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The Hon Tony Burke MP  
Minister for Sustainability, Environment, Water, Population and Communities  
Parliament House  
Canberra  
ACT 2600

19 October, 2011

**Submission – *Draft Environmental Offsets Policy***

Dear Minister,

This is a submission on behalf of the Urban Bushland Council WA regarding the *Draft Environmental Offsets Policy* that has been released by the Australian Government for public comment.

The Urban Bushland Council (UBC) is a peak community conservation body with over 60 member groups. The UBC encourages the protection and appropriate environmental management of bushland areas in and around the Perth Metropolitan Area and other urban centres in Western Australia. The Council participates in research and public education projects and has been active for over a decade.

The Urban Bushland Council takes a very keen interest in any new policy development that is likely to affect the protection of urban bushland and sees the *Draft Environmental Offsets Policy* as having considerable relevance to our exceedingly biodiverse and environmentally fragile region.

The UBC wrote a letter (dated 23<sup>rd</sup> August, 2011) to the Minister for Sustainability and Environment, the Hon Tony Burke, earlier this year raising concerns about offset proposals relating to a specific project - namely the Perth Airport and Freight Access Project (Gateway WA) – and we were invited to comment on the *Draft Environmental Offsets Policy* in his response ( dated 16 September, 2011). The Council has long had serious concerns about the environmental effectiveness of employing offsets to compensate for environmental impacts and has tended to regard them as being more convenient for proponents than genuinely environmentally advantageous or even protective of the environmental status quo.

The UBC's chief concern regarding offsets has been that, in our experience, they virtually always result in a net loss of habitat and the loss, or substantial loss, of particular populations of various species and the loss, or substantial loss, of particular occurrences of various floral communities and/or faunal assemblages. Even if other habitat areas are acquired for conservation purposes, it does not make up for the deficit because existing habitat is habitat whether it is environmentally secure or not.

While the net loss of habitat and the impacts on flora and fauna within that habitat are foremost among the UBC's concerns regarding offsets, our misgivings pertaining to this concept are manifold. With the nation's flora and fauna coming under increasing pressure from urban growth, mining, agriculture, invasive species and a plethora of other detrimental impacts, the justification for damaging our fragile and embattled ecological systems is becoming more and more problematic. To put it bluntly, in such a milieu, under pressure from business and with its own commitments to development, infrastructure and growth in mind, governments are almost inevitably going to find themselves casting about to discover new ways of excusing the inexcusable. This is the context in which the UBC sees the use of "offsets" coming into vogue. The UBC's preferred approach to proponents whose proposals threaten matters of national significance – and those matters would be subject to our definition rather than the Commonwealth's – would be "modify your proposal or abandon it." Regrettably, as environmental protection is apt to be viewed more as a hurdle than as a responsibility in the prevailing political and business culture it is now largely a matter of how much impedimenta comes with an approval rather than gaining approval per se.

As more and more species and communities are recognized as being threatened or endangered or vulnerable – sometimes by scientists and sometimes by the community at large as well - more and more ways of circumventing the protection of the real estate that they occupy are likely to be devised and put forward. This is attributable not so much to individual malevolence as to a legislative framework that is not informed by something as basic as a national sustainable population policy, for example. Farms have "carrying capacities" for cows but countries can apparently sustain unlimited numbers of human beings without any severe environmental impacts and without any diminution in the quality of life their citizens might enjoy.

Having made clear our general aversion to the concept of offsetting environmental impacts, the UBC makes the following comments relating to the *Draft Environmental Offsets Policy* itself.

## **1.Introduction**

The UBC is encouraged by the assertion that "this policy will help to ensure that offsets deliver high-quality conservation outcomes for matters protected under the *EPBC Act*" but sees a fundamentally unresolvable conflict between the destruction of habitat and "high-quality conservation outcomes." We would make the point at the outset also that not everything we would regard as being of national environmental significance is listed under the *EPBC Act*, or would necessarily be interpreted as being of national significance under the *EPBC Act*. The south west of Western Australia is widely recognised as a "biodiversity hotspot" having very high levels of biodiversity, very high levels of endemism, and a great many threatening processes. Its biogeographic isolation makes the south west of the continent a very special place but this does not appear to be recognised sufficiently at any level of government, including the Commonwealth. It is our very strong view any species or community that is recognised as being endangered or threatened or vulnerable at the State level – and we would probably include more species and communities than appear on the State's registers – should be recognised as being of national significance at the Commonwealth level as well. We would also make the point that we have seen Commonwealth land subject to appalling environmental destruction – such as has occurred at

Perth Airport – and, in our experience, the efficacy of the *EPBC Act* in protecting environmental values on Commonwealth land is something we would have to describe as farcical. This is unacceptable and the Commonwealth has no business whatsoever allowing lower standards of environmental approval on Commonwealth land than would otherwise pertain at a State level. The destruction of natural areas at Perth Airport is one of the most disgraceful issues the Urban Bushland Council has ever dealt with and it has left us with very little faith in Commonwealth assessment processes.

The UBC is not entirely sure what is meant by the government's commitment "to moving to a more strategic approach to environmental assessments." It is all very well to aspire to make everything clearer and simpler and more predictable and certain but many environmental issues are very complex and not easily resolved. In some cases, perhaps in most, there is insufficient scientific data to make confident predictions about the present conservation status of species and communities let alone their future status and it is quite irresponsible to pursue allegedly streamlined and quantified processes when the requisite research data simply doesn't exist. At all times we would urge a cautious approach to issuing approvals as it is the most responsible and the most scientifically valid. A genuinely 'strategic approach' to environmental assessments of matters of national significance could, however, lead to some welcome conclusions with respect to some of our threatened species in that it could lead to the recognition that any further clearance of their habitat may accelerate their extinction. The UBC is very concerned about the conservation status of the magnificent Carnaby's Black Cockatoo, for example, and until the Commonwealth government can show by credible research that it has sufficient habitat to support it into the future at current or improving numbers there must be a moratorium on the clearing of its habitat – whether in small remnants or large.

## **2. Aims of the policy and the overarching offset requirements**

The UBC supports, with some reservations, the stated aims of the policy. We would stress that it should be a "requirement" rather than an "aim" that the use of offsets must be "scientifically robust." We say this because we view the proposition that offsets can "improve or maintain the viability" of matters of national significance with some scepticism. We are unsure about the aim to "deliver improved environmental outcomes by consistently applying offsets policy" which seems to anticipate the worthiness of the offsets policy itself and to imply a uniform approach to potentially very diverse environmental challenges will necessarily provide better environmental outcomes.

The Box 1 "Offset requirements" are generally welcome apart from the acceptance of indirect offsets. We particularly support the requirement that suitable offsets must; "deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by the national environment law and affected by the proposed development."

The UBC is opposed to the use of "indirect offsets." It would appear to the UBC that well resourced proponents would gladly throw money at anything if it would get them approval and we have observed proponents casting about for such opportunities in areas that have little or no bearing on the specific conservation matters at issue. We take the very strong view that actions or measures that do not pertain directly to the protection of the matters threatened by the proposal should not be counted as offsets at all.

We strongly support the requirement that “in assessing the suitability of an offset, government decision making will be: informed by scientifically robust information.” The UBC has encountered many environmental assessment documents containing at least some evidences of the use of: out-of-date data, carelessly-gathered data, incomplete data, misleadingly arranged data, wrongly interpreted data, and irrelevant data. To make matters worse this sloppiness is often further enhanced by loose comparisons, broad generalisations, unsupported assumptions, dubious commitments, and glib assurances all pointing to the environmental acceptability of proposals and we would have to say our definition of the words “scientifically robust” would differ extraordinarily from that used by both proponents and government assessors in any number of instances in our experience of participation in environmental assessment processes. Nevertheless, we support the “requirement” as stated.

### **3. The EPBC Act**

The Urban Bushland Council is not particularly impressed by the content of the *EPBC Act* and has never been impressed by its administration by the Commonwealth. There is an apparent assumption in this *DEOP* that everybody thinks the *EPBC Act* is somehow ideal. It may be the law but it is not ideal. The Urban Bushland Council is ardently in favour of protecting matters of local, regional, state, national and international significance but is not convinced the *EPBC Act* is a particularly worthy vehicle for defining those matters that are of national or international significance or that it is a particularly worthy vehicle for protecting them. It is our understanding that very few proposals have ever been rejected as being environmentally unacceptable under this *Act* and that says a great deal about its real function, purpose and integrity. In our experience, public comment periods are brief, proposals are often very inconspicuously advertised, our submissions have no effect, and ghastly proposals are approved. The fact that the *DEOP* is essentially part of the *EPBC Act* does nothing for its credibility.

### **4. What are environmental offsets?**

The UBC strongly supports the statement that “offsets are not intended to make proposals with unacceptable impacts acceptable.” We strongly support it because it is at odds with our recent experience of environmental assessment processes. The UBC regards “avoidance” as being infinitely superior to “mitigation” of “offsets” when it comes to environmental impacts. “Mitigation” appears to be used as a euphemism for leaving about one-fifth of a bushland remnant intact so it does not have positive connotations in our experience.

The UBC is of the very strong view that avoidance – which is more easily defined than mitigation – should be the priority conservation strategy. We have seen instances in road construction, for example, where engineering costs involved in achievable avoidance have been deemed to be higher than offset costs so the latter has prevailed. In one case a very high conservation value wetland in remarkable condition has been scheduled for destruction for this very reason. If offset requirements are not made sufficiently rigorous avoidance will not be seen as an option by proponents well able to afford it.

#### **4.2 Types of offsets**

The UBC does not accept that indirect offsets should be regarded as offsets at all. Only direct offsets should be considered in an offsets package.

### **4.2.1 Direct Offsets**

The UBC is of the very strong view that acquisition of land is greatly preferable to “maintenance or improvement” of land as an offset. We are all in favour of land being maintained and improved but are fully aware how difficult this can be to achieve and how difficult it could be to monitor and assess. Proponents might pay a third party to do some maintenance or regeneration or rehabilitation but who will be monitoring this work into the future? It is our strong view that where offsets apply, and we generally do not favour their use, proponents should acquire similar land as close as possible to the impacted site and give it to the State government to manage in perpetuity.

### **4.2.2 Indirect offsets**

The UBC has one comment: UNACCEPTABLE.

## **5. When to apply offsets within the EPBC Act**

While generally disapproving of the use of offsets, the UBC sees the logic in the Figure 1 diagram. We would again stress our preference for avoidance and, with much less enthusiasm, very significant mitigation.

### **5.1 Referral Stage**

The UBC agrees that offsets should not be considered at the Referral stage.

### **5.2 Assessment Stage**

The UBC generally accepts the assessment stage considerations.

### **5.3 Decision Stage**

The UBC would expect offset proposals to be subject to the most rigorous scrutiny and we would expect they would meet the requirements set out in Box 1 (see our comments re Box 1).

### **5.3 Post-approval stage**

It is all very well to state that the “proponent is responsible for ensuring the offsets are delivered, “but the UBC is unconvinced that the Commonwealth has the resources to ensure that offsets have delivered the outcomes they were supposed to in the longer term.

## **6. Offset Requirements**

The UBC strongly supports the requirement that “offsets must deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environmental law and affected by the proposed development,” but is extremely sceptical as to how this can be achieved. If any offset is to be acceptable it would be the acquisition of land but the on-going environmental improvement of this land, while a worthy goal, could be very difficult to achieve, could be very difficult to measure, could take

decades rather than years to be meaningful, and could be unsuccessful in the longer term. A proponent pledging to pay someone to do a bit of weed control or put up a fence or plant some seedlings doesn't amount to much in our view and we have sufficient experience of observing incompetent bushland managers to know that it is not easy and it takes considerable expertise and effort over a long period to achieve even modest results in our landscape.

The UBC is strongly in favour of 'like-for-like' offsets but also stresses the importance of acquiring land that is reasonably close to the impacted site. We have seen offset acquisitions being made 50 kilometres or more from the impact site. The land may be cheaper and the offset block larger but that is not going to assist the threatened species that had become habituated to using the impact site and its environs. Smaller bushland sites in Perth's suburbs are very vulnerable to offset proposals because they are economically valuable. But their being sacrificed for larger remnants on the fringes of the urban area is probably making it more difficult for such endangered species as Carnaby's Black Cockatoo to cross the Swan Coastal Plain. Eventually there may be insufficient bushland sites for the birds to feed and rest – particularly affecting the less robust birds such as very young and the aged. Habitat is habitat in an environmental context and its destruction must always be seen in its context.

## **Figure 2 Factors contributing to offset suitability**

While the UBC sees offsets as a last and undesirable resort, the Figure 2 chart generally takes into account most of the questions that would need to be asked in relation to an offset. The answers may be glibly provided but the issues raised in many of the questions will constitute very difficult challenges in practice and it will be very difficult for the Commonwealth to monitor them effectively.

### **6.1 What constitutes a suitable offset?**

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

The UBC opposes the recognition of indirect offsets

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

Agreed

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

Agreed

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

Agreed

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

The UBC strongly agrees with this objective but again cannot see how the department can possibly keep track of all the offsets and their progress over time. The UBC strongly agrees that all costs should be met by proponents and that they must report to the department over a reasonably extensive period of time to determine the success or otherwise of their offset and of the offset strategy overall. Proponents must not be permitted to walk away from commitments or to pass the entirety of their responsibilities onto third parties. Reporting responsibilities should remain with the proponents even if they have contracted out any environmental management commitments.

## **6.2. Requirements of offset decision making**

### **6.2.1 Government decision making will be informed by scientifically robust information.**

The UBC strongly agrees with the points under this heading. It is very important to determine the role of a site in relation to a protected matter and to have a good scientific grasp of its importance in its environmental context. The UBC is strongly in favour of the latest and best scientific advice being applied to matter relating to environmental assessment. It is our strong view that proponents should be required to produce very detailed and accurate scientific information relating to the protected matter and the impacted site. It is also our very strong view that if scientific data is presented to government for the purposes of environmental assessment then the public at large should be able to access copies of that material.

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

The offset guide which is being developed is an interesting approach but we have reservations about the validity of “quantifying” environmental impacts in such an apparently precise manner. It has the appearance of making the process more predictable and transparent but some subjectivity will always come into such calculations. It is very difficult to quantify value judgements and to some extent assessment decisions involve such judgements. We have often disagreed violently with “condition” ratings put on remnant vegetation by consultant botanists but the careful application of certain criteria, albeit in a crafty and misleading manner, lends their work a certain air of credibility. It is our experience that numerical scales can invest the shabbiest of documents with an air of authenticity and that the same bias tends to appear in the numbers as we would expect to see in the verbiage.

We object to the minimum of direct offset contributions being set at 75% and basically don't accept indirect offsets as having any validity at all.

The guide is interesting but needs refinement. The Impact Calculator is just too crude in our view and could only be used as a rough guide at best. Considerations such as “type of habitat” can hardly be broken up into “marginal,” “average,” “core,” and “refugia” as if they were constant and easily measurable quantities. We would suggest even “marginal” habitat can become “refugia” in a bad drought or a major bushfire and Australia has a long history of bad droughts and major bushfires. What about the value of the habitat as a “stepping stone” for endangered avian fauna so that it can move safely across the landscape? Even the apparently quantifiable “conservation status” of the protected matter is a contentious issue. It may be officially assigned a certain status when credible authorities dispute that status or when the population trajectory has been so negative for so long that its conservation status can only be expected to head in one direction over time. Does “anticipated conservation

status” have a value when one considers the predicted impacts of climate change on the south west of Western Australia, for example?

The Offsets Calculator is slightly more refined and we agree with some of the priorities such as awarding more points of the offset being close to the impact site, or being part of a wildlife corridor but we have strong reservations about awarding higher points for the immediate delivery of an ecological benefit as we can barely envisage how that might be achieved let alone conceive of why that would make it a superior option. Tree planting would not appear to rate particularly well under such a regime unless, perhaps, a proponent could transplant a mature woodland. Merely purchasing a block does not “deliver an ecological benefit” so we can only assume the offset ecological benefit refers to something like fencing – but its immediate installation does not necessarily make it preferable.

The UBC would see the Offset Assessment Guide as an interesting concept but cannot see how a one page diagram can really do justice to such a complex set of issues. In principle it has the capacity to introduce proponents to the basic considerations but we could not see it being substantial enough in its current form to be said to reliably inform proponents and decision makers as to the significant factors that have to be weighed up or as to the likelihood of their offset package being acceptable.

## **8 Offset delivery options**

Western Australian does not have biodiversity banking schemes so we are unfamiliar with their operation. We are somewhat wary of schemes whereby proponents might offload all their responsibilities onto third parties and we take the view that proponents should retain some basic ownership of the offset process – such as the responsibility to report to the department over time on the progress and success of the offset package. If offsetting is not working it must be modified or abandoned. Consequently we are in favour of a thorough five-year review process.

Thank you for the opportunity to comment of the *Draft Environmental Offset Policy*.

Yours faithfully

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