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The Hon Tanya Plibersek MP  
Minister for the Environment and Water  
PO Box 6022  
House of Representatives  
Parliament House Canberra ACT 2600

By portal upload: <https://consult.dcceew.gov.au/australias-new-nature-positive-laws/new-survey-c59ba70e>

Dear the Hon Tanya Plibersek MP, Minister for the Environment and Water

**RECOMMENDATION'S FROM THE AUSTRALIAN INSTITUTE OF LANDSCAPE ARCHITECTS ON AUSTRALIA'S NEW NATURE POSITIVE LAWS REFORMING THE EPBC ACT 1999.**

Thank you for the opportunity to make a submission to the proposed New Nature Positive laws to reform the Environmental Protection and Biodiversity Act 1999.

As CEO of the Australian Institute of Landscape Architects (AILA), we welcome the Government's proposal for nature positive outcomes for our national environmental laws, including engagement with Aboriginal and Torres Strait Islander Traditional Owners. We support the objective to have nature positive outcomes. We have proposed a range of recommendations across the 10 identified areas of the Nature Positive Law survey.

**About the Australian Institute of Landscape Architects**

The Australian Institute of Landscape Architects (AILA) is the peak national body for Landscape Architecture. AILA champions quality design for public open spaces, stronger communities and greater environmental stewardship. We provide our members with training, recognition and a community of practice to share knowledge, ideas and action.

With our members, we anticipate and develop a leading position on issues of concern in landscape architecture. Alongside government and allied professions, we work to improve the design, planning and management of the natural and built environment.

In operation since 1966, AILA currently represents over 2,800 landscape architects and promotes excellence in planning and designing for life outdoors. Committed to designing and creating a better Australia, landscape architects have the skills and expertise to improve the nation's liveability through a unique approach to planning issues via integrated design solutions. In doing so, landscape architects contribute towards better environmental, social and economic outcomes for all Australians.

AILA promotes Biodiversity Positive design for our work and projects. We have developed a **Biodiversity Positive Position Statement** that outlines what landscape architects can do to be Biodiversity positive. We see a role for landscape architects to help with the big picture mapping primarily in our urban areas, but also our regions.

AILA is also asking its members to pursue not just a net zero target, but a climate positive target for their projects. This is where our projects sequester more greenhouse gases than they emit



over their lifetimes. See our Climate positive design resources and guidelines on our website.

Australia has a once-in-a-generation opportunity to halt and reverse biodiversity loss. We have outlined our submission responses in line with the 10 identified areas of the Nature Positive Law survey as outlined below.

## **01. MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE**

### **Need for a nationally lead whole of system approach to operate as an umbrella Environmental Protection for the Nation.**

AILA supports a nationally lead whole of system approach. This approach is in alignment with our mission to advocate for environment and landscape in Australia. A national approach provides a comprehensive and consistent framework for environmental protection, an essential element for sustainable landscape design and planning.

It fosters collaboration among various stakeholders, including our fellow landscape architects, and ensures that all projects meet high environmental standards. Moreover, it addresses key environmental challenges such as biodiversity loss and climate change, which are of significant concern to us as landscape architects. By endorsing this approach, we at AILA we express our commitment to shaping a sustainable future for Australia.

This endorsement comes with recommendations which we detail in box 1. These recommendations can help ensure Nature Positive Plan is effective and reflects our professional disciplinary knowledge. In terms of matters of National Environmental Significance, we have six key recommendations. These relate to existing categories. However, we also urge the minister to consider and appraise places of significance to Traditional Owners a category all its own rather than a subcategory as it is currently.

### **Include a climate trigger to account for scope 3 emissions.**

Anthropogenic global warming including Increasing land and ocean heat, increased variability in weather, and sea level rise, presents an extreme threat to Australia's unique environment. We are already seeing catastrophic loss of species and ecosystems, and this will continue unless a whole of system approach is taken.

Continued bleaching of the Great Barrier Reef bleaching and loss of giant kelp in Tasmania are some of the environments under threat of irreparable damage. We must include a climate trigger that covers scope three emissions. We outline this in more detail in item 3.

We note that scope 3 emissions, also known as value chain emissions, are a category of greenhouse gas (GHG) emissions originating from business operations by sources that are not directly owned or controlled by an organization. These emissions include activities such as supply chain, transportation, product usage, and disposal. Unlike Scope 1 (direct



emissions from owned or controlled sources) and Scope 2 (indirect emissions from purchased energy), Scope 3 emissions occur in the upstream and downstream activities of an organization.

We recommend including clear guidance and legislation to limit scope three emissions to protect Australia's unique environments and to support investment in an Australian economy that encourages industry to invest in carbon neutral circular systems, processes and products. Measuring Scope 3 emissions is crucial for organizations aiming to understand their full carbon footprint. Addressing these emissions can advance our nations, and the organisations which it governs, decarbonization and sustainability efforts.

### **Benefits:**

- By measuring Scope 3 emissions, organizations can:
  - **Prioritize reduction strategies** by identifying emission hotspots across their value chain.
  - Assess supplier sustainability performance and encourage product innovation.
  - Engage employees to reduce emissions from business travel and commuting.
  - Contribute to national efforts toward achieving **Net Zero**.

In summary, Scope 3 emissions play a significant role in achieving environmental goals and driving positive change across an organization's entire value chain. They cannot be omitted if the Nature Positive Plan is to have a lasting impact on industry and economy.

### **Include a land clearing trigger.**

Australia leads the developed world as a land clearing hot spot. Particularly North Queensland, where significant clearing of more than 2 million Ha of land between 2016 and 2021 occurred with little or no oversight. We are losing a Melbourne Cricket Ground of bushland and significant ecosystems a minute.

A serious commitment to the 2022 United Nations Kunming-Montreal Global Biodiversity Framework, would first address land clearing then focus on restoration efforts the Nature Positive Plan mentions. It makes no sense restoring degraded lands whilst we allow the mass destruction of vast areas of habitat through continued land clearing.

We recommend including a land clearing trigger in the proposed legislative amendments to prevent the ongoing large-scale destruction of our environment. This trigger is linked to the climate trigger as when land is cleared, we not only lose the carbon stored in the plants and soils, but we also lose the future potential sequestration potential of those areas.

### **Extent culturally significant, heritage and areas of outstanding natural beauty**



The United Kingdom has protections for areas of outstanding natural beauty. These protect areas of countryside that have been designated for conservation due to their significant landscape value. Areas are designated in recognition of their national importance and are exceptional landscapes whose distinctive character and natural beauty are precious enough to be safeguarded in the national interest.

Equally there should be consideration of places of cultural significance by Aboriginal and Torres Strait Islander Peoples, that are mapped and considered exclusion areas.

### **Extend protection of the environment to vulnerable communities**

The EPBC Act provides protection when they have reached the point of Endangered or Critically Endangered. By this late stage it is populations are often too late. It's far more difficult to recover a species once they are endangered. Particularly when the species decline is so clear like that of our Iconic Koala. We acknowledge the need for a nationally lead **whole of system approach** to operate as an umbrella Environmental Protection for the Nation.

### **Strengthen provisions under nuclear actions.**

There is a lot of discussion in Australia at present over the potential expansion and use of nuclear power. There are significant issues in storing toxic, corrosive and highly radioactive material for the timeframes required by half-lives that extend into the 100,000s of thousands of years. This future risk such possibilities present is unresolved, and this represents a significant impact on thousands of future generations. Any provisions must strengthen safeguards against nuclear actions and wastes.

#### **1 - Recommendations:**

- Include a climate trigger for all projects that will emit more than 100,000 tonnes of CO<sub>2</sub>e including scope 3 emissions over the project's lifetime.
- Scope 3 emissions must be included in all projects that reach the climate trigger.
- Include a land clearing trigger for any felling of bushland that exceeds 10Ha.
- Provide definitions and mapping of areas of outstanding natural beauty as part of the national estate covered by MNES.
- Extend the definition of species that are protected by the EPBC Act to include all vulnerable species and ecological communities.
- Strengthen not weaken actions and definitions around "Nuclear actions"
- Conduct mapping of Country by Aboriginal and Torres Strait Islander people to develop a comprehensive understanding of places of traditional national significance nation wide.



## 02. NATIONAL ENVIRONMENTAL STANDARDS

We endorse the implementation of National Environmental Standards. We note here their strengths and weaknesses.

- **Improved Clarity:** The standards can provide clear outcomes for regulated activities, improving transparency and predictability in environmental decision-making.
- **Enhanced Protection:** The standards can enhance environmental protections by setting a high and non-negotiable bar for conservation and sustainable use of natural resources.
- **Inclusive Engagement:** The necessary inclusion of community and First Nations engagement, the standards recognize the importance of diverse perspectives in environmental governance.
- **Implementation Challenges:** We note there may be difficulties in uniformly applying these standards across different regions and jurisdictions due to varying local conditions and interests.
- **Enforcement:** Ensuring compliance with these standards could be challenging, especially if there are insufficient resources for monitoring and enforcement.
- **Managing and Negotiating Conflicting Agendas:** Conflicts between environmental goals and economic development interests, can lead to compromises that weaken the standards' effectiveness. Clear mechanisms to negotiate conflict most result in nature positive outcomes.

We view these standards as central to Australia's environmental health and to the necessary laws to better protect, restore, and manage the environment, building on recommendations from the EPBC Act review and considering the latest information and opportunities:

## 03 CLIMATE CHANGE

**That act needs to recognize that Climate change is already having significant impacts on the Australian environment.**

Anthropogenic climate change primarily driven by the extraction and burning of fossil fuels and clearing of land is having a direct impact on our unique flora and fauna. Increasing heat and rapid shifts in bioclimatic zones are having a significant impact already. Some examples include:

- Our oceans have absorbed much of the heat from radiative forcing by greenhouse gasses in the atmosphere. This is pushing the Great Barrier Reef towards catastrophic loss from repeated marine heatwaves and coral bleaching events.<sup>i</sup> We have recently witnessed the fifth mass bleaching event of the Great Barrier Reef in eight years.
- Increasing heat is leading to nearly 95% of turtle hatchlings on Raine Island in the Great Barrier Reef, northeast of Cairns, being born female. With only 5% males, the chances of reproducing have drastically dropped to the point where they may not survive.<sup>ii</sup>



- The "elevator to extinction" where increasing heat is driving up habitat altitudes above where any land exists to support that habitat. Critical areas include the Australian Alps bioregion, the Tasmanian alpine zones, and wet tropic mountainous areas. This is impacting species such as the critically endangered Mountain Pygmy Possum<sup>iii</sup>, as well as fauna unique to our wet tropic areas.
- The similar "conveyor belt to extinction" occurring in our Tasmanian coastal waters where increasing ocean temperature has moved the viable cool habitat for giant kelp south into the Southern Ocean where it is too deep for kelp to grow.<sup>iv</sup>
- Extreme temperatures of over 45 degrees caused mass mortality of populations of critically endangered Speckled Flying Foxes in 2019.<sup>v</sup>
- While Eucalypts (Angophora, Corymbia and Eucalyptus species) might seem ubiquitous across Australia, many of the nearly 800 species have relatively small climate and soil niches, making them highly vulnerable to rapid changes in bioclimatic zones.<sup>vi</sup>

Therefore, it is imperative that the Nature positive / EPBC Act amendments recognize climate change as one of the most significant threats to our unique biodiversity.

**Climate change assessment must consider the full climate impact of a project, including the scope three emissions and give The CEO of Environment Protection Australia (EPA) the power to reject proposals that have a carbon impact of more than 100,000 tonnes.**

As climate change emissions are the total of scope 1, 2 and 3 emissions, it is essential that scope 3 be included in all assessments.

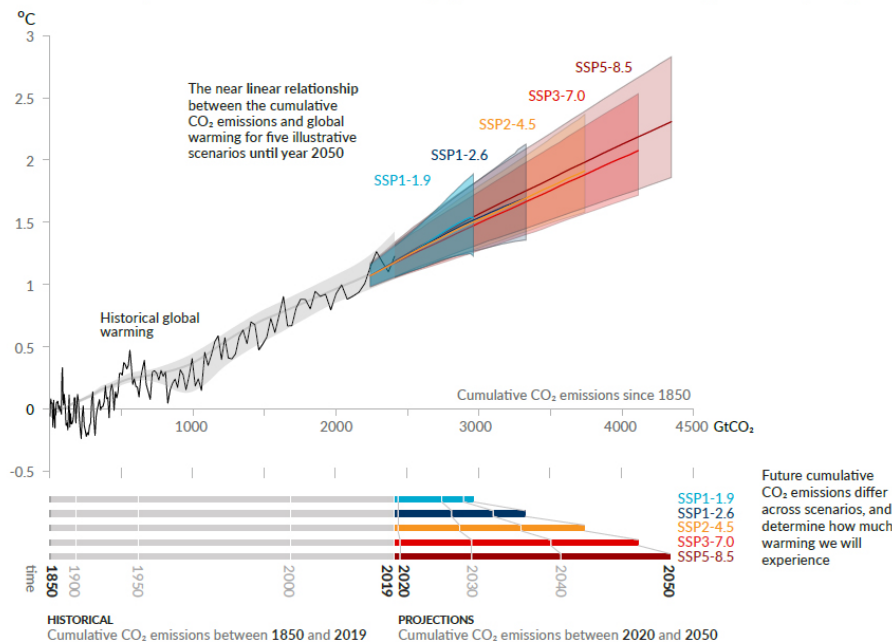
The IPCC in its latest sixth assessment report has made it unequivocally clear that every tonne of CO<sub>2</sub> is warming the planet. This is having a profound impact on the planet, and Australia. Scope three emissions know no boundaries and environmental assessment of projects must account for scope three emissions even if they are outside Australia's boundaries.

Critically, since the release of the IPCC AR6 scenarios in 2022, which were based on a scientific understanding from 2020, estimates of the remaining 1.5°C carbon budget (with a 50% likelihood) have been drastically revised downwards, from 500Gt CO<sub>2</sub> to around 210 Gt CO<sub>2</sub>.<sup>vii</sup> This update is due to the impact of recent emissions increases and better quantification of uncertainties like the impact of non-CO<sub>2</sub> emissions.



### Every tonne of CO<sub>2</sub> emissions adds to global warming

Global surface temperature increase since 1850-1900 (°C) as a function of cumulative CO<sub>2</sub> emissions (GtCO<sub>2</sub>)



Every tonne of CO<sub>2</sub> emissions adds to global warming . IPCC ARG WG1.

**There is no reference to climate mitigation. Mitigation is about stopping heat trapping greenhouse gasses from being released in the first place by proponents. The requirement for just adaptation and resilience are insufficient and far too late given the climate emergency we are in.**

The number one action with Climate change is mitigation, ie stopping heat trapping gasses from being emitted in the first place. All descriptions of Climate change must include the words Climate Change mitigation. The bill currently only refers to actions on adaptation and resilience measures. Adaptation and resilience is absolutely required, but there must be an immediate reduction in emissions first.

All the current scientific data is painting a dire picture of where we are going.

On top of this current picture, the esteemed climate scientist James Hansen who first testified to the US Congress as far back as 1988, has recently published a paper warning that current climate models may be underestimating the cooling effect anthropogenic aerosols from fossil fuels like Sulphur<sup>viii</sup>.

The fundamental premise here is the Faustian bargain we have by transitioning to cleaner forms of transport. As we reduce fossil fuel use, we also reduce pollution but Hansen et. al. estimate



that that has been masking additional heat by limiting incoming radiation by up to 0.5W/m<sup>2</sup>. The issue here is that if Mr. Hansen is correct, and we have accelerated warming in the pipeline, at the upper end of predictions, then we need to act even more urgently.

The precautionary principal should be doing everything we possibly can to protect our environment and ourselves from the future impacts of climate change. All references to Climate change in the act must require mitigation first and not just adaptation and resilience measures.

### **03 Climate change Recommendations:**

- Include a climate trigger for all projects that will emit more than 100,000 tonnes of CO<sub>2</sub>e including scope 3 emissions over the projects lifetime.
- Scope 3 emissions must be included in all projects that reach the climate trigger.
- All references to Climate change in the act must require mitigation first and not just adaptation and resilience measures. The proponent **MUST** reduce their emissions, not rely solely on adaptation and resilience measures.

### **04 COMMUNITY ENGAGEMENT.**

**There must be a sliding scale for community consultation that recognizes the time required by non expert community to assess complex technical proposals. The absolute minimum time for simple projects is 30 days, for more complex projects they may require 60-120 days or more.**

It needs to be recognised that community engagement is critical. It is also important that the government understands that the review by community of proposals is done in the evenings and on weekends in between family and work life. It takes substantial time and effort to properly review and respond with community comment.

It takes considerable time for the very small number of community experts in volunteer time on the weekend to critically examine proposals. Then be able to provide feedback and guidance to the community. It takes time to even just alert the community and to communicate what the issues and implications are.

A flat 30 days is insufficient for most projects that would be assessed under the ACT. There is a substantial difference in assessment of a 10Ha residential development in Koala Habitat to a multi-billion dollar fossil gas extraction project.

If a proponent takes 6 months with a team of specialist experts to prepare a 600page submission it is unfair to expect the non expert community to be given less than the same amount of time to respond.





**Prevent proponents from submitting variations that have a higher impact than the original proposal. Recognize that community engagement is a very draining on the community. These can be deliberate strategies that rely on community engagement fatigue.**

A common tactic in the development industry is to split up proposal approvals to enable early approval, with the intention to vary it later. This is very demanding of community time to have to re-mobilise, spends weekends and evenings reviewing revised proposals and submit another response. It's very draining and developers use this strategy of community engagement fatigue to make significant changes in the modification round. Ensure that proponents can only make variations to submissions that reduce not increase impacts.

**Genuine consideration and clear responses of how the proponent has taken community input into their revised outcomes.**

In many community consultation processes the submission response is often to say that it "wasn't feasible", or "not practical" or other vague and unclear language. Responses must provide a clear reasoning on how a community response has been included or why it was rejected.

Community participation must not end with a project's final decision. On the recent 2022 EPA report 1727 North West Shelf project extension by Woodside petroleum, the Western Australian EPA failed to correct a significant mathematical error by Woodside Petroleum.

This error substantially understated the project's lifecycle emissions. Woodside and the EPA states 1.4% of Australia's emissions, when in fact it was 5.4%. This significant error was pointed out to the EPA in community submissions. However, in the WA EPA appeals response, the EPA again included Woodside Petroleum's incorrect figures as justification for why this was not going to be considered, and effectively rejected the community concern.

Our new laws must ensure that once a decision has been made, groups that care about the environment have the right to seek independent review of the merits of decisions, not just whether decisions followed the right process.

#### **04 Recommendations:**

- That the time allocated for community comments be allocated on a sliding scale of complexity of the project. A good measure of complexity is the stated project budget. \$1-10Million 30 days. \$10-100Million. 40 days. \$100Million to \$1Billion 40-60days. \$1-5Billion 100 days. \$5-10billion or greater; 200days community review time.
- Ensure that proponents can only make variations to submissions that reduce not increase impacts.



- Proponent responses must provide a clear reasoning on how a community response has been included or why it was rejected.
- The consultation process must allow the community to see an independent merits based review of the proponents revised proposals.

## 05 CONSERVATION PLANNING

The current weaknesses and limitations of conservation planning in Australia under the EPBC Act are well known and include but are not limited to:

**Inadequate Protection:** The Act is too weak to prevent the destruction of critical habitats by activities like logging and mining.

**Failure to Address Key Drivers of Biodiversity Decline:** The Act has not succeeded in addressing key drivers of biodiversity decline, including habitat destruction, fragmentation, degradation, altered fire regimes, invasive species, and climate change.

**Lack of Enforcement:** While the Act includes provisions for the protection of critical habitat, these are rarely used.

**Ignoring Science:** Developments are often allowed in areas known to provide important habitat for listed threatened species:

**Loopholes and Exemptions:** The Act contains loopholes and exemptions, such as Regional Forest Agreements, that undermine its objectives.

AILA welcomes the proposed changes in the new Nature Positive Plan, but also notes potential shortcomings:

6. **Increased Regulatory Burden:** The plan could increase the regulatory burden on investments and proposed developments, adding significant costs to industry.
7. **Mandatory Reporting of Emissions:** The plan includes mandatory reporting of emissions and payments for non-compliance, which could be challenging for business and government agencies.
8. **Conservation Payments:** The plan allows for 'conservation payments' to be made by developers when destruction of threatened biodiversity is permitted, but suitable environmental offsets cannot be found. This could potentially lead to a 'pay to pollute' scenario.

The effectiveness of the Nature Positive Plan will depend on their implementation and enforcement but also an investment in new knowledge and action plans and research at a much greater level than current levels. For a wealthy nation with such a poor record of conservation and extinction Australia must invest to a greater level and with greater urgency to support action



across all sectors from private, to public and within the research and university sector to increase science infrastructure and capacity.

The Threatened Species Scientific Committee (TSSC) has an essential role in this process and must be supported, and funding increased to increase capacity so it can deliver the necessary conservation plans and reporting mandates in a rapid and informed way. While there are many mentions of speed in the new nature positive plan there is a lack of detail on how this speed will be delivered.

The new Nature Positive Plan in Australia aims to address critical habitat protection and repair. However, there are several key issues that need to be considered:

1. **Establishment of a New Regulator:** The plan proposes the creation of a new regulator, Environment Protection Australia (EPA), which will be responsible for enforcing National Environmental Standards. The effectiveness of this new body in protecting and repairing critical habitats will depend on its resources, powers, and independence.
2. **Legally Enforceable National Environmental Standards:** The plan includes the introduction of legally enforceable National Environmental Standards. The challenge will be to ensure that these standards are robust, comprehensive, and enforced.
3. **Changes to Biodiversity Offsetting:** The plan proposes significant changes to biodiversity offsetting. There are concerns about how these changes will be implemented and whether they will lead to better outcomes for critical habitats.
4. **Introduction of a Nature Repair Market:** The plan introduces a voluntary nature repair market to encourage private sector investment in long-term nature repair. There are questions about how this market will operate and whether it will deliver improved biodiversity outcomes. AILA urges the minister to include provisions for repair within urban regions which are not well addressed in the current documentation or processes. Urban regions contain a portfolio of places that can be linked and enhanced to support vulnerable populations and human nature connection and health.
5. **Threatened Species Protections:** The plan proposes changes to threatened species protections. It will be important to ensure that these changes provide stronger protections for species and their habitats<sup>1</sup>.
6. **Planning and Approval Processes:** The plan aims to improve planning and approval processes. The challenge will be to ensure that these processes are transparent, accountable, and lead to better environmental outcomes.

These issues highlight the complexity of environmental planning and the challenges involved in protecting and repairing critical habitats. It will be crucial to address these issues effectively to ensure the success of the Nature Positive Plan.



#### **o5 Recommendations:**

- Increase investment in environmental planning capacity. There is broad societal support for this.
- Ensure the TSSC has a balanced representation of expertise across new emerging areas of biodiversity including the soil and air microbiomes and within urban areas which are hotspots for biodiversity loss.
- Ensure the Nature Repair Market is expanded to integrate urban regions and small patches that can be linked to create a portfolio of places and ecological networks.

#### **o6. ENVIRONMENT INFORMATION AUSTRALIA**

We strongly support the initiative for greater and more rigorous monitoring of biodiversity. We particularly endorse increased measures and funding to monitor biodiversity in urban areas and to consider the expanding understanding of biodiversity including the microbiome and quality of the aero biome within regional and urban areas.

All data should be made available through open data protocols and made available for analysis and visualization of the public and media. Open data protocols relevant to biodiversity are designed to ensure that biodiversity data is shared in a way that is findable, accessible, interoperable, and reusable.

We recommend key protocols and standards be adopted to link our biodiversity as not only a national heritage but a global heritage. These protocols play a critical role in harmonizing biodiversity monitoring protocols across scales, ensuring that data collected in various regions can be integrated and compared effectively.

#### **o6 Recommendations:**

- **Support International Initiatives including the Essential Biodiversity Variables (EBVs) and Darwin Core:**
  - EBVs are a set of standardized measures that provide a framework for monitoring biodiversity change over time.
  - Darwin Core is a standard that supports the sharing of information about biological diversity by providing a stable framework of terms to facilitate the sharing of data about organisms, their history, and their environment.
- **Mandate FAIR Data Principles in reporting:**
  - The FAIR principles emphasize that data should be Findable, Accessible,



Interoperable, and Reusable, which are crucial for effective data sharing in biodiversity research<sup>2</sup>.

- **Support data flows to the Global Biodiversity Information Facility (GBIF):**
  - GBIF operates a global network that provides open access to data about all types of life on Earth, ensuring that biodiversity data is available for scientific research, conservation, and sustainable development.
- **Increase funding to exemplarity initiatives such as the Atlas of Living Australia**
  - Introduce a series of grants for business overseen by the Atlas of Living Australia to allow them to feed into and contribute to the data repository of the Atlas of Living Australia.

## 07. ENVIRONMENT PROTECTION AUSTRALIA

We strongly support the implementation of an independent EPA and urge that greater consideration be given to the nature of ministerial discretion. The establishment of an Environment Protection Authority (EPA) is a significant step in enhancing environmental governance. While we endorse this we urge greater precision around definitions of sustainability harking back to the Brutland Report's original meaning which is not "balancing economic development and ecological preservation" but is rather intergenerational equity for all species.

### 07. Recommendations:

- **Independent Regulation:**
  - An EPA should operate independently of political influence to ensure that environmental regulations are enforced consistently and impartially.
  - There should be no "call in" powers by the Minister.
- **Comprehensive Jurisdiction:**
  - The EPA should have a broad mandate covering various environmental laws, including those related to biodiversity, waste management, and pollution control.
- **Enforcement Powers:**
  - It should have strong enforcement powers, including the ability to issue stop-work orders and impose significant penalties for non-compliance.
- **Public Trust:**
  - The EPA's role in streamlining regulatory decision-making should aim to restore public trust in environmental laws and their enforcement.



## o8. ENVIRONMENTAL ASSESSMENTS AND APPROVALS

The following points outline necessary measures to ensure the integrity and effectiveness of environmental assessments and approvals in Australia to strengthen the framework for environmental assessments and approvals within the context of the Nature Positive Plan and the EPBC Act. By ensuring national consistency, independence from government influence, and guaranteed funding, we can safeguard Australia's unique environment for future generations.

**National Consistency in Environmental Assessments:** Environmental assessments and approvals must remain under the purview of the Commonwealth, ensuring a uniform standard across all states and territories. This national consistency is imperative to maintain the integrity of environmental protection measures and prevent a patchwork of varying standards that could undermine Australia's biodiversity conservation efforts.

**Independence from Government Influence:** The process of environmental assessment must be independent of governmental influence to avoid any potential conflicts of interest. This independence ensures that assessments are conducted based on scientific evidence and ecological sustainability, rather than political expediency. The establishment of an independent body, such as Environment Protection Australia, could serve this role, providing impartial oversight of environmental assessments and approvals.

**Guaranteed Funding:** To carry out thorough and timely environmental assessments, it is essential to have guaranteed funding that is not subject to fluctuations by successive governments. This financial security will enable the responsible agencies to plan and execute their duties without the risk of budgetary constraints affecting their operational capabilities.



## 09. REGIONAL PLANNING OR STRATEGIC ASSESSMENTS

The Australian Institute of Landscape Architects (AILA) supports the initiative for regional planning however we are concerned about two key issues. Firstly that the distinctive urban bioregions may not be addressed in a systematic and rigorous way. The mention of Urban Areas is limited in the current documents. Secondly we are concerned about ensuring sufficient quality and content in biodiversity mapping.

Urban bioregions: The current documents do not adequately addressing the unique environmental challenges faced by urban areas. Urban ecosystems are complex, novel ecosystems, many in hotspots at the forefront of the extinction crisis.

They require tailored approaches to biodiversity conservation that are often overlooked in broader regional planning. Strategic assessments under the EPBC Act are crucial for ensuring that large-scale urban development projects consider environmental impacts. However, there is a concern that these assessments do not fully capture the cumulative effects of urbanization on biodiversity and ecosystem services. Further current monitoring of urban biodiversity is inadequate.

There is a significant lack of urban-specific environmental data, which hampers the ability to conduct thorough strategic assessments and informed decision-making for urban development projects. We note that currently there are unclear metrics for biodiversity positive development. While the nature positive legislation aims for environmental improvement following urban development, there is a lack of clarity on how this improvement is measured and what benchmarks are used for urban areas. We note the following two points in particular.

### 1. Climate Change Considerations in Urban Settings:

- The integration of climate change considerations into urban planning is essential. However, there is a need for more explicit guidance on how climate change impacts should be factored into urban development and conservation efforts.

### 2. Need for Urban Bioregional Planning:

- A bioregional planning approach is necessary to address the specific needs of urban areas. This approach should consider all urban impacts, including those from individual developments, to achieve a truly nature positive outcome.

These points highlight the need for a more focused consideration of urban areas and regions in the EPBC recommendations and nature positive policies to ensure that the unique challenges of urban ecosystems are addressed.

### Quality and content of Mapping

Under the **proposed stage 1 Mapping**, environmental values are critical to the final outcome of any assessment. If the map is incorrect the assessment will be equally flawed. We agree that the environmental values need to be prioritised into at least three tiers, high moderate or low environmental value. In this regard there needs to be a clear criteria and definition of how each level of value is measured across different areas. In addition to this tiered evaluation are protected areas such as National parks, World heritage site and so forth. We agree that mapping



must include heritage and cultural values. As noted before, values should also include high scenic value, high visual impact (eg ridge tops) and areas of outstanding natural beauty such as in use in the United Kingdom.

By way of example, in an area that was originally listed for world heritage status in Ningaloo Reef, International industrial corporation K+S wants to build a 12,00Ha salt production facility on the eastern side of Exmouth Gulf, over an undeveloped, nationally listed wetland. The wetland, while not listed as a Ramsar wetland, is of very high conservation status for Exmouth Gulf and Ningaloo Reef. As an area of High environmental value it should automatically be excluded from development as a no-go zone.

Under the **proposed stage 2 planning**, the Conservation zones should automatically include high ecological value areas as well as nationally significant areas. Where development Zones encroach into medium environmental value areas, there needs to be a clear indication to what is acceptable and not acceptable in those areas.

#### **09 Recommendations:**

Urban regions be given sufficient consideration in the Nature Positive Plan and addressed at the national level in coordination with the states. We see sufficient consideration as including the points below.

- That regional plans be prepared for all major cities and urban regions to guide their development in ways which benefit positive nature-human connection. This can support investment in green infrastructure projects which benefit biodiversity and enhance human health.
- That regional plans include the legislated category of regional park systems to actively protect, link and set in place the necessary spatial framework to conserve and enhance sensitive ecosystems and their biodiversity. That such park systems to developed through the collaboration of transdisciplinary consortium including participants that possess biodiversity, science, planning and design areas of knowledge.
- EPA CEO Discretionary powers to form, amend or revoke regional plans be given science based criteria and limits to avoid political interference that may dilute or threaten environmental outcomes.
- EPA CEO discretion powers be limited to non conservation areas following their mapping through mapping proposed in the documents titled "Consultation on National Environmental Laws 13-14 December 2023"
- Conservation zones must extend to include all high ecological value areas as well as nationally significant areas.
- Where development Zones encroach into medium environmental value areas, there needs to be a clear indication to what is acceptable and not acceptable in those areas.





- That mapping has clear criteria and definitions of how each level of value is measured so that it can be equally applied across regions.

## 10. OTHER - OFFSETS

Environmental offsets are mechanisms designed to compensate for the residual impacts of development on biodiversity and ecosystems. However, they have been criticized for several limitations, particularly in relation to achieving 'nature positive' outcomes, which aim to enhance biodiversity and contribute to the recovery of natural systems.

**Fundamental Limitations of Environmental Offsets:** Environmental offsets often lead to an overall net loss of biodiversity. The principle of 'like-for-like' or 'better-than' compensation is challenging to achieve in practice. Biodiversity is complex and site-specific, and the loss of habitat often cannot be fully compensated by creating or preserving habitat elsewhere. This leads to a gradual erosion of biodiversity, as offsets rarely deliver the equivalent ecological functions and values as the areas they aim to replace.

**Ken Henry Review's Critique:** The Ken Henry Review was particularly critical of the New South Wales (NSW) Biodiversity offset programs. It highlighted that the current approach to biodiversity offsets is insufficient and often leads to poor conservation outcomes. The review suggested that the offset schemes are "compromised" and do not adequately prevent the loss of biodiversity.

**Monetization of Nature:** The option for proponents to simply pay their way out of offsetting is problematic. It suggests that nature's value can be reduced to a monetary figure, which is not feasible. Nature provides a multitude of services and intrinsic values that are not easily quantifiable. The commodification of natural resources fails to recognize the complexity and interconnectedness of ecosystems and the irreplaceable nature of certain habitats and species.

**Towards a Nature Positive Approach:** A nature positive approach requires a shift in how we view and manage environmental offsets. It calls for a system that not only avoids net loss but also contributes to the net gain of biodiversity. This involves stringent avoidance and minimization measures before considering offsets, improving the quality and management of offset sites, and ensuring that offsets contribute to broader conservation goals.

Whilst environmental offsets have played a role in mitigating the impacts of development, they cannot be seen as a panacea for biodiversity loss and should be avoided. A more holistic and rigorous approach is needed to ensure that development is truly nature positive, contributing to the restoration and enhancement of natural systems rather than their decline.



## 10 Recommendations:

- Develop a hierarchy of approaches that places environmental land offsets as a last resort requiring director approval and a review demonstrating that all other avenues have been exhausted. Avoidance should be the very first priority.
- Implement recommendations of the Ken Henry review at a National Level. These include
  - Legal Reforms: The review called for significant changes to the legal framework to prioritize the environment over land-clearing and development.
  - 'No-Go' Zones: It recommended the creation of areas where land-clearing would be strictly prohibited to protect critical habitats and biodiversity.
- If Offsets are to be used consider Target-Based Ecological Compensation: This approach explicitly links compensatory requirements to biodiversity targets. Instead of aiming for "no net loss," it focuses on achieving specific conservation goals. For example: If a country commits to doubling the area of habitat for a threatened species, a project causing a loss of 100 hectares of that species' habitat would need to restore or recreate 200 hectares of the same species' habitat. This ensures a net gain in habitat availability. Target-based ecological compensation provides greater certainty and clarity while aligning development impacts with broader conservation objectives.
- Consider Avoidance Offsets: Avoidance Offsets: Instead of compensating for impacts, consider avoiding them altogether and the proponent can then use that avoided area for biodiversity stewardship credits.



## 10. OTHER – ABORIGINAL AND TORRES STRAIT ISLANDER RIGHTS

Adding to the recommendations for Australia's nature positive review to the Environment Protection and Biodiversity Conservation (EPBC) Act, it is crucial to invest in knowledge foundations and centers that support traditional ecological knowledge (TEK). This would involve the following for instance:

### 1. **Establishing TEK Centers of Excellence:**

- Create dedicated centers for the study and promotion of TEK, providing a platform for Indigenous knowledge holders to share and collaborate on environmental management practices<sup>1</sup>.
- These centers would serve as hubs for research, education, and policy development, ensuring that TEK is integrated into broader environmental strategies.

### 2. **Investment in Education:**

- Increase funding for educational programs focused on environmental management and research within Aboriginal and Torres Strait Islander communities<sup>2</sup>.
- Develop curricula that incorporate TEK alongside scientific knowledge, fostering a generation of environmental professionals grounded in both worlds.

### 3. **Capacity Building:**

- Provide training and resources to Aboriginal and Torres Strait Islander peoples to enhance their skills in environmental management and conservation<sup>3</sup>.
- Support initiatives that empower Indigenous communities to lead and participate in environmental projects, ensuring their expertise is recognized and utilized.

These investments would not only honour and preserve the rich environmental knowledge of Australia's First Peoples but also contribute to the country's capacity to manage and protect its unique biodiversity effectively. Further In the context of Australia's nature positive review to the Environment Protection and Biodiversity Conservation (EPBC) Act, several rights and practices can be implemented to ensure the involvement and consent of Aboriginal and Torres Strait Islander peoples. We note these in the box below.



## **10 Recommendations:**

### **Mapping of Country:**

- The process involves detailed mapping of lands and waters traditionally owned or managed by Indigenous communities. This mapping can be used to identify areas of ecological significance and cultural importance. It serves as a critical tool for co-management and decision-making regarding biodiversity conservation on Indigenous lands.

### **Co-Management of Biodiversity:**

- Co-management agreements can be established, allowing Indigenous communities to have a direct role in managing and protecting biodiversity on their Country. Agreements should be based on traditional knowledge and practices, aligning modern conservation efforts with Indigenous ecological understanding.

### **Free, Prior, and Informed Consent (FPIC):**

- FPIC is a principle that ensures Aboriginal and Torres Strait Islander peoples have the right to give or withhold consent to projects that may affect their lands, territories, and resources. Implementing FPIC requires that Indigenous peoples are informed about projects in a timely manner, consulted through their representative institutions, and consent is given voluntarily without any coercion.

### **Clear Recognition of Country:**

- All submissions to the EPBC Act should clearly recognize the traditional ownership and connection of Aboriginal and Torres Strait Islander peoples to their Country. This recognition respects the sovereignty and ongoing relationship between Indigenous peoples and their ancestral lands.
- These practices underscore the importance of integrating Indigenous rights and knowledge into environmental legislation and management, ensuring that the conservation of biodiversity is inclusive and respects the rights of Australia's First Peoples.



## Summary

The Australian Institute of Landscape Architects would be pleased to make a representation to the committee if required. Thank you again for the opportunity to submit and if you have any questions or queries about our submission, feel free to call me to discuss.

Yours Faithfully

**Ben Stockwin**

Chief Executive officer  
Australian Institute of Landscape Architects

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