



Environment
Institute of
Australia and
New Zealand

Response to OEH draft Biodiversity Offsets Policy for Major Projects

1 Background

The Environment Institute of Australia and New Zealand (EIANZ) is pleased to make comments on the draft NSW Biodiversity Offsets Policy for Major Projects, and related documents on public exhibition including the NSW Biodiversity Offsets Fund for Major Projects Discussion Paper and the Draft Framework for Biodiversity Assessment. EIANZ has also made other recent submissions on the development of offset policy in Australia (EIANZ 2014).

EIANZ considers that the maintenance and enhancement of biodiversity values is important to achieve a resilient and sustainable landscape that meets the environmental, social and economic needs of Australian communities. A decline in biodiversity values has been reported in recent years in spite of political commitments and legislative frameworks to protect this essential characteristic of the Australian landscape (SeWPaC 2011).

While the EIANZ broadly supports the application of biodiversity offsets to compensate for the impacts of development projects that cannot be avoided and mitigated, it considers that the governance framework for assessment, implementation, monitoring and evaluation must be improved if this policy approach is to be of lasting value in protecting and managing biodiversity values. In particular, EIANZ considers it critical that decision-making processes do not over-emphasise the ability of offsets to replace lost vegetation and habitat. Furthermore, biodiversity offsets policy in NSW should be extended to all development across the state, not simply major projects.

The draft NSW Biodiversity Offsets Policy for Major Projects is an important policy initiative and has been reviewed in this submission. Detailed comments on key aspects of the draft policy and associated documents are outlined below, focusing on:

1. Application of offsetting principles
2. Relationship between offsets and strategic land use planning
3. Establishment of a NSW Biodiversity Offset Fund
4. Draft Framework for Biodiversity Assessment
5. Accreditation of biodiversity offset assessors
6. Mine rehabilitation and biodiversity offsets

2 About EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand, is an advocate for good practice environmental management. It holds members accountable for ethical and competent good practice environmental management.

The Institute regularly delivers professional development activities about a wide range of subjects of interest to environmental practitioners, and delivers an effective training program for early career environmental practitioners in seven core environmental and professional practice proficiencies.

A Certified Environmental Practitioner Scheme (www.cenvp.org) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Ecology.

The EIANZ is an advocate for environmental assessment and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registrable Australian body under the Corporation Act 2001 (Cwth), allowing it to operate in all Australian jurisdictions.

3 Application of offsetting principles

Offsetting principles underpin the application of biodiversity offsets. The biodiversity offsetting principles for major developments in NSW outlined in the draft policy are inconsistent with international best practice and the principles for determination of offsets under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). It is suggested that the principles be reconsidered to improve biodiversity outcomes and to be consistent with the EPBC Act. A recent review of biodiversity offsetting practice in NSW has identified 5 essential principles for offsets which should be incorporated in the policy (Fallding, 2014).

Furthermore, the proposed principles are not consistent with the 13 principles currently applied by the Office of Environment and Heritage for non-major development, leading to further complexity, inconsistency and inequity for development proponents. It is therefore proposed that the policy should apply to all development, not simply major projects.

The policy should retain the 'maintain or improve' standard currently applying to the clearing of native vegetation, and similarly should support 'like for like' biodiversity offsets as far as possible.

4 Relationship between offsets and strategic land use planning

The draft Policy should recognise that successful biodiversity offsetting requires concurrent implementation of a strategic land use planning framework, and other complementary programs. This framework must complement local government planning, support the protection of long term habitat connectivity and identify the preferred location for offsets.

A strategic planning approach is also consistent with strategic assessments undertaken under the EPBC Act, such as completed for the Western Sydney Growth Centres (NSW Department of Planning 2010), and currently being undertaken in the Lower Hunter Region.

Strategic planning can also identify opportunities for farmers and landowners to provide biodiversity offsets on their land, and would complement the introduction of a NSW Biodiversity Offset Fund.



5 Establishment of a NSW Biodiversity Offset Fund

While the establishment of a NSW Biodiversity Offset Fund is a good idea in principle, more details of the proposal are required. Key principles underpinning the establishment of such a Fund should be that:

- Payments to the Fund must be at least the equivalent of the costs of providing and maintaining suitable offset land in perpetuity.
- Funds should only be able to be spent on offset acquisition and management, not on scientific research or derelict mine rehabilitation, etc.
- The Fund should be operated independently of government to avoid conflicts of interest, and to ensure targeted investment is appropriate. The NSW Nature Conservation Trust may provide a suitable governance model.
- The Trust board should include representatives from both state and local government, and specialists in biodiversity land management. In particular, the Fund investment program should be linked to local strategic land use planning frameworks.
- Payments to the Fund need to be expended appropriately, and within a reasonable time frame.
- The Fund should be available to provide offsets for all development, not simply major projects.

While the Fund has the advantage that it simplifies the process of transferring biodiversity offsets and can enable more strategic and coordinated purchase and management of offset land, there are however, a number of risks. A significant risk is that not enough land will be available for acquisition for offset sites and the use of a fund transfers the risk and cost of providing offsets from developers to the NSW Government.

Because it is a convenient offset option, payments to the Fund are likely to become the default option for all development proposals requiring offsets. Therefore, it is essential for the policy to provide more detailed guidance outlining when payments to a Fund are appropriate and acceptable, and how the quantum of payment is to be determined.

6 Draft Framework for Biodiversity Assessment

The application of standard, science based methodology to the determination of biodiversity offsets for major projects is supported. However, some limitations of the approach proposed in the draft Framework are that:

- It adds a further methodology to the current assessment processes applying for the clearing of native vegetation, Biobanking and biocertification. Where multiple approvals are required, different assessment methodologies are required which are inconsistent with one another.
- The Framework is confusing, difficult to use and will lead to inconsistency and inequity compared to non-major development projects. In particular, socio-economic considerations are not subject to a transparent methodology.

- Proper ecological surveys are required, not simply regional scale vegetation mapping and modelling which in many localities is inaccurate and unreliable for quantifying offsets. The Plant Community Type (PCT) classification system for vegetation communities is very broad, and is poorly suited to site based ecological assessment. Furthermore, impacts on all flora and fauna should be considered, not simply listed threatened species.
- The Framework fails to adequately take into account time lags for the rehabilitation or creation of habitat, which may be several decades or even hundreds of years for the establishment of hollow bearing trees or re-establishment of food webs in forests, woodlands or freshwater wetlands.
- Assessment should be linked to, or at least take into account the strategic land use planning framework. Issues of habitat connectivity and corridors are not adequately catered for in the draft Framework and need to recognise altitudinal and latitudinal shifts necessary for climate change adaption.
- Quick determination of the likely scope and acceptability of offsets and options is essential for development planning. Use of the draft Framework is limited to accredited assessors and is not transparent.
- Application of supplementary measures is questionable. This requires further detail if it is to be acceptable.

7 Accreditation of biodiversity offset assessors

EIANZ supports the concept of accreditation of assessors using the Framework for Biodiversity Assessment. However, given the importance of the calculation of offset requirements, assessment should be undertaken independently of the development proponent or should be subject to an independent peer review process.

EIANZ would be interested in participating in the establishment of an accreditation scheme, and proposes that this should include consideration of ethical standards as well as technical standards for using the methodology in the Framework.

8 Mine rehabilitation and biodiversity offsets

As significant matter of concern in the draft Policy is its application to mining developments, and specifically to the consideration of rehabilitated mine land as biodiversity offsets. There is little evidence to indicate that reinstatement of land can be successfully achieved or that this is appropriate for a biodiversity offset (Maron et al. 2012).

Mine rehabilitation is subject to a separate regulatory framework, and should not form part of biodiversity offset arrangements. In particular, accepting mine rehabilitation areas as offsets is not appropriate, and remediation of mined land should not be funded from the removal of biodiversity either directly or through the proposed Biodiversity Offset Fund.

EIANZ suggests that a review of the Mining Act 1992 is required to clearly distinguish between mine rehabilitation and biodiversity land. The mining legislation also needs to be recognised as a barrier to the establishment of biodiversity offset sites as it limits opportunities to establish offset sites, either through the Biobanking scheme or other arrangements.

9 Conclusion

The draft policy is an opportunity to improve present biodiversity offset practice in NSW. While it represents a step forward, the policy also highlights the many areas that need work before NSW has a comprehensive and equitable framework for biodiversity offsetting for all developments adversely affecting biodiversity values in the state.

The NSW Government should aim to work towards a relatively simple and consistent process and set of principles applying to the provision of biodiversity offsets for all developments (including major projects), which applies at all levels of government. The draft policy has the potential to further increase the complexity of biodiversity offsetting processes in NSW and the inconsistency in standards applied between major projects and all other development projects.

Many key details of the proposals are not included in the exhibition documents and are important for effective implementation, particularly in relation to the scope of the proposed Biodiversity Offsets Fund.

The EIANZ would be pleased to assist in, and contribute to the further development of the NSW Biodiversity Offsets Policy for Major Projects and associated frameworks. Please don't hesitate to contact me if you have any questions regarding this submission. EIANZ can be contacted directly at Sarah.Bray@edgeenvironment.com.au.

Yours sincerely,



Sarah Bray (nee Campbell)
President, EIANZ NSW Division

8 May 2014

References

EIANZ (2014) Submission to the Senate Standing Committee on Environment and Communications References Committee Inquiry into Environmental Offsets, April 2014.

Fallding, M (2014) *Biodiversity Offsets: Practice and Promise*. Environmental and Planning Law Journal 31: 11-33.

Maron, M. et al. (2012) *Faustian bargains? Restoration realities in the context of biodiversity offset policies*. Biological Conservation 155: 141-148.

NSW Department of Planning (2010) *Sydney Growth Centres Strategic Assessment Program Report*, November 2010. <http://www.environment.gov.au/node/18611>

SEWPaC (2011) *Australia State of the Environment 2011: Independent Report to the Australian Government Minister for Sustainability, Environment, Water, Population and Communities*. Submitted on behalf of the EIANZ NSW Division. 14 September 2012

