



4 April 2014

Committee Secretary
Senate Standing Committee on Environment and
Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: ec.sen@aph.gov.au

Dear Sir/Madam

Senate Committee Inquiry into Environmental Offsets

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission to the Senate Environment and Communications Committee Inquiry into environmental offsets under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

As you are aware, the Minerals Council of Australia (MCA) represents over 85 per cent of minerals production in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

MCA members commit to continuous improvement in their performance, beyond regulatory requirements, as signatories to *Enduring Value – The Australian Minerals Industry Framework for Sustainable Development*. A key element in this Framework is the commitment to 'contribute to conservation of biodiversity and integrated approaches to land-use planning'.

Offsets are an important tool for the minerals industry as mining operations are constrained by the location of the target resource. While the industry makes all efforts, to avoid, minimise and mitigate impacts before offsets are considered, they remain an essential option for many projects. Further, the MCA considers there remains a significant opportunity to capitalise on industry investment in offsets to achieve more strategic and enduring environmental outcomes.

The MCA rejects suggestions, including those made by Senator Waters, that environmental offsets are a "magic pudding" calculation rather than based on science and expert opinion. Indeed, the Commonwealth offsets calculator was developed over an extended period in close consultation with academic experts, the CSIRO, a wide range of environmental Non-Government Organisations and industry. Nor do we accept assertions that offsets are an "excuse for Governments to tick and flick" projects. Central to Government policy is the principle that environmental offsets cannot make a project with unacceptable impacts acceptable and an offset proposal is no guarantee that a project will be approved.

In the MCA's view, the primary purpose of the inquiry is to support a broader anti-mining campaign rather than a genuine effort to consider the role played by environmental offsets. Further, the MCA does not consider the Inquiry to be either necessary or of particular benefit at this time given policies at the Commonwealth and State level are either relatively new, having been only recently released, or are undergoing reform. While it is important to review the performance of offset arrangements, this

should be undertaken through science based expert assessment within an appropriate timeframe to avoid the political context behind the Inquiry.

The MCA provides specific comments on the application of environmental offsets in the attached submission. These comments focus specifically on part 1 of the Committee's terms of reference and cover issues generic to the minerals industry's operations nationally.

The MCA would welcome the opportunity to discuss these issues further.

Yours sincerely

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CHIEF EXECUTIVE



MINERALS COUNCIL OF AUSTRALIA

SENATE INQUIRY INTO ENVIRONMENTAL OFFSETS

SUPPORTED BY:

QUEENSLAND RESOURCES COUNCIL

SOUTH AUSTRALIAN CHAMBER OF MINES AND ENERGY

MINERALS COUNCIL OF AUSTRALIA VICTORIAN DIVISION

MINERALS COUNCIL OF AUSTRALIA NORTHERN TERRITORY DIVISION

4 APRIL 2014

1. INTRODUCTION

1.1 The Importance of Offsets to the Minerals Industry

The Industry applies significant effort to firstly avoiding (where possible), minimising and mitigating its impacts and invests heavily in the continuous improvement of rehabilitation practices. However, the ability to develop appropriate, science based environmental (biodiversity) offsets to compensate for significant residual impacts remains an important management tool for many projects. This, given that the location of minerals operations are constrained by the location of geological resources, and as such cannot be relocated within the landscape.

1.2 The Application of Environmental Offsets

It is important to note that offsets are neither the 'first' nor the 'easy' option for mining proponents. In line with industry policy and regulatory requirements, a suite of avoidance, minimisation and mitigation (restoration) measures must first be fully considered before offsets can be employed to address significant residual environmental impacts. Further, the requirement to rehabilitate lands disturbed by mining is not diminished by the development of offsets.

Environmental offsets are only considered in the final stages of the Commonwealth environmental assessment process (at the end of the Part 9 Assessment Stage)¹. An offsets proposal is developed by specialist consultants engaged by the proponents or in-house ecological experts. After submission, the offsets proposal is reviewed by Commonwealth agency assessment specialists. It is understood that where suitable expertise is not available in-house to review the proposal, expert peer review can be outsourced. It should be noted that in some instances at a state level, the consideration of offsets is part of the environmental assessment process. This is often a far more efficient approach to the assessment of offset development.

A fundamental principle in the application of environmental offsets is that an offset cannot make a project with unacceptable impacts acceptable. An offset proposal is no guarantee that a project will be approved.

1.3 How does Australia compare to other countries?

There are now over 14 countries with offset enabling policy/legislation in place. Australia has been at the forefront of policy development in this area and features strongly in the 2013 Independent Report on Biodiversity Offsets² jointly commissioned by the International Union for the Conservation of Nature (IUCN) and the International Council on Mining and Metals (ICMM).

By-and-large, the Commonwealth environmental offsets policy aligns with the principles of the International Business and Biodiversity Offsets Program³ (BBOP). BBOP is an international collaboration between companies, financial institutions, government and civil society.

2. INDUSTRY POLICY ON ENVIRONMENTAL OFFSETS

The MCA Biodiversity Offsets Policy⁴ provides the following principles for the application of offsets. Specifically, offsets should be:

- Transparent in their calculation and development;
- Developed using the best available scientific information, and include declarations about assumptions that underpin the science therein;

¹ <http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy>

² <http://iucn.org/about/work/programmes/business/?11866/ICMMJan2013>

³ <http://bbop.forest-trends.org/>

⁴ http://www.minerals.org.au/focus/sustainable_development/industry_policy/biodiversity_offsets_policy

- Developed in a consistent, transparent, non-duplicative and contemporaneous manner across jurisdictions involved in the regulatory process;
- Clear and certain regarding expectations for implementation and outcomes, including long-term management arrangements and liability for financial contingencies;
- Fair in sharing risks between the regulator and developer regarding the delivery of outcomes;
- Strategically developed to ensure investments lead to the best value-for-money biodiversity outcomes across the landscape; and
- Clear in absolving the developer of reasonable responsibility in the delivery of outcomes when impacted by forces outside their control including natural variability, acts of god, or wilful damage by third parties.

3. COMMONWEALTH ENVIRONMENTAL OFFSET REQUIREMENTS

3.1 Background

Offset requirements under the *EPBC Act* have long been a significant issue for the minerals industry. In particular, up until very recently, Commonwealth policy was vague and open to subjective interpretation. This lack of clarity drove a number of perverse outcomes including:

- An increasing expectation by regulators that offsets would be required to utilise environmental offsets (as the rule, rather than the exception to provide offsets).
- A precedent for offset to impact area ratios set by one proponent were applied to subsequent projects resulting in proponents being required to provide ever larger offsets at significantly increasing multiples of the impacted area or in comparison with offsets required by the States/Territories.
- Offset requirements were strongly linked, and limited, to the immediate location of the impact. This promoted inflexible and inefficient responses, exacerbated the issue of fragmented habitats and led to compatibility issues with surrounding land users (e.g. purchasing of large tracts of neighbouring agricultural land for offset development).

The 2012 revision of the EPBC Act Environmental Offsets Policy represented a significant step forward in addressing the above concerns and in providing greater certainty for proponents in the application of offsets. This is discussed in further detail in the following section.

3.2 2012 EPBC Act Environmental Offsets Policy

The *EPBC Act* Environmental Offset Policy was developed over an extended period in close consultation with academic experts, the CSIRO, industry and a wide range of environmental Non-Government Organisations (including the Australian Conservation Foundation, Conservation Council, World Wildlife Fund, National Parks Australia Council and the Network of Environmental Defenders, Conservation Council, the Humane Society and Birds Australia).

The policy, which was finalised in September 2012, provides a set of principles to underpin offset development, some of which have been provided below.

Offsets must:

- Deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment protected by national environmental law.
- Be of a size and scale proportionate to the residual impacts on the protected matter.
- Effectively account for and manage the risks of the offset not succeeding.

- Be efficient, effective, timely, transparent, scientifically robust and reasonable.

Further, in assessing the suitability of offsets, government decision making will be:

- Informed by scientific information and incorporate the precautionary principle in the absence of scientific certainty.
- Conducted in a consistent and transparent manner.

The policy represents a significant improvement on past approaches. It recognises the importance of flexibility in the development of offset arrangements to improve cost effectiveness and to allow for offsets to be better tailored to the environmental circumstances of the impacted matter. The policy also provides for the development of consolidated environmental offsets for multiple projects.

In addition to the offsets policy, an environmental offsets guide or 'calculator' was developed for use in implementing the policy. The guide was developed by biodiversity specialists both within and external to the Department of Environment, including scientific experts. The guide uses a 'ledger' approach to quantify positive or negative impacts and gains and losses to determine the magnitude of offset required. The intended users of the guide are specialist advisers who develop offset proposals for the proponent and expert assessment officers within the Department.

The approach was adopted in recognition of the need for increased transparency for both industry and civil society and to ensure the consistency and robustness in the application of the policy. While there were some industry concerns about the complicated nature of the calculator, it was agreed that having such a structured approach is one way to meet these needs in a transparent manner.

Offsets typically require both habitat protection as well as habitat improvement measures such as replanting, fire management, weed and/or feral animal control. Such measures generally take a long time (typically years) to produce the targeted improvements. The *EPBC Act* offsets policy and guide has been in operation for less than 18 months which is a very short timeframe for the development, implementation and validation of environmental offsets. Accordingly, the MCA considers a general review of the effectiveness of this policy through the Inquiry process at this juncture, is unnecessary, premature and unlikely to reveal whether it is yet achieving its stated aims.

The policy provides that a technical review of the offsets policy and associated guide or calculator will be undertaken periodically post-implementation. **The MCA considers it is this expert technical review which should form the basis of any changes to improve its operation, or assess the success of the policy in achieving the desired environmental outcomes.** This is in contrast to a more general and premature discussion around its perceived effectiveness.

3.3 State Context - The Queensland Environmental Offsets Framework

The Queensland Government recently introduced a new independent Environmental Offsets Bill, which aims to provide a single touch point for the provision of offsets in Queensland. One of the most significant reforms has been the provision that where the Commonwealth Government has set a condition for offsets, the state will then not require an offset for that same matter. This is a significant advance in ensuring that offsetting conditions are not duplicated between multiple levels of government. Further to this, there is now the ability under the new Queensland framework to provide a mix of either financial or land-based offsets with no limitation on the provision of financial offsets. This, combined with a far more transparent equivalency calculator and a number of other reforms, will result in a far more flexible offsets framework in Queensland which delivers far more strategic conservation outcomes.

3.4 Areas for Further Improvement

While greater certainty and transparency has been provided in the revised *EPBC Act* offsets policy, and in other jurisdictional policies, there remain further opportunities to improve the way offsets are administered. Specifically:

- *Recognition of offsets under other jurisdictions* - In line with the intended administrative reforms to be implemented under the Government's one-stop-shop initiative and COAG commitments⁵ there is a need for greater alignment and accreditation of offset processes between the Commonwealth and the State/Territory jurisdictions. Benefits would include greater linkage between environmental offsets, consolidated monitoring and compliance requirements and more strategic and enduring conservation outcomes. See above for details on the new Queensland Offsets system which encapsulates the positives of just such an alignment.
- *Promotion of improved land management* - As part of developing 'social license', many companies may voluntarily implement or contribute to conservation programs. The MCA considers that voluntary conservation activities beyond compliance requirements, including research, will continue to be beneficial for the environment and also important to the industry and should be encouraged and further recognised.
- *Accounting for rehabilitation measures* - The treatment of rehabilitation on temporarily impacted MNES is of key importance to the minerals industry. The industry considers that greater recognition of rehabilitation in consideration of offsets will further encourage leading practice and progressive rehabilitation. In a staged approach, rehabilitation can be considered within the context of a debit/credit process.
- *Species population trajectory* – Offsets are required to deliver steady state outcomes even where a species is projected to decline within a region without the impacts of future development. This should be further considered in the development of offset requirements.
- *Land tenure* – Land tenure issues should be further considered. In particular, access to offset areas may be required in the future. Those areas should remain available provided proponents can demonstrate offsetting the previous offset is viable. Special consideration should be given to those regions with minimal freehold land. Obtaining tenure of a suitable type and for a suitable timeframe for offset areas is problematic in many areas of Western Australia and Queensland with, for example, co-existing mining tenure and underlying pastoral leases or vacant crown land. Recently, Queensland introduced a new mechanism for the legal securing of offsets. This new mechanism could be a useful case study to assess the way in which offset land could be secured in the future.
- *Allowing for greater flexibility in the offsets mix* – More flexibility is needed in the offsets mix required of the proponent. In addition to direct and indirect offsets, a mechanism to fund relevant and targeted conservation initiatives should be developed and the offsets mix employed in a way which is both cost effective and improves environmental outcomes.
- *Staging of offsets* – long-term development plans should be supported by alternative arrangements for delivery of offsets over a greater time scale. Specifically, staging of offsets enables proponents to deliver offsets for actual disturbances rather than estimated impacts at the EIS stage.
- *Marine offsetting and a net benefit test* - there are important distinctions to be drawn between land-based offsetting and marine offsets. The resources industry has long maintained a consistent policy of advocating for 'no net loss' in the context of land based offsetting, as the impacts are easily definable and measurable. However, the Queensland resources industry

⁵ COAG Communiqué 13 April 2012

has in the context of the marine environment (and in particular the Great Barrier Reef), noted the difficulty in defining and quantifying the impacts at an ecosystem level. As such, the industry can see the efficiencies of adopting a slightly different approach, where there is a less direct link between the exact scale and nature of the impacts and those of the offsets. This approach would facilitate small-scale localised impacts from dredging operations to be offset through a contribution to an offset fund. Hence the industry could support a 'net benefit' policy in the context of marine offsets, provided it is contained and defined to ensure certainty to proponents and recognises all of the contributors to the impacts on the marine environment.

4. MONITORING AND EVALUATION

The MCA recognises the importance of monitoring and evaluation of offsets as provided in individual offset agreements. It is however essential that these agreements provide clarity regarding expectations for the delivery of outcomes and that any risk management provisions are fair to both the proponent and Government.

The MCA also supports regular review of the environmental offsets policy to ensure it is delivering the outcomes sought. However as provided earlier in this submission, any review should be resourced appropriately, engage suitable experts and be completed at a logical point in time.

5. OPPORTUNITIES PROVIDED BY OFFSETS

The MCA recognises the option to use environmental offsets should be considered only after the avoid-minimise-mitigate management hierarchy is applied. Further, offsets should not be required for projects which do not result in a significant residual impact. However, it is important to note that the development of environmental offsets can provide a significant opportunity for improved conservation outcomes. Accordingly, the MCA considers these often significant 'one off' investments by industry should be harnessed to maximise long term biodiversity gains.

Key to this will be the adoption of an integrated, more strategic approach to directing offset and conservation investment. It is important that offsets should no longer be considered in isolation to the offset requirements of State/Territory Governments, but be mutually reinforcing. Offset development should also be complementary to the range of government and non-government conservation activities taking place within a region, including catchment management, wildlife corridor development and to support the quality and management of the existing conservation estate. Industry should be encouraged to use systems already in place, for example 'environmental hubs' in Queensland. The benefits in adopting such an approach include:

- ***Trading fragmented and declining ecosystems with larger, better managed areas*** - In some parts of Australia habitat areas are becoming increasingly fragmented and disconnected leading to a trajectory of decline for those dependent species. Where industry investment in environmental offsets is directed to the improvement and/or conservation of larger areas of consolidated habitat, this decline may be halted or reversed, leading to longer term environmental gain.
- ***Connecting Ecosystems*** - Offset investment could be applied to connect habitat and existing conservation areas (e.g. contributing to wildlife corridors) or through support of a broader regional conservation strategy). This would contribute to the enhancement and resilience of regional biodiversity values.
- ***Supporting the existing conservation estate*** - Where a proposal meets the test of not shifting public cost to individual project proponents, collaborative opportunities may exist between the Government and proponents to improve the environmental values of existing conservation areas.

- ***Contributing to the recovery of critically endangered and threatened species –***
Alignment of offset investment with broader conservation priorities with threatened species management plans, threat abatement plans and securing arrangements for long term management of critical populations. Further, offset investment/areas could be utilised to support research into ecosystem resilience and the management of key threatening processes.

By implementing a more flexible approach to offsets, industry contributions could be utilised to secure priority or high value conservation outcomes. Further, government or specialist conservation providers could co-ordinate and manage the offset investment, to avoid mining proponents managing programs outside their area of core business, and to ensure a co-ordinated and targeted approach to biodiversity conservation.

6. CHALLENGES FOR THE INQUIRY

The development of environmental offsets is a complex task, requiring expert input and interpretation by biodiversity/environmental specialists. Further, environmental offsets need to be considered in the context of the impact to be offset, the characteristics of the target species and the region in which offsets have been or will be established.

The MCA considers that where the Inquiry does consider specific projects, it is imperative the debate is informed and contextualised by the comprehensive and specialist input of the technical aspects of the project, including information provided in the project's Environmental Impact Statement or specialist Commonwealth and State agency assessment. Informed conclusions cannot be drawn in the absence of this information.

Attachment A - Select Case Studies – Implementation of Environmental Offsets

While longer term monitoring is required to measure the success of more recently initiated offset requirements, the MCA provides the following industry case study which demonstrates the opportunity for offset development to contribute to longer term conservation aims.

Case Study: Rio Tinto's environmental offsets in the Hunter Valley

Recent projects have secured significant areas within the Hunter catchment as long-term biodiversity offsets. Figure 1 illustrates the offset ratio of more than 5:1 for a combined disturbance footprint of less than 5000 hectares. These offsets have been enhanced by indirect offset commitments to improve outcomes for Matters of National Environment Significance and State biodiversity values.

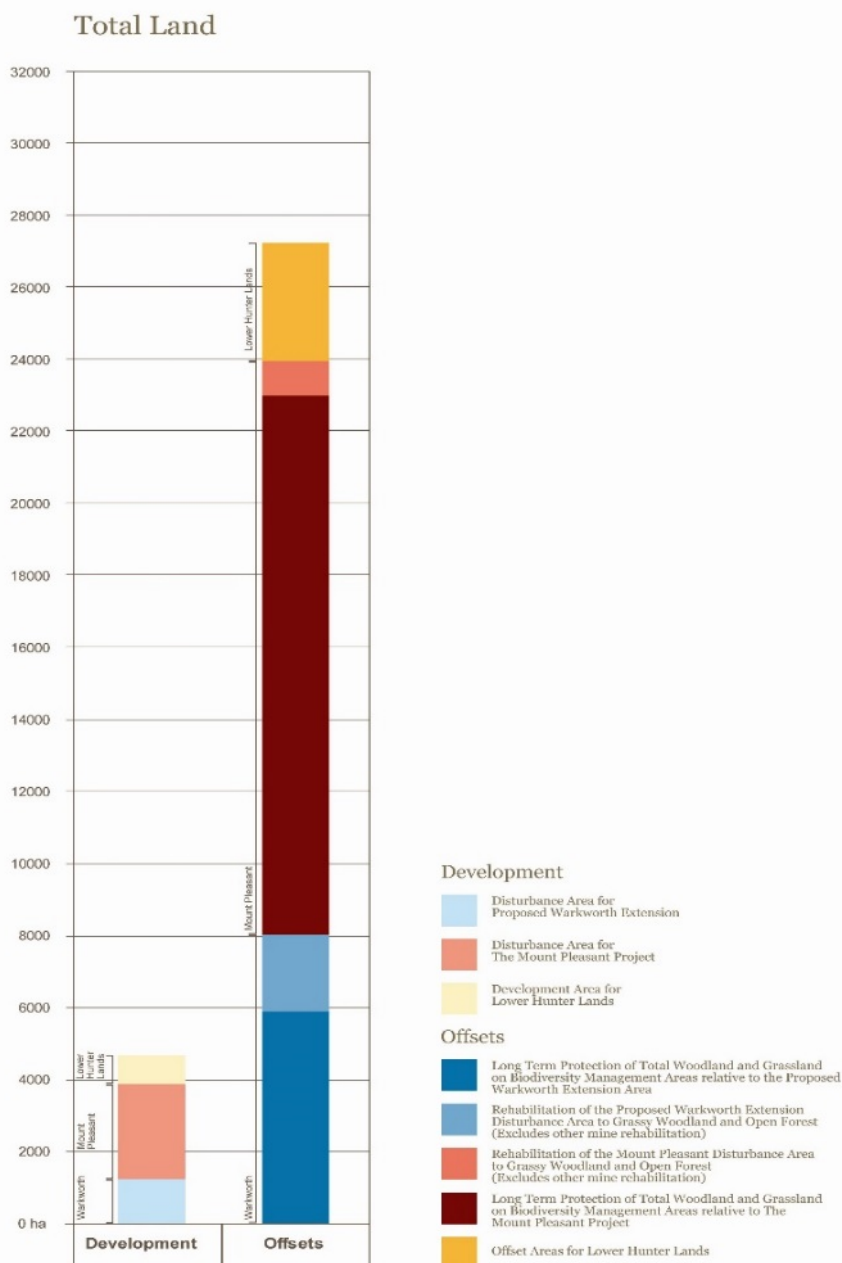


Figure 1

Key indirect offsets associated with recent Hunter Valley projects include:

- Assisting with the establishment of critical conservation corridors connecting Watagans to Stockton Bight and the Wallarah Peninsula through contribution of approximately 3,000 hectares of land.
- Investment of \$1 million for invasive weeds research project, to address key threatening process identified within the National Recovery Plans for Box Gum Grassy Woodlands CEEC.
- \$2 million to deliver a Woodland Birds project targeting priority actions from the National Recovery Plans for the regent honeyeater and swift parrot.
- A commitment of \$4 million over 5 years to restore and increase the area of endangered Warkworth Sands Woodlands and Central Hunter Ironbark ecological communities.
- An offer of 1,800 hectares of land next to the Goulburn River National Park to increase the National Reserve System for the Warkworth Continuation Project.