

A few
words.

21 October 2011

Department of Sustainability, Environment, Water, Population and
Communities
GPO Box 787
Canberra, ACT 2601
By email: epbc.reform@environment.gov.au

Dear Sir/Madam

Consultation Drafts of the Australian Government Biodiversity Policy and the Environmental Offsets Policy

1. Introduction

AGL Energy Ltd (AGL) welcomes the opportunity provided by the Department of Sustainability, Environment, Water, Population and Communities (Department) to contribute to the development of the consultation drafts of:

- (a) the Australian Government Biodiversity Policy (**Draft Biodiversity Policy**); and
- (b) the Environmental Offsets Policy (**Draft Offsets Policy**).

AGL is Australia's leading renewable energy company with the largest privately owned and operated renewable portfolio in the country. AGL is also one of Australia's largest retailers of gas and electricity with more than 3 million customers in VIC, NSW, SA and QLD.

AGL operates across the supply chain with investments in energy retailing, coal-fired electricity generation, gas fired electricity generation, renewable and upstream gas exploration and production projects.

The diversity of its portfolio has enabled AGL to develop a detailed understanding of the risks and opportunities presented by the energy sector.

AGL supports the Draft Biodiversity Policy and the Draft Offsets Policy as a welcome development for the energy sector which provides an opportunity to clarify and formalise the Department's approach to addressing biodiversity assessment and the provision of offset under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**). AGL's specific comments in relation to each of the Draft Biodiversity Policy and the Draft Offsets Policy are set out at sections 2 and 3 below.

AGL would welcome an opportunity to provide further feedback on the broader reforms proposed to the EPBC Act which are foreshadowed in the recent Australian Government response to the Report of the independent review of the EPBC Act.

2. Draft Biodiversity Policy

AGL makes the following submissions for inclusion in the proposed Draft Biodiversity Policy:

- (a) **Application of the Principles:** The Draft Biodiversity Policy outlines 10 principles which are intended to provide the "the foundations for a strategic and integrated approach to tackling the challenge of biodiversity." The 10 principles are, of necessity, broad and somewhat general in nature.

AGL submits that the Draft Biodiversity Policy be amended to provide clear guidance as to how the 10 principles are to be applied by decision makers. In particular, AGL recognises that the maintenance of biodiversity is and should be a very significant consideration in all decisions made by the Australian Government. However,



biodiversity impacts are but one issue of many in what are often complex decisions which require competing considerations to be considered and addressed. This is recognised, for example, in section 136 of the EPBC Act which specifies that "economic and social matters" are a mandatory matter for consideration by the Minister for Sustainability, Environment, Water, Population and Communities in determining whether or not to approve the taking of an action, and what conditions to attach to an approval. AGL recommends that the Draft Biodiversity Policy be amended to clarify that the proposed biodiversity principles are not the only issues to be considered by the Australian Government and will not, in every case, prevail over all other considerations to mandate a particular outcome.

3. Draft Offsets Policy

AGL makes the following recommendations for inclusion in the proposed Draft Offsets Policy:

- (a) **Previous Draft Policy:** In 2007 the Department released a draft policy statement entitled the Use of Environmental Offsets under the EPBC Act and a discussion paper in relation to this draft policy statement.

AGL assumes that the Draft Offsets Paper supersedes this earlier draft policy and discussion paper.

- (b) **Referral Stage:** The Draft Offsets Policy states that:

"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."

AGL acknowledges that the EPBC Act, as currently drafted, does not enable the Minister to consider any beneficial impacts on protected matters in determining whether or not an action is a controlled action. However, there does not seem to be any public policy reason why, for example, if offsets are proposed which will result in a net benefit to a particular listed threatened species or endangered ecological community, the Minister should be precluded from taking this into account in determining whether or not the action is a controlled action by reason of its impacts on the particular listed threatened species or endangered ecological community.

Accordingly, AGL asks that the Department give consideration to removing this restriction as part of the wider proposed reforms of the EPBC Act and in finalising the Draft Offsets Policy.

- (c) **Recognition of State and Territory Offsets:** The Draft Offsets Policy provides guidance on what will constitute a suitable offset for the purpose of a controlled action under the EPBC Act. Section 7.1 of the Draft Offsets Policy confirms that "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." However, the Draft Offsets Policy does not confirm that all offsets provided under state or territory mechanisms will be recognised for the purposes of the EPBC Act. Applicants accordingly run the risk that offsets, which have been approved under state or territory legislation, may not meet the guidelines contained in the Draft Offsets Policy.

AGL requests that the Draft Offsets Policy be amended to confirm that current state and territory offsetting mechanisms will be acceptable for the purposes of the EPBC Act.

- (d) **Double Assessment:** The Draft Offsets Policy, as currently drafted, does not remove the current requirement for double assessment of proposed offsets by both state or territory agencies and the Department. In the absence of such provisions, it is likely

that applicants will be put to additional cost and delay resulting from the need to have offsets separately assessed under two separate regimes.

AGL requests that the Draft Offsets Policy be amended to address this issue.

- (d) **Conditions:** It is common for EPBC approvals to be issued subject to a condition requiring that, prior to a certain date or event (for example, within 12 months of commencement of construction), the person carrying out the action must secure an offset package which meets specified minimum requirements using one or more approved mechanisms on terms approved by the Minister. The Draft Offsets Policy does not make it clear whether such conditions will still be able to be imposed or whether the Department will now require that the final offsets package be determined and approved in advance of approval being granted.

AGL considers that it is entirely appropriate to enable offsets to be settled and subsequently approved without delaying project construction. AGL recommends the Draft Offsets Policy be amended to make it clear that such conditions may still be imposed and that the Draft Offsets Policy will be applied by the Minister in determining whether or not to approve an offsets package under such a condition.

- (e) **Timing and Cost:** The Draft Offsets Policy does not provide clear guidance as to whether the Department will now require additional information to be provided in relation to proposed offsets and the length of time which the Department will require to assess offsets. Both of these issues can be critical factors in determining whether or not commercially important project construction timetables will be delayed.

AGL recommends that consideration be given to providing further guidance in the Draft Offsets Policy in relation to both these issues.

4. Conclusion

AGL thanks the Department for the opportunity to contribute to the development of the Draft Biodiversity Policy and the Draft Offsets Policy and hopes that the recommendations outlined above will assist in the development of these policies.

AGL looks forward to being kept informed in relation to the proposed reform of the EPBC Act and would welcome an opportunity to provide a submission on the proposed broader reforms in due course.

Should you have any queries or require any additional information in relation to this submission then please do not hesitate to contact me on [REDACTED]

Yours sincerely,



David Kelly

Head of Land and Approvals