

Commonwealth Offsets Policy and Calculator

– Submission by the Conservation Council ACT Region Inc.

Background

The Conservation Council ACT Region is the peak environmental organization for the ACT and SE NSW. The Council represents the views of some 4,000 individuals who are members of the 37 groups that make up the Council. The Council aims to improve biodiversity and sustainability outcomes across the landscape and for the growing city of Canberra, and sits on a number of Territory and Federal representative bodies.

Introduction

The Conservation Council (CONSACT) wishes to commend the Commonwealth for the open, informative and participatory manner in which it has handled community engagement on this important policy initiative. Members of the conservation movement have attended workshops and engaged in review and development of the Offsets Policy to deliver greater biodiversity outcomes for Australia.

At the outset, The Conservation Council wishes to restate its in-general opposition to the concept of offsets (see attached CONSACT Policy). We believe that no development should be approved in instances where our rapidly diminishing and increasingly under threat vulnerable and endangered species and ecosystems occur. However, we also recognise that, despite this objection, such development is going to continue.

We wish to reinforce our full support for the *Avoid-Mitigate-Offset* hierarchy standing as a core principle of development control for MNES. We urge SEWPaC to define 'viable' and 'reasonable' in the policy as these could be easily used to weaken the policy. We also suggest that the Commonwealth should codify the 'Avoid' and 'Mitigate' assessments so that there are clear measurable indicators for meeting these critical requirements. This is critical to ensure that proponents do not proceed straight to offsets before exhausting all reasonable avoidance and mitigation measures, as has happened in the ACT in some instances in the past. Offsets, we believe, should be the last resort.

We wish to stress the importance of 'like-for-like' as a core principle of the Offsets Policy – especially when offsetting highly fertile sites – and the need to assess not only the tenure of proposed offsets, but also the intended management regime (which could be ramped up to provide substantial 'additionality'). We strongly believe that the words "wherever possible" on Page 11 should be deleted.

We fully support the Minister's stated desire for "greater documentation and transparency", and many of the comments and recommendations below address this issue.

Offsets Guide

The Guide is intended to provide proponents of developments information on how to calculate offsets in order to drive the design and cost-minimisation of projects that fall within the ambit of the EPBC Act. It will be made available to proponents to help them identify potential offsets. The Conservation Council requests that it be made public, so that the community can also check that a proponent's offset proposal has been accurately calculated. We also call for the assessor's/developer's scoring on the calculator to be made public as we understood that the 'Guide' will be a public document.

Although CONSACT would prefer 100% direct offsets, we are prepared to accept a Commonwealth commitment to the minimum 75% direct offsets principle as described by SEWPaC staff at the workshops.

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A COAG working group has been set up to look at national standards that would apply in the process of CONSACT is very concerned over the concept of 'accrediting' the States/Territories for bilateral arrangements (see COAG Communique 19/8/11) as we believe many jurisdictions employ a far lower standard for environmental protection than the Commonwealth. Consequently, we fully support the statement that the Commonwealth will NOT move away from its requirements for the protection of MNES, and that it will set national standards that would act as a minimum level under EPBC, irrespective of any bilateral agreement. However, we are unsure how this might apply in practice if the State/Territory jurisdiction believes it had the right to undertake the environmental assessment and to determine the development approval.

CONSACT does NOT support the 'Accreditation' of State biobanking schemes (such as NSW & Victoria). *We believe that neither jurisdictions have demonstrated 'net biodiversity gain' from their biobanking schemes.*

Risk

We share CSIRO's concern over lack of quantification of 'risk'. A major problem of the use of offsets is in dealing with 'uncertainty'. Many in the NGO sector believe that there should be a greater level of offset provided if there was a higher level of risk that the offset may not actually result in net biodiversity gain. [REDACTED]

We believe the Policy should cover the matter of 'red flag' areas, even though we have been led to understand that 'clearly unacceptable proposals' would be screened out early at the 'Referral Stage' (see Figure 1 in the Draft Policy), which occurs before the 'Assessment Stage'. We strongly urge the production of transparent guidelines for what would be considered 'red flag' areas (eg critical endangered habitat?). This process would then clearly obviate the need for offset calculation to even take place.

Another area of potential risk is where development applications are fragmented or presented in a piecemeal fashion – as has been the case recently in the ACT in regard to urban development. In many cases, the EPBC offsets are too small and fragmented to provide either certainty of survival in a high quality condition (due to adjoining impacts along long borders), or lack connections to the wider landscape. In such instances, especially where planning strategies clearly identify adjacent future development (as is the case in Gungahlin, ACT), the Commonwealth should move to a Strategic Environment Assessment process prior to any EPBC referrals.

As part of the Minister's support for greater documentation and transparency, CONSACT fully supports the publication of ongoing reviews of the use and performance of offsets.

We support SEWPaC's view on the need to check the status of lands offered for offsets to ensure that they are not already protected (and therefore ineligible for offsetting). And also to ensure that State/Territories do not engage in cost-shifting for natural area management (as an indirect offset).

In considering the acceptance of any offset, we strongly believe that the Commonwealth should seek demonstrated capacity by the managers of the offset lands that they have the capacity, knowledge and resources, to enhance biodiversity outcomes, and to undertake scientific monitoring and report upon same to the Commonwealth.

Additionality

We support the view of CSIRO and WWF who strongly urged that offsets must provide 'additionality', not just the setting aside of lands that already have conservation status, otherwise the loss of MNES in the development area would result in net biodiversity loss. Additionality is the international basis for the use of offsets.

However, we urge extreme caution over the consideration of cash payments for research as an 'additionality' offset. CONSACT would recommend that cash payments should not be able to consume the entire 25% of the indirect offsets component of a 'split' package, but should be capped at, say, a quarter to a third of total indirect offsets.]

In the ACT we have seen 'negative' additionality created as a result of offsets, where a conservation area set aside as an offset has had its conservation significance significantly reduced by the application of inappropriate fire management practices undertaken in order to protect the adjacent development (the subject of the EPBC referral).

The Calculator

CONSACT supports the use of the Calculator separately for each MNES, unless they overlapped. And we fully endorse SEWPaC basing each assessment as a science-based activity, with assessors talking to experts and local groups. We would encourage SEWPaC to become more engaged with local communities and ENGOs during the assessment of development applications affecting critical MNES.

Furthermore, CONSACT strongly recommends that the Commonwealth publishes the recommendations arising from an Assessment, independently of the Minister's Determination. This would be seen by the community as part of the 'increased transparency' regime.

At the workshops, there was debate over whether other calculators could be devised to handle migratory species and other items which have quite different offset requirements. CONSACT fully supports the development of additional targeted calculators for specific MNES areas.

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Conclusion

Overall, CONSACT does not favour the use of offsets as we believe it is extremely difficult to ensure that real net biodiversity gains can be achieved. Nevertheless, there *has* been an effective consultation process and we believe that if the issues and recommendations presented above are fully accepted - coupled with the introduction of rigorous assessment, monitoring, and transparency processes - an effective national offsets policy can be implemented in a manner that might lead to some biodiversity gains.

CONSACT is very willing to continue engagement with SEWPaC to further refine the Calculator to ensure that maximum biodiversity outcomes are achieved, in an environment that provides certainty for industry, and which does not pose unreasonable costs and constraints upon development.