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CONSERVATION COUNCIL ACT REGION

Nature Finance Policy Branch
Department of Climate Change, Energy, the Environment and Water

Email: NatureRepairMarket@dcceew.gov.au

Re: *Discussion Paper: Nature Repair Market*

Friends of Grasslands (FOG) is a community group dedicated to the conservation of natural temperate grassy ecosystems in south-eastern Australia. FOG advocates, educates and advises on matters to do with the conservation of native grassy ecosystems, and carries out surveys and other on-ground work. FOG is based in Canberra and its members include professional scientists, landowners, land managers and interested members of the public.

The Conservation Council ACT Region (Council) is the leading environmental advocacy organisation and hub for community groups in Canberra. Our mission is to protect nature and create a safe climate future in the ACT and region.

Thank you for the opportunity to comment on the *Discussion Paper: Nature Repair Market* (Paper) considering Rules for the operation of the Market. Our submission looks in some detail at the questions you posed (enclosed). Our main points and concerns are outlined here.

We will support every effort by land managers working to 'create' complex native grassy ecosystems from degraded earth; we think of this as 'rehabilitation'. Simultaneously, given their scarcity and high value, we argue as many as appropriate land managers caring for extant high conservation value remnant patches should be eligible to participate in the Market, to do what we call 'restoration' (which may include replanting, but may also include weed control, fencing, grazing management), e.g., protected area managers and those managing offset sites *after* any site's 'environmental offsetting purpose' ends.

Our key concern is the Paper does not consider the standard of information that must accompany applications to the Regulator, an important determinant of the quality of information that will be available to the Regulator for decision-making. The Rules must be better than recipes listing ingredients but not quantities. For example, what standard of detail will be required concerning "regulatory or voluntary program requirements that are applicable to the project area or related to the proposed project activities"? Require too much and few land managers will apply. Require too little and the Market will lack integrity. Absent an *appropriate* level of detail and, even as the Market matures, additionality and hence the value of projects will be difficult to determine. The Rules need to set minimum standards.

The Paper does not consider how Rules might steer investment, for example, to encourage the restoration of small, diffuse but key remnants of critically endangered ecosystems like native grassy ecosystems. Scale matters. For anyone managing a small patch, while the environmental benefit might be significant, participating may not be worth the transaction cost.

Our uncertainties are not diminished by the Paper in key areas: whether projects can both enhance *and* protect; what 'repair' projects that will do no more than 'protect' (without management) will achieve; whether vital detail will be included in project plans; whether

registered projects can commence if a s 17 condition has been attached to a project registration; what it will say to land managers if the Regulator does *not* attach a s 17 condition to a project likely to impact a matter of national environmental significance.

This submission is also supported by a member of the Council, the Cooleman Ridge Park Care Group.

For any further information about our submission, please email advocacy@fog.org.au.

Yours sincerely

Matt Whitting
Committee member, Friends of Grasslands
8 October 2024

Dr Simon Copland
Chief Executive, Conservation Council ACT Region
8 October 2024

Section of the Paper	Question
Requirements for registration	**Should existing projects be eligible to participate in the Nature Repair Market?** Given the declining state of Australia's environment, the Market should be able to operate in a wide range of situations. Here's three situations that must be eligible. Case #1. Most of Australia's protected areas fit the Paper's definition of 'existing projects', i.e., many are managed under "a State or Territory Government conservation scheme/ program". On the basis that, in general, all protected area managers are (and are increasingly) resource constrained regardless of governance type, land in all types of protected area should be eligible to participate in the Market. The approach will enable protected areas to be included in biodiversity projects that restore (enhance) at-risk ecological communities across multiple tenures in regional landscape contexts. Case #2. Historic 'offset sites' should also be eligible to participate in the Market, after their dedication to an 'environmental offsetting purpose' ends. • Section 76A stipulates biodiversity certificates must not be used for an environmental offsetting purpose. • Over the last two decades, few if any 'offset sites' have been dedicated to conservation *in perpetuity*. Conditions attached to approvals typically require the establishment (protection and/or management) of offset sites, and those approvals have expiry dates. When the approvals expire, so do the offset requirements. • Some long-term approvals include offset conditions that have required: specified works, e.g., construct a fence; and/or a specified magnitude of effort to be completed over a shorter period; and/or the achievement of an improved state or condition, e.g., from condition 4 to condition 5. • Once all required works are complete and/or the new state is achieved, regulators have *routinely* accepted that offset conditions have been satisfied in full. These sites need ongoing care (protection and enhancement). Case #3. Historic 'offset sites' where a new purpose has taken over: • Continuing from Case #2, in some instances, approval conditions have required the establishment of offset sites *and* stipulated an intention that the offset arrangement continue *in perpetuity.* In such cases, the mechanism for ensuring any offset site's long-term future is a separate legal instrument like a gazettal over Crown land or a conservation covenant over other tenures to establish public and private protected areas, respectively. • Over most of Australia's land, gazettals and covenants are published and executed as part of "a State or Territory Government conservation scheme/ program". • When a new legal instrument comes into legal effect establishing a protected area, regulatory decision-makers have *routinely* accepted that conditions requiring the establishment of the offset site have been satisfied in full. Implicit in their decisions, decision-makers have accepted that the resources provided by the approval holders to establish the offset sites will be adequate to compensate for the impacts at the impact site for the duration of those impacts. • The separate legal instruments 'take over' as the basis for the establishment of the new protected area on the former offset site from the moment they are published or gazetted. In cases #2-3, where regulatory decision-makers have been satisfied offset requirements have been met, our view is the Market's Rules can and should consider that the offset site's 'environmental offsetting purpose' does not survive.

	The implications of determining otherwise are seriously problematic. It would be to suggest two decades of offsetting have been effective in robustly protecting and in ensuring the effective management of offset sites. This is not the case. This interpretation does not enable all existing or future offset requirements to be satisfied by biodiversity certificates. Australia's broken offsets system must be fixed separately while simultaneously promoting the Market and compliance with s 76A. That will entail interpreting the 'secure protection' of future offset sites separately and appropriately, i.e., by ensuring *solid evidence* is needed before decisions to accept that 'projected gains' through future offsets (or Restoration Actions and Contributions etc) will be delivered and maintained in other ways for the duration of impacts at impact sites.
	Do you agree that each registered project must include activities beyond those required under a Commonwealth, State or Territory law? Yes. Having to address such a basic question is annoying when there is so much more that should be included in, but is not considered in, the Paper. For example, the Paper could have proposed a standard for the "detail" to be required of applicants addressing additionality. This is needed because, in the absence of a standard, we can expect a highly variable quality of information will account for the legal requirements that apply in any proposed project area. Spatially, at which scale(s) must legal requirements be detailed? Temporally, different applicants may be subject to different lease conditions attached to leases granted at different times. How, without creating an administrative quagmire for applicants and the CER, will the CER and the Market know simply, and with confidence, what is already legally required? Require too much detail and people will be less likely to apply. Require too little detail and the market will lack integrity. Absent a standard for this "detail" and it will not be possible for Market participants to consider and compare additionality, nor to establish a suitable price they are willing to pay for an uncertain magnitude of outcomes beyond existing legal requirements.
	Matters related to project registration not included in the Paper <u>Regulatory approvals</u> The Act enables the CER to register a project subject to a condition about obtaining regulatory approvals (s 17). Where this occurs, the Register will show whether the project's registration is subject to such a condition (ss 162(1)(f)). We note however that ss 17(2) does not require that the condition specify the type of regulatory approval(s) the CER considers should be obtained. A notice about this form of conditional registration must state that "a biodiversity certificate is not to be issued in respect of the project until all regulatory approvals are obtained for the project". This construct does not prevent a Project proponent from commencing a registered project. There are serious problems with this approach: • The interaction with other regulatory requirements is vague and therefore confusing. If, for example, the CER registers a biodiversity project and does <u>not</u> impose a condition under s 17, Project proponents may conclude no other regulatory approvals are needed. There is discussion below that suggests highly variable information will be available to the CER as a basis for these decisions. • In our view, it is not the CER's role to be indicating, for example, that an EPBC Act approval will (or will not) be needed; this is the Environment Minister's role. • There is a risk some Project proponents will consider the registration of a biodiversity project subject to a s 17 condition authorises them to commence immediately, i.e., that the other regulatory approvals the CER considers must be

	required can be obtained later, at any time before the Project proponent(s) applies for a Biodiversity certificate. Can a registered biodiversity project enhance *and* protect? It is not clear whether a biodiversity project can be registered to both enhance *and* protect biodiversity. Paragraphs 284 & 288 of the Revised Explanatory Memorandum indicate it is possible, i.e., that a registered biodiversity project can do both. The Act and the Paper each appear to say the opposite (e.g., s 57(1)(a)). Which is it? Can a project do both? The Rules must make this point clear. How certain and confident will we be that projects providing protection will protect? The Act provides that the Rules may set standards for Methods (ss 57(1)(j) and ss 57(2)). A Rule is needed to clarify the standard of information required to inform assessments of the level of certainty and confidence *additional* protection will be provided by projects that protect. The need arises because of the difference between s 57(1)(e)(v) and s 57(1)(e)(vi) (the difference being the omission of the words "or assessed" in s 57(1)(e)(vi)); this difference is not addressed in the Paper nor in paragraph 421 of the Revised Explanatory Memorandum).
Information to accompany an application	**Do you agree that the specified information should be mandatory at the application stage?** The Paper suggests *types* of additional information that could be required by the Rules, and we agree these types of information must all be provided. Project areas must be identified by cadastral detail that enables its precise identification without charge in any jurisdiction, and that cadastral detail must be maintained (kept up to date) on the Register. The project area should also be identified by IBRA subregion(s). However, the Paper does not consider suitable minimum standards for any of the types of information (frequently described as 'Detail') to be required of applicants. The Paper's failure to consider a suitable standard for information to be provided about existing legal requirements is discussed above. Other examples where a standard for information to be provided is needed include: • to demonstrate how the intended biodiversity outcome for the project will be achieved, e.g., "the likelihood that activities will deliver the biodiversity outcome in the project timeframes" – these assessments must be supported by evidence • in proposed project-level monitoring – e.g., there is no confirmation applicants will need to include corrective actions nor trigger values for those corrective actions - this is required by DCCEEW's *Environmental management plan guidelines* (2024, p. 11). Can project areas include land where no activity will occur? The Paper leaves open the possibility project areas may include areas where no activities will be undertaken. The Rules should confirm this is not permissible. What type and standard of information will satisfy the CER that "all regulatory approvals have been obtained for the project" (ss 17(1)(c))? Is this approach wise? The Paper indicates (at p. 5) that s 12 of the Act states information about "any regulatory approvals that apply to the project" is required to accompany a project registration application. This is incorrect; s 12 does not state this. A requirement like this could be included in the Rules, however, even if this information is submitted by an applicant, it is an entirely unsatisfactory basis for decision-making by the CER, i.e., for decisions under ss 17(1) about whether to attach a condition that regulatory approvals should be obtained. At minimum, if such a requirement is to be included in the Rules (we argue here and above that the interaction between the Act and other statutes is vague and confusing): the standard of evidence required in support of the claims made in the application must be specified; and the information provided by the applicant must be published.

Project plans	**In what ways could the project plan facilitate the registration and implementation of a biodiversity project?** Project plans should include (but not be limited to) detailed monitoring plans and assessments of risk that applicants and later Project proponents must maintain throughout any registered biodiversity project's permanence period. We support the intention to publish on the Register the current and every historic iteration of each registered biodiversity project's Project plan. Every Method should require a Project plan, even if all any project will do is protect a project area. That is because every Project proponent should be managing the risk the gains achieved during their registered project will be maintained throughout and beyond any registered biodiversity project's permanence period. Having a Project plan that can be updated is an efficient way to do this.
Types of projects unable to participate in scheme	**Should the listed project types be excluded from the Nature Repair Market?** The Paper suggests two obvious project types be excluded from the Market. Of course they should, i.e., no project should plant weeds nor derive private benefit from illegal clearing. No clarity is provided about the standard of proof that will be accepted that a plant proposed for planting in any area will be regarded in that area as a weed. We submit plants on published state and territory weed lists should not be planted in that jurisdiction. Weed lists need to be refined, urgently, for application at the area level; area lists could apply at the level of regional ecosystems and even, in time, ecological communities. If the CER can only prevent project registrations where a court has made a finding that clearing was illegal, little will be prevented. That is because, generally speaking, enforcement of vegetation clearing laws is weak right across the country, including under the EPBC Act.
Transitioning for varied or ceased methods	**Should registered projects be required to transition to new or varied methods? What exceptions, if any, should be allowed?** We agree with the comments of the Environmental Defenders' Office on this point. See here: https://www.edo.org.au/publication/submission-on-the-discussion-paper-nature-repair-market/ , section 1.3.
Content of a biodiversity certificate	**Do you agree with the proposed content of the biodiversity certificate?** The information proposed to be included on a Biodiversity Certificate includes facts and one other matter, the "Biodiversity outcome defined by a set of project attributes". Additional facts needed include a list identifying the regulatory approvals and consents required by the CER and obtained by the Project proponent(s). The Biodiversity Certificate should include row below addresses what needs to be included on a Biodiversity Certificate The content of the biodiversity certificate must include the specified information and (at least): - a list of regulatory approvals and consents that have been obtained (s 17, s 18 and s 18A) - a concise summary of all existing land management activities that by law must be undertaken in the project area at the time of registration, e.g., a specific weed must be removed – this level of information is needed to enable rapid assessments by Market participants of additionality and hence value.
Project attributes	**What specific project attributes should be included on a Biodiversity Certificate?** To answer this question, it would have been useful to see a draft "consistent set of attributes" that will allow the Market "to compare and value certificates". Outcomes should be expressed in terms of the measurable improvement expected: *for enhancement projects*

	- in an element(s) of, and/or in the quality(ies) of, and/or in an index of, the identifiable ecological community(ies) the project will enhance in the project area - this approach will work if a population(s) of one or more species is to be enhanced *for protection projects* - in the protection of the project area – specifically, the mechanism that has been executed, and the specific restrictions and/or obligations that are included in the legal protection instrument made under the mechanism.
Project information on the register	**Do you agree with the proposed project information to be included on the Register?** We support the intention to publish all project information provided at registration on a public Register (p. 5 of the Paper); we consider few if any exemptions should be provided. We note no discussion has been included concerning requests that information about a project not be set out in the Register. In our view, all the 'Information about biodiversity projects proposed to be on the Register' should be on the Register. No rules should be made under ss 163A(c)(ii).
Certificate information on the Register	**Do you agree with the proposed certificate information to be included on the Register?** Significant reversals should be listed.
Category A biodiversity project reports	**Do you agree with the proposed content for Category A biodiversity project reports?** No comment.
Category B biodiversity project reports	**Should a Category B biodiversity project report be required every 5 years?** No comment.
Audits at the time of certificate issuance	**Do you agree with the proposed requirements and contents of an audit report at the time of certificate issuance?** For investor confidence and Market integrity, we support ensuring the Regulator will have good access to high-quality independent (e.g., auditors') evidence that has examined each claim by each Project proponent that "the project [is] sufficiently progressed [such] that it has or is likely to achieve the biodiversity outcome". We would prefer such evidence be published; however, we recognise the Act does enable this unless all the information in the audit is public or the Project proponent consents (s 134–135); not likely. Other independent evidence that may exist and could be provided to the Market includes the publication of: alternative assurance agreements; and information obtained via the associated assurance measures (where relevant). The Paper does not explain whether information obtained by these alternative assurance measures will be published on the Register; it should be published.
Audits to accompany biodiversity project reports	**What factors should determine the number and timing of audits for Category A or B biodiversity project reports?** Relevant factors should include confidence in the Project proponent's claims, in biodiversity project reports and otherwise, about: the activity(ies) they have conducted in the project area; their progress toward achieving the intended biodiversity outcome; reasons given for any lack of progress; the existence of evidence and/or intelligence suggestive of non-compliance; and the quality of information provided by alternative assurance measures (where relevant).

	Should the CER have authority to set additional audits requirements, or should these be limited to proponent consent? Yes, the CER should have the authority to set additional audit requirements.
	Under what circumstances should the CER require an audit with the next biodiversity project report? If any combination of any of the factors set out above raise concerns.
Notification – significant reversal	**Do you agree with the proposed definitions of significant and not significant reversals of biodiversity outcomes for notification?** No comment.