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## Marine Ecology and the Environmental Offsets Bill 2014 (the Bill)

The purpose of this brief submission is to focus attention on how the proposed legislation would deal with environmental offsets for significant residual impacts in areas with coastal and/or marine ecology. Environmental offsets for coastal and marine ecologies are less common than for terrestrial ecologies. However, when projects such as ports, marinas and canal estates are put forward it is important to understand how environmental offsets may apply.

A topical example of such a project is the planned marina of up to 800 berths included in the Toondah Harbour Priority Development Area (PDA) proposed development scheme.<sup>1</sup>



Figure 1 Toondah Harbour marina site

If such a project were to proceed as currently planned it would impact on or destroy up to 50 hectares of coastal and marine ecology including mangroves, tidal mudflats and seagrass beds. The planned development area is located in the Moreton Bay Marine Park Habitat Protection Zone.<sup>2</sup> It is also part of the internationally significant Moreton Bay Ramsar site.<sup>3</sup>

These habitats are protected because of their rich ecologies and because they support species which have conservation requirements. Notable examples include the dugong, green turtle and loggerhead turtle which are all regarded as vulnerable or endangered. The development area is frequented by many migratory shorebirds such as the vulnerable eastern curlew listed in various bilateral conservation agreements between the Australian Government and other countries.<sup>4</sup>

For these reasons any development would require rigorous environmental assessments. The proposed Toondah Harbour development scheme notes that assessment would be required under Queensland's Marine Parks Act 2004 and that there may be a requirement for offsets. However, because any development could also impact on matters that may be of national environmental significance, it is likely that assessment under the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999 would also be required which may result in a requirement for offsets.

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<sup>1</sup> Toondah Harbour PDA Proposed Development Scheme and public notification:  
<http://www.dsdip.qld.gov.au/infrastructure-and-planning/toondah-harbour.html>

<sup>2</sup> Map of Moreton Bay Marine Park March 2009:  
<http://www.npsr.qld.gov.au/parks/moreton-bay/zoning/pdf/map3-zoningplus.pdf>

<sup>3</sup> Australian Government, Department of the Environment, Moreton Bay Ramsar site, Overview:  
<http://www.environment.gov.au/cgi-bin/wetlands/ramsardetails.pl?refcode=41>

<sup>4</sup> Australian Government, Department of the Environment, Bilateral migratory bird agreements:  
<http://www.environment.gov.au/node/14280>

In considering the possibility that a marina is proposed which would impact significantly on matters of environmental significance a decision maker could either refuse to approve the development or approve the development with environmental offset requirements. This begs the question of how an approving entity can determine suitable offsets for a variety of coastal and marine conservation matters such as but not limited to dugongs, green turtles, loggerhead turtles and eastern curlews.

Assuming that the offset would have to comply with the EPBC Act, these following principles for offsets as set out in the Commonwealth Government's offset policy would provide important guidance:

*Suitable offsets must:*

1. *deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environment law and affected by the proposed action*
2. *be built around direct offsets but may include other compensatory measures*
3. *be in proportion to the level of statutory protection that applies to the protected matter*
4. *be of a size and scale proportionate to the residual impacts on the protected matter*
5. *effectively account for and manage the risks of the offset not succeeding*
6. *be additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs (this does not preclude the recognition of state or territory offsets that may be suitable as offsets under the EPBC Act for the same action, see section 7.6)*
7. *be efficient, effective, timely, transparent, scientifically robust and reasonable*
8. *have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced.*

*In assessing the suitability of an offset, government decision-making will be:*

9. *informed by scientifically robust information and incorporate the precautionary principle in the absence of scientific certainty*
10. *conducted in a consistent and transparent manner<sup>5</sup>*

The Commonwealth Government goes on to note that:

*Direct offsets are an essential component of a suitable offsets package. A minimum of 90 per cent of the offset requirements for any given impact must be met through direct offsets.<sup>6</sup>*

It is an espoused aim of the Environmental Offsets Bill 2014 to minimise regulatory duplication by meeting the environmental offset requirements of the Commonwealth Government where they apply through national environment law. The planned Toondah Harbour marina project gives the Committee a case study which can be used to test how this might work in practice.

In its deliberations on the Environmental Offsets Bill 2014 the Committee should ensure that careful consideration is given to how the legislation together with subordinate regulations, policies and guidelines will apply to protect important conservation matters in coastal and marine ecologies such as the planned Toondah Harbour marina project.

Environmental impacts of projects in marine areas are less easily observed and monitored than impacts of projects in terrestrial areas. This suggests that the precautionary principle is particularly important. For this reason consideration should be given by the Committee to removing the maximum multiplier factor of 4 to 1 for environmental impacts on marine ecologies.

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<sup>5</sup> Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy, October 2012, Page 6  
<http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf>

<sup>6</sup> Ibid, Page 8