

24 March 2014

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The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
Brisbane, Qld 4000

PARTNERS



Dear Mr Hansen

Environmental Offsets Bill 2014



Thank you for the opportunity to provide comments on the *Environmental Offsets Bill 2014* (Bill).



The Property Council has worked with the Department of Environment and Heritage Protection (Department) on the *Queensland Environmental Offsets Policy* (Policy) since early 2013.



Throughout this time, the Property Council has consistently supported the development of a single, integrated environmental offsets policy, and its aim of providing a simplified, consistent approach to the determination and delivery of offsets in Queensland.



While the Policy and Bill may achieve their stated purpose of providing a simplified approach to the determination of offsets, concerns remain regarding the delivery and implementation of the framework. In particular, our fundamental concern regarding the need for an exemption from the requirement to provide environmental offsets for urban uses in urban areas, remains.



This issue, and a number of others, are discussed below.



Support for the Bill

The Property Council supports the purpose of the Bill, and applauds the Queensland Government for developing a Policy that purports to regulate offsets across the three levels of government.



A major criticism of the current ad hoc approach to determining offsets is the overlap and duplication across the three jurisdictions. If the State Government is able to achieve Commonwealth accreditation of the Bill and Policy, it will greatly assist in reducing a layer of unnecessary green tape.



The introduction of 'significant residual impact' as the threshold for an action to require an offset condition not only aligns with the Commonwealth policy, it also provides a fairer approach than the current 'impact' requirement in determining when an offset condition is imposed.

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The Property Council also supports the discretion afforded proponents to select the method by which they meet their offset obligations – whether by proponent-driven offsets, financial contribution offsets or a combination of the two.

The introduction of a capped multiplier of 1:4 (for prescribed environmental matters, other than protected areas) is a vast improvement on the original multipliers, and is supported by the Property Council. This limitation should be explicitly stated in the Bill, so that it applies to both the State and local governments. Further, it should apply to both proponent-driven offsets and financial contribution offsets.

Exemptions for urban areas

Recommendation: Introduce an exemption for urban development in areas identified for urban purposes

The primary concern for the property industry with regard to the Bill and Policy is the requirement for offsets to be provided in urban areas.

In determining whether or not to identify an area as suitable for urban development, governments undertake rigorous assessments of the environmental values of the area, and balance that information with other policy objectives, such as housing our increasing population and promoting economic growth.

When developing on land identified for urban development, the property industry is implementing the government's policy outcomes. It is counterintuitive to then impose a tax on development occurring in accordance with these established policy objectives.

At a local government level, enabling local governments to seek offsets in areas they themselves have zoned for urban uses is in conflict with the various reform measures occurring across government to improve certainty and consistency in the planning system.

The Property Council recommends that the Government introduce an exemption from the provision of environmental offsets for urban development in areas identified for urban purposes, whether these areas are identified in the *South East Queensland Regional Plan* (SEQRP), local government planning schemes, areas identified under the *Economic Development Act 2012*, or otherwise.

With a review of the SEQRP currently underway, this provides an opportunity for Government to align the two processes and provide greater certainty to the industry.

Additionally, as the list of prescribed activities to which the Policy and Bill apply will be listed in the regulations, there exists an opportunity for Government to easily introduce an exemption for urban uses (prescribed activities) on land identified for urban purposes.

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Role of local governments

Recommendation: Limit the scope of local government offset policies and immediately introduce the cap of 1:4 on local government offsets

The Bill provides that local government offsets are not to duplicate the requirements of another level of government.

While the Property Council supports this limitation, the removal of duplication will fail to take effect if the bilateral agreement between Queensland and the Commonwealth is not in place, or if approvals are obtained from a local government, prior to seeking State or Federal approvals. A mechanism needs to be included in the Bill to deal with these situations.

Throughout Queensland, many local governments are in the final stages of adopting planning schemes that are compliant with the *Sustainable Planning Act 2009* (SPA). As part of these new schemes, many have introduced offsets policies that differ greatly from the Policy and Bill.

As the transitional provisions of the Bill (Section 971) make it clear that local governments are permitted to proceed with current offsets policies until their planning schemes are amended or a new scheme is made, it may be many years before changes are seen at a local government level.

To counter this delay in implementation, the Property Council recommends the immediate introduction of a maximum multiplier of 1:4 for all offsets being sought by local governments. This limitation should be expressed in the Bill. This will provide a greater level of certainty to the property industry prior to new local government policies being introduced.

While it is acknowledged that environmental offset policies of local governments will need to be prescribed by regulation, it is important that such policies are carefully and thoroughly reviewed prior to being prescribed. A cursory review as part of the normal planning scheme State interest check process will not provide an adequate safeguard, given the highly technical nature of such documents.

It would be preferable for local government offset policies to be publicly notified and open to public submissions prior to being submitted to the State Government for prescription. Ideally, local government offset policies should be open for public consultation for a period of 20 business days and submitted to the State Government for prescription together with a report that addresses the submissions received.

Additionally, matters of local environmental significance that are identified by local governments in their local planning schemes or planning scheme policies, should be limited to matters that have not already been identified as matters of State environmental significance, or matters of National environmental significance, to further reduce duplication.

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Requirements before starting

Recommendation: Immediately undertake consultation on the proposed dispute resolution process and revise requirements regarding staging and conditions

The Property Council commends the Bill's proposed approach to permit works to start once an administering agency and a proponent reach agreement about the delivery of an offset condition, as opposed to when an offset has been legally secured.

It is noted that the Bill provides for the establishment of a dispute resolution process within the regulations to deal with circumstances where the administering authority and development proponent are unable to agree on the delivery of an offset condition.

As the regulations are proposed to be released to coincide with the enactment of the new legislation, the Property Council is keen to ensure that adequate consultation is undertaken on the proposed dispute resolution process.

It is imperative that this process provides a fair, efficient and effective resolution of disputes, ensuring that developments are not unnecessarily delayed.

The Property Council also supports new provisions within the Policy permitting the staging of proponent-driven offsets, and the allowance of credits and debits to deal with unavoidable circumstances in offset delivery.

As staging is critically important in addressing the market reality of the often unpredictable nature of delivering development, the Property Council seeks the inclusion of staging provisions within the Bill, rather than the Policy.

It also remains unclear whether the staging of offsets will apply to financial settlements. As proponents choosing this delivery option will be subject to the same market conditions as those selecting proponent-driven offsets, it is critical that staging is also permitted for this delivery option.

The proposed process within the Policy whereby offset conditions must reflect the intent to stage offsets is of concern to the Property Council, as the conditions are set by the administering agency, not the proponent. Should the administering agency not agree to such a condition, the proponent will be required to seek a negotiated decision notice, and/or appeal the decision.

As this process has the potential to introduce time delays and costs, the proponent should be provided a right to stage offsets in all circumstances where the authority has provided for a staged development.

Section 16(3) of the Bill identifies a number of conditions that are deemed to be imposed if an offset condition is imposed on an authority, under another Act.

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As it is an offence to contravene a deemed condition, the Bill should be amended to require that deemed conditions are either replicated or referenced in the authority issued under the other Act. This will ensure persons required to comply with the deemed conditions are made aware of their existence.

Critically, it is noted that there is only a tenuous link between the Policy and an offset condition. There is nothing in section 14 of the Bill, which deals with imposing offset conditions, which requires an offset condition to be consistent with the Policy.

This is inconsistent with the Policy (page 4), which identifies itself as ‘...a decision-making support tool when the relevant *administering agency* has identified that an offset is required for a significant residual impact on any *prescribed environmental matter*.’

Financial offsets

Recommendation: Review inputs into the financial offsets calculator to ensure a fair system that meets stated policy objectives

The Property Council notes the Bill’s intent to allow for *Strategic Offset Investment Corridors* (Corridors) that will provide ‘...strategic and landscape scale outcomes...’ (Explanatory Notes, page 3). As raised in previous correspondence with the Department, concerns remain regarding the process for identifying and mapping these Corridors, and we note that the Bill is silent on this matter.

Over the past 12 months, the Property Council has worked with the Department to review the financial calculator developed in conjunction with the Policy, through which funding for the Corridors will be derived.

After being provided the opportunity to interrogate the financial calculator, the Property Council developed a number of case studies based on real-world examples, which were provided to the Department.

While access to the calculator and its outputs was provided on a confidential basis, the Property Council believes the financial calculator will fail to meet the Policy’s objective to ‘...benefit authority holders by making offsets more cost effective.’ (Policy, page 12).

This will have the flow-on effect of limiting the funding available to the Government to deliver Corridors, and encourage the current ad hoc situation of proponent-delivered offsets.

High level inputs such as a minimum administration fee of \$50,000 and the use of average values across local government areas, contribute to the escalated costs derived by the calculator.

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Unless the output costs of the calculator can be contained at a similar level to proponent-delivered offsets, the calculator will remain unutilised, which will limit the Government's ability to achieve its stated objective of delivering landscape-scale outcomes.

Additionally, the calculator does not provide an opportunity for proponents to provide alternative inputs for consideration, such as revised factors based on field assessments undertaken by qualified professionals. This option would allow the proponent to negotiate an outcome with the administering authority.

The Property Council recommends the Department revise and introduce flexibility into the inputs of the calculator to ensure it reflects the actual cost of delivering an offset, providing a greater incentive for proponents to utilise it.

Transitional provisions, outstanding materials and other matters

Recommendation: Allow for consultation on the materials developed to support and implement the Bill, prior to their finalisation; ensure that the provisions of the Policy are consistent with the provisions of the Bill

The Bill and Policy refer to a number of supporting materials, such as regulations, guidelines, maps and strategies, currently being developed by the Department.

A comprehensive review of the Bill and Policy is not possible in the absence of the regulation and the many supporting materials referred to in the Policy. *Direct Benefit Management Plans*, for example, are not referred to in the Bill, so it is assumed they will be given recognition in the regulations.

It is imperative that the industry is permitted to view and provide comment on these documents, prior to their finalisation.

Additionally, the Policy provides for the development of a *Self-administered offset code of compliance*. No consultation has been undertaken with respect to this document to date and the Property Council requests consideration of industry input into its development.

The Policy purports to deal with transitional arrangements. These should be located solely within the Bill, or if retained in both the Policy and Bill, they must be consistent.

There is also a need to ensure that other components of the Policy are consistent with the Bill. For example, it is unclear how section 2.6 of the Policy and section 24 of the Bill correlate, with respect to impacts on legally secured offset areas.

It is also unclear how the transitional provisions in section 94(1) of the Bill and the provisions within the Policy that refer to the SPA, are compatible. If inconsistency exists between the provisions of the different legislation, it needs to be resolved in the legislation, not in the Policy.

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The Property Council would support provisions that enabled a proponent who has lodged an application under another Act before the commencement of the Bill (and where the application has not been decided) to elect to have the Policy apply to that application.

Finally, a number of errors have been found in the Policy:

- The Bill identifies matters of local environmental significance dealt with under a local planning scheme or planning scheme policy, while the Policy only identifies matters in a local planning scheme.
- The Bill refers to cost-effective on-site mitigation measures, while the Policy refers to 'all reasonable avoidance and mitigation measures'.
- The Policy refers to 'the main purpose, offset principles and offset requirements' of the Bill, however there is no express reference to 'offset principles' in the Bill.
- The list of matters in the Policy relating to Offset Delivery Plans is more extensive than those identified in the Bill.
- The reference to 'Chapter 2' in section 3.1 of the Policy is not correct.
- Exemptions in section 3.2 of the Policy are not consistent with those listed in the Bill.
- Section 1.4.3 of the Policy no longer exists, and reference to it needs to be removed.

Conclusion

Thank you once again for the opportunity to provide comment on the Bill.

The Property Council remains supportive of the Bill's intent to provide a simplified framework for the calculation and delivery of offsets in Queensland, and appreciates the consultation undertaken by the Department to date.

As stated above, the property industry remains concerned by components of the proposed framework, and looks forward to the opportunity to work with the Committee and Department on further refinements.

The Property Council would appreciate the opportunity to appear before the Committee at the public hearing scheduled for Wednesday, 2 April, and would be pleased to provide any further information to assist the Committee in its review of the Bill.

If you require any further information on the Property Council or this submission, please do not hesitate to contact me on 07 3225 3000, or kmacdermott@propertyoz.com.au.

Yours sincerely,



Kathy Mac Dermott
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