Friends of Grasslands
supporting native grassy ecosystems

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CONSERVATION COUNCIL ACT REGION

Nature Repair Market Methods Team
Department of Climate Change, Energy, the Environment and Water

Re. Nature Repair Market: Protect and Conserve method design

Friends of Grasslands (**FOG**) is a community group dedicated to the conservation of grassy ecosystems in south-eastern Australia - natural temperate grasslands and grassy woodlands. FOG advocates, educates and advises on matters to do with the conservation of these ecosystems, and carries out surveys and 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 (**Council**) is the leading environmental advocacy organisation in Canberra and hub for over 40 community groups. The Council's mission is to protect nature and safeguard ecosystems in the ACT and region. We also support broader initiatives to counter regional and global climate change. The Council is a non-profit, non-government organisation that runs campaigns, promotes and upskills local groups, undertakes research, advocates passionately, and engages and informs our community.

Background

FOG and the Council (**We**, **Our**, **Us**) support many aspects of the proposed design of the Protect and Conserve (**P&C**) method. For example, 100-year commitments by land managers who intend to manage high conservation areas for conservation, i.e., commitments to implement what are known worldwide as Other Effective area-based Conservation Measures (**OECMs**) and here in Australia as 'conserved areas', will be secured by biodiversity project registrations and the subsequent issue of biodiversity certificates.

We understand the P&C method intends to allow a wide range of activities provided the proponent (at minimum) maintains ecosystem condition within a range of permissible values. We support this approach. We think it means the method will be available to land managers in much of Australia covering a wide variety of ecosystem types, including grassy ecosystems. We welcome and support this prospect for all land managers. We are especially grateful support will be available to those caring for grassy ecosystems as we recognise these ecosystems need *constant*, ongoing management action.

In our responses to the Consultation questions (the Attachment), We recommend measures that will both incentivise long-term protection in the market and, with good administration, require approval holders who choose to proceed with approved actions that cause serious irreversible impacts, and who are required to compensate for those impacts for the duration of those impacts through dealings in biodiversity certificates, to do so efficiently.

Issues/Concerns

Most of the points and concerns We express in the Attachment relate to the variable biodiversity project characteristic 'commitment to protection'. Our concerns have been elevated by the reform concluded recently that allows offsets to be acquitted through dealings in biodiversity certificates. While we think 'pay to destroy' may hasten damage overall, if the approach results in better management and protection of offset sites, then in that respect (and that respect alone) We are in support. We understand the P&C method will be pivotal in the implementation of this reform because it's focussed on long-term protection, and that what's to be achieved for offset sites when protections *in perpetuity* are required.

There is little point maintaining and enhancing project sites if at the end of each time-limited biodiversity project the project area reverts to being at risk of complete loss. Having regard to the appropriate timeframe, net gain will not be maintained (note We hold this concern in respect of all methods).

Specifically, biodiversity certificates issued for registered biodiversity projects are cancelled when time-limited biodiversity projects end and, for project proponents, no obligations to protect and conserve their project area survive beyond that permanence period.[1] We are therefore pleased the design of the P&C method can and looks set to address this risk.

Recommendations

We recommend:

1. a suitable incentive structure, through value scoring that will appropriately recognise commitments to protect project areas *in perpetuity.*
2. including on the Register values for three separate indicators that will clarify the nature of commitments to protect project areas (combining these values into a single score will not give the investors good information; indicators that give insight into management considerations should be kept separate).
3. the benchmark (highest) value for the security indicator be an '*in perpetuity* commitment secured by legal or other effective means' (not 'inclusion in the NRS').
4. the Department compiles then maintains a database of all protection mechanisms relied on by project proponents, by region and ecosystem and land governance type:
    a. listing the mechanisms *capable* of delivering *in perpetuity* protection
    b. for each mechanism so listed, annotating that listing with conditions that must be satisfied for the assignment by the Regulator of the highest value for any indicator under the 'commitment to protection' project characteristic.
5. requiring publication on the Register of the concise reason–the <50-word reason provided by the project proponent–explaining what fact or matter makes a commitment to a 100-year permanence period impossible, inappropriate or unable to be supported.
6. where any proposed project area is (or includes) leasehold tenure, and the lease has ≥25 but <100 years still to run, all the following should be true:
    a. the permanence period should be a duration not less than the period remaining on the lease and
    b. the lease condition relating to the lease duration should state that the lease applies 'for the term of the lease and any extension to the lease' (or similar) and
    c. a lease condition should state that, if the lease is transferred, successive leaseholders will be bound by the lease terms.
7. for assessments of the security indicator, that each instrument (not mechanism) be assessed on a case-by-case basis.
8. the security indicator be assessed considering a wide range of risks including challenges from within, e.g., proponents seeking (with or without outside inducement) to dedicate the project area to a different land use purpose, and from third parties, e.g., from powerful interests with the power to frustrate the long-term intentions of proponents willing to continue managing registered biodiversity projects.
9. no biodiversity certificate is issued for any registered project applying the method until the forecast value for the security indicator has been achieved.
    a. If that is not accepted, then the discretion of the Regulator considering whether a project is sufficiently progressed to be likely to result in the protection committed to by the proponent should be tightly controlled.
10. no more than five per cent of a project area could be under a 0.5 EKS condition threshold score at any time after a biodiversity project is registered.

[1] *Revised Explanatory Memorandum for the Nature Repair Bill 2023*, para 208, describing the legal effect of s 32A.

11. prohibiting any act or omission that would result, or is likely to result, in rapid condition decline in a project area.
12. where culturally appropriate, that draft fire management plans are subject to independent expert review, such as by fire authorities.
13. fire management plans be ecosystem specific and that they are based on advice from suitably qualified experts such as fire authorities and First Nations people.
14. fire management plans are developed by suitably qualified people with expertise in working with fire and experience working with fire authorities.
15. one assertion in the Consultation Paper is not used again. The statement is that the NRS Strategy and OECM Framework "set similar standards"[2]. While this may be true in relation to management, the two standards are nothing alike on protection.[3]

We would be happy to provide clarification or further information on any part of this submission. To contact Us, please email advocacy@fog.org.au

Yours sincerely,

SIGNED

Matt Whitting
Vice President, Friends of Grasslands

15 December 2025

SIGNED

Dr Simon Copland
Chief Executive, Conservation Council ACT Region
15 December 2025

[2] Consultation Paper, p. 10

[3] The OECM Framework adopts language often used in a protected area security context, stating OECMs "Must be secured through legal or other effective means."[3] We welcome all commitments to long-term conservation; however, on security, on their own, OECMs offer no legal protection. The OECM Framework is clear on this stating "Consent for a site to be recognised as a Conserved Area can be withdrawn at any time, including after a site has been recognised. If consent is withdrawn, a site would no longer be recognised as a Conserved Area." (p. 16)

Attachment: Our response to consultation questions

Overarching questions:

1. Will the proposed P&C method support the objective of contributing to long-term protection and conservation of biodiversity on land? If not, how could it be improved?

   A: In relation to management, in general, yes. We note some limits and/or controls are contemplated for the use of management tools like grazing and fire; at the same time, it appears a wide range of activities will be acceptable provided (at minimum) the proponent maintains ecosystem condition within a range of permissible values. We support this approach.

   In relation to protection, not to a satisfactory degree, no. For the security indicator proposed under the 'commitment to protection' project characteristic, **We recommend** the benchmark (highest) value be *in perpetuity* commitments secured by legal or other effective means. That is a higher benchmark than inclusion in the National Reserve System' (**NRS**). Inclusion in the NRS is possible based on 99-year commitments; however, an *in perpetuity* commitment is clearly a better standard.[4] This change would establish a structure that attracts premium payments from investors who place a high value on intergenerational equity.

   In market and regulatory settings, the P&C method should incentivise investors and enable regulators to efficiently require protections *in perpetuity*, respectively, in an effective way. To these ends, **We recommend** the P&C method (or the *Nature Repair Rules 2024*) list the mechanisms *capable* of delivering *in perpetuity* protection. **We recommend**, for each mechanism so listed, that the listing is annotated with conditions that must be satisfied for the assignment by the Regulator of the highest value for any indicator under the 'commitment to protection' project characteristic. This is necessary as mechanisms are administered by decision-makers acting independently under their own programs. The conditions must clarify what will be accepted before any instrument made under each mechanism will achieve the highest value under the relevant indicator for the 'commitment to protection' project characteristic. Examples showing why this is important are included and discussed further in Our responses to questions 8a and 8b.

   We outline briefly here Our vision of the regulatory solution in the case where offset obligations will be taken to have been acquitted through dealings in biodiversity certificates. The Minister has the power to attach conditions to approvals. With that power he or she can require–including through delegated or accreditation arrangements, with a new high degree of efficiency and effectiveness–that the projected gains achieved through restoration actions be secured for the duration of the anticipated residual significant impacts by the deposition with the Regulator of a biodiversity certificate that has achieved the highest protection standard. This would be an efficient and effective means of delivering a defensible outcome.

   We support the option of assessing the starting state for a 'commitment to protection' by a study of existing legal and other protections.[5] **We recommend** the Department compiles then maintains a database of all protection mechanisms relied on by project proponents, by region and ecosystem and land governance type. If this recommendation is adopted, proponents won't need to fund desktop

[4] *Australia's Strategy for the National Reserve System 2009–2030* (the **NRS Strategy**) *accepts* commitments of a minimum 99 years. The same strategy also states *the ideal* is a higher bar, protection *in perpetuity*; https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf, p. 43

[5] Consultation Paper, p. 18

assessments; instead, they will be able to query and challenge database outputs. Over time, database information quality will improve, as will efficiency and effectiveness. The general duty to care for land that exists in a region and ecosystem type will become clear nationally. For the benefit of nature, the public will know when local councils, catchment authorities and Crown lease administrators etc will step in and require action.

2. Do the proposed method's settings appropriately balance integrity (including meeting the Act's biodiversity integrity standards) with usability for project proponents? In answering this, note that users would usually be supported in developing projects under a method through the CER's website, information products, and spatial information systems like PLANR.gov.au.

   A: In relation to management, in general, yes.

   In relation to the 'commitment to protection' project characteristic, no. Summarising from the detail in our response to question 8a:

   - To evaluate protection mechanisms, **We recommend** investors are presented with three *separate* scores in the Register for three indicators, i.e., 'duration of protection', 'security' and 'scope and impact'. Combining values for these indicators into a single score for a project will not work; it prevents transparency and will not give investors a clear understanding of the proponent's commitment to protection.
   - **We recommend** management considerations are kept separate. Management considerations are assessed, several ways, under other variable biodiversity project characteristics.

   Anything less than the above and it is entirely foreseeable the biodiversity integrity standard at s 57(3)(h) of the *Nature Repair Act 2023* will be compromised. That is because:

   - It is entirely foreseeable statements in the Register and on biodiversity certificates about protections delivered under the P&C method will claim strong protections.
   - Absent values for each of the three indicators and it is entirely foreseeable actions will be brought for misleading the market.
   - That is because 'duration of protection', 'security' and 'scope and impact' are all valuing objective facts. Overblown claims will be clearly and obviously false.

<u>The department would welcome specific feedback on the following:</u>

3. Is the proposed permanence period of 100 years, and under limited circumstances 25 years or more coupled with a long-term conservation management commitment of at least 99 years (for conserved areas as set out in the OECM Framework), appropriate? (section 5.1)

   A: Recognising the Nature Repair Act provides for 'permanence periods' of no more than 100 years, the 100-year upper limit is appropriate.

   If permanence periods of <100 years are to be allowed under the P&C method, the 'limited circumstances' under which lesser terms will suffice should be tightly controlled. To this end, in all cases where a proponent proposes a permanence period <100 years, **We recommend** the P&C method requires publication on the Register of the concise reason–the <50-word reason provided by the project proponent–explaining what fact or matter makes a commitment to a 100-year permanence period impossible, inappropriate or unable to be supported.

Outside of lease restrictions, We consider there should be few if any reasons accepted as to why a 25-year permanence period should be allowed under the P&C method.

a. In circumstances where a project involves a permanence period of 25 years, what could constitute evidence of the long-term conservation management commitment of at least 99 years?'

A: For ease of comprehension, in this point 3a, all references to a single lease should be taken as a reference to multiple leases, i.e., every lease that makes up the project area should be subject to these suggestions.

We recommend, where any proposed project area is (or includes) leasehold tenure, and the lease has ≥25 but <100 years still to run, all the following should be true:

i. the permanence period should be a duration not less than the period remaining on the lease and
ii. the lease condition relating to the lease duration should state that the lease applies 'for the term of the lease and any extension to the lease' (or similar) and
iii. a lease condition should state that, if the lease is transferred, successive leaseholders will be bound by the lease terms.

4. Is the proposed eligibility requirement for ecosystems to be in relatively high condition (such as an EKS score of 0.5 and above) appropriate?

A: **We recommend** further investigation to the following. According to the *National Roadmap for protecting and conserving 30% of Australia's land by 2030*, priority areas to be protected and conserved can be identified using the criteria set out in Table 2. We would prefer all places that will count toward Australia's 30 x 30 Global Biodiversity Framework target be 'in relatively high condition' per the criteria in Table 2. We consider it is therefore appropriate to investigate whether all the areas (and only the areas) that satisfy the criteria in Table 2 can be further reduced, i.e., whether they (and they alone) will have an EKS score of 0.5 and above. We note Murphy *et. al.* describe the EKS as being more about regenerative capacity than extant natural values.[6]

Should there be a maximum proportion of the project area that can be under the threshold ecosystem condition score? A: Yes. **We recommend** for Nature Repair Market integrity sake that no more than five per cent of a project area could be under a 0.5 EKS condition threshold score at any time after a biodiversity project is registered.

5. Are there particular activities that you think should be prohibited in project areas?

A: Yes. **We recommend** prohibiting any act or omission that would result, or is likely to result, in rapid condition decline in a project area. Examples would include: intensive grazing above a threshold level or at an inappropriate time; or fire at an inappropriate time.

We believe foreseeable situations that are likely to cause rapid condition decline in project areas can be defined on a case-by-case basis having regard to reference ecosystems and other factors. Doing so would get easier over time.

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[6] Murphy *et. al.*, *The Ecological Knowledge System (EKS) for the Nature Repair Market*, **https://doi.org/10.25919/9zx8-g268**

6. Is the proposed option for use of fire appropriate (section 5.3.2)?

   A: Yes. The use of fire should be part of a strategy for the management and maintenance of ecological condition in grasslands and grassy woodland ecosystems.

   a. Does this proposed option enable a wide range of scenarios for the use of fire?

      A: Yes.

   b. Does the proposed approach provide flexibility for cultural and ecological fire while also mitigating the risks to biodiversity?

      A: Yes to the flexibility element. The criteria for 'suitably qualified person' do not specifically consider any person's experience using fire as a tool. **We recommend**, where culturally appropriate, that draft fire management plans are subject to independent expert review, such as by fire authorities.

   c. What would be important inclusions in a fire management plan?

      A: **We recommend** fire management plans be ecosystem specific and that they are based on advice from suitably qualified experts such as fire authorities and First Nations people. Objectives should relate to: what area to burn & when; the landscape sought (it will generally be a patchwork); the existence (or otherwise) of individuals from species that are sensitive to fire; and reporting the benefits of fire based on monitoring.

   d. What provisions might be needed to protect Indigenous knowledge and values if requirements relating to cultural burning are defined?

   e. What expertise should a suitably qualified person have to develop a fire management plan?

      A: **We recommend** fire management plans are developed by suitably qualified people with expertise in working with fire and experience working with fire authorities.

   f. What additional monitoring requirements (if any) should be included for a project that uses fire?

      A: **We recommend** mirroring the objectives in the relevant fire management plan, i.e., monitor variables related to the achievement of the objectives

7. The commitment to protection variable biodiversity project characteristic is proposed to be mandatory for projects under the method (section 6.3). Is this appropriate?

   A: Yes.

8. We would welcome specific feedback on the following aspects of the commitment to protection characteristic:

   a. Whether the five potential indicators set out in section 6.3 are appropriate, noting these would be combined into an overall project-level score. Do these indicators cover the key aspects of how a project contributes to protection?

      A: As noted in Our responses to question 2, for this project characteristic, **We recommend**:

      i. all indicators relate specifically to protection (not management).

ii. not combining indicator values to calculate a single project-level score. Combining these values: is not explicitly required by the *Nature Repair (Biodiversity Assessment) Instrument 2025*[7], would result in poor information provision for all market participants, and it is unnecessary. This matter is discussed further in Our response to question 8b.

Only two of the five indicators included under the 'commitment to protection' project characteristic relate exclusively and clearly to protection, i.e., 'duration of protection' and 'security'. These indicators are discussed under these sub-headings below. **We recommend** against adopting the other three indicators:

- 'harm prevention' – This indicator is about preventing gradual condition decline, and that is achieved by effective management.
- 'confidence in management outcomes' - As presented, this indicator is very clearly all and only about management.
- 'First Nations Caring for Country' - The relevance of the descriptors for this indicator are not explained, i.e., First Peoples' 'priorities and objectives' and 'control over decision making' may, or may not, relate to securely protecting a project area from loss.

We recommend including the indicator 'scope and impact' (of a commitment to protection). In our response to question 5, we discuss prohibiting any act or omission that would result, or is likely to result, in rapid condition decline. A protective mechanism can prohibit or restrict such acts and omissions. Some mechanisms will be better at doing this than others. The 'scope and impact' of a protective mechanism that can and should be measured.

Security

The descriptor for the 'security' indicator refers to the "strength of mechanism or tool used to secure the protection". In this response, a 'mechanism' refers to the program under which protective 'instruments' are executed, e.g., a statutory program typically establishes rules for the content of, executing and then varying or revoking conservation covenant instruments.

We recommend the P&C method make clear, for assessments of the security indicator, that each instrument (not mechanism) be assessed on a case-by-case basis. We understand this will be an administrative burden for the Regulator; however, anything less and the risk of failure is unacceptable.

The reason for this is, in general, the statutory provisions governing mechanisms give decision-makers broad discretion as they consider executing protection instruments. Imagine a decision-maker considering executing a covenant has discretion to include (or not) a condition that could, in future, provide for a variation in favour of sustainable development. As soon as the permanence period ends, a decision-maker considering a variation request will be able to authorise the loss of the project area. In this case, a high score reflecting good security should be contingent upon such a condition being excluded from the instrument at the time of execution.

Our recommendation is relevant in relation to all three indicators because similar discretion exists in each lens and in the statutory programs of so many protection mechanisms. For an

[7] Section 14(3) of the *Nature Repair (Biodiversity Assessment) Instrument 2025* states the starting commitment to protection score for the project must be "calculated or otherwise assessed".

example of what can go seriously wrong, look at the example provided in Our response below under the heading 'duration of protection'.

We recommend the security indicator be assessed considering the risk of challenges from:

- within, e.g., from a proponent seeking (with or without outside inducement) to dedicate the project area to a different land use purpose; and
- outside, e.g., from a powerful interest like a transmission line or mining company or Crown authority that controls leases, any of whom hold the ability (power) to frustrate the long-term intentions of a proponent willing to continue managing a registered biodiversity project.

Assessments of security could be different under each of these scenarios. Both forms of legal challenge are entirely foreseeable, in due course. At minimum, the P&C method needs to state whether risks to registered projects from external challenges are to be assessed (or not).

Duration

As indicated above, We consider it is not sufficient to accept a mechanism *can* provide protection *in perpetuity*. Each instrument needs to be examined to understand its legal effect.

An example will help. The Queensland (**Qld**) Government's Private Protected Area Program website states "Nature refuge agreements are in perpetuity."[8] Qld's Private Protected Area Program is approved by the Federal Environment Minister, at the mechanism/program level, for the purposes of the *Income Tax Assessment Act 1997*.[9] In Qld, 'nature refuges' are declared after 'conservation agreements' are executed between land managers and the minister responsible for the *Nature Conservation Act 1992* (Qld)[10]. On 27 July 2010, to offset the impacts of two coal mines, a subsidiary of BHP executed a *Conservation Agreement to establish Norwich Park Nature Refuge*, and on 10 Dec 2010 the Norwich Park Nature Refuge was declared. On 16 June 2030, both the agreement and the nature refuge will expire[11].

We consider Nature refuge agreements should be on the list of mechanisms *capable* of achieving the protection *in perpetuity* benchmark, *with a condition*: Only nature refuge agreements that are executed with an intention of enduring *in perpetuity* would qualify for the award of the highest score on the duration of protection indicator.

b. Is the proposed approach practical to implement and an appropriate way of providing a transparent and easily accessible way for buyers to understand the protection and conservation outcomes from the project?

A: While transparency and accessibility of information about 'commitments to protection' are important, so is information quality. We have presented our thoughts above on not combining 'commitment to protection' values, and more.

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[8] Qld Government (online) *The Private Protected Area Program,* https://www.qld.gov.au/environment/parks/protected-areas/private/program, see the answer to the question "How long does a nature refuge agreement last?", viewed 15 December 2025

[9] Department of Climate Change, Energy, the Environment and Water (online) *Approved conservation covenanting programs*, https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs, viewed 15 December 2025; To avoid doubt, this website notes Queensland's Nature Refuges Program was approved in July 2003 and expired on 8 July 2021.

[10] *Nature Conservation Act 1992* (Qld), s 45

[11] cl. 2.3(a) and Item 5 of Schedule 1 to the Conservation Agreement, available on request

Literature shows commitments to protect land can and often do result in frustration, e.g., with third parties who need to agree not 'being on board'. **We recommend** the P&C method require that no biodiversity certificate is issued for any registered project applying the method until the forecast value for the security indicator has been achieved. If that is not accepted, then **We recommend** the P&C method tightly control the discretion of the Regulator considering whether a project is sufficiently progressed to be likely to result in the protection committed to by the proponent.[12]

c. Do you have feedback on how the five indicators could be easily, transparently and consistently measured and assessed?

A: Everything in Our response shows a 'commitment to protection' is not easily measured or assessed. This is hard; yet, there is much at stake so it must be tackled and tackled well.

d. Should there be different descriptors or different ways to measure indicators for public, private, Indigenous and jointly managed lands?

A: In our view, no. It would be better, although it is not simple to do, to evaluate all project area dedications in the same way.

9. In many cases, the counterfactual for projects will be static. However, a declining or increasing counterfactual for ecosystem condition or other variable biodiversity project characteristics may be justified. The suitably qualified person will be required to justify the nominated counterfactual. Should the method allow a declining counterfactual for ecosystem condition and other variable biodiversity project characteristics?

   a. If so, what information should the method require to justify the choice and to determine an appropriate, conservative rate of decline?

   b. Are there guardrails the method should include around how a declining counterfactual could be set?

   c. Should a declining counterfactual scenario allow the project area ecosystem condition to fall below the eligibility threshold, e.g., below an EKS score of 0.5?

   d. Should project areas that fall below the ecosystem condition eligibility threshold be able to retain their biodiversity certificate?

10. Are there ways we can align and, as much as practicable, with existing processes to create protected and conserved areas, or to recognise organisations that support the creation of protected areas and their ongoing conservation?

A: We understand the interest in recognising and aligning with existing programs and processes. In Our view, this is only possible to a limited extent. A succession of directions statements and strategies have sought to establish protection and management standards for the NRS. Progress toward laudable ends has been either non-existent or very slow. The integrity of the Nature Repair Market will depend on strong national leadership.

[12] This response paraphrases ss 70(2)(f) of the *Nature Repair Act 2023*.