North Coast Environment Council submission to EPBC Consultation Draft Environmental Offsets Policy
August 2011

Environmental offsets policy
1. Introduction
The statement in the introduction that this policy provides more flexibility in delivering outcomes is of concern to the North Coast Environment Council (NCEC) as it indicates straight away that this policy review is designed to alleviate the position where proponents have the responsibility of providing "like for like" and that more ways will be developed to facilitate development.
It is NCEC's strong position that offsets should only be considered for **critical infrastructure** needed for the common good of the community and only where damage is absolutely unavoidable. The common good does not include mining, CSG mining as they are considered industries which pollute and destroy environmental assets for the benefit of a few investors. The common good similarly does not include residential subdivision and tourist development in inappropriate locations.
In NSW the government created a category of "State significant development". In coastal habitat that began as any development worth over $10M but was corrupted to in the end to be anything the Minister felt like passing. ICAC are currently investigating the paper trail involving the previous Planning Minister.

The promise of a five yearly review is regarded with great scepticism by NCEC having regard to the failure of successive governments in NSW to adequately and consistently carry out five yearly reviews in areas such as forestry.

NCEC is also alarmed by the statements about best practice overseas and in the intention to set a set of national standards for Biodiversity banking.
NCEC is unaware of the particular countries are referred to as establishing best practice as it is generally conceded that the world environment is in trouble everywhere as we trade off the environment for expected but seldom delivered financial gain.
We cannot believe that North or South America have a "best" practice in areas like global warming emission or forest or species protection. It is unlikely that you mean any overseas best practice in China, India, SE Asia, in any of the Arab nations, or in Africa, or in Russia.
Perhaps "best practice" is to be found in Europe where there has been advance in renewable energy development but at this stage there is not much of the original environment to exercise "best practice" upon.

It would seem appropriate then to develop best practice here by avoiding having to make offsets at all except in the circumstance identified above.

The thought of formulating national standards for BioBanking based on what is going on in the Australian states is also seeking to adopt the standards of the lowest common denominator. NSW for instance used to have a strong environmental policy with the EP&A Act and the Native vegetation Act which were continually weakened to allow development, increased logging for an unattainable quota and subdivision development and tourism developments in sensitive coastal areas. The detested Part 3A eventually had a lot to do with the Labor government suffering a humiliating defeat at the election. However Part 3a seems to have been replaced by Part 3b.

To look for a benchmark in the States would be a mistake. The Federal government needs to come up with a benchmark far better than what has happened in “the premier state”.
Biobanking in NSW has already proven a failure with both environmentalists and developers illustrated by a miserable rate of uptake despite considerable efforts by government.
The system is difficult to understand, appears to guarantee scientific rigour but was developed with the facility for the minister of the day to disregard ‘red flags”.
BioBanking’s close relation Biocertification was also exposed as just another way to facilitate development in the NW Sydney Cumberland Plain area where “like for like” and “maintain or gain” could not be found and vegetation outside the area of a different type was allowed. Even blood money is considered acceptable which can be spent on some undefined area elsewhere.
The idea that offsets can be achieved by including like habitat in a conservation area many kilometres away ignores the basic fact that if critical habitat or high conservation habitat is to be found elsewhere it should already be protected under the NSW TSC Act or the NVA or incorporated in a National Park or conservation area in its own right.
Offsets are used to justify the destruction of one area where two areas should have been conserved. The status of our species demands that consideration, not ways to get rid of it.
The paragraph about national standards of course presumes that the states actually have such protective legislation. When I last enquired WA did not even have a Threatened Species Act and there are some pretty horrible things happening in the Northern Territory and Queensland. States in which over 150 leaks from an uranium mine are allowed in a world heritage national park are not ones which should be involved in a Council of Australian Governments in developing a set of national standards for biodiversity banking and for environmental offsets more generally.

Even the NSW Government has lately taken on an obvious policy in weakening the EP&A Act, NVA, a moratorium on marine parks, weakening protections for the endangered grey nurse shark and has refused to adequately prosecute State Forest breaches of the code and allowed the incorrect rezoning of over 100,000 ha of old growth and rainforest for PNF logging. The change to the PNF Code to allow logging under Biocertification has opened up PNF logging without targeted threatened species studies and in areas above the previous 18 degrees of slope areas.

2. Aims of the policy and overarching offset requirements
Box 1: Offset requirements
Offsets are frequently justified on the grounds that the habitat or species are represented elsewhere in a regional area or conservation area. This is of course a program for death by a thousand cuts where each development takes away another part of the original description until suddenly we are in trouble.
Under the effects of global warming and the coming need for connectivity for migration of flora and fauna species we should be thinking of ways to restore the previous connectivity and offsets are herein quoted as a means to do this. In effect that is a self-defeating prophesy. We should be planning and restoring lower quality habitat anyway, not destroying the best of it first.

Suitable offsets must:
1. *deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environment law and affected by the proposed development*

If this means “like for like” that is agreed.

2. *be efficient, effective, transparent, proportionate, scientifically robust and reasonable*

“reasonable” means a completely different thing to proponents, it means commercially reasonable.

3. *be built around direct offsets but may include indirect offsets*

Here we go again denying the “improve, net gain and like for like” components.

4. *be of a size and scale proportionate to the impacts being offset*
Agreed

5. be in proportion to the level of statutory protection that applies to the affected species or community

This ignores the need for absolute red flag areas in the environmental assets listed below in **3**.**The EPBC Act-** World heritage area, EEC’s Threatened species, RAMSAR , GBR MP etc.

6. *effectively manage the risks of the offset not succeeding*

This requires the facility to intervene during the 5 year period before review. The intention is a good one but it seems unlikely that the federal government will move to close Ranger uranium mine no matter how many breaches they incur, or coal mining of CSG no matter how much damage it does to water resources while it is making money for the government as well as overseas companies.

7. *have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced.*

As for 6. Above.

In assessing the suitability of an offset, government decision making will be
1. informed by scientifically robust information
2. conducted in a consistent and transparent manner.

No consideration of the concerns of the community?

3. The EPBC Act

The EPBC Act is the Australian Government’s principal piece of environmental legislation. It is designed to protect national environmental assets. These protected matters are:

☐ *world heritage properties*

☐ *wetlands of international importance (Ramsar wetlands)*

☐ *listed threatened species and ecological communities*

☐ *listed migratory species protected under international agreements*

☐ the Commonwealth marine environment

☐ the whole of environment on Commonwealth land

☐ the whole of environment where it relates to actions carried out by a Commonwealth agency

☐ the whole of environment where it relates to nuclear actions

☐ national heritage places

☐ the Great Barrier Reef Marine Park.

If a proposed development or other action ('proposed action') is likely to have a significant impact upon a protected matter, then it must be referred for assessment under the EPBC Act. These proposed actions may range from a housing development, to an offshore gas project, or a road project.

Where is the red flag??

4. What are environmental offsets?

Environmental offsets broadly mean measures to compensate for the adverse impacts of an action on the environment. More specifically, offsets are measures to compensate for environmental impacts that cannot be adequately reduced through avoidance or mitigation. Offsets do not reduce the impacts of an action. Instead they provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining impacts are termed 'residual impacts'.

Offsets can help to achieve long-term conservation outcomes for matters protected under the EPBC Act, while providing flexibility for proponents seeking to undertake an action that will have unavoidable environmental impacts.

Offsets are not intended to make proposals with unacceptable impacts acceptable. They simply provide an additional tool that can be used during project design and the Environmental Impact Assessment process.

NCEC hopes the writer appreciates the irony of this statement. In NSW "unacceptable" red flag areas have been at the mercy of the Minister of the day.

4.1 How are offsets different to avoidance and mitigation measures?

Avoidance and mitigation measures are the primary strategies for managing the potential impact of a proposed action. They directly reduce the scale and intensity of the potential impacts of a proposed action.

*Offsets do not reduce the likely impacts of a proposed action, but instead compensate for any residual impact**. Offsets cannot be used to allow an action with unacceptable impacts to proceed.***

Avoidance of impacts on protected matters may be achieved through comprehensive planning and suitable site selection—for example, by changing the route of an access road to avoid an endangered ecological community.

After all reasonable avoidance measures have been put in place, mitigation of any remaining impact must be undertaken—for example, putting in place measures to reduce sediment runoff from a development site that may otherwise affect a threatened fish species. Only after all reasonable avoidance and mitigation measures have been identified will an offset be considered.

Avoidance and mitigation can reduce and, in some cases, remove the need for offsets. The Government will not consider offsets unless the intended measures to avoid and

mitigate the anticipated impacts are presented at the same time, or good reasons are provided as to why avoidance or mitigation of impacts is not reasonably achievable. In proposing avoidance, mitigation and offset measures, the proponent must provide clear information about the scale and intensity of impacts of the proposed action and the relative on-ground benefits to be gained through each of these measures.

NCEC notes the choice available to the government from the concept of the precautionary principle, the choice to do nothing and truly "avoid" i.e. not avoid by rerouting around an EEC creating an island or "mitigating" damage but actually to do nothing, not allow, red flag and prevent. It is just difficult to find examples where this actually happens, in Kakadu with uranium and tourist development, in the Kimberley with ports, in the whale sanctuaries of the Antarctic, in the Tasmanian forests, in the shark harvest within the GBR MP, or the translocation of the underground orchid at Bulahdelah.
It seems ironic that you are trying to provide certainty for proponents.

4.2 Types of offsets
Offsets can be categorised into direct and indirect offsets. Direct offsets generally provide a better and more certain conservation outcome than indirect offsets, and therefore are considered an essential component of a suitable offsets package. The scale of the offset required is proportionate to the impacts and the risk that an offset will not achieve its aim. As that risk grows, so should the scale of offset required. Direct offsets present a lower risk than indirect offsets.

Risk? Where does it say risk is acceptable in the Precautionary Principle?

4.2.1 Direct offsets
Direct offsets provide on-ground protection and improved conservation outcomes for the impacted protected matter. They involve the following attributes:

☐ the acquisition of land for enduring protection through inclusion in the conservation estate (including covenanting arrangements on private land)

☐ maintenance or improvement of that land through positive conservation actions (both passive and active actions) targeted toward the impacted protected matter. These actions may include:

☐ protecting existing good or better quality habitat

☐ rehabilitation of existing vegetation in poor condition

☐ revegetation of environmentally degraded land.

Contracting this work through an accredited third party organisation or through buying credits in an accredited biodiversity banking scheme is acceptable.

This description is a recipe for removing the "like for like" principle and merely provides yet another way for developers to gain "certainty".

4.2.2 Indirect offsets
Indirect offsets are a range of other measures that improve our knowledge, understanding and management of environmental values leading to improved conservation outcomes for the impacted protected matter. They may include:

☐ implementing priority actions outlined in the relevant recovery plans

☐ enhancing habitat quality or reducing threats to the protected matter on a site that

is not part of the direct offset, for example by removing invasive species

☐ contributing to relevant research or education programs.

The delivery of offsets that establish positive social or economic co-benefits is encouraged. This could include funds to employ Indigenous rangers or to pay existing landholders to manage their land for conservation purposes as a direct offset.

NCEC does not consider indirect offsets or "blood money" acceptable offset for destruction of the qualities in **3. The EPBC Act.**
If "like for like" cannot be found then obviously the area is too valuable to be trashed.

5. When to apply offsets within the EPBC Act

Figure 1 illustrates when the Environmental Offsets Policy will be applied, and demonstrates the role of offsets within the broader Environmental Impact Assessment process.

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Figure 1: When to apply the Environmental Offsets Policy

NO YES

Having regard to the likely impact on environmental matters protected, together with economic and social factors, is the proposed action acceptable?

YES

YES,

Controlled action decision

NO

YES

Is offsetting proposed, appropriate and feasible?

Have all reasonable measures been taken to ***avoid and mitigate*** *impacts on matters of national environmental significance?*

Environmental Offsets Policy applies

What is the magnitude of the residual impact?

*Significant impact*remains likely*

No significant impact is likely*

Is this proposal likely to have a significant impact on matters of national environmental significance?

**As defined in Significant impact guidelines 1.1: matters of national environmental significance*

Final ***NO*** *decision—not a controlled*

Final decision—clearly unacceptable

YES*, impact is found to be clearly unacceptable*

Seek further avoidance and mitigation measures

Final decision— approved or approved with conditions

NO

Final decision—not approved

YES

Part 7 Referral stage

Part 9 Assessment stage Final decision stage

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5.1 Referral stage

The referral stage, under Part 7 of the EPBC Act, is the initial screening stage of the

EPBC Act impact assessment process. Referrals are used to determine whether significant negative impacts on protected matters are likely to occur and to make a formal decision on whether a proposed action requires full assessment under the EPBC Act. If the Minister or the Minister's delegate (the decision maker) decides this is required, the proposed action becomes a 'controlled action' and requires full assessment under Part 9 of the EPBC Act. If approval is not required then it is declared 'not a controlled action' and no further assessment under the EPBC Act is required. The EPBC Act does not allow for offsets to be considered at the referral stage. This includes any offset that may have already been developed as part of a state or territory approval process. The need for an offset is determined following the more thorough assessment of the environmental impacts of the proposed action under Part 9 of the EPBC Act.

5.2 Assessment stage

In order to determine if an offset is necessary, the impacts of a proposed action need to be fully understood. At the assessment stage the decision maker considers the following issues in detail:

☐ ***What is the nature of the proposed action?*** *For example, what sort of construction is involved, when and for how long will construction occur and how large is the area to be developed?*

☐ ***What sort of impacts on protected matters are likely?*** *For example, could there be clearing of a threatened ecological community, could there be negative changes to the water quality of an internationally important wetland, or could important habitat for a migratory species be disturbed?*

☐ ***Can impacts on protected matters be avoided?*** *For example, could the proposed action be designed to avoid clearing of habitat for a threatened species?*

☐ ***Can impacts on protected matters be mitigated?*** *For example, will erosion from construction be controlled or will areas adjacent to the proposed action be managed to mitigate the impacts of weeds on a disturbed site?*

☐ ***What are the residual impacts?*** *For example, what are the residual impacts on protected matters that are still likely to occur after the proposed activities to avoid and mitigate these impacts are taken into account?*

☐ ***How severe are the residual impacts likely to be?*** *That is, after avoidance and mitigation, will the proposed action only slightly disturb an area of potential habitat for a threatened species or will it destroy an area of habitat known to be used by a threatened species?*

☐ ***Are offsets a suitable approach?*** *That is, are offsets needed to help compensate for residual impacts on the protected matter and are they feasible?*

5.3 Decision stage

If the decision maker agrees that an offset can be considered, then the proponent needs to submit an offsets proposal. This proposal should describe the offset and demonstrate how it will provide the appropriate benefit to compensate for any remaining impact on the protected matter.

The decision maker then assesses the offset proposal in considering whether the proposed action should be approved, taking into account relevant environmental, economic and social issues. Any offset requirements would then be included as a condition of approval.

It is important to note that offsets are not required for all approvals under the EPBC Act. Each approval must be considered on a case-by-case basis and must take into account

the scale and intensity of impacts from the proposed action on the site and the potential for conservation outcomes through offsets. Offsets are not required where the impacts of a proposed action are considered to be minor in nature or could reasonably be mitigated. In some cases, a suitable offset may not be available and a decision on the overall acceptability of the project will need to be made.

This where NSW got into trouble with the minister of the day adjudicating on proposals by companies making political donations.

5.3 Post-approval stage

If an approval has been granted that incorporates offsets into the conditions of approval, the proponent is responsible for ensuring that the offsets are delivered.

And the government is responsible for ensuring the proponent delivers.

6. Offset requirements

Suitable offsets are determined by applying the requirements outlined in Box 1, and as illustrated by Figure 2 below.

Offsets must deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environment law and affected by the proposed development. Offsets must:

☐ Contribute to the ongoing viability of the impacted protected matter and

☐ Be improved or maintained as compared to before the action occurred.

When the matter protected is the whole of the environment (nuclear actions, proposals involving the Commonwealth and actions that affect Commonwealth areas), offsets must be targeted to the aspect of the environment that is being impacted.

How will the environment be maintained or improved with an appropriate offset in the case of millions of litres of radioactive water from an uranium mine like Ranger, or the gold mine tailings on the coastal rivers of NSW or huge areas of contaminated water from CSG mining, or the decimation of blue fin tuna and sharks? Will that compensation to the environment, the Aboriginal people, the people of Australia and the world be through the following? :

An improved conservation outcome may be achieved by:

☐ revegetating environmentally degraded land

☐ rehabilitating habitat that is in poor condition, or

☐ protecting habitat that is already in a good condition.

These types of direct offsets must improve the environmental value of the land through conservation management actions and securing the land on title in an enduring way for conservation. An improved overall conservation outcome is not achieved by an offset that simply increases the amount of habitat or ecological community that is protected by

covenant or other mechanism. Protection must be matched by management of the protected matter that is impacted.

An appropriate offsets package is developed by proponents in consultation with departmental assessment officers. Assessment officers then consider the appropriateness of the offset through conducting desktop research, sourcing advice from experts and consulting with states and territories. The appropriate magnitude of an offset is determined on a case-by-case basis. Matters to be considered include:

☐ the scale and intensity of the impacts of the proposed action, including direct and indirect impacts

☐ the maturity and health of relevant vegetation communities impacted by the proposed action

☐ the composition and presence of relevant species impacted by the proposed action

☐ the importance of the impacted site in context, whether of the landscape or of other values relevant to the matter protected. This would include factors such as the value the site may have in providing habitat important in allowing species to adapt to climate change

☐ achieving the greatest long-term conservation gains. Wherever possible this would be in the context of a 'like-for-like' approach, which requires offsets to target the specific environmental value being impacted by the proposed action (for example, a particular type of foraging habitat for a threatened species)

☐ the approach of the relevant state or territory, with a view to complementing and building upon that approach

☐ the level of certainty that the offset will deliver the conservation gain said to be achievable. In the case of uncertainty, such as using a previously untested conservation technique, a greater variety and/or quantity of offsets may be required to minimise risk.

Is the proposed offset effective?

*Does the proposed offset improve or maintain the viability of the protected matter?**

***Relative to the state prior to the proposed action taking place**

Does the proposed offset address identified priority management actions for the protected matter? For example, from recovery plans, endorsed conservation advice

Is the proposed offset proportionate to the scale of the impact?

Is the proposed offset equivalent to offsets from equivalent impacts?

Has adaptive management been considered?

Is the proposed offset cost effective, implementable and transparent?

Is the proposed offset enduring? That is, will the benefit last at least as long as the impact (not as long as the activity)?

Is the proposed offset appropriate?

Figure 2: Factors contributing to offset suitability

Has the proposed offset already been used as an offset and is it secure?

What is the environmental record of the proponent and

any third parties
involved in delivering
the proposed offset?

Does the offset conform to good governance principles?

Are the
proposed offsets
readily able to
be measured,
monitored,
audited and
enforced?
Is the
proposed
offset cost
effective to
administer?

Effective and appropriate

Is the risk that the
proposed offset will not
achieve its aims assessed
as low using the best
available science?
Is there potential for any
perverse outcomes as a
result of the proposed offset?
Can the proposed offset
provide any social, economic
or environmental
co-benefits?

6.1 What constitutes a suitable offset?

6.1.1 A suitable offset must be built around direct offsets but may include indirect offsets

Offsets must deliver a conservation outcome that would not otherwise occur. For example, funding an open-ended research program which delivers little or no on-ground benefit for the relevant protected matter is not a direct offset.

Also, the purchase of existing unprotected habitat only provides a real conservation outcome if that habitat is protected in an enduring way and is actively managed for long-term conservation purposes (for example, by rehabilitating degraded areas). Payment of monies to a trust fund would not be acceptable as a standalone offset; however, monies paid to a third party to purchase and manage the land may be acceptable if the land purchased conforms to these offset requirements. Trust funds, as an indirect offset, need to be accredited as being fully transparent, auditable and accountable, with publically available annual audited statements.

6.1.2 A suitable offset must be of a size and scale proportionate to the impacts being offset

Offsets must be proportionate to the impact, in both size and scale. The offset required for each impact is determined by taking account of risk, the level of impact, the best available science and other considerations mentioned below. The offset-to-impact ratio required will depend on a range of factors including the conservation status of the relevant protected matter, the time between the impact, the delivery of the ecological benefit and the type of habitat impacted.

6.1.3 A suitable offset must be in proportion to the level of statutory protection of the affected species or community

Due to the higher risk involved with protected matters of greater conservation status, the

offsets required for those protected matters with higher threatened status must be greater than those with a lower status.

6.1.4 A suitable offset must effectively manage the risk of the offset not succeeding

Each proposed action that is determined to be a controlled action will have offsets considered as part of its assessment process. As each proposed action is different, so too are the offsets that may be required. Departmental assessment officers will look closely at each proposed action before recommending to the decision maker whether offsets are appropriate and what a suitable offset may be. They will use a risk-based approach to determining suitable offsets due to the inherent risks associated with the use of offsets.

There are two types of risks involved in using offsets to compensate for the residual, unavoidable impacts of an action. First there is the risk that the impact on the protected matter will be too great and that any offset will not be able to compensate for the impact. This risk is addressed in the assessment process. Second, all offsets involve some risk that they will not fulfil the aims for which they were designed. It is this risk that is

considered in determining a suitable offset. Risk is considered when making judgements on what constitutes a suitable offset including:

☐ What is the impact?

☐ What type of offset should be provided?

☐ What size should the proposed offset be?

☐ Where should the proposed offset be located?

There is also the risk that offsets may result in perverse outcomes, either for the environment as a whole or for other aspects of the community, for instance social and economic factors. To avoid perverse outcomes, analysis of the possible perverse outcomes will form part of the decision making process in deciding on the suitability of an offset package.

The magnitude of a suitable offset increases with risk, as outlined in Figure 3.

Risk

Scale of offset

Figure 3: Relationship between scale of offset and

Unacceptable risk

6.1.5 A suitable offset must have transparent governance arrangements, including being able to be readily measured, monitored, audited and enforced

Offsets must be determined within appropriate and transparent governance arrangements. Proponents, or their contractors, must report on the success of the offsets so that conditions of approval can be varied if the offsets are not delivering the desired outcome.

Offset proposals will need to include clearly articulated measures of success that are linked to the purpose of the offsets and provide clear benchmarks about their success or failure. Annual reports will be required by the department and will be made publicly available.

Performance of offsets will be reviewed as part of the monitoring, compliance and audit program for all proposals considered under the EPBC Act. All offsets will be placed on a register that will include, among other details, spatial information (for example GPS data), information on the relevant protected matters and the ongoing management actions required. This information will be publicly available on the department's website

from the start of the policy. The register will ensure that offsets cannot be used more than once to compensate for the environmental impacts of development—that is, no double counting.

Establishment costs of offsets required as a condition of approval under the EPBC Act must be borne by the proponent and the offset must be designed in a way that is able to be measured, monitored, audited and enforced.

While offsets may be used as an approval condition to achieve the best environmental outcomes for a proposed action, the department should not bear undue cost for assessing offsets as a necessary condition. The department will not be responsible for the costs of establishing an offset, or any costs associated with the ongoing management of an offset. These costs must be borne by the proponent. Where the proponent elects to have a third party manage or establish the offset area or program, the proponent must make financial arrangements with the third party.

In determining the success of an offset, proponents will be required to report data that allow for the performance of an offset to be evaluated. Obtaining such data is part of the ongoing management of an offset and the cost therefore lies with the proponent. Conditions will require that data be made readily available to the department and in a format that can be easily integrated into a departmental database.

6.2 Requirements of offsets decision making

6.2.1 Government decision making will be informed by scientifically robust information

In keeping with the entire environmental impact assessment process under the EPBC Act, the determination of offsets is based on the latest scientific evidence and empirical data. This is obtained from a variety of sources including consulting scientists, scientific literature and data collected by both the department and proponents.

The environmental characteristics of the site of the proposed action will provide information about what will be regarded as a suitable offset. There are two key points that will need to be addressed:

*☐ The **role** which the site of the proposed action plays in the environment. Examples of this for protected matters include:*

- *for threatened animal species—feeding habitat or breeding habitat*
- *for wetlands of international importance—maintaining water quality or providing habitat for species that use the wetland*
- *for heritage places—contributing to the aesthetic value, cultural value, or natural value*
- *for migratory species—feeding sites or migratory pathways*
- *for actions taken in Commonwealth land, Commonwealth marine areas and nuclear actions where the whole of the environment is protected—supporting ecosystem values, heritage values or social values.*

*☐ The **quality** of the environment at the site of the proposed action. This refers to how pristine or natural the environment is at the site. Sites that have few weeds and support a large number of native plant species are likely to be higher quality than sites that have weeds and few native plant species.*

6.2.2 Government decision making will be conducted in a consistent and transparent manner

An Offset Assessment Guide at Appendix 1 is being developed in order to translate the requirements of this policy into a quantitative format. This will help ensure that offset requirements are consistent and transparent, and help project proponents to consider offset requirements early in their project planning. The guide will provide flexibility to ensure that the most efficient offsets can be determined, but within limits that ensure

that they improve or maintain the viability of the protected matter.
Project proponents or departmental assessment officers can use the guide to help determine a range of suitable offset options for a proposed action. The guide can also be used to examine how offset requirements might increase or decrease with variations to a project's design that would result in different impacts on protected matters.
Once finalised, the guide will assign points to a proposed action based on its impact. These 'impact points' will vary with the severity, type and duration of the impact. Once total impact points for a proposed action have been calculated, an equal or greater number of offset points is required in order to compensate for the impact. In order for activities to be considered eligible to earn offset points, they must be targeted towards the protected matter to be impacted by the proposed action, and must also meet the other requirements of this policy (see summary in Box 1).
The guide shows that a minimum of 75% of the total offset points required must be derived from direct offsets. Particular activities involved in direct offsets that accrue points include revegetation and other habitat improvement measures, reduction in key threatening processes, and the enduring and secure protection of the land for

conservation purposes. The remaining 25 per cent of offset points can be accrued a range of suitable indirect offset measures.
Once again "like for like" is avoided.
Once finalised, the guide will be used in developing suitable offset packages, but as it is a general guide it is not binding on decision-makers. Specific guides may be developed for specific areas or environmental matters. For example, the Tasmanian devil is suffering from devil facial tumour disease, and so a guide may need to be tailored in this case to reflect that offsets relating to the Tasmanian devil may give more than usual weight to funding for research into this disease, or to the establishment of refugia.
All these actions are laudable in trying to protect an animal with a special case issue but would not compensate for the killing of the animal in other areas through irrevocably damaging its habitat.
The commitment to transparency and public register is applauded.

7. Interactions with other legislation and schemes

7.1 Links with state and territory approval processes—no double jeopardy

All of the states and territories have laws that protect the environment. The majority of proposed actions that need approval under the EPBC Act also require environmental approval from the relevant state or territory government before they can proceed.
It is important to note that while there are many similarities between the environmental laws of the states and territories and the EPBC Act, they also differ in a fundamental way. The EPBC Act focuses on protecting matters of national environmental significance and only protects the broader environment in certain circumstances. State and territory laws on the other hand usually protect all aspects of the environment (for example, air quality, noise quality, water quality biodiversity, and heritage values).
Offsets may also be required under state and territory environmental legislation. As a consequence, some proponents may need to provide offsets under both state or territory laws and the EPBC Act. Therefore, a state or territory offset will count toward an offset under the EPBC Act to the extent that it compensates for the residual impact to the protected matter identified under the EPBC Act.
As part of the consultation process on this draft policy, the government is seeking feedback on:

☐ *the methodology used in the guide, including:*

- *the appropriateness of the factors that influence impact points*
- *suggestions for quantifying the impact categories of low, medium, high and very high*

o the proposal that 75 per cent of offset points must be earned from direct offset
o the appropriateness of the actions that can earn offset points
o suggestions for appropriate weightings of offset points for particular actions

☐ potential matters for which the guide may need to be tailored to particular circumstances.

To help make sure that an offset can meet the requirements of both the relevant state or territory and the EPBC Act, proponents should consider referring their project under the EPBC Act as early as possible in the planning process. Making an early referral helps to align the impact assessment processes of the state or territory with the EPBC Act.

8. Offset delivery options

8.1 Use of market-based mechanisms to deliver offsets

Market-based approaches are based on choice. They accept the principle that decisions are best made at the most local level possible. Market mechanisms allow policy to be made plain and for businesses to help drive the most efficient pathway to reach the destination.

Biodiversity banking schemes create markets of potential conservation properties from which interested parties can purchase offsets. The Government supports the use of these schemes, where they are based on reproducible and scientifically robust metrics as the means of determining the conservation value of the proposed action site and the potential offset. The Government believes a market approach allows a policy goal to be achieved through the most efficient and cost-effective means. It allows rural landholders to make decisions that combine conservation with the commercial, diversifying their income streams and optimising the outcomes for communities.

A number of state governments are developing or have already developed biodiversity banking schemes, such as BushBroker in Victoria and BioBanking in New South Wales. The Government has commenced leading consultation through the Council of Australian Governments on a set of national standards for biodiversity banking. The Government will consider accreditation of biodiversity banking schemes, providing they meet these standards.

While development of offsets using a state biodiversity banking scheme may satisfy the requirements of the EPBC Act, this will only be possible within the scope of the scheme (that is, the scheme may not cover the species or other matter that is protected by the EPBC Act). Proponents should engage early with the department during the assessment process to allow for streamlining of processes between different jurisdictions.

8.2 Use of third parties to deliver offsets

The Government encourages the use of approved third parties to deliver offsets. In many cases enhanced environmental, social and economic outcomes can be achieved through proponents contracting rural landholders to mange land for conservation as a way of meeting their offset obligations. As most proponents are not in the business of land management it is not appropriate that they be required to manage land for conservation purposes. In contrast, third parties such as rural landholders or private conservation organisations may have the knowledge and skills to manage land for conservation. Contracts with third parties to manage an offset may be through a biodiversity banking scheme or not, but in either case the third party must be accredited by the department, which must be satisfied that appropriate mechanisms are in place to ensure the enduring delivery of the offset.

Which raises the “shelf company” and “bottom of the harbour scheme” scenario. It is not explained how these offsets will be managed in perpetuity. Developers will gladly offload

responsibility for the management of the offsets and no longer care if the rural landowner of private conservation organisation disappears. It is the government's scheme and their responsibility to the environment and the people of Australia that the offsets work for ever.

9. Further information

For further guidance on whether an action has, or is likely to have, a significant impact on a protected matter, please refer to:

☐ *'Significant impact guidelines 1.1—matters of national environmental significance,' and*

☐ *'Significant impact guidelines 1.2—actions on, or impacting upon, Commonwealth land and Actions by Commonwealth Agencies'*

These are available at: www.environment.gov.au/epbc/protect/index.html

For further general information about the EPBC Act, including information about the referral, assessment and approval processes, please contact the Department of Sustainability, Environment, Water, Populations and Communities Community Information Unit on 1800 803 772, or access the EPBC Act website at: www.environment.gov.au/epbc