

Australian Government's EPBC Act Environmental Offsets Policy 2011: Consultation Draft



Trust for Nature - Submission

Introduction

Trust for Nature (TfN) welcomes the draft Environmental Offsets Policy (the Consultation Draft) as having the potential to clarify for all stakeholders the use of environmental offsets (Offsets) and deliver high-quality conservation outcomes for matters protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act).

Trust for Nature is the leading private land conservation body in Victoria. Over the past 40 years, Trust for Nature has helped landowners to establish more than a thousand in-perpetuity conservation covenants over their land securing high quality native vegetation and contributing over 45,000 hectares to the National Reserve System. Covenants are primarily a voluntary mechanism of conservation but are being used increasingly as the security for Offsets under the State and Commonwealth schemes. Since July 2010, Trust for Nature has facilitated over 400 hectares of protection and improvement across four bioregions as part of both the Victorian and Commonwealth offset schemes and currently maintains a database of Native Vegetation Credits registered under the Victorian Offset scheme. Due to its extensive experience in developing Offsets, Trust for Nature has already been working with the Department of Sustainability and Environment in Victoria to enhance the transparency and conservation potential of the state offset scheme.

Trust for Nature is eager to work with the Department of Sustainability, Environment, Water, Population and Communities and has developed a number of recommendations by which the Consultation Draft could be strengthened to enhance the biodiversity benefits and effective implementation of the Commonwealth offset scheme.

Attributes of a suitable Offset

Trust for Nature suggests that there is an opportunity within the Consultation Draft to place a more significant emphasis on Offset Projects which are efficient, effective and transparent (clause 2.1, pg 4).

There are various ways to secure land for the purposes of developing an Offset. Trust for Nature believes that the Consultation Draft should actively promote high quality forms of in-perpetuity protection which both display a high level of transparency and security and ensure a more effective provision of ecosystem services.

Every Conservation Covenant developed by Trust for Nature displays the following attributes:

- Stewardship support for landowners;
- clearly articulated performance and security measures;

- reliable monitoring requirements;
- strategic environmental significance determined by a well-established system of ecological assessment guaranteeing the viability of each Offset as well the impacted vegetation more generally.

In addition, Offset Covenants have more onerous requirements of monitoring and reporting which have been developed to complement the Department of Sustainability and Environment's BushBroker scheme and include:

- annual reporting forms available for the purposes of compliance;
- visits made to each Offset site for the purposes of monitoring and auditing at regular intervals within and beyond the Offset period;
- ongoing Stewardship support to landowners to ensure secure and high quality protection of native vegetation beyond the 10-year Offset period.

Similarly, when compared to a revegetation or rehabilitation Offset, securing and improving remnant vegetation that is already in a good condition provides a significantly more immediate ecological benefit, thereby reducing the risk that an Offset will not achieve its targets between the time of impact and the time of ecological benefit (clause 6.1.2, pg 13).

The Consultation Draft has outlined that "suitable offsets must effectively manage the risk of the offset succeeding" (clause 6.1.4, pg 13). Trust for Nature submits that by actively promoting covenanting programmes which involve contracting rural landowners to undertake ecological services on their land, the Consultation Draft can more effectively encourage Offsets with the least amount of risk, the least amount of delay between impact and ecological benefit, and further reinforce clause 8.2, that "enhanced environmental, social and economic outcomes can be achieved through proponents contracting rural landholders to [manage] land for conservation."

Recommendation: that the Commonwealth consider recognising the quality of security provided by a Conservation Covenant and equivalent forms of on-title security backed up by Stewardship as one of the highest levels possible and afford appropriate weighting above the standard number of points assigned to a "Basic Direct Offset" which reflects the lower level of risk involved.

Recommendation: that the Commonwealth consider including in the Environmental Offset Assessment Guide the ability to award bonus points to Offset projects with significantly reduced risk of not fulfilling their targets, such as protection and improvement of good quality remnant vegetation.

Public Policy implications

Trust for Nature suggests that the Consultation Draft could be clarified further in regards to what types of protected land are eligible to contribute to Direct Offsets. As it is currently drafted, the Consultation Draft appears to recognise that land already under enduring protection can still be eligible for contributing to Direct Offsets by undertaking "Significant Additional Actions above Legal Requirements" as outlined by the draft Environmental Offset Assessment Guide.

Trust for Nature believes that this approach is desirable for the following reasons:

- while existing covenant agreements are a set of negative legal obligations designed to *maintain* vegetation quality in perpetuity at the level it was at the time of entering the agreement, this land still has substantial capacity for improvement works which would satisfy the additionality requirement;
- any gain secured through improvement works on existing protected land involves significantly less risk as it builds upon the contributions of those who have already shown themselves committed to national environmental goals and have a proven track-record in land conservation management;
- such an approach reinforces the *Australian Government Biodiversity Policy Consultation Draft*, in particular Clause 5 which emphasises that we “must recognise and support the effort of volunteers, landholders, farmers and community groups to date and build on their participation to move forward”.

This approach is also consistent with the current Victorian Offsets policy to include the gains supplied by landowners who have voluntarily covenanted their land in response to government environmental programmes or otherwise altruistically. The Victorian policy of including existing protected land recognises the significant potential for encouraging ecological improvement works across the vast areas of land already maintained and currently contributing to the viability and connectivity of native vegetation.

In addition to these positive benefits, clarifying the Consultation Draft so that it is clear that owners of existing protected land can contribute to Direct Offsets ensures that the development of a Commonwealth Offset scheme will not work against the intent of the Commonwealth’s draft Biodiversity Policy by undermining the existing system of creating protected areas on private land using covenants. In this way, the following potential perverse outcomes will be avoided:

- a reluctance of private landowners to consider establishing conservation covenants as part of the National Reserve System due to uncertainty and confusion about whether their opportunities to enter biodiversity markets will be affected (a ‘chilling effect’). Commonwealth acceptance that a landowner contemplating permanently protecting their land is able to preserve their rights to enter biodiversity markets will both help to create biodiversity banks from which offsets can be sourced in future and avoid this “chilling effect”;
- the possibility of disenfranchising a subset of existing owners of protected land who have already entered conservation agreements without financial incentive often at the encouragement of Commonwealth and State governments. These landowners now bear ongoing ownership and management costs for a public good and yet their opportunities to enter biodiversity markets remain unclear.

Trust for Nature recognises that Direct Offsets sourced from land already under enduring protection would attract a different level of weighting (potentially excluding points for security).

The Consultation Draft correctly emphasises that “Offsets must deliver a conservation outcome that would not otherwise occur” (Clause 6.1.1, pg 13). In order that there are clear records of what land is being secured for the purpose of contributing to an Offset or biodiversity banking scheme, Trust

for Nature suggests that this intention must be clearly recorded on the instrument at the time of execution to enhance transparency of the achievement of additionality on conservation land.

This is a broader issue for environmental markets and not limited to biodiversity banking. Trust for Nature suggests that it would substantially reduce the risk of a “chilling effect” on the achievement of conservation sought by a range of programmes, including those of the Commonwealth, if future covenants are recognised as being able to achieve additionality in situations where the landowner has, for example, noted such an intention at the time of execution of the instrument.

Recommendation: that the Commonwealth consider adopting a clear position recognising that land already under enduring protection can still be eligible for contributing to Direct Offsets by undertaking “Significant Additional Actions Above Legal Requirements.”

Recommendation: that the Commonwealth consider including in paragraph 2 of Clause 8.1 the following requirement: “All properties from which Offsets can be sourced as part of a future biodiversity banking scheme must have clearly noted on the legal instrument securing them the intention for the property to be used as an Offset if they are to satisfy the requirement of additionality.”

Interaction between State and Commonwealth Offset schemes

Trust for Nature notes that one of the principle aims of the Commonwealth’s Offset policy is “delivering improved environmental outcomes by consistently applying offsets policy” (Clause 2.3, pg 4). Trust for Nature suggests that the Consultation Draft has the potential to clarify the interaction between the State and Commonwealth Offset schemes to ensure a more consistent application of offset principles and practice, thereby reducing the potential for replication.

As an organisation that routinely develops State and Commonwealth Offsets in tandem, Trust for Nature submits that there is greater potential for streamlining Offset schemes so that it is sometimes possible for offsets required under the EPBC Act to be provided using existing State offset schemes.

Trust for Nature understands that the Commonwealth wishes to maintain flexibility in the way that the extent and content of an Offset are determined. However, in order to minimise the risk of conflict when incorporating State and Commonwealth management plans into a single on-title agreement, Trust for Nature submits that the underlying principles, standards of management actions and terminology should be applied consistently between the State and Commonwealth.

Recommendation: that where the nature of the offset allows, the Commonwealth provide an offset methodology consistent with State guidelines to reduce the administrative burden and the possibility of any conflict between two processes running simultaneously.

Recommendation: that the Commonwealth consider amending bullet point 6 of ‘Matters to be considered’ under Clause 6: Offset Requirements so that it reads: “the approach of the relevant state or territory, with a view to complementing and building upon that approach, and seeking consistent national standards and terminology of management actions.”

Technical Application of Offsets

Trust for Nature notes Clause 6.1.1 which states that Offsets should be built around in-perpetuity protection but potentially include Indirect Offsets which must be fully transparent, auditable and accountable. Trust for Nature has experience in developing conservation projects as part of an Indirect Offset requirement and directly appreciates the difficulties involved with reporting and ensuring quantifiable gains.

Trust for Nature suggests that there is an opportunity for the Consultation Draft to endorse and actively promote the ability of specially accredited non-governmental organisations to offer independent and transparent packages of Indirect Offsets. In addition to the experience Trust for Nature already has with developing Indirect Offsets through conservation projects, organisations like Trust for Nature have extensive regional networks and are ideally placed to direct strategic funding for on-ground improvement works to benefit a particular type of habitat falling outside the scope of the Direct Offset.

Recommendation: that the Commonwealth consider including in Clause 4.2.2 a further method for achieving Indirect Offsets so that "a package of Indirect Offsets supplied by an accredited third party like a biodiversity bank service provider which may include a combination of any of the above options as well as other approved sources of Indirect Offset".

Further Consultation

Trust for Nature appreciates the chance to provide comments and input on the development of the Commonwealth's policy for offsets under the EPBC Act and understands that the offset approach will continue to be developed. Trust for Nature suggests that the Commonwealth continue to engage in further consultation with all those bodies likely to be affected by the Policy and is eager to provide any assistance it can in this difficult process.

For more information in relation to this submission or Trust for Nature's Offset programme, please contact [REDACTED] on [REDACTED]

Sincerely yours,

Victoria Marles
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