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Dear Ms Edye

Nature Repair Market Submission

Thank you for the opportunity to provide our comments on the Nature Repair Market Draft Bill as a part of the Environmental Protection and Biodiversity Conservation initiative (**Nature Repair Market Initiative**).

Property Council of Australia and UDIA National are strong supporters of the Government's initiative to issue Australian landholders with tradable biodiversity certificates for projects that protect, manage, and restore nature. The initiative augments the Environmental Protection, Biodiversity and Conservation (**EPBC**) system and appears to be a necessary stepping-stone to ensuring there are sufficient, appropriate biodiversity offset projects in a well regulated market.

We are aware that at present, the Nature Repair Market Initiative **does not** specifically, certify biodiversity offsets and instead ensures there is a mechanism/register for trading biodiversity certificates with Government and organisations that (for example), are looking to augment their ESG strategy.

We support the creation of a register and market for biodiversity certificates that support projects aimed at conserving or restoring critical environments. Ultimately, there is a future opportunity to use the Nature Repair Market initiative to dovetail into existing state biodiversity offset trading mechanisms or create a Federal model (which will also need to incorporate existing mechanisms). Properly designed, it would give developers a viable alternative option, in addition to the option of finding their own offsets. We appreciate the Minister and department's consultative approach to a complex and important suite of reforms and it will be critical that industry continue to be involved with the development of this initiative (and any subsequent biodiversity offset approach), to avoid the mistakes created in the existing systems.

Specifically, existing models of biodiversity certification and offset mechanisms, have been undermined by complex approvals processes, immature markets, non-strategic site selection and slow take up, which in combination, degrade participation, undersupplies biodiversity certificates and over-inflates certificate prices. Our recommendations will help avoid these problems by

ensuring the Nature Repair Market initiative has a fundamentally sound structure on which to build a vibrant market.

The Initiative

We understand that the Nature Repair Market Initiative establishes a framework for issuing, tracking and ensuring the integrity of biodiversity certificates in projects that enhance or protect native species. The biodiversity certificates are to be included on a register as an easy way for businesses, governments and individuals to invest in nature repair projects – without owning an interest in the land.

The initiative covers the requirements for proponents to establish a project including the methodology, project obligations, reporting, record keeping and monitoring of the project. The clean energy regulator will have a range of powers to ensure compliance including, audits, de-registration, penalties and relinquishing of certificates if biodiversity integrity standards established under the act, are not met. There will be a Nature Repair Market Committee to advise the Minister on their functions and an online platform to facilitate trading in certificates. Decisions can be reviewed by the Administrative Appeals Tribunal.

We understand that the Bill is the overall framework or “coat hanger legislation” around which will “hang” the detail of the initiative.

While the detail is yet to be formulated, the lessons from problems encountered in the states when instituting similar biodiversity credits/certificates, are extremely valuable in designing the initiative.

The Lessons from State Approaches

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

Using NSW as an example, the structure of the Bio Conservation rules are 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 credits, 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 produces suboptimal outcomes for biodiversity conservation. Not enough land is being conserved - Low participation by private landholders in establishing credit-generating sites translates into an undersupply of offset credits, equating to lower conservation overall. The undersupply of sites/credits also leads to severe price volatility in the dysfunctional biodiversity offset credit trading market.

Critically, for the Nature Repair Initiative, the genesis of many of the problems with this state system, come down to the architecture of the initial framework.

In summary, private landholders in that state may decide to offer their land to the market to sell biodiversity credits that a developer can purchase to offset their biodiversity impact from the development project. However, offering credits to the market involves a complicated and costly undertaking to negotiate an agreement with the Government. The incentives to supply the market are not in balance - the market is undersupplied and does not function well.

UDIA commissioned the ecology firm EMM to produce an issues paper in 2021 on the NSW scheme, which outlines many of the scheme's shortcomings. We strongly commend that report to you as an appendix to this submission; it can be found here -HERE-.

The key failures in the NSW initiative are key learnings for implementing the Nature Repair Market Initiative. They include:

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 Nature Repair Market Initiative needs a more simple approach to reduce cost 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 currently 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.

   Our members are experiencing severe constraints on development due to biodiversity regulation in states with credit markets, such as NSW. Any federal credit 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.

   Some key questions that should be considered now for a future offsets scheme, include:

- How is the Scheme to be related / coordinated with existing state based schemes?
- How does the Scheme relate / coordinate with Carbon Credit schemes, etc? Can a site participate in multiple schemes at once – we suggest they should.
- Do existing state based / approval based obligations on land preclude eligibility in a new Scheme?
- Does the concept of "additionality" apply? i.e. if site has some existing obligation(s), can scheme participation still occur albeit with a lessened Biodiversity Certificate value outcome?
- Could the Nature Repair Market certificate be used under the existing state frameworks?

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 BSAs. 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 Nature Repair Market Initiative needs to give careful consideration to how the market is established to ensure a steady supply of projects that can be traded (whether or not it is eventually used for offsets).

3) Some state schemes have a cost/benefit imbalance in establishing bio 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, partly 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 (whether that be ESG/carbon offset or a later stage of development offsets).

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

   The Nature Repair Market 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 ones 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 storey vegetation and diversity. Renewal of cleared land takes a long time and significant input.

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

   This is likely to 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.

The Summary Recommendations

Many of the issues we raise can be avoided by implementing a number of simple recommendations which will balance environmental protection and support the productivity of industry under a Nature Repair Market Initiative. Many can be implemented as part of the Bill architecture or the regulatory framework:

- **Collaborate with industry and states to design the detailed rules** for the Nature Repair Market Initiative - ensure we avoid mistakes and can future proof any integration with state regimes.
- **Define rapid processes for certification acceptance.** Perhaps including external accredited assessors, industry accepted standards (acknowledging achievement of habitat if not pristine or perfect habitat quality achieves very substantial biodiversity benefit.
- **Implement appropriate KPIs to keep certification processes streamlined**, efficient and timely, including a maximum timeframe of (say) 3 months to assess certificate applications.
- **Consider the appropriate capital gains tax (CGT) rules** for both state and federal credit-generating projects to link the CGT to the point of credit sale, instead of the point of credit generation, and provide better guidance on CGT implications for landowners.
- **Do not apply overly onerous requirements** for applications, methodologies, project obligations, reporting, record keeping and monitoring to ensure momentum of biodiversity projects being certified.
- **Ensure the program actively monitors for project bias in approvals** and recognises (even prioritises), restoration of degraded (but not cleared areas) as well as cleared sites.
- **Ensure projects are in accord with planned landscape scale biodiversity corridors** accounting for and working with urban growth.

- **Define strategic priorities for the habitat projects of greatest need** (taking into account the environmental and development needs of areas), and incentivise or support their creation. Consider habitat values and sites that can achieve a biodiversity best bang for buck result.
- **Actively promote market making by the Regulator** to build a portfolio of certificates that correlate with environmental and development needs. This includes providing easy access for potential buyers and sellers to meet and understand the market. This will require some active participation of the Regulator using the online registry to kick-start the market.
- **Clarify and provide examples of how certificates can be used now and potential future uses** as development offsets. The Regulator should explain, the pathways for using the certificates by industry, the community and businesses.

  For example:

  - Whether and how certificates could be used now for carbon credits, EPBC/state offsets and other programs.
  - the future use of certificates for offsets may include how offsets could be used to mix and match certificates for legislative acquittal or the use of alternate certificates where "like-for-like" replacement of habitat is not required.

We are keen to discuss these reforms with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss any aspect of this submission further.

Maxwell Shifman
UDIA National President

Attachment: Issues Paper on Biodiversity Offsets Scheme .
https://udiansw.wpenginepowered.com/wp-content/uploads/2109-EMM-Issues-Paper-on-the-NSW-Biodiversity-Offsets-Scheme-FINAL.pdf