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The Research Director
Agriculture, Resource and Environment Committee
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Dear Research Director

Environmental Offsets Bill 2014

Thank you for the opportunity for Council of the City of Gold Coast (**Council**) to make a submission to the Committee to inform its inquiry into the *Environmental Offsets Bill 2014* (**Bill**).

Council supports the Bill's policy objectives of providing a clearer, simpler environmental offsets framework that is easier to address and provides greater certainty than the current system of five standalone offset policies.

The Bill seeks to achieve these objectives through, among other things, an integrated regulatory framework. Within this regulatory framework, Council is an administering agency under the Bill, and an assessment manager for development applications under *Sustainable Planning Act 2009* (**SPA**). Many, but not all, 'prescribed activities' the subject of the Bill, will be assessed and decided under SPA.

The Bill both empowers, and places a number of obligations on, local government (as SPA assessment managers) including:

- imposing offset conditions on development approvals;
- considering and reaching post-approval agreement with authority holders as to the method of delivery of offset conditions;
- administering financial settlement offsets for matters of local environmental significance;
- enforcing compliance with authority holders' obligations; and
- entering environmental offset agreements.

While Council supports the Bill's policy objectives, there are concerns that the associated regulations and offset calculators being drafted by the State have still not been made available for review. Council's ability to appropriately implement environmental offsets through its planning scheme relies on the reasonable and timely dissemination of information regarding all aspects of the State's offset agenda. Notwithstanding these issues, please find below Council's submission on the Bill.

Council's submission on the Bill is two-fold:

Recommended Amendments

Straightforward, but in Council's view important, amendments to the Bill to ensure the relationship between the Environmental Offsets Act and the SPA is clear for all stakeholders. Without these amendments, it is Council's view there is a risk the policy objectives will not be achieved.

Matters for Clarification

Two matters requiring clarification. First, the role of an environmental offset policy and second, the relationship between State planning policy 'matter[s] of state environmental significance integrated into planning schemes and 'matter[s] of local environmental significance' under the Bill.

Recommended amendments

Council's recommended amendments are set out in **Appendix 1** to this submission. In summary, these are—

1. Amend **clause 16** (Conditions that apply under this Act to authority) and **clause 138** (Amendment of SPA section 346A – Environmental offset conditions) to make clear that offset conditions (deemed condition under the Environmental Offsets Act and an offset condition that is an environmental offset condition under the SPA) are not inhibited by SPA limitations.
2. Amend **clause 18** (Election about delivery of offset condition), so the requirement for the authority holder to submit the offset delivery plan is part of the deemed condition where a proponent-driven offset is proposed and its relationship with an authority is clear.

The Bill enables an authority holder to choose from a number of options as to how an offset condition in a development approval will be met. The deemed condition requiring and enabling an authority holder to nominate its choice and then reach agreement with the administering agency as to how the condition will be met overrides any inconsistent conditions in a development approval. As this occurs post-approval, the offset delivery plan is a critical document in providing the detail and certainty that would otherwise have been achieved by it being specified by the local government in the development approval condition. Because of the critical role of the offset delivery plan, the requirement to submit should be a deemed condition.

The recommended amendment to clause 18 is necessary because, as currently drafted, the requirement for the offset delivery plan sits separately to the deemed condition. The recommended amendments to clause 18 will ensure submission of an offset delivery plan can be compelled and appropriately enforced (under section 17) where it is not submitted.

3. Amend **clause 18** (Election about delivery of offset condition), so it is clear the requirement for the benefits to be provided by an offset is in addition to a benefit provided under a requirement of an Act or a condition of an authority.

Clause 18(4)(b) requires the offset delivery plan ensure the offset provides benefits in relation to the prescribed environmental matter *in addition to* any other benefit provided under a requirement of an Act. Amendment to this clause is recommended to remove any doubt as to whether this includes a requirement of an authority given under an Act (for example, a requirement under a condition of an existing development approval).

4. Amend **clause 23** (Requirements for financial settlement offsets), so there is a link between the agreed delivery arrangement under *clause 19* and an enforceable obligation to pay the financial settlement offset in accordance with that arrangement.

If the Committee has questions about these recommended drafting solutions, Council would be happy to provide further input.

Matters for clarification

1. **Role of an ‘environmental offsets policy’**

Clause 12 of the Bill defines ‘environmental offset policy’ as a document that is prescribed under a regulation to be an environmental offsets policy.

Clause 12(3) provides for a regulation to prescribe a local government document to be an ‘environmental offsets policy’. It seems from this the intention is a planning scheme policy could be prescribed.

The limited role for an environmental offsets policy under the Bill seems to be that when considering an authority holder’s proposed method of delivering an offset condition, an administering agency must have regard to the ‘relevant environmental offsets policy’ (clause 19(1)(a)). In other words, for the purposes of the Environmental Offsets Act, an environmental offsets policy has relevance only *after* a decision has been made to issue an authority under another Act (eg. a development approval under SPA) subject to an offset condition and not in assessing/deciding the application for the authority.

Council seeks confirmation as to whether the above understanding is correct and also clarification as to—

- (a) If a local government does not have a policy that is prescribed under section 12(3), to what is the local government to have regard (other than any matters that might be prescribed under a regulation for section 12(3)(b))?
- (b) If a local government has a planning scheme policy dealing with environmental offsets, but that policy is not one prescribed under section 12(3), can the local government have regard to it when considering a notice of election and offset delivery plan?

2. **Relationship between SPP ‘matter[s] of state environmental significance’ integrated into planning schemes and ‘matter[s] of local environmental significance’ under the Bill**

Council is currently preparing a new planning scheme. The State Planning Policy (SPP) requires the biodiversity state interest¹ to be appropriately integrated in local government planning schemes. The SPP requires that a planning scheme do this by:

- giving consideration to matters of national environmental significance and, where considered appropriate by a local government, to matters of local environmental significance;
- for matters of state environmental significance, identifying them, locating development to avoid significant adverse impacts on them and facilitating their protection by an avoid-mitigate-offset approach, among other things. In contrast to matters of national and local environmental significance, the SPP is more specific and directive in relation to matters of state environmental significance.

The SPP Part G glossary defines ‘matters of national environmental significance’² and ‘matters of state environmental significance’,³ but not matters of local environmental significance.

¹ Namely, matters of environmental significance are valued and protected, and the health and resilience of biodiversity is maintained or enhanced to support ecological integrity.

² Matters of national environmental significance (MNES) means the following matters protected under the *Environment Protection and Biodiversity Conservation Act 1999*, chapter 2, part 3:

- world heritage properties
- national heritage places
- wetlands of international importance
- listed threatened species and communities
- listed migratory species
- Commonwealth marine areas, and
- the Great Barrier Reef Marine Park.

³ Matters of state environmental significance (MSES) means the following natural values and areas:

- protected areas (including all classes of protected area except coordinated conservation areas) under the *Nature Conservation Act 1992*
- marine parks and land within a ‘marine national park’, ‘conservation park’, ‘scientific research’, ‘preservation’ or ‘buffer’ zone under the *Marine Parks Act 2004*
- areas within declared fish habitat areas that are management A areas or management B areas under the Fisheries Regulation 2008
- threatened wildlife under the *Nature Conservation Act 1992* and special least concern animal under the Nature Conservation (Wildlife) Regulation 2006
- regulated vegetation under the *Vegetation Management Act 1999* that is:
 - Category B areas on the regulated vegetation management map, that are ‘endangered’ or ‘of concern’ regional ecosystems
 - Category C areas on the regulated vegetation management map that are ‘endangered’ or ‘of concern’ regional ecosystems
 - Category R areas on the regulated vegetation management map
 - areas of essential habitat on the essential habitat map for wildlife prescribed as ‘endangered wildlife’ or ‘vulnerable wildlife’ under the *Nature Conservation Act 1992*
 - regional ecosystems that intersect with watercourses identified on the vegetation management watercourse map
 - regional ecosystems that intersect with wetlands identified on the vegetation management wetlands map
- high preservation areas of wild river areas under the *Wild Rivers Act 2005*
- wetlands in a wetland protection area or wetlands of high ecological significance shown on the Map of Referable Wetlands under the Environmental Protection Regulation 2008
- wetlands and watercourses in high ecological value waters as defined in the Environmental Protection (Water) Policy 2009, schedule 2
- legally secured offset areas.

The terms 'matter of national environmental significance',⁴ 'matter of State environmental significance'⁵ and 'matter of local environmental significance'⁶ are also used in the Environmental Offsets Bill. However, the Bill does not define these terms in the same way as the SPP and it is presumed this is intentional.

Clause 10(4) of the Bill defines 'matter of local environmental significance' and 'matter of State environmental significance' as:

- ***matter of local environmental significance*** means a matter of environmental significance dealt with under a local planning scheme or planning scheme policy made by a local government
- ***matter of State environmental significance*** means a matter of environmental significance that is dealt with under a State law

The Bill's broad definition of 'matter of local environmental significance' is such that a matter of state environmental significance as defined in the SPP, once appropriately integrated into the planning scheme/planning scheme policy (ie. 'dealt with under' the planning scheme/planning scheme policy) as contemplated by the SPP, then meets the definition of 'matter of local environmental significance' in clause 10(4) of the Bill.

If a matter of state environmental significance under the SPP does become a matter of local environmental significance for the purposes of the Environmental Offsets Act in this way, the consequence would be that any financial settlement offset in relation to that matter would be payable to the local government pursuant to section 23(2)(a) and not the department. However, because the definitions of 'matter of State environmental significance' and 'matter of local environmental significance' do not exclude each other, it leaves open the possibility a matter could be both, creating uncertainty as to whom payment is to be made.

Clarification on this is important, as it has implications for the department, local governments and authority holders.

⁴ At clauses 10(1)(a) and 10(3) (What is a prescribed environmental matter and a matter of environmental significance)

⁵ At clauses 10(1)(b) and 10(4) (What is a prescribed environmental matter and a matter of environmental significance)

⁶ At clauses 10(1)(c) and 10(4) (What is a prescribed environmental matter and a matter of environmental significance), 23(2)(a) (Requirements for financial settlement offsets) and 88(2)(Payment of amounts into and from trust fund)

On clarification of the above matters, it may be that Council considers some amendments to the relevant provisions would be appropriate. Accordingly, Council would appreciate receiving clarification as soon as possible and the opportunity to provide a supplementary submission ahead of the Committee finalising its report to Parliament.

If you wish to discuss any aspect of Council's submission, please contact Sinclair Britton, Senior Environmental Planner on 07 5582 8918 or by email to sbritton@goldcoast.qld.gov.au.

Yours faithfully

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Appendix 1—Suggested amendments

16 Conditions that apply under this Act to authority

- (1) This section applies if an offset condition is imposed under another Act on an authority granted under the other Act for a prescribed activity for a prescribed environmental matter.
- (2) Sections 18, 21, 23 and 24 state further conditions that, under this Act, are imposed on the authority.
- (3) A further condition stated in section 18, 21, 23 or 24 is a **deemed condition** of the authority.
- (4) The Sustainable Planning Act 2009, sections 347(1)(b) and (c) and 626, do not apply to a deemed condition.
- ~~(5)~~ A reference in another Act to a condition (however described) of the authority includes each deemed condition.

18 Election about delivery of offset condition

- (1) This section applies if, under an authority granted under another Act by an administering agency, the authority holder may carry out a prescribed activity to which an offset condition relates for a prescribed environmental matter.
- (2) It is a condition of the authority that, before the authority holder starts any part of the prescribed activity to which the offset condition relates, the holder must—
 - (a) elect, by notice given to the administering agency, to deliver the offset condition by—
 - (i) a proponent-driven offset; or
 - (ii) a financial settlement offset; or
 - (iii) a combination of a proponent-driven offset and a financial settlement offset; ~~and~~
 - (b) agree with the administering agency about the delivery of the offset condition; ~~and~~

~~(3)~~ (c) If the notice of election that involves a proponent-driven offset, must be accompanied by a plan about how the authority holder will undertake the offset (an **offset delivery plan**) and that complies with subsections (3) and (4).

~~(4)~~(3) The offset delivery plan must—

- (a) describe how an environmental offset will be undertaken and the conservation outcome will be achieved; and

The deemed condition is only what is set out in subsection (2) (ie. "It is a condition of the authority that..."). In the Bill, the obligation for submission of an offset delivery plan does not sit in (2) so is not part of the condition. Including it as part of the deemed condition by re-numbering it from (3) to (2)(c) will enable this to be enforced where not complied with pursuant to the enforcement provisions in section 17.

- (b) be signed by the authority holder and any entity that owns land on which the environmental offset will be undertaken; and
- (c) satisfy each other requirement prescribed under a regulation for this section.

~~(5)(4)~~ For subsection ~~(4)(3)~~(a), the offset delivery plan must—

- (a) effectively account for and manage the risks of the offset failing to achieve the conservation outcome; and
- (b) ensure the offset provides benefits in relation to the prescribed environmental matter in addition to any other benefit provided under a requirement of an Act or an authority; and

Examples for paragraph (b)—

Ensuring an environmental offset in relation to the management of a pest provides benefits in addition to a landowner's obligation under the *Land Protection (Pest and Stock Route) Management Act 2002*, section 77 to take reasonable steps to keep land free of particular pests.

Ensuring an environmental offset in relation to the management of environmental impacts provides benefits in addition to an obligation under a condition of an existing development approval, for example, to undertake management works, provide a buffer or enter into a covenant.

- (c) have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced; and
- (d) ensure the offset is of a size and scale proportionate to the significant residual impacts on the prescribed environmental matter.

~~(6) An authority holder must make an election under subsection (2) despite the *Sustainable Planning Act 2009*, section 347(1)(b) or (c).~~

(6) can be deleted if clause 16 amended as recommended.

23 Requirements for financial settlement offsets

- (1) This section applies if, under an agreed delivery arrangement, an authority holder is to deliver an offset condition in whole or in part by a financial settlement offset.
- (2) It is a condition of the authority that, before the authority holder starts any part of the prescribed activity to which the offset condition relates, the holder must pay the amount required, and in the way stated, byin the administering agency agreed delivery arrangement—

- (a) if the offset condition relates to a matter of local environmental significance—to the local government that is the administering agency; or
- (b) otherwise—to the department.

Note—

See also sections 84 and 88.

- (3) In deciding the amount to be required as a financial settlement offset, the administering agency must calculate the amount in the way prescribed under a regulation.

138 Amendment of s 346A (Environmental offset conditions)

- (1) Section 346A(2)—

omit, insert—

(2) Sections 347(1)(b) and (c) and 626 do not apply to an environmental offset condition.

- (2) Section 346A—

insert—

(3A) An agreement entered into under subsection (3) is not an environmental offset agreement under the *Environmental Offsets Act 2014*.

- (3) Section 346A(5), 'section 347(1)(c) does'—

omit, insert—

section 347(1)(b) and (c) do

- (4) Section 346A(6), 'works or activities'—

omit, insert—

an environmental offset

- (5) Section 346A(7) and (8)—

omit, insert—

- (7) In this section—

environmental offset see the *Environmental Offsets Act 2014*, schedule 2.