

Enquiries to: [REDACTED]
Reference: EM/A/2

Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

19 October 2011

Dear Sir/Madam

**COMMENT ON EPBC ACT ENVIRONMENTAL OFFSETS POLICY
CONSULTATION DRAFT**

Thank you for the opportunity to comment on the *Environmental Protection and Biodiversity Conservation Act* Environmental Offsets Policy Consultation Draft and Assessment Guide, currently out for public comment. Please find detailed below the City of Armadale submission in relation to the policy and assessment guide documents.

Offset Policy

General comments

- The position that "*a suitable offsets package*" involves both direct and indirect offsets is supported.
- The State and Federal approvals and offsets system employ the same system to allow the processes to occur concurrently and in a consistent manner.
- Offsets provided through this process should also be able to be directed to conservation areas managed by the Local Government, rather than all of the funding/offsets being applied only to State managed and private lands.
- Based on some of the comments made below regarding the circumstances under which a Local Government Authority operates, consideration should be given to tailoring the policy and guide for sector.

Policy content

- Section 1 Page 3 - Paragraph 3 – the words "*and government infrastructure service providers*" should be added following "*greater certainty to businesses*" to include non-profit bodies who provide essential infrastructure and services which, on occasions will have the potential to impact on EPBC values and therefore may be required to provide offsets under that process.
- Section 5 Page 8 - Figure 1 – "*Significant Impact Guidelines*" should be included as an appendix to the offsets policy.
- Section 5.1 Page 9 – Paragraph 2 – It is assumed that the reference to offsets not being "*considered at referral stage*" means that offset proposals submitted by proponents at this stage do not influence the decision whether an approval (or not) is required under the EPBC Act. If this is the case, this should be clarified.

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- Section 5.1 Page 9 – Paragraph 2 – The words “*or local*” should be added following “*state or territory*” to acknowledge that some Local Government Authorities are developing local offset policies to be administered in local infrastructure project formulation and approvals processes.
- Section 5.3 Page 10 - Paragraph 1 – indicates that the decision maker exercises the power to determine whether an “*offset can be considered*”, however a proponent presumably has the discretion to avail itself of the offset mechanism. The wording “*needs to*” should be amended to read “*may*”.
- Section 6 Page 11 – the matters to be considered in determining the appropriate magnitude of an offset should include the additional criteria below:
 - *The role and function of the proponent, for example a local government authority is required by law to provide local infrastructure which can have environmental impacts such as vegetation clearing, however such a public agency has entirely different scope for action and ability to fund offset costs, than does a private business enterprise whose fundamental objective is enhancing shareholder profits and whose costs and tax structures allow costs to be passed directly to end users.*
 - *The context of the relevant action and residual impacts by government agencies providing public goods, for example a local government authority's community infrastructure or service provision (particularly where such action is implied in plans endorsed by state government agencies).*
 - *The nature and role of the conservation manager proposed.*
- Section 6 Page 12 – Figure 2 (the box headed “*Does the offset conform to good governance principles?*”) - While the sentiment of giving weight to a proponent’s environmental record can be appreciated in the determination of offsets, it is questionable whether this is entirely consistent with principles of administrative law which generally require decisions to be made on their merits and without prejudice. Such a consideration would require a high degree of subjectivity unless based on objectively quantifiable legal actions and should involve detailed analysis of proponent’s circumstances which may be applicable to a past historical record of the company or proponent such as changes in governance policies over time.
- Section 6.1.1 Page 13 – Paragraph 1 – The first sentence implies that the regulator can have absolute certainty over future outcomes in relation to an offset area, and should also be rephrased in a positive manner, for example “*offsets must deliver or strengthen a conservation outcome*”.
- Section 6.1.4 Page 13 – Paragraph 2 – It is not clear as to the intended timeframe of a “*long-term*” management action, and this should be clarified within the document.
- Section 6.1.5 Page 15 – The time frame required for the provision of annual reports to the department should be provided.
- Section 8.2 Page 18 – The process for third party accreditation by the department should be detailed and this information should be made available to proponents at the beginning to the process to ensure this requirement can be met.

Grammar corrections

- Section 6 Page 10 – Paragraph 5 – Sentence 2 should be reworded to provide clarity what is meant by the sentence.

- Section 6.1.4 Page 13 - Paragraph 1 - the first sentence is not particularly clear or consistent with earlier statements and would benefit from re-examination and possible rewording.
- Section 6.1.4 Page 14 – The word “risk” is missing from Figure 3 title.

Environmental Offset Assessment Guide

- ***Impact Calculator*** –
 - The arrow indicating the increasing impact points on the far left-hand side of the table should be for each individual factor, as each factor has an increasing impact point for their descriptive value, rather than one factor having a high impact than another factor.
 - Definitions of the factor descriptions should be provided with the guide.
- ***Offsets Calculator*** –
 - Land tenure change and maintenance – There should be a quantified time frame for the implementation of management actions.
 - Site characteristics – Location of offset to impact site – The use of “close” should be quantified with a distance figure or range.
 - Site characteristics – Length of time between action and offset delivering ecological benefits – The deduction of points for medium and long term time should be reconsidered. Revegetation works that deliver ecological benefits, including ongoing management of a site, may not see the full benefits of the works within 12 months, this also needs to consider the timing of the works where plants for revegetation works are required to be ordered during the spring months before the winter when planting will occur. Consideration also needs to be given to the effectiveness and ability for certain actions to occur within a 12 month time frame, for example negotiations for purchase of land can be a lengthy process.
 - Other actions – Other direct offset actions as proposed for consideration in consultation with the department – the symbol of the footnote on this item does not match the key.
 - \$100,000/year for priority actions – Details on the analysis behind the determination of this figure should be provided. The annual cost of the implementation of some recovery plans would not always be greater than \$100,000/year, and so actions under \$100,000/year may not be considered within the requirements of the policy.

Thank you once again on the opportunity to comment. If you require clarification on any of the issues raised in the submission above please contact the [REDACTED] on [REDACTED] or via email on [REDACTED]

Yours faithfully



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