

Australian Network of Environmental Defender's Offices



Australian Network of Environmental
Defender's Offices Inc

Submission to the Inquiry into Environmental Offsets

4 April 2014

The Australian Network of Environmental Defender's Offices (**ANEDO**) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Introduction

The Australian Network of Environmental Defender's Offices Inc (**ANEDO**) is a network of independently constituted and managed community legal centres across Australia. Each EDO is dedicated to protecting the environment in the public interest. For the last 30 years, EDOs have provided legal representation and advice; taken an expert role in environmental law reform and policy formulation; and offered a public outreach program to help urban and rural communities understand and participate in environmental impact assessment and decision making.

EDO offices have provided legal advice on environmental offsetting at the state and national levels, in relation to broad policy reforms and also in relation to how offsetting works for individual projects. We welcome the opportunity to comment on the use of environmental offsetting in Australia.

Offsetting is an attractive option as a means for developments to obtain approval despite their environmental impact. How offsetting is done is highly variable across Australia. Often offsets are negotiated on a case by case basis between the regulator and the development proponent. Some jurisdictions apply policy guidelines, assessment methodologies, or more simplified offset ratios. Although there are certainly emerging trends and themes in offsetting, at present it is done on a relatively ad hoc basis with little strategic direction or guarantee of ecological outcome.

While certain types of environmental offset schemes do have some quantifiable benefits – such in the Hunter River Salinity Trading Scheme in NSW – other types of environmental offsets are far from proven. Many EDO clients, and relevant significant scientific literature, note serious concerns as to whether biodiversity offsetting is actually possible given the unique nature of local biodiversity. Furthermore, where offsets are used, outcomes are difficult to measure. Given this uncertainty, and given that around three quarters of EPBC Act referrals are due to potential impacts on federally listed threatened species, this submission focuses on the use of *biodiversity* offsetting.

This submission responds to the terms of reference by identifying the fundamental principles that need to be applied to any offset scheme. We outline the core principles and note some concerns with recently proposed reforms in Queensland and NSW. These reforms are of serious concern given the imminent accreditation of state standards for environmental assessment and approval under the Australian Government's 'one stop shop' policy. Our concerns about how offsetting principles are applied/ignored in Australia are illustrated by the case studies explored in this submission.

There are currently significant differences between the Australian Government Offset Policy and those proposed in NSW and Queensland. Based on our analysis of State and Territory threatened species and planning laws, we reiterate that now is the time to improve State and Territory laws, not lower standards.¹ The Australian Government must retain a leadership and approval role to protect and enhance matters of national environmental significance.²

¹ *Protect the laws that protect the places you love: An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia*, Places You Love Alliance, 2013, prepared by the Australian Network of Environmental Defender's Offices Inc (ANEDO). Available at: http://www.edonsw.org.au/native_plants_animals_policy

² See previous ANEDO submissions on one stop shop policy including: ANEDO 'COAG environmental reform agenda: ANEDO Response – In Defence of Environmental laws' available at: <http://www.edo.org.au/policy/policy.html>.; ANEDO "Submission on the Draft Framework for the Accreditation of Environmental Approvals under the EPBC Act", 23rd November 2012, available at:

Now is not the time to rush through State policies that are based on reducing approval timeframes rather than robust science. We note that the Productivity Commission recently recommended that, “A dedicated and independent review of offset arrangements is warranted to examine: offset policy objectives, the quantitative methodologies used to identify suitable offsets, the merits of offset markets and the case for establishing a single, national offsets framework. The Commission is recommending that COAG commission a national and public review of offsets, to report by the end of 2014”.³ ANEDO supports an independent review for the purpose of a single national offsets framework that implements best practice.

Our key recommendation is therefore that a comprehensive an independent review into offsets is established, and that rigorous national standards be developed. These national standards must be based on robust and objective science and apply the fundamental principles as outlined in this submission. Once a best practice national standard has been developed through expert and public consultation, state standards and relevant legislation should be amended to meet the national standard. Accreditation of state standards must not occur until this precondition is met.

Part One of this submissions addresses the following terms of reference:

The history, appropriateness and effectiveness of the use of environmental offsets in federal environmental approvals in Australia, including:

- a. the principles that underpin the use of offsets;
- b. the processes used to develop and assess proposed offsets;
- c. the adequacy of monitoring and evaluation of approved offsets arrangements to determine whether promised environmental outcomes are achieved over the short and long term; and
- d. any other related matters.

Part Two of this submission provides further information and analysis in relation to four projects identified by the Committee in the terms of reference:

- a. Whitehaven Coal’s Maules Creek Project;
- b. QGC’s Queensland Curtis LNG project;
- c. Waratah Coal’s Galilee Coal Project; and
- d. North Queensland Bulk Port’s Abbot Point Coal Terminal Capital Dredging Project.

<http://www.edo.org.au/edonsw/site/pdf/subs/121123COAGCthaccreditationstandardsANEDOsubmission.pdf>; ANEDO, Best practice standards for environmental law (June 2012); and ANEDO *Submission on Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, 18 January 2013 available on request or at www.edo.org.au. Recent submissions on the proposed assessment bilateral agreements between the Commonwealth and NSW, Queensland and South Australia are also available at: www.edo.org.au.

³ Productivity Commission 2013, *Major Project Development Assessment Processes*, Research Report, Canberra, at page 213, available here: http://www.pc.gov.au/_data/assets/pdf_file/0015/130353/major-projects.pdf

Part One: The history, appropriateness and effectiveness of environmental offsets for federal environmental approvals

Historically, offsets have been developed and applied in a variety of ways, with variable outcomes in Australia and internationally. Our experience suggests there is a lack of consistency, ecological credibility, rigour, enforceability and legislative parameters for offsetting in Australia. Appropriateness and effectiveness could therefore be improved by the development of a national standard and legislation that implemented the fundamental principles discussed below.

a. The principles that underpin the use of offsets

There are a number of fundamental principles that must underpin a national offset standard and be reflected in legislation.⁴

Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts.

The mitigation hierarchy should be clearly set out in relevant planning legislation in each State and Territory as a mandatory pre-condition before any offsetting option is considered. The national standard must provide appropriate guidance and emphasis on how a proponent can demonstrate their endeavours to genuinely 'avoid' and 'mitigate' aspects of the proposed development.

Offsets must be based on sound ecological studies and principles, such as 'like for like.'

The national standard must enshrine the requirement of like-for-like offsets, to ensure that the environmental values of the site being used as an offset are equivalent to the environmental values impacted by the proposed action. Otherwise the resulting action is not an offset. A like for like requirement is absolutely fundamental to the ecological integrity and credibility of any offset scheme.

Concerted policy action and long-term strategic planning to contextualise offsetting within a broader strategy of environmental conservation, must be based on sound landscape conservation principles, without eroding the like for like principle.

Legislation and policy should set clear limits on the use of offsets.

The national standard, and any State or Territory scheme designed to meet the standard, must have clear parameters. The use of 'red flag' or 'no go' areas is essential to make it clear that there are certain matters in relation to which offsetting cannot be an appropriate strategy. This is particularly relevant to critical habitat and threatened species or communities that can withstand no further loss. (This principle must not be undermined by relaxing the 'like for like' rule).

⁴ For an analysis of current offset principles used in Australia – see: Fallding, Martin, "Biodiversity offsets: Practice and promise" (2014) 31 *Environment and Planning Law Journal* 11. Fallding identifies 5 generally accepted common offsets principles: (p15) (1) Biodiversity offsets will be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts; (2) Offsets must be based on sound ecological studies and principles; (3) Offsetting must achieve benefits in perpetuity; (4) Offsets must be based on principles of "net gain;" (5) Offset arrangements must be enforceable.

Indirect offsets must be strictly limited.

There should be extremely minimal use of indirect offsets under the national standard. This is due to significant uncertainty of linkages with impacts, and higher risk that biodiversity outcomes may not be achieved. Allowing expanded use of indirect offsets would result in net loss of impacted matters.

Offsetting must achieve benefits in perpetuity.

An offset area must be legally protected and managed in perpetuity, as the impact of the development is permanent. Offset areas should not be amenable to being offset again in the future.

Offsets must be based on principles of “net gain”

A national standard should require any offset scheme to maintain or improve environmental outcomes, or even *enhance environmental outcomes* (posited in WA and Victoria), instead of simply requiring ‘no net loss’. This acknowledges current trajectories of biodiversity loss, and that positive action is required to halt and reverse this trend.

Offsets must be additional

Any offset action must be additional to what is already required by law. The requirement of ‘additionality’ must be based on clear criteria to ensure that offsets are not approved unless they provide a conservation benefit additional to what would otherwise occur.

Offset arrangements must be legally enforceable.

Any offset scheme must be underpinned by strong enforcement and compliance mechanisms in legislation, with adequate resourcing, established from the outset.

These principles are discussed further in relation to proposed reforms in NSW and Queensland below, and in relation to specific projects in **Part Two**.

b. The processes used to develop and assess proposed offsets

As noted, offsetting is currently done differently depending on the type of project, the proponent and the jurisdiction. Based on our experience, some assessment processes are more rigorous and transparent than others.

ANEDO was involved over a number of years in expert consultations with the federal Environment Department in the development of the national offsets policy. Our input included advice on the legal architecture and also scientific advice from our Expert Register. For our detailed comments on that policy development process, we refer the Committee to our previous technical submissions listed in the **Appendix**.

At a state level, EDO NSW has been involved for a number of years in the development and application of 3 assessment tools under NSW legislation: the *Environmental Outcomes Assessment Methodology* under the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2005*; the biocertification methodology under the *Threatened Species Act 1995*; and the Biobanking assessment Methodology under the *Threatened Species Act 1995*, through our participation on the Ministerial Reference Group for Biobanking. We note the Hawke Review of the EPBC Act recommended that consideration be given to a national biobanking scheme to consolidate national

standards for a more consistent approach across Australia.⁵ For detailed comment on the legal application and science underpinning those tools - and concerns regarding the progressive weakening of these tools - we refer the Committee to our previous technical submissions listed in the **Appendix**.

In the absence of a robust tool, the criteria on which offset sites are selected is unclear. Where an assessment method does exist, it is essential that it is applied consistently and accurately. In the ACT for example, serious concerns have been raised about the choice and location of offsets.

As most urban development in the ACT has an impact on nationally threatened box gum woodlands, native grasslands or threatened species such as the striped legless lizard, the ACT government has now been applying the new federal environmental offsets policy for over a year.

However, early indications are that the ACT is applying this policy in a manner that is fundamentally changing the way we go about conservation.

International standards and the federal policy on biodiversity offsets state, as a key principle, offsets must deliver gains in biodiversity that would not have otherwise occurred.

The federal policy states as, an example, that this generally prohibits establishing offsets in existing nature reserves.

This is because there is a very high duty of care by governments to conservation in nature reserves, so there is little capacity to obtain gains in biodiversity within nature reserves that are additional to existing commitments.

Early application of the federal offset policy in the ACT is in clear contravention of this principle of additionality. For example, impacts on threatened species from proposed development of new Gungahlin suburbs such as Kenny and Throsby will be offset with actions in the existing Mulligans Flat, Mulangarri and Gungahra nature reserves. Similarly, a proposed development in North Watson has been permitted because of a biodiversity offset in the nearby Justice Robert Hope Park.⁶

Similarly, concerns about how proposed offsets are developed and assessed have been raised in other jurisdictions. Concerns have been raised by EDO clients in South Australia in relation to offsets for BHPB Roxby Downs Olympic Dam Expansion project, where 17,267 hectares of vegetation will be cleared under the proposed expansion. In particular, concerns raised in relation to the draft EIS have included: the lack of information on how current offsets are managed and exactly how proposed offsets will be managed in perpetuity to provide a significant environmental benefit, and that the true costs were not factored into the offsets including loss of reptiles and mammals. There is also the view that it is hard to hold developers to account for agreed offsets as enforcement seems to be under-resourced; and where there seems to be a preference for payments in lieu of direct offsets, it is unclear how funds are spent in terms of beneficial environmental outcomes.⁷

⁵ See: *Report of the Independent Review of the EPBC Act (2009) Recommendation 7.*

⁶ See EPBC Act referral (2012):

http://www.environment.gov.au/cgibin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=6418, and Dr Phil Gibbons, ANU, <http://www.canberratimes.com.au/comment/its-becoming-harder-to-see-the-trees-for-the-revenue-20140128-3112b.html>.

⁷ For further detail see the submission on the draft EIS prepared by the Conservation Council of South Australia.

For a critique of how offsets are currently calculated in Victoria, we refer the Committee to the EDO Victoria Report: *Reforming native vegetation offset rules in Victoria*.⁸

ANEDO would support the development of a robust national assessment methodology based on the best available peer-reviewed science that consistently implements the fundamental principles of offsetting including like for like and additionality.

c. The adequacy of monitoring and evaluation of approved offsets arrangements to determine whether promised environmental outcomes are achieved over the short and long term.

There is a dearth of evidence to show that offset schemes actually achieve the intended biodiversity outcomes. The field of restoration ecology is still relatively new, and even those schemes that have been in existence for some time – such as the Wetlands Restoration Scheme in the USA – cannot show conclusive results in terms of beneficial environmental outcomes.⁹

In most cases it is too early to say whether an offset ecosystem has been restored to an equivalent of the ecosystem that was cleared at the development site.

Furthermore, ecological outcomes may be threatened by further development. Of concern to ANEDO is the fact that some offset areas do not get managed in the long term as they end up being the site of new development (and further offset). An example of this is the current Warkworth Mine extension near the village of Bulga in NSW, where a previous offset area is now proposed to be mined.

Bulga Milbrodale Progress Association Inc. ats Warkworth Mining Limited & Ors

On April 7, 2014, the NSW Court of Appeal ruled in favour of the residents of the Hunter Valley village of Bulga and the protection of a rare forest containing endangered plants and animals, by upholding the refusal of an open cut coal mine expansion. Rio Tinto was seeking to open cut mine a biodiversity offset area, containing an endangered ecological community, the Warkworth Sands Woodland, and threatened animal species including the squirrel glider and the speckled warbler. This woodland is unique to the area and only 13 per cent of the original forest remains. Rio Tinto had previously promised to permanently protect this area, under an agreement with the NSW government, as part of the existing approval from 2003. The protected area also includes Saddleback Ridge which provides a buffer between the mine and Bulga.

⁸ Available at: <http://www.edovic.org.au/law-reform/major-reports/reforming-native-vegetation-offsets>.

⁹ For example see: Maron et al, "Can Offsets Really Compensate for Habitat Removal? The Case of the Endangered Red-Tailed Black Cockatoo" (2010) 47 *Journal of Applied Ecology* 348, at 348; Maron et al, "Faustian Bargains? Restoration Realities in the Context of Biodiversity Offset Policies" (2012) 155 *Biological Conservation* 141, at 144; Gibbons & Lindenmayer, "Offsets for Land Clearing: No Net Loss or the Tail Wagging the Dog" (2007) 8(1) *Ecological Management and Restoration* 26; Bekessy et al "The Biodiversity Bank Cannot be a Lending Bank" (2010) 3 *Conservation Letters* 151; Ambrose, Richard F, (2000) "Wetlands Mitigation in the United States: Assessing the success of mitigation policies", *Wetlands (Australia)* 19(1) 2000; Lake, PS (2001) "On the maturing of restoration: Linking ecological research and restoration" *Ecological Management and Restoration* Vol 2, No. 2, August 2001; and Chapman M.G. and Underwood A.J. (2000) The need for a practical scientific protocol to measure successful restoration *Wetlands (Australia)* 19(1), 28-45.

This case study demonstrates that environmental outcomes are uncertain and that current laws do not enshrine the principle of permanence.

d. Any other related matters – Current offset reform proposals

We note two current reform proposals, whereby Queensland and NSW are lowering offset standards by relaxing the fundamental principles. The rationale for reforms is to facilitate development by making offsetting simpler, while ostensibly maintaining environmental standards.

NSW

The NSW Government has recently released a *Draft NSW Biodiversity Offsets Policy for Major Projects* for public consultation until the 9th May 2014. The policy is underpinned by a *Framework for Biodiversity Assessment (FBA)*¹⁰ which sets out the method by which biodiversity impacts and offsets are to be assessed.

The policy has three key objectives:

1. to provide clear, efficient and certain guidance for stakeholders
2. to improve outcomes for the environment and communities
3. to provide a practical and achievable offset scheme for proponents.

The policy is based on seven principles. There are principles that ANEDO would support, such as *Principle 2: Offset requirements should be based on a reliable and transparent assessment of losses and gains*. ANEDO supports the use of a transparent and repeatable methodology to be used by accredited ecological consultants. However, principles 1, 3, 6 and 7 are of concern.

Principle 1: Before offsets are considered, impacts must first be avoided and unavoidable impacts minimised through mitigation measures. Only then should offsets be considered for the remaining impacts.

The policy states:

*Where all feasible measures have been taken to avoid or minimise the impacts, offsets should be used to compensate for the remaining impacts. The FBA provides specific instructions for avoiding and minimising impacts on biodiversity. **If necessary**, proponents will be required to clearly explain why certain impacts cannot be avoided or minimised any further. Some impacts are more complicated or severe, such as those that are **likely to cause extinction** of a species from an area or significant reductions in vegetation bordering streams and rivers. These will require additional consideration by the consent authority before the option of offsetting is used. (emphasis added)*

While this does apply the mitigation hierarchy, justification may not be required and the principle of red flags/no go areas is overridden. The policy implies that everything is amenable to offsetting. Even where a project could cause a local extinction offsets could still be considered.

¹⁰ Draft Framework for Biodiversity Assessment. For assessing and offsetting state significant development and state significant infrastructure, NSW Government, March 2014, available at: <http://www.environment.nsw.gov.au/biodivoffsets/1482fba.htm>

Principle 3: Offsets must be targeted to the biodiversity values being lost or to higher conservation priorities.

The proposed NSW policy states:

- **vegetation** – the policy broadens the requirement for offsets to be ‘like-for-like’, meaning offsets can include similar vegetation types in the locality that are more highly cleared than the vegetation being impacted on.
- **threatened species** – in certain circumstances, a species can be offset on a basis that is not strictly like-for-like, provided it is not critically endangered or listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. In these circumstances, a species can be offset with a similar species in the locality that is under the same or a greater level of threat, but this will need to be approved by the consent authority...
*Broadening the scope of entities that can fulfil the offset requirements provides **greater flexibility for proponents and recognises that exactly the same biodiversity is not always available for an offset.** The policy recognises that protecting and improving biodiversity that is of similar value but under a greater level of threat can also provide beneficial outcomes for NSW.*

This proposal is not consistent with the fundamental principle of like for like.

The FBA that sets out the proposed offset assessment process expands the like for like concept almost beyond recognition. Instead of offsetting species for species, the FBA provides that vegetation of the same *class* can be included in the offset ‘credit profile’ (p39), and stretches the nexus even further by allowing variation of the offset rules to include vegetation from the same *formation* for ecosystem credits (p40). Similarly in relation to individual threatened species, the FBA does not require offsets of the same species, but allows variation of the offset rules to include species from the same *Order* for fauna species and the same *Family* for flora species (p41). These proposed variation rules allow offsetting from very broad ecological categories that may have a tenuous link to the actual species or population being impacted. Inclusion of such ‘variation’ rules undermines the ecological integrity of the proposed methodology.

Principle 6: Supplementary measures can be used in lieu of offsets.

This principle is of serious concern to ANEDO and has the potential to undermine the environmental outcomes of the whole policy. The policy states:

If appropriate offset sites cannot be found, proponents can provide funds for supplementary measures. All reasonable attempts must be made to locate appropriate offset sites before supplementary measures can be undertaken, as offset sites covered by biobanking agreements achieve a more clearly measurable conservation gain.

Supplementary measures are measures, other than protection and management of land as an offset site, that are known to improve biodiversity values. They may include:

- actions outlined in threatened species recovery programs
 - actions that contribute to threat abatement programs
 - biodiversity research and survey programs
 - rehabilitating degraded aquatic habitat.
- calculated so it is approximately equivalent to the cost of an offset site.*

Ensuring the amount a proponent is required to contribute to supplementary measures is commensurate with the cost of establishing an offset site will prevent an artificial bias towards supplementary measures over offsets.

The NSW reforms, like those proposed in Queensland discussed below, therefore support the use of indirect offsets. This principle essentially allows a developer to buy their way out of a difficult offsetting requirement. This will be particularly detrimental for areas where there is no offset available because of the scarcity of the impacted matter. This is a breach of the like for like principle and the red flag principle. What is being suggested is a compensatory payment, not an offset.

ANEDO continues to oppose the use of indirect offsets or 'supplementary measures' to achieve the goal of enhancing, or even 'improving or maintaining', environmental quality.¹¹ Four reasons support this position.

1. It is very difficult, if not impossible, to measure the environmental gains when the results of indirect offsets are balanced against the losses occasioned by a development. ANEDO submits that in order for an offsets policy to be viable, the gains must be measurable with a reasonable degree of certainty. This is simply not the case when indirect offsets are deployed.
2. The relationship between many types of indirect offsets and the environmental gain sought to be achieved is dependent on many contingent and uncertain factors. Many proposed schemes currently contemplate, for instance, that funding for research may comprise part of an acceptable offset. In order to achieve an effective environmental outcome, however, research must not only be performed to an acceptable level, but it must also be implemented and there must be systems in place for evaluation of its impacts. This in turn is dependent on adequate funding. The uncertainty inherent in this process renders such forms of indirect offsetting ill-suited to achieving enhanced environmental outcomes.
3. As noted, effective offsets must be additional to activities that would have been undertaken in the normal course of events. It is difficult to demonstrate that indirect offsets comprise the requisite degree of additionality.
4. The use of indirect offsets contradicts the principle of 'like for like' offsetting that, in ANEDO's view, should be a fundamental component of any offset strategy.

ANEDO emphasises, therefore, that the widespread use of indirect offsets should not be supported in a national offsets standard.

Principle 7: Offsets can be discounted where significant social and economic benefits accrue to NSW as a consequence of the proposal.

Another alarming principle is the discount principle which states:

*This policy explicitly allows offset requirements to be reduced when they **cause a project to be unviable** and the project has a significant overall social or economic benefit.*

*The rigorous method for determining offsets provided under the FBA aims for offset requirements that will result in an overall '**no net loss**' to biodiversity. It is acknowledged that, in certain rare circumstances, an*

¹¹ See ANEDO's *Submission on the Use of environmental offsets under the EPBC Act 1999 – Discussion Paper*, December 2007, http://www.edo.org.au/edonsw/site/pdf/subs/071204epbc_offsets.pdf.

offset requirement may make a project that is of significant social and economic importance unviable.

*This principle recognises that decisions on whether to approve major projects under the Environmental Planning and Assessment Act 1979 (EP&A Act) involve a consent authority also considering the social and economic aspects of a proposal. If overall social and economic benefits are significant, **it might be reasonable for a consent authority to modify the offset requirement if it would otherwise prevent the project from proceeding.** The overall social or economic benefits would have to be large enough to justify the additional environmental impact caused by reducing the offset requirement.*

A decision by a consent authority to discount an offset will be made only in very specific circumstances in accordance with clear criteria. These criteria will be developed during transitional implementation of the policy in order to provide further certainty to proponents (emphasis added).

This principle potentially allows environmental concerns to be overridden by socio-economic considerations. As biodiversity has not been given a dollar value, the ledger will always tip in favour of major projects if the criteria are economic.

Mining policy in NSW already attempts to prioritise 'the economic significance of the resource' by making it the primary consideration of decision-makers.¹² This is contrary to recent court decisions. As noted above in relation to the NSW *Warkworth* decision, the Land and Environment Court previously found Rio Tinto's economic modelling deficient in many ways, including its methodology that over-estimated the benefits of the mine. The Court of Appeal found no fault with the Land and Environment Court decision that the economic benefits of the coal mine did not outweigh the significant impacts on Bulga residents and the destruction of rare forests containing endangered plant and animal species.

Such economic prioritisation policies are likely to contribute to the incremental and permanent loss of significant biodiversity in NSW, and completely undermine the ecological credibility of the FBA.

Queensland

In Queensland, there are currently five offsets policies consisting of the Queensland Government Environmental Offsets Policy (2008) as an overarching policy and four policies for specific environmental matters:

1. Marine Fish Habitat Offsets Policy (version FHMOP005.2);
2. Policy for Vegetation Management Offsets (2011);
3. Queensland Biodiversity Offset Policy (2011); and
4. Offsets for Net Gain of Koala Habitat in South East Queensland Policy (2010).

Environmental offsets can be imposed under *Environmental Protection Act 1994* (Qld) and the *Sustainable Planning Act 2009* (Qld). The imposition of environmental offsets requires the decision-maker to be satisfied that all cost-effective mitigation measures have been or will be undertaken.¹³ There are statutory requirements for offsets in the

¹² See *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*. Note there are amendments to the Planning legislation before NSW Parliament currently that may amend the effect of these clauses of the SEPP.

¹³ *Environmental Protection Act 1994* (Qld) section 207(1)(c); *Sustainable Planning Act 2009* (Qld) section 346A(2).

Vegetation Management Act 1999 (Qld), *Fisheries Act 1994* (Qld) and the Coordinator General can make environmental offset conditions for coordinated projects (major projects) which must be implemented and cannot be judicially reviewed.

Offsets are heavily relied upon in Queensland's recently amended State Planning Policy (SPP), which provides a self-assessable development code and associated performance outcomes for development in the catchments of the Great Barrier Reef. Where performance objectives cannot be achieved, offsets are simply imposed.

The suite of offset policies in Queensland means that specific requirements for environmental matters (vegetation, marine fish habitat, koalas in SEQ and biodiversity) have been addressed separately. These policies currently require no net loss and ecological equivalence measures.

Despite the tailored offsets policies, there is little evidence of the efficacy of offsets in Queensland. State of the Environment Reports¹⁴ indicate significant losses of biodiversity as a result of development impacts. Such evidence suggests that offset conditions are not working, and/or there are incremental and cumulative impacts of development not requiring offsets.

Proposed reform concerning offsets in Qld

On 13 February 2014, the Environmental Offsets Bill was introduced to the Queensland Parliament.¹⁵ The Bill provides a legislative basis for offsets in Queensland and will replace the five offsets policies with a single offsets policy. The Bill provides that offsets can either be proponent-driven,¹⁶ whereby the proponent causing the impacts identifies a suitable offset that is approved by EHP, or by a financial payment to an offset fund controlled by EHP or the local government,¹⁷ or a combination of the two options.¹⁸ Proponent-driven and financial settlement offsets must achieve a conservation outcome of 'maintaining viability' of the prescribed environmental matter.¹⁹

Problematically, the Bill does not apply to the decisions of the Coordinator-General of Queensland,²⁰ a senior public servant responsible for imposing conditions on major projects (often with high environmental risk) including coordinated projects and State Development Areas. Of further concern, as noted, is that the Queensland Government is seeking Commonwealth accreditation of the Bill to apply to matters of national environmental significance (MNES). As most coordinated projects in Queensland are also controlled actions under the EPBC Act,²¹ the Coordinator General will not be required to apply the requirements in the new legislation and his decisions regarding offset conditions cannot be judicially reviewed.²²

¹⁴ Queensland's State of the Environment Reports are available here: <http://www.ehp.qld.gov.au/state-of-the-environment/index.html>

¹⁵ There had been limited consultation with the conservation sector prior to the Bill via a 'confidential' discussion paper in November 2013, however there had been extensive consultation with the resources and development industry prior to this.

¹⁶ *Environmental Offsets Bill 2014* (Qld) Division 3.

¹⁷ *Environmental Offsets Bill 2014* (Qld) Division 4.

¹⁸ *Environmental Offsets Bill 2014* (Qld) clause 18(2)(a)(iii).

¹⁹ *Environmental Offsets Bill 2014* (Qld) clause 11.

²⁰ *Environmental Offsets Bill 2014* (Qld) clause 5.

²¹ A list of current coordinated projects in Qld and whether these projects are 'controlled actions' under the EPBC Act, is available here: <http://www.dsdip.qld.gov.au/assessments-and-approvals/coordinated-projects.html>

²² *State Development and Public Works Organisation Act 1971* (Qld) section 27AD.

The recently released draft Offsets Policy²³ provides detail on how offsets are to be delivered, including the application of funds towards strategic offset investment corridors. Whilst there is merit in having a strategic approach to identifying suitable locations for offsets in Queensland, there are several problems which need to be resolved before the Bill passes and the draft Policy is approved.

The Bill does not satisfy the fundamental offset principles outlined in this submission. Concerns include:

- The Bill and Policy provide for the identification of offset corridors and landholders in those corridors can voluntarily enter into offset management plans, in which the landholder undertakes activities on their land and receives payment from the Offsets Fund. However these offset areas are not set aside for perpetuity and can be revoked, although to do so would require an additional offset. EHP has made clear that it is not about 'locking up land'²⁴ and some landholders in offset corridors see the receipt of offset funds "as a way to maintain the values on their land and provide income to manage them more effectively in terms of weeds and fire."²⁵ We note that there is little evidence to support these type of 'restoration offsets'.²⁶
- Although legally secured offset areas should be set out in planning schemes,²⁷ there is no requirement to identify offset corridors in regional or local planning instruments. This means that development can be planned on offset corridors.
- The conservation outcome of 'maintaining viability' of the environmental matter impacted is very low and does not achieve 'no net loss' of the environmental matter impacted.

Other concerns with the Bill include (see EDO Queensland's submissions for further detail²⁸):

- Significant residual impacts on protected areas (for example, national parks) can be offset by providing any social, environmental, economic or cultural benefit to any other protected area²⁹ (EDO Queensland submission at p5).
- It adopts 'significant' residual impact to align it with the EPBC Offsets Policy, however this is a decrease in standards from the previous Queensland policies which required offsets for 'residual impacts' (p 6).
- There are no efforts to strengthen the 'avoid' and 'mitigate' components, nor is there a clear statement in the Bill that unacceptable residual impacts cannot be made acceptable through the imposition of offsets conditions (p 3).
- There are no requirements for 'no net loss' or 'ecological equivalence' in the Bill (although ecological equivalence may be required under the policy) (p 7).
- Numerous species and ecosystems once covered under the previous policies will no longer be required under the proposed list of prescribed matters requiring offsets (p 7).

²³ The draft Qld Offsets Policy is available here: <https://www.ehp.qld.gov.au/management/environmental-offsets/offsets-bill.html>

²⁴ Proof transcript from the Agriculture, Resources and Environment Committee's public briefing held on 19 March 2014 on the Environmental Offsets Bill 2014, p.7.

²⁵ Ibid, p. 16.

²⁶ Maron, M, Hobbs, R, Moilanen, A et al 2012, 'Faustian bargains? Restoration realities in the context of biodiversity offset policies', *Biological Conservation*, vol. 155, pp. 141-148.

²⁷ Queensland State Planning Policy, p.27 available here:

<http://www.dsdp.qld.gov.au/resources/policy/state-planning/state-planning-policy.pdf>

²⁸ EDO Queensland Submission on the Environmental Offsets Bill, available at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/AREC/inquiries/current-inquiries/21-EnvironmentalOffsets>.

²⁹ Environmental Offsets Bill 2014 (Qld), clause 7(3).

- Principles of ecologically sustainable development have not been included in the Bill (p 14).
- The Policy provides a limitation of liability for proponents, by imposing a 1:4 maximum cap on offsets and a higher cap of 1:10 for offsets in protected areas. ANEDO is concerned that arbitrary ratios are not based on any scientific criteria.

EDO Queensland has called on the State Government to address these problems through amendments to the Bill and Policy.

Application of Bill and Policy to MNES under an approval bilateral agreement; and development occurring in the Coastal Zone of the Great Barrier Reef

Queensland and the Commonwealth are currently negotiating the delegation of approval powers to Queensland to approve actions impacting MNES and the Reef. ANEDO believes an independent review and certification of Queensland's proposed offsets legislation and policy is needed to ensure that it meets or exceeds the standards set out in the EPBC Offsets Policy and EPBC Act.

In late 2013, the Queensland State Government released a draft Strategic Assessment Report and Program Report for the coastal zone of the Great Barrier Reef World Heritage Area. If the delegation of approval powers to Queensland occurs, Queensland will apply its own offsets policy and legislation including for projects affecting the Reef, in place of the Commonwealth offsets policy. Yet the 'forward-looking' draft Coastal Zone Strategic Assessment Report and Program Reports have not contemplated the effect of the new policy and legislation and were released in the absence of the Bill and new policy.

Part Two: Case studies of environmental offsets

Part Two of this submission provides further information and analysis in relation to projects identified by the Committee in the terms of reference:

- a. Whitehaven Coal's Maules Creek Project;
- b. QGC's Queensland Curtis LNG project;
- c. Waratah Coal's Galilee Coal Project; and
- d. North Queensland Bulk Port's Abbot Point Coal Terminal Capital Dredging Project.

Whitehaven Coal's Maules Creek Project

The Maules Creek open cut coal mine is a Greenfield mine within the Leard State Forest in North West NSW near the small township of Boggabri. The Leard State Forest is public land and is made up mostly of the Critically Endangered Ecological Community White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community (CEEC) and forest habitat of the nationally listed threatened species, the regent honeyeater, the swift parrot and the greater long-eared bat (habitat forest).

The Commonwealth approval of the Maules Creek open cut coal mine (in February 2013) was contingent on the understanding that the offsets proposed by the proponent (offset areas) provided the requisite ministerial satisfaction that the mine would not have unacceptable impacts on matters of national environmental significance.

Community submissions contended that the Leard State Forest is one of the highest biodiversity sites of the particular forest communities in the region (outside of the limited areas of National Park in the region). The community submitted that 'based on figures in the Environmental Impact Assessment of the proponent the project will remove over 191,000 tree hollows. It can take up to 140 years for a tree hollow to form and remaining tree hollows in adjoining habitat are likely to already be occupied'.³⁰ This is based on recognition of the fact that such high density of hollows represents significant conservation value regards hollow dependent threatened species.

The Commonwealth approval of Maules Creek open cut coal mine allows the clearing of 544ha of the CEEC and 1665ha of habitat forest. This is the most part of the entire Leard Forest public estate.

The conditions of approval required:

Condition 9

The person taking the action must register a legally binding conservation covenant over **offset areas** of no less than:

- a. 9,334 ha of an equivalent or better quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat; and
- b. 5,532 ha of an equivalent or better quality of the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

³⁰ Maules Creek Community Council Inc Submission:
<https://majorprojects.affinitylive.com/public/feb5443b755a0eb6abb0e7825a85685c/30.%20Maules%20Creek%20Coal%20Project%20-%20Maules%20Creek%20Community%20Council%20Submission%20-%20Part%201.pdf>

The offsets required are like for like, meaning in this case that the offset areas are required to be of an overall equivalent or better quality than that area being cleared:

Condition 12

The **offset areas** must be of an overall equivalent or better quality than the areas being cleared. This means:

- a. for White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community, **offset areas** must meet the definition of the ecological community described in the listing advice, and must be of an overall equivalent or better **condition class** than the areas being cleared, based on the proportion of each **condition class** represented and other relevant ecological attributes;
- b. for the threatened species, the quality of the habitat for the species, taking account of its ecological requirements, must be equivalent to or better than the areas being cleared.

However, just before granting approval to the Maules Creek Open Cut Coal Mine members of the community provided an independent expert report to the Minister for the Environment providing evidence that the offset areas as proposed by the proponent were not in fact able to satisfy the requirement of like for like, and that much of what was mapped as the CEEC was not in fact able to be defined as the CEEC at all. With such evidence before him the Minister for the Environment in approving the project added the condition:

Condition 10

The person taking the action must verify through **independent review** the quantity and **condition class** of White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and the quantity and quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat within all proposed **offset areas** including those proposed in the **Environmental Assessment**, as defined at Attachment C of these conditions, and any additional offsets as required at condition 9. Details of all independently verified **offset areas** must be submitted to the **Minister** for approval by 30 December 2013. The findings of the independent review must be published on the proponent's website.

This condition was to safeguard the implementation of the offset requirement and the community concern. However, the requirement to independently verify the offsets areas was not a pre-commencement condition. In other words the clearing of the CEEC and the habitat forest could commence before the requisite offsets had been verified. The conditions further provided for the event that the independent verification of the offsets areas resulted in agreement with the community contention that the offsets areas are inaccurate.

Condition 11

If the **independent review** finds that the **offset areas** do not meet the requirements of conditions 9, 12a and 12b, then additional areas must be included in the offset areas until all relevant criteria under these conditions are met.

The substantial and continuing concern of the community is that the offset conditions are premised on the assumption that such further offsets areas can be found in the landscape and secured as an offset. Such a requirement cannot in fact be satisfied, that

the CEEC in particular is not available and does not exist in the landscape to satisfy the condition requirements.

The community group Northern Inland Council for the Environment Incorporated brought proceedings in the Federal Court of Australia against the Minister for the Environment and the proponent of the Maules Creek Mine and as part of that case argued that the offset conditions were uncertain.³¹

Justice Cowdroy of the Federal Court of Australia said of the offsets conditions:

*It is correct, as NICE submits, that the offset conditions need not be satisfied prior to commencing the approved clearing. This would undoubtedly be undesirable from the perspective of environmental protection and preservation if the approved clearance of the Leard State Forest were revoked by the Minister due to a breach of an offset condition.*³²

Since the Commonwealth approval was granted the community has engaged two further independent experts to assess the offset areas proposed by the proponent. Both these experts in their reports state that the areas proposed by the proponent as offsets to satisfy the Commonwealth conditions are not at all capable of satisfying the conditions. Consistently all independent expert reports state that the areas mapped by the proponent as the CEEC are not the CEEC as it is scientifically define.

The most recent report by Dr John Hunter who has particular expertise in the CEEC in the landscape states:

It is the inescapable conclusion based on the sampling of 83 sites [of the proponent's offsets areas] that the extent of the CEEC mapped by Cumberland Ecology [on behalf of the proponent] is vastly overstated and perusal of the data collected within other mapped units that the other vegetation types are equally poorly circumscribed and mapped. Based on the results reviewed herein, the on-ground extent of this critically endangered ecological community is approximately 5% of the area mapped as such by Cumberland Ecology but that some small isolated occurrences may occur within other mapped units.

The independent verification required by condition 10 above was apparently completed and submitted to the Minister for the Environment by 30 December 2013, but that report is not available to the public and has not been placed on the proponent's website as required by condition 10. At the time of writing it has not been provided to the community notwithstanding many requests by the community, including Freedom of Information requests.

There is currently an investigation being undertaken by the Commonwealth Department of the Environment about the offsets areas at the same time the mine site is being cleared.

³¹ Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1419.

³² Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1419 [40].

QGC's Queensland Curtis LNG project

ANEDO has a number of concerns about offsets in relation to the Curtis LNG project, based on our analysis of conditions, as set out below.

Appropriateness of the offset

The conditions for the Curtis Island offset allow indirect offsets, such as field management and visitor management, for offsetting indirect impacts.³³ Such indirect offsets do not provide any sort of ecological equivalence, as they do not directly retain any of the ecological values that will be lost through the development. In addition, it would be difficult to quantify the value improved by operations such as field or visitor management, and compare it to actual indirect impacts that occur. The impacts may be indirect rather than direct, but they are nonetheless actual impacts. The indirectness of the cause of the impact does not correspond to the appropriateness of an indirect offset.

Location of the offset

The conditions provide that the offset area should be within the Great Barrier Reef World Heritage Area (GBRWHA).³⁴ However, as a *World Heritage Area*, pursuant to international obligations and the EPBC Act framework for protecting World Heritage as a matter of national environmental significance, there should be a presumption that the GBRWHA is already protected. An offset in this area would therefore provide no additional net value - it is effectively not an offset at all. This would therefore fail to meet the principle of additionality.

Timing of offset plan requirements

The offset plan, to be prepared by the proponent, is only required to be submitted within 6 months of the final investment decision to proceed with the proposed action, and no deadline is imposed for securing the actual offset.³⁵ Only requiring securing of offsets at a late stage increases the pressure for an inadequate offset to be approved, simply because the project has already been approved or is already underway; in a sense there is 'no turning back'. Arguably, the process should be reversed – a project that will cause a significant impact upon the environment should not be approved until an appropriate offset is secured. Otherwise, there is no guarantee that the goals of offsetting will be achieved.

Monitoring and evaluation

While the conditions provide that direct impacts should be offset with an area that has characteristics 'corresponding with'³⁶ those of the affected area, specific requirements are not detailed (other than a 5:1 area ratio), and no monitoring requirements are specified. This gives the proponent significant licence to determine offsets that suit them, which is inconsistent with the like for like principle. Coupled with the timing issues as described above, this decreases the likelihood that any offsets would achieve true ecological equivalence.

³³ Curtis LNG Project approval, EPBC 2008/4402, condition 15(c).

³⁴ Curtis LNG Project approval, EPBC 2008/4402, condition 16.

³⁵ Curtis LNG Project approval, EPBC 2008/4402, condition 19.

³⁶ Curtis LNG Project approval, EPBC 2008/4402, condition 15(a)(i).

Coherence with objectives of offsetting

The conditions require that the offset plan must reflect the objectives of ‘identifying, protecting, conserving, presenting, transmitting to future generations and, if necessary, rehabilitating, the World Heritage and National Heritage values of the Great Barrier Reef property’.³⁷ However, the lack of equivalence and rigor of the offset requirements imposed in the conditions all but ensure that these objectives will not be fulfilled.

Waratah Coal’s Galilee Coal Project

Appropriateness of the offset

The conditions of the Galilee Coal project impose more stringent requirements with respect to offsetting than the Curtis LNG project. Galilee Coal’s conditions include requirements to be met for the monitoring program, such as inclusion of research undertaken with respect to EPBC listed threatened species and communities.³⁸ They also include the requirement to prepare an Offset Management Plan, to be approved by the Minister. However, the conditions refer to Waratah Coal’s own ‘Offsets and Assessment Guide: Results and Assumptions’ as the basis for the Offset Management Plan.³⁹ This gives Waratah Coal significant scope to draft a Plan on their own terms. This should only occur where the Offsets and Assessment Guide, and the Offset Management Plan, are consistent with sound principles for offsetting, as outlined by ANEDO. Based on the conditions imposed, this is far from certain.

Coherence with the objectives of offsetting

A major criticism of offsetting in general applies to the offset requirements for this project – that the environmental values that need to be offset are actually lost, one way or the other. Galilee Coal’s conditions do not differentiate between securing an offset area that contains existing equivalent environmental values, and rehabilitating an offset area to eventually achieve equivalent environmental values. Although the former (depending on its location), may provide the opportunity for fauna to relocate to appropriate habitat, it is highly unlikely to actually occur (more so for sedentary species) and the proponent has not demonstrated that the species could actually survive relocation. The latter is unhelpful for existing fauna that is displaced, as it may be centuries until the area is suitable as habitat, as is the case for *eucalyptus melanophloia* (dominant habitat for the endangered black-throated finch). Unless this species is present in sufficient quantities and in conjunction with appropriate water supply, the species will not survive. This is particularly important for the endangered black-throated finch and other EPBC listed threatened species affected by this project, as the vulnerability of their populations may render the offsets useless as compared to the protection of their habitat in the first place.

Unavoidable impacts

The use of offsetting to compensate for ‘unavoidable’ or ‘residual’ impacts is another major criticism of offsets in general and one that applies to the Galilee Coal project. Residual impacts are simply those that remain after avoidance and mitigation measures. However, there is no concrete measure of what level of avoidance and mitigation is ‘enough’ that offsets should be preferred for the remainder of impacts. In addition, residual impacts must only be offset when they are ‘significant’ (in line with the EPBC Act and Significant Impact Guidelines). This approach leaves the proponent to determine

³⁷ Curtis LNG Project approval, EPBC 2008/4402, condition 14(a).

³⁸ Waratah – Galilee Coal Project approval, EPBC 2009/4737, condition 11(g),(h).

³⁹ Waratah – Galilee Coal Project approval, EPBC 2009/4737, condition 11.

what impacts they deem unavoidable, providing a perverse incentive, as proponents will naturally consider their economic and business interests as a significant factor in the viability of avoidance and mitigation measures. In light of this issue, and the questionable viability of offsetting in this case, it is unclear whether the extent of disturbance to black-throated finch habitat is indeed unavoidable.

Timing of offsets

Project Stage 2 involves the significant amount of disturbance required to prepare for the commencement of coal mining.⁴⁰ The conditions provide that Project Stage 2 cannot commence until the Offset Management Plan is approved by the Minister.⁴¹ Notably, the Plan must include details of the proposed offset areas, including their environmental values, and how they will be legally secured. However, the offset itself only has to be secured within two years of the commencement of Project Stage 2.⁴²

This presents a similar timing issue as in the Curtis LNG project and the Maules Creek project – without actual securing of an offset prior to commencement of works, there is no guarantee that an appropriate offset will be able to be secured, despite all the best intentions in the Offset Management Plan. If the Plan is already approved and project works are underway, there is limited ability to mitigate the effects of securing an inappropriate offset. Once again, approval of the project itself should have been contingent at least on approval of an appropriate Offset Management Plan, if not securing of the offsets themselves.

Costs, monitoring and evaluation

The conditions relating to offsetting require 10 years of financial contribution to a fund dedicated to monitoring of impacts on EPBC listed threatened species in the Galilee Basin.⁴³ While such activities are essential, these do not provide an offset for environmental values lost as a result of the development. These are indirect supplementary measures, and should therefore be a minimum pre-condition rather than this condition be considered as an offset in of itself. Additionally, the cost of compliance, monitoring and evaluation has been underestimated by the proponent.

A new approach to offsets - the Galilee Basin Offsets Strategy?

More broadly, we note that the Galilee Basin, covering approximately 247,000 square kilometres in central Queensland contains vast coal deposits which are set to be developed into massive coal mines in the coming years. There will be significant environmental impacts of these massive coal mines in the Galilee Basin (some with a mine strike as long as 30 kilometres (Alpha and Kevin's Corner combined) and some are set to extract 60 million tonnes of coal per year (Carmichael coal mine)). For example, the Galilee Coal Project (also known as 'China First') will destroy the Bimblebox Nature Refuge which provides essential habitat to EPBC-listed endangered and threatened species including the endangered black throated finch (see below for case example).

In response to the significant clearing and environmental destruction caused by these 'mega-mines', the Queensland Government has developed the Galilee Basin Offset

⁴⁰ Waratah – Galilee Coal Project approval, EPBC 2009/4737, Definitions – Project Stage 2, p 11.

⁴¹ Waratah – Galilee Coal Project approval, EPBC 2009/4737, condition 13.

⁴² Waratah – Galilee Coal Project approval, EPBC 2009/4737, condition 14.

⁴³ Waratah – Galilee Coal Project approval, EPBC 2009/4737, condition 21.

Strategy.⁴⁴ The Galilee Basin Offset Strategy identifies 'offset investment hubs' where landholders in these areas can elect to undertake land management (such as changes to grazing stocking rates or allowing regrowth to regenerate) and be paid for these activities. High conservation 'offset hubs' are identified as well as offset corridors that link the high conservation areas.

Whilst this approach has merit, one of the most significant problems with this offsets strategy is that mapped high conservation areas are also mapped on the State Development Area as planned for having major rail infrastructure. For example, there are high conservation mapped areas in Mount Coolon, north-west of Moranbah and in the State Development Area and the offsets area, however rail infrastructure has also been mapped on these areas. Where landholders choose to take up the offset payments as incentives for maintaining or restoring ecological values on their properties, any gains can be unwound once coal trains start running 24/7 through high conservation offset areas, and the offset areas will not achieve their intended outcomes. Additionally, the offset corridors mapped do not have sufficient baseline monitoring data to support where the corridors should occur. There are no guarantees that even where offsets agreements are entered into with landholders, that the lost environmental values from mining impacts will be replaced.

North Queensland Bulk Port's Abbot Point Coal Terminal Capital Dredging Project

North Queensland Bulk Ports – Abbot Point Capital Dredging

The offsetting requirements for Abbot Point are slightly different from the Queensland projects discussed above due to the nature of the project. Rather than a land-based biodiversity offset, the Abbot Point offset would involve reducing fine sediments from other sources, in order to offset the disposal of dredge spoil (and consequent effects on seagrass and other environmental values) that will occur.⁴⁵

There is also a very loosely framed requirement that the offsets plan 'address' both the direct loss of seagrass from the dredging and the indirect loss as a consequence of the dredge plume.⁴⁶ This condition does not nominate an offset ratio or any other quantifiable offset outcome.

Appropriateness of offsetting

The general issues with offsetting, as described above, apply equally to this project – it is unclear whether the proposed offshore disposal of dredge spoil is indeed unavoidable, and this determination, as made by the proponent, is in any case subjective. The required Offsets Plan must be submitted prior to commencement of dredging and disposal activities,⁴⁷ however the conditions do not provide a timeframe for approval of the plan, nor a requirement that the offsets be identified or implemented prior to the commencement of dredging.

The water quality offset conditions are problematic in that they do not satisfy the EPBC Act offset policy requirement of 'additionality' – that is, the offsets must be additional to what is already required, determined by law or planning regulations, or agreed to under

⁴⁴ Queensland Government of State Development, Infrastructure and Planning, *Galilee Basin Offset Strategy*, August 2013, available here: <http://www.ehp.qld.gov.au/management/environmental-offsets/galilee-basin-offset-strategy.html>

⁴⁵ NQBP – Abbot Point Project approval, EPBC 2011/6213, condition 31(d).

⁴⁶ NQBP – Abbot Point Project approval, EPBC 2011/6213, condition 31(a).

⁴⁷ NQBP – Abbot Point Project approval, EPBC 2011/6213, condition 31.

other schemes or programs.⁴⁸ The Reef Water Quality Protection Plan 2013, which is self-described as “collaborative program of coordinated projects and partnerships” (we would argue this is a scheme or program for the purpose of the EPBC Act offsets policy) has the following long term goal:

Reef Plan’s long term goal is to ensure that by 2020 the quality of water entering the reef from broadscale land use has no detrimental impact on the health and resilience of the Great Barrier Reef.⁴⁹

Given this objective, no water quality offset can be ‘additional’ in the sense required by the EPBC Act offsets policy.

Coherence with the objectives of offsetting

The conditions placed on NQBP relating to offsetting are short, and very broadly-framed. One major concern is whether the offsetting prescribed is at all sufficient to offset the environmental harm that will occur as a result of dredging and disposal. The required offset is a reduction in fine sediment coming from the Burdekin and Don catchments, in the quantity of 150% of fine sediments ‘potentially available for re-suspension’ as a result of dredging and disposal.⁵⁰ ‘Available for re-suspension’ is not defined, and seems to suggest that the entire quantity of fine sediments disturbed as a result of dredging and disposal will not be offset; only the amount predicted to re-suspend. This is a low threshold, and in any case both spatial and temporal environmental variables would make it difficult to accurately quantify any equivalent reduction in the impacts of fine sediments.

In addition, the receiving environment of fine sediments coming from the Burdekin and Don catchments is different to that at the proposed offshore disposal area. Therefore, these areas are likely to have differing environmental values, so that any reduction in sedimentation from the catchments will not be environmentally relevant to any reduction in the impacts of disposal (and considering that sedimentation from those catchments would not be entirely eliminated). This would, of course, make it useless as an offset.

Finally, the method for achieving reductions in sedimentation is not specified, nor is a timeframe required for meeting the catchment sediment reduction. Given the diverse causes of catchment sedimentation, achieving such reductions would be a highly complex process, and reductions would be difficult to accurately measure. There is no guarantee that the proponent would be able to achieve ecological equivalence for the environmental values affected by dredging and disposal.

SUMMARY

Based on the concerns outlined in Part One and Two of this submission, our key recommendation is that a comprehensive an independent review into offsets is established, and that rigorous national standards be developed. These national standards must be based on robust and objective science and apply the fundamental principles as outlined in this submission. Once a best practice national standard has been developed through expert and public consultation, state standards and relevant legislation should be amended to meet the national standard. Accreditation of state standards must not occur until this precondition is met.

⁴⁸ EPBC Act Environmental Offsets Policy, pp22-23.

⁴⁹ Reef Plan 2013, p18.

⁵⁰ NQBP – Abbot Point Project approval, EPBC 2011/6213, condition 31(d).

APPENDIX – Further references

The following resources are available at: www.edo.org.au and can be provided to the Committee on request:

Submission the Review of the NSW Biodiversity Banking and Offsets Scheme, 9 July 2012

ANEDO submission on the Draft EPBC Act Environmental Offsets Policy, 21 October 2011

Submission on the Use of Environmental Offsets under the EPBC Act 1999 - Discussion Paper, 3 December 2007

Submission on the Environmental Outcomes Assessment Methodology under the Native Vegetation Act 2003, 4 February 2011

Submission on proposed amendments to the Biobanking Assessment Methodology, 19th November 2010.

Submission on the proposed Sydney Growth Centres Strategic Assessment, 25 June 2010

Submission on the review of the Environmental Outcomes Assessment Methodology, 29 April 2009

Submission on the Proposed Biodiversity Banking Scheme, 7 February 2008

Biobanking consultation - Key concern: variation of red flags, 21 November 2007

Submission to the Joint Select Committee on the Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006, 9 May 2007

Submission on "BioBanking - A Biodiversity Offsets and Banking Scheme" Working Paper, 5 March 2006