided are important to maintain and are threatened with extinction. The idea that some of those things that we've decided we need to conserve and recover actually can be lost in exchange for others really is baffling to me. I'd love to know how that really plays out in reality.

**ANDREW LOTHIAN:** If I could add here, it's become very apparent that there are lots of things written into both the existing legislation and some of the fixes that are proposed in the amendment. But these are administrative changes or stipulations that don't really have anything to do with the environment. I would suggest that something like the variation rules, the reason they exist is that the fund is going to be taking on a lot of that offset obligation from developers. We've already seen how they've been stuck with this massive load of credits that they need to acquire and acquit. It's going to be very hard for them to do that like for like, because you're acquiring on voluntary entry into offsetting. So there's no guarantee that you're ever going to have koalas put up when you've got koalas taken out. Particularly on the vegetation side of the credits, that's where—that mechanism was put in place to give the fund flexibility to actually acquit their obligations.

But we have seen changes recently in the owl survey guidelines, for instance, where they have massively expanded the amount of credits that you can generate—or the size of species polygons around owl records. The only reason for doing that—and they have admitted it in some of the feedback—is basically there is not enough vegetation out there to offset the number of owl credits that the fund has taken on in the first seven years of its operation. They've had to change how many credits you can generate per owl in order to meet that obligation. That's an administrative change that has no biological relevance whatsoever. There are a number of things in this which seem to be operating in the same way.

**MARTINE MARON:** I'm just listening to Andrew, and it is really horrifying to hear that evidence. I'm not that familiar with the way that those issues have played out in New South Wales. Those sorts of accounting tricks are exactly the problem here. I think the biggest issue here is that the system is taking offsetting—not even offsetting but payments—as the solution and they are going to retrofit the system so that it looks like that's the solution to all the problems, and they are just not. Offsets, even properly done offsets—and we are not even talking about appropriately done offsets. We are talking about accounting tricks, so wildlife suffers. But even if they were being done properly, they have a really, really narrow domain within which they can work and actually deliver a gain that can legitimately be exchanged for a loss. It's really small. There are a lot of things we cannot offset, and that's not a matter of "We just need to drum up enough landholders"; there are ecological limitations. There are limitations of reality, and then there are limitations of practicality.



If you think about trying to offset the loss of a large old hollow tree that took many hundreds of years to form, hypothetically if the species we are worried about uses artificial nest boxes, you can give those a go but you are going to have to make sure that they stay standing and are maintained, are not destroyed or damaged and remain suitable for that species also for hundreds of years. The cost of that is a practical limitation. I think the problem is that we just don't set limits. I say "we" because here I am in Queensland and we have the exact same problem. The fund will accept offset payments in lieu of actually delivering an offset and then suddenly discover "Whoops, this is not something that we can offset." There are no safeguards, there are no checks and there are no feedbacks to prevent this from happening.

**JAMES TREZISE:** I was just going to add to this that when we look at it as a market or we look at it as the system, there are two types of supply side constraints. Your original question—what's the driver to relaxing like for like?—it is those two different sides of the supply side constraints that we see. Supply side constraint A is that there are not enough offsets in the system, and so the example that Andrew gave where there is an accrual of these credits and we have to find flexibility otherwise the money just keeps building up and that drives the variation rules. Martine made a really important point which is that the other constraint, and this is probably the bigger constraint in reality, is that the reality of recreating ecosystems, the reality of actually compensating—and we're talking about trying to recreate and compensate—there are ecological limits to this. What is scientifically feasible to do in an ecologically relevant time frame—just reinforcing Professor Maron's point, there is a whole bunch of stuff that is not offsetable and so we need to shift our mindset around where we are looking to put developments.

The offsets discussion very quickly merges into a planning discussion and where we put developments, how we design developments in the State and the country. It talks to a failure of the overall system and where offsets sit within that. But all we see from across Australia are offset systems being designed to try and deal with these supply side constraints, whether it's the inappropriate pricing of offsets—and so they don't actually reflect the true cost of restoring and recreating ecosystems—or creating flexibility and relaxing like-for-like requirements to increase fungibility and lower transaction costs. Basically, increasing the liquidity of the offset market makes it easier for developers to go wherever they like, because it means that, as Martine said, you could trade Callala credits for something else. Once we're running up against things like regent honeyeater credits—we don't have a lot of those birds left, really.

**The CHAIR:** Are you suggesting in all of this that there absolutely should be no-go zones? I'm seeing heads nod. Have you got a view on no-go zones and how we do that? Where do they appear, and how do we apply any views on that?

**DEBBIE MEDARIS:** Sorry, I was struggling to unmute there. I think you've got a great starting point, if you look at the 11 categories of land type that can be included on the Biodiversity Values Map, to inform where you start to try to identify those things that are irreplaceable. There are significant gaps in that mapping already, and there needs to be a more comprehensive look at those 11 categories that includes which species and ecological communities may be subject to serious and irreversible impacts. There's also a range of outstanding ecological values, and in particular the forest types and other ecological systems in there, that can actually be looked at. If you start there and try to build out from that and identify within those categories in that existing framework—where is there potential replaceability to go to the Biodiversity Council's list of what things we do know, with a fair degree of certainty, can actually be offset. On the flipside, what do we know that definitely can't be offset?

There are going to be a whole range of entities that fall in the middle as well and that are protected under legislation. We're not sure whether or not they can all be offset. I think that you need to apply a precautionary principle in that case, and really look to see if we can find the evidence to suggest that they could be offset. If we can't, then we need to prohibit further development or expansion in those areas, or that will impact those entities, until we can identify ways to replace them if they are to be lost. This goes back to the complexity of what we're actually trying to do here. Are we trying to increase the market and create a way for development to be more sustainable or have lower impacts? Absolutely, but how does that play out with markets around the repair and restoration of nature? There are all sorts of opportunities for emerging markets here, and it is a very careful balance that has to be made. I think there are ways that you can investigate further to look for those no-go zones.

**MARTINE MARON:** I couldn't have said it better, Debbie. There have been discussions around terminology. What is the particular net outcome that we're trying to achieve here? Is it no net loss? Is it net positive? Is it nature positive? Do we want to preserve the option to be nature positive if we do want to be nature positive? Nature positive, as I'm sure you've heard many times, means an absolute increase in the value of biodiversity over time, relative to 2020. At the project level, what that would mean is, if you were to do an offset in a nature positive aligned way, you can only do an offset that means there is more biodiversity after the development than before. That is not what we do now. That is not actually what "no net loss" means, and it is also

not what "net positive" means either. Depending on how we choose to define it, as Debbie says, it can also mean that we are preventing the loss of biodiversity that we think would otherwise have been lost.

There is still less biodiversity afterwards, but not as much less is if we hadn't done that protection. That's not aligned with the nature-positive future. If we did choose to go in the same direction as the rest of the world is and set ourselves a goal of absolute nature positive and absolute net gain, rather than this "relative to what would otherwise have happened" type of net gain, then that tells you really clearly where your no-go zones are. Basically, if you can't make more of that biodiversity value, then you can't destroy it. It's as simple as that. There has been some work done recently that was commissioned by the Queensland Conservation Council, led by Professor James Watson and Dr Michelle Ward and involving quite a lot of people, that has demonstrated how you could do that mapping.

**JAMES TREZISE:** I will be relatively brief. To answer your first question, no-go zones, absolutely, we would support that. Professor Maron just outlined some recent analysis. But there are also existing mechanisms under the BC Act that are underutilised, such as areas of outstanding biodiversity value. There are currently only four areas listed on that. I could think of 50 areas in New South Wales—more—of outstanding biodiversity value. How can we explore how to use existing mechanisms to identify and map critical habitats, really important areas that should be off limits from offsets, as a first point. As the second point, Debbie mentioned that we've proposed a permitted list for biodiversity offsets, and so that is where we know that they work. Even though we've been doing them for 10 to 15 years, it's still an experiment.

We're still trying to work out what ecosystems we can recreate. Actually, it's relatively simple to recreate certain types of habitats, and for other types it's almost impossible, and so that should be telling us that's the market. If you were to apply a pure market approach and take IPART's recommendation where you drop away a pay-to-play mechanism—that is to say, you can't pay into a fund; you have to go out and source your own offsets. If the market was functioning truly as it was intended to, it would tell us that these things are really hard to create. They're really, really expensive and that's going to drive proponents to avoid and mitigate those types of impacts. But, back to your previous point, that's why there are all these provisions variations to relax like-for-like requirements to enable things to go wherever they want to, and that results in the overall running down of our natural capital in the State.

**REBECCA HOGAN:** My point follows on a little bit from what has just been discussed. It's just in relation to consulting with industry again when you're looking at identifying no-go areas, particularly if you're looking at which species should be having habitat set aside as no-go. Obviously some species we know respond to management better than others. Some species will use nest boxes, some won't. Some will occupy regenerating habitats and some are much more reliant on old-growth habitats. That information is a database that we're building up over time. It's not complete and probably never will be, but it's getting there. But what also feeds into this is some species are much easier to survey than others. This is a practical consideration that we're finding as consultants.

Some species are perhaps not necessarily as threatened as others but they may have no credits coming onto the market at all for offsetting because they're just expensive to offset, and so people setting up stewardship sites don't see the value in paying for those surveys to be done on the off chance they might be found. And then particularly if there's not really any significant value in the cost of the credit for them to pass on, there's no financial benefit for somebody to survey for those species. That's something that needs to be considered when identifying what's happening with no-go areas. If there are no credits being created or no protection being offered to some species because we don't know where they are, then those species perhaps need a higher level of protection in their environment when they are found than what might be otherwise offered by their status or some other consideration.

**The Hon. SARAH MITCHELL:** I just wanted to get clarity from the Wentworth Group's submission. You were talking about the no-go zones, which goes to your part 4 where you talk about irreplaceable biodiversity values. You said basically in those sorts of areas to refuse all developments except in exceptional circumstances of national public interest. What would be the sort of project that you think would qualify to be accepted under those circumstances? I was just curious about what the threshold is in terms of your perspective.

**DEBBIE MEDARIS:** I'm happy to jump in there. There are certain situations that are going to be really obvious I think in this scenario, things like national emergencies that might warrant irreversible environmental destruction. Irreversible biodiversity destruction is what we are actually considering allowing here. There are going to be times when there is no alternative—I'm thinking about things like measures to limit the severity or extent of extreme fire or flood events—or things like that, for example. I can't give you a comprehensive list. There are some things that are quite intuitive—when it's an action that is critical to sustaining human life, for

example. Limiting the extent, potential extent or likely extent of destruction of nature by preventing these kinds of extreme events from spreading would be one example.

**The Hon. SARAH MITCHELL:** I have one quick question for the Ecological Consultants Association. I was quite concerned to see in your submission some of the data you had around the stress levels of people working in your industry with all of the different legislative changes. One of the things we heard from earlier witnesses when we had a hearing last week—and particularly from local government—was the need to have more expertise in ecology, particularly in small councils or regional areas where they are needing that assistance. Is there anything that the Government could be doing to help your workforce or sector in terms of maintaining professional support, but also so you don't have ecologists leaving the industry? Data indicates that is a serious concern.

**REBECCA HOGAN:** Thank you for picking up on that. What we've identified is that the stress is largely caused by the frequent changes to the legislation. This is because, as we've been discussing, the legislation came in full of flaws to start with. We've been constantly tweaking and updating ever since then. The result of that is that consultants are dealing with projects that are continually needing updates done so that we can get them out the door. Every time you wait for another update, and then you update that, then by the time you get that one done another one has come in. The process is going on, and that's just causing a lot of stress. It's also causing uncertainty, because there's that concern that you may have missed a change, an update or a database change, and then getting picked up on something that you've missed when there's so many changes and so much going on and no clear notification process for a lot of these.

That places a lot of stress on consultants that really are genuinely trying to do the right thing and keep up to date. It's very difficult. When you've got a lot of projects across different regions, and all of these changes are coming through, then it makes it hard. The other consideration we're looking at is if the industry was consulted more during the development of a lot of these policies, these flaws wouldn't be there in the first place. We wouldn't then be needing all of these constant tweaks and updates to fix them. A lot of the tweaks are frustrating, because they're things that we could have identified from the outset. We would have said, "This is how this is going to be implemented. This is a problem. Let's fix this", which could have gone out before it went out. We're doing these changes afterwards, then you've got different versions of legislation, policies and guidelines and people that are still working on old ones, and people working on the new ones.

We then need our consent authorities to be up to date on it well, so that they're also reviewing your report in the context in which your report was written. I think it all comes back to consultation. That's really what we're pushing with this. We feel that if there is consultation, then that will really help, but it needs to be genuine. What we tend to find is that we'll be sent a draft bill—or a draft thing, like in this case—that says submissions close in two weeks. We're not paid to be on the Ecological Consultants Association. We're all volunteers that give our time to that. We run businesses. To suddenly have a two-week time frame to respond to a complex piece of legislation and provide meaningful advice—particularly when it has already been almost completely drafted—is not genuine in our mind. We would like to be involved, at the outset, at the conceptual phase—"We're going to introduce this new guideline. What are the key things we need to consider?"

If we're involved in that process, we can make sure it's going to be implemented correctly. We're going to pick up on unintended consequences. Some of these policies have come in and then there's unintended consequences that the department wasn't aware would happen because they hadn't considered what would happen in a particular type of development. That's where we can really provide that information. We'll spot loopholes before the department will, because this is the space that we work in. We can iron that out first. That will then go, moving forward, to resolving a lot of the stress issues.

**The Hon. STEPHEN LAWRENCE:** Thanks, everyone, for your evidence and submissions, and for the work you do. My first question is for the Biodiversity Council. What do you think the best application of the avoid, minimise, offset hierarchy looks like? Can you provide some information and details about that?

**JAMES TREZISE:** What it looks like is a proper set of incentives and signals to developers and proponents about where they should be focusing their efforts really up-front and early in the design process. I'd be interested actually in the ECA's view on this. A lot of the challenges with environmental regulation are where you end up in a path-dependent process and someone's locked in on a particular site or in a particular way of doing things, and then actually they haven't factored in biodiversity until well down the track and they're starting to chase project finance. I will just put a caveat around that, that once upon a time I was an environmental regulator, so I experienced that firsthand.

But from the context of this legislation, I think it is novel in the sense that it is creating a register and asking proponents to identify how they will demonstrate avoidance and mitigation measures, which is new. But I guess one of the things we need to explore is how we can make sure that is going to be effective and drive those

actions. What are the alternatives that are put forward? How do they demonstrate those avoidance and mitigation measures in an earnest sense rather than kind of, for want of a better word, greenwashing those exercises just to justify their preferred site for economic reasons?

**ANDREW LOTHIAN:** I think it's great having that hierarchy written into the legislation and having it enforced to a greater extent, but on the ground this is possibly something that's going to be difficult to implement because at what point do people pick up on, "We have to demonstrate this avoid and minimise"? Say a major mining project, you go, "I want to do all of this area and we've stripped it back down to this little area." Realistically, that was the only place they were going to do it anyway. Are we just going to have this artificial inflation of project sizes for the justification of reducing the footprint? I could see this being probably more applicable in sort of housing stuff up and down the east coast potentially compared to some of the mining projects west of the divide.

**The Hon. STEPHEN LAWRENCE:** A question for the Wentworth Group: You recommend prohibiting development where a credit type can't be found in the market. Do you think this prohibition would occur too late in the planning process, being so close to the final development consent decision?

**DEBBIE MEDARIS:** I think that's why our recommendation is that the ideal is to identify what is irreplaceable from the outset and actually have that information available and also to encourage early engagement with proponents, with development proponents and people clearing particular areas, so that they do know where these irreplaceable entities are known or likely to exist and they know how to get that information and how to work with consultants. I'm very curious to hear about how this might work on the ground from an ECA perspective. But if they can get that information early about how to either know where these irreplaceable things have been identified already or what you need to do—what kind of surveys and research you need to do to identify whether or not they may occur in the areas that you're looking at so you can avoid it early on.

**The Hon. STEPHEN LAWRENCE:** For the ECA, can you talk to us about how often there are different interpretations of the biodiversity assessment method and how they're usually resolved between assessors and government?

**ANDREW LOTHIAN:** There are definitely some issues, or have been in the past seven years, with either definitions of things or, when the guidelines are published by the department, the way those guidelines are interpreted or worded is not always that great. We see some sort of different interpretation around mainly the survey effort that might need to be applied for something like that. We're having issues as well with people on the other side of the desk being the consent authorities and not recognising the experience of consultants. For instance, I've had projects sent back saying, "You need to include the eastern pygmy possum," when it's a cow paddock with a couple of paddock trees in it. It's not sufficient habitat for that species.

There is actually a mechanism in the BOS for accredited assessors to make the judgement call that that habitat is degraded and not sufficient to house that species, and yet I've sat across the desk from the consent authority—who was the department in this instance—who have argued with me by saying, "You can't use the degraded function that exists in the BAM calculator unless there's a habitat constraint." I've said, "No, that's not true at all." The BOS is very clear about when this tool can be used. Habitat constraints are one thing, but habitat degrading is another. We've been sent back to modify the project by an erroneous interpretation of the BOS from the department side.

This speaks to why we have great issues with an environment agency head being able to dictate how we write our reports and the changes that we need to make to our reports. As an accredited assessor, you operate to a code of conduct where you must provide a truthful opinion and operate within the field of your expertise and competence. How can we have mandated changes put upon us? If I have to rewrite something that I don't agree with, then it's not my truthful opinion. On top of that, if it's being directed by the environment agency head, who is not an on-the-ground ecologist, I would suggest that they are probably operating outside the field of their competence.

**The CHAIR:** Ms Hogan, did you want to add something?

**REBECCA HOGAN:** I was going to add, but I might just leave it with what Andrew has.

**The CHAIR:** I'm afraid that our time has come to an end. We are incredibly grateful for your expertise, insights and evidence today. Thank you for your submissions. We really hear loud and clear, Ms Hogan, how difficult it is to respond. We're really grateful for your responses and for being here today. If there are any further matters, the secretariat will be in contact with you.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Ms CARMEL FLINT**, National Coordinator, Lock the Gate Alliance, before the Committee via videoconference, affirmed and examined

**Mr MICHAEL CORNISH**, Policy Lead, Australian Land Conservation Alliance, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Would either of you like to start by making a short opening statement?

**CARMEL FLINT:** Thanks for the opportunity to present today. The New South Wales biodiversity outlook was released with zero fanfare in May this year, but it found that only 50 per cent of threatened species are expected to survive the next 100 years. In that very dire context, our primary concern with this bill is that it really falls short of Dr Henry's independent review of the Biodiversity Conservation Act, and it's really only tinkering around the edges of what is a very broken system. Notably, it doesn't deliver on the most important recommendations which Dr Henry made, such as a concurrence role and no-go zones, and it really doesn't give primacy to the Biodiversity Conservation Act over other pieces of legislation. As a result, we're really concerned that it's not adequate to address the rapid deterioration in biodiversity in New South Wales.

The focus on offsets, in our view, is very problematic because the central premise of biodiversity offsets is flawed and it inevitably leads to a net loss of biodiversity. If so-called higher quality offsets are used, which are existing areas of habitat in good condition which may be earmarked for biodiversity stewardship, the result is simply less habitat than existed previously because new clearing approvals are being granted in return for an offset site that already existed. The overall outcome is net loss of habitat. There are equally problematic issues with using low-quality offsets in the form of committing to regenerate already cleared or highly degraded patches of land in return for obtaining approval to clear vegetation. It's really hard to regenerate degraded habitats with confidence. It takes a lot of time. There is a lag to providing habitat, and they're prone to stochastic events, such as floods, fire and drought, that are now becoming more common with climate change.

Offsets fundamentally facilitate habitat clearing and fragmentation, which are two of the greatest recognised threats to biodiversity. That's why the law in New South Wales, in our view—if it's to genuinely address the biodiversity crisis—must drop offsets and break the nexus between approvals to destroy habitat and biodiversity stewardship elsewhere. In our view, what's needed is a general levy on all developments that can then be used to incentivise stewardship without it being linked to and predicated on approvals to clear habitat for development. A major problem with the current laws is that most of the measures are restricted to entities defined as being at risk of serious and irreversible impacts.

This equates, according to the department's own guidance, to the critically endangered category under the IUCN framework. These are the most severely threatened entities that are already right on the brink of extinction. The problem is that taking action at this stage is very often far too late. Only a very small portion of all the vulnerable and endangered species in New South Wales are recognised as critically endangered or as species at risk of serious and irreversible impacts. This approach severely limits the consideration of species in terms of the biodiversity framework that is in place in New South Wales currently. Even the koala is not currently listed as a serious and irreversible impact species by the department.

In our view, biodiversity conservation has to focus on preventing species reaching critically endangered status. A way to do that is to prevent habitat clearing for species that are vulnerable or endangered, but not yet critically endangered. Notably, even though the serious and irreversible impacts status is so limited to only the most endangered entities, it still doesn't lead to an automatic refusal of approval for State significant projects and infrastructure. Decision-makers can still approve destruction for those entities with additional measures. We'd really like to see a mandatory refusal of all State significant projects that would cause serious and irreversible impacts to those most endangered entities. We want to see stronger protections for all other threatened entities that are not critically endangered through a statutory no-go-zone map or equivalent means, and an end to offsets as a measure to facilitate clearing and development.

Finally, in terms of the whole package of reforms, we at Lock the Gate Alliance welcome the New South Wales Government's commitment to mine rehabilitation not being allowed to be used as an offset in the future, but we're worried that's not going to happen until a subsequent regulation which we haven't yet seen. We are also concerned that there are a number of mines that have been approved on the basis of these deeply flawed rehabilitation offsets. We're really keen to see an audit of projects where this has been used, and an approach taken to vary conditions so that they cannot be relied on going forward.

**MICHAEL CORNISH:** The Australian Land Conservation Alliance, also known as ALCA for short, is the peak national body representing organisations that work to conserve, manage and restore nature on private land. We represent our members and supporters to grow the impact, capacity and influence of private land

conservation to achieve a healthy and resilient Australia. We do face the harsh but unbending reality that nature is not an infinite asset that can be continually drawn upon without profound social, economic and environmental cost. We must avoid as much further destruction as possible and invest heavily in its renewal.

Our unique nature is not only core to our social and cultural values as a nation, it is also a cornerstone of our prosperity, with half of Australia's GDP being moderately to highly dependent on nature. Sadly, various State and Federal state of the environment reports detail that Australian nature is in accelerating decline. The Australian Government, including the New South Wales Government, must therefore adopt, generally, absolute net positive approaches to its social, environmental and economic development. As an organisation, we've been long critical of environmental offsetting schemes across Australia for not delivering in practice on the theoretical promise of compensating for the destruction of our nature.

We therefore strongly welcome the New South Wales Government's support for a net positive transition for its Biodiversity Offsets Scheme. However, we would argue this should be an absolute net positive transition, rather than net positive—i.e., that means delivering absolute improvements in biodiversity relative to its current situation, rather than simply a slower rate of decline than otherwise is occurring. Further, the bill needs a clear timeline for the net positive transition that is promised to be implemented, as currently this is missing. The bill does not include all four steps of the mitigation hierarchy. It's missing the restore/rehabilitate step that is included in the general Australian and international consensus on mitigation hierarchies—namely the requirement that measures be taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and/or minimised.

So although restoration rehabilitation can come with its own challenges, it's still a useful option to make available. Our view is the bill should adopt the standard consensus approach, and therefore include it as a step. Lastly, and perhaps this is the biggest issue of concern, whilst the new three-year requirement for an offset credit to be applied is welcome, the bill does not take the very important step of requiring that an on-ground biodiversity offset is actually possible or available before allowing an offset payment to proceed. Without fixing this issue, the three-year requirement will not ultimately drive improved outcomes for nature. Thank you again for the opportunity to present, and I look forward to your questions.

**The Hon. STEPHEN LAWRENCE:** I will go first to the Australian Land Conservation Alliance. Mr Cornish, could you elaborate on your recommendation around legislating a standard mitigation hierarchy and why that should include a reference to restoration and rehabilitation? How would that work in practice, in the development application process?

**MICHAEL CORNISH:** The international consensus, as per the International Union for Conservation of Nature and other sources, is that a standard mitigation hierarchy is those four steps: avoid, then minimise, then restore/rehabilitate, and then offset—the payment at the end. The reason for including it is that there are occurrences where doing restoration on land that might be, for example, temporarily impacted may be a better approach than trying to secure an offset in another location. For example, that might be where there is temporary clearance for a track in order to be able to access a particular development location. It may be if you are storing construction materials on a particular site but the seedbank is largely intact and so you can remove all those materials and help foster restoration and rehabilitation to occur. It is very unlikely to be appropriate in cases where you might have, for example, the equivalent of a clear field—something that doesn't have an existing seedbank that can recover reasonably easily or with some limited assistance. But, as I say, in certain circumstances it is appropriate.

**The Hon. STEPHEN LAWRENCE:** Lock the Gate, you say in your submission that even good-quality offsets do not represent a conservation gain as they already exist. But we are told there is significant investment in the stewardship sites, where pests and weeds are removed and there is revegetation and other improvements, and that this is all calculated to ensure there is no net loss. What is your view on that?

**CARMEL FLINT:** Our view is that in reality, really, whilst there are some slight improvements from those kinds of measures and they are important, they can't compensate for destroying intact habitat. You just end up with a net loss of the area of habitat. A slight improvement in one patch of veg, versus the clearing and destruction of another patch, just doesn't really stack up in our view.

**The Hon. STEPHEN LAWRENCE:** Just lastly for Lock The Gate, you raise in your submission the need for no-go zones. How would that be applied whilst also allowing for the development of critical renewable energy infrastructure?

**CARMEL FLINT:** I think first of all it's a step to have a look and identify no-go zones. At the moment, obviously, there is a bunch of places where renewables are being developed without impacts on biodiversity and other things. The problem we've always had with coalmining is that developments can occur anywhere and the

communities' views are not taken into account well, and the various impacts on all the different values—on water, biodiversity and farmland—aren't well considered. We really want, in terms of the renewables rollout, for that to be done better. Not impacting heavily on biodiversity and those other values is also important for renewables.

**The Hon. STEPHEN LAWRENCE:** Lastly, back to the Land Conservation Alliance, in your submission you speak of the need for more specifics in the strategy towards net positive offsets. I'm wondering if you could expand on that—this need for more specifics?

**MICHAEL CORNISH:** What we're really needing then, though, is more of a schedule or a timeline—a requirement for either the strategy to be handed down and/or a timeline for it to be implemented. In a perfect world, you'd have a strategy already done and referred to within the legislation in more detail. We know that is not in place yet. But given that is the case, having a clear, articulated timeline would be very helpful. A definition of what a net positive transition actually is would be helpful as well.

**The Hon. STEPHEN LAWRENCE:** For Lock the Gate, you welcome the Government's decision to remove mine rehabilitation as an offset, but you've also requested an audit of projects where this has been used. Could you explain why you want that information?

**CARMEL FLINT:** I guess it's a deeply flawed thing to suggest that you could clear a whole mine, dig a mine, dig a mine pit and then suggest that you could rehabilitate a critically endangered ecosystem in that area. And yet, under the previous system, mines were allowed to use that as a basis to clear land—on the basis that they would create this rehabilitation offset in the future. Really what we are looking for is an understanding of how many times that was used, that mechanism. How many mines were approved on the basis of that type of an offset? Then to identify what could be done to, in our view, change the conditions so that can't be relied on as a basis for that mine to continue.

**The CHAIR:** Ms Flint, I would love to hear a little bit more on this notion of separating the offset requirement from the development, and this idea of a levy. I'm trying to understand what that would look like. I realise that it's potentially not directly what's not proposed here in the bill, but it's an interesting concept. I suppose I'm asking for the elaboration because there seems to be a fairly broad view that this bill is not necessarily going to achieve the things that we need to achieve in order to reverse the trajectory of biodiversity loss. What is this notion of separating the offset from the development?

**CARMEL FLINT:** Yes, I think we've struggled with this for a long time because we are big supporters of incentives—so biodiversity stewardship by farmers and communities. We think that's incredibly important and delivers incredibly good outcomes. We want it to be incentivised. But we don't believe it should be incentivised at the expense of clearing bushland elsewhere. Our view is that you have to break that nexus. While they are connected, there is this impetus to approve clearing and development in order for folks to be able to do biodiversity stewardship. We just don't think they should be connected in any way. We think it's going to be problematic until that nexus is broken in terms of achieving biodiversity outcomes that we need in New South Wales. In our view, the best way—potentially a way—to do it could be to impose a general levy on all development. Then that levy is what funds biodiversity stewardship agreements for landholders to be able to get on and do the good work they do. That's pretty much the guts of it, I don't think we've thought in detail about the mechanism, but we've struggled with feeling like we need a different mechanism and that offsets inherently create that nexus between the two things.

**The CHAIR:** Essentially taking out that market component of it, and actually going back to the raw, "this is what it costs to do it" and the Government, or whoever, becomes responsible for the biodiversity improvements and outcomes elsewhere. I understand.

**CARMEL FLINT:** Yes, so raising that money from developers, but not in return for getting approval for a development. It becomes some kind of fund that could fund biodiversity stewardship agreements directly. So it's got a bit of a market element, but it just doesn't have the link to the approval.

**The CHAIR:** On the serious and irreversible impacts, we heard earlier—I think it might have been from the Minerals Council—a suggestion that the matters that are the listed entities are already very broad and that any further broadening of what constitutes or what is a serious and irreversible impact on a matter is already adequate. But you're suggesting that is not the case.

**CARMEL FLINT:** No, definitely not. The department itself says in its guidance quite clearly that the categories for serious and irreversible impact are equivalent to the category of critically endangered under the IUCN framework. For example, that is something that has experienced an 80 per cent population decline in 10 years, or that is over 90 per cent cleared. We are talking about things that are right on the brink, entities that are already extremely endangered. In our view that is a subset. The original Threatened Species Act in New South Wales was set up to protect vulnerable and endangered species. Now we seem to be at a point where, after all

these years, we've shifted down to only look at a very small subset of those, the most endangered subset. But it can be too late, and unless we are starting to think about those entities that are not as far down the extinction pathway, then we are not going to do anything to address it.

**The CHAIR:** I'd like to hear from both of you. Do you think this bill is going to make any inroads into assisting the mission of reversing the trend of extinction and the trajectory of biodiversity loss?

**CARMEL FLINT:** I can't see it, based on Dr Henry's review and the scale of the recommendations he made compared to what is in this bill. I don't have any confidence, no.

**MICHAEL CORNISH:** The bill will certainly assist. But the reality is that we don't have a better system of dealing with development than an offsetting system of some sort. The fundamental problem facing this offsetting scheme in New South Wales is that you don't have to ensure that there is an availability of an offset, in reality, before the development can proceed. That means that even if it's not possible to protect or re-create habitat elsewhere, you can still proceed with development, except in the most egregious examples, where something is stopped altogether. Until you have a condition before you get approval that there has to be an offset available—an on-ground offset available in practice—you're going to continue to have the fundamental problem here. This is why we've seen, not just in New South Wales but in other jurisdictions, the offsetting funds—the funds available for offsetting—increasing and increasing and then an inability for departments and agencies to be able to deliver the offsets to essentially discharge that liability.

**The Hon. JACQUI MUNRO:** We've heard from both sides of the debate—in terms of pro-development, let's say, and pro-conservation—that there might be merit in delaying this bill until better consultation can occur and that the terms of the bill can be clarified and give certainty to everybody involved. Could you provide some comment on whether you think that would be useful to strengthen the bill and provide further clarity?

**MICHAEL CORNISH:** I think as long as this is perceived as a first step in a broader package of reforms that will come as the rest of the response to the independent review is implemented, this is a first good step. We don't want to pretend that this is going to fix all the problems. It's not. Some of the definitional issues can be easily addressed through some tighter drafting, I think, around what is a net positive transition. At least articulating what that is, even though we are not going to get the full strategy and the full terms and conditions of exactly what a transition looks like—at least defining the net positive component. We argue it should be an absolute net positive but, nonetheless, defining what is in the bill would be very helpful. I don't think that the bill is not salvageable at all. Quite the opposite. But it can be improved. I think it's also worth mentioning that, in a sense, this is a consultation process. We have our opportunity to consult. We do get heard, we get to put submissions in. So I don't think it's completely true to say there is no consultation process.

**The Hon. JACQUI MUNRO:** We are just doing the Government's work for them.

**The Hon. STEPHEN LAWRENCE:** There's Government people here.

**The Hon. JACQUI MUNRO:** There is a Government person here.

**MICHAEL CORNISH:** In fairness, there have been multiple reviews into the offsetting scheme, right? We've had the Auditor-General's report. We've had a parliamentary inquiry. I'm sure the Government has been looking at it in length. We've got this inquiry. Again, as long as this is not seen as the end of reform, but rather the beginning, then it's not something we want to delay what reform is actually in the pipeline.

**CARMEL FLINT:** I think we are keen to see some more robust changes than are proposed in this bill. I don't know whether that needs more time or just more political commitment, not sure. We would definitely like to see some much bigger changes.

**The CHAIR:** Can I just ask in terms of how you view the idea of any mapping tool and register in terms of any third-party engagement with those tools and mechanisms. I think we've had some submission about why is there the need for any public register and what is the purpose of public registers. I'm interested in your views on that, given you work with communities and particular cohorts within the community.

**CARMEL FLINT:** Yes, I think there is incredible value for communities in being able to access information about these kinds of projects and developments. There are communities that are just so invested in what is happening in their neighbourhood and their region and who follow things closely and who want to have access to that information. They know the most about what is happening in a lot of these areas in terms of the environment and other issues. So they are really the best people to have that information at their disposal, because they can look at what is happening on the ground, what is supposed to be happening and raise awareness with regulators or whoever else needs to know if something is not matching up.



There is a whole lot of benefits there in communities having this information, in our view. It just adds a level of rigour that we just really need in this field, because we've got huge disparities between the developers, the amount of money they have at their disposal, the legal power they have at their disposal, and the communities that are being impacted. The one thing communities should have access to is information to be able to level that playing field a bit.

**MICHAEL CORNISH:** Whether it's a register or mapping tools or what form the information takes, it's very hard to argue against increased transparency. That is certainly a very good thing. I guess what the mapping tool exercise has highlighted is the importance of trying to get the information out as quickly as possible in one go so that there aren't perverse outcomes where those may see what has come before. Maybe the mapping hasn't come to their district yet and they go, "Right, well, I better get clearing before they come mapping here." So you do want to obviously stage the information release in an appropriate way to avoid perverse outcomes.

But increased transparency is a good thing. We shouldn't pretend that we have all the biodiversity data that we need. Quite the opposite. But, having said that, we should also not use it as an excuse for not using the best available data to make the best decisions we can at the time. That's where the precautionary principle comes into play, where we say we should take all precautions and not presume the opposite. We should not presume that, well, if we can't find something, then actually it is okay.

**CARMEL FLINT:** I think the big issue with biodiversity data and mapping tools and whatnot is that if they are not public then it can be really hard for the community to interrogate decisions. The biodiversity assessment methodology is a bit like that; it's very much a black box. The community gets an output at the end. You've got these consultants doing the work and it's almost impossible for the community to stress test it, or to understand how conclusions were arrived at. I think having access to as much data as possible for the community, and to any tools, is really important. Otherwise we end up with this huge disparity and we don't have that checking that the community delivers to be able to go, "Wait a minute, you didn't consider this species, or you didn't do that." But they can't do that because they can't work out what was actually done. So that's been a big problem with the current system as well.

**The CHAIR:** We heard from some of the experts who are accredited assessors that there was a potential push to have more capacity to engage more, one-on-one and directly with the department, and how the biodiversity assessment methodology and tools are applied and worked. I'm assuming, based on what you've just said, you would think that is actually quite problematic if we went down that path and that would reduce the capacity to have oversight, ultimately?

**CARMEL FLINT:** Yes, potentially. There is little oversight at the moment. It's a real black box. So I think whatever happens, we need to go in the other direction of more transparency and clarity about what the rules are, rather than more subjectivity and negotiation and less transparency.

**The CHAIR:** Thank you. We've run out of time. I don't think there were any matters taken on notice but, if there is anything further, the secretariat will be in contact with you and a process will follow from that. We are very grateful for your time, for your submission and for your evidence today.

**(The witnesses withdrew.)**

**Mr STEVE HARTLEY**, Executive Director, Resilience and Sustainability, Department of Planning, Housing and Infrastructure, affirmed and examined

**Mr DAVID GAINSFORD**, Deputy Secretary, Development Assessments and Sustainability, Department of Planning, Housing and Infrastructure, affirmed and examined

**Dr LOUISA MAMOONEY**, Executive Director, Nature Markets and Offsets Division, Department of Climate Change, Energy, the Environment and Water, affirmed and examined

**Ms AMY DUMBRELL**, Director, Biodiversity Offsets, Nature Markets and Offsets Division, Department of Climate Change, Energy, the Environment and Water, affirmed and examined

**Mr MICK O'FLYNN**, Director and Acting Chief Executive Officer, Biodiversity Conservation Trust, affirmed and examined

**The CHAIR:** Would anyone like to make an opening statement?

**LOUISA MAMOONEY:** Thank you for the opportunity to appear before the Committee today. I acknowledge we are on Gadigal land. The bill seeks to reform the Biodiversity Offsets Scheme in line with the New South Wales plan for nature. The amendments proposed in the bill are the result of many years of review, inquiry and consultation on the scheme, including the review led by Dr Ken Henry on the Biodiversity Conservation Act, and the parliamentary inquiry into the integrity of the Biodiversity Offsets Scheme. Throughout these reviews and in regular discussions with stakeholders as well as practical experience in implementing the scheme, we have closely considered elements that are not working. That consultation has included consultation and stakeholder meetings associated with the Henry review, stakeholder round tables in developing the New South Wales plan for nature, and the many and regular stakeholder meetings the department holds.

I want to thank stakeholders for their contributions and close engagement with DCCEEW over the years and for their submissions to this inquiry. The bill proposes changes to the scheme that are urgently needed. We have in New South Wales a mature offsets scheme compared to other jurisdictions and we have addressed many of the issues that other jurisdictions are grappling with. We have in-perpetuity stewardship agreements which are registered on the title of the land. We have funding set aside at the outset to ensure that biodiversity gain on those sites occurs over the long term. We have a functioning biodiversity market with high levels of interest from landholders in participating in that market. Over 450 new sites have been identified in the last few years by landholders who would like assistance to participate. We have a sound, repeatable and scalable method for assessing biodiversity that works for the assessment of biodiversity in all its variety in New South Wales for measuring loss and gain.

Around 400 people are accredited to apply that method. We are now seeing a rapid increase in the amount of habitat and ecosystems being restored in the scheme, and we've just tipped over 90,000 hectares of land that is being protected under biodiversity stewardship agreements. At the recent national offsets conference hosted by the ELANZ and attended by over 350 people from across Australia and overseas—professionals, consultants and stakeholders—Professor Hugh Possingham reflected that, of all the Australian jurisdictions, the New South Wales scheme was ahead of the pack, although we are beating ourselves up with review after review, and so we should.

It's critical that we get the fundamentals and the practical implementation right if we are to have confidence in offsetting as part of the broader plan for nature and achieving other critical social and economic objectives. The key components of these reforms are strengthening requirements to avoid and minimise impacts; requiring the scheme to transition to delivering overall net positive and developing a strategy to achieve this; allowing for the regulations that will limit the use of the biodiversity conservation fund so more credits are sourced upfront; ensuring quicker investment in impacted species and ecosystems when the fund is used—increasing transparency and accountability is key; and, finally, allowing for regulatory burden on lower impact local development to be reduced.

Finally, to assist the Committee in directing questions, I will briefly speak about DCCEEW's role in the scheme. We accredit assessors who apply the BAM and set the requirements for those accredited assessors. We approve biodiversity stewardship agreements that create biodiversity credits. We have responsibility for public registers and systems for the operation of the scheme and provide support to stakeholders and local government on implementing the scheme. Finally, we support a functioning biodiversity market and have been putting in tremendous effort to increasing the supply of credits and working with landholders. I will now pass over to my colleagues in BCT and DPFI to do the same.

**MICK O'FLYNN:** My opening statement is also by way of describing the BCT's role to assist the Committee. The BCT has several statutory functions, overseen by a board. We have two main roles in the

Biodiversity Offsets Scheme, and they are mostly operational roles. The first role is providing landholder support, technical advice, monitoring and agreement assurance for stewardship sites once they are approved by DCCEEW. This role includes administering the \$390 million currently held in the Biodiversity Stewardship Payments Fund. These Funds are generated by the sale of credits by landholders and are paid back to landholders as annual management payments in perpetuity in accordance with the payment schedule set out in each biodiversity stewardship agreement.

Our second role is in securing biodiversity offsets through the Biodiversity Conservation Fund. This includes managing the calculator that determines the amount that developers pay into the fund if they choose to do so. With these funds, the BCT secures offsets and buys credits from the market in accordance with the Biodiversity Conservation Regulation and the BCT board's parameters for doing so. In this task the BCT has made some good progress in the last 12 or more months, which I'm sure there will be some questions about from the Committee. In delivering our roles in the scheme, we collaborate closely with the Department of Climate Change, Energy, the Environment and Water.

**DAVID GAINSFORD:** The Department of Planning, Housing and Infrastructure is responsible for assessing major projects. Some projects can impact on biodiversity and are required to comply with the requirements of the Biodiversity Conservation Act, in particular the Biodiversity Offsets Scheme, prior to being determined. By the end of August 2024, there were 710 major projects within the assessment stages—from prepare secretary's environmental assessment requirements to determination—proposing a direct investment of \$202 billion for New South Wales. The Biodiversity Conservation Act amendments seek to improve the operation of the Biodiversity Offsets Scheme, which operates alongside the Environmental Planning and Assessment Act. There are significant interactions between the bill and other government decision-making processes, including under the planning system. The bill proposes a staged commencement. Much of the detail around implementation of the new provisions in the bill are to be established via regulation, which will need to be made before the relevant provisions outlined in the bill commence.

The department recognises the importance of the reforms and the objective to make the Biodiversity Offsets Scheme clearer and more efficient in its operation. Several elements of the bill significantly interact with planning processes and decision-making, including development assessment. These include front-loading consideration of biodiversity considerations through strategic planning to provide better development certainty and improve biodiversity outcomes, and simplification of the biodiversity assessment process, where warranted, to provide greater transparency and consistency of decisions. The department will work closely with the Department of Climate Change, Energy, the Environment and Water to support the changes that achieve a transparent, equitable and fair system that delivers improved biodiversity outcomes and allows for the delivery of housing, renewable energy and critical infrastructure.

**The CHAIR:** Are all 90,000 hectares under conservation agreements in perpetuity?

**LOUISA MAMOONEY:** Yes. It includes biobanking agreements and biodiversity stewardship agreements. It goes back to 2010.

**The CHAIR:** Earlier today we heard about variations. We asked one of the experts at a professional level—who has dealt in the international world and who has a very impressive CV, from what I could gather—how all this started: when you have a rules-based system but the system itself is operating on the variations to those rules. How did we get there? How do variations happen? Who makes them happen? Where in the system do they happen? I'd love to have some insight into that, if that is possible.

**LOUISA MAMOONEY:** Yes, certainly. I'll start off by explaining that there are two forms of variation rules that are in place. I'll cover variation rules relating to development projects first, and then I'll pass over to Mick to talk about variation rules that the BCT uses for the Biodiversity Conservation Fund. Yes, you are right. In terms of the biodiversity assessment method, it is assessing projects on ecosystems and the threatened species that occur on those sites as well. The assessment reports that are produced by accredited assessors describe the impacts in terms of the impact on particular ecosystems and particular threatened species, measured in biodiversity credits, which is the unit of measurement that we use.

There is a possibility in the legislative framework that when developers come to meet those offset obligations, if they cannot find the credits available to offset those impacts on a like-for-like basis, they can use the variation rules. We're putting in a lot of effort at the moment to increasing the supply of credits and to make sure that there are the right types of credits available in the market to offset the impacts so that the developers can offset those impacts, and we are seeing a lot more of the species credits being created. However, there are these variation rules that are also available. I'll give two examples of those. A variation rule can be used to substitute either a different type of ecosystem credit, and they can also be used for species credits to substitute. So if there is an impact on an endangered animal, then there can be a substitute endangered animal credit used for that. That

is one. It also applies for vulnerable species, so a vulnerable species can be substituted for another vulnerable species.

**The CHAIR:** Who set those rules?

**LOUISA MAMOONEY:** That's set through the framework, and it's in the regulations. Mick will explain about the BCT.

**MICK O'FLYNN:** The Biodiversity Conservation Trust has a separate set of variation rules. It's called the offset hierarchy. It's prescribed in the Biodiversity Conservation Regulation. In that hierarchy, the like-for-like biodiversity credits is at the top of the hierarchy and is always the first consideration. The BCT board has set more cautious rules than exist in the regulation. For example, we will not consider going outside the like for like until after we have twice attempted to secure that like-for-like credit in the market through a market offering. A further example is, when considering a conservation action, which is one of the steps in the hierarchy we can use, the board has set a series of parameters and principles that we have to satisfy before we'll consider taking such a conservation action.

As the Committee would know, if we are unable to achieve like for like in a time frame, then timeliness versus the desire for like for like becomes a bit of a trade-off for the BCT under the current regime. By way of example, I'll just say that as at 31 August we have secured 81 per cent of the credits that we've ever acquitted through like-for-like offsets. Most of the ones that have not been like for like, a significant proportion of them have been in recent funding of conservation actions through the Saving Our Species program.

**The CHAIR:** In terms of people who operate the system and drive it, do you think it would be a much more straightforward, certain system if we did away with variations? The development industry, for example—the sector keeps talking about wanting certainty and clarity. In terms of the operators and the lever holders of the machinery, would it be much clearer to just say, "No, these are the rules. You play by the rules"? Are these variations where the uncertainty and the inconsistency, and the to-ing and the fro-ing and the negotiation, and the bad faith and the good faith all happen? Sorry, where a lot of it happens—not all of it.

**LOUISA MAMOONEY:** Our view is that there does need to be more transparency over the way that the scheme operates in practice, and that is part of the reason we've proposed additional registers, to allow that transparency to occur. Considering doing away with the variation rules is something that is probably worth considering. We would look closely at that if it is suggested by the Committee. There are lots of ways in which we probably should be increasing transparency of the scheme, and having clear registers which set out the offset obligations and how those offset obligations are being met will go a long way, I think, to assuring the public about the operation of the scheme and the outcomes that are being achieved.

**The CHAIR:** I'm curious about the impact of serious and irreversible impacts, particularly for State significant development. How do we reconcile that? Will the department, and has the department ever, recommended refusal of development because of serious and irreversible impacts? At what threshold does that actually happen?

**LOUISA MAMOONEY:** I would suggest Mr Gainsford may respond to this as the decision-maker for serious and irreversible impacts.

**DAVID GAINSFORD:** Serious and irreversible impact is obviously something that is taken very seriously in the assessment. I know there was some previous evidence that was given earlier today around a suggestion that that should be as it is for non-State significant development—something that should be considered by the consent authority as a red flag, or something that shouldn't then progress. I think, in reality, I'm not aware of circumstances of where we, as a consent authority, have actually agreed to approve a development that had concluded that it had serious and irreversible impacts. We obviously work through, often with regard to mitigations, to try to reduce impacts where there is the risk of serious and irreversible impact.

I know we are working closely with our colleagues at DCCEEW with regard to making sure we've got clear understanding of how serious and irreversible impacts should be defined. From our perspective it's something that is definitely taken seriously. Whilst we are doing a merit based assessment and we need to weigh up various factors, certainly from my perspective it would only be in very extreme circumstances that I would be recommending to an eventual consent authority to agree to a development that has concluded there is serious and irreversible impacts.

**The CHAIR:** To your knowledge to date have you had assessments that have come to you and said, "This will have a serious and irreversible impact on biodiversity"? Have you had that come to you? If you have, are you suggesting the response has been you've then gone to work out how to not have that impact?

**DAVID GAINSFORD:** I think that is a fair summary, yes. So there are certainly circumstances of where, as we are undertaking and developing up the assessment there is the ability still to iterate, and to look at further mitigations and also to gather further information around some of the evidence that's been put to us. It's through that process that we hope to get to a position where we can conclude, if we are recommending approval for a project not to have serious and irreversible impacts.

**The CHAIR:** I'm just trying to interrogate this aspect of how it works. Is it then the case that, okay, we've got a first assessment that says "There will be a serious and irreversible impact here." Does the serious and irreversible impact ever get lessened or more acceptable, because an offset can get greater—the offer of a greater offset takes place?

**DAVID GAINSFORD:** That's one of the avenues. My colleagues might be better at answering the typical processes of mitigation and offsetting discussions that happen there. Dr Mamouney?

**LOUISA MAMOUNEY:** Serious and irreversible impacts are something that are assessed as part of each biodiversity development assessment report. Documentation is prepared by the accredited assessors to go to the decision-maker on serious and irreversible impacts. We also have a guide published by the environment agency head that sets the requirements for serious and irreversible impact to be assessed. Those assessment reports—there are ways in which impacts on the entities that are identified as at risk of serious and irreversible impacts. There is mitigation possible, so avoiding, essentially, the impact. Sometimes offsets are used as well, to reduce the likelihood of a serious and irreversible impact.

**AMY DUMBRELL:** Just to note that the legislation as it's currently written requires the consideration of additional and appropriate measures, if it's looking like a project will have a serious and irreversible impact. So that is something that we work very closely with our planning colleagues on. If a project is looking like it will have a serious and irreversible impact, we will look through all of those potential options of reducing or minimising that impact on the impact site. We also look to see if there are other measures that can help support that impacted entity.

**DAVID GAINSFORD:** Perhaps I can provide an example of a project that we've currently got under assessment without necessarily naming the project—because it's something that has occurred in a few different examples recently—where there has been substantial survey effort associated with this project, but the project itself is a very large project, a long, linear project. So there have been some parts of the assessment that haven't been able to be ground-truthed, and so there have been levels of assumed presence and therefore some uncertainty around whether there is a serious and irreversible impact. In those situations some of the additional and appropriate measures are the sorts of things that we would take into account. We'd obviously continue to be seeking some advice on the likelihood of serious and irreversible impacts occurring in those situations.

**The CHAIR:** So people have been talking about that we should have no-go zones, and we should have really good mapping tools and we should be very progressed at how to identify where these no-go zones are and have them already. What would you say to that, if your instructions from government tomorrow was, "Right, we need that magic map that identifies all the no-go zones, and we can then start reversing the trajectory that we're on for biodiversity loss"? What do you say to that?

**LOUISA MAMOUNEY:** I would love to be in that situation; it would be ideal. We do have very good mapping in New South Wales. We have a State Vegetation Map and an excellent classification system. Unfortunately, the level of assessment that we need to do for biodiversity is quite granular—appropriately granular—looking at particular species and what is actually on the site. Unfortunately, mapping often doesn't get to that level of detail and the precision that we need to do assessments. If we are trying to identify no-go maps across the entire State, it will be quite costly. But I would be very happy if we were in the situation where we had that level of information available to us.

**The Hon. STEPHEN LAWRENCE:** Firstly, for the department of housing et cetera people, is this bill going to delay housing approvals, or impact the Government's housing targets?

**DAVID GAINSFORD:** Whilst I mentioned in my opening statement that we are still keen to work with our colleagues at DCCEEW around the regulations and the provisions in those regulations, we don't believe so. One of the matters we are considering—I talked again in my opening statement and perhaps I can defer to my colleague Mr Hartley—and are very supportive of in what's being proposed here is the ability to front-load the process, and to identify at a strategic level the sorts of biodiversity protections that are needed to give some certainty for housing development. That has happened in the Cumberland Plain Conservation area and it's something we are looking to expand out some more. Perhaps Mr Hartley could add to that.

**STEVE HARTLEY:** Yes, and picking up also on the theme from Dr Mamouney, one of the elements of the reform package talked about front-loading the development consideration process. Some work that we've

done in Western Sydney, the Cumberland Plain Conservation Plan, was about 3½ years of mapping over 11,000 hectares of land. Whilst that was a significant effort in terms of undertaking those on-ground surveys, they were sufficient and representative enough that we were able to make decisions about the best possible conservation outcomes and the best possible locations to deliver housing supply as well. Through that more strategic landscape look, as well as the very detailed site-specific investigations, we're able to provide certainty for investment in conservation and stimulation of biodiversity stewardship agreements but also provide industry certainty around where development can occur with the least possible biodiversity impact.

**LOUISA MAMOONEY:** The reforms in this bill are not expected to impact the Government's housing targets. The scheme doesn't apply on land where there is no biodiversity, such as infill development. I think it's important to remember that. There are some substantial greenfield residential developments that have met their biodiversity assessment requirements, such as the Cumberland Plain Conservation Plan, and other plans with biodiversity certification on them. There are a number of those in regional areas as well. There could be more of those efforts to do certification. There are also regulatory powers to lift the entry thresholds for the scheme for local developments as well. That would need to be done by regulation and will obviously require careful consideration and consultation with stakeholders. I also note the Urban Taskforce suggestion about moving to better consideration of biodiversity up-front and through the rezoning stage as well.

**The Hon. STEPHEN LAWRENCE:** Thanks for that. Staying with the environment and climate change department, can you explain the reasons why the Government is introducing a new concurrence power for the Minister for the Environment when the planning Minister gives discounts to offsets?

**LOUISA MAMOONEY:** This concurrence power is only for State significant development and State significant infrastructure—so, really, those big, mega projects that are assessed by DPHI. The intent of the concurrence is to ensure that where the Biodiversity Offsets Scheme has been applied and there are proposed to be discounts on either the offset obligations or some other arrangement which is outside of the Biodiversity Offsets Scheme, that is when the environment Minister should have a concurrence role in it, because the planning approval is also the biodiversity approval.

**The Hon. STEPHEN LAWRENCE:** Just lastly, in terms of the new directions power to assessors, can you explain the justification and intent of that being introduced?

**LOUISA MAMOONEY:** I think, as many of the earlier witnesses talked about, the complexity of biodiversity assessment. Even despite having a very sound biodiversity assessment method and detailed guidelines and calculators and all the other things that go into templates on how to do assessment—all the things that go into supporting the implementation of those assessments—there can be issues that come up during the biodiversity assessment that require clarification. We heard earlier about the identification of species polygons: which species occur and where are they. Is it a particular plant community type or is it another one that looks fairly similar but might have a few differences?

The purpose of this power of direction is really to provide clarification up-front in the assessment process so it will reduce the uncertainties and the delays in the assessment if, at the last minute, there is a change in the way that site should be assessed. The power is contained to requirements that accredited assessors should already be doing, so the conditions of their accreditation, which include applying the biodiversity assessment method but also their code of conduct as well. We think it's within the bounds of operation of accredited assessors' current work, but there might be some changes that we can consider further to clarify that. I know the feedback from accredited assessors on that is that they would like for there to be further consultation on it.

If I could talk further about accredited assessors, too, I mentioned earlier we have 400 accredited assessors across the State. They undergo training. They are also very experienced ecologists and we note the important role they have in the scheme. It's absolutely critical that the assessment reports that they produce are accurate. That's why we take the role of accredited assessors so seriously. We're not seeing any reduction in the number of accredited assessors, which is good. We also have a number of renewal courses coming up throughout the remainder of this year and they are all full. So we are confident that there will continue to be accredited assessors available. I'm really excited to continue to work with those industry groups to resolve some of the issues that they are experiencing with the scheme.

**The Hon. SARAH MITCHELL:** Thank you all for your evidence so far. I wanted to ask a few questions just in relation to the evidence we've had from previous witnesses, both today and when we had our hearing last week. I wanted to start with the Country Mayors Association, which has made some recommendations around effectively looking at parts of the State differently under the scheme, and their argument is that the Far West is very different to the North Coast, for example. They talk about three zones across the State and also the potential of looking at percentage of land value for the offsets process so that you've got, again, more consistency. Would anyone want to offer some comments or views on those recommendations?

**LOUISA MAMOUNEY:** I'll attempt to. I really value the Country Mayors Association's perspective on the impact of the scheme in different parts of the State, and I've been out to look at some of these sites myself to see what is happening there. The benefits of the scheme for regional areas are quite unique, actually, and very exciting. In terms of the application of the scheme to small developments, there is also a fair bit of cleared land in regional areas that can be utilised for development. It's always worth considering how we can adjust it further to ensure that we're not disincentivising the types of development that should be encouraged.

I've also provided advice to some of the regional developments that need assistance on how they can operate within the scheme more effectively—so where are the sources of credits or biodiversity offsets that will be most cost effective for me, given the cost factors on regional developments. In terms of regional landholders, there are really good opportunities. I mentioned earlier the number of landholders that have been interested in working to establish new biodiversity stewardship agreements, and getting paid to manage land for conservation outcomes—manage weeds, pests, maintain fences and restore land. Some of that is a positive discussion that we can have in regional areas about working within the scheme.

**STEVE HARTLEY:** I might just add—without necessarily commenting on the Country Mayors Association's recommendations directly, one of the things that the Government response talks to in the bill, and its ultimate response looks to deliver, is a more strategic process. Recognition up-front of the biodiversity values, but also where development is likely to impact biodiversity less, and incentivise those sites. Dr Mamouney has talked about the potential financial benefit for landholders of high-value biodiversity sites. One of the things I think we've done well in some locations is to be able to front-end-load the strategic planning process to make it very clear to landholders and those looking to invest where the easier areas might be—where development, not only from a biodiversity perspective but from a servicing et cetera perspective, might be more appropriately located as well. I think there is definitely opportunity. I love the concept of the magic map. I think there is a real opportunity to use that strategic planning process to the benefit in that situation.

**The Hon. SARAH MITCHELL:** Just to follow on, one of the things we did get which was concerning was a number of different development opportunities—housing. We also heard from the NSW Aboriginal Land Council who said sometimes they want an exemption for their land because sometimes that process and the offset just makes any sort of community development for them—it doesn't stack up, I guess, in terms of the costs associated. I do think there is a bit of an impasse here in terms of wanting to have the right structure, but also when we are seeing necessary regional projects not go ahead because it's too costly, whether it's through the local Aboriginal land council or a council that wants to build 50 houses in western New South Wales. I guess that's the tension around how you make the system work better so that's avoided. I don't know if the evidence we've received so far indicates that this will give the solution that we need. That's not really a question, I guess.

**LOUISA MAMOUNEY:** I heard a question in there. You mentioned local Aboriginal land councils and the role that those land councils have in economic and social and environmental management within regions, as well. We have an Aboriginal engagement strategy, so we are actively working with Aboriginal landholders and through NSWALC, and I note the really thought provoking submissions made by NSWALC and the local Aboriginal land councils as well. We feel very strongly that we need to support the opportunities for Aboriginal people for housing and for economic purposes. There is also an opportunity for LALCs to benefit from the scheme in terms of conservation as well, if that is something that they are interested in doing. Our engagement strategy is to take a respectful approach to that conservation and to be led by community aspirations on that.

But we also need to make sure that those Aboriginal organisations are supported to consider the benefits of the scheme as well. We are helping to fund some of the assessments required to consider that. I note the submission from Ms Ruby Dykes talking about their long involvement in the scheme and the work that one of my team members, Mr John Seidel, has undertaken recently to ensure that site can be put into active management by additional survey work to identify more of the species that are occurring on that site. There are some very exciting outcomes that we are seeing on that site. Obviously there is a long way to go on all of that.

**STEVE HARTLEY:** I would reiterate that I've also read those submissions, and there are some really interesting commentary in those submissions. You've absolutely got to recognise the frustration that some Aboriginal people and local Aboriginal councils have expressed. One of the things that we have been working on with one of the local Aboriginal land councils is to try and look at the power of that strategic approach. Often land councils are returned a large number of disparate parcels of land. It can be quite complex in understanding the basic zonings of that land, the potential uses, the constraints on that land.

We have worked with several land councils, actually, to try and better understand those landholdings as a parcel, and the opportunities for those landholdings—both from an economic activation perspective, a self-determination perspective and a biodiversity perspective. We have started to have some success and that has been where we have also recognised that information asymmetry, and looked to provide some good information

from which the land councils can make decisions about their holistic holdings, as opposed to—I think I saw in one of the submissions—a site-by-site basis. We have definitely made some progress on that front, but there is a long way to go.

**The Hon. SARAH MITCHELL:** You might have seen the evidence earlier today from the Ecological Consultants Association. I know we sort of touched on this a little bit before, but they have some real concerns about government agencies effectively being able to issue directions in relation to some of the assessment reports. They say that it's inappropriate and unethical. They've got some serious concerns about what that would mean in practice. Is there anything that anyone would like to say in response to that?

**LOUISA MAMOONEY:** Thank you for the question. I do think that I probably covered it earlier, but I'm happy to reiterate. The directions powers are to reinforce existing requirements for accredited assessors, so it shouldn't be new things under the code of conduct and under the accreditation requirements, including the biodiversity assessment method. We are intending that power to issue directions will be held quite tightly. It's said at the environment agency head—it will obviously be quite a serious thing to issue those directions. But we do find that where there is uncertainty in the assessment this could be a useful way of resolving that and providing certainty for the accredited assessors, for the proponent and for our department in terms of how the assessment should be carried out.

**The Hon. JACQUI MUNRO:** My main question follows on from that. We've obviously heard that there are concerns about definitions: the definition of net positive, of how the avoid-mitigate-offset system is going to work. We have obviously had questions about how this accredited assessor direction is going to work. You spoke earlier about how important regulations have been to guide the direction of your operations and how your departments work. Is there a need for regulations to be in place, side by side with the bill, to clarify a lot of these issues that we've heard from multiple stakeholders?

**LOUISA MAMOONEY:** Thank you for the question. The bill provides, as the Biodiversity Conservation Act does, a framework for biodiversity conservation and assessment and the Biodiversity Offsets Scheme. It will be helpful for us for the legislative amendments to be settled so that we know what to include in the regulations. Obviously we are turning our minds to potentially what could be included in the regulations, and there will be an extensive process to develop those regulations. That will include consultation with stakeholders and the development of a regulatory impact statement being put on public exhibition. That will likely be next year. But the clarity in having the bill first would be essential for us to have the certainty to move ahead on that.

**The Hon. JACQUI MUNRO:** What does that process look like? You say next year. Are we talking about it taking a year from now for regulations to be in place?

**LOUISA MAMOONEY:** I don't believe it will be a year. There are many things that need to occur. We have guidance on how long regulations take, and I would be thinking it would be more like mid next year, but that is to be determined, I think.

**The Hon. JACQUI MUNRO:** So what happens in terms of the actual operation of the bill if it passes and becomes legislation? What happens to all the actors in this system in the meantime, while those regulations are actually coming into fruition?

**LOUISA MAMOONEY:** We work closely with stakeholders at the moment on how the scheme is going and how it's to be implemented. That will be an ongoing conversation that we will have with them, about the changes that are coming up and what that means. In fact I think it's probably a good thing to have some lead-in time, if the bill is passed by Parliament, to consider further and to discuss the detail of the operation. There will be consultation. I think the earlier suggestion of a discussion paper, for example, on the detail of the regulation would be quite useful. But that is normal regulatory development process. As you would know, most legislation that passes is not implemented on the day it passes. There is often a few months or sometimes longer for it to be implemented. For example, when the Biodiversity Conservation Act 2016 was passed it didn't come into effect until the following year, in about August 2017.

**The Hon. JACQUI MUNRO:** What do you need from this bill to provide certainty to your process?

**LOUISA MAMOONEY:** I think the bill provides the framework.

**The CHAIR:** Working backwards now, it's become quite clear that the intent is that we need this framework so that we've then got the certainty to drive the regs and get the regs right, with all of the participants and the players. But if we don't have the bill, we would be running out there and doing all of these things, and it may be a bit in vain because we might end up with a different law or something.



**LOUISA MAMOONEY:** Yes, and I might give an example of that—the Biodiversity Conservation Fund. There are reforms proposed to reduce reliance on the Biodiversity Conservation Fund. I might ask Ms Dumbrell to talk further about how we might proceed and what will be considered there.

**AMY DUMBRELL:** Absolutely. This bill, if it passes, will give us the ability for the regulations to prescribe the circumstances where the Biodiversity Conservation Fund cannot be used. Without the certainty that will be part of the bill, we would be struggling to have that conversation with stakeholders around what those options could look like. With the bill in place, we'll be able to move forward with stakeholders to test a range of options as to how you would reduce that reliance on the fund, and look at the various market and stakeholder impacts of the different options that are available, and then take a decision back to Government as to where those settings are appropriate to be made.

**The CHAIR:** I suppose some stakeholders have come with the view that those circumstances have already been determined. Henry made it very clear when he said that the integrity of the offsets scheme is being compromised by payments in rather than credits being sourced directly. Was there no impetus to just say, "Let's stop putting money into the fund." Was there nothing on that, or is there a view that receiving money in the fund without those credits available is still an option?

**LOUISA MAMOONEY:** There are a number of different ways in which we could reduce reliance on the Biodiversity Conservation Fund, and that may be one of them. But I think we need to consider the options, and in light of how the rest of the scheme is working as well. Yes, that is to be considered, but it would be good to have certainty that that is something we should be doing, because there is no power to do that, currently, in the legislative framework.

**The CHAIR:** It's kind of bizarre we got there, really, isn't it? You've just got this thing, and you can just pop your money in and not worry about biodiversity.

**The Hon. JACQUI MUNRO:** I wanted to follow up. I guess there is a difference between the kinds of certainty that each of your departments are looking for. Mr Gainsford, is that also your view regarding regulations? How do your stakeholders interact with the bill if it becomes law? You do have some lead time, but developments obviously take a long time to plan and there needs to be that certainty for people who are engaging with this system. How do you think about the issue of certainty in that gap between the legislation and the regulations?

**DAVID GAINSFORD:** I think the only thing I would add to what Dr Mamouney said before is that obviously we do have lots of circumstances where we have draft policies and regulations and legislation that's out there which is sending a signal. With the publication of the plan for nature and, if this bill passes, the framework that then starts creating starts sending some of those signals. One of the things we've already started doing with our applicants and with our industry associations is engaging with them around that work. It would certainly be in our interest, as I'm sure it would be in everybody's interests, to have the regulations settled as quickly as possible—albeit that there is that balance between making sure they are well consulted and the settings are right. That is probably the only thing I would add there.

**LOUISA MAMOONEY:** Just on the Biodiversity Conservation Fund, there is also the three-year deadline for acquittals as well, so there is some reform in the bill itself to ensure that there is faster delivery of offsets.

**The CHAIR:** Is there merit, though, in the argument that no money should go in unless it's guaranteed the credit's available? Clearly, there has to be merit in that. Is there?

**AMY DUMBRELL:** I can tackle that. It is a legitimate question that we are looking at. The Henry review, when it considered looking at that recommendation, identified that those decisions need to be made earlier in the planning process. So at the time you get to an approved development with a condition of consent to retire credits, it's really too late to then restrict that development from being able to proceed because the credits may not be available. So we really need to—and we've spoken a bit about it today—do that front-end loading of the considerations in the planning system. But it is still something we are looking to as to how we can increase that certainty if a payment is made into the fund, that credits will be available. That includes through the work we are doing to increase the supply and forecast demand, so the supply's there when it's needed.

**LOUISA MAMOONEY:** We are seeing a lot more supply of credits than has been available in the past, which is a good thing for the market to operate. That is one of the reasons why the reduced reliance on the BCF is preferred—to ensure that the market really does the heavy lifting to incentivise avoidance and also ensure that true supply and demand is effective, which is part of the IPART recommendations as well.

**The CHAIR:** We've heard today about the Cumberland Plain Conservation Plan—it was referred to as gold standard—and also the reference to the growth centres and the certification process et cetera. I've got a

scenario and I'm curious if you have any comments on it. I've become aware of a property in the Camden area and the council approved a DA there to clear a large amount of the Cumberland Plain—so the critically endangered Cumberland Plain woodland. It was for a claimed farming project, and there was no offset required for that because the land was biodiversity certified under the growth centres. That's because, apparently, non-urban clearing was required to be offset because it was certified—so this was the whole gold-standard thing apparently happening.

But then, as we understand it, the Federal strategic assessment never envisaged that non-urban or agricultural development to form part of the growth centres at all. But now we're seeing that land—could it now be developed for urban because it's now been rezoned for urban? How does that happen? Is there a safety valve for all of that? Because, ultimately, you've got the clearing of Cumberland Plain woodland under this apparent gold standard that was never offset. How do you grapple with that? Is there a way of calculating how much Cumberland Plain or other may have been lost through these apparent gold-standard instruments?

**STEVE HARTLEY:** I probably can't speak to that specific example. It sounds like a growth centres program, so an earlier biocertification. I can talk to the work that has been done more recently under the Biodiversity Conservation Act. The way we've tried to ensure that there is not uncertainty over clearing is to really—it's going back to that mapping question, I think. It's to look across the landscape, have an accurate representation of the vegetation and species habitat and so on within that landscape, and then ensure that the planning system reflects appropriate zonings and uses for that land, including conservation purposes and development purposes. I can't speak to the growth centres work. But under the Cumberland Plain Conservation Plan, for example, there is a singular map that is published that all planning authorities have to refer to. That singular map has the zonings and the uses published, and that goes down to the sub-lot and DP level. So there is no uncertainty under that scheme about what a parcel of land could or couldn't be used for.

**The CHAIR:** So under the previous scheme it's possible things may have slipped through—

**STEVE HARTLEY:** I'm actually just not sure of that one.

**LOUISA MAMOONEY:** It might be worth taking that one on notice just to check the specifics of that particular land.

**The CHAIR:** I can provide you a question around it, because it is a real concern about how do we guarantee that things aren't slipping through when we are creating these apparent gold-standard plans?

**STEVE HARTLEY:** I can't talk to the earlier example but with the Cumberland Plain Conservation Plan there's the zoning, there's the maps. There's also a number of checks and balances in the system. We work very closely with local councils on the implementation of the planning controls. We do a selective review of how those planning controls have been applied. We do a vegetation flyover every six months, which looks at the extent of vegetation clearing. There's a within-government 2½-year review of the program and an independent five-year review that brings together all of that information—not only on the zonings, the clearing but also the environmental acquisitions and the protection that's been afforded, and the development that's been delivered over that period. The scheme tries to build in multiple levels of check-in to make sure that circumstance that you've just described doesn't happen.

**The CHAIR:** We have come to the end of our session. If there were any matters taken on notice, the secretariat will be in contact—you know the system. Thank you very much. We are very grateful for your time and your evidence today. Thank you for coming along. That concludes our session.

**(The witnesses withdrew.)**

**The Committee adjourned at 17:35.**