

Non-state partner engagement: benefits beyond carbon. Private sector involvement in biodiversity, cultural and carbon projects – Emily Gerrard¹

Abstract: The role of private interests in Indigenous peoples' territories can present a risk and an opportunity. The private sector has an integral role in achieving domestic and international emissions reduction targets to mitigate climate change. However, this role is not, and should not be considered to be, purely commercial. Socially responsible investment has a major function, but so does general business practice and innovation. In-kind support and expertise already yields significant social, cultural and environmental benefits in various places, including in parts of Australia. Carbon-related opportunities depend upon and should respect a local community's priorities and aspirations; in doing so they present a pathway to sustainable development and social enterprise. This brief presentation will highlight examples of corporate involvement and partnerships in fire management projects in Australia to demonstrate how relationships with the private sector can go 'beyond carbon' and achieve benefits for multiple stakeholders, as well as the broader community. The examples discussed emphasise how respect and recognition of Indigenous peoples' rights, customary land tenure and traditional knowledge have contributed to sustainable use and management of ecosystems in Northern Australia. They also underline the importance of governance arrangements and note some of the challenges to be overcome in delivering cultural, environmental, social and economic benefits.

Introduction

Some introductory comments:

- This paper briefly highlights some of the opportunities and challenges associated with Indigenous peoples' participation in carbon market initiatives in Australia and engagement with the private sector. Due to the limited scope of the associated presentation, this paper provides comments from the perspective of a private sector participant, which do not exhaustively canvass all related issues. While some comments and observations are unique to Australia, others may have application globally. These examples highlight the role that the private sector can play in developing sustainable projects and supporting Indigenous peoples' livelihoods, including in the absence of national government frameworks.

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- In exploring potential climate change mitigation and adaptation opportunities for Indigenous peoples, it is acknowledged and respected that participating in the carbon economy may not be considered appropriate by all Indigenous peoples. This accords with fundamental principles under human rights instruments and the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which must be respected; that communities should determine their own development needs and aspirations in accordance with their cultural priorities and responsibilities.²
- UNDRIP recognises that respect for Indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment. As such, participating in carbon market opportunities need not, and should not, require Indigenous peoples' integration into the dominant mainstream. Such an assimilation requirement would be unreasonable and potentially damaging. Instead, opportunities should be founded on mutual respect, understanding and open mindedness. These relationship pillars are central to fostering shared-values and sustainable partnerships, which can underpin successful social enterprise.
- Climate change-related opportunities need to occupy a space beyond the preservation of rights and interests of Indigenous communities. Private sector partnerships need to go beyond what can be described as an 'engagement baseline' (typically, a legal requirement for consent or consultation with Indigenous peoples in order to proceed with an activity in traditional territories).

Context and overview of Indigenous peoples participation in land management

Indigenous peoples' involvement in the management and conservation of natural resources and biodiversity is well established in Australia.³ These activities pre-date legal recognition of 'native title' in Australia and draw on the specialised ecological knowledge and experience of local Indigenous communities who, for thousands of years, have used and harvested country in a sustainable manner.

Since a High Court of Australia decision in 1992⁴ and the subsequent introduction of native title law in Australia⁵, Indigenous peoples' traditional rights and interests in relation to areas of Australia are capable of recognition a national Australian law.⁶ However the recognition and protection of rights and interests of Indigenous peoples in Australia are frequently not as robust as non-Indigenous property interests. Legal recognition of Indigenous peoples' rights more often than not does not confer property rights. These differences in land

² the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966.

³ Indigenous Land Councils, corporations and organisations and Federal, State, Territory and local government departments and agencies have been involved in joint or cooperative management arrangements for a number of years (for example, the handback and joint management of Uluru in 1985 and long established Northern Land Council, and Kimberley Land Council 'caring for country' or 'land and sea management' activities – among other programs).

⁴ *Mabo v Queensland (No. 2)* (1992) 175 CLR 1

⁵ *Native Title Act 1993* (Commonwealth)

⁶ Specific land rights law existed in relation to parts of Australia before the 1992 High Court decision (eg: *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)). However, native title law has national application.

ownership and recognition are an ongoing source of dispute in Australia. Further, they had the potential to exclude Indigenous peoples' from carbon market opportunities in Australia.⁷

To ensure that Australia's carbon market framework did not limit or remove opportunities for Indigenous peoples, by virtue of land tenure interests, Indigenous leaders lobbied the Australian government and engaged with the private sector to demonstrate well-supported, innovative and sustainable opportunities. One of the central relationships in this policy and law reform dialogue, the National Indigenous Climate Change Project (**NICCP**), is discussed below.

Subsequently, the Australian Carbon Farming Initiative⁸ was drafted in a way that expressly recognises Indigenous peoples' land rights and interests as a basis for generating carbon credits.⁹ This significant step in Australia's climate change mitigation response avoided the inadvertent extinguishment or suspension of Indigenous peoples' rights in relation to use of land and resources as a result of others undertaking carbon projects in their territories.

Creating pathways with the private sector

In April 2008 the Australian Prime Minister convened a '2020 Summit' with representatives from business, academia, the arts, government, Indigenous communities and civil society. Based on discussion at this Summit and networks formed with corporate Australia, Indigenous leaders took forward an idea and an opportunity to proactively explore and implement opportunities from national responses to climate change.

Informal discussion that followed recognised:

- that Australia's responses to climate change (by both the private and public sectors) would involve significant changes, which may lead to new livelihood opportunities for Indigenous communities; and
- that there are significant investment risks in seeking to capitalise on these opportunities, as well as risks that national policy frameworks may constrain or undermine the benefits that might flow to Indigenous communities.

A post-Summit meeting brought together Indigenous leaders and representatives from the private sector who attended the Summit. On the strength of informal discussions and the

⁷ While there are a number of laws in Australia that recognise Indigenous peoples' rights and interests in land and cultural sites, it is beyond the scope of this paper and presentation to detail each of these. Generally, Australian laws operate to mean that traditional lands are sometimes held in trust for, or not 'owned' by, Indigenous peoples. Indigenous peoples' lands often consist of conservation land; areas subject to reservations, declarations or covenants, which require conservation and environmental management activities. Demonstrating 'ownership' of carbon credits generated from activities and/or that reforestation or land management activities satisfy necessary 'additionality' requirements (are in addition to what would otherwise occur – a common requirement for carbon markets) can be very difficult for Indigenous landowners and managers without express recognition of unique relationships with territories under the relevant 'secondary' legislation that recognises ownership of carbon credits (as separate from ownership of trees, vegetation or land).

⁸ The Australian Carbon Farming Initiative is a legislated offsets scheme (*Carbon Credits (Carbon Farming Initiative) 2011* (Commonwealth)).

⁹ See Part 3 of the *Carbon Credits (Carbon Farming Initiative) 2011*, which expressly provides for Indigenous groups who hold exclusive native title interests, land rights land interests and non-exclusive native title interests to participate in the CFI carbon scheme. This approach provides certainty and avoids the need for Indigenous peoples' to go through lengthy and potentially expensive 'proof' exercises in order to demonstrate that they hold the requisite carbon right to participate in carbon markets.

post-Summit meeting, the National Indigenous Climate Change Project (**NICCP**) was established.

The NICCP is a collaborative forum, driven by Indigenous leaders, to facilitate dialogue with representatives of corporate Australia and other experts about risks and opportunities associated with climate change and carbon markets.

Following the first meeting of the NICCP, participants developed an ‘opportunities framework’ to assist Indigenous communities in Australia to:

- Identify opportunities associated with the impacts of climate change;
- Identify opportunities associated with government, business and community responses to climate change;
- Identify how the Indigenous community can best respond to these opportunities;
- Identify key regulatory issues or limitations in relation to adaptation responses and economic development opportunities; and
- Propose policy responses to these issues or limitations.

The NICCP has also worked with the Australian Government on researching principles that could underpin any standard against which carbon credit ‘co-benefits’ are assessed.

The NICCP (along with other organizations and alliances representing Indigenous perspectives) has worked to identify mutual opportunities with representatives of corporate Australia and to have issues such as land tenure, cultural and moral rights addressed by Government in the formulation of a carbon market mechanism. This included round-table meetings with members of the Australian Parliament to develop aspects of carbon market legislation.

In this way, Indigenous leaders mobilised representatives from the private sector to engage with ideas and different approaches, which helped shape carbon market pathways and opportunities for Indigenous communities in Australia.

While representative Indigenous land councils and regional alliances also lobbied the Australian Government, as a centralised group the NICCP had the benefit of constructively testing ideas and exchanging knowledge with the private sector. This unique forum became a key network to discuss climate change law reform and pathways to support Indigenous peoples’ participation in Australia’s carbon market.

Common principles which underpin participation in the NICCP include that:

- Indigenous peoples possess many tangible and intangible assets that should be respected and can be supported through culturally appropriate partnerships and investment;
- as significant landholders (Indigenous-owned or managed land makes up over 30% of the Australian land mass)¹⁰ and residents in key geographic areas, Indigenous

¹⁰ Jon Altman and Francis Markham, ANU. Presentation at the Australian Institute for Aboriginal and Torres Strait Islander Studies Native Title Conference 2013

peoples are well placed to provide major contributions to Australia's climate change mitigation response; and

- Indigenous peoples have a 'special interest' in climate change issues, not only because their physical and spiritual relationships with territories and ecosystems, make them particularly vulnerable to climate change; but also because they have a specialised ecological and traditional knowledge relevant to finding 'best fit' solutions for the broader community.

The NICCP continues to provide an ad-hoc interdisciplinary forum to examine and explore evolving carbon markets and national policy issues. Local and regional representative Indigenous organisations now provide technical support and advice to Indigenous communities seeking to explore carbon market opportunities.

Realising opportunities – Indigenous carbon projects in Australia

Fire management activities, which integrate traditional knowledge and practices, have formed the basis of a number of carbon projects across northern Australia. These projects have been registered under the Australian scheme.¹¹ Fire is an integral part of the Australian landscape, as it is for other landscapes around the world. However, natural burns occur and can grow out of control, causing damage to property, public infrastructure and cultural places, and releasing large volumes of greenhouse gases.

Activities carried out by Indigenous peoples include strategic mosaic burns which are lit at particular times in the early dry season. These 'good fires' are more controlled, less ferocious and maintain habitat corridors for native fauna species. In the absence of 'good fires', landscapes are subject to larger, more destructive and out of control wildfires, with much greater greenhouse gas emissions.

Other co-panellists will be speaking about traditional fire management and these projects in detail. For the purposes of this discussion, the following are noted:

- A number of carbon projects have been registered by Indigenous organisations and generate tradable credits for sale in the Australian carbon market;
- One project, the North Kimberley Fire Abatement Project (**NKFAP**), involves four 'subgroups' and has been registered (and generates credits) based on recognised 'native title' rights (legally recognised traditional rights) of each of the four groups, without underlying land ownership (in an Australian property law context);
- NKFAP is an example of the resilience and the ongoing exercise of cultural responsibility and traditional practices that pre-date colonisation of Australia. These practices have an incidental commercial benefit for the groups involved (through the sale of carbon credits).
- As at November 2015, the NKFAP has generated greenhouse gas emissions reductions of over 295,000 tCO₂-e and significant revenue from the sale of carbon credits to the private sector.

¹¹ The carbon project scheme established under the *Carbon Credits (Carbon Farming Initiative) 2011* (Commonwealth)

- Recently, the NKFAP groups decided to work with a corporate partner who is assisting them to develop the market and sell carbon credits from the project.
- While areas of Australia (like areas elsewhere in the world) face climate uncertainty, the NKFAP has also faced, and overcome, political uncertainty from sub-national government. NKFAP's ability to promote engagement and partnerships with the private sector has helped manage this political uncertainty.
- The fire management 'methodology' used by the NKFAP is an example of some of the world's oldest cultures applying their traditional expertise and contributing to 'fire technology' that now assists broader Australian communities.

The NKFAP, along with a number of other savanna fire management carbon projects carried out by Indigenous peoples in the Northern Territory and Queensland, deliver benefits beyond carbon credits (and associated revenue). These projects facilitate: employment; health and environmental benefits; ongoing transmission of cultural knowledge between generations; access and enjoyment of parts of traditional territories that are difficult to reach easily (for instance, with helicopters); as well as the building and growing of important relationships with the public and private sector. Frequently, these projects also help to manage and maintain public infrastructure and biodiversity of national and international significance.

With respect to these examples, the use of traditional rights and interests could be described as new investment in ancient technology, which supports a right to development in accordance with the local Indigenous community's needs, interests and aspirations. The private sector understands that these climate change adaptation and mitigation strategies present an opportunity to bring traditional practices, economic markets and the environment together in a sustainable way.

The drivers for companies purchasing credits have been both compliance-based and voluntary. For a period of time in Australia, there was a price on carbon and large-scale greenhouse gas emitters needed to either comply with caps on their emissions or purchase eligible carbon credits. This carbon pricing mechanism facilitated the purchase of high value credits to meet compliance requirements. In parallel, companies and businesses continued to purchase lower value credits at their discretion to voluntarily offset greenhouse gas emissions associated with their business or brand. While carbon emissions law and policy in Australia has been in flux over recent years, the voluntary market continues and a compliance market is due to commence next year.¹²

Challenges and risks

Relationships with the private sector are important for project viability, with the sale and purchase of carbon credits providing a source of income and project finance. While schemes backed by public monies can support carbon projects or land conservation activities, these processes can involve significant administration and bureaucracy. In contrast, the private sector seeks out innovative and dynamic opportunities.

¹² Known as the 'Emissions Reduction Fund' safeguard mechanism.

Support from the private sector can be financial in nature, but it can also take other forms. A number of companies in Australia participate in secondment programs through which company personnel work in an Indigenous organisation for a period of time. Other firms may provide 'no cost' or pro-bono services to help Indigenous communities obtain all the information and expert advice they need in order to assess and agree on opportunities or partnerships. As seen with the NICCP, sometimes private sector involvement can simply be to support or help refine initiatives identified by Indigenous peoples.

However, there are challenges on both sides. For many Indigenous communities accessing the private sector is difficult. Language and literacy barriers, cultural and cosmological differences, technology, distance and timing all present significant hurdles. In many instances the private sector shares these challenges, but from a different perspective.

Other practical challenges include:

- Legal frameworks for carbon credits not adequately accommodate Indigenous peoples' interests. Recognition of Indigenous interests in relation to landscapes does not always confer 'ownership' of property (including, trees and carbon stored in trees or ownership of the right to benefit from carbon reduction). Depending on how Indigenous peoples' rights and interests in relation to their territories is recognised under sovereign law (if at all), land tenure arrangements can present a significant challenge in participating in, or protecting against, carbon projects.
- Complex and unfamiliar group membership and representative systems;
- Mainstream 'one size fits all' project requirements – requiring satisfaction of inflexible certification or registration requirements, as well as prescriptive monitoring and reporting obligations; and
- Financial and administrative burdens – 'up front' finance needed for consultants, advisors and auditors and the time and resources needed for administration and implementation of projects.

Despite these challenges, there are significant opportunities for mutual gain. The NKFAP demonstrates this. Whatever the motivation for engagement (ie: corporate social responsibility, sustainability initiatives, the need for local community support, regulatory compliance, or a proposal instigated by a community), Indigenous peoples and the private sector each bring their own cultural fingerprint to relationships or transactions. Finding the right balance between respect for each other's unique values (which can be quite foreign) and creating the necessary environment for exchanges, partnerships or transactions is delicate but essential if engagement is going to be mutually beneficial.

Another important aspect of relationships between NKFAP and private sector partners is governance. The groups involved in the NKFAP are not without internal politics, but both the groups and the overarching project have clear governance arrangements. Group governance arrangements can be understood by private sector participants. In addition, the NKFAP is governed by a defined carbon framework, which is backed by national law and overseen by a statutory regulator. Both these aspects of governance help provide certainty and therefore attract commercial interest, yet each is different.

Added to this, is a layer of Indigenous corporation regulation, required under Australian law. Many communities establish corporations or businesses yet are not familiar with the procedures and practices associated with 'good corporate governance'. Engagement with the private sector can enable knowledge transfer and development or mentoring in different skill areas (office administration, risk assessment, commercial decision making, planning etc.) in a way that is relevant and tailored to community needs and priorities.

Striking the right balance between community and project governance arrangements and preserving unique cultural values, is also a challenge that will vary from group to group and place to place.

Conclusion

Achieving the common goal of transitioning to a low carbon future will require ongoing negotiation and engagement between government, research institutions, civil society, Indigenous peoples and the private sector. Maximising space for Indigenous participation in sustainable economic development opportunities associated with climate change mitigation and adaptation relies on the recognition of fundamental rights and interests of Indigenous peoples. This includes the right to participate in development opportunities in accordance with Indigenous peoples' needs, interests and aspirations.

The inadequacy or absence of legal or policy pathways is not necessarily fatal to Indigenous peoples' sustainable development aspirations. Finding ways to engage with the private sector and identify synergies can help demonstrate valuable and respectful pathways to governments. In turn, this can help form the legal or policy settings needed to grow and sustain development. As demonstrated by the NICCP, productive dialogue between Indigenous leaders and private sector participants attracted government policymakers and lawmakers along with members of parliament.

An international agreement in Paris this year may create new and different opportunities and risks for Indigenous peoples. As traditional custodians, holders or managers of large territories, Indigenous peoples have the potential to significantly contribute to climate change mitigation and adaptation responses. In combination with socially responsible investment initiatives, green finance and complementary adaptation measures, engagement between Indigenous peoples and the private sector has the potential to harness innovative partnerships that deliver multiple benefits beyond carbon reduction.