



Dedicated to a better Brisbane

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24 March 2014

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

Dear Mr Hansen

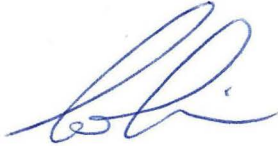
Brisbane City Council (Council) is pleased to provide a submission on the *Environmental Offsets Bill 2014*, which is enclosed. The establishment of a framework for the delivery of environmental offsets is supported; however, Council's submission focuses on ensuring the environmental offsets legislation, addresses local government considerations.

Key strategic issues raised in Council's submission include:

- The full impact of the proposed environmental offsets framework is not able to be reviewed currently, as the supporting regulation and policy documents are not available.
- Council is concerned that it will not be able to impose offsets for matters of local environmental significance, where the State has already imposed an offset condition for a different matter.
- It is a significant concern for Council if financial offset contributions are limited or capped in the regulation. Council does not support any environmental offsets approach that requires ratepayer funds to be used to 'top-up' inadequate financial contributions. The administration of local level environmental offsets must be a cost neutral process for local governments.
- Council supports environmental offsets being provided within the impacted local government area as the first option and within the regional area (e.g. South East Queensland) as a secondary option. Council recommends that the legislation include this matter.
- Council is concerned that the trust fund arrangement outlined in the Bill, is not the most efficient way to manage offset funds.
- Clarification is required about transitional arrangements for aligning local environmental offset provisions with the new Queensland Government approach.

Should you require any further information about Council's submission, please contact Ms Erica Gould, Council's Principal Coordinator – Regional and City Strategy on 3178 1363 or email erica.gould@brisbane.qld.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Jensen', with a stylized flourish at the end.

Colin Jensen
CHIEF EXECUTIVE OFFICER

BRISBANE CITY COUNCIL'S SUBMISSION ON THE ENVIRONMENTAL OFFSETS BILL 2014

Brisbane City Council (Council) is pleased to provide a submission on the *Environmental Offsets Bill 2014* (the Bill) and offers the following overarching and specific comments for consideration.

Overarching comments

- Council acknowledges that environmental offsets are an important tool to assist local governments with maintaining ecological services and to allow for the community to be compensated for the loss of amenity, biodiversity, ecological services and other values or benefits of natural assets.
- Local governments have a unique role in delivering local planning, contributing to regional planning, development assessment and land management decisions and investments. Council has made a significant investment in developing and delivering robust environmental offset policies and frameworks with local and regional stakeholders.
- The establishment of a framework for the delivery of environmental offsets is supported; however, Council's submission focuses on ensuring the environmental offsets legislation addresses local government considerations prior to the finalisation of these important provisions.
- The full impact of the proposed environmental offsets framework is not able to be reviewed currently, as the supporting regulation and policy documents are not available.
- Council would like to ensure that local level environmental offsets are a cost neutral process for local governments and that the payments system is efficient.

Specific comments

Financial payments

The Bill does not specifically outline an approach that would cap financial payments; however, clause 23(3) states that "*in deciding the amount to be required as a financial settlement offset, the administering agency must calculate the amount in a way prescribed under a regulation*". It is a significant concern for Council if financial offset contributions are limited or capped in the regulation. A state-wide financial calculation formula is not suitable for all Queensland local governments. In South East Queensland, land and other resourcing costs are substantially higher than in rural parts of Queensland. Council requests that any related regulation and policy provisions allow local governments to charge reasonable costs to facilitate the delivery of on-ground offset works (which reflect local land prices and operational costs). Council does not support any environmental offsets approach that requires ratepayer funds to be used to 'top-up' inadequate financial contributions. The administration of local level environmental offsets must be a cost neutral process for local governments.

Trust fund requirements

Clause 88 requires offset payments to be lodged and managed through trust accounts. These requirements are onerous and unnecessary. This provision should be amended to allow greater options for managing offset funds, on the basis that local governments are not required to place infrastructure charges in trust accounts; however, are required to have appropriate financial management practices in place.

Council requires clarification about whether it can charge for the costs associated with establishing new systems to assist with the administration of a trust and ongoing administration (including accounting) of the trust (or other options for managing offset funds). The Bill is silent on these local government considerations; however, Queensland Government expenses are covered in clause 85(b).

Planning considerations

The relationship between the *Sustainable Planning Act 2009* (SPA), the State Planning Policy (SPP) and the Bill is unclear, resulting in a lack of clarity about when local governments will need to align with the new environmental offsets framework, and could leave the offset conditions open to challenge.

The Bill omits SPA s346A(2) –

An environmental offset condition may be imposed only if the concurrence agency or assessment manager is satisfied that all cost-effective on-site mitigation measures for the development have been, or will be, undertaken.

Instead clause 14 operates in its place, by reference to the “other Act” - ... the administering agency may impose the offset condition only if it is satisfied–

2(a) the prescribed activity will, or is likely to have, a significant residual impact on the prescribed environmental matter; and

(b) all cost-effective on-site mitigation measures for the prescribed activity have been, or will be, undertaken.

(3) in making a decision under the other Act about whether to impose an offset condition, the administering agency may have regard to any relevant offset condition that has been imposed on an authority under another Act for the same prescribed environmental matter.

However, clause 14(3) is not reflected in SPA s346A. Section 346A(4) validates, for s345, a condition imposed under “this Act” namely SPA. However, the condition will now be imposed under the *Environmental Offsets Act 2014*, which will leave the offset conditions open to challenge.

Also, the hierarchy required by the SPP, to which the Planning Scheme must conform, is —
(5) facilitating the protection of matters of state environmental significance by requiring development to, in order of priority:

(a) avoid significant adverse environmental impacts, and

(b) mitigate significant adverse environmental impacts, where these cannot be avoided, and

(c) where applicable, offset any residual adverse impacts, and

(6) facilitating a net gain in koala bushland habitat in the SEQ region, and

For local environmental significance:

(7) considering matters of local environmental significance, where considered appropriate by a local government.

Therefore a condition could not be imposed to satisfy (5)(a), if the SPP were the default, or an equivalent provision in a SPP-compliant planning scheme. The amendments to SPA s971 may mitigate this effect for some schemes, however Council is concerned that its new SPP-compliant planning scheme will, at best, be protected, only if it is gazetted before the Bill is enacted and in force. Clarification is required about transitional arrangements for aligning local environmental offset provisions with the new Queensland Government approach.

The “cost-effective” constraint, which could trump all otherwise valid conditions, is of totally uncertain extent. Given the challenges around defining “reasonable and relevant” in planning law, and the express references in SPA s345, it is recommended that the use of a term such as “cost-effective” is reconsidered.

Council wishes to emphasise the importance of ensuring the environmental offsets legislation, regulation and all associated policies do not restrict the ability to adequately protect matters of local environmental significance.

While Council agrees with the elimination of duplication of protection of environmental values from significant residual impacts, clause 15(4) should be phrased differently. Matters of local environmental significance, as determined by a local authority can be different from matters of State or Commonwealth significance, but the offset condition is beyond power, if it can be said to “relate to substantially the same impact in substantially the same area”.

Coupled with subsection (2), this means that an insufficiently stringent condition by another level of government, about a matter of little concern to that level of government, and only tangentially “related” to an area, could exclude Council’s power to impose an offset condition to address a matter of local environmental significance.

Due to the way the provisions are worded, challenges would have to be made and determined after the condition was imposed, which would add to the cost and delay in finalising development applications. It would be preferable to recast these sections. Instead of dealing with the power to impose the condition, the provisions should allow for any inconsistency or duplication between conditions to be resolved, by providing for any one condition to be read subject to any other that affords best mitigation of the impact. Further, the determination of an “area” should be clarified.

Clause 19 of the Bill outlines that proponents must provide an offset delivery plan and the Bill provides a process for reaching agreement about delivery. However, if there is disagreement, the Bill says that the regulation may include a dispute resolution process, which may occur outside of the procedures in the SPA for complying with conditions. This could add new complexities to the development assessment process. This provision needs to be reconsidered, particularly in light of recent efforts by the Queensland Government and local governments to streamline development assessment processes.

Council requests that clear provisions are included in the Bill that require that no work is to commence on the development site until all offset obligations are agreed and accepted.

Prescribed activities

The Bill does not define “prescribed activity”, which is a key term used throughout the Bill. A “prescribed activity” is to be defined under the supporting regulation, which is not currently available. Therefore it is not possible to ascertain to what extent the Bill will regulate “prescribed activities” with regards to the ability to apply offsets.

Acceptable environmental offsets

Clause 7 outlines that conducting scientific research or an education program, is an acceptable environmental offset. These types of actions do not directly address significant residual impacts to prescribed matters. Council provided a submission to the Department of Environment and Heritage Protection (DEHP) in April 2013 on the draft Queensland Environmental Offsets Policy (QEOP) and outlined, that the creation of new habitat through direct land-based offsets or financial contributions, should be the primary aim of offset packages proposed under the final QEOP. Research and education programs should be considered in exceptional circumstances only.

The Bill is not consistent with the Australian Government’s *Environment Protection and Biodiversity Conservation Act 1999* Environmental Offsets Policy (EPBC Act Environmental Offsets Act Policy), as it relates to the use of measures such as research and education. The EPBC Act Environmental Offsets Act Policy outlines that such measures should constitute no more than 10% of any offset package. It is therefore recommended that clause 7 be revised to reflect the EPBC Act Environmental Offsets Act Policy.

Location of environmental offsets

Council supports environmental offsets being provided within the impacted local government area (preferably within the same biodiversity or green space network) as the first option and within the regional area (e.g. South East Queensland) as a secondary option. Implementing this approach ensures that offset sites are located as close as possible to clearing areas. Council recommends that the legislation include this approach.

Protected areas

In relation to Protected Areas, clause 7 allows for a wide range of relevant and irrelevant actions to occur in any Protected Area in Queensland. This may potentially undermine local government investments adjacent to Protected Areas, which could be impacted; however the relevant offset could be provided anywhere in Queensland.

Should any further information be required about Council’s submission, please contact Council’s Principal Coordinator – Regional and City Strategy, Ms Erica Gould on 3178 1363 or email erica.gould@brisbane.qld.gov.au.