



QMDC comments of Environmental Offsets Bill 2014

24 March 2014

Submission to:

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

Phone: 07 3406 7669

Fax: 07 3406 7070

Email: arec@parliament.qld.gov.au

Submitting organisation:

Chief Executive Officer
Queensland Murray-Darling Committee Inc.
PO Box 6243
Toowoomba QLD 4350
Phone: 07 4637 6276
Fax: 07 4632 8062
geoffp@qmdc.org.au

These comments are presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

1.0 Background

Environmental issues facing the QMDB involve significant challenges and constraints for natural resource managers, landholders and developers. QMDC and the communities it works with in QMDB, recognise the need to protect now and in the future the region's valuable natural resources from actual and potential threats and losses resulting from commercial development. One component of QMDC's NRM program is designed to protect particular species of flora and fauna (e.g. threatened species) and maintain functioning ecosystems that support all species.

QMDC operates from the premise that the sustainable management of this region's natural resources and assets requires the *Environmental Offsets Bill* (the Bill) to enhance and balance the environmental, social, cultural and economic well-being of regional communities.



QMDC supports the use of environmental offsets if they comprehend and mirror the fact that the QMDB has already been significantly degraded as a result of past human impacts, and that actions are required to reverse this trend.

QMDC's position places limits on offsets so that they cannot be used to facilitate, or attempt to facilitate, a development outcome or allow development to proceed in areas which it would presently not be able to proceed.

QMDC has consistently sought a robust legislative and regulatory framework that is compatible with the protective mechanisms and community aspirations contained within regional natural resource management plans.

The major legislative overhaul of environmental law has encouraged QMDC to make numerous submissions on the government's red-tape reduction program. QMDC supports the need to align legislative and administrative processes within departments.

Community expectation amongst QMDC member organisations and the landholders we work with is however, that the red-tape reduction program, implements an improved set of well-considered environmental management standards. Although QMDC supports the streamlining of processes, we are concerned that the red-tape reduction program has been at the cost of relaxing stringent control and compliance measures.

We urge the government to advance legislative reform by taking into consideration not only the impacts of individual developments but also the cumulative impacts, social, economic and environmental, of the total number of industries impacting on the environment and natural resource assets.

2.0 General comments

2.1 Developers should avoid impacts to the greatest extent prior to offsetting

QMDC promotes the use of environmental offsets where developers have firstly made a commitment to avoid impacts to the natural resources of QMDB to the greatest extent prior to offsetting. Environmental offsets should therefore only be considered when all steps to avoid and minimise adverse environmental impacts have been taken. QMDC's overall aim is to promote better land-use planning to avoid land contamination and degradation, and land use conflicts.

Where there are unacceptable ecological impacts, environmental offsets should not be used to rescue the proposed development and the development should not proceed.

Environmental offsets must be established prior to any proposed development which may result in an adverse environmental impact. Consideration of offsets conditions in *Environmental Protection Act (EPA)* and *Sustainable Planning Act (SPA)* must therefore retain a requirement for development proponents to legally satisfy that mitigation measures will be undertaken as part of a development project.

Produced by: Geoff Penton and Kathie Fletcher, 24 March 2014
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2.1.2 Recommendation:

- That the Bill upholds the fundamental principle that offsets do not permit unacceptable activities and development.
- That this principle is enshrined in legislation, namely the *Environmental Protection Act, Regional Planning Interests Act, Sustainable Planning Act and State Development Public Works Organisation Act*.

2.2 Public Interest Test

QMDC acknowledges the application of the public interest test in relation to development and offsets. The overarching principle of the test allows development to proceed because there is an overriding need for the development in terms of public benefit and no other site is suitable for the particular purpose.

QMDC asserts that each proposal, whether it be mining, residential, commercial etc should still be assessed on its merits to determine the degree of community advantage.

A public interest test although it provides many challenges, should provide an opportunity to the Government to make basic human rights meaningful to the QMDB communities so as to assure them social and economic justice, alongside environmental sustainability.

2.3 Offsets must deliver a 'like for like' ecological equivalence and provide greater environmental quality and quantity

Where adverse environmental impacts cannot be avoided, such impacts must be minimised through appropriate and effective mitigation measures.

Environmental offsets must deliver a 'like for like' ecological equivalence whilst also providing greater environmental quality and quantity for the QMDB. An agreed methodology is needed to measure ecological equivalence. Tools that could be used and built upon include the Department of Environment and Heritage Protection's (EHP) *BioCondition Methodology* and the *Biodiversity Assessment and Mapping Methodology*.

http://www.ehp.qld.gov.au/management/environmental-offsets/measuring-ecological-equivalence.html#document_availability

http://www.ehp.qld.gov.au/ecosystems/biodiversity/biodiversity_assessment_and_mapping_methodology_bamm.htm

Under the *Policy for Vegetation Management Offsets and Biodiversity Offsets* the land-based offsets must achieve or exceed ecological equivalence with the respective clearing/impact area. Demonstrating ecological equivalence, for example, on a proposed clearing/impact area and offset area requires an ecological equivalence assessment of both areas. Ecological equivalence comprises of two components: - ecological condition and special features. The ecological condition and special features' criteria are made up of 28 ecological indicators.

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EHP state that the benefits of using the ecological equivalence methodology (EEM) include:

- reduction in the subjectivity associated with offset assessment
- improvement in the quality of the offsets provided
- assistance in developing an offset supply database which is pre-assessed
- ecologically equivalent offsets being located faster and reduced assessment times
- reduction in the time and resources taken to assess suitable offsets and approve applications.

EEM is supported by QMDC. Its successful application requires developers to demonstrate how they can achieve ecological equivalence and document extensively those measures and their outcomes.

2.4 No net loss

QMDC supports environmental offsets as a last resort where it can be proven that there will be no net losses at an absolute minimum. This option is only available when the above two options outlined in paragraphs 2.1 and 2.3 have been explored to their full capacity.

2.5 Future protection

Offsets must also be protected in perpetuity and not be able to offset themselves in the future.

2.6 Best available science

Offset criteria must be based on peer reviewed scientific research. The aim of such science would be to produce information from data gathered from the QMDB region to understand the potential consequences of actions and not advocate for commercial interests of key stakeholders. Offset criteria must meet standards of scientific rigour, technical adequacy, and truthfulness; and be perceived as just and politically unbiased.

2.7 Conservation of natural assets

Conservation of the region's natural assets and resources is fundamental to the regional NRM Plan, especially vegetation and biodiversity that are threatened.

2.8 Community based process

The communities of the QMDB are empowered to direct the scope of offsets on the basis of their local knowledge and experience.

QMDC's work is guided by valuing community input and participation in natural resource management. Communities, landholders and natural resource managers should be involved as fully as possible in all stages of environmental decision-making. Environmental decision-making should be open and transparent. QMDC encourages community involvement at the earliest stages of environmental decision-making, such as setting of objectives for regional and/or site specific offsets.

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QMDC believes that successful community participation requires effective communication between decision makers, developers, communities, landholders and other key stakeholders.

Feedback to communities at key stages in the offset decision-making process is essential: landholders and natural resource managers must know that their aspirations, knowledge and views have been considered and heard, in order to produce beneficial outcomes for all stakeholders. Feedback also needs to include advice as to how community aspirations, knowledge and views have been considered and how they will be incorporated into planning or conditions for offsets.

Communities must be well-informed for public participation to be effective; information must be readily obtainable and inexpensive. Communities also need to be provided with scientific and technical information and assistance to analyze it if necessary.

Including a collaborative and participatory component to environmental offsetting enables QMDC and the communities it works with to manage the natural resources of the region and contribute to the environmental performance of developers within the region.

QMDC considers that all business and government organizations working within the QMDB should develop and maintain environmental ethical practices that are appropriate to their functions and activities. QMDC welcomes the opportunity to develop the use of environmental offsets involving landholders and other stakeholders so as to evolve natural resource management practices based on core principles.

QMDC considers that the effectiveness of environmental offsetting is dependent upon the involvement of stakeholders and the implementation of the regional NRM Plan in order to achieve natural resource management performance targets.

2.9 Environmental offsets initiatives must achieve certain outcomes

QMDC supports environmental offsets initiatives by governments and businesses which seek to achieve the following outcomes:

- implementation of the principles of ecologically sustainable development and a balance of social, economic and environmental values
- legislative compliance and due diligence
- resource conservation
- prevention of pollution and the elimination or reduction of waste
- protection of ecological systems, landscapes and the conservation of species and genetic biodiversity
- protection of cultural heritage, indigenous and built heritage
- informed and transparent decision-making
- continuous improvement.

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2.10 Offset proposals and management plans

QMDC considers that while it is appropriate for environmental offsets to take a variety of forms, depending on the circumstances of the environmental impact, all offset proposals and their associated offset management plans should aim to include the following elements:

- the offset reaches its intent
- the developer's or company's environmental best practice policy
- identification of goals, objectives, performance indicators and targets and development of plans for achieving these
- involvement of key stakeholders in the development and implementation of policies and targets and ongoing review of the management of the offset
- integration of environmental management into business planning and investment strategies
- adequate resourcing to achieve desired environmental outcomes and the implementation of the offset
- clearly defined responsibilities, authorities and accountabilities
- training programs to provide employees with the knowledge, skills and competencies required to achieve environmental targets and outcomes
- detailed work practices, procedures or processes to manage and reduce the future environmental impacts of the company, to understand the life cycle implications of the company's products and services, and to take advantage of environmental opportunities
- regular monitoring of environmental performance and environmental best practice policy implementation
- internal and third party audits of progress in achieving the desired environmental outcomes and offset implementation
- development of reporting systems to include regular environmental reporting internally and externally to stakeholders and reporting against the performance indicators
- regular review and continuous improvement of the offset and of the company's environmental performance.

3.0 Specific comments *Explanatory Notes*

3.1 Red-tape Reduction

QMDC disagrees with the statement in the *Explanatory Notes* at p.1 that the Bill "provides greater certainty". In our opinion it creates more uncertainty and does not provide the NRM sector confidence that "a strong economic future" will be enhanced by the Bill.

All regulatory costs, whether borne by industry or government, should be an accurate reflection of the work required to address site specific and cumulative impacts, risks and hazards.

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Red-tape fiscal arguments supporting the reduction of costs are in QMDC's opinion neither well-articulated nor factually proven. No examples are given to substantiate the claim at p.3 that current offset requirements "has led to significant delays and additional costs to industry". QMDC continues to assert the starting point for reform must be ensuring environmental protection and sustainability objectives are furthered, in the long term interest of the State, and not watered down because industry is having issues with the costs or the requirements of compliance.

QMDC recognises that government departments responsible for compliance are under resourced and yet compliance is a government responsibility. The resulting over reliance of self-regulation and voluntary compliance by individual companies is not in our opinion, in the best interests of community.

Overall QMDC is concerned that the drive to reduce regulation for development projects is swimming against the tide of community expectations of government. The Bill does not provide, for example, technically and economically rigorous offsets calculators; a transparent system of offset brokerage; or ecologically defensible supporting material including habitat quality and significant impacts guidelines.

QMDC advocates for corporate transparency and accountability and the use of non-financial information in the review of current offsets legislation. The environmental and social performance of the mining sector, for example, has come under increased scrutiny from community organisations. There is also a growing worldwide push for the corporate sector to embrace the principles of 'corporate social responsibility' and 'sustainable development'.
<http://www.iisd.org/business/issues/sr.aspx>

In QMDC's opinion, undertaking a comprehensive review of the State Government's offsets legislation and regulation requires the Bill to be designed in such a way that it:

- examines closely an industry's compliance records;
- analyses social and environmental damage costs before permitting offsetting as a mitigation action;
- identifies and assesses any gaps in the identification and management of risk arising from a development project or activities, including exploration, assessment, production and rehabilitation, particularly as they relate to human health, the environment, soil and land condition; and water catchments;
- identifies best practice in relation to the management of environmental assets in regional ecosystems and catchments
- examines how the characteristics of a proponent industry in Queensland compare to the industry nationally and internationally and recognises why a proponent has or has not a social licence to operate
- examine real costs of regulation to the industry;
- examine profits gained through the exploitation of the State's natural resource assets; and
- makes it mandatory for the industry to report on sustainability indicators.

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QMDC is not convinced that the government has based this Bill on peer reviewed science and research. Additionally there is no reference to applicable case studies or reports e.g. sustainable reporting on biodiversity management mechanisms, environmental accounting and monitoring of offset projects.

The *Business and Biodiversity Offsets Program* (BBOP) offers an invaluable source of experience and knowledge on biodiversity offsets. The work they have been doing is not apparent in the mechanisms of the Bill. With an international partnership of some 70+ leading conservation organizations, companies, governments, and financial institutions developing, testing and implementing best practice on biodiversity offsets, BBOP's work is in our opinion worthy of consideration.

The BBOP partners are collaboratively designing and implementing biodiversity offsets in a range of industry sectors, countries and ecosystems, and sharing the results and practical guidance in the form of a number of publications, including a set of principles, offset design and implementation handbooks, and case studies.

BBOP also provides support to governments developing policy related to biodiversity offsets, conservation banking and land-use and landscape level planning. BBOP because it is a global forum offers the Queensland Government the collective knowledge and experience of diverse organisations from around the world on the development of best practice related to biodiversity offsets. This would help the Bill to align itself to international policy, law and trends in practice.

<http://bbop.forest-trends.org/pages/guidelines>

Based on QMDC's regional NRM observations and our involvement in offset policy development over the last 10 years QMDC are not confident that the proposed changes to current offset legislation will actually result in "the greatest environmental outcome".

3.2 Financial environmental offset

QMDC is very concerned that the introduction of a financial settlement offset will fail to address the issues we have raised in our section **2.0 General Comments**. QMDC is not convinced that the current financial settlements provisions in the Bill will provide "stronger environmental outcomes". Additionally where are the comparative studies to prove that a government fund account compared to a community or NGO fund account is the best way to manage financial offset payments?

Given the complex nature of ecosystem services and their intrinsic socioeconomic and cultural values, it is important to understand the limitations of offsets and to use them only where appropriate and with care. BBOP, for example, has developed a set of principles which underpin its approach to biodiversity offsets.

<http://bbop.forest-trends.org/pages/guidelines>

The absence of a similar set of principles is telling, namely that the Bill's financial offset arrangements are not informed by core sustainable development values.

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QMDC asserts priority landscape scale regional ecosystems should be maintained or improved so that ecological processes and ecosystem linkages are increased in extent and abundance at priority catchment scales. The decline in populations of 'at risk' flora and fauna species must also be prevented.

The Bill's reliance on financial environmental offsets does not demonstrate scientific understanding of the importance of remnant vegetation and the habitat requirements of native fauna by preventing further fragmentation or destruction of ecosystem corridors. It should not be assumed money can adequately replace ecosystem services and if a dollar value is placed on these services how will they be calculated?

QMDC posits that the long term conservation of biodiversity and the well-being of the region's communities if they are to depend upon on fiscal payments must realise the physical actions needed to protect natural assets and to maintain the integrity of the ecological processes that sustain them.

A focus on process recognizes that ecosystems are temporally and spatially dynamic and that the components of ecosystems interact in complex and diverse ways that contribute to, and sustain biodiversity. Processes may also act as selective forces to which particular species are constantly adapting.

In QMDC's opinion the Bill's financial offset focus fails to articulate how it will respond adequately to the complexities in the ways in which threats affect ecological processes and regional ecosystems. The financial offset obligation, for example must take into consideration:

- Impacts may occur far from the location of the initial threat or disturbance.
- Threats that affect one species may have cascading effects on other species.
- Environmental responses to a threat are not necessarily directly proportional to the level of threat (ie a linear response). Non-linear responses mean there are critical thresholds where small increments of change can result in dramatic shifts in the state of the system.
- There is often a time delay, from days to decades, between alteration to an ecological process and its full effects on biodiversity.
- Threats may have a combined impact greater than their independent effects.
- Complexities in interrelationships among species and chance environmental variation may mean that often there will be uncertainty about the effects of a particular threat on processes.

QMDC believes at the very least financial offsetting proposals should provide terrestrial and aquatic ecology studies to ascertain which processes have the greatest influence in an area, their role, the spatial extent over which they operate, the kinds of threats that are limiting their function. In our opinion the Bill has failed to direct its management strategies where it will have the greatest impact.



A fundamental tenet of regional ecosystems is recognition of the interaction between pattern and process. The identification and management of locations directly associated with a specific process is a practical way for government to protect regional ecological processes and avoid the need for environmental offsetting, for example:

- Protecting floodplains adjacent to river channels to maintain lateral hydrological connectivity and the ecological benefits of periodic flooding.
- Maintaining continuous vegetation along elevational gradients to enhance opportunities for altitudinal migration or range shifts in a changing climate.
- Protecting key wetlands & natural springs along the migration paths of waterbirds as critical stops for refueling.
- Maintaining riparian vegetation to promote interactions between terrestrial and freshwater systems.
- Protecting small ephemeral streams and wetlands to aid the re-establishment of ecological process in restoration.

There is no independently peer reviewed evidence or information provided that outlines what financial values can be placed on potential impacts. Additionally no attempts by the government have been made to demonstrate or guarantee that fiscal offsetting provides the best method to offset an impact.

QMDC acknowledges that there may be an increase in costs to developers as a consequence of development at an alternative site. QMDC asserts however that Government should not support any more development within Environmentally Sensitive Areas (ESAs) when viable alternatives exist. In all cases buffer zones protecting a Vulnerable Ecosystem should limit development.

The preparation of technical reports to inform whether financial offsets is the best option should include an evaluation of alternative forms of development, and significant weight should be given to those strategies which minimise the impacts on natural resources. Due consideration should be given to the protection of ESAs and waterways. The siting of project infrastructure should aim to avoid potential land use conflicts and long term impacts on regional ecosystems.

QMDC is concerned key issues pertaining to both, surface and groundwater quality, quantity, and ecology cannot be adequately addressed by financial offset arrangements.

A full cost environmental accounting of water use and disposal requires social and economic issues to be addressed by the Bill.

Below is a list of key issues that in our opinion have been considered poorly or not at all:

- Hydrology: Changes in Dynamics and Aquifer Interconnectivity. These are crucial elements to better understand potential long-term impacts on water resources. QMDC asserts financial offset arrangements need to ensure proponents of development will provide all the relevant water data regarding connectivity at given locations and any predicted changes that are likely to occur over time as a function of floods, droughts, pumping and other factors.

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- Ecosystems and Water: Environmental Tolerances, Responses, and Mitigation. How will financial offsets provide community with the confidence that the amount paid by a development proponent demonstrates a good scientific understanding of the ecological impacts caused by changes to water quantity, quality, and flow; as a result of a development project, especially the long term effects of its activities on aquatic ecosystems, key species and ecological communities.
- Chemicals: Water-related Risks to Environmental Health. Additionally how will financial offsets determine how to evaluate and put a price on what water related risks are associated with the chemicals a development project may use, their movement in surface and groundwater systems, and their toxicity.
- Cumulative Impacts: Monitoring, Assessment, and Evaluation. How does a financial offset address the cumulative impact of a project in light of the significant number of proposals being considered in regional contexts and the impacts on the surrounding environments and natural resources.

3.3 Test of significance

QMDC believes improving Queensland's current legislation and regulatory regime requires a commitment to extensive research into the long-term and cumulative environmental and social impacts and how they are best regulated. This type of research is not apparent in the recommended changes relevant to the Bill.

QMDC submits that, although Government as the regulator plays the "last card" on "acceptable risk", initial determinations are not the prerogative of, for example, a private coal company nor any consultants it pays to conduct research. Both the company and consultant will have commercial interests in the outcome.

It is common practice that company based risk assessments, are frequently deemed confidential, do not incorporate regional NRM targets, do not respect local knowledge, depend too much on economic modelling which lacks peer review or environmental and social application and do not advocate a community participatory process or a precautionary approach.

The scientific reports relied upon by in the Bill must not weaken the intentions of the Environmental Protection Act by merely suggesting "preventative measures" which are based on a limited scope to address risks associated with potential impacts.

If the primary objective of the Environmental Protection Act is to improve the total quality of life, both now and in the future by maintaining ecological processes on which life depends then in relation to the Bill, the science and technical expertise relied upon, should be as a matter of routine, independently peer reviewed in order to provide the best available science and knowledge to protect, public health, aquifers, waterway, soils, biodiversity etc.

Providing peer reviews and their conclusions or at the very least referencing them as per the above comments would demonstrate that the Bill is building on historical and current research to advance the region's scientific knowledge.

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Best available science; where definitions and criteria are based on peer reviewed scientific research would enable community to consider an offset in terms of its saliency, credibility and legitimacy, namely whether it addresses legislative and policy relevant questions; whether the science relied upon meets standards of scientific rigour, technical adequacy, and truthfulness; and finally whether the science is fair and politically unbiased.

QMDC asserts an independent peer review needs to be conducted to assess the application of the test of significance and its associated assessment methodology. Describing impacts, for example, as “typical” minimises the significant impact they may have on, for example, regional ecosystems, or individual fish species, or tourism businesses, or human health, or air quality and so forth.

The region’s communities seek certainty where it is warranted.

The environmental framework approach promoted by this Bill requires not only the accurate identification of environmental values but also a full consideration of a project’s impact on those values. An accurate identification will enable the Bill to assign levels of sensitivity to those values and then apply an appropriate level of environmental constraint and/ or offset.

If, however, a proponent fails to accurately identify essential environmental values, then the environmental framework that the Bill uses to offset project developments becomes flawed, resulting in inappropriate development and/or the application of inappropriate environmental management controls.

QMDC is concerned that if environmental values have been incorrectly identified and technical reports and assessments have not been independently peer reviewed, site specific and cumulative impacts on species recovery, groundwater systems, existing land users, “sensitive receptors”, regional ecosystems etc are being underestimated or ignored.

The Bill must demonstrate that its test of significance has described and considered local and regional cumulative impacts to the greatest extent practicable.

The Australian and Queensland Government have expressed their intentions to protect water resources at a strategic level rather than by a case by case project level with the intention of providing at a regional level greater certainty regarding the sustainable use of water resources. Some of these mechanisms include bioregional water resource assessments, water resource planning, regional water quality guidelines, make good arrangements, water use efficiency programs, environmental water trading rights etc.

Any use of surface water or extraction of groundwater must be managed to not only protect bore owners, surface waters and natural spring ecosystems, which are comparatively vulnerable in these circumstances, but also to protect the QMDB, and the Great Artesian Basin (the GAB).

Bioregional assessments are one of the key mechanisms used to assist the Independent Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) in developing advice for the Federal Environment Minister based on best available science and independent expert knowledge.

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QMDC has prepared a first bioregional assessment draft of the water assets in the Border Rivers and Maranoa Balonne Region. This preliminary assessment identifies water systems/assets in the region, and then assesses their ecological, environmental and anthropomorphic values.

QMDC argues that the Bill must incorporate bioregional assessments to help development projects define, characterize impacts that may require offsetting. This includes describing causal pathways, for example, the chain of interactions and events connecting depressurization and dewatering of coal seams at depth with impacts on anthropogenic and ecological receptors located at the surface or depth.

The Bill must generate adequate quantitative or qualitative analyses of the likelihood of impacts of a proposed new coal mining activity on receptors by applying universally tested and agreed best practice ecology, surface and groundwater hydrology, hydrogeology and coal resource development models.

Key issues relevant to a test of significance in a regional context include for example:

- aquifer contamination
- the number of regional contaminated sites
- degradation of groundwater
- disturbance of farming land
- decreasing tourism opportunities
- land subsidence
- leachate pollution
- thermal pollution
- excessive water consumption
- degradation of regional water quality.

3.3.1 Recommendation:

- **Implement a reporting mechanism in the Bill to assess the effectiveness of the offsets (not just auditing) including the development impacts and how effective offset conditions have been in replacing the lost values.**
- **The Bill should require offsets performance reporting in the State of the Environment Report.**

3.4 Proponent driven offset

Maintaining that market-based regulatory compliance alternatives are capable of achieving the same, if not greater, environmental management as compared to strict regulatory controls is not fully supported by QMDC. The concept of supporting species recovery through self-regulation, voluntary, incentive-based mechanisms, rather than implementing additional mandatory controls, is in QMDC's opinion not appropriate for many housing, coal seam gas and coal mining activities.

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From an environmental policy perspective, the increasing reliance on voluntary approaches raises a number of important issues. Not least, how do they work, where do they work, what are their strengths and limitations and how can they best be used within the overall framework of environmental policy design?

The Report, *Carrots and Sticks For Starters Current trends and approaches in Voluntary and Mandatory Standards for Sustainability Reporting* identifies a number of drawbacks and advantages with self-regulation. http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/surveys_and_reports/carrots_and_sticks_-_kpmg_and_unep_en.pdf

This Report highlights for QMDC a number of key issues not discussed in the *Explanatory Notes* but which we believe are crucial in light of the recommended changes to legislation. The following limitations to self-regulation need to be more fully discussed and addressed as part of the legislative review process:

- “Conflicts of Interest: The same proximity that can help the self-regulator acquire useful information can be a disadvantage because of conflicts of interest. Knowing an industry better does not mean that a self-regulator will necessarily have the proper incentives to regulate it more effectively.
- Inadequate Sanctions: The greater flexibility afforded to self-regulatory organisations also means they may have the discretion to administer only modest sanctions against serious violators.
- Under-enforcement: Conflicts of interest and flexibility may also make it more likely that compliance will be insufficiently monitored. If industry interests are in conflict with societal interests, enforcement by self-regulators might be less than optimal overall.
- Global Competition: In a global marketplace, an industry’s collective interest may be defined by competition with foreign markets. If foreign markets are not equally burdened with regulation, then aggressive self-regulation could disadvantage domestic firms. This provides yet another reason to question whether self-regulators will make decisions that will benefit society.
- Insufficient Resources: Although the funding of self-regulatory bodies may not be susceptible to the whims of legislatures, underlying conflicts of interest could leave self-regulatory bodies with less than sufficient funding.”
http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/surveys_and_reports/carrots_and_sticks_-_kpmg_and_unep_en.pdf

To make the recommended changes to offsets legislation it is critical that the necessary control, inspection and prosecution processes are in place. QMDC therefore submits mandatory offsets standards should be a key component of the Bill and should include:

- Incentives for companies to report; and
- Mandatory guidelines relating to performance.

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QMDC would only support transferring the regulatory power to self-regulating authorities if they included a diverse stakeholder panel consisting of NRM managers and planners, conservationists, climate change scientists, ecologists, tourism operators whose statutes can either be voluntary or mandatory.

QMDC believe the Queensland Government should be increasingly concerned with sustainable development, inclusive economic growth, increasing transparency, and building social licence and trust within regional communities. Although an increasing number of companies and organisations want to make their operations sustainable, the Queensland government, in QMDC's opinion is yet to respond effectively to the external impacts of large scale development in the QMDB especially coal seam gas mining operations.

QMDC supports mandatory regulations, especially those with an obligation to report. The Report, *Carrots and Sticks For Starters Current trends and approaches in Voluntary and Mandatory Standards for Sustainability Reporting* describes the following benefits of mandatory reporting:

- “Credibility: The use of recognised practices and tools, or the publication of a sustainability report or equivalent that has been prepared using recognised guidelines should enhance the credibility of information provided in response to stakeholder concerns and interests.
- Changing the corporate culture: Mandatory requirements foster openness and transparency with respect to sustainability issues previously lacking in corporate culture. Mandatory requirements would place Corporate Social Reporting issues, and social and environmental issues in particular, squarely on the agenda of corporations.
- Incompleteness of voluntary reports: Voluntary reports often fail to address certain issues, notably on fundamental human rights issues and key aspects of a company's environmental performance.
- Comparability: There is no standardisation of the information found in reports because of the varying choices and approaches of different companies. It is often argued that the voluntary nature, progressive character and number of standards envisioned in initiatives such as the Global Reporting Index and other national and international initiatives, are unlikely to result in the standardisation of sustainability reporting practices.
- Non-disclosure of negative performance: Positive information and messages tend to be emphasised in most sustainability reports. The reports are also time and event specific. Firms may disclose information when it suits their interests, but not when it may negatively influence perceptions, or relate to future earnings and potential cash flows negatively (Walden and Schwartz, 1997).
- Standardisation: The economic literature names another advantage of required disclosure that only arises if the legislator promulgates mandatory rules: the advantage of standardization. (Adams, 2002). This relates to dependability, often cited as one of the advantages of command and control regulation, namely the ability to specify expected behaviour. An investor must compare a number of investment alternatives before deciding on an investment. It is to the investor's advantage if the information relevant for the investment decision is presented in a standardised format that can be readily compared.

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Standardised formatting saves investors, communities, consumers and employees' time and money, and explains why listing prospectuses or annual reports should follow identical guidelines (Baums, 2004)."

http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/surveys_and_reports/carrots_and_sticks_-_kpmg_and_unep_en.pdf

Development in the QMDB requires the regulator to have comprehensive and accurate knowledge of the workings and capacity of the housing, coal and coal seam gas, tourism, agriculture industry and individual companies within the industry. One size does not fit all.

Tailoring regulation to a mandatory approach must therefore be careful not to undermine tailored responses to address, for example, site specific differences. The challenge for the regulator is to keep pace with rapidly changing circumstances and changing technologies.

Mandatory types of regulation do not need to undermine innovation nor take away the incentive to go beyond compliance. It can, in QMDC's opinion, move from forcing a reactive, tick-box approach that would result only in more bureaucracy and filing of documentation. The government's access to more detailed and current industry information is essential to stop government regulators playing "catch up."

Establishing and resourcing stakeholder engagement forums where industry, government, natural resource management bodies and community can come together and discuss issues, mining operations etc and collaborate on solutions is urgently needed. Being closer to the action, will help both industry and government, to be better situated to identify potential problems and fix them. Governmental regulators must deal with politically unpopular or highly complex issues. The greater the collaboration and involvement of industry, government, natural resource management bodies and community in dealing with these issues and setting the rules, the more reasonable the rules are likely to appear to individual companies.

Establishing a mandatory sustainability reporting process as part of this Bill will help both government and industry to set goals, measure performance, and manage environmental assets. A sustainability report is capable of serving as the key platform for communicating performance information – both positive and negative – that is needed by development proponents themselves, and by all those who are affected by them.

Sustainability reporting is therefore a vital step for managing change towards a sustainable regional and global economy – one that combines long term profitability with social justice and environmental protection.

According to the 2013 report, *Carrots and Sticks, Sustainability reporting policies worldwide – today's best practice, tomorrow's trends* produced by the United Nations Environment Programme (UNEP), Global Reporting Initiative (GRI), KPMG Climate Change & Sustainability Services and the Centre for Corporate Governance in Africa, less than 10% of the more than 45,000 publicly traded companies that are required to disclose their annual accounts, report on their sustainability performance.

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The writers of the report highlight the need for regulators to use the current impetus to motivate or mandate sustainability disclosure.

<https://www.globalreporting.org/resourcelibrary/Carrots-and-Sticks.pdf>

UNEP, for example, has promoted sustainability reporting for private and public institutions along globally applicable guidelines, and works in close cooperation with the GRI, the United Nations Global Compact, the International Integrated Reporting Council, and others, to help companies better understand and address their integrated environmental and social impacts.

UNEP supports increased sustainability reporting for investors to use in financial decision-making. UNEP promotes life cycle-based methodologies such as resource footprinting, science-based information on critical resource flows, and capacity enhancement in developing and emerging economies.

QMDC assert that improved offsets legislation requires a commitment to sustainability reporting. This we believe is not recognised within the *Explanatory Notes*. Legislative reform needs a collaborative response from community, corporate and government stakeholders to advance sustainability reporting as a key tool to manage impacts on environmental assets.

4.0 Specific comments – clauses of the Bill

4.1 Clause 3 Purpose and achievement

QMDC asserts clause 3 because it restricts the scope of environmental offsets within a test of significance will potentially lead to unmitigated environmental harm. QMDC believes this test will be laden with value judgment and inadequate risk analysis, especially with regards to cumulative impacts. QMDC only supports actions designed to compensate for significant residual adverse environmental impacts arising from project development after appropriate prevention and mitigation measures have been taken.

The purpose of the Bill should include wording that clearly articulates that offsets for residual impacts should achieve no net loss, social licence to operate and other net gains, e.g. of, biodiversity, water and soil quality, vegetation protection and regrowth with respect to species composition, habitat structure, ecosystem function etc and people's use and cultural values associated with environmental assets.

In March 2010 a study *Biodiversity offsets and the mitigation hierarchy: a review of current application in the banking sector* completed on behalf of the Business and Biodiversity Offsets Programme and the UNEP Finance Initiative by PricewaterhouseCoopers LLP, highlighted that despite human reliance on ecosystem services, biodiversity is under-valued by modern economies and is diminishing at a rapid rate.

The study supports the *Millennium Ecosystem Assessment, Ecosystems and Human Well-being: General Synthesis, 2005, (The Millennium Ecosystem Assessment)* which shows that over the past 50 years, humans have changed ecosystems more rapidly and extensively than in any comparable period of time in human history.

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Much of this loss is attributed to developments in the agriculture, forestry, mining, and transport and construction sectors, among others.

Some examples of biodiversity decline, described in *The Millennium Ecosystem Assessment*, include:

- “Conversion of more land to cropland in the 30 years after 1950 than in the 150 years between 1700 and 1850;
- The loss of approximately 20% of the world’s coral reefs and an additional 20% degraded in the last decades of the twentieth century; and
- Over the past several hundred years, humans have increased the species extinction rate by as much as 1,000 times over background rates typical over the planet’s history.
- Despite the socio-economic importance of biodiversity, and the ecosystem services it underpins, these values are not well reflected in economic and development policies, investment decisions or consumption patterns. Indications are that they could be very significant, as the following varied illustrations show:
 - In 2007 the collapse of bee colonies was calculated to have cost US producers US\$15b (United States Department of Agriculture, 2007)
 - By mid-2008 the 1989 ExxonMobil oil spill in Alaska had cost the company US\$5b in fines and clean-up costs
<http://www.greenpacks.org/2009/06/16/exxon-mobilorderedto-pay-507-5-million-in-damages-for-the-1989-oil-spill-in-alaska/>
 - In the 1990s, Vittel (Nestlé Waters) chose to address groundwater contamination from local agricultural nitrates by compensating farmers and helping them to convert to more sustainable practices. In the first seven years Vittel spent US\$32m on this program (Perrot-Maitre, Daniele *The Vittel payments for ecosystem services: a “perfect” PES case?* (2006)). This is a substantial sum, but small relative to the cost of plant closure, relocation, or brand damage which befell some competing brands.
 - The annual economic cost of loss of biodiversity and ecosystem degradation was estimated at US\$2–4.5tn (3.3 –7.5% of global GDP) in 2008 (*TEEB Cost of Policy Inaction Study*, 2008).
- In essence, the continuing loss of biodiversity at global to local scales places great stress on the ability of ecosystems to provide the benefits that people and businesses need. Climate change will only exacerbate the decline of biodiversity: the Intergovernmental Panel on Climate Change (IPCC) forecasts that if the average global temperature increases by more than 2.5°C, 20-30% (varying among regional biotas from 1% to 80%) of animal and plant species will face extinction.
<http://www.ipcc.ch>

http://www.unepfi.org/fileadmin/documents/biodiversity_offsets.pdf

In light of this and recent Australian data illustrating regional ecosystem and species decline, soil and water contamination, air pollution etc the framework for offsets must implement much higher levels of protection than currently legislated. Impacts on Threatened and Vulnerable Wildlife and Special Least Concern Animals will require offsets.

BBOP has established a framework for designing and implementing biodiversity offsets and verifying their success. The framework consists of key principles with criteria and indicators.

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BBOP assert that biodiversity offsets should be designed to comply with all relevant national and international law, and planned and implemented in accordance with the Convention on Biological Diversity and its ecosystem approach, as articulated in National Biodiversity Strategies and Action Plans. http://www.forest-trends.org/documents/files/doc_3319.pdf

QMDC believes this Bill needs to also comply in this way and adopt BBOP's framework.

4.1.1 Recommendations:

That the Bill adopts BBOP's framework to include the following or similar wording:

Principle 1

Adherence to the mitigation hierarchy: An environmental offset is a commitment to compensate for significant residual adverse impacts on environmental assets identified after appropriate avoidance, minimization and on-site rehabilitation measures have been taken according to the mitigation hierarchy.

Criterion 1-1

The developer shall identify, implement and document appropriate measures to avoid and minimize the direct, indirect and cumulative negative impacts of the development project and to undertake on-site rehabilitation/restoration.

Indicator 1-1-1

An assessment of the development project's impacts (including direct, indirect and cumulative impacts, as appropriate) is conducted with stakeholder participation.

Indicator 1-1-2

Measures to avoid and minimize environmental asset loss and to rehabilitate/restore asset function and condition affected by the project are defined and documented, and these measures implemented, monitored and managed for the duration of the project's impacts.

Criterion 1-2

The offset shall only address the residual impacts of the development project, namely those impacts left after all the appropriate avoidance, minimisation and rehabilitation/restoration actions have been identified.

Indicator 1-2-1

Any residual losses that may exist following avoidance, minimisation and rehabilitation/restoration are identified and described in the Offset Management Plan.

Principle 2

Limits to what can be offset: There are situations where residual impacts cannot be fully compensated for by an environmental offset because of the irreplaceability or vulnerability of the asset affected.

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Criterion 2-1

The risk that the project's residual impacts on the asset may not be capable of being offset ("non-offsetable") shall be assessed and measures taken to minimize this risk.

Indicator 2-1-1

A risk assessment is undertaken to predict the level of risk that the project's residual impacts on the asset will be not be capable of being offset, with special attention afforded to any highly irreplaceable and vulnerable asset components.

Indicator 2-1-2

The risk assessment demonstrates how the project's residual impacts can and will be offset through specific measures and commitments, taking into account the level of risk and uncertainties regarding the delivery of the offset.

Principle 3

Landscape context: An environmental offset should be designed and implemented in a landscape context to achieve the expected measurable conservation outcomes taking into account available information on the full range of biological, social, and cultural values of the asset and supporting an ecosystem approach.

Criterion 3-1

The offset shall be designed and implemented to complement and contribute to conservation priorities identified at the landscape, eco-regional and national levels.

Indicator 3-1-1

The identification of potential offset locations is undertaken in the context of a landscape-level analysis, and the ecosystem approach is used to plan the offset.

Indicator 3-1-2

The offset shall be designed and implemented for the long term, taking into consideration other likely developments (e.g., competing land use pressures) within the landscape.

Criterion 3-2

Evidence is provided that any reasonably foreseeable future developments that might affect the offset, including developments by third parties, have been considered in the offset design.

Indicator 3-2-1

Evidence is provided that the offset gains and conservation outcomes contribute to regional and national conservation goals, where these exist.



Indicator 3-2-2

Evidence is provided that the offset planner has proposed to the relevant government authorities that the offset should be incorporated, where possible, within local, regional and national government land use or other similar plans. Vegetation offsets need to be protected within State legislation.

Principle 4

No net loss: An environmental offset should be designed and implemented to achieve in situ, measurable conservation outcomes that can reasonably be expected to result in no net loss, a “social licence to operate” and other potential net gains.

Criterion 4-1

The no net loss or net gain goal for the development project shall be explicitly stated, and the offset design and conservation outcomes required to achieve this goal clearly described.

Indicator 4-1-1

The commitment to a goal of no net loss or a net gain of all asset components affected by the project is stated by the project developer in a publicly available document.

Indicator 4-1-2

All residual losses due to the project are quantified relative to the “pre-project” condition of the affected asset, which is identified, characterized, and documented.

Indicator 4-1-3

The gains anticipated from the offset are quantified relative to the “without-offset” condition of the asset in the area of the offset site(s). The “without offset” asset condition is identified, characterized, and documented.

Indicator 4-1-4

The Offset Management Plan (BMP) describes the offset design and its intended conservation outcomes, and includes the evidence and assumptions used to predict that these outcomes will result from the offset activities described.

Criterion 4-2

An explicit calculation of loss and gain shall be undertaken as the basis for the offset design and shall demonstrate the manner in which no net loss or a net gain can be achieved by the offset. The methodology(ies) used for calculations need to be universally and consistently applied.

Indicator 4-2-1

A set of key asset components at species, habitats and ecosystem levels, including landscape features and components related to use and cultural values, is identified. The rationale for selecting these key asset components to represent all the assets affected by the project is explained and documented.



Indicator 4-2-2

Methods for (1) determining the equivalence of residual losses and gains (assessing like for like or better) in the offset design, and (2) calculating the net balance of losses due to the development project and gains due to the offset activities, including identification of suitable metrics, are identified and the rationale for their selection explained and documented.

Indicator 4-2-3

The methods used for determining equivalence of environmental asset losses and gains address equity/comparability in the type and condition, the location, and if possible, the timing of asset losses and gains, and explicitly consider the key asset components.

Indicator 4-2-4

The metrics selected for quantifying the net balance of losses and gains capture the type, amount and condition of affected assets, including the key asset components, and are used to calculate losses and gains in the offset design.

Indicator 4-2-5

The methods to determine net balance and equivalence of losses and gains (Indicator 4-2-2) are applied as the basis for the offset design, and demonstrate no net loss or a net gain.

Criterion 4-3

The offset design and implementation shall include provisions for addressing sources of uncertainty and risk of failure in delivering the offset.

Indicator 4-3-1

Sources of risk and uncertainty in the design and implementation of the offset (including in the loss/gain calculations), together with the measures taken to manage them, are documented in the Offset Management Plan.

Indicator 4-3-2

A series of milestones for implementing the offset, tracking progress towards achieving no net loss or net gain and verifying that the offset delivers the intended conservation outcomes, is established and monitored.

Principle 5

Additional conservation outcomes: An environmental offset should achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations. The fragmented nature of this region requires serious consideration of impacts to species displaced in the short term e.g. provision of artificial nest boxes may be necessary as part of a 10 year offset plan.

**Criterion 5-1**

The conservation outcomes of the offset shall be “additional” in that they are due to the offset activities and would not have occurred without them.

Indicator 5-1-1

Evidence is provided that the conservation gains at the offset site(s), calculated as the difference between the conservation outcomes with and without the proposed offset activities, were caused by the offset activities. The gains are predicted for a specified, long-term period, and monitored and verified during offset implementation.

Criterion 5-2

The offset shall be designed and implemented to avoid ‘leakage’: the displacement by the offset of activities that harm the asset from one location to another.

Indicator 5-2-1

An assessment is undertaken to identify potential leakage resulting from the offset activities.

Indicator 5-2-2

The offset design includes provisions for addressing the risk of leakage and these are put into effect during implementation.

Principle 6

Stakeholder participation: In areas affected by the development project and by the offset, the effective participation of a wide range of stakeholders should be ensured in decision-making about offsets, including their evaluation, selection, design, implementation, and monitoring. Consultation should not be restricted to neighbouring property owners to a proposed development area to ensure wider public and regional interests are represented.

Criterion 6-1

Consultation and participation of relevant stakeholders shall be integrated into the decision-making process for offset design and implementation, and documented in the Offset Management Plan.

Indicator 6-1-1

Relevant stakeholders are identified and informed of the plan to design and implement an offset for the project.

Indicator 6-1-2

Records are maintained that document the results of informed consultation and participation of relevant stakeholders related to the design and implementation of the offset.

**Indicator 6-1-3**

The roles of relevant stakeholders in the implementation of the offset, including its evaluation and monitoring, are established and clearly defined in the Offset Management Plan.

Indicator 6-1-4

For projects and/or offsets with adverse impacts on indigenous peoples, their free, prior and informed consent (FPIC) will be obtained and documented.¹⁴ The process of obtaining FPIC and the outcome (i.e., evidence of agreement between parties) for the purposes of this Indicator need to be set out in a Performance Standard designed to protect cultural heritage values and rights. Adverse impacts on indigenous peoples are impacts to lands and natural resources subject to traditional ownership or under customary use, relocation of indigenous peoples from communally held lands and natural resources subject to traditional ownership or under customary use, and significant impacts to critical cultural heritage.

Criterion 6-2

A mutually agreed and documented system for handling grievances exists and is accepted and implemented by all relevant parties.

Indicator 6-2-1

A documented system, which handles and resolves grievances in an effective, timely and appropriate manner and records outcomes, is in operation and open to relevant affected parties.

Principle 7

Equity: An offset should be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks, and rewards associated with a development project and offset in a fair and balanced way, respecting legal and customary arrangements. Special consideration should be given to respecting both internationally and nationally recognized rights of indigenous peoples and local communities.

Criterion 7-1

Rights, responsibilities, risks, and rewards shall be clearly identified and mechanisms to share these fairly amongst relevant stakeholders shall be included in the Offset Management Plan.

Indicator 7-1-1

The Offset Management Plan references all agreements with relevant stakeholders pertaining to sharing of rights, responsibilities, risk, and rewards related to the design and implementation of the project and offset.



Indicator 7-1-2

Documented evidence exists that agreements concerning the project and the design and implementation of the offset were entered into willingly by all parties and comply with existing regulations, recognize customary arrangements and, as appropriate, respect the internationally and nationally recognized rights of indigenous peoples.

Indicator 7-1-3

Agreements with relevant stakeholders demonstrate that the impacts on peoples' asset uses and values resulting from the development project and offset have been taken into account and appropriately compensated.

Principle 8

Long-term outcomes: The design and implementation of an offset should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the development project's impacts and preferably in perpetuity.

Criterion 8-1

Mechanisms shall be in place to ensure that the measurable conservation outcomes from the offset will outlive the duration of the development project's impact.

Indicator 8-1-1

Evidence is provided that those responsible for implementing the offset (see Indicator 6-1-3) have the requisite management and technical capacity.

Indicator 8-1-2

Legal and financial mechanisms are in place to guarantee the financial and institutional viability of the offset for at least the duration of the project's impacts, including under conditions of a sale, or transfer of project ownership or management.

Criterion 8-2

Adaptive monitoring and evaluation approaches shall be integrated into the Offset Management Plan to ensure regular feedback and allow management to adapt to changing conditions, and achieve conservation outcomes on the ground.

Indicator 8-2-1

Evidence is provided that the measures to manage and mitigate identified risks (see Indicator 4-3-1) are implemented, the results are monitored, and that risk assessment and management are adapted as necessary throughout offset implementation.

Indicator 8-2-2

Offset conservation outcomes and milestones are independently audited and project responds to audit recommendations in a timely manner.



Indicator 8-2-3

A system exists for monitoring and evaluating the success of offset implementation, including the monitoring of risks, and this provides regular feedback, which is used to document, correct and learn from problems and achievements.

Principle 9

Transparency: The design and implementation of an offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.

Criterion 9-1

The developer responsible for designing and implementing the offset shall ensure that clear, up to date, and easily accessible information is provided to stakeholders and the public on the offset design and implementation, including outcomes to date.

Indicator 9-1-1

Information on baseline findings, impact assessment as well as offset design and implementation is reported to stakeholders and the public in appropriate media during offset design and implementation.

Indicator 9-1-2

An independent mechanism (such as a steering committee, review panel, or system for peer review) is established to oversee the offset design and implementation process and report regularly to the public on their assessment of progress.

Principle 10

Science and traditional knowledge: The design and implementation of an offset shall be a documented process informed by sound science, including an appropriate consideration of traditional knowledge.

Criterion 10-1

Scientific information, and traditional knowledge, shall be utilised when designing and implementing the offset.

Indicator 10-1-1

The Offset Management Plan describes how the best available scientific knowledge and methods have been used in offset design and implementation, providing evidence of consultation with scientific experts.

Indicator 10-1-2

The Offset Management Plan describes whether and how relevant traditional knowledge has been used in offset design and implementation, with, as appropriate, the involvement and prior approval of local communities and indigenous peoples, and of relevant experts.



4.3 Part 3 Division 2 Key concepts and definitions

In QMDC's opinion the mitigation hierarchy needs to be a core concept informing the mechanisms of this Bill. The mitigation hierarchy is widely regarded as a best practice approach to managing biodiversity risk.

Developers are required to produce an Environmental Impact Statement (EIS), including a Social Impact Assessment, where social and environmental aspects are considered together. EISs assess the size and significance of the impacts, and recommend mitigation measures.

The EIS is an obvious vehicle for integrating offsets and the mitigation hierarchy into existing corporate procedures. In addition to regulatory requirements, investors may also require their clients to apply the mitigation hierarchy with care. Following approval of a development, an Environmental Management Plan (EMP), is produced to set out how the mitigation measures will be implemented and monitored.

EMPs cover a wider 'environmental' remit and hence are not exclusively focused on biodiversity or ecological outcomes, but have the capacity to capture actions taken to implement the mitigation hierarchy. Indeed some do already. In addition, Offset Management Plans or Biodiversity Action Plans could be used to detail more specifically a set of future offsets actions that will lead to the conservation or biodiversity enhancement.

4.3.1 Recommendations:

QMDC recommends including a mitigation hierarchy and to read as follows:

- 1. Avoidance: measures taken to avoid creating impacts from the outset, such as careful spatial or temporal placement of elements of infrastructure, in order to completely avoid impacts on certain components of the asset.**
- 2. Minimisation: measures taken to reduce the duration, intensity and/or extent of impacts (including direct, indirect and cumulative impacts, as appropriate) that cannot be completely avoided, as far as is practically feasible.**
- 3. Rehabilitation/restoration: measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and/or minimised.**
- 4. Offset: measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimised and/ or rehabilitated or restored, in order to achieve no net loss or a net gain. Offsets can take the form of positive management interventions such as restoration of degraded habitat, arrested degradation or averted risk, protecting areas where there is imminent or projected loss of the asset.**



4.4 Part 4 Environmental offsets policies

QMDC asserts that current biodiversity policy instruments should be one of the integral drivers informing environmental offset policies. At the global level, the main policy instrument for conservation is the United Nations Convention on Biological Diversity (CBD), now ratified by 193 state Parties.

Highlighted in the discussion paper, *Towards an Environmental Mitigation and Offsetting Policy for Provincial Crown Land in British Columbia* is that most of the national and international offset policies that were reviewed did not use replacement of total habitat area as the primary goal of offsetting activities; rather, the goal is replacement of lost habitat functions and values. “The Mitigation Hierarchy” was a common feature of all the policies, which includes the sequence of mitigation alternatives: Avoidance of impacts, Minimization of unavoidable impacts, and Offsetting (or “Compensation”) for unavoidable impacts. The discussion paper also found that in many cases, the order of preference for offset locations was also specified (e.g. *Policy for the Management of Fish Habitat* hierarchy from most to least preferred is “like-for-like” habitat in the same ecological unit, unlike habitat in the same ecological unit, or unlike habitat in different ecological units).

http://www.env.gov.bc.ca/emop/docs/EMOP_DiscussionPaper.pdf

The policy needs to be broad enough to encourage an increase in the number of organisations and initiatives working to integrate offset considerations into business and commercial activities. International partnership trends illustrate this particular significance, which needs to be encouraged regionally and nationally in Australia:

- **UNEP FI:** is a public-private partnership between UNEP and the global financial sector, with over 180 member organisations. UNEP FI’s Biodiversity & Ecosystem Services Work Stream (BESW) assists financial institutions to address the challenges arising from the loss of biodiversity and the degradation of ecosystem services. The activities of the BESW are carried out with the support of a number of UNEP FI signatory members, as well as recognised NGOs and advisory partners. See <http://www.unepfi.org/> for further details.
- **BBOP:** is a partnership between over 70 companies, governments, financial institutions and conservation experts to explore biodiversity offsets. Key objectives include:
 - Demonstrating no net loss of biodiversity and livelihood outcomes in a portfolio of biodiversity offset pilot projects;
 - Developing, testing, and disseminating best practice on biodiversity offsets, ultimately resulting in standards for best practice in biodiversity offsets; and
 - Contributing to policy and corporate developments on biodiversity offsets so they meet conservation and business objectives. See <http://forest-trends.org/> for further details.
 - *The Economics of Ecosystems and Biodiversity (TEEB):* is a major international initiative to bring attention to the global economic benefits of biodiversity and draw together expertise from the fields of science, economics and policy to enable practical actions moving forward.

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- *WBCSD Ecosystems Champions Group*: comprising over 60 companies aims to address ecosystem services-related business risks and promote market-based approaches that support the sustainable use of ecosystem services.
- *Business and Biodiversity Initiative* (introduced by the German Federal Ministry for the Environment) aims to intensify the engagement of the private sector by encouraging companies to: incorporate the conservation and sustainable use of biodiversity into their management systems by signing and implementing the Leadership Declaration; publish their best practices and broaden the international profile of the initiative.
- The mineral extraction industry has specific environmental and social industry groups to assist sector companies with management of biodiversity issues. Examples include *IPIECA* (International Petroleum Industry Environmental Conservation Association), with a specific Biodiversity Working Group, and *ICMM* (International Council on Mining and Metals), with an Environment Stewardship Program. Both groups have worked on biodiversity offsets.

Such engagement at this policy level may enable both individual companies and an industry to develop their relationship with local and regional communities and help to build their social licences to operate.

According to some development proponents in British Columbia whose work was studied as case studies for the *Environmental Mitigation and Offsetting Policy for Provincial Crown Land in British Columbia*, several benefits arise from environmental mitigation and offsetting. The *British Columbia Ministry of Transportation and Infrastructure* and *Northgate Minerals Corporation* noted the “social license” or social benefit from including environmental mitigation or offsetting plans within their development projects. A representative from the *British Columbia Hydro* funded *Fish and Wildlife Compensation Program* stated that one of the benefits to environmental mitigation and offsetting is developing positive relationships and partnerships with regulatory bodies, local government, First Nations and the public.

http://www.env.gov.bc.ca/emop/docs/EMOP_DiscussionPaper.pdf

QMDC asserts that overall this clause is too ambiguous, the policy scope is too narrow its implementation undermined by the use of the word “or” to describe its proposed content.

4.4.1 Recommendations:

We recommend the Bill providing clear guidelines as to what must be included in the policy and that the policy should clearly articulate the following:

- **Policy scope - who it will affect directly and indirectly**
- **Where it will or won't apply**
- **Where it may apply**
- **Principles of the policy, for example:**
 - **no net loss**
 - **long term public interest**
 - **follow international conventions for offsetting by applying a scaled/tiered/hierarchical approach**
 - **align the Policy with similar Federal policies**

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- **integrating regional government natural resource management approach to effectively address environmental impacts**
- **apply a strategic risk-based approach, using decisions informed by science and traditional knowledge to select appropriate offsetting activities**
- **develop environmental standards, and provide on-line guidance, spatial data, and best management practices related to environmental resources, and offsetting opportunities**
- **it will be updated to align with compliance audits, environmental trends and effectiveness outcomes**
- **apply full cost accounting fairly: the cost of the development needs to consider the impact to the environment, and to fully understand the costs, one must incorporate the offset costs**
- **promote additional conservation actions by providing a variety of incentives, both non-monetary and financial mechanisms**
- **encourage proponents to undertake project planning, design, construction, and operations that will lessen environmental impacts**
- **link environmental offsets with impacted environmental resources. Where feasible, environmental mitigation and offsetting actions should address the impacts that are proposed to affect or have affected specific environmental resources in the area affected by a development project or activity. Mitigation measures and offsets should be carried out close to the site where environmental resources are being impacted, or protect the same type of environmental resources. For example, damage to one species' habitat would necessitate restoration of that species' habitat in the vicinity of the footprint of the development or activity, or when that is not feasible, within that ecological community, catchment and/or other relevant area-based designation. For species of importance to Traditional Owners, damage to a species' habitat in one Traditional Owners' traditional country would need to be addressed within that Traditional Owners' traditional country.**

4.5 Clause 5

QMDC is most concerned by the Bill's lack of jurisdiction over the Coordinator General's decisions on the biggest development projects in Queensland. Clause 5 effectively means these projects will have no standards on how offsets are to be applied to their development. This is of concern because when read in the context that there is no statutory judicial review of the Coordinator General's decisions and conditions, this potentially allows major large scale environmental harm to occur without mitigation.

This involves than just coordinated projects, it also refers to State Development Areas, Private Infrastructure Facilities and Prescribed Projects all of which empower the Coordinator General under the *State Development and Public Works Organisation Act 1971 (SDPWOA)* to manage land use and compulsorily acquire land.

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For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

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Clause 5 means the Coordinator General is not bound to any standards regarding offsets and is under no obligation to apply the standards in the Bill and can impose less offsets and lower standards on major projects in Queensland, which are often the most environmentally risky projects.

4.5.1 Recommendation:

Amend clause 5 so that the Coordinator General is bound by the legislation.

4.6 Exclusive power to the State Assessment and Referral Agency

QMDC does not support the Department of State Development Infrastructure and Planning (DSDIP) to be exclusively deciding on offsets for most development under the State Assessment and Referral Agency. QMDC asserts that it is inappropriate that offset conditions for development applications under SPA are not determined and decided by EHP. This we believe does not reflect the Commonwealth approach of the Environment Minister making decisions on environmental impacts. Giving these legislative powers to the State Assessment and Referral Agency means that DSDIP is not required to obtain advice from EHP in relation to whether impacts are unacceptable, whether they could be avoided or mitigated in the first place, or appropriate offset conditions.

4.6.1 Recommendation:

Amend the SPA to make EHP a concurrence agency for applications that have any environmental impacts.

4.7 Clause 8 Significant residual impacts

QMDC is concerned that attaching the adjective 'significant' to residual impacts creates a lower standard than the previous Queensland offsets policies, which simply referred to residual impacts. By including the word 'significant', without a cumulative assessment of impacts on all environmental assets including MSES and MNES, may result in large scale environmental decline.

We note that guidelines are currently being developed for significant residual impact, however we argue that this important criteria should form part of the Act.

Section 8(4) is confusing does this mean that activities that are not prescribed but that have significant impacts will not require offsets?

4.7.1 Recommendations:

- **Define “significant residual impact” and provide clear examples**
- **Significant residual impact criteria to be enshrined in legislation**
- **Section 8(4) be clarified**



4.8 Clause 9 Prescribed activities

QMDC is concerned that if there are changes to prescribed activities this will mean they will not require offsetting.

4.8.1 Recommendation:

Ensure any new red-tape reduction legislation including *Planning For Queensland's Development Bill* does not reduce the prescribed activities requiring offsets – ensure they are the same level as SPA.

4.9 Clause 10 Prescribed environmental matters

QMDC asserts the Bill must ensure there is no reduction in standards by requiring **all** residual impacts to be offset.

4.10 Part 5 14 Imposing offset conditions

It is unclear how the administering agency will determine it is satisfied that an offset condition is warranted and how that will be publically reported.

QMDC believes a higher standard than just “cost effective” to measure offsets is needed. A cost-based assessment is inappropriate and the proponent. No reference is made in either the Bill or Explanatory Notes to who is responsible for making a decision on cost-effectiveness under s 14(2)(b) and what (if any) considerations may be taken into account by the relevant decision-maker. QMDC is therefore concerned it imposes a very low standard that could easily be met by any proponent who would incur costs for on-site mitigation measures. In turn this would lead to a proponent bypassing the Avoid-Mitigation steps relatively easily and opt for a financial settlement offset without engaging in any avoidance or mitigation procedures. This would undermine the fundamental purpose of the ‘hierarchical’ approach of Avoid-Mitigate-Offset.

4.10.1 Recommendation:

Amend clause 14(2)(b) to remove the word ‘cost-effective’ and replace with ‘whatever is required to achieve ecological equivalence’.

4.11 Part 6 Division 3 Proponent-driven offsets

The Bill must clearly articulate what criteria the proponent driven offset must meet before it is accepted as meeting legal offset obligations and how outcomes of these offsets and compliance will be monitored.

4.12 Clause 23 Financial settlement offsets & clause 85(d) investments

Ethical investing of the financial settlements should be integral to the Bill’s fiscal obligations to ensure that the money is appropriately used to support industries that contribute to net environment gains.



4.12.1 Recommendations:

- **The methodology and tools used to calculate a financial settlement offset need to be internationally peer-reviewed and available for public comment.**
- **Amend causes 85-86 to ensure that an investment made under clause 85(d) is invested in industries that are actively committed to creating a net environment gain or improvement**

4.13 Clause 27 Environmental offset agreements and clause 34 related breaches

The Bill needs to clearly articulate on what grounds an agreement can be varied, terminated and replaced.

Additionally, local government or the chief executive “may”, if they “reasonably believe” a party to have contravened terms of an environmental offset agreement give a “compliance notice”. QMDC is concerned that this permits discretion decisions regarding non-compliance. There is no clarity in the Bill with regards to fines or penalties that can be imposed if the terms of an offset agreement are breached, only if the compliance notice is breached. By that time, the harm is likely to have already occurred.

4.13.1 Recommendations:

- **It be written in to the Bill on what grounds an agreement can be varied, terminated and replaced**
- **Amend clause 34 to determine that it is an offence to breach a term of the agreement, which requires immediate penalties and not a time consuming contractual dispute or a compliance notice period**

4.14 Part 9 Compliance notices

Local government must be resourced appropriately to ensure compliance.

4.15 Clause 17(3) & (4)

This clause uses ‘may’ to describe enforcement. If the person to whom the clause applies breaches a deemed offset condition, they must be dealt with under the other Act and prosecuted.

4.15.1 Recommendation:

Amend clause 17(3) and replace ‘may’ with ‘must’.

4.16 Clause 21

QMDC asserts that before a project is approved the Bill must ensure that the proponent is able to legally secure the offset area(s) prior to impacting on the environmental asset or matter.



This would give EHP certainty that the area has been legally secured prior to an asset or area being compromised or destroyed.

4.16.1 Recommendation:

Amend clause 21 to require the proponent to legally secure the offset area prior to the impacts. Destruction of the environmental matter cannot proceed until EHP is satisfied that the area has been legally secured.

4.17 Part 10 Division 2 Subdivision 1 Appointment

No qualifications are stated in the Bill. These need to be disclosed.

4.18 Clause 89 Public register

QMDC supports the establishment of a public register however it needs to include all relevant data including offset delivery plans.

Communities of the QMDB and the wider public have a right to access this information and know the details of how an offset is to be achieved. Additionally, community groups can assist EHP with their monitoring and enforcement if the public is aware of the offset requirements.

Transparency is vital to ensure community confidence. If EHP is providing significant amounts of money to landowners then the public should be provided details of that expenditure. There is no administrative burden to government for doing so as the data is already available. It is consistent with the Premier's open and transparent government policy and reform. It is necessary to improve an industry's, business or company's social licence to operate. If details are not made available, it will reduce community confidence in the framework.

Opportunities for public comment on these offset delivery details must form part of the EA process. The existing EA submissions and objections allow for a degree of community involvement that could run concurrently with the opportunity for public input into offset delivery details.

4.18.1 Recommendations:

- **Amend clause 89 to provide opportunities for public comment.**
- **Amend clause 89(2) to require the administrating agency to make the register publically accessible in an electronic form online**

4.19 Clauses 111 & 138

QMDC does not support the amendments to s.207(1)(c)the *EPA* and s.346A(2), namely to remove the requirement that an offsets condition may only be imposed "if the administering authority is satisfied all cost-effective on-site mitigation measures for a relevant activity have been, or will be, undertaken."

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QMDC asserts that this is unwarranted and undermines the 'principal' assessing legislation, the *EPA* and *SPA*. The requirement for the decision maker to actively consider and be satisfied that all cost-effective on-site mitigation measures will be undertaken under the *EPA* or *SPA* is crucial.

It is, in our opinion, not appropriate to merely have this reference in this Bill. It must remain integral to the consideration of the assessment under the *EPA* or *SPA* without reference to another Act.

4.19.1 Recommendation:

Omit clauses 111 and 138 of the Bill.