

30 May 2023

Mr Stephen Palethorpe

Committee Secretary
Senate Standing Committees on Environment and Communications
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Dear Mr Palethorpe

Property Council submission to inquiry on Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]

The Property Council welcomes the opportunity to make a submission to the ongoing inquiry on Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions].

About us

The Property Council of Australia is the leading advocate for Australia's largest industry – property. Our industry represents 13% of Australia's GDP, employs 1.4 million Australians, more than mining and manufacturing combined, and generates \$72 billion in tax revenues annually. Property Council members invest in, design, build and manage places that matter to Australians across all major built environment asset classes. The Property Council represents some of the largest private landholders and our members are also a significant user of referrals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) – accounting for 17.5 per cent of all referrals in 2022.¹

Supporting Housing Choice and Affordability for all Australians

The Property Council believes every Australian deserves access to a home. Housing *choice*, *affordability* and *growth* should be key objectives for all three levels of government. Areas that are designated for

¹ [Public notices - referrals - Basic Portal \(environment.gov.au\)](#)

development should be clearly demarcated and the process for approval streamlined to ensure that our members can deliver the vital pipeline of housing to support our growing population.

Regulatory requirements should be aligned and harmonised across levels of government to ensure that approval processes deliver good environmental outcomes in a streamlined fashion and with certainty for business. This will be particularly relevant in peri-urban, key growth areas needed for essential housing supply. The NRM can support organisations with regulatory or voluntary initiatives to offset their footprint and regenerate nature.

We commend to you the findings of our recent report, *A Stark Reality*,² for further information on the need to deliver greater housing options for all Australians.

Supporting a Nature Repair Market

The State of the Environment Report 2021 sounded the alarm. It found that *‘overall, the state and trend of the environment of Australia are poor and deteriorating as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction’* - there is an urgent need to take decisive action to restore our natural heritage. The proposed NRM, if delivered effectively, can support investment in biodiversity and drive environmental improvements across Australia. It can also be a key pathway to deliver the Government’s national commitment to conserve 30% of Australia's landmass by 2030.

We are strongly supportive of the development of a streamlined NRM to attract private sector funding and contribute to the rehabilitation of our natural heritage.

Property Council members are committed to the principles of Ecologically Sustainable Development as the best approach to align environmental goals with economic and social objectives. While initiatives vary in maturity between property organisations, many Property Council members have established nature positive objectives that would benefit from the availability of biodiversity offsets. Our members have further reported there will be a significant appetite for purchasing biodiversity certificates, and engaging in projects, if the NRM functions effectively and delivers high-integrity environmental outcomes.

Key principles

To ensure the NRM delivers the positive outcomes sought by government and industry, it should include key principles hardwired into the policy framework. These principles will be essential to guide the development of the underlying methodology, governance, and regulatory framework for this initiative.

Principles that will ensure the integrity of the NRM:

1. **The NRM must deliver a net positive for biodiversity.** An overarching requirement for net positive outcomes should be integrated into the regulatory framework. Schemes whereby habitat destruction in one area is offset with avoided deforestation projects elsewhere lead to a net

² [Property Council of Australia A Stark Reality Feb 2023.pdf \(propertycouncil.com.au\)](#)

halving of biodiversity. This type of outcome ***should not*** be permissible under the NRM. The scheme should only create biodiversity certificates for projects that create genuinely additional protections for existing intact habitats, as well as creation of habitat in priority areas, and conservation projects that support vulnerable or threatened species or ecological communities.

2. **The NRM should provide robust and consistent disclosure of biodiversity value.** Unlike carbon avoidance or sequestration that can be measured in simple terms, nature is non-fungible on a global scale and there are significant challenges in measuring and disclosing biodiversity value. For instance, the NSW Biodiversity Offsetting Scheme refers to 1600 criteria for the measurement of biodiversity value. The NRM should aim to balance simplicity and accuracy to convey the biodiversity value of certificates to prospective buyers. The scheme should develop mechanisms to differentially recognise and reward higher priority biodiversity outcomes for more critical or rare habitats, versus lower priority actions.
3. **Outcomes should be considered at a landscape scale and focused on delivering the greatest biodiversity outcomes.** Projects undertaken in various locations will deliver wide ranging outcomes for biodiversity based on a multitude of factors. This can include the presence of threatened or endangered species, local wealth of biodiversity and the importance of the area for migratory activities and corridors. Projects should be encouraged to target the areas that deliver the greatest biodiversity outcomes. The scheme could define high priority areas for creation of biodiversity certificates, and disproportionately reward conservation actions in the most vulnerable high priority ecosystems.
4. **Offsetting should be considered last in a hierarchy of measures to reduce anthropogenic impact on biodiversity.** To minimise our impact on biodiversity, offsetting should be regarded as the final option in a hierarchy of measures. Just as with carbon reduction strategies, it is essential to prioritise avoidance and mitigation before considering offsets.
5. **Onsite biodiversity initiatives should be recognised and rewarded.** Project development that takes action to restore biodiversity onsite and goes above-and-beyond existing legislative requirements should be recognised and rewarded with biodiversity certificates under the NRM.
6. **Curtailling harmful public expenditure.** Efforts should be undertaken to identify, assess and track public expenditure towards activities/substances that are harmful to biodiversity. This will enable a combination approach to ensure this Bill also supports environmental protection legislation and accounts for public spending that may be causing nature loss in the first place.

Detailed comments

While we support the development of a NRM in principle, we note that there is still a scarcity of details on many aspects of its policy architecture and implementation. In the following section, we highlight detailed areas for consideration as the process matures and advance some proposed solutions.

Governance and integrity

The environmental integrity of this scheme will be paramount in ensuring its uptake by industry. We consider it essential that the scheme is equipped with a robust and independent governance framework

to avoid issues in its implementation. The roles and functions of the scheme should be separated across bodies to ensure there is independence of process.

We support the establishment of the Nature Repair Market Committee, as foreshadowed in previous consultation documentation, but strongly urge that it be composed of a balance of experts from both the *project development* and *purchasers'* interests.

We recommend the Department of Climate Change, Energy, the Environment and Water be tasked with developing the methodologies that will underpin the scheme *in close consultation with industry*.

The Clean Energy Regulator should assess applications to register, vary or cancel projects, as well as undertaking assurance and compliance activities.

The proposed governance framework for the NRM is, in many ways, analogous to that of the Emissions Reduction Fund (ERF). The integrity of the ERF has recently been subject to some debate and action should be taken to pre-empt and avoid similar issues with the NRM. The government should consider the findings of the Chubb Review into Australian Carbon Credit Units³, led by the former national chief scientist Prof Ian Chubb, with particular focus to the following recommendations:

- **Rec 1:** The respective roles of scheme assurer, scheme regulator and related policy development should be clear, undertaken by visibly separate bodies, and each function resourced sufficiently to play its role effectively in administering the scheme and supporting well-functioning [carbon] offset markets
- **Rec 4:** Provisions in the governing legislation should be amended to maximise transparency, data access and data sharing, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements, and
- **Rec 5:** Establish a transparent proponent-led process for developing and modifying methods as soon as practicable.

Expert input

Biodiversity assessments will require the input of adequately qualified individuals to ensure their accuracy. We recommend that the Clean Energy Regulator develops internal resourcing as this will be a departure from the established subject matter areas it deals with. In particular, there will be a requirement for in-house, expert ecologists to review project credentials. A balance will need to be struck between implementation costs and ensuring robust biodiversity outcomes. While we support landholders undertaking biodiversity assessments for their projects, it will be necessary to have some level of expert oversight by ecologists (whether through random onsite inspections for a percentage of projects or by using desktop reviews).

³ <https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-exec-summary.pdf>

Transparency of projects

One key area of criticism of Emissions Reduction Fund projects used to generate Australian Carbon Credit Units, is the lack of transparency on individual projects. To avoid similar issues with the NRM, it should be supported by a public register of projects that provide information on the location, nature and assumptions built into individual projects. This will allow purchasers to be discerning in the projects they invest in to meet their own quality criteria. However, we do not support excessive administrative burden that significantly increases the costs of this reporting mechanism.

Continued consultation

Much of the detail that underpins the NRM is yet to be established. We request that the Government undertake in-depth consultation with industry when it reaches the development phase of scheme components.

We particularly request strong consultation on the development of methodologies to assess and report on the biodiversity value of projects. These will be the most important component of the scheme and will need to secure industry support to ensure their uptake.

Overlap with Carbon Markets

Overlap with carbon markets should be considered carefully to avoid unintended consequences and double counting where landholders are paid twice for delivering the same environmental outcomes. Carbon markets have been the primary driver for investment in offsets to date. In some instances, carbon credits with biodiversity co-benefits have attracted a premium on the market. However, biodiversity has often been a secondary priority in the development of carbon credits. For example, carbon credits created by planting monocultures have good carbon abatement potential but limited biodiversity outcomes.

Biodiversity will have to be the primary driver to ensure good outcomes for nature, particularly in relation to areas with rich biodiversity outcomes but limited carbon abatement benefits. For example, standing existing remnant bushland, which is under private ownership, but which is not immediately at risk of being cleared has no carbon credit value, but potentially very high biodiversity value.

There could however be benefits in combining the returns for biodiversity and carbon abatement on the same plot of land to improve the business case and encourage investment; but the scheme design should ensure that projects supporting a nature repair market are biodiversity led, with carbon additionality; not the reverse, being merely a way of accrediting the biodiversity additionality of carbon led projects – as this may lead to poor overall biodiversity outcomes.

Integration and lessons learned from state programs

Several states have already implemented biodiversity legislation aimed at establishing regimes that will conserve valuable sites for biodiversity and allow for offsetting of new developments.

These schemes have been running for several years now and there is a good body of evidence of their successes and drawbacks. The Federal NRM scheme should undertake an analysis of these schemes to build on their successes and learn from their mistakes.

Using NSW as an example and drawing from the UDIA's [submission](#) to the departmental consultation, the structure of the Bio Conservation rules is undermining ecological connectivity and producing suboptimal outcomes for biodiversity conservation. Connectivity of conservation land is needed to support species resilience. The design of that particular biodiversity conservation system embeds disincentives to establishing sites that would generate tradeable certificates, and its reliance on site-by-site assessment and like-for-like offsetting is leading to a lack of connectivity for conservation land around urban areas. As a result, the Bio Conservation rules produce suboptimal outcomes for biodiversity conservation. Not enough land is being conserved - Low participation by private landholders in establishing certificate-generating sites translates into an undersupply of certificates, equating to lower conservation overall. The undersupply of sites/certificates also leads to severe price volatility in the dysfunctional biodiversity certificate trading market.

The Federal NRM should also seek to over time harmonise and align Federal and State biodiversity certificate schemes so that there is a national market covering all jurisdictions, underpinned by consistent methodologies and similarly robust verification processes.

Efforts should be made to integrate with state schemes in a streamlined way and ensure they are not duplicating the requirements for offsetting projects. The following section highlights the property sector's experience with interacting with state schemes.

1) Some state schemes have been too complex.

In the state example above, under the "like-for-like" trading requirement, the current scheme is highly fractured with separate markets covering 1,600 vegetation credit types and approximately 850 threatened species credit types. The majority of these credit types have never been traded.

The NRM Initiative needs a simpler approach to reduce costs and encourage projects.

However, we caution that changes must be fully considered and implemented carefully to ensure appropriate integration with state legislation. The current federal-state-local approach to biodiversity regulation is fragmented, overly complex and process driven. There are currently an array of approaches at the state and local levels to biodiversity assessments and offset calculation under a number of statutes. These lead to inconsistent and anomalous outcomes, with no certainty for environmental, economic, or social outcomes.

Any federal certificate market must not repeat the mistakes of the states, further undermine already-dysfunctional state systems, or add to the already overly complex biodiversity regulation regime.

2) Some state schemes have needed supply side intervention/investment to help establish the market.

The NSW state Government noted above, had been relying on a form of credit trading for the past 13 years between the former BioBanking scheme and the current Biodiversity Offsets Scheme which uses Biodiversity Stewardship Agreements (BSA). Over the 13 years to 2021, less than 250 private landholdings have been set aside for credit trading and approximately 70,000 ecosystem credits have been traded (a number far lower than the credit demand). Today, credit demand is growing yet the rate of supply is slowing.

The NRM Initiative needs to give careful consideration to how the market is established to ensure a steady supply of projects that can be traded (whether it is eventually used for offsets). Industry would benefit from a high level of alignment and consistency between the NRM and state schemes.

3) Some state schemes have a cost/benefit imbalance in establishing biodiversity conservation sites.

In the state example, the rate of credit supply is very slow because there is an imbalance in incentives that accrue against establishing BSAs. The system has inbuilt barriers. Offering credit supply to the market involves high upfront risk and complicated, lengthy, and costly negotiation with government. There is also no market understanding of the potential demand within these various credit types and areas. Over 90% of credit types have had no trades at all, in part due to the dysfunction of the market. With no understanding of demand, and high barriers to entry, there is no suitable supply in the market to satisfy practical offset needs.

This is a crucial problem to overcome for the framework to successfully transition to a viable market.

4) State frameworks can often overlook or bias certain projects over others – ignoring restoration of degraded (but not cleared) areas.

The NRM initiative is aimed at ensuring genuine environmental repair and is aimed at things actually being done, rather than conservation per se. We understand this means it will not consider actions already being done, or actions with no appreciable biodiversity outcome. However, it must also not create a bias to renewing cleared areas over degraded areas. It is important to bolster existing strategic habitat that is under threat from gradual impacts from edge effects of other uses, impacted elements like ground story vegetation and diversity. Renewal of cleared land takes a long time and significant input.

5) State frameworks have been undermined by the lack of timely introduction of projects to the market.

This is likely to be most critical and goes beyond the issue of complexity of the system noted above – it is about efficient processing, which is equally important, simplified project specification, resourcing, and decision-making. A program that takes an inordinate amount of time to define, research, prove up, and confirm sites are certificate-worthy will discourage market entry and not meet the strong demand for sites for offset or environmental acquittal to meet legislative or general need.

6) State frameworks need to be strategic in encouraging projects that fit the areas in which they are located.

Restoration and renewal of random sites can be more difficult and may fail if the site is not well located relative to other uses. The sites may also be zoned or intended for housing use for example and restoration could constrain well-located housing.

Distinguishing mandatory vs voluntary efforts

As outlined above, there are mandatory requirements in place for certain types of land use. These often rely on a “like-for-like” approach to biodiversity impact offsetting whereby equal amounts of biodiversity value are destroyed and replaced elsewhere. Provisions should be established to distinguish these types of zero-sum activities from voluntary efforts by organisations to become nature positive.

Additionality

Additionality is a key foundation of offsetting. In the case of biodiversity offsetting, it signifies that the net increase to biodiversity would not have occurred in the absence of the action taken as a result of the project. This concept can be difficult to apply across a range of scenarios. It may be problematic to establish the additionality of projects at the intersection of carbon and biodiversity offsetting (e.g. if the carbon offsetting project would have occurred in the absence of the NRM, can any biodiversity outcomes be considered additional?). Additionality should also be considered within the context of the NRM overlapping with state & territory and local government regulation to avoid overly onerous requirements.

Legislative instruments to deliver permanence

In carbon offsetting, extended permanence is a quality criterion that has led to purchasing premiums. It is likely that the assured permanence of biodiversity offsets will also be a driver for greater investment. If a fire or other disturbance occurs in the area during the project, causing a decline in the biodiversity outcomes, regrowth must be managed to allow the biodiversity stock to return to previously reported values. Projects must also be able to survive a change of ownership of a parcel of land. The Government should consider the legislative and assurance frameworks that can guarantee the long term implementation of biodiversity offsetting projects.

A single certificate per project will affect market liquidity

We understand that the NRM proposes that a single biodiversity certificate will be generated per project. This may prevent commercial buyers from participating as it requires a single buyer to purchase the entire outcome of the project. This differs from the carbon offset and large-scale renewable projects where there are multiple ACCUs and LGCs issued per project. Consideration is required of how this would practically work and its impact on demand and therefore pricing.

We recommend using a more agile approach to generating certificates on a project site. One approach could be using the existing thresholds for rating the danger to ecological communities. This approach is already anchored in legislation and well understood by industry participants.

Alignment with international reporting standards

There is an emerging consensus that the International Sustainability Standards Board (ISSB) standards will be the international pathway for reporting on sustainability risks, opportunities, and outcomes. ISSB is set to collaborate with the Taskforce on Nature-related Financial Disclosure (TNFD) to integrate reporting requirements for biodiversity outcomes. We encourage the Government to have consideration for the draft IFRS S1 and S2 standards due to become effective in early 2024 to ensure alignment with ISSB and TNFD.

Please don't hesitate to get in touch with Tim Wheeler, National Policy Manager for Sustainability and Regulatory Affairs, at TWheeler@propertycouncil.com.au or +614 9173 1496, if you would like to delve deeper into any aspect of this submission.

We would further welcome the opportunity to provide evidence during any public hearing on this matter.

Sincerely

A handwritten signature in black ink, appearing to read 'Mike Zorbas', with a horizontal line extending to the right.

Mike Zorbas

Chief Executive

Property Council of Australia