
Building offset market participation with Traditional Owner Private Partnerships

National Biodiversity Offsets Conference 3.0

Kimberley Swords & Darren Godwell

Riffle Advisory & i2i Global

July 2024



Abstract

Australia was a world leader in developing frameworks for biodiversity offsets (Victoria (2007); C'wealth (2012), NSW (2013)), and in formalising indigenous contributions to nature-based benefits through ILUAs or requirements for indigenous rangers as part of project approvals.

As the world decarbonises Australia's development boom for renewables and critical minerals will continue to drive demand for biodiversity offsets.

In 'business-as-usual' Traditional Owners (TOs) are generally not engaged until detailed assessment, as parties with heritage to protected or land use to be agreed to. Many are disappointed with ILUA outcomes and may introduce objections late in the process.

Emerging global best practice is for meaningful involvement in early design and pre-financing stages of project development, with expectations of investors and the experience of the private sector driving new models, as both beneficiaries, and increasingly as equity share owners.

This changes the game for indigenous involvement in offsetting and nature positive outcomes. Models for Free Prior Informed Consent and enduring land management for biodiversity values are emerging. Three things will make it faster:

- 1. Capability** - showing global best practice together with perspectives of investors, TOs and developers in Australia and outlining steps to build capability needed for biodiversity offsets in.
- 2. Access to capital & the invitation to invest** on a fully commercial basis, as part of capital raising. We share what we are seeing globally in indigenous investment from ESG funds & from large scale indigenous enterprises, and ask how can the benefits flow from offsets interact.
- 3. Fair and transparent agreements** - we will share inspirational approaches from other countries and some thoughts on what Australia needs to activate agreements at scale, facilitating discussion on what can the environmental impact profession do.

Insight from global best practice and interviews with private sector leaders and Traditional Owners inform next steps.

Introductions



Kimberley Swords
Chief Executive Riffle Advisory

Former McKinsey & Nougat Group management consultant and senior executive in Commonwealth and State Governments.

Led Victorian NVMF 2007 – 2010 & Commonwealth EPBC Offsets framework development 2010 – 2015.

Focusses on nature, climate risk, net zero strategy, leadership, executive coaching, infrastructure, indigenous economic development & Board roles

Member IABP Governance Working Group Voluntary Biodiversity Credits



Darren Godwell
CEO i2i Global

One of Australia's most well credentialed Indigenous executives.

Serves DFAT, DCCEEW, and major mining corporates on indigenous engagement & international development topics

Why TOPPs? Why now?



Colonial exploitation

- Local leaders may have been paid, but more often coerced or violently motivated into acceptance
- Landholders forcibly displaced



Legacy 20th century

- Use of treaties to convey protections (generally environmental, ie UNESCO World Heritage Convention)
- Some legal challenge prevented development: ie Jabiluka in Australia
- Ongoing conflict: ie Bougainville in PNG, Niger delta Ogoni people, and many others



Post ILO 169 & UNDRIP

- Ratification by many nations
- National constitutional recognition of rights
- Legislated standards emerge



Delivering on Free Prior Informed Consent

- Recognition and support in law
- Alignment on best practice standards
- Consistent use and application of FPIC by all developers

Biodiversity offsets & credits will need to meet global FPIC standards

Illustrative, not exhaustive

UNFCCC: Clean Development Mechanism Standards



First Nations Major Projects Coalition (FNMPC), Canada



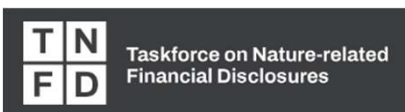
Resolve's FPIC Guide & insights from FPIC solutions dialogue



National Iwi Chairs Forum, New Zealand



Taskforce for Nature Related Financial Disclosures (TNFD)



Ecuador's 2008 constitutional amendments



International Advisory Panel on Biodiversity Credits (IAPB)



First Nations Clean Energy Network, Australia



Best practice examples - Canada



NWP Coal
Canada Ltd

In January 2023 Yaqit ?a·knuqti 'it (YQT) agreed to serve as 'regulator and reviewer' of Jameson subsidiary NWP Coal Canada's Crown Mountain Project which expects to start metallurgical coal production in late 2025

YQT have agreed to participate fully in the IA process for the purpose of providing or withholding Free, Prior, Informed Consent to the Project following completion of the Environmental Assessment



Blueberry River First Nations agreement with British Columbia (January 2023)

In June 2021 Yahey v. British Columbia the court found B.C. breached its treaty commitment to Blueberry and infringed the Nation's rights to carry out their traditional ways of life, as outlined in Treaty 8. The province approved drilling and forestry operations without the consent of Blueberry

Part of the agreement outlines a \$200 million restoration fund along with plans to manage watersheds and oil and gas activities in parts of the Blueberry claim areas, which cover four per cent of BC.

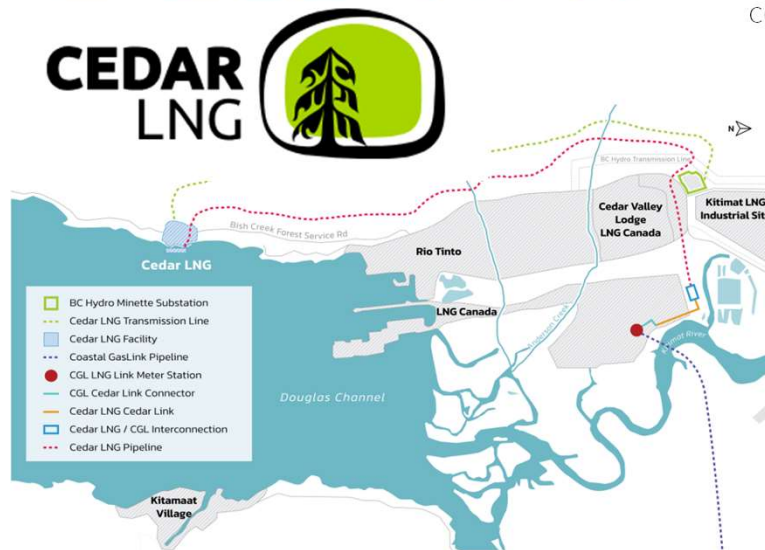


Best practice example - Canada



In the early 1950's Rio Tinto Alcan established a port north of Kitimaat Village. Since 2012 TC Energy has been building the Coastal GasLink project. LNG Canada built the export terminal for the project.

Benefit flows to local communities, investment in workforce development, and a proactive partnership with local communities have been features of both projects – driven by a belief of local leaders that the project could underpin the Haisla's recovery from colonization. LNG Canada made a participation agreement with the Haisla, sharing profits from the project and guaranteeing well paying jobs for community members. The commitments are public in a community charter.



Subsequently, Cedar LNG is being developed as a floating LNG facility, within the traditional territory of the Haisla Nation. The project is strategically positioned to leverage Canada's abundant natural gas supply and British Columbia's growing LNG infrastructure to produce industry-leading, low-carbon, cost-competitive Canadian LNG for overseas markets.

Cedar LNG is the world's first Indigenous majority-owned LNG project, will have one of the cleanest environmental profiles in the world, and will provide unprecedented opportunities for both the Haisla Nation and the region

Best practice example – USA



A conscientious company founded on our rich energy legacy, with strategic, diversified assets to serve the Navajo people, our employees, and our communities.

Winner of the the 2022 *Excellence in Surface Coal Mining Reclamation Award*.
“The reclamation performed by this year’s awardees are excellent examples of what is possible in coal mine land reclamation envisioned by Congress in the Surface Mining Control and Reclamation Act.

Established in 1957, & owned by GE from 1977, in 2013 BHP Billiton sold the Navajo mine to NTEC. NTEC was created through a pioneering effort by the Navajo Nation to achieve greater sovereignty over its natural resources. NTEC was established under Navajo law and operates as an autonomous commercial entity with an independent board of directors.

NTEC’s purpose is to promote the development of the Navajo Nation’s resources and new sources of energy, power, transmission and attendant resources, to develop the economic, financial, social and cultural well-being of the Navajo People and the Navajo Nation.

Coal mine closure & remediation is currently progressing and the company has grown to hold a diversified energy portfolio, while investing in energy security, energy transition, education and development of communities.

Asset portfolio:

- 4x coal mines
- Co-investment with Engie in solar development
- Part share of Texas Minerals corp
- Cloud Peak Energy Assets, and part ownership of Westshore Terminal in British Columbia
- 7% ownership of units four and five of the Four Corners Power Plant (FCPP)

Community investments:

- Community Heating Resource Program/ solar panel home installations
- Education & Scholarships
- Community benefit fund
- Community support and improvement projects

Best practice example - USA

Red Cloud Renewable

Red Cloud Renewable is a perpetually Native-led grassroots nonprofit on Pine Ridge Reservation, is one of the only majority Native-controlled renewable energy nonprofits in the nation. The Oglala Lakota nation provides culturally relevant educational & employment opportunities, while helping tribal members move towards energy independence

We provide free, place-based renewable energy training and workforce development opportunities for Native Americans.



Indigenized Energy was founded by Cody Two Bears in 2018 in the wake of the North Dakota Access Pipeline protest in his home community of Standing Rock. Indigenized Energy is a non-profit, native-led organization.

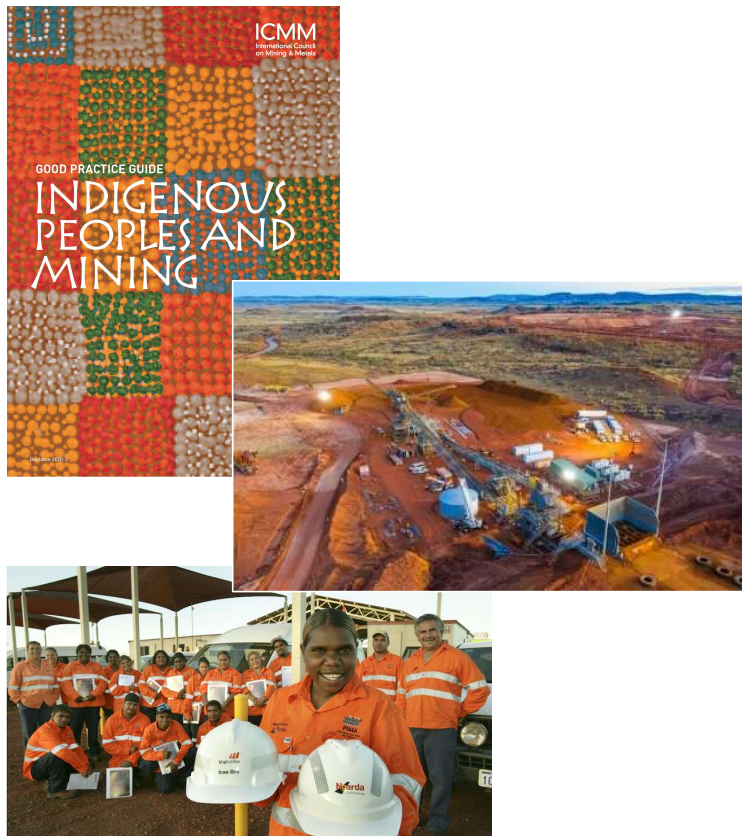
The team includes energy professionals with decades of experience creating change in Indian Country as well as an expanding group of strategic partners across government organizations, NGOs, and private corporations.

Their aim is to pursue tribal energy sovereignty through trusting partnerships and innovative programs that grow collective capacity to unleash the power of renewable energy.



Best Practice Example – Australian Traditional Owners Interests

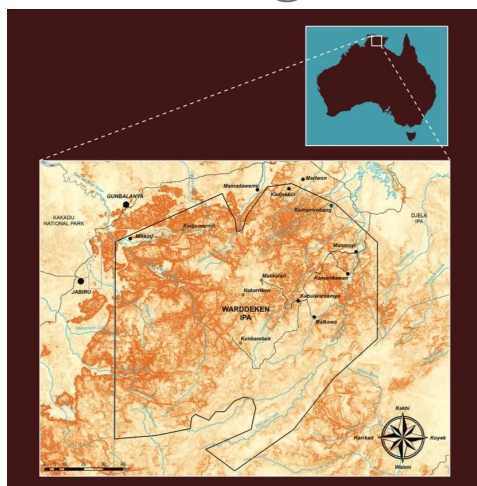
Delivering win-win outcomes with Mining Interests and Traditional Owners



A global mining company appointed i2i Global as their advisor to operationalize Free Prior and Informed Consent (FPIC) as a standard and a practice that supports Indigenous rights and Human Rights

- The mining company was studying options for a change in operating in Australia, including the possibility of transitioning in mining operations.
- i2i Global screened the study process through a FPIC lens to identify risks.
- This process identified required changes in both consultation and engagement approaches to ensure Traditional Owners interests were considered.
- i2i Global provided the Client with advice that addressed potential opportunities and/or adverse impacts to the interests of Traditional Owners.
- The result of the i2i Global inputs meant that Traditional Owners were provided with information, prior to the key decision gates of the proposed project and were actively participating in the study process through:
 - involving Elders in cultural, archaeological and ethnographic surveys identifying additional cultural heritage;
 - The Client then responded to TO feedback that, in turn, improved the planning processes, that secured social license from the TO's.
 - Delivered an FPIC Strategy to ensure Traditional Owners can exercise their self-determination and extract outcomes that will deliver sustainable benefits to the community.

Best Practice Example - Wardekken IPA Carbon Farming



The Wardekken IPA was established in 2009 and is located in the Northern Territory east of Kakadu National Park covering 1,394,951 hectares of spectacular stone and gorge country on the Arnhem Plateau.

It is owned and managed by the Traditional Owners of 36 different clan groups, through a complex system of customary law. The Karrakad Kanjdji Trust was established to support their vision for healthy country.

The Wardekken IPA employs 150 rangers on a casual basis every year.



One of the most prominent impacts of European colonisation was the decrease in traditional fire management resulting in very hot damaging large-scale late-season fires that risked the entire plateau's ecosystem.

Managed fires conducted in the early dry season reduce the frequency, intensity and extent of large-scale fires and also decrease greenhouse gas emissions by 52%.

The resulting reduction in emissions is then quantified and sold through the Climate Solutions Fund (a carbon market run by the Australian Government) or alternatively on the voluntary market.

There are a variety of projects that the traditional owners work on including:

- projects to protect biodiversity
- feral animal management
- invasive weed management
- the protection of culture
- carbon farming by preventing wildfires
- documentation and conservation of rock art.

Funds raised from carbon farming are reinvested into other projects to help restore and aid the communities and their connections with culture.

One of the most beneficial projects is the creation and investment into the bi-Cultural and bilingual Nawarddeken Academy.

The Academy creates opportunities for Indigenous families in remote areas to access full time schooling, compatible with cultural ways of living and delivered in language and in English. The school achieves an attendance rate of 95% far outperforming any other schooling provided to indigenous children.

Best Practice Example – Yindjibarndi Aboriginal Corporation



The Yindjibarndi Aboriginal Corporation was initially registered in 2004 and confirmed in 2008. It covers 13,000km² in the Pilbara region of Western Australia and includes numerous parcels of land with a variety of tenure/stakeholder interests, including the strongest form of native title, known as Exclusive Possession.

They are a Not-for-profit company with a standard business structure and allows for a Yindjibarndi person who holds in the common body of traditional law to become a member. Allowing them to speak and vote at general meetings to voice their opinion any the happenings of the company.

Michael Woodley has been the CEO since 2007.

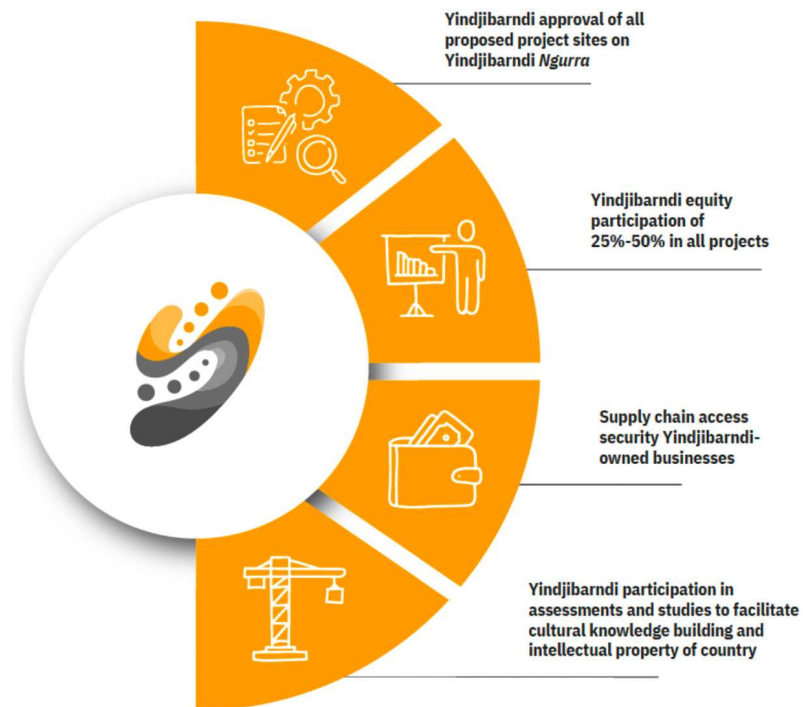
Currently 400 people are employed and the company generates \$120 million in annual turnover.

The company has created of 4 standalone companies that are reinvested into further commercial development and into the culture and communities living on the land. The four companies are Yindjibarndi Water, Yurra Pty Ltd, Cedrent Enterprises and Yindjibarndi Energy Corporation.

Due to the success of their previous projects. The YAC have partnered with the renewable energy company ACEN Australia to develop, own and operate up to 3GW of renewable energy on the traditional country of the Yindjibarndi people in Western Australia’s Pilbara Region.

Sources: <https://yindjibarndienergy.com.au/>, <https://yindjibarndi.com.au/>, <https://register.oric.gov.au/Document.aspx?documentID=935635&concernID=104370>

Yindjibarndi investment model



Lessons for Australia

Canada's approach has created an environment conducive to project-level negotiations between resource companies and Indigenous groups. Treaty rights, legislative arrangements and self-government arrangements mean indigenous groups control land access to a proposed development, and regulatory approval requires demonstration of compatibility with Indigenous rights (eg through the duty to consult and accommodate)

Customary landowners in PNG do not have power to grant or reject mining applications; however, their ability to negotiate for equity is improved by legislation that specifically envisages equity to be shared among the developer, the state and landowners

Its now a practice in Canada whereby large projects are being Indigenous initiated and led

Co-ownership is likely to help Traditional Owners exert influence over the full spectrum of company decisions (since contractual commitments are specifically defined), or where symbolic ownership is valued by the Indigenous group

Co-ownership can be negotiated and developed in a variety of ways: as a commercial share-purchase transaction, as part of a package of negotiations to access Indigenous land, and as part of a statutory process of negotiation that facilitates customary landowners' claim to equity

Indigenous co-ownership can benefit the broader community group, requiring the Indigenous equity holder must be capable of making and trusted to make decisions for the benefit of the group

Australia would benefit from a nationally consistent approach and toolkits to accelerate agreements, rather than relying on successful court actions establishing precedent

What do you need to do to help it happen?

This changes the game for indigenous involvement in offsetting and nature positive outcomes – from mendicant to ownership.

Three things will make it faster:

1. *Building capability and expectations* - of investors, TOs and developers
2. *Access to capital & the invitation to TOs to invest* on a fully commercial basis, as part of capital raising.
3. *Fair and transparent agreements based on the principles of Free Prior Informed Consent*

Canada's First Nations Major Projects Coalition



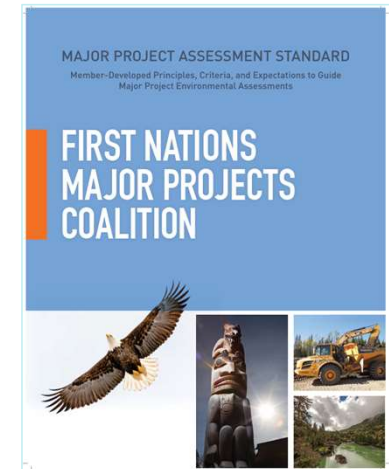
The First Nations Major Project Coalition (FNMPC), established in 2017 is a national 145+ collective group of First Nations made up of elected councils, hereditary Chiefs, Tribal Councils and Development Corporations, who have made the decision to come together to advance their shared interests of participating, and where appropriate gaining equity positions in the major projects taking place in Canada's territories.

FNMPC is a national non-profit organization established by First Nations for First Nations. Under their broad mandate, FNMPC provides First Nation members with access to tools, knowledge, and advice used to make free, prior, and informed business decisions about First Nation involvement and participation in major natural resource and infrastructure projects.

Services focus on supporting the economic, environmental, and public policy interests of members in a non-political and business focused way.

MISSION

The FNMPC works to safeguard our air, land, water, and medicine sources from the impacts of resource development; advocates that our members receive a fair share of benefits from projects undertaken in their traditional territories; and explore ownership opportunities of projects proposed in our members' traditional territories.



FNMPC's primary function is to provide capacity tools and support to its members in order to assist them in making informed business decisions about major projects planned or occurring within traditional territories.

Canada's Nations Royalty

On February 1, 2024, the transaction to create Nations Royalty was announced. Nations Royalty is a groundbreaking concept founded by the Nisga'a Nation and Frank Giustra.

Nations Royalty is a royalty company focused on creating royalty diversification for First Nations. Nations Royalty will allow First Nations to bring forward the Value within their Benefit Agreement Royalties and unlock the Net Asset Value (NAV) Multiples afforded to Royalty Companies.



Sources: <https://nationsroyalty.ca>; [About - Accomplishments and Benefits of Nisga'a Treaty | Nisga'a Lisims Government \(niskaanation.ca\)](#)



Nisga'a Lisims
Government



**NATIONS
ROYALTY**



I believe that Nations Royalty will be as impactful in the mining and royalty space as when we founded Wheaton Precious Metals and introduced the concept of Metals Streaming in 2004.

- Frank Giustra
Major shareholder

To be a self-sustaining Nation, independent of Government transfer payments, Nisga'a will require Assets under Management of over \$8 Billion. We intend to grow Nations Royalty as a cornerstone Public Company and Investment.

- Charles Morven
Secretary-Treasurer,
Nisga'a Lisims Government



Nations Royalty takes forward the Nisga'a 113 year journey from colonisation to autonomy in 2000, and subsequent self government and economic development.

In 2000 Nisga'a Final Agreement was the first treaty in British Columbia to provide constitutional certainty in respect of an Aboriginal people's Section 35 right to self-government. It recognized Nisga'a Lands and opened the door for joint economic initiatives in the development of the Nisga'a Nation's natural resources.

Backup



Where we have come from – Global oil and gas



Shell Petroleum Development Company joint venture (SPDC-JV), Nigeria

After years of broken promises, environmental mishaps and conflict in the Niger Delta region, Shell's host communities had little trust in the largest oil and gas producing company in Nigeria. By the late 1990s–early 2000s, the company had suffered reputational damage due to its environmental record in the Delta and in wake of the 1995 execution of Ogoni activist Ken Saro-Wiwa by the Nigerian government.

Shell's historically paternalistic community engagement model, with bilateral agreements and multiple interfaces with nearly 1000 host communities, was becoming unsustainable.

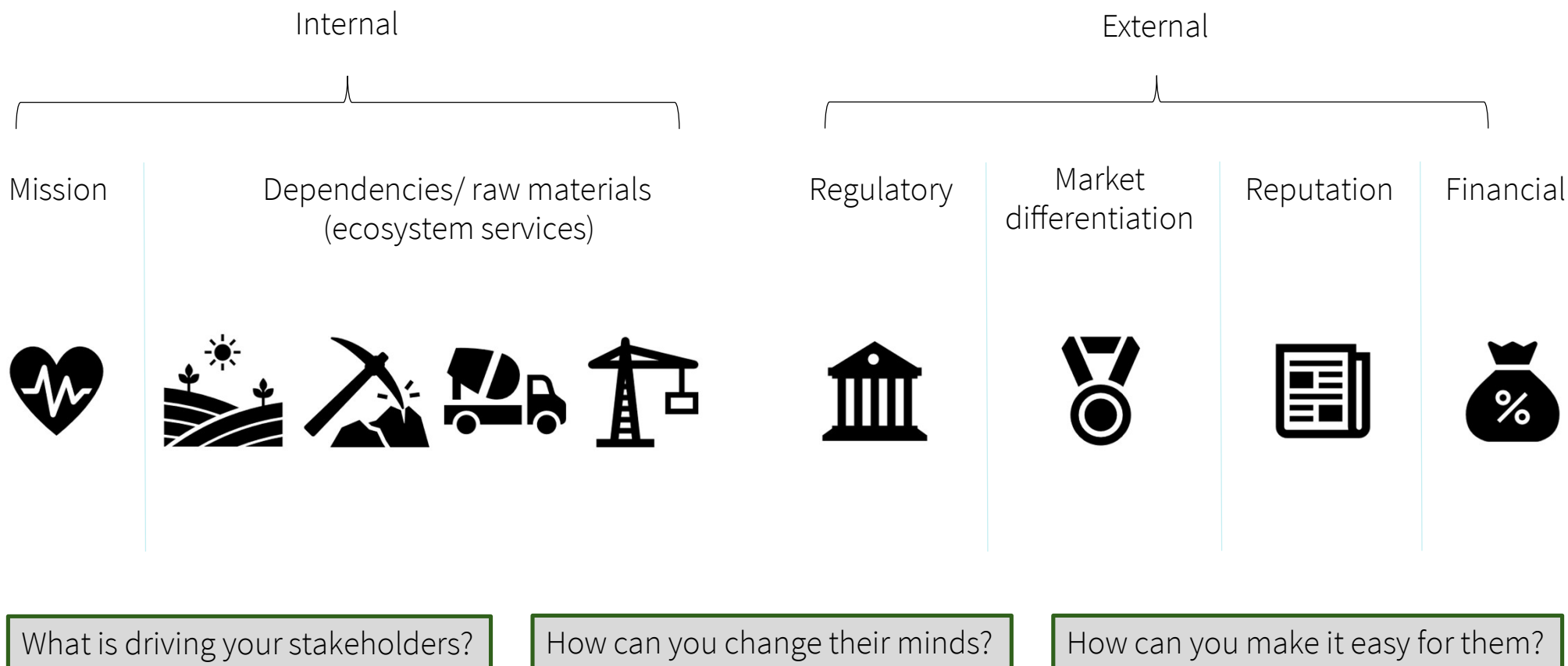
In 2005, Gloria Udoh, a community development officer at SPDC, Shell's premier subsidiary in Nigeria, led a team that was charged with proposing a new community engagement model to Shell senior management.

Since re-establishing relationships Shell has developed a portfolio of social investment, with funding for healthcare and education, alongside environmental investment, focused initially on spills clean-up, and broadening to nature and biodiversity improvement contributions and renewables energy access for communities.

In 2022 the scale of investment was:

- Support for 17 healthcare centres in the Niger Delta
- \$5.6m in education program support, including 3,000 secondary and 3,500 university grants & \$15m invested into a Geosciences centre of excellence & an e-library project
- \$900m over five years to the Ogoni Trust Fund to fund the UNEP recommended Hydrocarbon Pollution and Remediation (HYPREP). In 2021, remediation and certification was completed at nine sites, and work on a further 11 sites continued. In 2022, remediation of another nine sites and certification of four was completed by HYPREP. Work on the outstanding two sites continued into 2023
- All On's total portfolio of renewable, energy access investee companies in Nigeria increased to 46, with a total of \$23.6 million committed. Since its inception in 2017, All On has delivered more than 75,000 energy connections through its investee companies

Demand drivers for biodiversity offsets and credits



Governance Performance Framework for voluntary biodiversity credits



Priority design solutions	Elements	Options
Integrity	International trade management framework	Multilateral: convention led Bilateral government agreements Voluntary
	Innovative national regulatory frameworks	Environment led Development/economic led Rights of nature Science based targets Integrated Voluntary TNFD
	Defining and assessing biodiversity credit (and offset) integrity	Internal people leader Line manager McKinsey faculty or executive coach Stanford faculty
	Data governance	Open source, with protection Open source, without protection Closed source, centralised Closed source, data lake
Who is involved?	Indigenous people	Rights based – Free Prior Informed Consent Representation based – requirement for inclusion Quota based - % of inclusion Equity based –offer to TOs
	Local communities	Inform Consult Engage Involve
	Land owners	Inform Consult Engage Involve
	Other rights holders	Inform Consult Engage Involve
	Land & project developers	Inform Consult Engage Involve
	Land and project investors	Inform Consult Engage Involve
	Land stewards	Inform Consult Engage Involve
	Technical experts	Formal advisory Informal advisory Decisional None
Institutions	Independent members	Formal advisory Informal advisory Decisional None
	Price setting/valuation	Market based Market based, with floor Social intervention model
	Exchange/s	Single global clearing house Nodal global clearing houses National exchanges
	Register	Single global register Country based registers None
	Risk assessment & disclosure	Proactive/ forward looking/ future state based Retrospective, annual TNFD [++++]
	System assurance/ audit	Annual, risk based audit Annual, representative audit Transaction [value] based
Revenue flows	Monitoring of stock and flows of biodiversity	Remote sensed, with field checks Mapping and survey based Monitoring mission
	Price & flows of revenue	Full up front payment Regular [annual] payment for ten years Regular payment in perpetuity
	Beneficiaries	Current landholders Indigenous traditional owners Local communities