

445 Lennox Street
Maryborough Qld 4650
Em: wbbec@optusnet.com.au
or: wbbec@hotmail.com
Ph: 0423 932 431
Blog: wbbec.wordpress.com

Wide Bay Burnett
ENVIRONMENT COUNCIL



Submission

Environmental Offsets Bill 2014

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Introduction:

The overarching concept of an environmental offset is to provide a mechanism in which a residual impact to the environment, can be 'offset' to result in a 'no net loss' for the environment from a prescribed activity. The providing of an offset should occur only in the case where significant mitigation and minimisation measures have been applied to the prescribed activity prior and that the offset acts as a complimentary final measure to ensure the activity does not cause a residual impact to the receiving environment. An offset should not be provided as an alternative to the implementation of mitigation and minimisation strategies and subsequently does not negate the requirement of the latter.

Whilst the need for an overarching Environmental Offsets Act, is acknowledged, the constraint the government faces while drafting the Act and implementing future policies and regulations that will underpin and guide the implementation and governance of the Act, is to ensure that the necessary legislative requirements that underpin the overarching concept of the application of offsets, is not lost in translation.

The Wide Bay Burnett Environment Council would like to take this opportunity to respectfully submit comments regarding the Environmental Offsets Bill.

1.0 Purpose and Application of Act:

Sec 3 (1)- *'The main purpose of this Act is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.'*

The Oxford Australian Dictionary definition defines the term **counterbalance** as; 'weight or influence, balancing another'. It is broadly understood that a key defining word used to describe the rationale that underpins the requiring of Environmental Offsets, is to 'replace' the environmental values lost via a particular activity resulting in a net environmental gain for prescribed environmental matters.

The Oxford Australian Dictionary defines the term **replace** as; '1. put back in place 2. be or provide substitute for'.

Whilst the use of the term **counterbalance** in reference to defining why an Offset is required, may on the surface be deemed suitable and appropriate, when you closely analyse the difference between the concept of 'balancing another' compared with 'providing a substitute for', it becomes apparent that the former provides for the opportunity to misinterpret the intention of the Act resulting in a less clearly defined statement in regards to the requirement of Offsets.



The use of the term **counterbalance** in the paragraph stating the purpose of the Act, implies that the purpose of the Act is simply to 'balance' an impact against the environmental matter, as opposed to 'providing a substitute' for the loss of environmental values from the particular activity.

There are significant concerns regarding the phrasing of the purpose of the Act, in that this definitions could ultimately result in a loss of environmental values for a prescribed environmental matter given the legal status of such a definition and the application of it via broad and sometimes contrary interpretations.

We therefore recommend that Sec 3 (1) is omitted and replaced with:

'The main purpose of this Act is to ensure that a net environmental gain results from any environmental loss, as a result of residual impacts from particular activities on prescribed environmental matters through the use of environmental offsets'

2.0 Interpretation:

Sec 7 (2) *'An environmental offset is an activity undertaken to counterbalance a significant residual impact of a prescribed activity on a prescribed environmental matter.'*

The Queensland Government Environmental Offsets Policy (QGEOP) requires that Offsets be either Land Based (legally secured and protected from clearing and/or other impacts for the duration of the offset period) or secured via an Offset Payment to an approved Environmental Trust.

The interpretation provided for an Environmental Offset in Sec 7 (2) and Sec 7 1 (a)- Examples, indicates that an Environmental Offset is 'an activity undertaken' such as 'carrying out work to maintain the viability of the prescribed environmental matter', 'preparing a plan about a prescribed environmental matter' or 'conducting scientific research or an educating program'. These descriptions are contrary to the requirements for Offsets under the QGEOP and QBOP which require the Offset to be either Land Based or Financial Based.

It is of alarming concern that the description of what constitutes an Environmental Offset has changed markedly. It is noted that the descriptions of Offsets under existing Policies may very well remain in force however, given that this Act, when enforced, will become the overarching legislative framework that guides the requirement for the imposing of Offset Conditions, it is assumed that the definitions identified within the Act will take precedence over other existing policy documents.

We recommend that Sec 7 (2) be omitted and replaced with:

'An environmental offset is an activity that replaces an environmental loss resulting from a residual impact from a prescribed activity on a prescribed environmental matter, resulting in a net environmental gain via-

- (a) A land based legally secured offset that clearly demonstrates ecological equivalency as a mandatory minimum for the prescribed environmental matter or***
- (b) A Financially based legally secured offset resulting in an environmental gain***



Sec 7 (3) *‘However, an environmental offset for a prescribed environmental matter that is a protected area, other than a nature refuge, may include the delivery of any activity that provides a social, cultural, economic or environmental benefit to any protected area.’*

As stated previously, the concept of an offset is to replace, or provide substitute for, the net environmental value lost as a result of a particular activity.

QGEOP Principal 3 identifies that ‘Offsets must achieve an equivalent or better environmental outcome’.

To propose that an offset for a prescribed environmental matter in a protected area, may include the delivery of **any** activity that provides a social, cultural, economic or environmental benefit, is contradictory to purpose of the Act and all other Acts, Policies and Regulations relevant to the requirement, delivery and management of Environmental Offsets.

The delivery of an activity that does not provide a net environmental gain via the ecological equivalency concept will have provided no benefit to the protected area in terms of its unique and significant environmental status. It can be argued that providing a social, cultural or economic benefit via the delivery of an offset activity could benefit a protected area in other ways, however, these benefits would be in no way directly related to a net environmental gain for the protected area and therefore has no relevance to the purpose of the Act.

We recommend that Sec 7 (3) is removed from the Bill.

Sec 8 (1) *Generally, a **significant residual impact** is an adverse impact, whether direct or indirect, of a prescribed activity on all or part of a prescribed environmental matter that—*
(a) remains, or will or is likely to remain, (whether temporarily or permanently) despite on-site mitigation measures for the prescribed activity; and
(b) is, or will or is likely to be, significant.

The introduction of the term ‘significant’ to define a residual impact for the purpose of the Act, is concerning.

Whilst the term ‘significant’ is used broadly to define an ‘impact of significance’, there is concern surrounding the interpretation of what constitutes a ‘significant residual impact’ and the subsequent potential for misinterpretation during the identification of what particular activities may or may not result in a ‘significant residual impact’. We are of the opinion that, if a particular activity has the potential to result in **any residual impact**, after first identifying strategies to avoid and then minimise such impacts, consistent with the QGEOP Principal 2, that an offset condition must be required. As per the QGEOP Principles, an offset is not to be used as a means to replace or undermine existing environmental standards or regulatory requirements, nor can it be used to negate the requirement to avoid and minimise impacts from a particular activity.

We recommend that the term ‘**significant residual impact**’ is replaced with ‘**any residual impact**’ throughout the draft Bill to ensure that the intention of the Bill is consistent with the overarching concept of the use of Offsets to



replace any net environmental loss from a prescribed activity only after all efforts to avoid and then minimise such impacts have been undertaken.

Sec 8 (3)- *However, an impact as mentioned in subsection (2) is not a significant **residual impact** for the protected area if the prescribed activity is—*

- (a) conducted by an authorised person performing functions under the Nature Conservation Act 1992; and*
- (b) consistent with the management of the area under the Nature Conservation Act 1992, section 15.*

This section implies that any activity identified under subsection 3 (a) & (b) will be exempt from offset conditions under the *EO Act* because it pertains to any activities related protected area management under the *NCA 1992*.

This clause creates concern given that Protected Areas contain some of the States most significant environmental values in protected area status. It is essential that any net loss to the environmental values within a protected area resulting from the management of the area, is replaced under an offset agreement.

We recommend that Sec 8 (3), including (a) & (b) is removed from the Bill.

Sec 11- *A **conservation outcome** is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to maintain the **viability** of the matter.*

The Oxford Australian Dictionary defines the term 'viable' as; 'capable of surviving or living'.

In terms of the concept of a **conservation outcome**, and the overarching principal in which offsets are required, is to ensure no net environmental loss for the prescribed environmental matter.

If we are talking in reference of a Matter of National Environmental Significance, under this Bill, then it would be assumed that measures taken to ensure the protection of an Endangered, Vulnerable or Threatened Species would not seek to simply ensure that the future of the species was only **viable**?

The key concept of conservation, is not only to conserve what we already have, but to implement changes to ensure that our environmental values are protected, maintained and enhanced.

We recommend that Sec 11 is omitted and replaced with:

'A conservation outcome is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to ensure that;

- (a) No net loss occurs to the environmental values of the matter**
- (b) The offset provides for ongoing protection and maintenance of the matter and**
- (c) The offset provides an increase in the net environmental value of the matter resulting in the continued increase and enhancement of the values of the matter into the future**

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3.0 Environmental Offsets Policies:

Sec 13- Content of Environmental Offsets Policies

'An environmental offsets policy 'may'

In line with the concept of ensuring that any future offsets policies are consistent with the concept of preventing the loss of environmental values, it is essential that any policy 'must' have the legislative power to require Sec 13 (a)- (d) be implemented.

The term 'may' implies suggestion whereas the term 'must' implies statutory intent.

We therefore recommend that the term 'may' be omitted and replaced with 'must'.

4.0 Imposing Offset Conditions:

Sec 15 (1)-(5)

This section details restrictions regarding the imposing of offset conditions if a higher government jurisdiction has already imposed a condition for that prescribed environmental matter where the prescribed activity has 'the same or substantially the same, impact' or is 'the same of substantially the same, size' regardless of whether the impacts is considered to be more significant than the impact that the condition was originally decided upon.

Whilst a driving factor behind the creation of this Bill was to reduce the duplication of offset requirements, there is significant concern regarding the restrictions detailed in this section given that the way in which matters of Local, State and National Environmental Significance are assessed both separately and often independently from each other due to variations in Significance Listing and that the latter may impact upon the necessary requirement to impose further conditions to ensure that the values of the matter are not lost as a result of a residual impact from a particular activity.

We therefore recommend that Sec 15 (1)-(5) be removed from the Bill

Authors:

Roger Currie
President
Wide Bay Burnett Environment Council Inc

Emma-Kate Currie
Manager
Wide Bay Burnett Environment Council Inc