

24 March 2014

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

Dear Sir

Submission to the Inquiry on the *Environmental Offsets Bill 2014*

The Council of Mayors (SEQ) welcomes this opportunity to provide input to the inquiry into the *Environmental Offsets Bill 2014*. The Council of Mayors (SEQ) is an independent local government advocacy organisation for the one in seven Australians living in South East Queensland (SEQ). Our Board's Directors are 10 Mayors of the region.

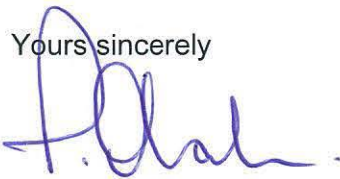
The Council of Mayors (SEQ) endorsed the position in this cover letter and attachment on 24 March, 2014. The attachment refers in the main to the draft Offsets Framework provided to our organisation by the Department of Environment and Heritage Protection ("the Department") on the 27 November, 2013 as well as comments on the Bill itself. Unfortunately, our organisation has not had time to cross-check comments with the Policy recently published on the Departmental website (17 March, 2014). The Council of Mayors (SEQ) believes that the issues raised in this submission will need to be addressed through the Bill and related regulations to allow councils in the SEQ region to successfully participate in the offsets arena.

I would like to note that our organisation has been in almost continual engagement with the Department regarding its review of the offsets legislation since this commenced in 2012. In the main this has been positive, however you will note in the attached points that a single approach that tries to apply to the entire state will not be workable in SEQ due to its higher land values. While the Bill refers to payment calculations, I urge the Committee to look into the detail and what it means for SEQ.

Prior to commencement of this government's review of the offsets legislation, Council of Mayors (SEQ) endorsed an interim framework for environmental offsets in SEQ, available at <http://www.councilofmayorsseq.qld.gov.au/Projects/Environmental-Offsets.aspx>. You will note the long held position of locating offsets as close as possible to the source of impact and I welcome its inclusion in the recently published Policy. However, this will not be

possible if a payment calculation is retained which makes SEQ offset sites financially unfeasible.

Please do not hesitate to contact me should you require any further information regarding our position on this matter. I look forward to your positive consideration of the issues raised in our submission.

Yours sincerely


Peter Olah
Executive Director

cc. The Mayors of SEQ

Council of Mayors (SEQ) comments on the draft One Government Environmental Offsets Framework Discussion Paper (released for targeted consultation, 27 November, 2013) and *Environmental Offsets Bill 2014*

Environmental Offsets Framework Discussion Paper - General Comments

1. The current position that the state has adopted is unacceptable on the basis that:
 - Any current local government offset policy is a 'transition' policy and one that would need to change to the state policy with an update to the planning scheme.
 - Utilising a condition based assessment means that a developer is unable to determine the offset consequence of their proposal at the time of undertaking due diligence on a project, with the net consequence being that they may not secure sufficient funds to cover that contingency and will therefore naturally fight for the removal of or reduction in the offset through the development assessment process.
 - The policy provides three clear 'escape' provisions to avoid a proper offset and those provisions will be exploited and place assessment managers and politicians under pressure to remove offset provisions or replace them with something less than a commensurate replacement of the lost value. Those escape components are the poor definition of "significant residual impact", the totally unacceptable situation where "other benefits/outcomes" outweigh the environmental harm and the capacity to condition with "alternative offset requirements".
 - The policy goes against the long standing position of Councils in SEQ requiring offsets to be applied locally.
 - The policy makes no provision for the accreditation of local offsets to comply with both federal and state offsets requirements and as a consequence make the development process smoother. A developer should only need to make one consolidated offset to be applied by local government when undertaking the development assessment process and then be applied locally to strategically build local core areas and linkages/corridors.
 - It fails to establish a standard for offsets, only an upper limit. As a consequence a myriad of different offsets will apply and this will be a boon for consultants who will be hard pressed to work out a pre-emptive position on what the condition assessment, conducted by the state, may deliver. If the state does not have the capacity and delegates condition assessment to consultants acting for the developer (and an extra cost for the developer which may exceed the cost of the offset) then local government and the state will have enormous problems determining the credibility of the assessment and be placed in the position of having to conduct their own assessments to verify the work.
 - This policy does not address the fundamental issue of the securement of offset sites. It places too much emphasis on offsets being secured on private land which means that there will be a strong possibility that offsets will not occur in a strategically coordinated fashion.

Environmental Offsets Framework Discussion Paper - Specific Comments

2. A state-wide financial calculation formula is not suitable for SEQ where land valuation is higher. It appears that the proposed approach would not enable councils to reflect the true costs of acquiring land, delivering environmental offsets and ensuring the ongoing management of environment offset sites particularly if financial contributions requested

for local environmental offsets can be no greater than the State's approach. The use of "average unimproved land value for the Local Government Authority area" (Box One) for protected areas may be a useful approach for SEQ. The administration of local level environmental offsets must be a cost neutral process for local governments. Legal and financial implications of the financial contribution approach need to be discussed as a matter of priority.

3. The Discussion Paper provides an outline that "to account for economies of scale for very large offsets a sliding scale of per hectare costs is applied". Further information is required, for example, what constitutes "very large offsets" as the financial implications for SEQ might be significant depending on the sizes envisaged.
4. Where 'financial settlement offsets' are paid to the State for MSES it is not clear whether the State will be expending it within the local government area or bioregion from which the offset was derived. This 'offsets close to site of impact' position is the long-stated position of Council of Mayors (SEQ).
5. The Discussion Paper outlines that any planning scheme that has undergone a 'state interest check' on a *Sustainable Planning Act 2009* compliant scheme, prior to the Framework coming into effect, will be considered a 'transitional' planning scheme. Further information is required about how this will apply to several SEQ councils that are at advanced stages of preparing new planning schemes and are in the process of finalising requirements for the implementation of new environmental offset provisions. In addition detailed information will need to be provided to link this work with the new State Planning Policy and Queensland Planning Provision (version 3) requirements.
6. How does a local government identify and list its MLES – does a planning scheme overlay suffice? Will a local government be permitted (through the State Interest Check) to regulate and impose offsets for values (MES) excluded by the State but consider to be important matters of local environmental significance? Do identified MLES have to be consistent across council jurisdictions? And if so how will this be resourced and coordinated (each of the councils within SEQ have different cultures, aspirations, resources and technical expertise). Should this be included with the new SEQ Regional Plan?
7. Further justification is required about how the maximum offset requirement capped at a ratio of 1:4 (other than for protected area estate offsets) aligns with current Queensland Government policy (particularly related to koala offsets). Clarification is needed as to whether a local government planning scheme can ask for a higher offset ratio where this aligns with local environmental visions.
8. Further explanation is required as to what actions may constitute acceptable offset actions to address any given impact, addressing specific residual and unavoidable environmental impacts. The proposed decision making process raises concerns around delivering consistent and accountable outcomes when determining if an offset is required. A standard for an offset is needed. The SEQ Ecological Restoration Framework is available and referenced by a number of councils already and could be incorporated into the State Offsets Framework. It provides a best practice framework to ensure consistent ecological restoration delivery across SEQ.

9. Further explanation is required on the capacity to revoke legal security of an offset and how any uncertainty will be managed.
10. Further information is required as to what may constitute a significant impact and how a final determination is made, as it does not necessarily reflect the scale at which local government operates. "Significant" needs defining.
11. There is potential uncertainty and risk associated with having undefined timeframes for achieving a conservation outcome for proponent-driven offsets.
12. There is some uncertainty associated with the proposed requirements of the 'Offset Strategy' and how it can operate in the current development assessment process. For example, it appears to allow proponents to change the phasing of an offset at any time which would add unnecessary complexity to the process.
13. Further information is required on how the discretion in assessing development is applied where local government is the assessment manager and the application is not referred to the State Government.
14. Clarification is required about future arrangements for the administration of the koala related financial payments and local government responsibilities. Further information is required as to whether the Priority Koala Assessable Development Areas will still apply, as there are koala offset requirements that are currently only specific to these areas. The DSDIP website advises that the Single State Planning Policy has repealed the South East Queensland Koala State Planning Regulatory Provisions. <http://www.dsdip.qld.gov.au/codes-policies-and-regulatory-provisions/lapsed-or-repealed-state-planning-regulatory-provisions.html> Is it expected that local government will pick up the offsets for koala habitat that does not form part of the MSES mapping through MLES mapping?
15. In a situation where a council collects development infrastructure contributions in a locally planned area and uses the monies to revegetate waterways to improve water quality and manage stormwater, can the waterway revegetation be counted towards koala net-gain calculations? Are councils still required to demonstrate koala net-gain calculations to the State?
16. The *Vegetation Management Act 1999* (VMA) is not mentioned in the legislative head of power section. An explanation of how the VMA is triggered is suggested given the recent changes to this legislation and uncertainty as to which RE classifications are triggered in urban areas.
17. The proposed change to exclude "threshold" (Of Concern) regional ecosystems (in both urban and rural areas) from requiring an offset will result in a net loss to vegetation/biodiversity in SEQ over time. It is recommended that there is a requirement for offsets for impacts to Of Concern REs.

18. The draft Framework states that offsets will not be required where an activity has an impact in an area zoned under a planning scheme for urban purposes, unless there is a significant impact on: endangered vegetation; koala habitat in South East Queensland; or fish habitat. This change (along with amendments to the VMA) may facilitate the removal of endangered REs in urban areas.
19. Identifying strategic offsets investment corridors is in principle sound; however, these need to incorporate and build on existing corridors which are also provided a level of protection/security. Identification of strategic investment corridors in SEQ requires extensive consultation (by the Department) with landholders within identified corridors.
20. There is a need to understand more clearly what the State's expectations are of councils and what capacity a council has to regulate and impose measures that go over and above what the State has implemented through the relevant legislation.
21. Members of the working group would be interested in participating in the development of a new legal security mechanism to provide flexibility for offsets, but within a simple process. The flexibility to include land that is already in public ownership would be welcomed as this will assist build landscape networks.

Environmental Offsets Bill 2014 – Comments

22. What constitutes a “significant residual impact” (...of a “prescribed activity” on a ‘prescribed environmental matter’)? This term needs to be defined and guidance provided to understand what “significant” means relative to “insignificant” (where residual impact does not require offsetting).
23. The provisions of the Bill refer to an offsets policy prepared by the chief executive and a separate document made by a local government. The Bill needs to be clear about these being two separate documents with presumably the State policy being aimed at MSES while the local government policy limited to MLES.
24. The Bill provides some direction on the desired content of environmental offset. It would also help if some basic pre-requisites could be prescribed in the proposed Act even if just to provide some consistency in format for navigation and usability purposes.
25. The Bill makes it clear that no entity can impose an offset condition on an authority/approval for substantially the same impact within substantially the same area if the impact was already the subject of an offset condition imposed by a higher authority. There are concerns regarding:
 - a. How “impact” is measured and what constitutes “substantially the same”;
 - b. There being no guarantee that the condition on the previous approval will not be amended or completely removed at some time in the future;
 - c. Potential differences between the offset standards prescribed in the offset policies for Commonwealth, State and Local governments.
26. There should be mandatory consultation with local government regarding the area of land sought for an “environmental offset protection area” to ensure the application is consistent with the intended use prescribed for the land in the relevant planning scheme.

A further obligation should be that the chief executive officer is to refuse any application that is inconsistent with the relevant planning scheme. Subsequently, local government should also then be included in being made aware of declared areas along with other authorities. Once made, the declaration can be amended, revoked and remade – there should be a statutory obligation on the chief executive to keep the local government informed of any subsequent changes to the declaration.

27. The requirement for offset financial settlements to be held in trust is overly restrictive, in addition to being contrary to legislative requirements for similar contribution systems such as those relating to trunk infrastructure charges.
28. It is stated that any proposed changes to existing approvals that are likely to result in a significant impact on a prescribed environmental matter will need to be processed under the new Act, and the new Act will then apply to the administration of the amended approval/authority. The wording used for this latter aspect is unnecessarily confusing because it is made conditional upon the proposed authority or amended authority not requiring or relating to an environmental offset. The reference to the “proposed authority not requiring or relating to an environmental offset” needs to be removed as there doesn’t seem to be any other available mechanism for dealing with the “significant residual impact” that will result from the proposed change to the authority.

END