

Consultation Draft. Environmental Offsets Policy. August 2011-10-21

Comments

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To whom it may concern,

Please find below my comments on the Australian Government's Consultation Draft for the proposed biodiversity offsets policy (August 2011).

Please do not hesitate to contact me if you require clarification on any of my comments.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Philip Gibbons', is written over a light blue horizontal line.

PHILIP GIBBONS

Offsets place a price on biodiversity

pp. 5-6. The comment “Offsets do not reduce the likely impacts of a proposed action” is not supported by the experience in NSW where, after the introduction of offsets, approvals to clear native vegetation dropped substantially (<http://www.environment.nsw.gov.au/resources/nativeveg/09751NVActReview.pdf>). Offsets place a shadow price on biodiversity and therefore motivate developers to find alternatives to impacting biodiversity—for the same reason that pricing carbon is used to reduce greenhouse gas emissions. Developers are more likely to avoid or mitigate their impacts if it is clear to them what impost biodiversity offsets represent. Thus, the impost that offsets potentially represent must be clearly communicated for the policy to work correctly as a market-like instrument to reduce the loss of biodiversity.

What constitutes gain?

The policy states that impacts must be offset relative to what was at the impact site before development. Similarly, you need to explain how gains are to be calculated at the offset site. If you simply calculate gains as those relative to what was there prior to development then, in my experience from developing an offset policy in NSW, this creates a perverse incentive on the part of proponents to degrade the offset site to the lowest condition as allowed under their statutory duty of care (e.g., using grazing by livestock) and then claim an improvement by reducing this pressure to its former level. To avoid this, and to acknowledge prior management above the legislative duty of care, the calculation of gain at an offset site should calculate gains from a baseline that represents the legislative duty of care (Figure 1), noting that gains should not be calculated for improvements from a baseline below this duty of care (e.g., offset funds should not be used to pay for management required within a land manager’s statutory duty of care such as the control of noxious weeds)

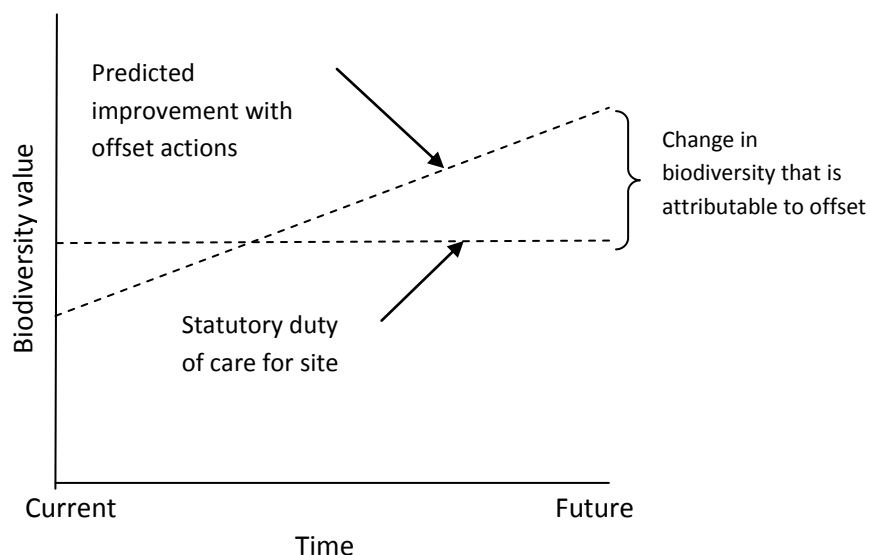


Figure 1. Biodiversity offsets should be restricted to outcomes above the duty of care for a site.

High quality habitat is not necessarily an appropriate offset

At p. 6 it states that “protecting existing good or better quality habitat” is an example of what constitutes an appropriate offset. And at p. 16 it states “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.” In many cases it is inappropriate to focus offsets at high quality sites because there is limited capacity for gain to offset the loss. This is for two reasons.

First, there is limited potential for gains in condition at already high quality habitat (Figure 2), unless there is demonstrable mitigation of threats. But threats cannot be assumed. High quality habitat is not at threat simply because it is high quality. For example, new clearing legislation in several states now provides protection to large, high quality remnants on private land. This legislated duty of care should not be undermined by the Australian Government’s offset policy. An offset in high quality habitat—regardless of the size of that offset—will result in losses equivalent with those at the impact site.

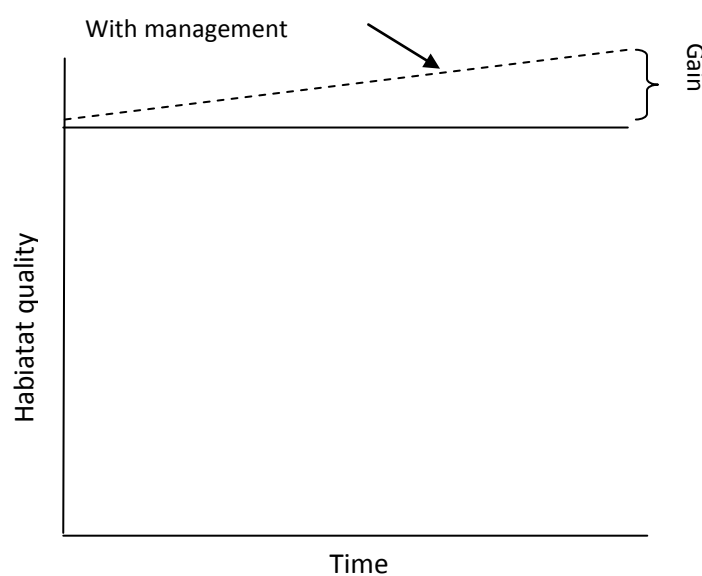


Figure 2. An illustration of the limited gain that can be achieved by establishing offsets on high quality sites.

Second, metrics used for most offset policies assume the gain in biodiversity with area and condition is linear. This is not the case. The species-area curve in ecology clearly shows that this relationship is curvilinear (Figure 3) and therefore the marginal gain in biodiversity outcomes decreases with area and condition. This means that gains at large, high quality sites can be modest relative to gains that can be achieved on small, modified sites (Figure 3).

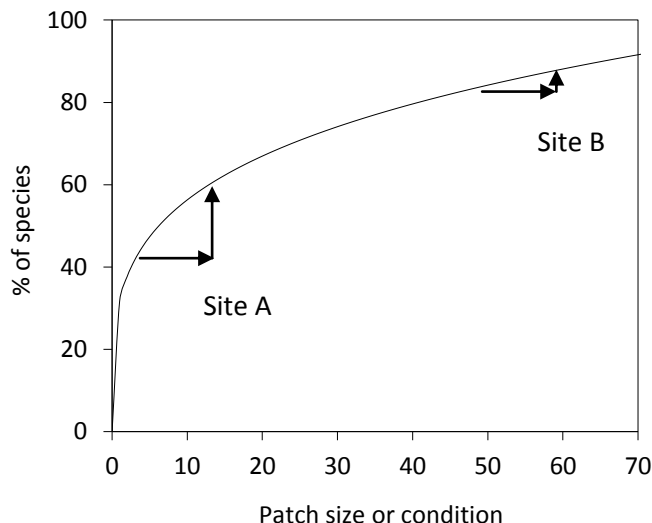


Figure 3. The relationship between biodiversity and area (or condition) is not linear. This means that marginal gains on existing large, or high quality, sites (Site B) can be modest compared with small sites in poor to moderate condition (Site A).

Removing threats should be a direct offset

On p. 7 it states that reducing threats is an indirect offset, which is inconsistent with the statement about threats on p. 16. Removing threats should be a direct offset as stated on p. 16. For example, reducing threats posed by foxes via baiting is a key way to avoid biodiversity loss.

A residual impact has to be “significant” before it must be offset

If the Australian Government is to ever achieve no net loss in biodiversity then all impacts that can be offset, should be offset. A feature of the Native Vegetation Act of NSW is that impacts must be offset regardless of the size of the impact. This avoids “death by a thousand cuts”.

Criteria for determining whether an offset is necessary

The criteria on p. 9 and the more expanded definitions in the NES guidelines are too loose to provide certainty to developers or for environmental protection. The Australian Government should give serious consideration to codifying these rules to improve transparency and consistency in the way they are implemented.

Identifying offsets is an iterative process

The Australian Government must aim to develop a rapid assessment protocol so offsets can be identified iteratively between proponent and the regulator. For example, a web-based tool that provides an indicative offset outcome. We cannot expect developers to identify a suitable offset at first pass. There must be a feedback loop so they can (a) quickly determine whether offsets are going to be feasible for the proposal (b) whether residual impacts must be further reduced and (c) how they can achieve a suitable offset at minimum cost to them.

Need strategies to deal with risk

SEWPaC need to develop strategies to deal with the risks identified on p. 11. Options would be: (a) be conservative with predictions; (b) don't grant consent where there is high uncertainty; (c)

outcomes must start to flow before development proceeds; (d) build a strategic biodiversity bank in advance of impacts; (e) adaptive management; or (f) diversity of offset approaches.

Need transparent assessment protocols

The issues on p. 13 must be addressed with transparent and largely codified decision support tools for all matters of NES that are the subject of offsets.

Annual reports

The requirement for annual reports p. 15 may be unreasonable in all cases. This was recently identified as a key area of regulation in need of reform by the Australian Industry Group and Deloitte. It might be appropriate to require annual reporting during establishment then a greater period between reporting after this. Unless this is entered in a centralised, consistent database that includes cost information then a true opportunity at adaptive management and ultimately potential cost savings will be missed.

Market-based mechanism

On p. 18 it states that it is the intention to manage offsets with a market-based mechanism. A market for trading biodiversity offsets will develop provided a metric is used to assess losses and gains on offset sites, and this metric is fungible across a sufficient number of developments. The Australian Government must develop metrics for assessing matters for NES as a priority. The Environmental Offset Assessment Guide does not represent an appropriate way forward in this respect.

Additionality

It is a key principle of offsets that they result in gains beyond what would be expected to occur under the duty of care that a landholder has to a site (Figure 1). If this is not done then it will undermine the existing duty of care that has evolved in land management and result in cost-shifting, whereby funds from development offsets will replace funds traditionally allocated from other sources. For example, we do not want to see the scenario where the management of national parks is reliant on development impacts at other locations.

Connectivity

In some parts of the document and offset calculator it is stated that offsets have potential to improve connectivity. It is important to note that the area and condition of habitat have primacy in terms of biodiversity conservation with connectivity being a secondary issue at best (Turner 2005) with a recent review suggesting the level of uncertainty around connectivity is so great that it should generally be ignored in decision-making (Hodgson et al. 2009). It is therefore important in the offset calculator that the area and condition of habitat cannot be offset with improved connectivity. In the metric underpinning biodiversity offsets in NSW we created a rule-set in which offsets had to deliver improve or maintain outcomes independently at each of the site, landscape and regional scales, ensuring that there wasn't trading between these entities and therefore contravention of "like-for-like".

References

- Hodgson, J. A., C. D. Thomas, B. A. Wintle, and A. Moilanen. 2009. Climate change, connectivity and conservation decision making: back to basics. *Journal of Applied Ecology* 46:964-969.
- Turner, I. M. 2005. Landscape ecology: What is the state of the science? *Annual Reviews of Ecology, Evolution and Systematics* 36:319-344.