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SEQ CATCHMENTS LTD.

Submission on: *Environmental Offsets Bill 2014*

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Introduction

This submission presents SEQ Catchments' position on the Environmental Offsets Bill 2014 (the Bill) particularly as it relates to South East Queensland's natural assets. SEQ Catchments is recognised as the Regional Natural Resource Management Body for South East Queensland by both the Queensland and Australian Governments.

We are a community-based, not-for-profit organisation helping to build a prosperous and sustainable community that cares for and values the natural assets of South East Queensland. The importance of these assets to a region's economy and social stability is well documented and increasingly understood[1].

In South East Queensland, the need for economic prosperity will undoubtedly put pressure on the remaining natural assets in the region. SEQ Catchments believes the Environmental Offsets Bill 2014 is a critical tool for all levels of government, community and industry to ensure current and future prosperity, much of which is underpinned by the region's natural assets, is not compromised.

SEQ Catchments has maintained for some years that the offset policy framework to date has been inefficient, created duplication, and was impractical in operation. We welcome the Bill and believe the Queensland Government has taken a sensible and practical approach to balancing Queensland's economic as well as environmental prosperity with the Bill.

Policy intent and overall comments

The Queensland Government's policy intentions to implement a single, coordinated and strategic offset framework, reduce green tape, remove potential for duplication between different jurisdictions and provide a single head of power for environmental offset decision-making are supported.

The importance of environmental outcomes sought through the Bill cannot be understated. The aim of the Bill should be to ensure that the capacity of the state's natural assets to provide the ecosystem services which underpin our economic, social and general wellbeing are not diminished. In South East Queensland the importance of land development to the region's prosperity is understood and we recognise the bill will play a critical role in balancing development and environmental outcomes. Its implementation will be the litmus test for this balance and developers, landholders, conservationists and the public will judge it accordingly.

From the conservation point of view, the notion of ecological equivalence has been an important platform for maintaining the condition and extent of important natural assets. The EPBC Act has enshrined this concept and to

[1] Marsden Jacob and Associates (April 2010), Managing what matters: The cost of environmental decline in South East Queensland, Brisbane

not addresses it in the Bill may result in the potential for duplicated assessment into the future. This will be contrary to the desire of both the Queensland and Australian Governments. We suggest that this concept is built into the policy outlined in Clause 13 which is yet to be developed, in particular, subclause (d).

The State planning framework
We note the Bill, in and of itself, largely delivers on its policy intents for significant residual impacts; however, we are also aware that the changes to the planning framework in the past year means many impacts on our natural assets will not trigger assessment and therefore the provisions contained in the Bill. *We believe the performance of the Bill in relation to the planning system may need to be monitored closely in South East Queensland given the impacts of development in South East Queensland already in evidence*.

The Bill will rely heavily on "prescribed activities" and the meaning ascribed to the term "significant residual impact". Little can be determined from the EPBC Act guidelines[2] from which presumably the terms have been derived. Until the regulations and other supporting materials are available, it is very difficult to determine the nature and extent of the practical effect of the Bill on achieving its purpose. While the draft biodiversity guideline supporting the State Planning Policy contains policy which outlines what the terms may mean, we are keen to see this reinforced in the Bill, even if it is only a reference to the State Planning Policy and guidance material.

Every jurisdiction across Australia, and the world, which implements environmental offset frameworks, adopts a standard hierarchy for decision-making for assessment decisions,. There is no provision or indication in the Bill to incorporate this standard for decision-making. While the guidance material which supports the Biodiversity State Interest in the State Planning Policy outlines the hierarchy in draft form, we believe it is sufficiently important to reference the hierarchy in the Bill to ensure there is no confusion.

The policy desire to create a "one stop shop" approach to environmental offsets between all levels of government is very much welcomed by our community, and no doubt proponents and industry. Given the number of exemptions and the status of the assessment triggers in Queensland's planning system and under other current legislation, we are concerned that the policy differences between the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) offsets policy and scope, and the scope of the Queensland Government framework will result in a continuing need for duplication of processes. We offer the following examples:

- Example 1: the provisions for blanket exemptions from assessment contained in regulations for "Community Infrastructure" in the Queensland planning system ensures inconsistency between the

[2] Commonwealth of Australia (2013), Matters of National Environmental Significance: Significant Impact Guidelines 1.1 *Environment Protection and Biodiversity Conservation Act 1999*, Canberra

Australian Government and State Government offset provisions (as well as other state jurisdictions).

- Example 2: the exemption given to the Coordinator General in Clause 5 is likely to be in conflict with the EPBC Act framework resulting in potential duplication and conflicting decision-making.

- Example 3: the trigger for assessment for vegetation under the *Vegetation Management Act 1999* (VMA) and associated regulations and codes is set at 5 hectares minimum. Much of the remaining vegetation in South East Queensland lies in parcels of less than 5 hectares and will therefore not trigger provisions in the Bill. Matters of environmental significance triggered under the EPBC Act jurisdiction lie in areas of less than five hectares in South East Queensland.

Consideration could be given to the insertion of a new clause which specifies that the provisions of the Bill, or alternatively, the policy intent of the Bill, applies to major projects and some or all of the Community Infrastructure exemptions as listed in the regulations. This provision could be delegated to the control of the Coordinator-General who is well placed to oversee such a provision and if desired, decision discretion.

Impacts of the Bill on Australian international commitments

The need for economic development while crucial, will impact on matters of environmental significance. As a result, we believe the Bill provides suitable mechanisms to allow landscape level management of these impacts efficiently and effectively. While the vegetation framework is one of a number of legislative frameworks dealt with in the Bill, this aspect of the regulatory reform process may need to be monitored if Australia is to honour its commitments to international agreements and associated targets. Given the changes to the framework in the past year, the importance of the Environmental Offsets Bill 2014 to maintaining this commitment cannot be understated.

Other important elements the Bill should consider

When the offset policy consultation was underway, two important instruments were touted as the way to ensure the new offsets framework was strategic, efficient and effective. These instruments were the direct benefit management plans and strategic investment corridors. We also note these instruments are specifically mentioned in the Explanatory Notes in several sections. We were not able to find any reference to these instruments in the Bill. While we presume Section 13 (b) is creating room for the policy to create these instruments, we believe it is both appropriate and important to include the instruments in the Bill.

We also note the Department of Environment and Heritage Protection has engaged a number of entities to assist with the development of scientifically backed and negotiated mapping to support the strategic investment corridor concept. Given the concept has already been tested in the Galilee Basin, we suggest the policy reflect this work when establishing its details.

The Queensland Government may also wish to consider the usefulness of the natural resource management plans being developed across Queensland as a guide and information source for offset delivery. The information and knowledge behind these plans represents the best scientific, community and industry knowledge available in each region. There is a window of opportunity for the government to influence these plans between now and the end of the calendar year in order to ensure they optimise opportunities for implementation of the Bill.

SEQ Catchments has noticed the Queensland Government has shifted its compliance focus toward the voluntary compliance end of the scale. We strongly encourage this trend to continue. While this trend will result in overall better legislative and practical outcomes, we also understand the critical importance of enforcement to the legislative framework.

We all should expect compliance with legislation such as the VMA and *Nature Conservation Act 1992* (NCA) and expect appropriate enforcement. However, in cases where laws are breeched through ignorance or similar unintentional activities, we could see the principles and provisions of this Bill forming part of a suite of tools which could be used to deal with such breeches. This tool could provide enforcement officers with a flexible and practical remedy for environmental damage caused by a breech without the need to reference a court jurisdiction.

Detailed provisions

The following comments are offered on the provisions contained within the Bill:

Clause	**Comment**
3 Purpose and Achievement	The hierarchy of decision-making for offsets as outlined above should be included in the Bill's purpose to ensure consistency with all other jurisdictions and with the State Planning Policy. *We suggest a new subclause (e) or guidance note which is worded "Environmental offsets are only required as a last resort under the SPP state interest - biodiversity where an assessment of a proposed development has demonstrated that the MSES may be significantly impacted by the adverse impacts of development, notwithstanding measures to avoid and mitigate such impacts"* *We suggest a new sub-clause (f) which states "recognising that any measures to counterbalance the significant residual impacts is in addition to any other lawful requirement placed on an applicant under law." An alternative approach may be to add the clauses to*

	division 2.
5 Relationship with particular acts	Exempting the powers of the Coordinator-General under the State Development Act may lead to duplication given the EPBC Act offers no such exemption, nor is it likely to do so given the many rulings on similar matters by the Productivity Commission.
7 What is an *offset condition* and an *environmental offset*	Subclause 3 implies that it is possible for an environmental offset to be interpreted as being used to give an economic or social benefit without benefit to the impacted matter, and is not consistent with the purpose of the Bill dealing with environmental offsets. *We suggest this clause is re-worded to make it align more clearly with the purpose of the Bill.*
8 What is significant residual impact	The term significant residual impact is very subjective and leaves the term which underpins the Bill open to wide interpretation. It may be helpful to make reference to the State Planning Policy guidance material for the Biodiversity State Interest in the Bill. *We suggest the term "significant residual impact" would have a stronger and more practical meaning if a direct reference to the guidance material, Appendix 2 test is included or referenced in the Bill.* Subclause 3 seems to facilitate routine management activities on the protected estate, which makes good sense. We are concerned that a management plan under the NCA for a protected area (sub-clause (b)) could include significant work, say in creating ecotourism outcomes, which may result in substantial loss of a matter of environmental significance without triggering the provisions of the Bill. *It may be prudent to add a clause to ensure this situation is covered by making it clear that the intent is to facilitate routine management actions under a management plan; otherwise it could be used to exempt situations where matters of environmental significance are substantially impacted*.
9 What is a prescribed activity	Until the regulations are set down, it is difficult to understand the scope of application of the Bill. The only guidance available is contained in the State Development Assessment Provisions and State Planning Policy draft guidance performance outcomes. We look forward to seeing the regulations which will support the Bill.
13 Content of environmental offsets	This clause could be used to place a head of power for direct benefit management plans and strategic

policy	investment hubs. *We recommend consideration is given to supplementing the wording in Clause (b) to nominate direct benefit management plans and strategic investment hubs as two examples to reflect the stated outcome in the explanatory notes (page3);* Sub-clause (b) establishes a provision to set out the characteristics of offset receiving areas in the policy. We are keen to see this part of the policy establish similar decision criteria to those contained in former koala state planning policy; that is, that the offset delivery site should be located as close as possible/feasible to the impact site for the impacted matter. While no change to the Bill is proposed, we look forward to commenting on the policy when appropriate.
23 Requirements for financial settlement offsets	This clause makes the process and requirements for financial payments to either local government or the State government clear. We note that clauses 18 and 19 set out the delivery agreement criteria and methods for the impacted matter. We also note the delivery agreement contains agreed delivery arrangements and an offset delivery plan. For a proponent-driven offset, the application of these two instruments seems clear and connects the impacted matter directly with the offset delivery. With the financial settlement offset, this connection is not clear. While the different components to the financial settlement offset are clear and include a register (Clause 89), a fund (Clause 82 and 83), and the offset agreement (Clauses 25, 26 and 27), there does not appear to be any provision in the Bill which connects all the components to ensure a connection between the significant residual impact and the offset delivery. The Bill may benefit from a provision which clearly connects the payment of a financial settlement to a conservation outcome. *This could be achieved by adding a clause to clause 23 or 25 with wording similar to "the administering agency must ensure the register created in Clause 89 for a financial settlement offset is used to ensure the matter impacted is offset through the offset fund"*.
85 Payment of amounts from offset account	We are concerned that this clause is oriented toward departmental payments and investments and seems to leave the intention of the account as set out in Clause 83 to fund offset outcomes to subclause (e) which is a catch-all clause for the original purpose of the offset framework.

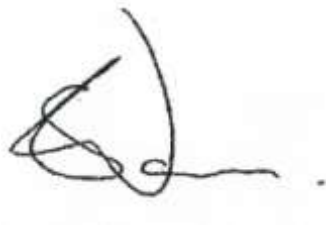
	We suggest this section be reorganised to emphasise the payment of money to achieve the purposes of the Act first, and then set out the head of power for the State government to recover its costs as secondary. Ideally, the wording needs to reflect the connection between this clause, Clause 89, Divisions 4 and 5 and Part 7of the Bill.

Conclusion

SEQ Catchments congratulates the Queensland Government on developing this crucial tool for balancing economic and environmental outcomes. We believe it contains adequate checks and balances for landholders and potential proponents. It goes a long way to addressing the many concerns and inefficiencies inherent in the previous offset regime. While there are some shortcomings with the current Bill, the overall scope and intent of the bill is a major step forward.

SEQ Catchments thanks the Committee for the opportunity to provide comment on the Bill and looks forward to assisting the State Government with its implementation at the practical level should the opportunity arise.

Yours sincerely



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