

Author name: B. Buffier

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Your submission for this review:

Attached is a synopsis of matters discussed at a meeting on 15/2/23, with the Christian Dunk, Chief of Staff to previous Minister for the Environment and Heritage, James Griffin. The meeting was on behalf of FAP nominees, who saw the value of their *Tetratheca juncea* credits decline from over \$5m to approximately \$10,000 as a result of the Reasonable Equivalence process and Government manipulation of the market. This is an excellent case study of how distorted the market is for credits and how government intervention has destroyed the market for one particular class of credits. The response from the Department to these claims is that FAP Nominees don't have a valid claim. In their response to the Upper House Inquiry the Govt said: "DPE has in place a robust process to determine the equivalent of the Biobanking Credits with the Biodiversity Offsets Credits. Nothing could be further from the truth. The supporting documents to the synopsis file attached could not be attached because of their format and will be sent separately."

Meeting 15/2/2023 with CofS to the NSW Minister for Environment and Heritage, a Department officer and Mr **Buffier and Mr Jerry Lees of FAP Nominees Pty Ltd**

Synopsis.

The total value of the credits in FAP's BioBank 393 was calculated, using OEH published values, by Parsons Brinckerhoff to be \$ 6.28 million dollars. This amount was reduced by deducting the TFD to give a Part B amount of \$ 5.84 million as per point 6.4 in the BioBank 393 agreement.

5 months after BioBank 393 was formed the OEH established the Reasonable Equivalence Process (RE) and 3 months after that FAP received the first advice of the existence of RE on 28/2/2019

4 months after that, following the RE process, FAP was allotted 26084 RE BAM TJ credits. This was a reduction ratio of 0.5 which was in line with the RE.

13 months after that FAP was advised their 52168 BBAM TJ credits was RE'd to 66 BAM credits. This reduced FAP's credit value by over \$5.0 million.

This was not only not Reasonable or Equivalent but also harmful to the species.

1. Value of the Credits registered to Biobank 393

At the request of the OEH for the value of Part B in the BioBank submission, Parsons Brinckerhoff (PB) calculated value of all the credits in BioBank 393 as at 4/7/2018 to be \$6,277,067.17, see attachment A1.

As noted in this document the calculation was based upon "the average of all published credit (sales) for Tetratheca and for the other credits the "Prices from the BOPC dated 30/4/2018"

These figures were used to calculate the Part b amount as shown in clause 6.3 of the agreement, see attachment A2 .

Also attached is an XL document showing how the PB calculated value of the credits is converted to the Part B amount by deducting the TFD, see attachment A3.

Attachment A4 shows all the published sales of TJ credits to date.

It should be noted that as this Part B amount is used in a taxation calculation for assessment of capital gains tax it is not a figure to be lightly calculated or dismissed.

2. How does the conversion from 52,168 to 66 meet the "Reasonable Equivalence" policy signed off by the Department.

FAP's BioBank agreement was signed on 31/7/18. On 27/11/2018 Anthony Lean, CEO OEH, signed off on the "Process to determine and manage reasonable equivalence of existing credits" (Process). FAP was completely ignorant of the details of this 'Process' having taken place until provided with a copy, see attached B1, by the NSW ombudsman.

On the 28/2/2019 FAP was first advised by OEH about applying for "Reasonable Equivalence" — FAP immediately contacted PB "What is this about?". FAP had no idea and had not been previously advised of the need to convert credits from the BBAM to BAM until this email.

FAP, as per the subsequent direction from OEH, applied for Reasonable Equivalence for its credits and in the case of TJ it was issued with 26084 BAM TJ credits on 26/6/19.

In hindsight this allocation / reduction of FAP's TJ credits is as per the "Process" signed off by Mr Lean. On page 2 of the "Process", it states —

Initial analysis

Conservation Programs has analysed data from existing BioBanking sites to test reasonable equivalence approaches. The analysis indicates that it is difficult to set a single optimal ratio of credit equivalence given:

- the range of ratios between sites. Old to new credits range from approximately 0.35 to approximately 0.7 of original values.
- the total number of credits generated by the different methods.

The current suite of applications for BioBanking agreements is likely to create upwards of 200,000 ecosystem credits established under the previous method.

The allocation of 28084 TJ BAM credits is exactly 0.5

However, on 23/7/2020 FAP received an amended Biodiversity Credit Ownership Statement. 52168 BBAM credits was now equivalent to 66 BAM TJ credits. I immediately complained by email to many personnel in the OEH, DPIE, BCT etc that that they had reduced FAP's value of its TJ credits by over \$5 million and that we did not accept this action. The replies from the following personnel are instructive —

Attachment B2 from Lucian McElwain Manager, Ecosystem Programs point 7 states — "The equivalence is done on ecological basis only. No consideration of finances is included. This is to ensure the ecological offsets for development are met by the new scheme". Point 10 states — "In your case the equivalence TJ was approx. 52,000 to 66. This is an approximately 1000:1 ratio". Points 19 and 20 state — "We usually don't recommend using the BOPC for pricing as this just for

developers who choose to pay out their BOS credits obligations.” The recommended site for BioBanking credits prices can be found here: [Biobanking SPI](#)” Note the BioBanking SPI at the time was \$160 per BBAM TJ credit valuing our TJ credits at \$ 8.34 million.

Attachment B3 from Julianne Smart, A/ Senior Team leader, Ecosystem Programs states — “While it is a matter for you- I understand from other credit owners that they have adjusted the price when selling equivalent credits – where the volumes have been reduced to ensure financial equivalence”. This would then have equated to a price of \$126,468 per BAM TJ credit when the BOPC calculator for BAM TJ credits was \$143.

The second attempt by OEH at converting BBAM credits to BAM TJ credits using the "Area Method" is obviously neither reasonable nor equivalent. An independent evaluation of the “area” method proposed by Lucian McElwain above that — “The equivalence is done on ecological basis only. No consideration of finances is included.” is to be seen in the findings of the "Integrity of NSW Biodiversity Offsets Scheme" enquiry of the NSW legislative council which in point 7.65, see attachment B.4, states —

7.65 The department advised that credit equivalence conversions were based on ecological, not financial, equivalence.⁵³¹ However the Audit Office of NSW noted that credit valuation has financial relevance and believed that the department's lack of communication about potential financial impacts created uncertainty about the value of BioBanking credits:

... how credits are valued has financial relevance to market participants who are making investment decisions ... [the department's] lack of communication on this matter, and about its potential financial impacts on credit holders, has created some uncertainty about the value of credits generated under the previous scheme.⁵³²

Furthermore, the application is also harmful to the TJ species

The 2016 Act is clear that the Minister has the power to review and amend the biodiversity assessment method, but subject to Division 2, Section 5.11 Biodiversity Stewardship Agreements, which states:

“The Minister must not agree to any variation of a biodiversity stewardship agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biodiversity stewardship site to offset any such negative impact.”

The costs to set up FAP’s BioBank was hundreds of thousands of dollars. The value of the BAM TJ credits was as per the BOPC calculator \$143 per credit. Thus, the whole value of the 66 BAM TJ credits would be \$9438. It is therefore not a proposition to protect the largest remaining area of TJ in NSW, the TFD alone was \$432,358.

As Lake Macquarie council stated to the Integrity enquiry in Point 7.61, see attachment B5. —“the measurement of some species by area of habitat is detrimental to the retention and conservation of the species”

As per the Integrity report Point 7.63, see attachment 5, --

7.63 FAP Nominees asserted that the re-evaluation was done 'arbitrarily', and that the government had 'destroyed all investor and particularly participant confidence in a scheme they promoted as a safe ecological investment backed by the Government'. Mr Barry Buffer AM, an advisor to FAP Nominees, asserted that the credit equivalence process was nonsensical:

3. Why did the BCT make an unsolicited offer to purchase TJ credits at a price that bore no relationship to the publicly available indicative price

On the 27/8/2020 Clare Kerr of the BCT Biodiversity Offset Program Team sent an email which valued FAP's BBAM TJ credits at \$0.18, see attachment C1. The major item was a table —

The total overall value of the offer is \$7,293.00 (excl. GST)

1. Successful bids								
BSA No.	Site name	Credit type	Credit ID	No. of BAM equivalent credits	Price per BAM credit (excl. GST)	No. of BBAM credits	Price per BBAM credit (excl. GST)	Total value (excl. GST)
393	Redhead	Tetralthea juncea (Black-eyed Susan)	735	51	\$143.00	40,312.64*	\$0.18	\$7,293.00
Total value of successful bids (Excl. GST)								\$7,293.00
<p>*These credit numbers have been calculated based on the Biodiversity Credit Ownership Report prepared by DPIE (rounded to two decimal places). BBAM credit numbers will be rounded to the nearest whole number during preparation of credit transfer forms if the purchase is accepted. Please note rounding may result in a slight variation between the final BBAM price per credit shown on the credit transfer form when compared with the figures above.</p>								

The calculation is simple enough — 51 BAM TJ credits at \$143 per credit is a total of \$ 7,293. FAP is allocated 66 BAM credits and 51 is 77%. of the total FAP BBAM credits is 40,312.64 BBAM credits. \$7,293 divided by 40,312 credits is 18 cents per credit.

From attachment A.4 the sale price for BBAM TJ was \$159.57 on 20/12/18. The BioBanking spot price was at the date of Clare Kerr's email \$160.00, see attachment C2.

One can only assume that they were wedded to their assumption that "we are always right" and that financial considerations have no place in ecological matters.

They did not consider the harm to both the species and to their clients, ourselves.

FAP believes it has been led up an expensive garden path and then dumped.

From Charles O'Neil's opinion, a copy of which has been previously provided to yourselves —

I find it necessary to comment on the following extract from the government's submission to the Inquiry and other related comments and

actions of the DPIE and its biodiversity departments that have adversely affected the investment position of FAP.

“The Scheme does not guarantee a financial return for landholders selling credits.”

It is all very well to make this statement, which is appropriate in the right context, but disclaimers about investor's risk certainly do not apply to a situation when the rules are arbitrarily changed after you invest causing heavy losses. In the private sector this may well amount to fraud or misleading and deceptive conduct, so why are no hard questions asked when a government department directly causes private sector investors to suffer substantial losses from a government instituted investment scheme.

I find that there has been a blatant disregard of FAP's investment position, resulting in substantial loss. It does not really matter whether it was incompetency or intentional or fraudulent. It does not appear to be fraudulent in that no one on the government side appears to have personally gained. However, in the case of Transport for NSW tendering to purchase 12,690 TJ BBAM Credits (see Section 4 above) FAP state that TfNSW advised them that they were able to purchase them for less than \$12,690 in total (i.e., less than \$1 each) whereas they were valued at \$160 each or a total of \$2.03m by the Spot Price Index in August 2020.

It is clear therefore that TfNSW, a government entity, benefited significantly from the change of rules at the expense of investors such as FAP.