

19 October 2011

Ms Vicki Middleton
EPBC Act Reform
Department of Sustainability, Environment, Water, Population & Communities
GPO Box 787
CANBERRA ACT 2601

Dear Vicki,

EPBC Act Draft Environmental Offsets Policy

Ports Australia welcomes and appreciates the opportunity to comment on the Draft Environmental Offsets Policy.

Ports Australia

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. The submission is made on behalf of the member of Ports Australia all of whom are listed on our website at www.portsaustralia.com.au

Ports Australia and its members is pleased to see that the Commonwealth Department is moving towards a consistent and transparent policy for the requirement and assessment of environmental offsets. The overall intention of the draft policy appears to be aligned with the principles and intentions of other state guidelines, eg WA, where environmental offsets can be effective in counterbalancing residual impacts (after avoidance and mitigation) when they are applied in a coordinated manner and have tangible and defined outcomes.

Draft Offsets Policy

We note that the draft policy *“focuses on terrestrial impacts and offsets, although some aspects of the approach are also relevant to the marine environment.”* We have been advised by the Department that the principles enshrined in this draft policy could apply to the marine environment. We are very interested in learning more about the Department’s thinking on offsets for the marine environment and we will be seeking an appointment time to discuss a marine offsets policy in more detail.

In the meantime, we have the following comments on the terrestrial policy.

The policy states a clear preference for direct offsets and prescribes a minimum of 75% direct offsets (ie a maximum of 25% indirect offsets) to address impacts. This will simply not be possible in the marine environment. Proponents cannot “purchase” marine waters. In most areas where impacts are occurring due to port and port-related development (eg in the Pilbara and Gladstone), there are few degraded areas to rehabilitate. Consequently the focus will have to be on indirect impacts in the marine environment.

Consideration will therefore have to be given as to how close geographically speaking the offset needs to be to the impact site. This is important given the relative scarcity of marine areas to rehabilitate and, for ports, in ensuring that offsets are not influenced by plans for future port expansion or operations. This is an important consideration when calculating offset points..

Many marine environmental impacts are difficult to predict with a high degree of certainty, eg, the potential impact of dredging-induced water pollution on surrounding aquatic ecosystems. In such circumstances, offsets should not be accurately defined prior to the activity and/or based on the precautionary principle. It would be more appropriate to assess a range of potential offsets and for the parties (ie the proponent and the Department) to determine the type and magnitude required once the results of impact monitoring were received and evaluated.

One of the aims in defining offsets is to consider *“the approach of the relevant state or territory with a view to complementing and building upon that approach”*. Would such a consideration be up to the proponent or the Commonwealth?

The governance requirements for offsets can impose significant costs on proponents, particularly for relatively small projects. Requirements for monitoring, auditing and enforcement of offsets should be tailored to the scale of the project. What timing would be proposed for offsets monitoring in the marine environment?

Offset Assessment Guide, Impact & Offsets Calculators

The quantitative system proposed for assessing residual impacts and offsets lacks detail, particularly for the marine environment, and will require rigorous testing across a broad range of activities and different marine environments to provide a level of confidence that it can deliver suitable outcomes. A trial period of three years should be undertaken to allow this assessment to occur. In the meantime, offsets may be determined by negotiation between the proponent and the regulator. Such an approach may provide a better outcome for the marine sector than the proposed terrestrial quantitative system.

In any case, having a defined timeframe for the assessment stage of the offsets evaluation would provide certainty to the proponent. Timing is important as the policy indicates that the Department will be seeking external expert advice when defining offsets needs and their acceptability.

We note that the Offset Assessment Guide is in the development stage and it is proposed that it be a non-binding decision-making tool to be used to translate the requirements in the policy into a quantitative form. However, a number of our members have found the guide to be confusing. We believe it could be better set out and better linked to the draft policy document. Further, we would caution that the non-binding decision-making tool does not become, at some point, a prescriptive instrument.

We are concerned that neither the impact nor offsets calculators consider uncertainty and risks.

Will there be different calculators for other protected matters considered under the Act? For example, it would not be possible to consider heritage aspects, particularly National Heritage Listed Places, within the framework of the proposed calculator. We look forward to a more detailed procedure and explanation of the methodology used as the guide is further developed.

If a similar guide were to be proposed for the marine environment, then the members of Ports Australia should be consulted on its development.

Summary

The issues raised in the draft terrestrial offsets policy paper are so many and varied for the marine environment that Ports Australia requests an opportunity to meet with you and your colleagues so that we can discuss the issues raised in our submission in further detail. We believe that a meeting will assist with the development of a marine offsets policy that takes into account the often unique requirements of the port industry. We will follow up with the Department.

Thank you for the opportunity to provide comment on a very important draft policy paper.

Yours sincerely,



David Anderson
Chief Executive Officer