

3 April 2014

Christine McDonald
Secretary
The Senate Standing Committee on Environment and Communications
References Committee
PO Box 6100
Parliament House Canberra ACT 2600

Dear Ms McDonald,

Submission by Dr. Philip Gibbons to the Senate Inquiry into Environmental Offsets

Please accept this as my submission to the above Inquiry.

Background and experience

I have been an environmental professional for 25 years and am currently a senior lecturer at the Fenner School of Environment and Society at The Australian National University.

My experience with environmental offsets is as follows:

- I was one of the principal developers of the environmental offset regulations adopted by the New South Wales Government under its Native Vegetation Act 2005
- I was retained by the NSW Government to peer review their BioBanking Assessment Methodology in 2007
- I was retained by the Australian Capital Territory's Office of the Commissioner for Sustainable Development to advise on appropriate offset activities as part of their review of the Canberra Nature Park in 2011
- I reviewed the Commonwealth Government's proposed offset calculator in 2011 and provided advice underpinning the current Offset Assessment Guide and
- I am currently a member of an International Union for Conservation of Nature (IUCN) technical advisory group on biodiversity offsets.

Principles of biodiversity offsets

The current list of principles in the Australian Government's EPBC Act Environmental Offset Policy are a subset of those identified by the Business and Biodiversity Offset Program (BBOP) and I believe represent a sound basis on which to build a robust policy and assess its performance. However, it is extremely difficult to evaluate the performance of the policy because of the lack of available data and independent evaluation. I am therefore confined in my comments to a handful of offsets approved for the Australian Capital Territory for which I happen to have reasonable information at my disposal.

Improve or maintain

Environmental offsets must deliver an overall conservation outcome that *improves or maintains* the viability of the protected matter as compared to *what is likely to have occurred under the status quo* (my emphasis) (Figure 1). The Australian Government need to provide greater guidance on how to assess the amount of biodiversity that is likely to be lost over time under the status quo. This will improve transparency and consistency for developers and the public alike. I recommend the Australian Government develop a standard set of methods that must be followed for calculating what is likely to have occurred under the status quo. This methodology must reflect existing statutory protection.

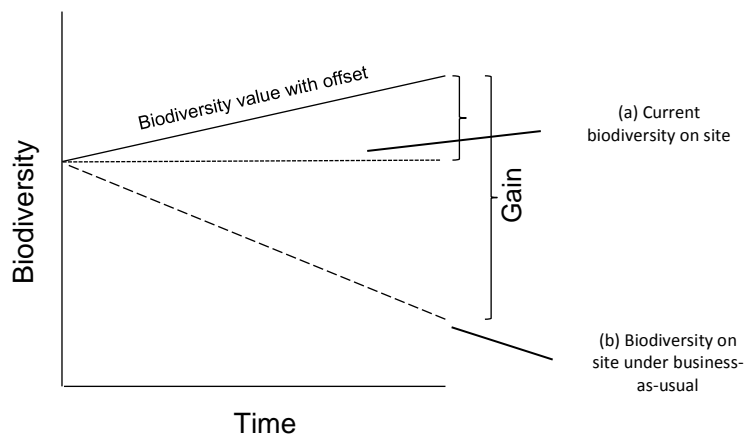


Figure 1. The Commonwealth policy states that biodiversity offsets must develop a gain that improves or maintains the viability of the protected matter as compared to *what is likely to have occurred under the status quo*, which is illustrated by (b) in this figure. Further guidance is needed in the current policy for calculating this.

The principle of additionality

Put simply, this principle states that offsets should produce a gain in biodiversity that would not otherwise have occurred, or is above the existing duty of care by a manager of a site (Figure 2). Anecdotally I believe that many offsets established to date under Commonwealth (and State) policy are not additional.

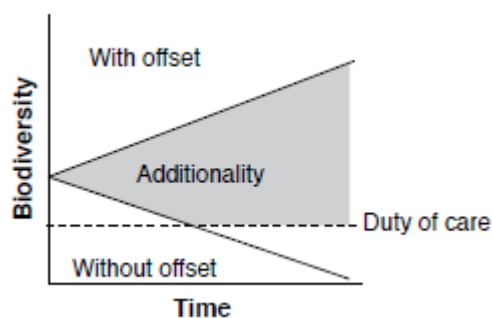


Figure 2. Additionality is actions above the existing duty of care by a manager to a site.

Many offsets appear to be established in existing native vegetation that is unlikely to have been cleared under existing Commonwealth or State regulations and is not suitable for alternative land uses such as agriculture (which is why many of these areas remain in the landscape). In these situations there is a net loss of biodiversity equivalent with the area (or amount) of biodiversity that is impacted. Further, this approach undermines the existing duty of care to the environment (statutory and non-statutory) that has evolved in Australia over many decades.

Some offsets I have seen are not additional because they include actions that should be undertaken as part of the existing duty of care by a land manager (Figure 2). For example, the Strategic Assessment of Urban Development at Gungahlin ACT (2012) included offsets within the Canberra Nature Park. The Australian Government’s Environmental Offsets policy states that offsets in the existing conservation estate are not generally additional (p. 24) and in this example the offset actions represent existing commitments by the ACT Government in Action Statements prepared under its *Nature Conservation Act 1980*. This type of activity is, in effect, cost-shifting, or the replacement of existing funding for environmental protection with funding from development and thereby create a dependency between conservation and development.

Offsets are a market-like mechanism in the sense that they place a value on biodiversity equivalent with the cost of offsetting the impacts of a development. Implemented properly this will, in turn, generate a disincentive for developers to negatively impact on biodiversity. However, this aspect of offsets is subverted when additionality is gamed and thus one of the theoretical strengths of the policy is lost.

The Commonwealth Government needs to develop a methodology that ensures the principles of additionality are observed and applied consistently. This should include a “legal and regulatory additional test” and/or demand that offsets exceed a pre-determined baseline to ensure that offsets are demonstrably additional—as is used in carbon offset schemes.

Averted loss offsets

Offsets can be actions that avert the loss of biodiversity that would have occurred under the status quo. The Offset Assessment Guide includes a section in which the risk of loss of the site must be estimated—the higher this risk, the greater the gain from averted loss. For the offset established for residential development of Block 9 Section 64 in North Watson, a figure of 70% risk of loss was used for the offset site (Justice Robert Hope Park) based on the predicted likelihood that urban open space can be used or rezoned for development. I looked back over 14 years of re-zoning decisions in the ACT and calculated that the risk of rezoning urban open space for the development was less than 1% and also found a commitment dating back to 2007 (Watson Neighbourhood Plan 2007 – that was written well before the offset was proposed in 2013) that explicitly states that Justice Robert Hope Park would remain a park. Thus, this development was approved based on a flawed assessment. In fact, the Statement of Reasons document provided by the Department of the Environment for this development was inconsistent in many respects.

The Commonwealth Government must provide greater instruction and oversight on the figures that are used in the Offset Assessment Guide. Assessments under this Guide should be made available to the public for all decisions to improve transparency and ultimately ensure that a greater level of rigour is applied to assessments.

Advanced offsets

I support the establishment of advanced offsets as permitted under the current policy, provided these are not established retrospectively (as was the case in the offset for Block 9 Section 64 in North Watson, ACT in which the advanced offset was retrospectively established when in fact the site was clearly reserved and managed for another purpose). Advanced offsets provide known gains in biodiversity prior to development. Conversely, the system as it operates now provides uncertain future gains well after development. No net loss is much more likely in the former scenario and thus a program or market that encourages the rapid expansion of advanced offsets should be developed.

Offsets implemented within an improve or maintain standard will restrict development opportunities

There are now considerable studies to demonstrate that there are only a limited range of impacts on biodiversity that can be offset with a high likelihood of success. For example, in a pilot study of 100 development applications in NSW, we found that only 30% could feasibly be offset with an *improve or maintain* outcome. Unless there is a more holistic strategy across government to decouple development and biodiversity loss then the demand for biodiversity loss will still exist and any form of regulation—offsets or otherwise—will only ever have limited success.

Recommendations

That the Commonwealth Government:

- develop a monitoring and evaluation program for biodiversity offsets
- develop a public web-based register in which all documentation for all offsets is lodged and this includes data used in the Offset Assessment Guide
- develop a standard and repeatable methodology to calculate the trajectory of biodiversity on impact and offset sites under the status quo taking into account existing statutory protection and the duty of care by the land manager to Matters of National Environmental Significance
- stimulate a market for advanced offsets with a gradual shift to a policy in which impacts on MNES can only occur where appropriate advanced offsets have been established.

Yours sincerely,
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