ICIN Indigenous Carbon Industry Network

Indigenous Carbon Projects Guide

September 2022

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Forward

Indigenous organisations from across Australia launched the Indigenous Carbon Industry Network (ICIN) this year as Australia's first independent not-for-profit company owned by Indigenous producers of carbon credits. It is a significant milestone demonstrating the growth and leadership of Indigenous people in the carbon industry, and in supporting more Indigenous groups to benefit from opportunities emerging in carbon markets and carbon methods.

"The network aims to provide a voice for the Indigenous carbon industry and to enable more groups to gain a seat at the table of important industry and policy discussions."

The network aims to provide a voice for the Indigenous carbon industry and to enable more groups to gain a seat at the table of important industry and policy discussions. Dozens of Indigenous organisations with carbon projects across Australia have been working together over many years to form this network. Our next step was to become a fully independent entity and this year we celebrated this achievement during the national forum.

The Indigenous Carbon Industry Network is owned by its full members, being Indigenous groups that directly produce carbon credits across Australia, making it Australia's first peak industry body for the Indigenous carbon industry. It is overseen by a Board of seven Aboriginal people appointed by members, including ourselves. Indigenous groups with an interest in carbon are encouraged to join the network as Associate Members to keep informed about the industry.

"Indigenous-owned carbon projects across Australia are making a huge difference to our lives through creating jobs and supporting opportunities for Indigenous people to care for country."

Indigenous-owned carbon projects across Australia are making a huge difference to our lives through creating jobs and supporting opportunities for Indigenous people to care for country. The network wants to give Indigenous groups interested in becoming involved in the carbon industry the chance to meet with those already working in this space - so we can all share stories, information, and experiences.

Our recent scoping work shows that there are currently around 35 Indigenous-owned savanna fire management projects, as well as several Indigenous-owned Human-Induced Regeneration vegetation carbon projects registered in Australia through the Federal Government's Clean Energy Regulator. The projects are predominantly located across north Australia, and collectively abate or store around 1.2 million tonnes of greenhouse gases each year.

This is an important achievement, but there's room for growth to enable more First Nations people to benefit from these opportunities. It's time for First Nations people to come together, to understand more about opportunities in the carbon industry, particularly around their rights and interests.

We are grateful to our members, funders, and supporters for making this network a reality. We hope this guide goes some way toward supporting a better understanding of opportunities and risks for Indigenous organisations brought by the rapidly growing carbon market in Australia.

If you are an Indigenous organisation with an interest in the carbon industry, you are welcome to join the network. Please contact the ICIN Ltd CEO at ceo@icin.org.au for further information.

Best wishes,

Cissy Gore-Birch
Co-Chair ICIN

Dean Yibarbuk
Co-Chair ICIN

The Indigenous Carbon Industry Network: Our Story

The Indigenous Carbon Industry Network (ICIN) is a network of Indigenous-owned organisations that operate across north Australia to develop and deliver carbon projects, mainly through savanna fire management.

Any Indigenous organisation seeking to join the ICIN should contact us for further information and forms.

Our members are currently producing around 1.2 million carbon credits each year through 35 Indigenous-owned savanna fire management projects and several Indigenous-owned vegetation projects. Collectively, Indigenous organisations delivering these carbon projects have established an industry employing hundreds of Indigenous people in some of Australia's most remote places. The Indigenous carbon industry is generating around $59 million worth of Australian Carbon Credit Units (ACCUs) annually across northern Australia through the Emissions Reduction Fund (ERF), compliance and voluntary markets.

The network is united by our Mission, Core Values, Purpose and Objectives.

Full members

Indigenous organisations that either own carbon projects or directly deliver carbon credits.

Associate members

Indigenous organisations that have an interest in the carbon industry.

ALFA NT Pre-Season Fire Meeting

MISSION

Our Mission is to promote and facilitate an active, innovative and Indigenous-led carbon industry supporting healthy country and better livelihoods for Indigenous people.

VALUES

We are:

Accessible and Member-driven: We work together to support each other and strive to enable decision-making that reflects the aspirations of members.

Indigenous-led and Empowering: We support more Indigenous voices to be heard and seek to maximise benefits brought by the carbon industry to Indigenous communities.

Respectful: We acknowledge that we all come from different places, yet we seek common ground where we find it. We respect local cultural protocols and are mindful that our industry is grounded in thousands of years of traditional knowledge and practice.

Transparent and Accountable: We are a trusted independent voice for the Indigenous carbon industry.

PURPOSE

Our purpose is to enable and empower Indigenous carbon producers and Traditional Owners of carbon projects to benefit from carbon markets through their land and sea management practices by supporting an active network of Indigenous carbon businesses and supporting agencies.

OBJECTIVES

The company aims to achieve its purpose by:

1. **Enabling and empowering Indigenous people to benefit from Australian carbon markets;**
2. **Working towards an Indigenous-led carbon industry supporting the advancements and aspirations of Indigenous people across Australia through:**

- Promoting Indigenous leadership and empowering Indigenous voices to be represented and Indigenous knowledges, practices and perspectives are represented in the Australian carbon industry;
- Advocating for an Australian carbon industry that is accessible to Indigenous people, protects and strengthens Indigenous rights, delivers benefits to Indigenous communities and supports healthy country outcomes;
- Ensuring the interests of the Indigenous carbon industry are represented in public decision-making processes;
- Promoting best practice standards for Indigenous engagement in the Australian carbon industry, enabling fair business agreements and Indigenous empowerment;
- Building, promoting and strengthening the reputation of Indigenous carbon credits in Australia and internationally;

3. **Supporting an active network of Indigenous carbon businesses, organisations and groups engaged in the Australian carbon industry through:**

- Building the capacity of Indigenous people to engage in the Australian carbon industry;
- Supporting the growth of Indigenous Producers and Indigenous Proponents benefiting from the Australian carbon industry;
- Disseminating information, research, policy and market updates and news about and for the Indigenous carbon industry.

OUR RULEBOOK

The ICIN Ltd Constitution sets the rules for ICIN Ltd, a registered not-for-profit company limited by guarantee, owned by its full members, and overseen by a seven-person, 100% Aboriginal Board of Directors. The Constitution is the result of three years of consultation with members, including direct input from over 20 Indigenous organisations across north Australia.

OUR BOARD

ICIN Ltd was registered with ASIC in 2021 as an independent, Indigenous-led not-for-profit company. The company is owned by its Full Members, who are all Indigenous organisations that own or directly produce carbon credits. Our Board of Directors is appointed from member organisations.

Our Directors (as at 2 August 2022)

- Cissy Gore-Birch
- Dean Yibarbuk
- Tyronne Garstone
- Catherine Goonack
- Mr W Rioli
- Neville Gulay Gulay
- Abraham Wesan

OUR STAFF

The network is supported by our team, including:

- Anna Boustead, CEO
- Brian Hylands, Business Development Manager
- Toni Hay, Project Coordinator for Method Development
- Kaye Hall, Communications Manager

ICIN Members at the Savanna Fire Forum 2019 (Photo: Veronica Toral-Granda)

OUR MEMBERS

FULL MEMBERS

Adjumarllarl Rangers West Arnhemland

ALFA Arnhem Land Fire Abatement

APN Cape York

ASRAC

Balanggarra Aboriginal Corporation

Bawinanga Aboriginal Corporation Maningrida

Central Land Council

Demed Aboriginal Corporation

Waanyi Garawa Caring for Country Rangers

Jawoyn Association Aboriginal Corporation

Kimberley Land Council

Kowanyama Aboriginal Shire Council Place of many waters

Yirralka Rangers Laynhapuy IPA

Malak Malak Land Management

Mimal Land Management

NAILSMA North Australian Indigenous Land and Sea Management Alliance

Northern Land Council Our Land, Our Sea, Our Life

Numbulwar Numburindi Rangers

Nyaliga Aboriginal Corporation

Oikola Aboriginal Land Managers Alwal

Thamarrurr Development Corporation

Timber Creek Rangers

Tiwi Resources

Wagiman - Guwardagun Rangers

Wardaman Indigenous Protected Area Land of the Lightning Brothers

Warddeken Land Management

Wilinggin Aboriginal Corporation

Mudicupilldiyerr Outstation Rangers

Yachatdac

Yugul Mangi Rangers Caring for country Land & Sea Management

ASSOCIATE MEMBERS

Australian Government Indigenous Land and Sea Corporation

The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

Indigenous Desert Alliance Keeping desert country healthy and its people strong

Kulilli Bulloo River Aboriginal Corporation

ACKNOWLEDGEMENTS

ICIN acknowledge the Traditional Owners of the lands and seas we work on right across Australia. We acknowledge that Indigenous people have never ceded sovereignty of their land or seas.

Thank you to contributors Polly Grace, Anna Boustead and to the Clean Energy Regulator and ICIN member organisations for reviewing this guide.

ICIN is grateful for the support of the Australian Government Department of Industry, Science, Energy and Resources as well as the Northern Territory Government, Queensland Government, Indigenous Land and Sea Corporation and The Nature Conservancy which provide funding to support the network and deliver this guide. The network is also grateful to the Warddeken Land Management Ltd for its in-kind support through hosting ICIN from 2018-2022.

Gayini, Nari Nari Country (Photo Annette Ruzicka)

1.

WHAT IS CLIMATE CHANGE?

1. WHAT IS CLIMATE CHANGE?

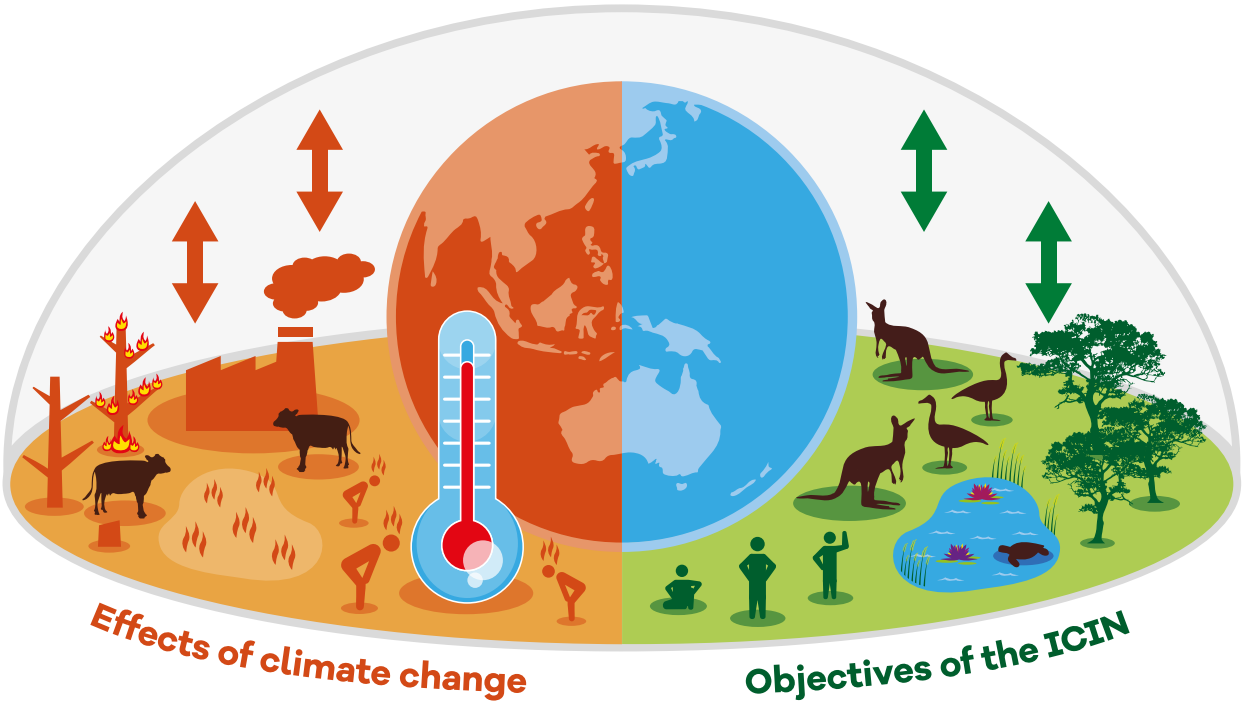
Climate change is about how humans are causing changes to the Earth's climate and making things warmer, which is having a big impact on the health of people and country. The climate of a place can change naturally but this takes a very long time – over thousands of years. Climate change on the other hand is very fast.

"Climate change is caused by too many polluting greenhouse gases going into the air, including carbon dioxide, nitrous oxide, and methane. These gases form a blanket around the earth, trapping in the heat."

Climate change is caused by too many polluting greenhouse gases going into the air, including carbon dioxide, nitrous oxide, and methane. These gases form a blanket around the earth, trapping in the heat. As more pollution goes into the air, this blanket is getting thicker, and the earth is getting warmer, which is why climate change is sometimes referred to as 'global warming'.

Since the industrial revolution (1870s), people in western countries have been burning fossil fuels, such as coal, oil, and gas, to create electricity for manufacture, transport, and domestic supply. Before long, people all over the world were using fossil fuels and clearing trees and other plants across very large areas of land to make way for agriculture and urban development. Over the past 100 years, with more greenhouse gas pollution and less trees absorbing carbon from the atmosphere, global temperatures have risen on average 1.2°C.

Climate Change Model



WHAT IS CLIMATE CHANGE?

The effects of climate change are different in different locations. Some of the things we are starting to see from climate change include:

- The climate in southern Australia is getting drier;
- In northern Australia, temperatures are getting hotter, and the wet seasons seem shorter or less predictable;
- Rising sea levels, because of the melting of polar ice;
- Increase in ocean temperatures, which is bad for marine life, like coral and is also causing changes in rainfall and seasons; and
- Increasing extreme weather events, like big fire seasons, droughts or floods.

In Australia and internationally, people are trying to slow down changes to the world's climate. The best way to do this is by reducing polluting greenhouse gases going into the air and looking after natural ecosystems, like forests, mangroves, savannas, and sea grass meadows which help to absorb and store carbon dioxide from the air.

Watch videos:

Indigenous Desert Alliance Climate Change Story

NAILSMA Climate Change in North Australia

Laynhapuy Rangers in 2013 (Photo: ILSC)

2.

WHAT IS A CARBON MARKET?

2. WHAT IS A CARBON MARKET?

Carbon markets encourage the reduction of polluting greenhouse gas emissions by putting a financial value on activities that reduce this pollution. They allow people to earn 'carbon credits' from doing activities that reduce pollution and create a market where those carbon credits can be bought and sold. A key principle for carbon credits is additionality – which is assurance that the same activity would not have occurred in the absence of the carbon project scheme.

In Australia, there are two main carbon markets: the Emission Reduction Fund (ERF) and the Voluntary Carbon Market.

Each carbon market has rules about:

- The type of activities you can do to reduce greenhouse gas emissions;
- The type of carbon credit you can earn;
- How many carbon credits you can earn for the type and amount of activity you do; and
- How carbon credits can be traded and with whom.

CARBON CREDITS

A carbon credit is a unit of trade that represents a quantity of avoided pollution. Generally, one carbon credit is equal to one tonne of carbon dioxide equivalent (tCO_2e) emissions which has not gone into the atmosphere or has been taken out of the atmosphere and stored in plants or soil.

In Australia, carbon credits issued by the government's Emissions Reduction Fund Scheme are called Australian Carbon Credit Units (ACCUs).

Other types of carbon credits can also be created in Australia through other global non-government schemes such as Gold Standard or Verra. However this report focuses on Indigenous carbon credits created through the Australian Government's Emissions Reduction Fund and traded as ACCUs.

"Generally, one carbon credit is equal to one tonne of carbon dioxide equivalent (tCO2e) emissions which has not gone into the atmosphere or has been taken out of the atmosphere and stored in plants or soil."

For example, a landowner helps trees to regrow on their land by stopping cattle from grazing in certain areas. Healthy trees help to remove greenhouse gases from the air, so the landowner can get carbon credits for doing this activity. The landowner sells those carbon credits to the Australian Government.

For example, an airline may wish to reduce their pollution but can't without also reducing the amount they fly, which would have a negative impact on their business. They decide to buy carbon credits from a landowner who has reduced pollution from big wildfires on their country.

WHAT IS A CARBON MARKET?

EMISSION REDUCTION FUND (ERF)

The ERF is part of the Australian Government' response to climate change. The Emissions Reduction Fund (ERF) provides a set of rules for developing and operating carbon projects and earning and selling Australian Carbon Credit Units (ACCUs).

Under the ERF, the Australian Government can buy ACCUs from carbon projects, through a reverse auction. The ERF reverse auction is like a tender process, with participants submitting their best price to the Clean Energy Regulator (CER), which then purchases ACCUs based on favouring the lowest price. The successful bidder is then awarded a Carbon Abatement Contract. Since 2021, the CER has offered Optional Delivery contracts which provide the right but not the obligation to sell carbon abatement to the Commonwealth at an agreed price, within a set time.

Over time a 'secondary ERF market' has also evolved for the purchase of ACCUs. This includes companies that run their own carbon projects and have a Carbon Abatement Contract, but need to purchase additional ACCUs to meet their obligations.

In addition to this, the ERF also operates a program called the 'Safeguard Mechanism'. The Safeguard Mechanism is a part of the ERF that regulates big polluters. Under the Safeguard Mechanism, companies with large greenhouse gas emissions (over 100,000 tCO_2 emissions per year) must keep their emissions at or below an identified baseline level. If a company is unable to reduce their greenhouse gas emissions below the Safeguard Mechanism baseline, they can offset this using ACCUs.

"The Emissions Reduction Fund (ERF) provides a set of rules for developing and operating carbon projects and earning and selling Australian Carbon Credit Units (ACCUs)."

Read more:

ICIN Guide 3. Emissions Reduction Fund (ERF) overview

Tiwi Resources Savanna Fire Management meeting, Mr Rioli presenting

WHAT IS A CARBON MARKET?

VOLUNTARY CARBON MARKET

The Australian Government is only one potential buyer of ACCUs. Many other buyers are interested in trading (buying and selling) ACCUs outside of the ERF. This is generally referred to as the Voluntary Carbon Market.

Buyers of carbon credits in the Voluntary Carbon Market are very varied. They include State or local government, big or small companies and organisations, and even individuals.

Generally, buyers in the Voluntary Carbon Market are interested in more than the carbon credits. When deciding how much to pay, buyers may take into consideration other benefits, such as whether a carbon project is Indigenous owned, or if it results in any other environmental benefits. Often, buyers in the Voluntary Carbon Market may be willing to pay a higher price for carbon credits that generate additional co-benefits.

One example of the Voluntary Carbon Market is an airline company that voluntarily chooses to offset their emissions from flying planes, through purchasing carbon credits.

PRICE OF CARBON CREDITS IN A CARBON MARKET

The price of carbon credits is determined by many different factors specific to an individual project, as well as the exact point in time when the carbon credits are sold. Some of the things which may impact on the price of a carbon credit are listed below.

The price of carbon credits is determined by many different factors:

- Supply and demand
- Quality of carbon credits
- Origin or 'provenance'
- Co-benefits
- Marketing and media rights

For example, a passenger on an airline might buy a carbon credit from the airline when they fly. This is another example of the Voluntary Carbon Market.

Wunambal Neil Waina, Head Uunguu Ranger ground burning at Munurru, Wunambal Gaambera Aboriginal Corporation

WHAT IS A CARBON MARKET?

"The price of carbon credits is determined by many different factors:

- *Supply and demand*
- *Quality of carbon credits*
- *Origin or 'provenance'*
- *Co-benefits*
- *Marketing and media rights"*

Supply and Demand

As with any market, two of the main factors influencing the price of carbon credits is supply and demand. Where demand is high, and/or supply is low, carbon credits are likely to obtain a higher market price. Conversely, if there is an oversupply of carbon credits, it is possible that this may drive the price of carbon credits down.

Quality of carbon credits

Another factor that influences the price of carbon credits is the reputation of the carbon project or carbon market under which the carbon credit is produced. For example, a carbon credit produced under a reputable carbon market may attract a higher price than carbon credits produced without any formal regulation or produced under markets that have received negative publicity about the reliability of emission reductions.

In Australia, all ERF projects must meet the high standards set out in the Australian Government's legislation, and therefore ACCUs are regarded as reputable.

Origin or 'provenance'

The price of carbon credits may also be affected by the origin, or the 'provenance', of carbon credits, i.e. where the carbon project takes place, who owns the project and how the carbon credits are produced. For example, in Australia, carbon credits that are produced by Indigenous carbon projects can often obtain a higher price on the Voluntary Carbon Market than credits from non-Indigenous projects.

Co-benefits

'Co-benefits' is a term often used to refer to beneficial outcomes, usually social or environmental, that flow from carbon projects, in addition to a reduction in greenhouse gas emissions. Both within Australia and internationally, co benefits can increase the sale price of carbon credits to buyers with Environmental Corporate Social Responsibility (ECSR) objectives.

The Australian Government's ERF does not currently recognise or place any additional value on co-benefits. However, outside of the ERF, several companies are starting to look at different ways of measuring and valuing co-benefits.

Indigenous carbon project owners may use a variety of ways to demonstrate the benefits brought by their project to a buyer of carbon credits.

If you are an Indigenous organisation thinking about marketing and selling 'co-benefits' it is a good idea to think carefully about exactly what you are selling, what it is worth, and how you will demonstrate the benefit.

Read More:

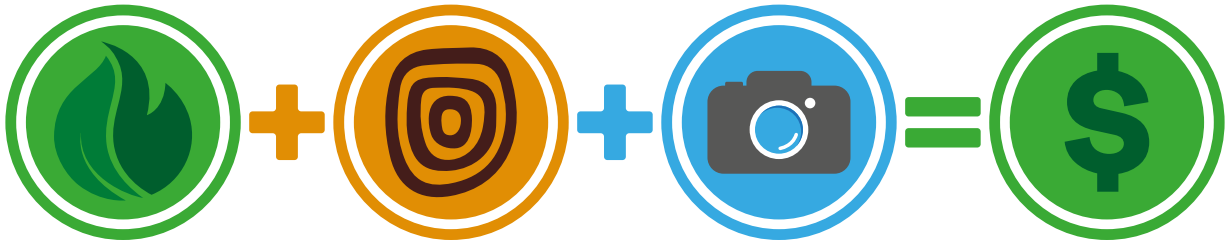
ICIN Carbon Co-benefits Report

Marketing and media rights

Another element that can influence the price of carbon credits is whether the buyer of the carbon credits receives any media or marketing rights in addition to their purchase. Media rights and marketing campaigns using representations of an Indigenous carbon project have a big dollar value to a buyer and need to be carefully considered and negotiated as part of any ACCU sales agreement.

For example, the buyer may request the right to use photos or videos to promote the purchase.

Indigenous carbon price sum



Premium Indigenous ACCUs + **Co-benefits** + **Media rights** = **Estimated value**

Wayne in chopper, Balanggarra Aboriginal Corporation

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This guide is intended as general information and is not business, financial or legal advice. While care has been taken to ensure the accuracy of this information, the ICIN and authors accept no liability and expressly disclaim liability for any person's loss arising from the use of this document.

3.

EMISSIONS REDUCTION FUND (ERF) OVERVIEW

3. EMISSIONS REDUCTION FUND (ERF) OVERVIEW

The Emission Reduction Fund (ERF), along with the Renewable Energy Target, is one of the main Australian Government responses to climate change and represents the main carbon market operating across Australia. The ERF provides rules for developing and operating carbon projects and earning ACCUs.

The ERF is administered by an organisation called the Clean Energy Regulator. You may sometimes hear them referred to as the CER. The main law governing the ERF is the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act). The CFI was expanded to become the ERF in 2012.

Under the ERF, Indigenous landowners can earn carbon credits from doing projects that reduce greenhouse gas pollution. You can then sell those carbon credits to the Australian Government (through the ERF Auction), or to other buyers in the Voluntary Carbon Market.

"Under the ERF, the 'Project Proponent' (owner) is the person or organisation legally responsible for doing the project."

WHO CAN DO AN ERF PROJECT?

Under the ERF, the 'Project Proponent' (owner) is the person or organisation legally responsible for doing the project. The Project Proponent controls the project, receives the carbon credits created by the project and is legally responsible for meeting all obligations under the ERF.

As a Project Proponent, you must show the CER that you have the capability, capacity, and good character to run the project and comply with the ERF requirements. This is sometimes referred to as 'Fit and Proper Person' requirements. You must also show that you have the legal right to undertake the project and claim the carbon credits.

Under the ERF, there are specific rules which simplify the process for Registered Native Title Body Corporates (RNTBC) with exclusive possession native title to become the Project Proponent. The ICIN encourages groups to consider different options for project ownership and operation and decide on an approach that best suits you, prior to registering a project.

Read More:

ICIN Guide 6. Indigenous rights and interests

EMISSIONS REDUCTION FUND (ERF) OVERVIEW

3

WHAT TYPE OF ERF PROJECT CAN I DO?

The ERF gives carbon credits to activities that reduce the amount of greenhouse gases going into the air or that draws carbon dioxide out of the air and stores it in plants or soil. The CER develops and publishes rules for the different activities that are eligible under the ERF – these are referred to as ERF methods. Your project and the type of activity you do must be consistent with one of these methods.

ERF Methods are divided into two main types: sequestration and emissions avoidance. Some methods, such as Blue Carbon or Savanna Fire Management, may include both. It is important to ask whether the project is an emissions avoidance project or a sequestration project, as there are increased obligations, rules and risks associated with sequestration projects that do not apply to emissions avoidance projects.

"ERF Methods are divided into two main types: emissions avoidance and sequestration. Sequestration means storing carbon dioxide in the vegetation or soil. Emissions avoidance means avoiding greenhouse gases going into the air."

Sequestration methods

'Sequestration' means to accumulate, keep, store or conserve. Under the ERF, sequestration means increasing the amount of carbon dioxide stored in vegetation or soil and keeping it there. Sequestration projects are long-term projects up to 100 years duration. Sequestration methods include:

- Savanna Fire Management – Sequestration and Emissions Avoidance
- Storing Carbon in the Soil
- Let the Native Forest or Woodland Regrow
- Protecting Existing Forest
- Forest Planting
- Forest Harvest

Emissions avoidance methods

'Emissions avoidance' means avoiding or stopping greenhouse gases going into the air; if the activity ends, the avoided greenhouse gases don't go back into the air. Under the ERF, emissions avoidance projects are shorter-term projects usually 7-25 years duration. Emissions avoidance methods include:

- Savanna Fire Management – Emissions Avoidance
- Savanna Fire Management – Sequestration and Emissions Avoidance
- Beef Herd Cattle Management

Read More:

ICIN ERF Methods Summary Report

EMISSIONS REDUCTION FUND (ERF) OVERVIEW

3

WHAT OTHER ERF REQUIREMENTS MUST I MEET?

In addition to doing an eligible activity (method), passing the 'Fit and Proper Person' requirements and having the capability to run a project, the ERF has some other general requirements that you must meet.

The project is new and 'additional'

For a project starting out under the ERF, it must show that it would not happen anyway, in the absence of the ERF and it must not have started. This is because the ERF wants to encourage new changes in behaviour and ensure that abatement or sequestration is real and additional. It does not want to invest in activities that are already happening or that would happen anyway, without a registered carbon project.

These requirements are sometimes referred to as 'newness' and 'additionality'.

Under the ERF, carbon projects must meet the following requirements:

- *Meets method-specific eligibility*
- *Project proponent (owner) passes 'fit and proper person' test*
- *Organisation has capacity and capability*
- *Project is new and additional*
- *Project owner has the legal right*
- *Project has Eligible Interest Holder consent*

Pre-season Fire Meeting, ALFA

EMISSIONS REDUCTION FUND (ERF) OVERVIEW

3

The project has all legal or regulatory approvals

The ERF does not give or create a right to do a particular activity. You will need to look at existing laws and regulations and see if there are any licences or permits that you need.

For example, if the project you want to do involves burning, you might need to get a permit to burn from the relevant State or Territory authority.

The project owner has the legal right to do the project

To do an ERF project you must have the legal right to undertake the activity. The ERF does not create any new legal rights. If you want to undertake a project, you must look to existing rights, interests, and laws to see if you have the legal right to do the activity required under the method.

For example, an owner of freehold land may wish to do a Human Induced Regeneration project. They look at their land title, and see they have the right to put in fences and plant trees. They are therefore able to establish their legal right based on their existing land title.

Determining whether you have the legal right to do a project, and/or what is required to get the legal right will depend on:

- The type of land in question e.g. Native Title, Land Rights, pastoral lease or freehold
- The type of land interest you have e.g. Native Title, lessee, carbon project developer
- The type of activity you want to do e.g. savanna burning, grazing or feral animal management, tree planting or native regeneration.

The project has Eligible Interest Holder consent

In addition to legal right, ERF projects must also obtain consent from all 'Eligible Interest Holders'. The ERF sets out exactly who is an Eligible Interest Holder, based on the land tenure. In general, if you have some form of registered interest in the land (e.g. registered native title holder) you will likely have an eligible interest under the CFI Act.

While an ERF project can be registered without Eligible Interest Holder consent, it cannot receive any carbon credits until this consent has been obtained and consent must be obtained before the end of the first reporting period (from between 2-7 years depending on the method) or the project can be revoked (cancelled).

It is good practice to get consent before registering an ERF project.

The legal right to do a project and Eligible Interest Holder consent are often confused, because sometimes it involves the same individuals or group. However, while there is this overlap, it is good to remember that these are two separate and distinct requirements under the CFI Act.

Importantly, if you are being asked to provide consent to a carbon project, there is no obligation to say 'Yes'. You have a right to request more time and more information. And you have an absolute right to say 'No'.

Read More:

ICIN Guide 6. Indigenous rights and interests

ICIN Seeking free, prior and informed consent

Mimal Land Management

Disclaimer

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4.

EMISSION REDUCTION FUND METHODS

4. EMISSION REDUCTION FUND METHODS

Carbon projects offer an opportunity for Indigenous land managers to leverage a source of independent revenue to support the carbon method activity while supporting a number of beneficial environmental, social, economic and cultural outcomes for people and communities. So far, this opportunity has been accessed predominantly by Indigenous groups undertaking savanna fire management in northern Australia.

LAND SECTOR METHODS UNDER THE ERF

There are many different activities you can do under the Emission Reduction Fund (ERF). For the land sector, the main activities under existing ERF methods are:

- Savanna fire management in northern Australia
- Managing livestock (cattle) to improve productivity
- Putting organic matter back into the ground or changing management to store carbon in soils
- Allowing land to naturally regrow into native forests
- Protecting existing forests by deciding not to clear the forest
- Planting seeds or seedlings to establish forests
- Establishing a new plantation forest or changing the management of an existing plantation
- Managing animal waste (effluent) to reduce greenhouse gas pollution
- Improving fertiliser use in cotton farming

Aerial burning, Kimberley Land Council

EMISSION REDUCTION FUND METHODS

4

Overview of land sector methods under the ERF

Type of activity	Method name	Registered Projects[1]	Indigenous Projects[2]	Is this activity a good fit for my group?
Indigenous fire Management in Northern Australia	*Carbon Credits (Carbon Farming Initiative—Savanna Fire Management— Emissions Avoidance) Methodology Determination 2018.*	77	29	This method would suit groups in Northern Australia who have an interest in improving fire management and have the ability to meet upfront costs to get a project started
	Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2018	2	2	This method would suit groups in Northern Australia who can do good fire management; have strong governance and administrative capacity; and the support of Traditional Owners to carry the project in the long-term.
Managing livestock (cattle) to improve productivity	Carbon Credits (Carbon Farming Initiative – Beef Cattle Herd Management) Methodology Determination 2015	10	0	This method may suit Indigenous pastoralists who have very large herds (many thousands)) are looking to improve herd productivity and have access to historical data on the liveweight of their herd.

EMISSION REDUCTION FUND METHODS

4

Type of activity	Method name	Registered Projects[1]	Indigenous Projects[2]	Is this activity a good fit for my group?
Putting organic matter back into the ground to store carbon in soils	*Carbon Credits (Carbon Farming Initiative - Estimation of Soil Organic Carbon Sequestration using Measurement and Models) Methodology Determination 2021.* *Carbon Credits (Carbon Farming Initiative—Measurement of Soil Carbon Sequestration in Agricultural Systems) Methodology Determination 2018* *Carbon Credits (Carbon Farming Initiative—Estimating Sequestration of Carbon in Soil* *Using Default Values) Methodology Determination 2015.*	334	0	A Soil Carbon project may suit groups who want to improve agricultural practice to get healthier country. Participating in this method involves regular soil sampling and lab testing of samples and will need specialist advice. Note this is a long-term, sequestration project. If you have a carbon abatement contract for your soil carbon project, you can apply to The Clean Energy Regulator to receive a forward payment on the contract to help with the costs of soil sampling and testing. The Department of Agriculture, Fisheries and Forestry also has support available through the Pilot Soil Monitoring and Incentives Program.
Allowing land to naturally regrow into forests	*Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013*	23	0	Native forest regrowth projects would suit groups who want to restore the land by changing the management of land areas that currently have grazing, cropping or weeds and feral animals stopping forests from growing. Note this is a long-term sequestration project.
	Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013 (as amended).	366	3	

EMISSION REDUCTION FUND METHODS

4

Type of activity	Method name	Registered Projects[1]	Indigenous Projects[2]	Is this activity a good fit for my group?
Protecting existing forests by deciding not to clear the forest	*Carbon Credits (Carbon Farming Initiative—Avoided Clearing of Native Regrowth) Methodology Determination 2015.*	11	0	An avoided deforestation or clearing project would suit Indigenous landholders who have existing forests, and a right to clear those forests from prior to 2010, but decide they want to manage the land with the forest intact. Note this is a long-term sequestration project.
	Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1) Methodology Determination 2015.	64	0	
Planting seeds or seedlings to establish forests	*Carbon Credits (Carbon Farming Initiative—Reforestation and Afforestation 2.0) Methodology Determination 2015.*	16	0	A forest planting project would suit Indigenous landholders who want to plant a forest on their land. Note this is a long-term sequestration project.
	Carbon Credits (Carbon Farming Initiative) (Reforestation by Environmental or Mallee Plantings—FullCAM) Methodology Determination 2014.	86	0	
Establishing a new plantation forest or changing the management of an existing plantation	*Carbon Credits (Carbon Farming Initiative—Measurement Based methods for New Farm Forestry Plantations) Methodology Determination 2014.*	3	0	A forest harvest project would suit Indigenous landholders who wish to establish new forest harvest plantations or change the way they manage existing plantations. Note this is a long-term sequestration project.
	Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022	37	0	

EMISSION REDUCTION FUND METHODS

4

Type of activity	Method name	Registered Projects[1]	Indigenous Projects[2]	Is this activity a good fit for my group?
Managing animal waste (effluent) to reduce greenhouse gas pollution	*Carbon Credits (Carbon Farming Initiative—Animal Effluent Management) Methodology Determination 2019*	5	0	This method is not explored in this document.

If you are interested in an activity that is not included in this summary, or would like more detail on a listed method, more information is available on the Department's website.

Arafura Swamp Rangers (Photo: David Hancock)

[1] Includes projects registered under current and previous versions of method.

[2] This information is based on information available to ICIN at the time of publication. ICIN acknowledges there may be some gaps in this data, which it will continue to update.

EMISSION REDUCTION FUND METHODS

4

LAND AND SEA METHODS IN DEVELOPMENT

Each year, the Australian Government identifies which activities will be prioritised by the CER for development of new ERF methods over the following 12 months of work starting on them unless intractable scientific or technical issues emerge. Once an activity has been identified as a priority, the CER works with the carbon industry, researchers, and other relevant stakeholders to develop the method.

Esperance, Tjaltjraak ranger Lachlan Adamson on country (Photo: ILSC)

Priorities in 2022

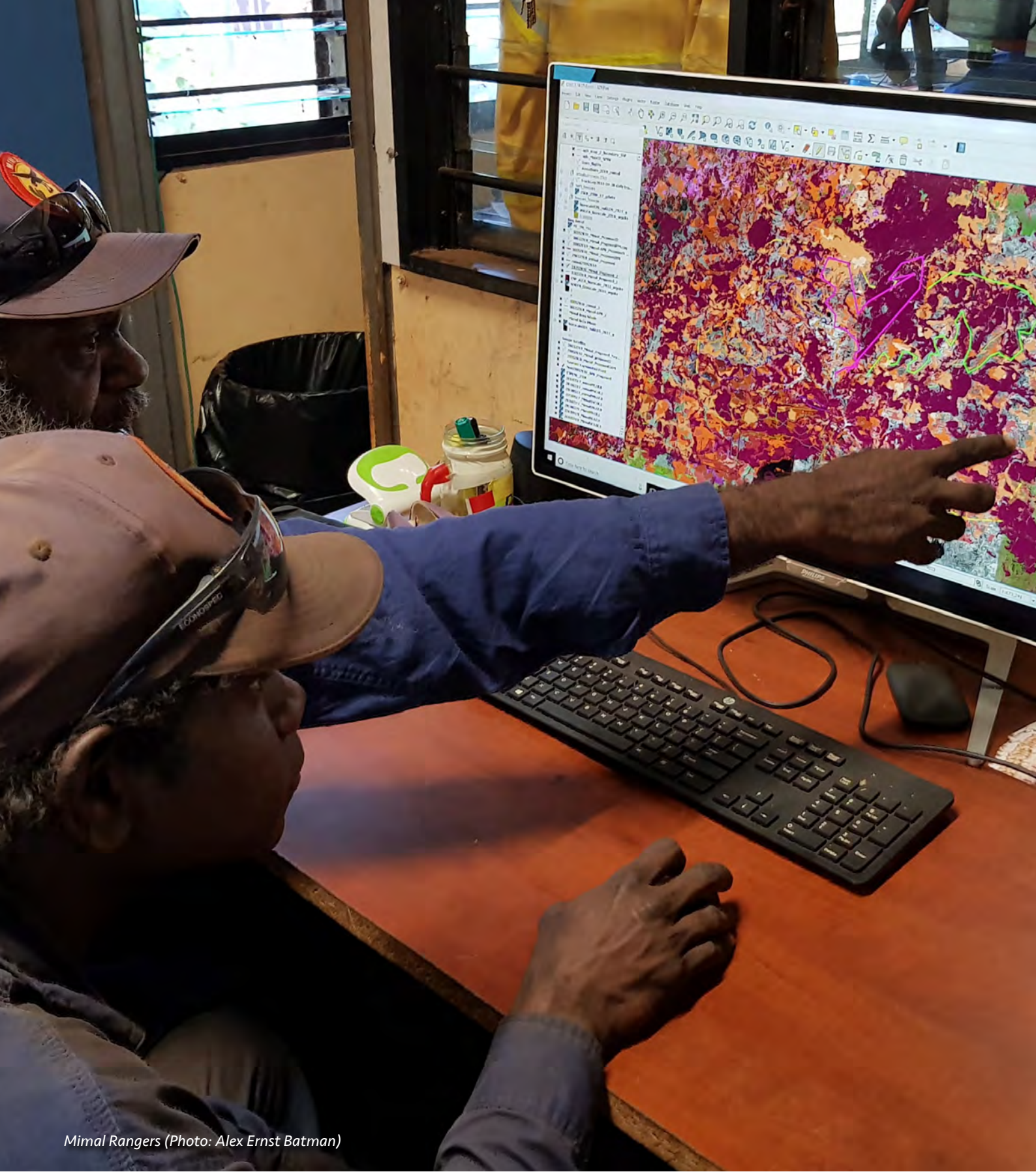
Methods prioritised for development through the CER in 2022 include:

- Integrated Farm Management – considering how different methods measuring the carbon benefit of different land management activities can be 'stacked' within one project area.
- Savanna Fire Management (new) – including accounting of new carbon pools under a new method such as the living biomass and dead standing trees biomass. The method will provide two options:
    - Emissions Abatement only, accounting for smoke saved from hot wildfires avoided through fire management.
    - Emissions Abatement + Sequestration, accounting for the permanent carbon stored in logs on the ground, standing dead trees and living vegetation, which is a commitment of 25 or 100 years.

If you wish to engage in the method co-design process, please contact ICIN.

Read more:

ICIN Mapping the Opportunities for Indigenous Carbon in Australia



Mimal Rangers (Photo: Alex Ernst Batman)

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5.

RUNNING A CARBON PROJECT

5. RUNNING A CARBON PROJECT

Undertaking a carbon project means you have a legal responsibility to carry out specific activities on your land in a particular way, for a certain amount of time. It is important that you understand the method, what activities you are required to do, and what you are prohibited from doing.

For example, a savanna burning project will require fire planning each year and the implementation of fire management in line with your burn plan. A sequestration project might mean planting trees and taking care of them while they grow for up to 100 years.

Want to participate in the Emissions Reduction Fund?

The Clean Energy Regulator has further information about registering and reporting on a carbon project on its website and is the first port of call if you have any questions about registration.

The four key steps to registering are:

1. Apply
2. Establish a contract
3. Reporting and auditing
4. Delivery and payment

Read more:

CER What to participate in the Emissions Reduction Fund?

"Undertaking a carbon project means you have a legal responsibility to carry out specific activities on your land in a particular way, for up to 100 years."

MONITORING, REPORTING, RECORD-KEEPING, AND AUDITING

Under the ERF, you are required to continuously monitor the project, keep certain records, and regularly report to the CER. The exact monitoring and reporting requirements will be set out in the method.

When you start your project, you should identify all your monitoring, reporting and record-keeping obligations, and establish a good system for collecting, storing, and maintaining this information for the entire duration of the project.

ERF projects must also be regularly audited, i.e. checked by an independent and specially qualified expert. Each ERF project will receive an 'audit plan' which sets out how often your project will need to be audited – these costs need to be factored into your project planning. The auditor will check whether are meeting the eligibility criteria, monitoring, reporting and record-keeping requirements of your project.

RUNNING A CARBON PROJECT

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CONTINUING TO MEET ELIGIBILITY REQUIREMENTS

At the start of the project, you will need to meet eligibility requirements, including the legal right to do the project, regulatory approvals, and meeting 'fit and proper person' criteria, which continue to apply for the whole project.

This means that if you change your rights in relation to your land (e.g. you grant a lease to someone else) or if your company goes into administration or receivership, this will have implications for your carbon project and legal obligations.

CARBON SALES CONTRACT REQUIREMENTS

Once you are receiving carbon credits, you are likely to enter a contract to sell those credits. These contracts can have their own obligations, such as delivering a certain number of carbon credits by a certain time or keeping certain information about the contract confidential. These obligations might be one-off, or ongoing.

Figure 3 illustrates some of the activities involved in running a carbon project, and who might be responsible for these. As governance models are flexible, you can pick and choose what works best for you.

SEQUESTRATION – SPECIAL CONSIDERATIONS

A sequestration activity involves drawing down carbon from the atmosphere and storing it in the landscape, for example planting trees to increase carbon dioxide stored in the wood, roots, trunks, branches, and leaves. However, for the carbon to stay there, the trees must be maintained – they cannot be cut down. The carbon stored must be stored 'permanently', which is why sequestration projects have long-term obligations.

Garrathalala GanGan Early Management Burn 2020, Yirralka, Layynhapuy Homelands Aboriginal Corporation

RUNNING A CARBON PROJECT

5

Permanence Period

If you are planning a sequestration project, you will need to choose a Permanence Period of either 25 or 100 years. The Permanence Period is how long you will be responsible for maintaining the activity and the carbon stored. You will also need to provide the CER with a Permanence Plan, outlining how you will protect the carbon stores for the entire Permanence Period.

For example, your sequestration project can be maintaining the trees (not clearing them), continuing to look after soil health, or good early dry season burning activities. How long you are responsible for these activities depends on the Permanence Period for the project.

It is important to note that the Permanence Period can be longer than the Crediting Period for your project. This means that your obligation to keep doing the activity (as set out in the Permanence Plan) might extend beyond when you get ACCUs – and income – from your project.

For example, a savanna sequestration project has a Crediting Period of 25 years. The Project Proponent decides to adopt a 100-year Permanence Period. At the end of 25 years, the project no longer receives ACCUs, and therefore no longer receives income from the sale of ACCUs. However, it must keep doing the burning activity for the duration of the Permanence Period to maintain the carbon stores.

"When deciding on a permanence period, you need to consider the cost of having to maintain the carbon stored for up to 100 years. These obligations run with the land – so they continue even if the land is sold or there is a change in management."

Risk of reversal buffer

Whether the Permanence Period is 25 or 100 years, the CER withholds 5% of potential carbon credits for the project to cover the risk that the carbon stored might be released. This is called the 'risk of reversal buffer' and it is applied to all sequestration projects.

Permanence period discount

If a 25-year Permanence Period is chosen, the Government generally keeps an additional 20% of potential carbon credits to cover the risk that carbon stores might be reversed after 25 years. If you choose a 100 year the permanence period discount does not apply but the risk of reversal buffer does. You will get 95% of the ACCUs rather than 75% over a 25-year period. Note that some methods provide even greater permanence period discounts.

When deciding on a permanence period, you need to consider the cost of having to maintain the carbon stored for up to 100 years. These obligations run with the land – so they continue even if the land is sold or there is a change in management.

CONSEQUENCES OF NON-COMPLIANCE

During the Permanence Period, the project proponent is expected to take steps to protect the stored carbon and will need to provide a permanence plan to the CER at different stages of the project. If something happens that significantly reduces the amount of carbon stored by the project, the ERF has rules to try to recover the carbon stored. While most of these rules are discretionary (which means the CER can decide whether to enforce them) the Government is serious about maintaining high integrity standards under the ERF.

For example, if a decision is made to finish a sequestration project prior to the end of the Permanence Period, all ACCUs issued to the project up to that date must be returned to the CER, even if those ACCUs have already been sold. A project would need to buy enough ACCUs to replace the ones sold, and hand these back to the CER.

The same could apply where it was found that the project proponent had deliberately taken actions which released carbon (like clearing forest), or had not taken reasonable steps such as those in their permanence plan, to protect the carbon.

If there is a reversal in stored carbon due to an unpreventable event (such as a bushfire burning the trees), the Project Proponent must take action to let the carbon stored recover. Recovery activities might be re-planting trees or management activities to help them recover.

Deregistering a project or Project Proponent

If the CER forms the view that you or your organisation is no longer capable of running the carbon project, they have the power to deregister the project or Project Proponent. This might mean the carbon project ceases altogether, or that someone else takes on the running of the project.

Handing back (relinquishing) carbon credits

If you stop running your carbon project in line with the method, or something goes wrong and you fail to fix it, the CER can require you to hand back carbon credits, up to the total amount issued for the project. The CER can do this even if you've already sold the credits – which means you might need to buy carbon credits to repay the CER.

For example, if you are running a forest planting method and a fire burns down the trees, you cannot give up and graze cattle in the area instead. You will be required to replant or regrow the trees, or hand back the carbon credits you have been issued.

Order to re-establish carbon stores

If something happens to reduce or remove the carbon that has been stored on your land and ACCUs are unable to be relinquished, the CER has the option of requiring you to re-establish the carbon. This is called a Carbon Maintenance Obligation.

Financial penalty

The CER has the power to impose financial penalties for non-compliance with certain requirements of the ERF.

Criminal charges

Certain offences under the ERF, such as dishonest or fraudulent conduct, are considered criminal offences. Remember that undertaking a carbon project involves rules and responsibilities. If something goes wrong, or you're worried you won't be able to meet your obligations, you should talk to the CER.

Read more:

CER The Emission Reduction Fund and Permanence on the Land

ICIN Emission Reduction Fund (ERF) Overview

Aerial burning, North Australian Indigenous Land and Sea Management Alliance (NAILSMA)

6.

INDIGENOUS RIGHTS AND INTERESTS

6. INDIGENOUS RIGHTS AND INTERESTS

Carbon projects affect Indigenous rights and interests in a number of ways, and you will often have multiple and overlapping rights. Your rights depend on the type of interest you have in the land, and the type of interest you have in the carbon project.

INDIGENOUS RIGHTS AND INTERESTS IN CARBON

Under the Carbon Credits (Carbon Farming Initiative) Act 2011 (the CFI Act), there are provisions for two key rights of interest to Indigenous people impacted by a carbon project registered by the CER, including provision for:

1. **Legal Right.** The proponent of a carbon project must be able to demonstrate that they have the legal right to own the carbon project.

   Determining whether or not you have the legal right to do a project, and/or what is required to get the legal right will depend on the type of land in question, the type of land interest you have, and the type of activity you want to do.

   Whether or not you have a legal right to do a project affects not only whether and how you might want to register a carbon project yourself, but also your rights if other people want to do a carbon project on your country. Indigenous people with a legal right to conduct a carbon project must be given the opportunity to provide Free, Prior, Informed Consent (yes or no) to the project developer for a project on their land.

2. **Eligible Interest-Holder Consent.** Indigenous people may be identified as Eligible Interest Holders and have a right to consent to the project under the CFI Act. This applies to all Native Title determination areas as well as some other Indigenous land interests.

   This provides an important point of leverage for any Native Title group.

   The CFI Act allows for conditional registration of carbon projects from 2 up to 7 years depending on the type of carbon method applied, although the project cannot claim any credits until consents are provided. However, the ICIN strongly advocates for the Free, Prior and Informed Consent of Native Title holders or claimants to be demonstrated *before* the project is registered with the CER. This benefits both Indigenous groups and any non-Indigenous proponent (see Part 7).

"Indigenous people with a legal right to conduct a carbon project must be given the opportunity to provide Free, Prior, Informed Consent (yes or no) to the project developer for a project on their land."

THE ROLE OF AGREEMENTS IN CARBON PROJECTS

Some Indigenous people may choose to enter into an Indigenous Land Use Agreement (ILUA) or other contract to support strong relationships with non-Indigenous landholder/s or carbon project developers. Agreements can include provisions around access to country, employment of local Indigenous people, support for traditional land management practices, share of ACCUs, revenue or profits from the project, use of images and media, plans to transition to Indigenous ownership, terms of review, and anything else important to parties. These types of agreements are very important given that projects may require a commitment up to 100 years.

Remember, carbon projects that can demonstrate direct and genuine benefits created from the project, such as Indigenous employment or support for Indigenous land management practices, may attract a premium price on the carbon market. Therefore, the agreement should detail how the projects are marketed, if at all, by the proponent, as well as protections to ensure that any images, videos or stories of Indigenous people or details of the group's story are not shared without that group's free, prior and informed consent.

Read More:

ICIN Seeking free, prior and informed consent from Indigenous communities for carbon projects

"Indigenous Land Use Agreements (ILUAs) can provide a high degree of certainty to project owners and Indigenous groups impacted by a carbon project on their country."

"Carbon projects that can demonstrate direct and genuine benefits created from the project may attract a premium price on the carbon market."

Fire management, Warddeken Land Management

PROJECT PROPONENT (OWNERSHIP)

If you are a lessee, freeholder, or have some form of exclusive possession land interest, you may have a legal right to undertake the carbon project. This means that:

- You could choose to register a carbon project for yourself.
- Someone else can register a carbon project on your land – only with your permission.

Undertaking a carbon project is a big decision. If you decide to own and operate a carbon project as the Project Proponent, you have ongoing responsibilities. If you don't meet these responsibilities, there may be serious consequences for you and your organisation.

It is a good idea to talk to existing Project Proponents and learn from their experiences. However you will find that what works well for one organisation, will not necessarily fit perfectly for another. Don't be afraid to adapt different approaches to suit your unique circumstances.

Below is a list of some of the main types of governance models – but this is not exhaustive!

- ### Registered Native Title Body Corporate as Project Proponent

  Under the ERF, there are certain rules which can deem a RNTBC with exclusive possession native title to be the Project Proponent. This can streamline the process of project registration and establishing legal right to run the project.

  However, just because these rules exist, doesn't mean you have to choose this option. The rules will help RNTBCs establish the legal right to do a carbon project if they want to, but it does not prevent you from choosing another governance model.

  No matter who is the Project Proponent, what decisions could be delegated? And to whom? You may decide to contract someone to do certain parts of the project for you (e.g. annual reporting) or appoint an Agent who can act as your representative.

- ### Indigenous landowner as Project Proponent

  For non-native title land, such as an Indigenous pastoral lease, another option is for the Indigenous landholder to be the Project Proponent. You could decide to run all aspects of the project yourself, or to outsource some of these to experts or land managers.

- ### Joining together with other Indigenous projects

  Joining together with other Indigenous projects – through either 'aggregating', cooperating, or collaborating, is another governance approach which has proven successful. Aggregation allows groups to pool resources and jointly manage risks.

  Within an aggregation approach, there are a lot of variables. For example, you could choose to share revenue and benefits jointly, or distribute them according to project land area, or contribution to the project or baseline. If you choose an aggregation approach, you can still shape up a governance model that suits your individual circumstances. It is important in aggregation models that all legal right holders are committed to the project for the crediting period. This is because if one party decides to withdraw from the project, it will affect the whole project's ability to continue unless that part of the project area can be removed. Some methods do not allow areas to be removed.

- ## Setting up an Indigenous carbon business

  You may decide that it is worthwhile setting up a new company or business which is focused on the job of owning and running the carbon project. For this to be successful, you would need to have a good business plan and make sure that the benefits will outweigh any costs of setting up and running a new corporation.

- ## Third-party Project Proponent

  One governance model is to negotiate an agreement with a carbon service provider and let them own, manage and take on costs and risks of the project in exchange for access to your land and a fee and/or other benefits. This may be a good option, particularly if you don't have much expertise about how to do it yourself, and don't care too much about who owns the project. However, through this arrangement you may lose a level of control over the project and what happens on your land, as well as a significant proportion of the benefits so it is important to understand what it is you are negotiating.

  If you are thinking about this type of approach, it is important to do your research on the organisation you are partnering with and understand all fees involved, and how the carbon service provider profits from the relationship. Remember, this will be a long-term business relationship, and so you want to make sure you can work well together.

  If the proposed partnership involves splitting revenue (as opposed to profit), your feasibility study should carefully check what your costs will be, and make sure you won't be out of pocket if there is a bad year. You also need to be clear about who is responsible for any risks.

Remember, there are other governance approaches which let you outsource the running of the project to experts, without handing over project ownership. Seek independent legal and business advice, and a strong contract, so that if anything does go sour, your rights are protected. One way you can make these terms clear is through an Indigenous Land Use Agreement.

Read More:

ICIN Guide 9. Planning a carbon project – governance

CER Being a Project Proponent – information for landholders

Mimal Land Management

INDIGENOUS RIGHTS AND INTERESTS

6

ELIGIBLE INTEREST HOLDER

In addition to legal rights in carbon projects, some people also have an 'eligible interest'. The ERF sets out exactly who holds an eligible interest, based on land tenure. For example, native title holders are one type of eligible interest holder.

Having an eligible interest means:

- You have a right to say 'Yes' or 'No' to the carbon project
    - You might choose to negotiate benefits from the carbon project, in exchange for your consent; or you might choose to say no to the project.
    - This is an absolute right of veto, you do not have to negotiate, and you do not have to say yes.
- The carbon project cannot earn carbon credits unless it has your consent, but it can be 'conditionally' registered.
- If you have not given consent by the end of the first reporting period, the project must be cancelled.

For example, your Registered Native Title Body Corporate (RNTBC) holds non-exclusive native title interests over a National Park. The National Parks authority can register a carbon project over the park but they cannot earn any carbon credits until they have your consent.

"Having an eligible interest means you have the right to say 'Yes' or 'No' to the carbon project."

NATIVE TITLE RIGHTS

If you are a native title holder over an area proposed for a carbon project, you might also have rights under the *Native Title Act*. These would be additional to your rights under the ERF.

Because sequestration projects affect what you can or cannot do on your country for a long time, these projects may be considered a 'future act', requiring your consent under the *Native Title Act*. If the carbon project requires the grant of additional rights or amendment of any existing interest, this may also be a future act, requiring consent. This is an unsettled area of law, and you should seek legal advice on your specific rights.

For example, your RNTBC holds native title over a lease area. The lessee wants to do a carbon project. The relevant government authority informs the lessee that they will need a special licence to do the carbon project. The grant of this licence may be a future act.

OTHER LEGAL RIGHTS

Additional rights may arise out of State law or regulation, common law, or contract law.

For example, when dealing with a third party about a carbon project on your country, you can negotiate additional contractual rights. You might negotiate to be paid a certain amount, or to require certain levels of reporting on the project, and those rights would be protected under the contract.

Read More:

ICIN Seeking free, prior and informed consent

CER Native title, legal right and eligible interest-holder consent guidance

Thamarrurr Development Corporation

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7.

FREE, PRIOR AND INFORMED CONSENT (FPIC)

7. FREE, PRIOR AND INFORMED CONSENT (FPIC)

Carbon projects affect Indigenous rights and interests in many ways. The United Nations Convention on the Rights of Indigenous People has developed best practice principles for anyone seeking consent from Indigenous people, known as 'free, prior and informed consent' (FPIC).

FPIC requires that you have enough time, information, and resources to make a decision about whether or not you will consent (give permission) to a carbon project on your land. That decision may be 'No' to the carbon project.

WHAT IS FPIC?

FPIC is both a process and an outcome. The outcome is the right of Indigenous people to say 'Yes' or 'No' to a carbon project which impacts on their rights. This is a higher standard than the mere right to be consulted. FPIC is also a decision-making process and a framework for ensuring that project developers properly engage Indigenous people and involve them in decisions about carbon projects.

FPIC means that consent is:

- **Free** from force, intimidation, manipulation, coercion or pressure;
- Obtained **prior** to the project starting; and
- Obtained after Indigenous people are fully **informed** about the costs, benefits, and risks of the project; and have the opportunity to seek independent advice.

Free Prior Informed Consent (FPIC)

Free
Voluntary i.e. no coercion or manipulation

Prior
Before work begins

Informed
Full disclosure about the proposed project

Consent
Collective decision-making (yes or no)

FREE, PRIOR AND INFORMED CONSENT (FPIC)

THE RULES OF FPIC

If someone approaches you for permission to undertake a carbon project on your land, you can insist that they engage with you and your community according to the rules of FPIC, as follows:

- Work with established channels within Indigenous communities to identify all relevant affected people and appropriate mechanisms for engagement.
- Engage early and allow Indigenous people to make decisions in their own time.
- Be aware of and respect the cultural context: allow Indigenous people to make decisions in
- their own ways, in languages of their choosing, subject to their own norms and customary laws and decision-making processes. Note that each Indigenous group may have different languages and laws and accept that these may be different to your own expectations.
- Build relationships and trust through early and ongoing communication.
- If consent is given to register the project, apply the principles of FPIC throughout the life of the project from start to finish.

"While the ERF allows carbon projects to be registered prior to obtaining native title holder consent, the ICIN strongly advocates for consent to be obtained before the project is registered."

9-Step FPIC engagement process

As a matter of best practice, these steps should be followed when engaging with Indigenous people and seeking consent for a carbon project on their land.

Step 1:	Identify who has rights and interests over the project area
Step 2:	Agree appropriate timeframes
Step 3:	Meet with relevant stakeholders and agree on a process for consultation and obtaining consent, including relevant timelines.
Step 4:	Agree on the costs of engagement and how these will be covered
Step 5:	Establish a process for dealing with disputes and complaints
Step 6:	Provide information and negotiate details about the proposed carbon project
Step 7:	Hold subsequent meetings and have further dialogue
Step 8:	Obtain agreement on outcomes, noting that a legitimate outcome may be Indigenous people saying 'No' to the project
Step 9:	Monitor and adapt commitments

Read more:

ICIN Seeking free, prior and informed consent

CER Native title, legal right and eligible interest holder consent guidance

WHAT TO DO IF YOU EXPERIENCE POOR CONDUCT IN THE CARBON INDUSTRY

1. **Get legal advice.** If you don't have access to a legal team, many legal firms offer pro-bono advice to assist you to assert your rights and interests.

2. **Check with your local land council or representative body.** Representative bodies have an important role in advocate on behalf of Traditional Owner groups within their region. They may be able to assist you if you have been pressured to sign an agreement without the right information, or if you have experienced misconduct.

2. **Reach out to the Indigenous Carbon Industry Network.** Depending on the issue, we may be able to direct you to the right place to go for help.

3. **Make a complaint to the Carbon Market Institute Code of Conduct.** The CMI Code of Conduct is a voluntary industry code that sets some rules for best practice within the carbon industry.

   Anyone who may have experienced poor treatment within the carbon market from a company that is a signatory to the Code; which could include behaviour such as being pressured to sign a deal with a carbon service provider; not being provided with full information, being presented with misleading information etc, can make a complaint to the Code Administrator.

   The complaint will be investigated and if a breach of a signatory to the Code is found, then the CMI is able to request the company to improve its practices or may decide to issue a penalty.

   The Code supports the best practice principles and steps outlined in the ICIN FPIC Best Practice Guidelines.

4. **Make a complaint to the Clean Energy Regulator.** The CER has published guidance on its expectations for project proponents who are carbon service providers in the ERF. If a landholder/owner believes a carbon service provider may not be fit and proper (after considering the above guidance), then it may lodge a complaint by emailing enquiries@cleanenergyregulator.gov.au or calling 1300 553 542.

5. **Make a complaint to the ACCC.** The Australian Competition and Consumer Commission (ACCC) also provides a system to allow any consumer of a product or service to make a formal complaint.

Read more:

CMI Australian Carbon Industry Code of Conduct

CER Carbon service providers and FPP - Factsheet

ACCC Complaints & problems

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8.

PLANNING A CARBON PROJECT – FEASIBILITY

8. PLANNING A CARBON PROJECT – FEASIBILITY

Deciding to do a carbon project is a big decision. It can often involve significant financial investment to get it started and result in long-term obligations.

Before you start, it is important to get enough information to know whether the proposed project is 'feasible' (possible to do) and 'viable' (likely to succeed). It will also consider the impact of the project affecting what you can and cannot do on your land for up to 100 years.

It is important to ensure your feasibility study is objective. A feasibility study will summarise the requirements, financial considerations (costs and revenue) and benefits associated with undertaking a carbon project and help establish whether or not the project is viable. You might want to engage an independent expert to do this work.

If you are working with a carbon service provider, make sure they are considering all possible options, and not just putting forward a recommendation that supports their business model. Also, make sure you understand all costs associated with their services, and don't sign anything without independent advice, and in particular make sure you understand the conflict resolution and termination clauses, as the carbon service provider may seek to retain the rights to any carbon credits earned.

FEASIBILITY STUDY CHECKLIST

Here is a list of information you would expect in a feasibility study.

- ### Meeting ERF Requirements

  Under the ERF, there are a lot of requirements that you will need to meet to do a project, which can involve significant upfront cost and may require some ongoing costs.

  This will include:

  1. **Eligibility:** whether you meet both ERF and method specific eligibility requirements.
  2. **Legal right:** if have the legal right to do the ERF project, or what might be required to get the legal right. This might require you to get separate legal advice.
  3. **Environmental conditions:** some projects require certain environmental conditions to be successful. This might include vegetation mapping, analysis of local rainfall or investigating suitable land to be included in the project area. Doing this mapping may incur additional costs.
  4. **Legal or regulatory approvals:** the feasibility study should identify what legal and regulatory approvals are required to do a project, and how difficult these might be to obtain.

PLANNING A CARBON PROJECT – FEASIBILITY

8

- ## Governance, business, or administrative structures

  - A big consideration when deciding to do a carbon project is how the project will be owned and managed. Some of the things you might want to consider include:
  - What is your existing organisational capability, and what resources might you need to run a carbon project?
  - How will any risks from the project be managed and can different business structures help to reduce risks to your organisation?
  - How will benefits from the project be applied and distributed, and who will make these decisions?
  - Will any aspects of the project be outsourced, and which ones?

  A discussion of governance should consider your organisational goals, as well as how to manage risks.

- ## Project implementation

  Setting up a carbon project is quite complicated, but that's just the beginning! It's important to think about how you will run your project year after year.

  Your implementation plan should include method-specific requirements, monitoring, reporting, record-keeping, and auditing rules, as well as managing unexpected events or risks (such as big bushfires), and meeting project costs (such as annual operating costs or audit costs).

- ## Estimating carbon credits

  When thinking about doing a carbon project, you need to understand how many carbon credits you can expect to receive from the project each year, and over the life of the project. Importantly, you will also need to understand how reliable this estimate is and whether it is likely to vary much each year.

  For many carbon projects, it is hard to predict in advance how many carbon credits they will receive. You will need to factor this uncertainty into your project management and business planning.

- ## Project costs

  There are a number of costs associated with running a carbon project. To make an informed decision about undertaking a project or not, it's important to have a good understanding of these costs.

  Here are some of the costs you should consider:

  - Start-up costs including mapping and sampling
  - Ongoing management costs
  - Audit and reporting costs
  - Any costs associated with permanence obligations (for sequestration projects only).

Read more:

ICIN Guide 9. Planning a carbon project – governance

ICIN Guide 5. Running a carbon project

ICIN Guide 5. Running a carbon project – Sequestration – Special Considerations

- ## Sales or marketing strategy

  You can sell carbon credits to different buyers for different prices. For example, you might earn more on the Voluntary Carbon Market than on the Government's ERF reverse auction.

  You will need to consider how you plan to sell your carbon credits and what price you want (or need) to break-even or make a profit. Some groups choose to sell their carbon credits themselves, and others pay a 'broker' or 'trader' to do this for them. This will also have a cost involved.

- ## Risk management

  Carbon projects have different risks depending on whether they are sequestration or emissions avoidance projects, and the type of methods applied. For example, a risk could be insufficient funds to conduct fire operations or having to hand carbon credits back to the CER because of a project default. Identifying these risks, and developing strategies to manage them, is an important part of a feasibility study.

  Note: a person providing financial advice (including sales and pricing) must have an Australian Financial Service Licence.

Feasibility study

Is the project viable?

Does the project meet:	Yes/No
ERF eligibility	
Method specific eligibility	
Required environmental conditions	
Do you have:	
Legal right to the land	
Eligible interest holder consent	
Organisational resources and capabilities	
Company structure	
Project partners	
Project costs – start-up and ongoing	
Carbon credit estimation	
Project implementation strategy	
Sales and marketing strategy	
Risk management strategy	
Agreement about revenue distribution	

Rivercamp, Balanggarra Aboriginal Corporation

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9.

PLANNING A CARBON PROJECT – GOVERNANCE

9. PLANNING A CARBON PROJECT – GOVERNANCE

Project governance is a very important part of planning a carbon project. Project governance is about who will own the project (i.e. who will be the Project Proponent) and how decision will be made over the long-term and day-to-day. It will also impact on who bears the risk and how benefits are shared.

Good governance can be the difference between success and failure. A good governance structure will help to reduce costs, improve efficiency, increase benefits, and reduce the potential for future conflict.

IMPORTANT CONSIDERATIONS

Indigenous carbon projects across Australia operate under many different governance models – there is no one size fits all. It is important to take the time and carefully plan a governance structure that will suit you now and in the future.

There are a lot of things to consider when it comes to project governance, and all these things will depend on your and your project's individual circumstances. You need to ask:

- What is important to me right now?
- What will be important in five or 10 years?
- How do we need to design our carbon project so that our long-term interests are protected?

Below are some examples of the types of things you might want to think about when weighing up different governance options, however, this list is not exhaustive.

ICIN CEO Anna Boustead presenting, ALFA NT Pre-Season Fire Meeting

PLANNING A CARBON PROJECT – GOVERNANCE

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Project Proponent capabilities

The Project Proponent owns the carbon project and registers it under the ERF. Deciding who will be the project owner is a big decision. This can be an individual or an organisation.

The person owning the project is ultimately the one responsible to the CER for the project. They will make decisions, sign documents, and are legally responsible for the project and any ACCUs issued– including if something goes wrong.

When deciding who will be the Project Proponent, you need to consider:

- Will they pass a 'fit and proper person test' i.e. be viewed as having good standing and complying with the law? This test must be met for the duration of the project. Therefore, if there is a risk of a corporation going into receivership or administration, it may not be the right entity to be the Project Proponent.
- Will they be available and able to sign documents, enter information on the computer, and speak with the CER if required? Having good computer literacy and some level of understanding of the ERF is important. If the Project Proponent is a corporation, you can identify individuals (e.g. directors or Company Secretary) who can be the nominated contact people.
- How will legal right of the Project Proponent be established? How difficult or easy will it be to show legal right? What might be the cost involved if you must do a lot of complex legal arrangements?
- How important to you is having control over the project and its decision making? If this is a big priority, you should look at a governance model where you have project ownership (or joint ownership). However, if ownership is not an issue, you might be willing to outsource project ownership to an aggregator or other third party.

Fit and proper person checklist

Does the person meet these criteria?	Yes/No
Good character, diligence, honesty, integrity, and good judgement	
No white-collar crime	
Knowledge, skills, and experience to run the project	
Understand good governance	
Computer literate and reliable	
Available to sign documents and represent the organisation	
Able to demonstrate legal right to the land	

PLANNING A CARBON PROJECT – GOVERNANCE

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PROJECT DECISION MAKING

While the Project Proponent has the legal right to run the project, you can still have rules in place about how decisions are made. It is important to understand who holds responsibility for these decisions and how decision-making will b

For example, if the Project Proponent is a corporation, then the Board of Directors will probably be making decisions about the project. However, you might consider that not all decisions are important enough to go to the board. Could some (or all) aspects of running the project be delegated to a staff person?

Alternatively, if you have decided that a third party should be the Project Proponent, are there certain core decisions which you think still need to be referred to you? If so, these should be clearly set out in a legal agreement. For example, if the Project Proponent is third-party aggregator, you might still want to have a say in where carbon credits are sold.

- ### How will day-to-day operation of the project be carried out?

  There is a lot of flexibility in governance arrangements, and there is a lot involved in operating a carbon project. Not only do the activities, such as burning, fencing or planting, need to be undertaken, but carbon offset reports must be developed and submitted to the CER, and at times the project will need to be audited. Regardless of who owns the project, you might decide that some or all aspects of project operation should be delegated to staff or contractors with appropriate skills and expertise.

  For example, some Indigenous projects require the Board of Directors to make big decisions about the project – like when and where to sell ACCUs – but delegate the day-to-day decisions about operations (like undertaking early season burning) to the rangers or engage contractors to develop up carbon offset reports for them.

- ### Selling Your ACCUs

  Who will be responsible for taking your ACCUs to the market? How will decisions about who to sell to be made and at what volume?

  Who will advise you on engaging in the carbon market and negotiating a contract? What other matters do you need to consider when negotiating a sales contract? Who will be responsible for making decisions about price, volume and whether you need to engage a third party broker or trader?

- ### Revenue distribution

  For most Indigenous carbon projects, revenue is reinvested in keeping the carbon project running as a priority. For sequestration projects, where there are ongoing obligations to keep doing certain activities beyond the time when income is received, it is important that any decisions about revenue have taken this into account, with good planning to run a successful and sustainable carbon project.

  Make sure there are clear rules about how carbon credits will be sold, how money generated from sales will be distributed, and who has the authority to make changes to these rules if required.

PLANNING A CARBON PROJECT – GOVERNANCE

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- How will risks be managed?

  There are both risks and benefits involved in owning a carbon project and your governance structure will be one of many tools to help ensure successful outcomes for you and the project. It is critical that you are clear about the risks upfront – especially in relation to sequestration projects, which have a direct impact on what can and cannot occur on the land over a long timeframe, up to 100 years.

"How will revenue earned from sales of carbon credits from your project be distributed and who will make decisions about this? It's a good idea to decide before any money arrives what will happen once it does!"

Laura Rangers, Cape York Fire Forum 2021

Mimal and Jawoyn rangers discuss the years burning at the end of year fire meeting, ALFA

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10.

UNDERSTANDING CO-BENEFITS

10. UNDERSTANDING CO-BENEFITS

Carbon co-benefits is a poorly defined and poorly understood term. It generally refers to the marketable environmental, economic, social, or cultural benefits arising from a carbon project. Co-benefits are additional outcomes that a buyer or investor is willing to pay for, above and beyond the reduction or storing of greenhouse gas emissions.

In relation to the Indigenous carbon market, marketable co-benefits include tangible outcomes such as increased biodiversity, increased employment, and protection of cultural sites. In addition, the Indigenous carbon market recognises the non-marketable (intangible) benefits of projects, such as intergenerational transfer of cultural knowledge and language, and connection to country. As these intangible benefits are economically unqualifiable and invaluable, it is important that tangible and intangible benefits are not conflated.

Marketable (tangible) co-benefits include:

- Biodiversity benefits
- Increased Indigenous employment
- Protection of Indigenous cultural sites
- Social benefits from investment of carbon revenue

These benefits may be grouped into two categories:

- Direct benefits – arising from carrying out carbon related activities or from selling carbon credits e.g. increased employment or protection of cultural sites.
- Indirect benefits – flowing from direct benefits e.g. stronger and more functioning communities because of increased revenue flows.

WHAT DO WE MEAN BY CO-BENEFITS?

Within our network and in the marketplace, there are many different views on how co-benefits should be viewed, including:

- Co-benefits should be valued, quantified, and packaged as added value for impact investors, or
- These outcomes are central to Indigenous land management and caring for country, and therefore should be called ‘core benefits’, or
- These outcomes are independently valued by environmental or social investment markets, and therefore should be viewed and marketed as products independent of the carbon market.

Importantly, what carbon buyers typically refer to as ‘co-benefits’ are not interchangeable with Indigenous ‘provenance’ (origin) of carbon credits, i.e. where and how the carbon credits are generated. Currently, many Indigenous-owned carbon projects are successfully marketing and selling their carbon credits for a premium price based on provenance alone, in recognition of the value of supporting Indigenous-led enterprise and self-determination of Indigenous communities. These sales do not, however, recognise additional and specific co-benefits, such as improved outcomes for wildlife, or the social benefit from the sale of carbon credits resulting in investment in remote community infrastructure.

UNDERSTANDING CO-BENEFITS

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OWNING THE OUTCOMES

In discussions with non-Indigenous and mainstream carbon companies, it is increasingly apparent that Indigenous organisations are motivated by an entirely different set of values, more altruistic and holistic than their non-Indigenous for-profit counterparts. This difference sets them apart in the marketplace.

Many ICIN members assert that they, and only they, have the right to communicate what outcomes their project is seeking to generate, and how this could be measured or evaluated. Therefore, it is vital that Indigenous companies can articulate these drivers and the outcomes of these projects in a clear way that is determined by them.

Summary the direct and indirect benefits of carbon projects identified by ICIN members during recent workshops with members.

UNDERSTANDING CO-BENEFITS

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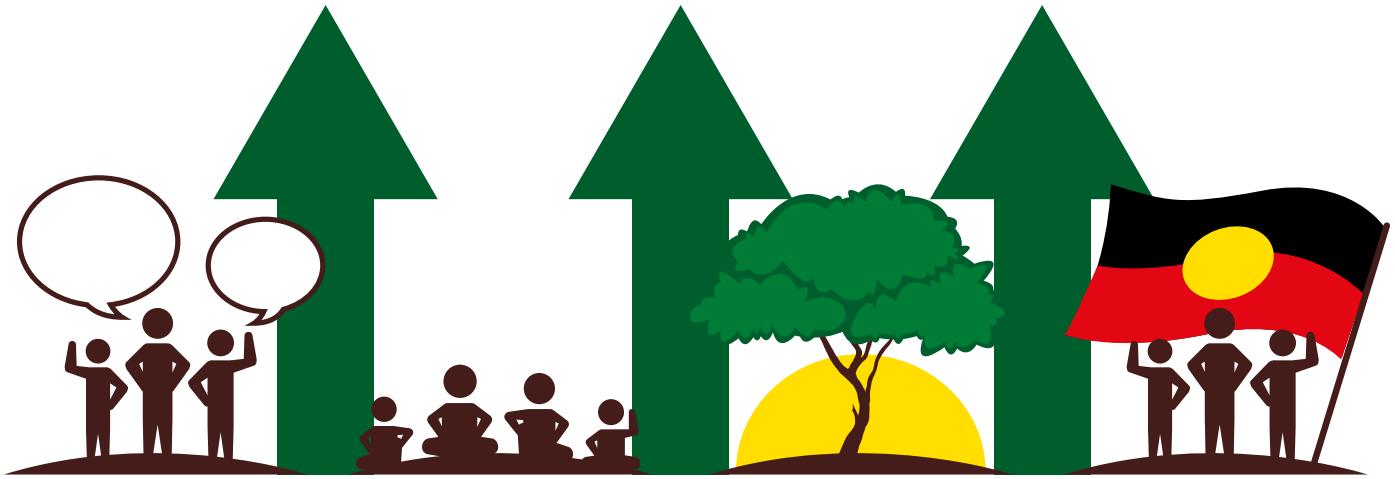
KEY DRIVERS AND INVESTMENT PRIORITIES

At the North Australia Savanna Fire Forum (2019, 2020 and 2021) discussion highlighted the key drivers of Indigenous savanna fire management projects, demonstrating that revenue from carbon projects is viewed as just one positive outcome of these projects, rather than being the sole or main driver. Similarly, the ICIN Member Survey (August 2019) demonstrated that the investment priorities of Indigenous carbon projects are centred around community benefit.

Mimal Land Management, spring cleaning

Key drivers of Indigenous Savanna Fire Management projects



Collaboration & communication

Knowledge sharing

Restore healthy country

Self determination from independent revenue & new, meaningful jobs on country

UNDERSTANDING CO-BENEFITS

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Key areas for investment of carbon project revenue (top-bottom)

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11.

KEEPING YOUR STORY STRONG

11. KEEPING YOUR STORY STRONG

While many dealings in the carbon market are a direct transaction (i.e. project produces carbon credit, project sells carbon credit) it is becoming increasingly apparent that in the Indigenous carbon industry, this is rarely the case.

"Many buyers of Indigenous carbon credits are interested in sharing your story and attaching your story to their brand."

If this is done in an agreed and respectful manner, it can offer many benefits to you and them.

Buyers are interested in the 'co-benefits' or additional environmental, socio-economic, or cultural benefits associated with Indigenous carbon projects (see above). Alongside this, buyers may also want to improve or enhance their brand through association with an Indigenous carbon project. Therefore, a request to buy Indigenous carbon credits is often coupled with a request for access to media materials (photos, videos, interviews, or other forms of media).

When you are negotiating a carbon credit sales agreement, it is often easy to overlook these things, and sometimes, requests for media and marketing only come up later, once an agreement is already in place.

To avoid this, have discussions with the buyer upfront about whether they are interested in sharing your story, and if so, what, how and why. If you already have a sales agreement, and the buyer is now asking to share your story, it is not too late to negotiate a media agreement that will ensure they use your story respectfully.

A combination of smart, strong branding that you control and clearly drafted legal agreements is a good way to keep your story strong. Take the time to work through what you are and are not comfortable with and get media and legal advice to support your decision making.

THE 'WHAT, HOW AND WHY' OF SHARING YOUR STORY

For Indigenous carbon projects selling carbon credits, buyers may often ask for something more in return for their purchase than just a carbon credit – for example videos or photos to use in advertising.

It is important to have a good understanding of what buyers want, how they want to use it, and what messaging (why) they want to be associated with it.

KEEPING YOUR STORY STRONG

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What buyers want

The type of things a buyer may ask for includes:

- Photos of people or the area involved in the project: for example, photos of rangers doing burning, photos or rock art or aerial images of the country being burnt.
- Videos of people doing activities on country: for example, doing fire burning or talking about the cultural or environmental importance of burning.
- A description of the project or the Indigenous group and why it is important to people and country.
- A right to use the name, logo or brand of the Indigenous organisation, carbon project or ranger group.
- Access to a spokesperson from your organisation for an event which they will then promote, e.g. through Twitter, media release or photos

Companies may ask that instead of groups providing these things, they are allowed to come on to country and take photos, videos, or recordings themselves. This request will have implications for ownership and control of media.

How they want to use it

There are a lot of different ways a company may wish to use the images or information they receive. This could involve using photos, videos, or information:

- On a company website
- In social media posts e.g. Facebook, Twitter
- In marketing materials e.g. magazines, flyers, advertisements, newspaper stories
- As information to staff or shareholders e.g. Power Point presentations, Annual Reports

They may wish to use the information once or keep using the information long-term. When thinking about how a company can use your story, you should also think about how long they will use it.

Tiwi Resources, working with Outback Helicopters

Why they want to be associated with it

Finally, the reasons why a company wants to use your story will vary between different companies and groups. It is useful to understand what messages they want to send and why, as this can help you make informed decisions about its use. For example:

- How does the company profit from using your brand, image and/or reputation e.g. attract more customers, gain trust or social licence for its activities, or build shareholder confidence?
- How is the company's market value tied in with your brand, image and/or reputation?
- How do the company's values and activities align with your values and activities?
- Does the company want 'exclusivity' i.e. be the sole (only) supporter of your carbon project?
- Are they interested in saying they are supporting co-benefits? If so, what ones? Do they require these co-benefits to be separately authenticated? Are they paying a premium for the co-benefits?
- Does the company care about your individual story? Will they help enhance your brand, or will your images just be used generically as 'an Indigenous project'?
- Is there a particular reason the company wants to be associated with your story? What might that mean for your brand? Are they trying to overcome a perceived bad reputation for previous engagement with Indigenous groups?

Sharing your story - how, what, why

KEEPING YOUR STORY STRONG

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"Having discussions upfront with buyers about what, how and why they want to use your story can be a useful starting point for a carbon credit sales discussion."

WHAT IS IMPORTANT TO ME?

Having companies use your story can impact not only your relationship with other buyers of carbon credits, but also your relationship with partner organisations and stakeholders. It can also put added demands on your organisation, for example if people need to participate in or organise filming.

Sharing your story raises many questions, including:

- Do you want to give the buyer exclusive (sole) use of your story?
- What is the market value of your story in relation to this sale?
- What is strictly not 'for sale'?
- What rules, if any, need to exist about the use of images of deceased persons?
- How long are buyers allowed to keep using your story for?
- Are there any companies which you do not want your story associated with?
- Do you need to control the messaging that is used (for example, the airline bought carbon credits, but does that mean it can say it supports the rangers)?

Aerial burning, APN Cape York

KEEPING YOUR STORY STRONG

The example below highlights why it is important to think about how you will protect your story, and what permission you will give to companies wanting to use it.

Imagine a scenario where an Indigenous carbon project – the Healthy Fire Carbon Project - produces 100,000 carbon credits in a particular year. They sell 80,000 carbon credits into the ERF. They sell 15,000 carbon credits to Oil & Gas Pty Ltd, and they sell 5,000 carbon credits to Airline Pty Ltd. The oil and gas company and airline both ask for some photos and videos to promote the carbon credits, which the Indigenous organisation provides.

At its AGM, the Oil & Gas Pty Ltd tells its shareholders that it is a major supporter of the Healthy Fire Carbon Project. However, one of the shareholders takes a plane home and sees an advertisement on the plane saying that Airline Pty Ltd is the sole supporter of the Healthy Fire Carbon Project and Healthy Country Rangers. The shareholder is confused.

Later, the Australian Government approaches the Healthy Fire Carbon Project and asks to make a video about the project and the ERF. The rangers don't work for five days while they help to make the video, which is run on government media channels.

The airline contacts the Healthy Fire Carbon Project. They are annoyed because they wanted to say that they were the only supporter of the project.

Two years pass. The Australian Government is still running the video about the project. Meanwhile, Oil & Gas Pty Ltd has started undertaking work on Indigenous lands and are becoming increasingly unpopular with some people. They try to increase their 'social capital' by saying that they are supporting the Healthy Country Carbon Project, although they haven't bought any more carbon credits in the last two years.

Separate to the carbon project, the Healthy Country Ranger Group have applied to the Australian Government and philanthropic organisations for more funding. These funders ask why the Healthy Country Rangers need more funding, given that they are supported by Airline Pty Ltd.

The Healthy Fire Carbon Project once again seeks to sell carbon credits but find that there are less buyers and that they cannot attract a very high price because its brand is associated with all these other businesses.

KEEPING YOUR STORY STRONG

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HOW CAN WE PROTECT OUR STORY?

There are a range of options available for ensuring you maintain ownership and control over your story. These can range from marketing strategies – such as branding and trademarks – through to agreed policies or protocols and media schedules in legal agreements.

It is important to choose an approach (or approaches) that is right for you. Don't trust the buyer to recommend the best approach, as they have different interests to you. You may want to get independent legal and marketing/media advice. Sometimes, your lawyer might need reminding that the carbon credit sales agreement concerns more than just carbon credits! You could point them to this document as a possible resource.

When thinking through different approaches, it's important to be aware that with protecting your rights comes certain obligations. For example, if you want to check every media statement that a buyer wants to make, then you need to have someone available on staff to do those checks. If media and marketing is a big part of your carbon credit sales agreement, and you don't have an existing media officer, you might have to think about what additional burden will be placed on staff and how this will be met.

BRANDING AND MARKETING

A brand is more than a logo, it is also the story attached to your business and product. When your brand is marketed properly, people will see your logo and immediately understand and connect with your story.

Interrelationship between brand, logo and story

KEEPING YOUR STORY STRONG

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"In relation to carbon credits, branding is as much about maintaining control over your product as standing out in the marketplace. To have a strong brand, you need to have a good marketing strategy."

What brand will we use?

You might choose to associate your carbon project with the brand of your Aboriginal organisation or ranger group, or you might choose for it to have its own brand, just for the carbon project.

What makes your brand unique?

There are elements of your story that no-one can take away from you – your language, connection to country, and culture. You will want to associate some things with your brand, while other things you might choose keep private.

For example, language could be an important part of your brand. Language is not only unique but will help retain control over your story. If you speak in language about your project, then no one else can speak for you. When using language, it is important that you also think about any possible Cultural Intellectual Property considerations and get advice from a marketing expert with experience in Indigenous enterprises.

How will you market your brand?

Branding is more than putting your logo on things. In order to develop your brand you also need to tell your story on social media, television, radio, newspapers, tourism, events and festivals. You need to make sure that when people see your logo, they know about your product and associate it with your story. Think about what opportunities there are to get your brand known.

Do you need to protect your brand through a Trademark?

A Trademark is a way of protecting your brand (word, phrase, or logo) so that no one else can use it. Without a Trademark, there is nothing (legal) stopping people from using that same name.

However, trademarks only protect the name or brand, not necessarily the story behind it. You need to weigh the cost and complexity of registering a trademark against the likely risk that someone will try to copy your brand, and if it will be successful in protecting your story.

KEEPING YOUR STORY STRONG

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Legal agreements

Another way to protect your story is by including clear terms and conditions in your Carbon Sales Agreement (contract). In addition to setting out what can and cannot be said about the sale, it can also set out the rules and obligations for the use of images and video. This will not only help protect your story but can provide a strong foundation for a respectful and strong partnership with the buyer.

Table 2 identifies some of the issues related to protecting your story that may be addressed through a contract in relation to media. This is not an exhaustive list, and you will need to think about your individual circumstances. Working through these questions can take some time, however the pay-off is a strong story and a strong partnership.

If your contract is short-term, once you have come up with a strong set of rules, you may want to use the same rules for future agreements. For a longer-term sales contract, clear rules and guidelines can reduce the likelihood of a dispute and strengthen your chances of a respectful and productive partnership. This information may also be relevant to other partnership agreements.

If you already have a contract in place, it is not too late to think about these issues. If the buyer you have partnered with wishes to use your story, then you can work with them to negotiate rules relating to media that sit alongside your existing contract.

The information provided here is of a general nature. It does not constitute legal advice. ICIN recommends that, prior to entering into any agreement, you obtain legal advice on this and all other aspects of a carbon project.

Laynhapuy Rangers in 2013 (Photo: ILSC)

Table 2: Issues relating to your story and Carbon Sales Agreements

Issue	Explanation	Example	Ideas and Considerations
Confidentiality	Confidentiality is about what aspects of the carbon credit sale will be confidential, what can be discussed (is not confidential), and with who. It is important to consider how this will fit with any agreement on media.	*Can the price which carbon credits were sold be made public?* *Can the name of the buyer or seller be stated publicly?*	You can have rules about what is and is not confidential in your sales agreement. Balancing confidentiality requirements against media requests can be an area of confusion. Consider providing a plain English explanation or summary of how confidentiality and media requests interact.
Intellectual Property and Copyright	Intellectual Property is about protecting new or unique ideas. Copyright is a way of protecting certain types of Intellectual Property, like videos. If videos, films or photos are being used or produced, you will need to consider who will own these and who has the right to use them. If relevant, it can be important that your agreement contains strong Clauses around Intellectual Property, and 'licencing' use, because this will help protect your story.	*The buyer of carbon credits wants to come on to country and make a film about traditional fire burning and carbon credits.* *Who will own the images, and who will have the right to control how they are used will depend on what is agreed in relation to Intellectual Property, Copyright and licencing.*	Think through who should own Intellectual Property in any media produced or shared under the sales agreement, and set this out in the sales agreement For example, you might use a 'licence' to allow one Party to use media but keep ownership (Intellectual Property) with the other party. Think about what should happen with any videos/photos etc. at the end of the Agreement. Think about how long media can be used for, and for what purpose, and make sure that your sales agreement reflects this in any Licence or Intellectual Property clauses.

Issue	Explanation	Example	Ideas and Considerations
Aboriginal and Cultural Intellectual Property	Aboriginal and Cultural Intellectual Property is about your unique cultural and traditional knowledge. Cultural Intellectual Property may need to be considered if there is going to be media which refers to or contains cultural references, to ensure that these remain the property of the Indigenous group	*Videos or documents which contain people speaking in their language, images of rock art, or discussions about cultural sites or stories may bring up issues of Aboriginal or Cultural Intellectual Property.*	Think about and get advice on whether you need to include protection of Aboriginal and Cultural Intellectual Property in your sales agreement.
Exclusivity	Some buyers may want to be the only ones allowed to promote your partnership. Or, you may want your buyer only to promote your partnership.	*An airline wants to advertise that they are the sole purchaser of your carbon credits.*	Exclusivity can work two ways, think about whether there are any benefits to you of requiring – or agreeing to - exclusivity. Ensure exclusivity clauses, if required, are carefully drafted so as not to inadvertently impact non-carbon partnerships.

Issue	Explanation	Example	Ideas and Considerations
Publication	Publication is anything which publicly discusses your story or the carbon sales. It could be printing photos, broadcasting videos, or making statements on Facebook. This is where you need to decide what the process is before someone can say anything publicly.	*The buyer wants to run a newspaper advertisement, which includes an image from your project and a statement that 'We support the ... Carbon Project'.*	For example, one option is to agree key messages (see below) and an image bank at the time of the agreement, and only require permission if the publication is outside of this. Pre-agreeing messages and images can help streamline some requests later, and therefore reduce the burden on you to handle media requests but can also reduce flexibility. Another option is to develop a template for seeking permission for publication. Developing a template and including this in your Agreement can ensure that any request for publication includes all the information you require (what purpose, what will be said, what image/images, who is in images, what timeframe etc). Timing is often crucial when it comes to media. Having clear timeframes set out in the agreement can help to manage expectations and avoid any disputes. Timeframes might have to vary depending on type of request – e.g. request to film a video might require longer to approve than a request to release a Facebook post.
Credit for images	Consider what branding you want attached to any Publication, and whether this varies depending on whether you supplied the images/footage or if the buyer captured it.	*You could require that every use of an image must reference the name of the carbon project, or of the native title group, aboriginal corporation or ranger group*	Clearly set out what credit must be included in each Publication. Consider how does required credit vary between different type of media (e.g. a Twitter Post can't necessarily contain the same information as a film).

Issue	Explanation	Example	Ideas and Considerations
Use of brand or logo	Do you have a logo or brand that you want to be used in any Publications? What rules and permissions are required for its use? Are there any circumstances when you might want to use the buyer's brand in a publication?		You could outline in the agreement the rules for use of brand and logo for both the buyer and seller.
Key Messages	Agreeing key messages about your story and the sales can help streamline Publication requests.	*Should publications refer only to the carbon project, or can they refer to the Aboriginal Corporation or Ranger Group?* *Must all publications acknowledge and refer to the Carbon Project/ Ranger Group/Aboriginal Corporation, or can they just name e.g. the single individual in the photo?* *Can Publications only be made for a specific purpose – e.g. to promote the carbon project – and exclude use for other more generic advertising purposes?*	For example, you could develop a schedule or media guide with key messages as part of the Sales Agreement. This could be a static or live document. You may want to think about, if Publication uses key messages, does it still require notification? Prior permission? In addition, or alternatively, you could agree key communication principles, and require that all messaging must align with this, or key purposes, for which communications can be made, for example.

Issue	Explanation	Example	Ideas and Considerations
Photo or Image bank	It may be useful to pre-approve the use of some images or videos.		You could include a photo or image bank in the Agreement. These might be the only ones ever used under the agreement, or more might be added or developed later. Make sure that Intellectual Property/ copyright is clearly set out and agreed, as well as agreement on how long the images can continue to be used for (e.g. can photos continue to be used beyond the term of the sales contract?)
Cost	Developing Publications can be costly. Even if the buyer is responsible for this cost, it can still result in an indirect cost to the Indigenous organisation.	*The time involved in having staff review and agree to Publications could be significant, particularly if there is no pre-agreed messaging or image bank.* *Where buyers request to come on-country to take images or make recordings, the time involved in staff, Traditional Owners, Directors or Rangers being involved in this can also be significant.*	You may want to include something in the agreement which outlines who will pay for the development of Publications. For example, if indirect costs are likely to be significant on the Aboriginal Corporation, this also may need to be factored into the sales Agreement.

Issue	Explanation	Example	Ideas and Considerations
Capturing media (taking photos or videos)	Often, buyers may want to come onto country to capture their own photos or videos. This can be a nice way to obtain high-quality media, but raises questions of ownership (Copyright, Intellectual Property), as well as the time-burden on staff and notification periods.	*The buyer contacts the Aboriginal Corporation and tells them they have a film crew who would like to come and film burning operations next week. They will use the footage for a variety of purposes in years to come.*	A carefully drafted agreement which ensures that images/footage is only captured and used for the agreed purpose and timeframe is essential for protecting your story. Frequently, requests will coincide with the busiest time of year from a land management perspective. You may want to make sure you have the right to decline a request, if it does not suit you. Consider developing a template request form as part of the Agreement to ensure any request includes all the information you require (when, where, how, who). Check whether your agreement sets out the requirements for the buyer taking photos and videos including, for example: - Notification timeframes for making requests. - Who will own the final footage/ images. - What purpose can they be used for. - How long they can be used for. - Whether a Traditional Owner or staff member must be present for all filming/image capture and who will cover this cost. - Whether imagery will be reviewed and approved by Indigenous group prior to use.prior to use.

Issue	Explanation	Example	Ideas and Considerations
How can your story be used?	Understanding where and how your story will be used and setting this out in the Agreement is useful.	*Can images can be used on Facebook, Instagram, Website, Power Point presentations to shareholders etc.*	For example, you could agree an exhaustive list of places where media can be used, or you may wish to decide on a case-by-case basis. This could dovetail with the requirements on Key Messages, so that (for example) pre-approved channels (and messages) do not require permission, but Publication outside of these channels requires additional permission. If you take this approach, you might consider including a template permission form for this purpose.
Use by third parties	Can the buyer give access to your images or story to third parties, and if so, on what basis?	*The buyer wants to give some of your images to a client for use in the clients advertising.*	Carefully consider the benefits and risks of this. For example, access could be allowed to a pre-defined group of third parties or agreed on a case-by-case basis. If third party use is allowed, you may want to make sure that third parties should be bound (at minimum) to the same rules and conditions as they buyer.

Issue	Explanation	Example	Ideas and Considerations
Agreement from individuals	Who will be responsible for getting agreement from individuals captured in photos or videos to their use? What considerations need to be put in place if someone is deceased. How can this be managed?		Agree on who is responsible for obtaining Participant Release Agreements. It could depend on who has captured the footage, or consider who is best-placed to obtain it. If the Seller is responsible for obtaining this, be aware of the time-burden this puts on them. You may want to develop a pre-agreed template and include a protocol around cultural mourning and use of images of deceased people. Discuss whether it is possible for the buyer to withdraw all Publications of deceased people. It might be difficult to remember all the media that has been done. Keeping a summary of all media, as well as a contact sheet of people used, can help to manage things such as cultural mourning.
Media by the seller	You may also want to do media about your sales agreement. Think about what you would like to say, how and where.		For example, the Agreement should be drafted to support Publication by both the buyer and seller.
Timeframes	Once the sales agreement expires, it is important to consider whether the buyer can continue advertising the relationship, and the impact this could have on future sale opportunities. It is important to agree how long Publications can be made for, and how long the right to use your images, footage and story continues.		For example, agree the duration for which rights are granted, and make sure that this is consistent throughout your entire agreement. Where necessary, you may want to include a process around the return of footage.

Mimal Land Management (Photo Renae Saxby)

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INDUSTRY TERMINOLOGY

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The Carbon industry can seem quite complicated, with quite a lot of assumed knowledge. People will often use acronyms, and it might be hard to follow what they are talking about. Here is a list some of the key concepts you might come across in the carbon industry.

ACCU Producer is the individual or group who undertakes the activity which results in the generation of ACCUs. For a savanna carbon project, this would be the group undertaking fire management.

Advisors may include legal advisors, such as lawyers, financial advisors, carbon experts or business advisors.

Agents are employed to act on behalf of a proponent, to help manage the carbon project. The extent of the agent's authority will depend on individual relationships. For example, some agents may have authority to make sales of ACCUs in the interests of the proponent.

Aggregators are organisations that bring multiple sources of carbon abatement together. There can be different types of carbon aggregation:

- **Project aggregation:** One organisation which registers a carbon project on behalf of several entities undertaking the carbon activity.
- **Contract aggregation:** An organisation which buys ACCUs from different projects and bundles them together into one ERF Contract.

ALFA NT Ltd (formerly WALFA Limited) was established in 2013 and is an Indigenous savanna burning carbon business operating in Arnhem Land.

Audit, in the context of the ERF, is an independent examination of an ERF Project, undertaken by a suitably qualified (category 2 auditor registered under the National Greenhouse and Energy Reporting Regulation 2008) auditor.

Australian Carbon Credit Units (ACCUs) are the type of carbon credit issued under the Australian Government's ERF. It represents one tonne of CO2e reductions. An ACCU can only be issued to someone who has an Australian National Registry of Emissions Unit (ANREU) Account.

Australian Charities and Not-for-profits Commission (ACNC) is the national regulator of charities.

Australian Financial Services Licence (AFSL) is required by any individual or business trading in or providing advice about ACCUs, including traders, brokers, advisors, sellers, and agents. This is because ACCUs are a financial product.

Australian National Registry of Emissions Unit (ANREU) account is the account for carbon credits and should be set up when you register your ERF project.

Baseline emissions refers to the historical emissions from a carbon project. The baseline is often used in the calculations of ACCUs for a project, through comparing how a project performs with new management activities (in the Reporting/Crediting Period) compared to what happened historically (the Baseline).

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Brokers organise sales of ACCUs for a fee or commission, which can be one-time deals or longer-term sale contracts. Also referred to as 'traders'.

Buyers are the people or organisations purchasing ACCUs. Depending on who they are or why they are purchasing ACCUs, they are usually grouped into different categories as follows:

- **Voluntary Buyers:** Corporate or not-for-profit organisations seeking to purchase ACCUs to voluntarily offset their carbon footprint and support the co-benefits generated by an Indigenous carbon project. Usually willing to pay a premium price. Sales can be one-off but are usually long-term relationships governed by a contract. Example: Qantas, Virgin
- **Compliance Buyers:** Large corporate entities which may seek to offset their emissions through the purchase of ACCUs so that they comply with the Safeguard Mechanism. *Example: Conoco-Phillips, Origin Energy*
- **Australian Government/Clean Energy Regulator:** The Clean Energy Regulator (CER) purchases ACCUs on behalf of the Australian Government through the ERF reverse auction process.

Carbon Abatement Contract is an ERF contract between the Project Proponent and the CER. It contains all the rules and legal obligations for selling ACCUs to the CER.

Carbon Sales Agreement is a private negotiated contract outlining terms between a seller of ACCUs and a corporate buyer seeking to purchase carbon credits to offset their greenhouse gas emissions.

Carbon Credit is a tradeable unit that represents a tonne of CO_2e reductions. Carbon credits are issued to carbon projects and can be bought and sold in carbon markets. An ACCU is a type of carbon credit issued under Australia's ERF.

Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI Act) is the Australian Government legislation underpinning the ERF.

Carbon Dioxide (CO_2) is a greenhouse gas that is created through humans and animals breathing or created when things burn or decompose.

Carbon Dioxide equivalent emissions (CO2e) is a standard used to measure and compare the emissions from different greenhouse gas based upon the damaging effect the gas has on the atmosphere.

Carbon Maintenance Obligation is a requirement placed on a project by the CER that requires carbon stocks to be maintained. A Carbon Maintenance Obligation only applies to sequestration projects and will only be applied if carbon stores have been lost and the CER is of the opinion that relinquishment obligations have not or will not be met.

Carbon Market Institute (CMI) is the peak industry body for the carbon industry. It administers the industry Code of Conduct, holds an annual Summit and provides policy updates to its members.

Carbon market is a system for encouraging the reduction of greenhouse gas emissions through the trading of carbon credits. There are many different carbon markets in operation around the world. A carbon market normally features a tradeable unit (carbon credit), and may operate voluntary or on a compliance basis, and at a local, regional, national or international level.

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Carbon offset can refer to a reduction in greenhouse gas emissions happening in one area of the economy to make up for emissions which are occurring elsewhere.

Carbon project is an activity that reduces the amount of carbon emissions going into the air, or stores greenhouse gas in the landscape.

Carbon service provider is a private business that offers a range of services to landholders interested in establishing and managing a carbon project in exchange for a fee. Services may range from provision of mapping and feasibility studies to complete ownership and management of the project.

Clean Energy Regulator (CER) is the independent statutory authority responsible for administration of the ERF. They also oversee the Renewable Energy Target and National Greenhouse and Energy Reporting Scheme.

Climate Change refers to a change in global or regional long-term weather patterns, which is usually attributed to the increased level of greenhouse gas in the air because of human activities.

Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act) is the law that allows Aboriginal and Torres Strait Islander groups to form corporations.

Crediting Period is the length of time over which a project can create and earn ACCUs.

Delivery Schedule sets out the number of ACCUs that a project agrees to provide to the CER under a Carbon Abatement Contract, and the dates that the ACCUs will be delivered.

Eligible Interest Holder is an individual or organisation who holds an 'eligible interest' according to the *Carbon Credits (Carbon Farming Initiative) Act 2011*. There may be none, one or many eligible interest holders for a carbon project. *Example Native Title holders; pastoral lease holder; a bank with a mortgage over a property.*

Emissions avoidance project is a carbon project that reduces the amount of greenhouse gas emissions going in the air.

Emissions Reduction Fund (ERF) is the Australian Government's voluntary scheme that aims to provide incentives for people to reduce greenhouse gas emissions by undertaking carbon projects. The ERF provides rules (methodologies) under which a carbon project can earn ACCUs. The ERF also provides a market where the CER purchases ACCUs from carbon projects through a reverse auction favouring lowest cost abatement.

Environmental Corporate Social Responsibility (ECSR) is a form of self-regulation that reflects a business's accountability and commitment to contributing to the well-being of communities and society through various environmental and social measures.

Forward Abatement Estimate (FAE) is an estimate of the total amount of CO_2e that a carbon project expects to produce over the entire Crediting Period.

Gold Standard is an international carbon program. It provides a framework for the certification of certain projects which also meet the United Nations Sustainable Development Goals.

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Greenhouse gases (GHG) are gases that trap heat in the Earth's atmosphere, making the planet warm enough to live. Greenhouse gases include CO_2, nitrous oxide, and methane. Too much greenhouse gas in the atmosphere causes the Earth to get too hot, resulting in climate change.

Indigenous Land Use Agreement (ILUA) is voluntary agreement between a native title groups and others about the use of lands and waters.

Kyoto Protocol is an international agreement among countries that sets limits on greenhouse gas emissions from certain countries who have signed the agreement.

Method, under the ERF, refers to the set of rules on how a carbon project operate, monitor, and report on greenhouse gas emissions in order to earn ACCUs.

NAFI refers to the North Australia Fire Information website, which provides fire management data, such as hotspots and fire scars.

Network. The Indigenous Carbon Industry Network is an independent network of Indigenous organisations involved in the carbon industry.

Prescribed Body Corporate (PBC) is a corporation established to represent native title holders, following a determination of native title under the *Native Title Act 1993* (Cth). See also Registered Native Title Body Corporate (RNTBC)

Project Offset Report is the document used to provide information on the carbon project to the CER. A Project Offset Report must cover a period of at least six months and can be up to two years for emissions avoidance projects, or five years for sequestration projects.

Project Proponent, under the ERF, is the organisation or individual who has the legal right to own the carbon project and is the registered owner of the carbon project.

Registered Native Title Body Corporate (RNTBC) is a corporation established to represent native title holders, following a determination of native title under the *Native Title Act 1993* (Cth). See also Prescribed Body Corporate (PBC)

Regulator refers to the Clean Energy Regulator (CER) which is the statutory body regulating the generation of ACCUs in Australia and administering the purchase of ACCUs through the ERF.

Reporting Period, under the ERF, means the time covered by a Project Offset Report. The first Reporting Period commences at the start of the Crediting Period. Subsequent Reporting Periods must begin immediately after the end of the last Reporting Period.

Reverse auction (ERF reverse auction) refers to the mechanism under the ERF by which the CER purchases ACCUs from projects.

Safeguard mechanism is a part of the ERF which places additional requirements and regulation on the greenhouse gas emissions of some large companies and businesses.

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Savanna Burning Abatement Tool (SavBAT) is an online tool which automatically calculates and processes data under a savanna burning method and can be used to determine the number of ACCUs which a project has earned for the Reporting Period.

Savanna burning methodology refers to an ERF methodology which involves the reduction of greenhouse gas emissions or sequestration of CO_2 through the activity of fire management, and includes:

- *Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Emissions Avoidance) Methodology Determination 2018*
- *Carbon Credits (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2018*

Savanna burning project refers to a carbon project operating under the ERF and applying a savanna burning methodology. A savanna burning project involves undertaking fire management activities to prevent the severity and spread of late season wildfire and thereby reduces greenhouse gas emissions.

Secondary market or ERF secondary market refers to the purchase or demand for ACCUs by individuals or organisations seeking to on-sell these ACCUs into the ERF reverse auction.

Section 19 Agreement means a Land Use Agreement under section 19 of the *Aboriginal Land Rights Act 1976* (NT) which is an agreement between traditional owners and others above activities occurring on their land or waters.

Sellers are the people selling ACCUs, which may be the Project Proponent, aggregator, or an agent.

Traders set up and maintain relationships between sellers and buyers of ACCUs, usually for a set fee or commission. Also referred to as 'brokers'. *Example: Aboriginal Carbon Foundation, Corporate Carbon*.

Voluntary Carbon Market is a type of carbon market where there is no legal or regulatory requirement for an individual, company, or government to reduce their greenhouse gas emissions, but they choose to participate in the carbon market anyway.

Territory Natural Resource Management (NRM) Conference, 2020

Annual fire walk, King Edward River, Wunambal Country in far north Kimberley (Photo Wunambal Gaambera)

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