

21 October 2011

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

Dear Sir/Madam

Subject: Submission – EPBC Act Environmental Offsets Policy, Consultation Draft

Lake Macquarie City Council wishes to comment on the Consultation Draft Environmental Offsets Policy of August 2011. Council officers welcome the preparation of a policy relating to this issue, but considers that significant changes are desirable.

Provision of biodiversity offsets is frequently a consideration in land use and development proposals in the Lake Macquarie local government area. In response to concerns about this issue, the Council recently publicly exhibited a draft Council biodiversity offsets to provide a consistent framework for offsets within the City, based on current practice and experience. The policy has not been finalised at this stage. A copy of the exhibited draft and accompanying exhibition material is attached for your information.

An essential consideration in the preparation of the policy is the desirability of maintaining a consistent approach to offsets between all three levels of government, and this requires at least consistent definitions and principles. There are also benefits in working towards consistent approaches for calculating offsets.

The following essential principles should be included in the policy, and are based on a review of Australian state jurisdictions and international biodiversity offsetting principles and practice:

1. Offsets will be used as a last resort, after consideration of alternatives to avoid and/or mitigate impacts.
2. Offsets must be based on sound ecological studies (of both the area to be disturbed by the development and the offset area) and principles.
3. Offsetting must achieve benefits in perpetuity.
4. Offsets must be based on the principle of 'net gain' in terms of both the area of native vegetation and biodiversity values.
5. Offset arrangements must be enforceable.

The policy should identify circumstances where offsets are (and are not) appropriate by making a statement such as 'biodiversity offsets are not appropriate where the biodiversity impacts of a development could be reasonably avoided or mitigated' and supplementary guidelines for how to determine this.

In practice, biodiversity offsetting requires considerable flexibility of approach and must be underpinned by sound land use planning. Market based mechanisms, such as the NSW BioBanking scheme, have had limited success to date in achieving landscape-scale biodiversity outcomes.

The distinction between direct and indirect offsets is probably not useful in practice. Experience in Lake Macquarie suggests that it is important to differentiate between on-site offsets and off-site offsets, but that a range of offset types are available which vary according to the circumstances of each case. The Council differentiates between four different types of offset arrangements, any or all of which can be used:

- Balancing biodiversity losses (eg acquisition of offset land or biobanking credits);
- Improving biodiversity security (eg dedication of land to public ownership or legal conservation agreement);
- Improving management (eg plan of management and rehabilitation program); and
- Indirect improvements (eg financial contributions or scientific studies).

It is important for offset arrangements to be consistent between all levels of government, because of separate regulatory requirements and the need to maintain outcomes, which are enforceable and consistent with long-term strategic land use.

Section 6.1 of the draft environmental offsets policy, relating to what constitutes a suitable offset, could be further clarified to assist practical decision-making. It is suggested that clear principles, which are explained and quantified, are more useful, such as those outlined above. It is noted that the principles included in the Draft Policy Statement: Use of Environmental Offsets under the EPBC Act of August 2007 were clearer and easier to apply when compared to the draft policy currently on exhibition.

The proposed Environmental Offset Assessment Guide is conceptual in nature rather than practical. A case study is required in order to trial its effectiveness. Most importantly, the approach is inconsistent with state and local government approaches, meaning that a development requiring consents at national, state, and local government level may need three different methodologies to work out offset arrangements. The draft Lake Macquarie biodiversity offset policy criteria and calculator attached provides an example of a method of calculating offsets. The Council is working with the NSW Office of Environment and Heritage to make the calculator generally consistent with the NSW BioBanking Assessment Methodology, but it appears inconsistent with the indicative EPBC Act Offset Assessment Guide calculator.

It is **not** appropriate for the policy to endorse or promote accreditation of biobanking schemes, which is only one of a number of mechanisms for achieving biodiversity offset outcomes. Experience with biobanking in NSW shows that it is not being used in practice by the development industry except in some unusual circumstances.

One of the reasons why Lake Macquarie City Council has prepared a draft biodiversity offsets policy is that current arrangements have failed to produce a workable way of allowing offsets to be integrated into land use planning and development approval systems.

The policy should also note the need to properly record and document offsets so that all levels of government are aware of these sites and they can be incorporated into conservation planning, and to ensure appropriate consultation when administering the policy.

Opportunities exist for linking biodiversity and other environmental offsets with carbon offsets. Consideration therefore needs to be given to how complementary offsets can be recognised in the policy.

Before the policy is finalised, it would be beneficial to conduct a thorough review of biodiversity offsetting practice in Australia, and to trial the application of the policy and the calculator using case studies. An expert conference or workshop would be a way of clarifying the key issues in establishing an effective approach to biodiversity offsets, and Lake Macquarie City Council would be willing to contribute to and/or host such a forum.

There is merit in a national policy relating to biodiversity offsets. However, this must have full regard to the needs of local government, the community and the development industry for generally consistent offsetting principles and approaches across all levels of government. It is essential for this issue to be addressed prior to the finalisation of the policy.

Thank you for taking these comments into account. Should you require further information, please contact [REDACTED]

Yours faithfully



Alice Howe

Manager Sustainability

Encl: Draft Lake Macquarie Biodiversity Offsets Policy public exhibition material