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

By email: AREC@parliament.qld.gov.au

Environmental Protection and Other Legislation Amendment Bill 2014

Dear Committee,

The Urban Development Institute of Australia (Queensland) (the Institute) welcomes the opportunity to comment on the Environmental Protection and Other Legislation Amendment Bill 2014 ('the Bill'). Our comments are limited to those aspects of the Bill that amend the Environmental Offsets Act 2014 ("the Act").

The Institute has previously advocated for an integrated approach to environmental offsets at all levels and a less onerous regulatory burden on the development sector so as to better achieve the dual goals of environmental protection and economic growth.

The Institute is supportive of the overarching intent and premise of environmental offsets and acknowledges that the new environmental offsets framework offers a reduction in green tape at a State level through the consolidation of the current five offset policies and creates some additional flexibility for proponents when considering offset delivery options.

The Act contains a number of flaws, in particular a failure to remove duplication of offsets and process between levels of Government. The Environmental Offsets Regulation and Financial Calculator are also in urgent need of amendment. The Regulation and Financial Calculator are flawed and in many cases are generating excessive offsetting requirements particularly in South-East Queensland and for smaller urban developments. The large offset payment requirements being generated by the Financial Calculator do not deliver increased environmental benefits because they are being generated by flawed assumptions regarding administration costs and landholder incentive payments. Often the financial offsets required under the new policy are in excess of offsets delivered under the previous policy. Without amendment, the community will suffer due to reduced housing affordability and supply. The Institute and other stakeholders are working with the Department of Environment and Heritage and the Department of State Development, Infrastructure and Planning to address concerns with the Regulation and Financial Calculator.

The Institute's specific comments relating to the Bill are summarised below.

Amendments to Section 25A of the Environmental Offsets Act 2014

Decisions regarding offsets are not always accessible to a lower level of government and often evidence of a decision may be in the form of a statement or a non-statutory letter. Currently section 25A does not adequately consider the timing or format of these decisions.

Section 25A of the Act and the proposed amendments in the EPOLA Bill fail to adequately ensure that there is no duplication in offsets across the three levels of government for the same or substantially the same matter. Section 25A must be amended to ensure that the following outcome is achieved:

1. That any conditions are removed which have been imposed by a lower level of government when a higher level of government has had the opportunity to impose a condition for the same or substantially the same matter as part of an assessment but did not impose such a condition.
2. That any conditions are removed which have been imposed by a lower level of government when a higher level of government has imposed a condition for the same (or substantially the same matter)
3. That timeframes are established for making a decision about whether a lower level of government ought to remove a condition in light of (1) and (2) above.
4. That a dispute resolution process is established for those decisions.
5. That any relevant conditions are removed from a permit once a decision has been made.

Often a lower level of government will not be aware of when a higher level of government has made a decision. It is therefore most appropriate that the process of acquiring information regarding a decision is proponent driven and that decision making timeframes regarding whether to remove a condition begin from the date receipt of the evidence, rather than the date the higher level of government made its decision. No costs should be associated with this process for the proponent.

To ensure section 25A of the Act adequately considers the timing and the nature of the way decisions are made relating to offsets, the Institute recommends that the section be amended to:

- Extend the application of section 25A to situations where the higher level of government has had the opportunity to impose a condition for the same or substantially the same matter as part of an assessment but did not impose such a condition. This ought to occur regardless of whether the lower level of government is of the opinion that the impacts are more significant than those assessed by the higher level of government or that the higher level of government should have imposed an offset condition.
- Introduce a requirement for the proponent to apply to the administering agency, at any time after the offset decision is made by the higher level of government and at no cost to the proponent, for the removal of the offset condition imposed by the administering agency.
- Ensure that any offset condition imposed by a lower level of government is removed within 10 business days of receiving evidence that a decision has already been reached in relation to the same or substantially the same prescribed activity and matter.
- Remove Subsection 25A(3) which outlines what the decision notice must contain.
- Replace Subsection 25(4) with a section that confirms that if the offset condition is removed, the deemed conditions also cease to apply.
- Include a subsection to ensure that if an administering agency refuses the application, the administering agency must give the applicant written notice of the decision and the reasons for the decision within 10 business days after the decision is made.
- Ensure that there is a mechanism to enable the proponent to apply for a review of the decision.
- Articulate the process for a proponent to have a decision reviewed.

Section 15

The Institute understands that the intent of Section 15 of the Act is to remove assessment duplication, ensuring that when a higher level of government has determined that an impact does or does not require an offset, then a lower level of government cannot impose an offset for the same or substantially the same

matter. The current Act nor the proposed amendments in the EPOLA Bill achieve this intent. The drafting of the amendments fail to adequately acknowledge the various means by which each level of government undertake assessments relating to matters of national, state or local environmental significance. Without further amendment, one of the key purposes of the new environmental offsets framework which was to reduce duplication will not be achieved.

Of particular concern to the Institute is the interplay between the Commonwealth's assessment of a Matter of National Environmental Significance (MNES) under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) and subsequent State Government assessment for the same or substantially the same matter. It is the Institute's view that a 'not controlled action' under the Commonwealth's review should be considered by the Act as a level of government choosing not to seek offsets for a matter. The State Government should then not be able to seek an offset for the same or substantially the same matter. In the case of the Commonwealth determining that an activity is 'not a controlled action', it has made an informed assessment regarding whether that activity is likely to have a significant impact on a population, as a prescribed MNES.

To ensure the new framework meets the initial policy intent of removing duplication, the Environmental Offsets Act 2014 must clearly acknowledge that notices of 'not controlled action' under the EPBC Act as a decision in relation to a matter. In this instance, the Commonwealth has determined that the activity will not have a significant impact on a matter and that no offset conditions will be applied. Therefore, subsequently neither the Queensland State Government, nor the Local Government should impose an offset for any matter which has been referred to the Commonwealth.

Significant industry concerns also exist regarding the interplay between Matters of State Environmental Significance (MSES) and Matters of Local Environmental Significance (MLES). Currently, the Regulation is unclear regarding the identification and definition of a MLES. The broad definition of MLES under the new offsets framework and the exclusion of some of the MSES definitions from urban areas, allows local governments to claim MLES offsets in urban areas where the State has chosen not to seek offsets. Section 15 does not preclude any matter which has been already considered and exempted from the State's offsets framework being identified as a MLES. It is the Institute's view that in addition to necessary amendments to the Regulation and state planning instruments, Section 15 should also specifically preclude the identification of MLES in urban areas.

Section 24 (3)

Section 24 (3) of the Act suggests that the administrating agency must calculate the financial offset in accordance with the environmental offsets policy, inferring that the amount produced by the financial calculator is the amount that must be imposed at all times.

The Institute strongly suggests that the wording in the Act be amended by the EPOLA Bill to ensure that the environmental offsets policy sets the maximum amount to be required as a financial settlement, not an absolute value. The Act should state that the output from the financial calculator is a maximum only, allowing for negotiation at both State and Local Government levels. Indeed this is the approach in other areas of Government policy whereby the State imposes a maximum obligation through legislation but allows for a lesser amount to be imposed by either a local government or an agency (e.g. local government infrastructure charges).

Specifically, the Institute recommends that section 24(3) of the Act be amended to read:

"(3) In deciding the amount to be required as a financial settlement offset, the maximum amount that can be imposed by an administering agency is equal to the amount calculated in accordance with the environmental offsets policy."

Section 18

Section 18 of the Act as currently written could cause unnecessary delays to urban development projects. When developing offset delivery plans, Section 18 of the Act requires all information to be provided upfront before works can start. The negotiation of a delivery plan in many cases could be a lengthy exercise. The Institute recommends that Section 18 be amended to allow for negotiations to occur concurrently with the assessment of the development by the Single Assessment and Referral Agency (SARA).

Financial calculator

As mentioned at the outset, the Institute also holds significant residual concerns regarding other aspects of the new offsets framework which are beyond the Environmental Offsets Act 2014. In particular, the Institute remains concerned with the outputs of the Financial Calculator and believes that the current calculator will render important developments unviable in key growth regions and pose a significant risk to the development industry and the community, particularly in master-planned communities and infill developments within South-East Queensland.

The Institute is appreciative of the opportunity to comment on the Bill and welcomes the opportunity to provide more detailed feedback to the Committee if required.

Yours sincerely
Urban Development Institute of Australia (Queensland)

Marina Vit
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