

21 March 2014

Agriculture, Resources and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

To whom it may concern

Queensland Environmental Offsets Bill 2014

Thank you for providing AMEC Environment and Infrastructure (AMEC) the opportunity to provide a submission on the Environmental Offsets Bill 2014 to the Agriculture, Resources and Environment Committee (the Committee).

AMEC is an environmental consultancy with a dedicated environmental offsets team based in Brisbane, and regarded as an 'offset broker'. The team is led by Berlinda Ezzy, who is a recognised industry leader in offset delivery in Queensland and been involved in offset policy development and delivering offsets for over six years. AMEC has also engaged with the Department of Environment and Heritage Protection (DEHP) over a number of offset policy related matters in recent times, including the industry engagement for the current policy amendments, but also for a range of informal discussions on shortcomings of the existing ecological equivalence assessment to evaluate fauna habitat.

As an offset broker AMEC works with a range of proponents (including coal, coal seam gas, rail and electricity) providing them with specialist offset advice and services to meet their project's offset requirements. AMEC has experience quantifying a project's biodiversity offset requirements and applying relevant calculators, preparing offset strategies, identifying suitable offset sites and completing ecology assessments that then inform the preparation of offset management plans.

AMEC also work closely with landholders throughout Queensland to provide advice on using their property as an environmental offset, complete ecology assessments on their properties to validate the biodiversity values and suitability as an offset, and support the negotiation process between a landholder and proponent to enter into an offset agreement.

As a result of reviewing the Environmental Offsets Bill 2014 we would like the following comments to be considered by the Committee. AMEC has sought to identify those changes which we believe are a positive step forward and matters that require further consideration or information before commencement.

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Legislation specific to environmental offsets

AMEC support elevating the regulation of offsets from policy to primary legislation. We see this as providing a clearer and stronger head of power to require and inform the use of environmental offsets in Queensland. The legislation should be used to ensure collaboration and consistency between different levels of government in Queensland as to how environmental offsets will be regulated and assessed. The legislation also provides for enforcement of offsets which is important to ensure offsets are being implemented as required, and conservation gains are actually being achieved through the offset program.

One Environmental Offsets Policy

The introduction of one environmental offset policy for Queensland is supported as it reduces the complexity of having numerous offset policies to be aware of, understand and apply. It has also removed a number of inconsistencies that existed between policies. We also support reducing duplication of offset requirements for Commonwealth, State and local matters and the intent to have one offset assessment process that will satisfy all jurisdictions. AMEC has had experiences in the past where a proponent has been requested to demonstrate how they were providing offsets for the same matter by both Commonwealth and State governments and undertake two separate assessment processes (EPBC Act Offset Assessment Guide, and Ecological Equivalence). Assuming the Commonwealth Department of the Environment (DoE) accredits the State process, this will remove this duplication and therefore save proponents time and money.

Significant Impacts

The introduction of a “significance” test will be beneficial and provide greater consistency with environmental impact assessments under the *Environment Protection and Biodiversity Conservation Act 1999*. In our experience a number of proponents were required to provide environmental offsets for very minor impacts (e.g 0.03ha of essential habitat). In particular for linear projects such as powerlines and pipelines where they intersect very small areas. For those projects which impacted a number of biodiversity values, in small areas, offsetting became more a lot more expensive and complicated as often a number of offset sites needed to be found. However we do want to stress that we feel proponents should still be asked to mitigate these minor impacts including through rehabilitation of these areas. The concept of “death by one thousand cuts” should be considered when developing approval conditions.

The current level of detail regarding what constitutes a “significant” impact is, however, very poor. It is recommended a clear definition as to what constitutes a “residual, significant” impact is developed. This may require a guideline or assessment process for proponents to follow as we understand each biodiversity value and project may be unique and therefore flexibility is required.

We also believe that mitigation measures (such as rehabilitation) should be taken into consideration when determining the extent of residual impact. If further guidance is not provided then it will be a very subjective process and one that is likely to be debated between proponent and assessment manager, but also increase the likelihood that inconsistent decisions will be made. This could also provide an avenue for legal challenges from community groups.

Reduction in matters requiring offsets

The Bill provides for the revision of a number of environmental matters subject to offsets by requiring offsets only for Queensland's most significant environmental values. We understand the biodiversity matters required to be offset are listed in the draft Queensland Environmental Offsets Policy.

This list should be reviewed annually to ensure it reflects current listings as new species or communities may become threatened, or some may be delisted.

Can further information be provided on why offsets are still required for 'special least concern' species but not for 'near threatened' species? It is acknowledged these are 'iconic' species but there are also a number of locally threatened and important species that may be listed as near threatened that are also worthy of impacts to their habitat requiring an offset. Will local governments be able to pick up these more locally important values through their own offset policies?

Application to State Significant Projects

The Act and supporting policy will not apply to state significant projects (under the *State Development and Public Works Organisation Act 1971*) approved by the Coordinator-General. We believe this provides uncertainty to proponents for whose projects are being assessed through this process. Will offsets be required? If so, what rules apply? Or it may result in proponents not wanting to address environmental offsets until the last minute when they are conditioned to do so. By providing certainty proponents are more likely to address environmental offsets earlier in the project planning and environmental impact assessment phases.

AMEC recommend that further guidance is provided (such as in a specific guideline issued by the Coordinator-General) on how environmental offsets will be assessed and applied to State Significant Projects.

It is also likely that a State Significant Project will also be a Controlled Action under the EPBC Act. Therefore there may be significant residual impacts to Commonwealth Matters of National Environmental Significance (MNES) and offsets required. What policy will be applied to these impacts? Would the Coordinator-General's Office be responsible for making this impact assessment and determination of MNES offsets?

AMEC seeks further clarification on how the State will operate under the "bilaterally accredited authorisation process" and offsets would be assessed for MNES. On this point, AMEC would also seek to understand what resources would be engaged by SDB&I or the Coordinator General's Office to assess these applications. Adequate environmental impact expertise and offset analysis would be required to make an educated evaluation of a project and prescribe the relevant environmental conditions to uphold the principles of the EPBC Environmental Offsets Act.

Proponent driven offsets

AMEC support the Bill providing options to a proponent for the delivery of an environmental offset. One option is that a proponent may elect to develop a proponent-driven offset or combination of proponent-driven offset, and offset payment. This flexibility is important as some companies may own land or wish to use third parties land for an offset.

In some instances it may be more cost effective, or the proponent may want to have greater control over how their offset funds are invested.

When delivering a direct offset it is currently unclear as to what an acceptable offset will look like. The current draft offset policy describes achieving a conservation outcome, and statements have been made by EHP as to retaining 'like for like', but we feel more clarity is needed around this issue. For example clear direction on what type of vegetation (e.g. remnant, regrowth or revegetation) and 'like for like' criteria will be used when locating suitable offset sites. Is a higher preference given to the location of an offset rather than its condition? The current ability to use a Regional Ecosystem (RE) with the same or higher status in the same broad vegetation group as the impacted RE provides some flexibility, and we would not like to see this removed.

This is not only to support proponents and offset providers but also so landholders can be more informed and confident as to the offset values and offset potential that their property may provide.

If a proponent chooses to deliver their own offset they have to enter into an "environmental offset agreement". AMEC don't see an issue with preparing an offset agreement prior to approval being granted however would like to note that obtaining consent from the landowner and registered interests including any registered interests can take time therefore proponents should look to identify an offset site/s as soon as possible to ensure these consents are in place and do not delay the project if this option is adopted. However the Committee should note that having to identify the offset site you are using and obtaining consents before project commencement rarely occurs in the current situation. A number of approvals have allowed the project to commence and within 12 months the offset site identified and secured. However AMEC do support proponents having to start the offset identification process earlier as it provides more confidence to the decision maker a suitable offset can be found and is likely to reduce the length of time between impact and offset being implemented.

One detail that is needed is guidance on the length of time that a proponent will be granted to legally secure the offset and have the offset management plan finalised post project commencement.

Offset payments

There is a lot of detail lacking with this delivery option. While it is recognised some proponents may see a benefit in paying funds up-front to the State and then not having responsibility to deliver the offset, further detail on how a payment will be calculated needs to be released. Offsets can be a significant cost to a project and it is imperative proponents have greater certainty in what costs their business may incur, at what stages of the project.

AMEC have not provided specific input into design of the calculator and have not provided formal feedback to date. We have seen a draft version of the calculator and we are concerned the landholder compensation components is far below the current market value.

In contrast the administration costs appear to be well in excess of what is currently best practice to secure an environmental offset.

The Committee needs to understand that once a proponent pays their money this is a fixed amount and a conservation outcome needs to be delivered for that price. If this price is then put out to providers then they are also taking on that risk and need to be confident they can deliver to that budget. So ensuring adequate funds are being provided is critical. Particularly when working with landholders as they also need to see the benefits from providing offsets on their land as it may mean a reduction in their grazing regime for example.

It should also be clear under an approval that the proponent is not liable for non-compliance associated with the offset. Once their funds are paid, the offset liability is no longer with the proponent. Currently there is no clarification on where the liability would sit? Has this issue been considered for approvals under the EPBC Act? If the State are responsible for the offset involving MNES then does this mean the Commonwealth will have to enforce the EPBC Act offset with the State?

Administration of Offset Funds

There is potential for a conflict of interest with the government agency which is responsible for approving a development (e.g EP Act) and deciding on the extent of offset payment, is also the one to receive and manage those funds. Clear governance arrangements as to how the funds will be managed and allocated are required to ensure against perceived and actual conflicts of interest.

- How will funds be distributed? *through a tender process?*
- What will be the timeframes given to a provider to deliver an outcome?
- Will the offset actually deliver a 'like for like' conservation outcome?
- What are the rules that will be applied to expenditure of the funds to achieving a suitable, and cost effective, offset based on the impact that occurred?
- What is the penalty if the third party awarded these funds does not deliver the required outcome?

Another concern in relation to offset payments is a potential for substantial delays from when funds are paid to the government trust account through to when on-ground outcomes are delivered. What are the timeframes in which government is proposing to distribute funds and finalise offsets? We also are concerned as to how much of these offset funds will be used for administration by the department. Can the department confirm no funds will be spent on administration or what % is capped for administration?

It is recommended an independent board of advisors be established including people from industry, conservation, community and government sectors to provide advice on the most appropriate use of the funds and oversee management and distribution of the funds.

Accreditation of Offset Brokers and Providers

AMEC would support the introduction of some manner of accreditation for the provision of the highly specialised skills of assessing impacts to offset values, identifying suitable offset sites that maximise the co-location of biodiversity values, landholder engagement, developing offset area management plans to achieve the required environmental outcomes and the actual on the ground implementation and monitoring of offset sites.

AMEC would recommend the establishment of a panel of approved offset providers that would ensure suitably qualified professionals are being engaged to achieve the desired environmental outcomes. This would also minimise risks associated with some individuals or small entities that may claim they can deliver environmental offsets but may not be financially stable or have the project management skills required.

It needs to be highlighted that potentially millions of dollars will need to be awarded to offset providers to deliver the conservation outcomes required, particularly where it involves the on-going management of a large offset. Therefore stability in an organisation with appropriate expertise and financial management capabilities should be a key consideration.

Monitoring and Enforcement

Based on our experience over the last three decades of offsetting in Queensland there has not been many, or any, reports prepared by the Queensland Government that discussed the offsets which had been approved, how they were progressing, and whether conservation gains were occurring as predicted. It is also our experience that in a number of situations the assessment officers didn't even have time to visit the proposed offset site.

We believe it is important the government plays an active role in monitoring the implementation of offsets and work hand in hand with offset providers, landholders, contractors etc to ensure the conservation gains are being achieved. Managing land and ecosystems is challenging and offsets have the potential to benefit landholders, the local community and deliver significant conservation gains when delivered collaboratively. If regulators are more closely involved, and visit offset sites, they are likely to better understand the constraints and where opportunities exist for improvement.

We also acknowledge that an important part of monitoring is the monitoring built into the offset management plan and the reporting provided back to regulators for their review. Based on AMEC's experience we often require annual monitoring be conducted of the offset site, and an annual report provided to the regulator on the offset progress. This is a way to help regulators see how the offset is progressing and an opportunity to raise any issues or constraints such as drought, fire etc.

The other aspect is enforcement. It is important where proponents are investing significant amounts of money to environmental offsets that the regulators are also ensuring that each party is doing what they are required to do. There must be a consequence to a particular party for doing the wrong thing. This may be a developer or landholder who illegally clears vegetation within the offset for example.

Environmental Offset Protection Area

Currently there are constraints with legally binding mechanisms to protect offset areas. Voluntary declarations under the *Vegetation Management Act 1999* have been the most widely used as they are the easiest to administer. However at law it will not override other forms of development approval therefore not providing guaranteed protection to an offset. Similar constraints apply to other forms of legally binding mechanisms. Therefore AMEC welcome the introduction of a new tool to protect offsets. The tool would need to be straightforward to administer, not be high in cost to put into effect, and be completed in a reasonable timeframe.

Further detail is requested on what this new legal protection mechanism will entail, the process required and its standing against other forms of development approval. AMEC also recommend that all offsets have a mandated base level of protection (which may be the new legal instrument) and then proponents or landowners have the choice of adding other instruments such as a nature refuge. This may assist with timeframes as well because a nature refuge can take 12 months to gazette.

If you have any queries on the above or would like further information on any points we have made please do not hesitate to get in contact with Berlinda Ezzy, Offsets Coordinator on (07) 3232 2547 or berlinda.ezzy@amec.com.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Berlinda Ezzy', with a stylized flourish at the end.

BERLINDA EZZY
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AMEC Environment and Infrastructure