

File no:

MEETING WITH THE BUSINESS COUNCIL OF AUSTRALIA ON THE EPBC ACT OFFSETS  
POLICY AND OFFSETS ASSESSMENT GUIDE

MINUTES

24 July 2012

Venue: Business Council of Australia offices, 120 Collins St (level 42), Melbourne

Time: 4-5pm

1. Introduction

- a) Attendance/apologies/declaration of interests

IN ATTENDANCE

s22 s22	Biodiversity Policy Section, Regulatory Reform Task Force, Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)
s47F s47F	Business Council of Australia Business Council of Australia

2. Topics of discussion

- a) The COAG decision on environmental regulation reform of 13 April 2012 and broader regulatory reform processes:
- Discussion about the role of the offsets policy in bilateral negotiations with states and territories; the department clarified that:
    - : the COAG outcomes document specifies the role of the offsets policy in relation to the broader bilateral negotiations;
    - : if a state or territory offset policy/tool demonstrates that it meets the policy's principles, there could be scope for this policy/tool to be accredited for use assessing EPBC Act offsets within that state or territory;
    - : the requirements for offsets under the EPBC Act are not necessarily greater than those under state and territory environment legislation, however the EPBC Act offsets policy requires offsets to meet impacts at the level of specific matters of national environmental significance, where many state and territory policies do not; and
    - : where offset requirements under state or territory environment legislation meet offset requirements under the EPBC Act, it may be possible for one offset to be used for both state/territory offset requirements and EPBC Act offset requirements simultaneously.

b) Update on the EPBC Act environmental offsets policy:

- Discussion about the responsibilities of a proponent when something happens to an offset site that is outside of the proponent's control (e.g. natural disaster); the department clarified that the proponent's responsibility is to meet the approval conditions. Approval conditions are usually outcome focused, but sometimes are more activity-based. Proponent's responsibility is broader for an outcome focused condition.
- Discussion about the use of third parties for the longer term management of offset sites; the department explained that it considers the use of third parties for the delivery of offsets to be appropriate, and that the key issue for the department is that the approval conditions are implemented.

c) Overview of the Offsets assessment guide and demonstration using two scenarios:

- Question about how uncertainty is incorporated into the measurement of impact during the EPBC Act assessment process; the department explained that the EPBC Act incorporates the precautionary principle as an underlying principle and where there is uncertainty about impact the precautionary principle is adopted.

d) Other topics of discussion:

- s47F mentioned that The Business Council of Australia has been particularly focused on cost recovery under the EPBC Act and has not had any significant comments from members about the EPBC Act Offsets Policy or Offsets Assessment Guide.
- s47F will follow-up with member organisations to get their feedback about the Offsets Policy and Guide and will make contact with the department if she has any further comments.

The meeting finished at 5 pm.

Minutes confirmed as true and correct.

_____	Date: _____
s22 Acting Director Biodiversity Policy Section Regulatory Reform Taskforce	

INTER-AGENCY PRESENTATION ON THE OFFSETS ASSESSMENT GUIDE

MINUTES

Meeting of Wednesday 1 August 2012

Venue: Large Executive Conference Room, Level 2, John Gorton Building, Parks, Canberra

Time: 3:30 – 4:30 pm

DSEWPaC representatives:

Presenter: Kimberley Dripps – Deputy Secretary

Presenter: Kelly Pearce – A/g First Assistant Secretary (Regulatory Reform Taskforce)

Presenter: s22 – A/g Director Biodiversity Policy Section (Regulatory Reform Taskforce)

Note-taker: s22 – A/g Assistant Director Biodiversity Policy Section

Note-taker: s22 – Policy Officer Biodiversity Policy Section

Attendees	Agency
s22	Department of Resources, Energy and Tourism
s22	Department of Infrastructure and Transport
s22	Department of Climate Change and Energy Efficiency
s22	Department of Resources, Energy and Tourism
s22	Department of Resources, Energy and Tourism
s22	Department of Defence
s22	Department of Agriculture, Forestry and Fisheries
s22	Department of Industry, Innovation, Science, Research and Tertiary Education
s22	Department of Human Services
s22	Department of Prime Minister and Cabinet
s22	Department of Resources, Energy and Tourism
s22	The Treasury

**Preamble**

The meeting was opened by Kimberley Dripps who welcomed participants, stated the purpose of the meeting and gave a broad overview of the Commonwealth's involvement in the determination of suitable environmental offsets. Kelly Pearce spoke to the PowerPoint presentation. s22 presented the *Offsets assessment guide* (the guide).

s22 states that he last saw a version of the guide in November 2011. He would like to see an updated version of the guide.

s22 said that the Biodiversity Policy Section has engaged the Department of Defence throughout the development of the guide. The Biodiversity Policy Section will be running a number of defence scenarios through the guide in the near future.

Participant would like the guide to be distributed electronically.

Q: Offsets may not always need to be in the form of purchased land for conservation purposes. Can one improve the condition of land instead?

A: Kelly Pearce: Yes

Participant states that using the term 'discount rate' is an inaccurate way of describing the effect of using the IUCN criteria for the annual probability of extinction.

s22 states that Defence does not want to be penalized for current and historical conservation practices. Defence wants discretionary use of the policy and guide.

s22 states that the guide should not apply to Defence as the private sector can pass costs on to customers; however, Defence may need to seek additional funding from the government.

Participant asks about a market for offsets.

Kelly Pearce responds saying that the Commonwealth would not want to be the banker.

Q: Is there going to be a cabinet submission?

A: No

Participant questions the likelihood of a court challenge of the policy and guide.

Q: Does the policy and guide have legal status?

A: They are guidelines.

Minutes confirmed as true and correct.

_____	Date: _____
[Signature] [Name and Position] Chair	



INTERDEPARTMENTAL COMMITTEE

DRAFT MINUTES

Wednesday 4 July 2012

Venue: Large Executive Conference Room, John Gorton Building, Parkes Canberra

Time: 10:30 am – 12:00 pm

1. Introduction

a. Attendance/apologies/declaration of interests

Kimberley Dripps welcomed attendees and noted that not all invitees were present.

2. Minutes of previous meeting (7 March 2012)

Minutes from the Interdepartmental Committee meeting of 7 March 2012 were sent to participants on 20 March 2012. These minutes were also distributed in this meeting.

Kimberley Dripps asked if attendees had any comments on the draft minutes from the Interdepartmental Committee meeting of 7 March 2012.

There were no comments on the Minutes.

b. Action list report

NA

3. Update on progress – Environmental Regulatory Reform

Kelly Pearce outlined current activity regarding the approvals bilateral process between the Australian Government and states and territories.

a. Legislative amendments – (s22 [REDACTED]) – Director)

SEWPAC stated that the drafting of the EPBC Act Amendment Bill (the Bill) is about 75% completed

**The Bill will have a category T status for Spring sittings** (check accuracy of statement)

The Minister is considering requests from stakeholders regarding an exposure draft of the Bill.

Various sections of the Bill have been provided to the relevant central agencies for comment.

SEWPAC thanks stakeholders for their input to date.

Ms Kimberly Dripps requests that participants contact s22 [REDACTED] if they require consultation regarding elements of the Australian Government Response to the independent review of the EPBC Act.

Ms Kelly Pearce stated that a final draft of the Bill will need to be presented to the Minister in the week of 23 July 2012.

b. COAG Working Group on Environmental Regulatory Reform

Ms Kimberly Dripps outlined the new functions of the Regulatory Reform Taskforce. There is now a Joint Team on Environment Regulation Reform located with the Department of Prime Minister and Cabinet.

Ms Kelly Pearce mentioned the department has had meetings with the COAG Working Group on Environmental Regulatory Reform to discuss a variety of issues, including national standards for environmental offsets.

There has been no significant change.

The department will possibly be re-engaging with the COAG Working Group on Environmental Regulatory Reform in August 2012.

c. Cost recovery (s22 [redacted] – Director)

Ms Kimberley Dripps mentioned that the Australian Government will not utilise cost recovery if the states and territories are undertaking environment impact assessments under the assessment and approval bilaterals.

Ms s22 [redacted] stated that the Draft Cost Recovery Impact Statement (CRIS) has been tested through a smaller Cost Recovery IDC in April 2012.

The draft CRIS was released on 10 May 2012

The draft CRIS clearly articulates that the Commonwealth will only charge for services that the Commonwealth undertakes.

There was a six week consultation period on the draft CRIS which closed on (?) June. The department accepted a number of late submissions

A total of thirty-three submissions were received which is much less than what was received last time (about 80) – (check accuracy)

Views from submissions were in favour of improved services and increased compliance with statutory timeframes. Some submitters were positive that previous feedback had been considered.

The department will brief the Minister on the outcomes of stakeholder consultation

The draft CRIS will be passed through the ERC in a couple of months.

The EIA section of the draft CRIS will need to be revised prior to finalisation.

The Minister will be writing to Ministers of other central agencies prior to the CRIS going through to the ERC. Departments will include DRET, DAFF, DIISR, Finance and PMC and possibly some others.

d. Draft *EPBC Act environmental offsets policy* and *Offsets assessment guide* (Kelly Pearce)

Ms Kelly Pearce outlined that environmental offsets are used as a condition of approval after all attempts have been made to avoid or mitigate detrimental environmental impacts.

Ms Kelly Pearce states that the department already utilizes environmental assessments.

Stakeholders have been requesting for more transparency around the determination of suitable environmental offsets.

Stakeholders requested that the Offsets assessment guide is independently peer reviewed by a suitably qualified academic.

The Offsets assessment guide is an expert tool which has been created as a decision making tool for departmental assessment officers as well as a guidance tool for proponents.

The guide has been peer reviewed and further developed by Professor s47F and his team at the University of Queensland.

The department is currently consulting with state and territory environmental departments

The department is also testing the guide with real life case studies

The department anticipates that the policy and guide will be ready for release in August 2012.

Ms Kelly Pearce asked if any of the participants would like to see the workings of the Guide and said that we can have 'offline' discussions. She mentioned that these presentation usually take about 2 hours.

The department is working with environmental groups, peak bodies and industry representatives.

Question: from representative from defence. Wanted to know about procurement of land.

e. Draft *Australian Government biodiversity policy*

The draft policy has been through a public consultation process.

The submissions will be published with the release of the policy.

The policy will be released in August – September 2012.

SES haven't seen the draft policy

Comments from subs include (include brief from annotated agenda)

No major changes to the policy

The policy interacts with the EPBC Act.

f. National Centre for Cooperation on Environment and Development (s22 )

The Centre is an initiative to engage industries, governments and scientists.

An EOI was released last year for participants to be involved

MAY 2012 – discussion paper for participants who provided EOIs

There are three types of participants

1. Partners – governance function
2. Project Leaders – governance for specific projects
3. Participants – those who wish to stay in touch, on distribution list

55 EOIs - 10 have come back – due 4 July 2012

One on one conversations will be had with potential partners

The Minister will be briefed on the operation of the Centre

A decision is expected to be made later this year

4. Next Steps

Active negotiations with states and territories (approval bilaterals)

We have worked with QLD on assessment bilaterals

Worked with Tas

James Barker (PMC) stated

- discussions with states and territories will probably start with discussions with the ACT and NSW

Leg process – Kimberley Dripps

Exposure draft – late in Spring – to parliament

Cost recover – discussed ERC timing

AGBP and EOP – ready to go once Minister approves

**Action:** xxxxxxxxxx

5. Other Business

**Action:** xxxxxxxxxx

6. Upcoming agenda items

7. Next Meeting

[time/date/venue]

The meeting finished at 11:20 am

Minutes confirmed as true and correct.

_____	Date: _____
Kimberley Dripps Deputy Secretary Environmental Assessment and Compliance, Heritage and Wildlife, Supervising Scientist and Marine Divisions Chair	

MEETING WITH NRETAS (OFFSETS ASSESSMENT GUIDE) AND OTHER NT GOVERNMENT  
AGENCIES

Meeting of Tuesday 10 July 2012

Venue: Plaza 2 Conference Room (Smith St Mall), Darwin, Northern Territory

Time: 2:00 pm – 4:00 pm (CST)

SEWPaC representatives

**Presenter:** Kelly Pearce (Acting First Assistant Secretary – Regulatory Reform Taskforce) (via teleconference)

**Presenter:** s22 (Acting Assistant Director – Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer - Biodiversity Policy Section)

Name	Position	Agency
s22	Executive Director – Strategic Projects Implementation Office	NT Department of Chief Minister
s22	Principal Policy Officer	NT Department of Resources
s22	A/Director Environment Protection and Sustainability	NRETAS
s22	Executive Officer	NT Department of Chief Minister
s22	<del>NRETAS</del> -CEO	NRETAS
s22	Manager Environmental Assessment	NRETAS
s22	A/Senior Executive Director, Natural Resources, Environment and Identity	NRETAS
s22	Project Officer, Emerging Issues	EPA
s22	A/Director	EPA
s22	A/Executive Director, Natural Resources	NRETAS
s22	Director, Marine Biodiversity	NRETAS

NRETAS – Department of Natural Resources, Environment, The Arts and Sport

EPA – Environment Protection Authority

## Discussion:Introduction

s22 started the presentation. Kelly Pearce outlined the context and background of the policy and guide. s22 demonstrated the use of the guide.

Q (Tony): How does the NT environmental offsets policy relate to the Commonwealth policy?

Take on notice.

s22 said that ~~the department~~SEWPaC will need to provide guidance for the guide.

s22 states that the policy and guide does not mention Indigenous land management. This is a very important issues for NT.

s22 wanted extra bonus points in the calculator for Indigenous rangers.

Kelly: Indigenous rangers cannot be factored into the guide. This has been done in earlier versions.

s22 : ~~We will encourage delivery of offsets by~~dd information about indi Indigenous rangers into the policy. Our Minister is keen on this.

s22 ~~wanted extra bonus points in the calculator for Indigenous rangers.~~

s22 ~~there is no clear methods for bonus point as yet~~

s22 : ~~When speaking of Indigenous involvement. Does this mean any involvement?~~

s22 ~~Any involvement will need to be directly applicable to the protected matter.~~

s22 would like remedial measures to be done by locals as much as possible.

Kelly: Local management may not always work.

s22 : Do departmental assessment officers decide what values will be assessed through the guide (quality, etc).

A: Yes

s22 states that ~~there are limited options in the NT for offsets~~NT will have issues with the metric as there are limited adequate offset sites. For instance, mangroves are already well managed so how would one get conservation gain for an impact on mangroves.

s22 : ~~How is quality determined?~~Discussion about how the quality score is determined.

Participant states that NT struggles to get high quality data from their EIA process.

s22 ~~states that the guide could possibly have a factor for indigenous rangers.~~

s22 : Will the guide (with worked examples) be published on the department's website with other approval information.

s22 : Possibly yes

s22 : ~~In a situation where a direct offset is not available, is there a cash option.~~Discussion about the 90% requirement for direct offsets and potential exceptions to this requirement if a greater benefit can be achieved for the protected matter.

s22 : The department is looking at a third party accreditation system and biodiversity banking options. The Commonwealth has no interest in being the banker.

Minutes confirmed as true and correct.

_____	Date: _____
[Signature] [Name and Position] Chair	

DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION  
AND COMMUNITIES

FOI 190210  
Document 5

MEETING WITH DEPARTMENT OF ENVIRONMENT AND HERITAGE ON THE OFFSETS  
ASSESSMENT GUIDE AND OTHER SA GOVERNMENT AGENCIES

MINUTES

Meeting of Friday 13 July 2012

Venue: 77 Grenfell Street, Adelaide, South Australia 5001

Time: 9:30 am – 11:30 am

SEWPaC representatives:

**Presenter:** Kelly Pearce (Acting First Assistant Secretary – Regulatory Reform Taskforce) (via telephone)

**Presenter:** s22 (Acting Assistant Director – Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer - Biodiversity Policy Section)

Name	Position	Organisation
s22	Principal Advisor Landscape Management	DEWNR
s22	Senior Policy Advisor (EPBC Act)	DEWNR
s22 (Convenor)	Principal Environmental Officer	DPTI
s22	Senior Environmental Management Officer	DPTI
s22	Principal Environmental Advisor	DMITRE
s22	Director Geophysical Operations	DMITRE
s22	A/Manager Policy and Economics	PIRSA
s22 (Principal contact)	Manager Planning and Assessment	DEWNR
s22	Acting Director Mining Regulation	DMITRE
s22	Chef Environmental Officer (Major Developments and Assessments)	DPTI
s22	Principal Advisor, Native Vegetation Council	DEWNR
s22	Director Legislation, Planning and Policy	DEWNR

DPTI – Department of Planning, Transport and Infrastructure

DEWNR – Department of Environment, Water and Natural Resources

DMITRE – Department of Manufacturing, Innovation, Trade, Resources and Energy

PIRSA – Primary Industries and Recourses South Australia

**Preamble:**



Kelly Pearce joined the conversation via telephone and introduced the background and purpose of the *EPBC Act environmental offsets policy* and *Offsets assessment guide*.

s22 presented the *Offsets assessment guide* to attendees. s22 documents discussion.

**Discussion:**

s22 : SA have an avoid, mitigate hierarchy with offsets considered afterwards. That said, this does not always happen in realty.

s22: There is a perception of double dipping offsets in SA. This is due to the very different systems of the SA government and the Commonwealth.

s22 : The Commonwealth policy principles are largely aligned with the SA environmental offsets policy.

s22 suggests for case studies to be run through the guide for each jurisdiction. She would like a focus on wet areas.

KP: Discussion about the potential for 3<sup>rd</sup> party accreditation of offset providers.

Participant requested a training package for jurisdictions.

KP: Agreed

s22 request broader training for EIA not just offsets.

Discussion around guidance for the use of the guide. The department may have guidance for specific MNES.

s22 Will figures entered into the guide be contestable?

KP: If facts are incorrect, then they will be contestable.

KP invites participants to send an email or phone to discuss COAG context.

s22 stated that the quality scale will be different from the SA Native Veg Act methodology.

s22 :

- concerned about the longevity of offsets.
- would like a net public benefit from offsets (social and economic benefits from the offset). Feach states that the EPBC Act does not look at offsets which are not related to the protected matter.
- would like offsets to be incorporated in early processes of development and to be consistent with pre-existing management plans.
- thinks the guide is a step forward from current practice.

s22 – interested in guide, would like to match with state work.

- what about uranium mines? Are there any thoughts regarding offsetting nuclear actions?

s22 : At the moment, SEWPaC is focused on ecological communities and species. Where nuclear actions affect these MNES - offsets will be required.

s22 :

- wants to explore 'other compensatory measures'
- wants to run scenarios through the guide. s22 wants to see marine examples run through the guide)

- SA is currently looking at revising their offset system.

s22

- likes the guide. Likes that the guide is focussed on the protected matter.

- thinks that the guide will cause a lot of debates

- thinks marine examples will be tricky

s22

- thinks that the guide provides for systematic decision making.

- concerned about the lack of data for some factors in the guide.

s22

- The department promised to send a PDF version of the guide (PDFs were sent to s22 by s22 on Monday 16 July 2012)

s22 Has the policy been updated?

s22: Yes and outlines small changes. Said that we could send a draft policy to Angela once we are happy with it.

s22 :

Discussion about the role of the guide in informing decision making, There will still be negotiations about offsets between the Cwth and proponents. The Cwth's position in these negotiations will be informed by the guide.

Minutes confirmed as true and correct.

<hr/>	Date: _____
[Signature]	
[Name and Position]	
Chair	

Minutes from Mid-term briefing with s47F (Fenner School of Society and Environment, Australian National University)

**Date:** 30 January 2012

**Time:** 3:30 pm – 5:00 pm

**Venue:** Level 6, 33 Allara Street, Canberra

**Attendees:** s47F, Peter Burnett (FAS – Regulatory Reform Branch), s22 (Director – Regulatory Reform Branch), s22 (Assistant Director – (Offsets Policy) Regulatory Reform Branch), s22 (Senior Policy Officer – (Offsets Policy) Regulatory Reform Branch) and s22 (Policy Officer – (Offsets Policy) Regulatory Reform Branch).

**Apologies:** N/A

**Background:** s47F was engaged by the department to undertake an independent review of the Environmental Offsets Guide. To date, a contract has been formulated but has not been signed by the Service Provider (s47F). The purpose of the meeting was to provide the offsets team (s22, s22 and s22) with an overview of progress on the review, whilst briefing the executives on key issues.

**Minutes**

s22

[Redacted content]

**Review of the Environmental Offsets Guide**

- 4) s47F suggests that the offsets team should analyse the *Native Vegetation Act* 2003 (NVA Act), and more specifically the offsets component of the Act. Phil wrote the regulations for the NVA Act.
- 5) s47F suggests that the guide needs to be more transparent and demonstrate clearer logic. Specifically the assessment of the impact site does not always have an analogue at the offset site. Further, most factors identified in the Environmental Offsets Assessment Guide (the Guide) are about the type of loss rather than the quantum of loss.
- 6) s47F is concerned that a large number of points are currently being awarded to good quality sites. In his opinion, this would mean that there would be little conservation gain from managing/conserving a site that is already in good condition.
- 7) s47F fundamentally agrees with the use of direct and indirect offsets.
- 8) s47F outlined an approach which could be used in conjunction with a modified Guide to make the correlation between loss and gain clearer.
- 9) s47F is concerned that the Guide does not deliver on all of the policy principles outlined within the Consultation Draft: Environmental Offsets Policy.

- 10) s47F offered to summarise his critique and suggestions for the Guide in an interim analysis and email this to the department within a few days.

**Further actions**

- 11) Peter Burnett suggested that the offsets team may need to meet with s47F again to go over the review. This would mean that the schedule within the contract should be amended.
- 12) s22 .

MEETING WITH THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE (ACT)  
ON THE OFFSETS ASSESSMENT GUIDE

MINUTES

Meeting of Wednesday 28 June 2012

Venue: SEWPaC offices, Allara Street Canberra

Time: 9.30 am – 11.30 am

SEWPaC representatives

**Presenter:** Kelly Pearce (Acting First Assistant Secretary - Regulatory Reform Taskforce)

**Presenter:** s22 (Acting Director - Biodiversity Policy Section)

**Presenter:** s22 (Acting Assistant Director - Biodiversity Policy Section)

s22 (Acting Assistant Director – Biodiversity Policy Section)

Name	Position	Agency
s22	Manager, Impact and Estates Assessment	ESDD
s22	Senior Manager Natural Environment	ESDD
s22	Senior Manager Nature Conservation Policy.	ESDD
s22	Policy Officer, Natural Environment, Nature Conservation Policy	ESDD

**Preamble:**

Kelly Pearce introduced the background and how it relates to the ongoing COAG process

s22 gave a presentation on the *EPBC Act environmental offsets policy* and the *Offsets assessment guide*

s22 demonstrated the use of the *Offsets assessment guide*.

**Discussion:**

s22 the ACT is willing and able to co-operate in the broader COAG approval bilateral process

KP Offsets are one element of that process, outcomes are important, outlined the timetable for the introduction of the Bill

Discussion around definition of the phrase 'direct offset', conservation gain and whether gain in already reserved estate deemed suitable

s22 Yes –possible

KP strategic assessments, policy principles will apply, the guide, less so

s22 have been specifically told, by SAB that strategic assessments are not bound by the same ratios as project by project assessment, if not the case begins to become problematic

s22 Relationship of impact in the Guide is now linear, which was not the case in previous versions of the guide

s22 This is new and may not have been communicated throughout SEWPaC, Dep Sec wants it to apply to strategic assessments

Minutes confirmed as true and correct.

_____	Date: _____
[Signature] [Name and Position] Chair	

DRAFT

MEETING WITH ASSOCIATION OF MINING AND EXPLORATION COMPANIES ON OFFSETS  
ASSESSMENT GUIDE

MINUTES

Meeting of Thursday 12 July 2012

Venue: QVC1 Building, 250 St George Terrace, Perth, Western Australia

Time: 9:00 am – 11:00 am

Convenor: s47F

SEWPaC representatives:

**Presenter:** s22 —(Acting Assistant Director – Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer - Biodiversity Policy Section)

**Attendees**

1.	s47F	AMEC
2.	s47F	AMEC
3.	s47F	CME
4.	s47F	CME
5.	s47F	Moly Mines
6.	s47F	Gold Fields
7.	s47F	Allens
8.	s47F	API
9.	+ 1	API
10.	s47F	Premier Coal
11.	s47F	Paladin Energy
12.	s47F	Pluton Resources
13.	s47F	Newmont
14.	+1	Newmont
15.	+1	Newmont
16.	s47F	Rey Resources
17.	s47F	Iluka
18.	s47F	BAJV
19.	s47F	GHD
20.	s47F	Rio Tinto Iron Ore
21.	s47F	Coffey
22.	s47F	Coffey
23.	s47F	Brockman Resources
24.	s47F	Strategen
25.	s47F	ERM
26.	s47F	ENV
27.	s47F	Atlas Iron
28.	s47F	Fortescue
29.	s47F	Fortescue
30.	s47F	Freehills
31.	s47F	Hancock Prospecting
32.	s47F	Silver Lake
33.	s47F	Roy Hill
34.	+1	Roy Hill

35.	+1	Roy Hill
36.	s47F	Ramelius Resources
37.	s47F	Independence Group
38.	s47F	BC Iron

s22 introduced the background and purpose of *EPBC Act environmental offsets policy and Offsets assessment guide*. s22 documents the conversation.

Note that Kelly Pearce did not participate in this meeting. The meeting was run by s22

**Discussion: Introduction**

s22 states that the policy has not changed substantially from that of the consultation draft (released 24 August 2011). Feach outlines peer review of the guide.

Q: Why won't the department simply accept state offsets?

FeachA: The department will analyse state offsets prior to see if they meet Commonwealth requirements accepting. In regards to bilateral agreements, states will have to follow national standards.

Q: The department often requires greater offsets than the state. Does the Commonwealth consider department account for state offsets?

A: Yes, the department does consider and account for state offsets.

Q: Will there be an offsets register?

A: Yes there will be a register and mapping tool. The department is trying to make the offsets register public.

Q: Is there any guidance around the determination of quality?

A: The department will be publishing generic guidance first and then more specific guidance in the future.

s22 discusses trading up calculator briefly. The trading up calculator was not presented to attendees.

Q: Why are there discounts for risks at the offsets site but not at the impact site? ?

A: The impact is a particular moment in time, time; the impact either occurs or does not occur. ?

Q: How was 320 ha picked for the proposed offset (in regards to Scenario 1: Housing Development)? ?

This A: sScenario demonstrates meeting engineered. One can play with numbers to get 100% of the offset requirement through direct offsets direct offset.

Attendee mentioned that departmental assessment officers do not have enough information regarding the Northern Quoll

Q: Will land be returned to the proponent if the offset 'over performs'?

A: No

Discussion about potential accreditation of 3<sup>rd</sup> party providers.

Statement: proponents should be able to determine their own offsets. Why should offsets be through a 3<sup>rd</sup> party provider?

Why isn't the proponent trusted to achieve the outcomes through the use of the guide?



Broader discussion: Participants stated that offsets are always requested at the referral stage which some think is inconsistent with what was said by departmental representatives in this meeting. Departmental representatives stated that offsets are not considered at the referral stage.

Attendee states that he/she would like to have the offsets policy and guide brought up in the early stages of the assessment so there are no surprises later in the assessment process.

Q: If one already has an offset requirement and the policy comes out or you find a better way to execute the offset...can oneyou do so?

A<sup>S22</sup>: Ceannot comment-on this.

Q: Can the proponent use the guide to start negotiations around offsets?

A: The proponent can use the guide as a planning tool; however, the decision lies with the decision-maker.

~~Attendee requests that he/she has greater interaction with the Commonwealth, currently has good interactions with state and territory environmental departments.~~

Q: Will there be training for proponents regarding the use of the guide?

A: There will be training.

~~Attendee states that he/she would like to have the offsets policy and guide brought up in the early stages of the assessment so there are no surprises in the future.~~

Minutes confirmed as true and correct.

	Date: _____
[Signature]	
[Name and Position]	
Chair	

STAKEHOLDER CONSULTATION ON OFFSETS ASSESSMENT GUIDE WITH THE MINERALS  
COUNCIL OF AUSTRALIA

MINUTES

Meeting of Friday 6 July 2012

Venue: NSW Minerals Council, Level 3, 12 O'Connell Street, Sydney 2000

Time: 10:00 am – 12:00 pm

Principal contact: s47F (Assistant Director – Environmental Policy – Minerals Council of Australia) via teleconference

Convenor: s47F (NSWMC)

Departmental representatives:

**Presenter:** Kelly Pearce (A/g First Assistant Secretary – Regulatory Reform Taskforce) via teleconference

**Presenter:** s22 (A/g Assistant Director – Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer - Biodiversity Policy Section)

**Attending in Sydney**

s47F	<u>Cockatoo Coal</u>
s47F	<u>Rio Tinto</u>
s47F	<u>Rio Tinto</u>
s47F	<u>Bengalla Mining Company</u>
s47F	<u>Umwelt</u>
s47F	<u>Umwelt</u>
s47F	<u>RPS</u>
s47F	<u>Hansen Bailey</u>
s47F	<u>AECOM</u>
s47F	<u>EMGA Mitchell McLennan</u>
s47F	<u>EMGA Mitchell McLennan</u>
s47F	<u>NSWMC</u>
s47F	<u>NSWMC</u>

## Teleconferencing

s47F	<u>Peabody</u>
s47F	<u>BHP Billiton Mt Arthur Coal</u>
s47F	<u>Rio Tinto</u>
s47F	<u>Rio Tinto</u>
s47F	<u>Minerals Council of Australia</u>

Note that I will need to get a list of attendees from Claire Doherty

### **Preamble:**

Kelly Pearce joined the conversation via telephone and introduced the background and purpose of the *EPBC Act environmental offsets policy* and *Offsets assessment guide*.

s22 presented the *Offsets assessment guide* to attendees. s22 documents discussion.

### **4. Discussion: Introduction**

Kelly Pearce ~~introduced the content stating the following states that~~

~~the guide is a tool for use by departmental assessment officers.~~

Q (s47F ): Will the guide be available to the general public?

A (Kelly Pearce): The guide will be published. ~~It is a but will be caveated to state that it will be used as a~~ decision making tool for use by departmental assessment officers.

Q (s47F – Rio Tinto): What is the timeframe for implementation of the policy and guide?

A (Kelly Pearce): Fairly shortly, subject to Ministerial approval. Release date is likely to be in August 2012. The guide may not be used by states and territories under the bilateral agreements; however, the department expects that the policy principles will be used.

Q (s47F ): Has any thought been given to what will happen to projects that are already referred. How will the policy and guide be applied?

A (Kelly Pearce): Projects that have already been referred will be assessed according to current practice under previous practices. That said, proponents may want to use the guide.

Q (s47F ): ~~At what point will the policy be applied to projects that are already in the system? How binding is the guide?~~

A (Kelly Pearce): The guide would be a reference for use by the decision maker but will not have binding power over the decision.

Q (s47F ): What happens for cases of rehabilitation of mined land?

A (Kelly Pearce): ~~If the law required mined land to be rehabilitated then that alone cannot be classified as an offset. Offsets need to be additional to current practices and/or legal requirements.~~

A (s22 ): ~~If the proponent exceeds their legal obligations – then the department we would consider these actions to be additional.~~

Q: Would such an offset be direct or indirect? (Note that this was a very important point for attendees).

A (Kelly Pearce): ~~We will take this question on notice. Requests examples and/or case studies.~~

KP said that these offsets would be direct offsets is they meet the definition.

~~KP requests~~ KP requests that s47F provide formal (written) feedback and/or examples on this topic to be included in MCA's submission.

Comment (s47F ): ~~states that consultation period is too constrained for them to provide meaningful feedback. They would like to have 3 days—week.~~

### Demonstration of the functionality of the Offsets assessment guide (presented by s22 )

Q (s47F ): Where is the methodology to determine the quality value in the impact calculator? This could cause arguments between the department and proponents.

A: ~~The department will be developing guidance.~~

Comment: s47F states that there needs to be guidance for subjective components of the guide for transparency and ease-of-use.

Comment: Attendees requested guidance for the determination of time horizons.

Q: Will the department defend their position on how they decide on values for subjective components of the guide (Will there be references to scientific literature, etc)?

Q (s47F ): ~~There needs to be more transparency around the calculation for the determination of the cost of indirect offsets.~~

A (s22 ): s22 said that we will release the formula for the calculation of the costs for indirect offsets prior to the release of the policy and guide.

~~We will provide this information.~~ Attendees are very keen to see this formula.

Comment: Participant states that the guide does not streamline processes. Instead it turns one large argument into numerous small ones. The department needs more staff to deal with increased negotiations around assessments.

Participant states that proponents should be able to present a proposed offset through the guide.

Q: ~~Will there be third party accreditation?~~

A (s22 ): ~~Yes~~

Q: Has an economic analysis been conducted on the guide?

A: No.

Attendee states that ~~that an analysis is really~~ should have been conducted ~~done.~~

s47F thinks that advanced offsets would be a very good idea. The department states that there will need to be clear guidelines around year zero.

~~s22 said that we will release the formula for the calculation of the costs for indirect offsets prior to the release of the policy and guide.~~

~~Attendees are very keen to see this formula.~~

~~The meeting finished at xx am/pm.~~

Minutes confirmed as true and correct.

_____	Date: _____
[Signature]	
[Name and Position]	
Chair	

MEETING WITH THE OFFICE OF ENVIRONMENT AND HERITAGE (NSW) ON THE OFFSETS  
ASSESSMENT GUIDE

MINUTES

Meeting of Monday 259 June 2012

Venue: Level 18, 59-61 Goulburn Street, Sydney

Time: 2.30 pm – 4.30 pm

SEWPaC representatives

**Presenter:** Kelly Pearce (Acting First Assistant Secretary - Regulatory Reform Taskforce)

**Presenter:** s22 (Acting Director - Biodiversity Policy Section)

**Presenter:** s22 (Acting Assistant Director - Biodiversity Policy Section)

Name	Position	Agency
s22	Manager, Biodiversity and Vegetation Programs	OEH
s22	A/Director, Landscapes & Ecosystems Conservation Branch	OEH
s22	Manager Conservation Policy	OEH
s22	Manager, Conservation Programs and Partnerships	OEH
s22	Biodiversity and Vegetation Programs	OEH
s22	Senior Policy Officer Landscapes & Ecosystems Conservation Branch	OEH
s22		OEH via 'phone
s22		OEH via 'phone
s22		OEH

**Preamble:**

Kelly Pearce introduced the background and how it relates to the ongoing COAG process

s22 gave a presentation on the *EPBC Act environmental offsets policy* and the *Offsets assessment guide*

s22 demonstrated the use of the *Offsets assessment guide*.

**Discussion:**

s22 Will the COAG standards include the Policy?

KP the Policy is to inform the standards – will be “influential”

s22 what type of consultation is this – seeking improvement or a “heads up?”

s22 Both

s22 question regarding perpetuity of offsets

s22 commensurate to the duration of the impact

s22 ‘Improve or maintain’ has a defined meaning in NSW legislation and relies on ‘red flags’ – terminology may lead to confusion if used by commonwealth without reference to ‘red flags’

s22 Recent negotiation with Strategic Assessment Branch of SEWPaC for Upper Hunter SEA has been based on 75% ‘direct offsets’ as per SAB advice

NSW Government wants out of offset regulation space, want it to be run by consultants

Trouble with supply of offsets, not enough to create market –something needs to be done otherwise policy agenda is at risk

Looking at accepting cash to provide over the counter offsets

Minutes confirmed as true and correct.

	Date: _____
[Signature] [Name and Position] Chair	

MEETING WITH THE PROPERTY COUNCIL OF AUSTRALIA TO DISCUSS THE OFFSETS  
ASSESSMENT GUIDE

Meeting of Thursday 12 July 2012

Venue: Ground Floor, 191 St George Terrace, Perth, Western Australia

Time: 12:00 pm – 2:00 pm

SEWPaC representatives:

**Presenter:** Kelly Pearce (Acting First Assistant Secretary - Regulatory Reform Taskforce) via teleconference

**Presenter:** s22 (Acting Assistant Director - Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer - Biodiversity Policy Section)

<u>Name</u>	<u>Position</u>	<u>Organisation</u>
s47F (convenor)	<u>Executive Director</u>	<u>Property Council of Australia</u>
s47F	<u>Partner (Environment and Planning)</u>	<u>Lavan Legal</u>
s47F	<u>State Planning and Design Manager</u>	<u>Stockland</u>
s47F	<u>Director (Principal Environmental Consultant)</u>	<u>Emerge Associates</u>
s47F	<u>General Manager, Communities WA</u>	<u>Lend Lease</u>
s47F	<u>State Manager</u>	<u>Peet</u>
s47F	<u>Development Director (Land)</u>	<u>AustraLand</u>
s47F	<u>Sewer Development Manager</u>	<u>Mirvac</u>
s47F	<u>Senior Policy Advisor</u>	<u>Property Council of Australia</u>
<u>Name</u>	<u>Position</u>	<u>Organisation</u>
s47F	<u>Director (Principal Environmental Consultant)</u>	<u>Emerge Associates</u>
s47F	<u>State Manager</u>	<u>Peet</u>
s47F	<u>Sewer Development Manager</u>	<u>Mirvae (?)</u>
s47F	<u>Partner (Environment and Planning)</u>	<u>Lavan Legal</u>
s47F (?)	<u>General Manager, Communities WA</u>	<u>Lend Lease</u>
s47F	<u>State Planning and Design Manager</u>	<u>Stockland</u>
s47F	<u>Development Director (Land)</u>	<u>AustraLand</u>
s47F (convenor)	<u>Executive Director</u>	<u>Property Council of Australia</u>



s47F	Senior Policy Advisor	Property Council of Australia
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**Preamble:**

Kelly Pearce joined the conversation via telephone and introduced the background and purpose of the EPBC Act environmental offsets policy and Offsets assessment guide.

s22 presented the Offsets assessment guide to attendees. s22 documents discussion.

**4. DiscussionIntroduction:**

s47F states that the Commonwealth has ignored state planned offsets in the past (i.e BushForever). Kelly Pearce statesaid that she doesn't have the information at hand to adequately address the issuewould take the question on\_ notice.

s47F concerned about double-dipping. States that it is difficult to find adequate offsets. Wanted to know how state policies such as BushForever interactoverlap with the policy and guide.

s47F state that there is no inconsistency in the EIAreferral processes under the EPBC Act. They mentioned the South Alkimoscamos(?) decision.

s47F mentioned that 'quality' is different from the 'viability of the offset' for the protected matter

s47F said that the department will need to differentiate between 1 and 2

1. A patch of 5 ha land of foraging habitat for cockatoos with a large number of trees.
2. A patch of 20 ha of land that has scattered trees.

s47F states that option 2 is less viable in the long term.

s47F overall supportive of the metric; however, he would like to know how quality is determined. Asks for guidance around subjective components.

s22 : There will be general guidance and after a\_ awhile there maywill be more specific guidance.

s47F states that small variations in quality on the impact site could have a large impact on the offset calculations.

s47F stated that departmental assessment officers have told developers that they should give offsets to the state and then the state doesn't want the offsets. s47F stated that mixed messages have been sent by departmental assessment officers.

s47F said that the department should consider how the policy can fit into current ENGO schemes.

s22 states that the department is looking into options of 3rd party accreditation for the delivery of offsets.

s47F liked the idea that offset proximity to the impact site is no longer an important factor of the guide.

s47F asks about advanced offsets.

s22 states that the department is looking into options for advanced offsets.

Q: Can developers band together to purchase advanced offsets?

s22 Could be possible.~~Yes~~

s47F How should the guide be used?

s22 : The guide is a tool for use by departmental assessment officers. Proponents can use the guide as a planning tool. The decision maker makes the final call on whether an offset is suitable.

Q: Will there be a dialogue regarding the output of the guide, and will ~~(will~~ the decided offset run through the guide be public?~~)-~~

s22 : Yes, there will be a dialogue between the proponent and the department. It has not yet been decided if individual projects run through the guide will be public.~~The guide will be published (still seeking confirmation).~~

Minutes confirmed as true and correct.

<hr/>	Date: <hr/>
[Signature] [Name and Position] Chair	

DRAFT

MEETING WITH THE DEPARTMENT OF ENVIRONMENT AND HERITAGE PROTECTION ON THE  
OFFSETS ASSESSMENT GUIDE (QUEENSLAND)

MINUTES

Meeting of Monday 9 July 2012

Venue: Level 3, 400 George Street, Brisbane, QLD 4000

Time: 10:00 am – 12:30 pm

SEWPaC representatives

**Presenter:** Kelly Pearce (Acting First Assistant Secretary - Regulatory Reform Taskforce)

**Presenter:** s22 (Acting Assistant Director - Biodiversity Policy Section)

Note-taker:	Position	Agency
s22 (Policy Officer - Biodiversity Policy Section)		
s22	Manager – Biodiversity Policy and Legislation	Department of Environment and Heritage Protection
s22	Policy Officer	Department of Environment and Heritage Protection
s22	Former Manager – Biodiversity Policy and Legislation	Department of Environment and Heritage Protection
s22	Director – Biodiversity and Assessment Policy Group	Department of Environment and Heritage Protection

**Preamble:**

Kelly Pearce introduced the background and purpose of the *EPBC Act environmental offsets policy* and *Offsets assessment guide*.

s22 presented the *Offsets assessment guide* to attendees. s22 documents discussion.

**Discussion:**

Q (s22): What does the mining industry think of the of the *Offsets assessment guide* (the guide)?

A (s22): The mining industry appreciates the transparency of the guide. States that some mining representatives think that the department is creating smaller arguments instead of the current larger argument of ratios which occurs in current practice. s22 thinks that these smaller arguments are more defensible.

Kelly states that the guide an expert tool for use by departmental assessment officers.

Discussion regarding offsets in World Heritage areas and the recent UNESCO report into the Great Barrier Reef (negative view of effectiveness of offsets).

Kelly states that the department will continue to proceed with the offsets policy and guide regardless of the fact that assessments may be undertaken by states and territories under the bilateral agreements.

Kelly states that the policy and guide are likely to be launched in August 2012, subject to Ministerial approval.

Kelly states that the policy will help inform the bilateral negotiations with states and territories.

Kelly states that states and territories do not have to use the guide but meeting the policy principles will be required to meet EPBC Act standards.

s22 supported this.

s22 states that his colleague - s22 (EPH) is involved with the bilateral negotiations with the Commonwealth.

Kelly states that EIA standards will be distributed to states and territories shortly. Kelly outlines the bilateral process.

Q (s22 ) Will there be guidelines around the avoid and mitigate hierarchy. He states that this is a difficult policy area.

A (s22 ): Not as yet.

s22 said that they would like to let proponents know ahead of time if offsets are required as offsets can be very costly.

s22 and s22 agree that securing land for biodiversity conservation is a useful mechanism; however, improving condition of that land is a better outcome.

Kelly states that the department has expanded the definition of 'direct offsets'

s22 states that the revised definition of direct offsets is similar to that of Queensland's, except that the QLD definition includes securing offsets in perpetuity for conservation purposes.

s22 states that the Queensland government has a 90% requirement for direct offsets.

Kelly discusses that the department has renamed 'indirect offsets' to 'other compensatory measures'.

s22 supports this change in terminology.

s22 states that, under the QLD policy, 'other compensatory measures' need to provide benefit for the protected matter. This aligns with the Commonwealth's position.

s22 outlines the process of the development of the Guide.

s22 states that he doesn't see the need to have to use two metrics (the Commonwealth's and Queensland's).

s22 states that proponents will compare offset values with QLD and the Commonwealth. s22 stated that they would only want to use one system.

s22 supportive of the Commonwealth's position that offsets must be directly related to the impacted protected matter.

s22 mentions the trading up calculator and its functionality. The trading up calculator was not shown to attendees.

Discussion regarding how the quality score will be determined. Participants requested guidance for subjective components of the guide.

A (s22 ): There may be guidance for certain species.

QLD has biocondition. s22 states that the department could pick up this information

Q: Is there a weighting for area of community vs area of habitat? That's what QLD does.

s22 states that if there is more than one MNES, SEWPaC would accept the largest offset, provided it provides for all MNES.

Q: How was the annual risk of loss value calculated?

A (s22 ): States that 0.4 is a standard figure for forest decline.

s22 said that there is a degree of subjectivity around the probability of offsets success. s22 said that the department will provide guidance.

s22 asked if the guide provides an estimation of cost of offsets.

s22 and Kelly: No.

Kelly states that it would be useful to have an Australian wide database to determine the location of offsets.

s22 said that the QLD government is compiling a database for QLD offsets.

s22 states that there are a lot of important/robust aspects of the guide, and sought ongoing engagement.

Discussion about potential roles of the Commonwealth in biodiversity banking.

s22 states that the QLD assessment officers lack expertise to use the guide and suggests that proponents calculate offsets through the guide and present that information to assessment officers. The assessment officers would then have a role of checking the accuracy of the data used to derive the proposed offset.

Discussion about advanced offsets. Queensland has advanced offset provisions.

s22 outlines the disadvantages of solely purchasing land. He would like to stop proponents from solely purchasing land.

Kelly said that the policy would not accept just locking up land as a suitable offset unless it was at risk.

s22 : Can we have access to a live version of the guide? Wants to show the guide to QLD departmental ecologists. Wants to imbed our metric into theirs.

Kelly states that we have had similar requests and that we are not giving out the guide.

s22 states that the revised guide is better quality than the consultation draft released in August 2011.

Minutes confirmed as true and correct.

<hr/>	Date: _____
[Signature] [Name and Position] Chair	

MEETING WITH RIO TINTO TO DISCUSS THE OFFSETS ASSESSMENT GUIDE

MINUTES

Meeting of Thursday 12 July 2012

Time: 3:00 pm – 4:00 pm (WST)

Venue: Rio Tinto Office, 152 – 158 St George Terrace, Perth, Western Australia

Presenter: s22 (Acting Assistant Director – Biodiversity Policy Section)

Note-taker: s22 (Policy Officer – Biodiversity Policy Section)

Presenter: Kelly Pearce (Acting First Assistant Secretary – Regulatory Reform Taskforce) (via teleconference)

Note-taker: s22 (Acting Assistant Director – Biodiversity Policy Section) (via teleconference)

Name	Position	Organisation
s47F	General Manger (Climate Change, Water and Environment	Rio Tinto
s47F	Manager Environmental Approvals	Rio Tinto
s47F	Approvals Specialist	Rio Tinto
s47F	Chief Advisor – Biodiversity	Rio Tinto

**Preamble:**

Kelly Pearce joined the conversation via telephone and introduced the background and purpose of the EPBC Act environmental offsets policy and Offsets assessment guide.

s22 presented the Offsets assessment guide to attendees. s22 documents discussion.

**Discussion:**

**1. Introduction**

Participants like the look of the guide.

s47F states that offsets are discussed well into the EIA process. He would like to know ahead of time if offsets may need to be considered.

The department's revised definition of direct offsets and other compensatory measures is very similar to the definitions that Rio Tinto uses. Rio Tinto utilizes the term 'additional conservation actions' for 'other compensatory measures'.

s47F: When the policy was developed, did the department look at like-for-like and trading up different factors?-



s22: We have moved away from like-for-like definition as stakeholders were getting confused by the concept.

s22 mentions that the guide has a trading up calculator. This calculator was not presented to participants.

s47F: Can we trade up between protected matters

s22: No, this is not possible.

s22 invites s22 to be involved in a meeting regarding the guide with s47F. s22 said that the proposed dates are 24-28 July.

s47F ~~Has the department got worked examples for mortality rate?~~

~~A: Not on hand~~

s22: The guide is to be used to inform decision-making along with a range of other considerations.

~~s22 states that the guide is simply a guide and may not always be utilised in decision making.~~

s47F: Does the proponent determine the quality score inputted to the guide set the indicators for quality?

s22: The guide is to be used by departmental assessment officers; however, the guide will be a public document. The final decision will be made by the decision maker.

~~by departmental assessment officers. The guide will be a public document and the final decision will be made by the decision maker.~~

Q: Will there be guidance for use of the guide?

~~A~~s22: Yes

Minutes confirmed as true and correct.

	Date: _____
_____ [Signature] [Name and Position] Chair	

MEETING WITH THE DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND  
ENVIRONMENT (TAS) ON THE OFFSETS ASSESSMENT GUIDE

MINUTES

Meeting of Tuesday 27 June 2012

Venue: 1 Franklin Wharf, Hobart

Time: 9 am – 11 am

SEWPaC representatives

**Presenter:** Kelly Pearce (Acting First Assistant Secretary - Regulatory Reform Taskforce)

**Presenter:** s22 (Acting Director - Biodiversity Policy Section)

**Presenter:** s22 (Acting Assistant Director - Biodiversity Policy Section)

Name	Position	Agency
s22	Deputy General Manager, EPA Division,	DPIPWE
s22	Policy and Projects Group	DPIPWE
s22	Section Head (Conservation Assessment)	DPIPWE
s22		DPIPWE
s22		DPIPWE

**Preamble:**

Kelly Pearce introduced the background and how it relates to the ongoing COAG process

s22 gave a presentation on the *EPBC Act environmental offsets policy* and the *Offsets assessment guide*

s22 demonstrated the use of the *Offsets assessment guide*.

**Discussion:**

s22 Tasmania is a small jurisdiction with limited availability of offsets

s22 goes to the overall suitability of the project if offsets can't be found

Discussion of strategic assessments, cost recovery and third party providers

s22 What standard is imposed

s22 Improve or maintain

Discussion over the subjectivity that still exists within the Guide, risk and the possibility of challenge by proponents. That metrics opens the door for increased scrutiny and the benefits and dangers of more numbers versus less numbers used to determine suitable offsets

s22 Why isn't the future value of the impact site calculated?

s22 Will different offsets be required for different protected matters



Yes if necessary

Worried about cost of implementing the Guide

Minutes confirmed as true and correct.

<hr/>	Date: <hr/>
[Signature] [Name and Position] Chair	

DRAFT

MEETING WITH WESTERN AUSTRALIAN DEPARTMENT OF ENVIRONMENT AND  
CONSERVATION AND OTHER GOVERNMENT AGENCIES ON THE OFFSETS ASSESSMENT  
GUIDE

MINUTES

Meeting of Wednesday 11 July 2012

Venue: Level 4, Dumas House, 2 Havelock Street, West Perth, Western Australia

Time: 11:30 am – 1:00 pm

SEWPaC representatives:

**Presenter:** Kelly Pearce (Acting First Assistant Secretary – Regulatory Reform Taskforce)

**Presenter:** s22 (Acting Assistant Director – Biodiversity Policy Section)

**Note-taker:** s22 (Policy Officer – Biodiversity Policy Section)

Name	Position	Agency
s22	A/Policy Officer	WA Department of Premier and Cabinet
s22	Position not stated	WA Department of Planning
s22	Director (Strategic Policy and Planning)	WA Office of Environment Protection Authority
s22	Policy Officer	WA Department of Agriculture and Food
s22	Position not stated	WA Department of Transport
s22	Program Manager	WA Department of Regional Development and Lands
s22	Policy Officer	WA Department of Premier and Cabinet
s22	Research Assistant	WA Department of Premier and Cabinet
s22	A/Director (Strategic Policy and Programs)	WA Department of Environment and Conservation
s22	A/Senior Policy Officer	WA Department of Premier and Cabinet
s22	A/ Director (Strategic Review)	WA Department of Premier and Cabinet
s22	Senior Policy Officer	WA Department of Regional Development and Lands
s22	A/Director (Approvals)	WA Department of State Development

## Preamble:

Kelly Pearce joined the conversation via telephone and introduced the background and purpose of the *EPBC Act environmental offsets policy* and *Offsets assessment guide*.

s22 presented the *Offsets assessment guide* to attendees. s22 documents discussion.

## Discussion:

Kelly states that the guide will not have to be adopted by states and territories. The department is outcome focused. If a state system meets the policy principles, then the state would not have to adopt the Commonwealth's framework.

s22 and s22 state that they do not like the fact that the direct offset requirement has changed from 75% to 90%.

Kelly responds to this comment by saying that the definition for direct offsets has been expanded; hence, there is more flexibility.

Q (s22): What about the rehabilitation of mined areas?

Kelly states that where there is a legal requirement for the rehabilitation of mined land, this cannot be considered an offset. Offsets need to be additional to legal requirements.

Q (s22): How is quality determined at the impact site?

Q (s22): Is there going to be criteria for the quality scale. Will it be published?

Kelly states that the department will be providing guidance regarding the workings of the guide.

s22 states that the department should record the rationale behind assigning values for quality so the department can review these figures in the future.

s22 critiques current Commonwealth offset determination practices. He said that reports are not made public quickly enough and there is a lack of detail.

Kelly states that we will publish an offset database.

WA is creating its own register.

s22 requested that the rationale behind determining subjective components of the guide should be justified in a report.

Q (s22): Is there a risk that the species becomes extinct before the offset is ready?

s22 responds that the annual probability for extinction is used in the guide.

Q (s22): How does the guide deal with cumulative impacts?

Kelly states that this issue can be dealt with through the use of strategic assessments.

s22 states that WA is avoiding the use of a metric because of lack of data. Kelly responds by saying the guide to inform decision-making.

s22: There are a large number of assumptions in the guide.

Kelly said that the introduction of the guide does not mean that there no longer will be negotiations between the Commonwealth and proponents. The guide will simply break down a large argument into smaller more defensible negotiations.

s22 stated that there is no evidence that the Commonwealth considers state and territory offsets.

Kelly requested that s22 shows examples of this.

s22 wanted to ensure that there is no double dipping on offsets.

Q: What happens when data is scarce, how does one used the guide?

A: Kelly states that the department won't always use the guide. It may not always be practical to do so.

s22 requests that a marine scenario is run through the guide.

s22 wanted to see a science program that would that 'other compensatory measures' were beneficial to the protected matter.

Minutes confirmed as true and correct.

<hr/>	Date: <hr/>
[Signature] [Name and Position] Chair	

DRAFT

## Notes From Offsets Workshop

### Views/positions/concerns of stakeholders:

#### APPEA:

- Doesn't support offsets for short term activities eg. explorations, marine areas and greenhouse gases. Only supports offsets for direct habitat disturbance.
- Environmental outcomes almost always come at the expense of social and economic benefits.
- Offsets have potential for perverse outcomes ie. currently oil and gas companies spend considerable time and money developing new technologies to make practices more environmentally friendly. Under offsets arrangement could potentially use old technologies and processes and simply offset the negative impacts.
- Supports the concept of like for like but wants more transparency and certainty from government during offset process.
- Struggles with concept of 'no net loss'
- Recognises that there are areas which can't be offset, therefore attempts to offset with something else is unreasonable eg. mangroves only grow in certain areas therefore cant offset in an area where they don't grow (unnatural).
- Wants the term 'in perpetuity' to be changed to enduring. Believes that offsets should have an expiry date, eg. if project only lasts 20 years then why protect in perpetuity. Wants access to world heritage sites, national parks and marine conservation areas.
- Is in favour of biobanking arrangement because does not want to manage offset but engage third party to do so. Does not want to be responsible for third party negligence.
- Wants a test of reasonableness to apply to offsets and ability to appeal decision.
- Would like a clearly established metric for offsetting for more certainty and make costing easier.
- Wants mutual recognition across all jurisdictions ie. does not want to have to negotiate offsets with different states and federal gov for the one proposal.

#### MCA:

- Would like to know to what extent economic & social considerations will be taken into account when determining offsets. Offsets sterilise the land from agricultural and resource (commercial) activities.
- Locking up land in offsets near mining areas (ie farmer sells land) may have detrimental impact on rural community ie. will lose families who sold farms for offsets.
- Currently industry pays for offsets because the cost of paying for an offset is generally less than the cost in delaying the project to negotiate the offset. Likened to a 'horse trading' process (other industry groups agreed). This may not lead to best environmental outcomes.

- Issues with time lag a factor, ie offsets will be long term intergenerational projects – will the time required to establish an offset be factored into risk matrix
- Supports the principles of avoidance and mitigation as first preference. Where offsets are to be considered, instead of principle of net environmental gain prefers the principle: ‘no net loss to mNES, but net again overall (preferably for mNES but if not possible than for other matter).’
- Funding towards research which targets better environmental outcomes and practices should be heavily valued as an indirect offset. Otherwise industry will continue to use the same practices for remediation to meet their obligations – no incentive or scope to improve practices, rather do bare minimum to meet requirement.
- Would like to know whether rehabilitation will be tailored to the type of action involved ie. will rehabilitating a mining site have different requirements than for farming land.
- Has issues with perpetuity, management in perpetuity might not be possible and might not be within their control. Also would like to know status of offsetting an offset. Also question regarding extinction event ie. if species becomes extinct, then will offset land protecting species become available for development again.
- Would like to know details of monitoring eg. timing and who will monitor. What happens if offset diverges from trajectory at any point?
- The concept of perpetuity should be attached to conservation and management and not to the specific piece of land itself.
- Would like the department to consider using funds as indirect offset for the ongoing monitoring and compliance for long term effectiveness of offsets.
- Would like measurable criteria for offsets to be established upfront
- Also like the possibility for a multi-stakeholder process ie. if no recovery plan or clearly defined priority in an area then pull together local expert panel to determine priority (subject to scale of impact)
- Absolution of responsibility to proponent for acts of god, wilful neglect by third party etc.

#### NFF:

- Priority should be on management of land and improving the quality of the land set aside. Should not be so focused on selecting the best piece of land for offset at the detriment of not ensuring the best management plan for offset land.
- Would like clarity on how offsets will be aligned under state and federal jurisdictions.
- Interested in strategic approaches
- Landscape scale offsets
- Direct and indirect outcomes for site/mNES/environment
- What is the outcome of offsets: maintenance should prioritise quality, get rid of ferals etc
- Biggest concern from members is that offset land near farms is not being properly managed, full of pests and feral animals, farmers willing to look after the nearby land if government paid, to ensure won't get out of control.
- Noted that offsets policy is interim while recommendations from Hawke are implemented.
- Shouldn't give incentive for perverse outcomes.

- Is offsets the wrong word? Discussion more about outcomes, therefore should be environmental outcomes.
- Understands that offsets don't impact approval, just an adjunct to give better environmental outcome

UDIA:

- No views explicitly expressed

CSIRO:

- Need more research to find better ways to measure environmental impact and hence effectiveness of offsets ie. if an area is initially assessed as having no impact and later found not sustainable then we haven't properly measured the impact in the first place.
- Noted that the vast majority of offsets are and will be under States and Territories.
- Agrees that if offsets policy only for interim ie. next 2 years is a good thing.
- Noted that in logic chain hierarchy of preferred offsets that research is at bottom of list. It is in best interest of industry to fund research irrespective of if a requirement for offsets, as it will lead to better practices which will reduce cost and improve environmental outcomes.

**s47F** (ANU):

- Emphasised that 'like for like' should be the standard for offsetting ie. always focus on the matter that is being impacted, otherwise there is potential for a 'diffuse' impacts.
- Need to make absolutely clear that offsets won't make a proposal acceptable (can't simply negotiate more offsets to make up for clearly unacceptable impact). In NSW 60% of proposals don't pass the offsets test.
- Noted that if aim of offsets is to achieve net gain and do so with the best scientific methods then it significantly narrows the options available for offsetting ie. department is setting itself up for criticism as it will be hard to satisfy criteria and keep up with demand for approval of projects.
- Indicated is happy with principal proposed by MCA (no net loss to mNES but net gain overall), but says that all offset activities should focus on the matter impacted (both direct and indirect). Advocates a mix of direct and indirect offsets.
- Tenure of offset not sufficient – use of word 'additionality'
- Compliance is important – should be public register and management plans put on internet so more incentive for self-compliance.
- Noted that in NSW putting value on biodiversity has led to a decrease in development applications
- Also noted that NSW has a higher standard for offsetting ie if species is listed or endangered it can't be offset (except by Minister approval).

- Offsets policy needs to be a compromise between rules/codifying and flexibility. If repetitive issues keep arising they should be dealt with by strategic assessment eg. Perth.

#### s47F (University of Queensland):

- Suggested that land is not the best definition for offsets ie. providing nest boxes for birds is above the land (department commented this would be indirect offset).
- Direct and indirect actions should better reflect actions that are positive for the 'critter' being impacted.
- Unclear whether aim for net gain is project or site specific, or broader overall outcome of offsetting.
- Need for certainty and transparency – questioned how we will measure success of offset, but at same time outcome should be main focus.
- Emphasised that offsets should not be considered the new (and only) mechanism for stopping biodiversity loss. Offsets will reduce the rate at which biodiversity is being lost, not stop it. Stopping biodiversity loss should still be achieved through conservation.
- The offset should last as long as the impact lasts.
- In principle 3 – 'insert measurable before strategic'
- Principle 4, point 7 – must include be able to be measured.

#### Birds Australia:

- By considering broad matter to be protected rather than on focusing on smaller patch of remnant species, there is the risk of emphasising quantity over quality of offset.
- Offsets should be operating as part of a package of other reforms as per Hawke's recommendation
- Notes that the government has signed international treaties which require it to stop biodiversity loss, therefore proponents must adhere to at minimum no net loss.
- Core question: do offsets actually work? Therefore, shouldn't launch into a policy that may not actually work.
- Offsets do not adequately account for cumulative impacts.
- Many eNGOs will be against offsets that destroy mNES
- Objects to the word 'persistence' when referring to 'ongoing persistence of environmental values'. Should not just be about persistence but about recovery of biodiversity back to how would be if not impacted by development.
- Would like more consultation, with a broader range of eNGOs – very important to give more notice so that more stakeholders can be involved.
- Emphasised the importance of proper auditing and monitoring to sure offset objectives met over the long term.

#### Invasive Species Council:



- All science based indicators tell us that biodiversity is declining and therefore getting approval for development should be harder, but at same time politics tells us that development can't be stopped. Need to balance these two views. Therefore, may need to stop focusing on like for like and focus on broader issues.
- Need to use adaptive management for managing offsets
- Invasive species are a diffuse threat, need to be proactive in management.

EDO:

- Question of whether offsets are applicable to strategic assessments.
- Would accreditation of States and Territories conform to Fed offsets policy?
- Notes that current use of offsets in assessments is being applied inconsistently, therefore need a consistent approach.
- Both carbon and biodiversity policies require long term scientific evaluation to determine effectiveness
- Would like an upfront statement about to clarify site by site & context of strategic assessment. Also statement about what is not acceptable as an offset ie. red flags.
- What is the legal status of the policy – is it actually enforceable?

Conservation Council ACT:

- Did not attend workshop

**All stakeholders were unhappy with the short notice of the meeting.**

ACTIONS for the Department:

STAKEHOLDER WORKSHOP ON THE EPBC ACT OFFSETS POLICY AND OFFSETS ASSESSMENT GUIDE

MINUTES

28 June 2012

Venue: Kuringui Room (2004), 33 Allara St, Canberra

Time: 2-5pm

1. Introduction

a. Attendance/apologies/declaration of interests

IN ATTENDANCE

Kelly Pearce s22 s22 s22 s22 s22 s22	Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)
s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F s47F	Association of Mining and Exploration Companies (AMEC) Australian National University Australian Petroleum Production and Exploration Association (APPEA) Conservation Council of ACT Environment Institute of Australia and New Zealand (EIANZ) EPBC Reform Environmental NGO Working Group Humane Society International Minerals Council of Australia National Farmers' Federation National Network of Environmental Defenders Offices Property Council of Australia University of Queensland Urban Development Institute of Australia WWF Australia WWF Australia

APOLOGIES

- Australian Conservation Foundation;
- Australian Coal Association;
- Australian Local Government Association;
- Australian Working Group of NRM Regional Bodies;
- Business Council of Australia;
- CSIRO;
- Ports Australia; and
- Urban Development Institute of Australia.

2. Presentation (Kelly Pearce) - The COAG decision on environmental regulation reform of 13 April 2012 and broader regulatory reform processes:

- Discussion about the role of the offsets policy and assessments guide in light of the COAG reform process and bilateral agreements under development between the Australian Government and states and territories.
- Discussion about the development of standards for bilateral agreements, which are being led by the Department of Prime Minister and Cabinet. The Department of Finance and Deregulation (DoFD) are leading stakeholder consultation on these standards. DSEWPaC will provide stakeholders' contact details to DoFD for this purpose.
- Discussion about the interaction between state and territory and Commonwealth offset policies.
- Discussion about the draft EPBC Act amendment bill.
  - : The Minister is considering an exposure draft, but has not yet made a decision on this.
  - : There will be words in the bill to avoid all doubt that offsets can be imposed as conditions of approval under the EPBC Act.
  - : Q: Will the amendment bill include a definition of "offsets"? A: Unclear at this stage.

3. Presentation (s22 ) - Update on the EPBC Act environmental offsets policy:

- Discussion about timing of release of the finalised policy in coming months.
- Some participants requested additional time to review the assessment guide and provide more detailed comments:

**Response:** Attendees were given until 13 July 2012 to review the offsets policy and assessment tool and provide any further feedback to the department;

4. Presentation (s22 ): Overview of the *Offsets assessment guide* and demonstration using two scenarios.

- Discussion about the need for clear guidance and training on the use of the offsets assessment guide, both for internal and external users:

**Response:** guidance for assessment officers on various components of the assessment guide will be developed by the department over the coming months. Training options for external users will be explored and the department is open to further discussions with stakeholders about this matter.

- Discussion about advanced offsets (offsets which realise an environmental benefit before the proposed action takes place):

**Response:** Advanced offsets will be considered by the department if documentation is provided to show that a true conservation gain has occurred. The point in time from which "conservation gain" can be measured will be clarified.

- Discussion about the potential for a curvilinear relationship between area and quality.

**Response:** The discussion will continue offline between DSEWPaC, Dr s47F , and Dr s47F .

- Comment: The department needs to provide a clear, plain English explanation about each of the columns in the offsets assessment guide and what is intended by these columns.
- Discussion about proposed review mechanisms for the offsets policy and guide.
- Both the offsets policy and assessment guide were generally very well received by most participants of the stakeholder workshop.

The meeting finished at 5 pm.

Minutes confirmed as true and correct.

_____	Date: _____
Kelly Pearce Acting First Assistant Secretary Regulatory Reform Taskforce Chair	

MEETING WITH THE BUSINESS COUNCIL OF AUSTRALIA ON THE EPBC ACT OFFSETS  
POLICY AND OFFSETS ASSESSMENT GUIDE

MINUTES

24 July 2012

Venue: Business Council of Australia offices, 120 Collins St (level 35), Melbourne

Time: 12:30-3:30pm

1. Introduction

- a) Attendance/apologies/declaration of interests

IN ATTENDANCE

s22	Biodiversity Policy Section, Regulatory Reform Task Force, Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)
s47F	Rio Tinto Iron Ore (RTIO)
s47F	Rio Tinto Iron Ore (RTIO)
s47F	The Biodiversity Consultancy (consultant working with Rio Tinto)

2. Topics of discussion

- a) Brief introductions and description of s47F consultancy with Rio Tinto:
- s47F has spent much of this year working on mitigation frameworks and offsetting for Rio Tinto. He is likely to continue his work with Rio Tinto for the remainder of 2012, focusing on developing appropriate offset packages for some of Rio Tinto's proposed mining developments. He is working closely with Rio Tinto Iron Ore (RTIO).
- b) The COAG decision on environmental regulation reform of 13 April 2012 and broader regulatory reform processes:
- Discussion about the objectives and timeframes of the EPBC Act offsets policy:
    - : There was interest in the quantified objectives of the EPBC Act and offsets policy. The department explained that the EPBC Act is very likely to include mention of offsetting in the context of environmental assessments and the offsets policy itself will provide more details of the objectives of offsetting under the EPBC Act.
    - : Question about definitive timeframes for finalisation of the offsets policy and guide and whether there is scope for further changes to be made. The department confirmed that the release date is likely to be before October, 2012, and stakeholder input feedback is naturally coming to an end; however, there are still a few weeks available to provide feedback.

: s47F showed interest in participating in the state and territory negotiation process (on behalf of Rio Tinto) in relation to the offsets policy. The department explained that the negotiations are in the context of the broader COAG agenda, which is likely to be a bilateral govt-to-govt negotiation process, and the nature of the proposed bilateral agreements is unknown at this stage.

c) Update on the EPBC Act environmental offsets policy:

- Discussion about quantitative measurements and uncertainty in the context of offsets under the EPBC Act:

: Clarification that there is guidance on measuring significance for listed threatened species (e.g. significant impact guidelines), however it is not possible to quantify significance thresholds due to the complexities involved.

: There are no quantified upper limits for offsetting (i.e. red flags) under the EPBC Act.

: In the absence of scientifically robust information, expert opinion is suitable.

- Question about whether there will be policy guidance on offsets within conservation lands (e.g. where a state government requires an offset to be funding for conserving state-owned land, like national parks). The department responded by stating that where offset activities go above and beyond existing obligations (conservation gain) they may be able to be considered. However, where previous obligations exist for the management of the site, those activities cannot also be an offset.

- How precautionary should proponents be when dealing with uncertainty (of offset success)? This is best discussed on a case-by-case basis, it is anticipated that a body of knowledge on this subject will be developed over time, which will lead to greater understanding and certainty, meaning less need to be precautionary.

- Will the guidance on determining “quality” and “risk of loss” be provided to proponents? The department took this as a question on notice and will provide a response following the meeting.

- Offsetting offsets: Rio Tinto was interested to know whether it would be responsible for any 3<sup>rd</sup> party actions on an offset site in the future if it meets all of its requirements/conditions under the EPBC Act (e.g. issue of mining lease issues). The department responded by stating that actions that have an impact on an offset site are likely to have some impact on matters protected under the EPBC Act (given that the site was deemed a sufficient offset) and where these impacts are likely to have a significant impact the action would need to be referred to the department.

- Conditioning of offsets: Will conditions be outcome-based? They are likely to be, however this is best discussed with the relevant assessment team on a case-by-case basis (based on the impacts and specific matters of national environmental significance).

- Rio Tinto showed some interest in advanced offsets. In particular, there was interest in whether a single site could be split into parts for use as offsets for a number of different actions. Also, how does a proponent get certainty that an advanced offset can be recognised under the EPBC Act? (For follow up).

d) Overview of the Offsets assessment guide and demonstration using two scenarios:

- Cost estimate of offsets in the Guide: Discussion about changing costs associated with offsets.
    - : What if the costing is changed? Can the cost estimate also be changed after the offset has been settled? No, the department is looking for one figure and would need to be confident in the costing provided based on best available knowledge.
    - : Will the department provide information about the way that the cost of other compensatory measures is calculated? Yes
  - For an offset that is already available at the time of impact, would the probability of offset success be 100%? Yes.
  - Would the Guide provide a proponent with information as to whether they are going beyond the minimum requirements for an offset? Yes.
  - How does the department propose to get around the issue of Mining Act tenure in terms of securing a site in perpetuity? The new definition of direct offset allows scope for land management but not in perpetuity.
- e) Other topics of discussion:
- s47F will seek clearance to provide the department with details of the work that Rio Tinto has done already in terms of measuring “quality” of habitat for the Northern Quoll.
  - Rio Tinto is proposing to run a series of workshops to determine how to measure quality for other species. s47F will contact the department to discuss this further.
  - If there is scope for Rio Tinto to be involved in the COAG negotiations, s47F would ask the department to contact him.

The meeting finished at 3.30 pm.

Minutes confirmed as true and correct.

_____	Date: _____
s22 Acting Director Biodiversity Policy Section Regulatory Reform Taskforce	

## Summary of comments (13 October 06)

### Offsets Discussion Paper and Draft Policy

#### Consultation

- Comments were requested from:
  - key officers in EAB who have previously worked on standards for condition setting and environmental offsets; and
  - more broadly from the Division through a preliminary round of consultation.
- Comments were received from seven sections across all four Branches.

#### Summary

There is a high level of support for the policy approach presented in the draft discussion paper. There is also clear support for a public offsets policy and a set of internal tools to assist in the assessment and negotiation of offsets. This is consistent with actions already proposed.

The key point of discussion in relation to the policy approach focused on the order in which offsets should be considered. One view is that offsets should only be considered after avoidance and mitigation have been applied to the development. The alternative view is that the focus should be on trying to achieve the best conservation outcome by taking a more flexible approach to the use of avoidance, mitigation and offsets.

#### Key comments

- The offset process should always be: avoidance, mitigation, offset
- There is a need to ensure national consistency in the application of offsets is not lost in the attempt to achieve consistency with proposed state and territories offsets
- More guidance on the appropriate magnitude of offsets is needed, e.g. through case studies
- Emphasis should be placed on offsets with a high levels of certainty
- Needs to be clear that 'mitigation' should be 'best practice mitigation'
- Needs to be clear that when impacts on habitat occur, offsets should focus on securing habitat
- Consideration should be given to requiring bonds to insure against poor mitigation/offset
- Need to clarify how long offsets should be delivered for – e.g. in-perpetuity or as long as there is an impact on the matter protected
- Concern that offsets are being applied to areas that should be protected by the Act anyway
- Concern about the level of resourcing available for the monitoring and enforcement of offset conditions
- Information packages should be developed to assist in identifying appropriate offsets
- Keen for procedural guidance (as well as policy) for assessing and negotiating offsets
- Proponents should remain responsible for offsets throughout the life of the offset



## Offsets – Roundtable meeting notes

### *Amendment text*

- Clarifies that offsets can be required as part of approval conditions and that financial contributions can be required.

(aa) conditions requiring specified activities to be undertaken for:

(i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and

(ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa);

### *Key comments/issues*

- Question of when offsets should be considered:
  - one view is that offsets should only be considered after avoidance and mitigation have been applied to the development
  - the alternative view is that the focus should be on trying to achieve the best conservation outcome by taking a more flexible approach to the use of avoidance, mitigation and offsets.
- Tools to implement the policy are equally important. Various levels of information/progress in relation to these and AWD will work closely with other Divisions as relevant. Some tools that need to be developed include:
  - tool to guide assessment of the appropriate magnitude of offsets
  - spatial tool to track offsets
  - analysis of the effectiveness of S/T legislation to implement offsets – e.g. effectiveness of conservation covenants

*Policy development project plan - attached*



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MINUTE - AWD PANEL

**ENVIRONMENTAL OFFSETS – USE OF LAND BANKING UNDER THE  
EPBC ACT**

**Recommendation**

That Panel agree in-principle to the use of ‘land banking’ as an appropriate mechanism for delivering offsets as part of approval conditions under the EPBC Act.

**Key Issues**

different to trusts

- current proposal - xstrata
- within context of policy development
- Does the EPBC Act provide for land banking?
  - approvals – offsets context
  - strategic assessments....
- approach to drawing down on the bank:
  - discrete blocks of land
  - certain values within the landscape

***Benefits***

- offsetting on a larger scale – potentially better conservation outcomes, providing advance offsets at a single large site for multiple future projects that would otherwise be offset at several smaller sites
- offsets delivered at the time of development – no time lag
- Finally, since the number of credits that some banks earn is a function of how successfully species or habitats are restored, bankers have a compelling economic incentive to do the best restoration job possible

***Risks***

- tracking on offsets and accounting ‘withdrawals’
- few examples of successful expenditure of funds
- land values changing over time
- no strict regulatory system for establishing and tracking on land banking offsets

- risk for proponent/banker – establishing bank that does not relate to future impacts
- protecting something in the future that is already protected
- changing the rules over time

### ***Proposed approach***

A number of criteria would need to be met before this strategic approach would be acceptable. These include:

- a joint approach/criteria for identifying and agreeing primary areas of habitat for matters of NES which are likely to be impacted during mining operations in the region (key players being the Australian Government, Queensland Government and Industry);
- a formal agreement that provides for management of the whole area of primary habitat over the duration of the ‘bank’ to ensure the values of the area are retained and enhanced where possible;
- each component of the larger area offered up as an offsets would need to have relevant NES values and be ecologically viable in its own right; and
- agreement on the ratio of loss to offset. For example the loss of 10ha of good quality Brigalow community would need to be offset by the protection in perpetuity of at least 20 ha of equal quality habitat plus the rehabilitation of at least 20 ha of lesser quality habitat (key players being the Australian Government, Queensland Government and Industry).
- ‘accounting’ system – tracking on offsets
- up-front clarity that offsets have to relate to the nature of the impact – risk with proponent

### **Background**

- definition of land banking
- ecological values of the land equal to savings in a bank
- 

To date, much of the consideration of the use of ‘bio-banking’ or ‘offsets credits’ has focused on a developer providing funds to a separate agency to offset a residual environmental impact. The agency (generally a state land management organisation) holds these funds until an appropriate conservation outcome can be achieved using these funds, in particular, through the use of accumulated funds, from a number of development proposals, to purchase high value land for inclusion in the reserve system.

The development and implementation of bio-banking schemes is still in its infancy with few examples of successful expenditure of funds. Positive aspects of this approach include the ability to accumulate sufficient funds for land purchase, particularly in areas of high cost of

land, however, it has a number of limitations which make it currently unsuitable for the delivery of offsets under the EPBC Act. This includes the transfer of responsibility for the environmental outcomes from the proponent to a different organisation, the potential loss of a role for the Australian Government in determining the appropriate use of funds and the considerable time delay which may occur before the funds are expended.

An alternative approach is for the proponent to take a strategic approach to their longer term environmental responsibilities and develop and manage their own on-ground 'bank' of potential land offsets which can then be used to compensate for potential loss of environmental values.

For example, a south east Queensland mining company with a long term interest in expansion of their coal mining interests in the Brigalow Bioregion could identify a primary area of high value habitat with the aim of managing and enhancing that area to provide a series of offsets that are offered up as subsequent developments occur.

In this example, a primary habitat area could consist of a large area, eg. 4000ha of habitat containing a range of medium to good quality listed threatened Brigalow and Bluegrass ecological community and known to support various individually threatened species, which has been assessed to determine its environmental values.

The proponent would undertake to manage this primary habitat area to retain and enhance its environmental values, including matters of NES, with the long term intention that all of the area will eventually be protected in perpetuity for conservation purposes. This area is then conceptually broken down into ecologically viable units with agreed values. Each of these units could then be offered up to compensate for residual environmental impacts which can not be mitigated as part of the company's mining activities.

## **Attachments**

Attachment A

Alex Rankin  
Assistant Secretary  
Environment Assessment Branch  
April 2006

**DRAFT****The Use of Compensatory Habitat in Condition Setting for EPBC Act Approvals**

This paper discusses the role and function of Compensatory Habitat in terms of mitigating the impacts on natural habitat of actions approved under the *Environment Protection and Biodiversity Conservation Act 1999*. The paper will examine examples of the use of compensatory habitat from overseas and within Australia, consider the applicability of compensatory habitat in a nature conservation context, identify the legal aspects of compensatory habitat in Australia, investigate the means for incorporating compensatory habitat into conditions for approval under the EPBC Act, and develop guidelines for utilising compensatory habitat in condition setting.

***1.0 Introduction******1.1 What is compensatory habitat?***

Compensatory Habitat refers to habitat that is constructed artificially in an attempt to compensate for an area of natural habitat that has been destroyed. Environmental compensation is the creation or enhancement of habitat in order to compensate for the anticipated or actual environmental effects of a proposed action. The guiding principles of compensatory habitat prescribe that natural habitats should not be destroyed, but when social or economic imperatives require it, the rehabilitation or construction of a habitat is required. For the purposes of this paper, compensatory habitat may also refer to the acquisition and legal protection, by the proponent, of areas of natural habitat in order to compensate for habitat affected by a proposed development.

The use of compensatory habitat is widespread in the United States and is becoming an increasingly legitimate option for Australian environmental agencies at both the Commonwealth and State level. Compensatory habitat is being used to not only compensate for the loss of terrestrial habitats but is also used to offset actions that impact wetland and aquatic habitats. The applicability of compensatory habitat has been recognised through efforts to enshrine environmental compensation into legislation, regulatory guidelines and environmental policy to avoid or minimise the loss of natural habitats.

***1.2 The No Net Loss Principle***

The 'No Net Loss' principle assumes that the current area and quality of natural habitat will not change and that active management for conservation will take place in order for this to occur. While the environmental impacts of a proposed action must be avoided by using all cost-effective prevention and mitigation measures, compensatory habitat offers a means for addressing the remaining environmental impacts. It must be stressed though that compensation may not be an option for particularly valuable habitat. No net loss is the term commonly applied to policies that aim to ensure that the current area and quality of natural habitat will not change, however, the terms “net conservation benefit” or “net environmental benefit” may also be used.

## DRAFT

The principle of No Net Loss has become a cornerstone of wetlands conservation policy in the United States. The current administration has committed to a goal of no net loss of wetland habitats through the combined efforts of numerous governmental programs and initiatives, non-regulatory wetland conservation initiatives, and partnerships among federal agencies, and private and not-for-profit sectors. To achieve this goal a National Wetlands Mitigation Action Plan has been developed with the primary purpose of improving the ecological performance and results of wetlands compensatory mitigation and other related programs.

In Australia, the principle of no net loss has been adopted as a key feature of environmental policy in New South Wales, Victoria and Queensland. The NSW Government has signed an agreement with the Federal Government, under the Natural Heritage Trust, committing the state to no net loss of native vegetation. "No net loss" is defined as a reversal in the long-term decline of the quality and extent of native vegetation. NSW will seek to achieve the No Net Loss goal through vegetation retention and revegetation targets, Regional Vegetation Management Plans and an offset policy. A State offset policy would set out how offset agreements would operate within the limits set by existing policies. No net loss of aquatic habitat is an approved NSW Fisheries policy. When developments are proposed which would have a damaging impact on habitat, NSW Fisheries can require compensatory actions as a condition of consent. These could, for example, involve transplanting seagrass or constructing fishways.

The Victorian Government has established goals for biodiversity management to ensure that within Victoria there is a reversal, across the entire landscape, of the long-term decline in the extent and quality of native vegetation, leading to a net gain with the first target being no net loss by the year 2000. *Victoria's Native Vegetation Management – A Framework for Action* establishes the strategic direction for the protection, enhancement and revegetation of native vegetation across the State. The Framework addresses native vegetation management from a whole of catchment perspective but necessarily focuses primarily on private land where the critical issues of past clearing and fragmentation exist. The goal of net gain in the extent and quality of native vegetation is to be achieved through extensive policy, legislative and regulatory mechanisms for conserving biodiversity. Net Gain is the outcome for native vegetation and habitat where overall gains are greater than overall losses and where individual losses are avoided where possible. The losses and gains are determined by a combined quality-quantity measure and over a specified area and period of time.

In response to recording the nation's highest levels of land clearance, the Queensland Government has also adopted the objective of no net loss to ensure the long-term protection and sustainable management of Queensland's native vegetation. This policy is best observed in the Queensland Government's policy for the management & protection of marine plants. This policy is to be achieved through measures such as ensuring fish habitat resources are used in an ecologically sustainable way; ensuring the minimisation of adverse impacts of human activities on fish habitat resources; and the use an integrated education, extension, research and regulatory approach to increase public awareness of

## DRAFT

the protection, diversity, role and value of Queensland's marine plant resources and the detrimental effects of removal and disturbance of marine plants.

While not directly referring to no net loss, the Commonwealth Government's policy on the management of Australia's native vegetation establishes the goal of reversing the decline in the quality and extent of our native vegetation. Under Natural Heritage Trust Partnership Agreements, States and Territories have committed to prevent any clearing of endangered ecological communities, any clearing that changes the conservation status of a vegetation community, and any clearing that is inconsistent with the sustainable management of biodiversity at a regional scale. The Heritage Trust is the foundation of the Commonwealth's approach to conserving Australia's native vegetation, land, biodiversity, water resources and seas. The Bushcare program is the largest of the Trust programs and funds on-ground improvements to protect and enhance Australia's native vegetation, by working with community groups, land managers, industries and Government agencies.

### *2.0 Examples of the use of compensatory habitat*

This section examines examples of the use of compensatory habitat from both overseas and within Australia.

#### *2.1 Overseas examples*

Wetland policy in the U.S is guided by the goal of no net loss of wetland habitat and is enforced primarily through the permitting requirements of the *Clean Water Act*. Section 404 of the Act incorporates the no net loss policy into regulatory guidelines. Under this section land users and developers must avoid or minimise wetland loss and, if this is not possible, are required to redeem loss through compensatory wetland mitigation projects. Mitigation in the Section 404 context can include:

- creation (making a wetland where there never had been one before);
- restoration (restoring a currently degraded wetland);
- enhancement (making an existing wetland "better"); or
- preservation (purchasing or otherwise protecting an existing high-quality wetland).

Data on the Section 404 permitting program during the 1990's suggests a net gain in wetland habitat in the U.S. The area of permitted impacts during 1994 was approximately 6,964 hectares. Compensatory mitigation, either as habitat restoration or creation, required as a condition of these permits was 15,385 hectares per year. Once implemented, wetland mitigation during 1994 resulted in a net gain in wetland habitat for the year of over 8,000 hectares.

#### *2.1.2 Section 404 Case Studies*

##### **Coyote Creek, California**

## DRAFT

The Coyote Creek compensatory mitigation site was installed in 1993 to satisfy the permit requirements of Section 404 of the *Clean Water Act*. The site was designed to provide off-site mitigation for the impacts on nine creeks of the construction of an interstate highway development. The mitigation goal was to develop 10 hectares of riparian habitat adjacent to Coyote Creek. The mitigation area was extensively planted with tree, shrub and herbaceous riparian species to create four distinct vegetation communities, consisting of streamside, floodplain, oak forest, and slope communities. A monitoring plan for the mitigation site called for the measurement of various site parameters, including plant survival and species composition, over a 15-year period to track the success of the site and its overall status. Upon completion, the Coyote Creek compensatory mitigation project will be maintained by the County of Santa Clara Parks and Recreation Department.

### **Oneida County, New York**

As mitigation for unavoidable impacts of a sanitary landfill development, the Oneida County Solid Waste Management Authority was required to create 13 hectares of wetland on the project site, provide funding for the restoration or creation of at least 8 hectares of wetlands that have been impacted by farming or other practices, and preserve at least 22 hectares of ecologically significant habitat. This compensatory mitigation plan will result in a net gain of approximately 4 hectares of state-regulated wetlands and no net loss of federal regulated wetlands. Effort has been made to minimise the amount of wetland habitat that will be impacted during the 62-year life of the landfill with special emphasis placed on avoiding, to the greatest extent possible, high quality wetlands such as open water, beaver ponds and forested wetlands. These high quality wetlands will not be impacted by the landfill construction and will be preserved as part of landfill buffer areas.

### **Grays Harbour County, Washington**

This project entailed the filling of 2 hectares of wetland habitat for the construction of a resort complex. Required mitigation included the creation of 0.2 hectares of wetland habitat on-site, the restoration of 1.3 hectares on-site and 2 hectares off-site, the enhancement of 34 hectares of wetland habitat through re-establishing hydrologic connectivity to existing wetlands, and the further preservation of 45 hectares of wetlands. Though the mitigation was not implemented to plan, wetland habitat features have been installed and the sites are meeting the assessable performance standards outlined in the mitigation plan.

#### *2.2 Australian Examples*

Examples of the use of compensatory habitat in an Australian context include the utilisation of compensatory mitigation as part of specific project developments and as part of conditions of approval under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*.



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### 2.2.1 Specific Project Developments

The State Forests of New South Wales (SFNSW) Land Repair Unit has recently completed a small compensatory habitat planting for the Road Transit Authority (RTA) at Wootton, on the NSW Central Coast. The objective of the project was to create a vegetation corridor across cleared, grazing land to link two areas of regrowth vegetation. The area lies adjacent to the Buladelah – Coolongolook motorway. Under the Agreement with the RTA, SFNSW provided:

- 2000 Seedlings (13 species, local provenance seed);
- full site preparation, including slashing, rip/mounding, secondary cultivation, pre and post plant herbicide application;
- planting and fertilising, and;
- ongoing maintenance for six months after planting.

A second compensatory habitat planting for the RTA of 12 hectares has been completed, based on the project at Wootton. Features of this project include:

- reforesting ex-pasture and banana land that the RTA has resumed adjacent to the new Yelgun to Chinderah motorway project, north of Brunswick Heads;
- habitat planting to link stands of native vegetation (isolated by the motorway and clearing) with an existing wildlife corridor which runs from the Nightcap Range and Mt Warning National Parks to the coast;
- planting 14 species found locally. Individual species will be randomly planted according to site-specific needs, and;
- planting will follow best-practice site preparation methods and the project includes weed maintenance for two years.

The advantage of this approach is that the trees will be able to colonise the site quickly, shading out much of the exotic grasses, reducing the need very quickly for prolonged weed control and encouraging the establishment of rainforest understorey species.

### 2.2.2 EPBC Act Approvals

Approval guidelines for the EPBC Act state that compensatory measures should be used where an action is likely to have irreversible or long-term impacts, and feasible mitigation and/or remedial measures cannot be relied upon to reduce impacts to an acceptable level.

Compensatory measures must ensure that *net* adverse impacts on the matter protected by the EPBC Act are reduced to an acceptable level. For example, if an area of habitat for a listed threatened species will be irreversibly damaged by a proposed action, a compensatory measure would be to rehabilitate or establish an area of habitat, which can fulfill the *same ecological function* for the species. Note that simply restoring an equivalent *area* of habit may not necessarily do the job.

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### **Tasmanian Natural Gas Project**

As part of the approval conditions for the construction of a natural gas pipeline, Duke Energy International (Tasmania Holdings) Pty Ltd (DEI) must prepare and submit to the Minister for approval prior to construction within Swift Parrot habitat to the west of Bridgenorth a plan for managing the impacts of construction on Swift Parrot habitat that includes identifying, marking and retaining important habitat, and rehabilitating degraded habitat to ensure no net loss of habitat.

Despite substantial changes to project design and the pipeline route to minimise disturbance to important Swift Parrot habitat, approximately 2.15 hectares of habitat was cleared for the purposes of the Tasmanian Natural Gas Pipeline. DEI have committed to ensuring no net loss of Swift Parrot habitat by rehabilitating areas of degraded habitat and/or protecting other habitat areas. To this end, DEI has committed to a two-for-one approach as the minimum objective for the Swift Parrot in relation to the Tasmanian Natural Gas Pipeline, and where practicable, will seek five-for-one replacement, repair or protection of habitat. In conjunction with the Swift Parrot Recovery Team, DEI have identified twelve patches of Swift Parrot foraging habitat for obtaining management agreement or covenant with the landholder in order to protect them.

### **Woolnorth Wind Farm**

The approval conditions for the construction of a wind farm in northwest Tasmania by the Hydro-Electric Corporation (Hydro Tasmania) specified the preparation and submission for the Minister's approval of a plan to repair or mitigate damage to the habitat of the Orange-bellied Parrot, away from the site of the action, to protect the species. These plans must include measures to create and/or manage Orange-bellied Parrot winter habitat for at least two sites. Measures to create and/or manage Orange-bellied Parrot winter habitat may include stock fencing, stock management, land management agreements, planting of native food species, provision of supplementary food crops, pest management and planting/protecting roosting sites. Wind farm operations could not commence until the plan was approved.

After discussions with the Orange-bellied Parrot Recovery Team, Hydro Tasmania has committed to sponsoring two projects to create and manage Orange-bellied Parrot winter habitat that mitigates the impact of construction of the wind farm. These compensatory mitigation projects are:

- a pilot saltmarsh grazing trail at the Spit Nature Conservation Reserve, Victoria to determine whether sheep grazing will provide a reliable supply of seeding vegetation for the overwintering Orange-bellied Parrot population, and;
- the establishment of plots of native vegetation to act as roosting sites at Lake Connewarre State Game Reserve, Victoria.

**DRAFT****Christmas Island East Coast Port Facility**

The approval conditions for the construction and operation of a port facility on the east coast of Christmas Island required the Commonwealth Department of Transport and Regional Services to rehabilitate an area of degraded coastal habitat, to be agreed by the Minister, similar in size to the area used for the port facility. To build the new East Coast Port Facility on Christmas Island, 0.7 hectares native vegetation was cleared from the construction site. To compensate for the clearance of this vegetation, 0.7 hectares of severely degraded coastal land will be converted back into natural coastal open forest, scrub forest and vine forest. Four discreet blocks totally 0.7 hectares in area will be rehabilitated with invasive weeds removed from the sites and native flora re-established.

***3.0 Applicability of compensatory habitat in a nature conservation context***

Compensatory habitat has become a common tool for mitigating the impacts of actions that destroy or substantially alter natural areas. These compensatory projects usually take the form of the rehabilitation of areas of degraded habitat or the creation of areas of supplementary habitat. Environmental compensation, however, is not necessarily quantitative, to be measured solely in area lost and gained. In a nature conservation context, compensatory habitat should also seek to compensate for lost ecological function and value. Guidelines for the condition setting under the EPBC Act highlight the need for compensatory measures to fulfill the same ecological function as the area impacted upon by development. However, the complexity of natural habitats and the interactions between the components of natural ecosystems can be difficult to replace or replicate artificially. Therefore, two key questions emerge on the applicability of compensatory habitat: (1) how effective is compensatory habitat in mitigating the impacts of developmental actions, and (2) can compensatory habitat provide a genuine replacement for destroyed habitat?

***3.1 How effective is compensatory habitat***

Australian experiences with compensatory habitat, including under the EPBC Act, are relatively recent, meaning that in most cases it is too early to clearly determine the effectiveness of these efforts. Overseas experiences can provide an insight into the efficacy of compensatory measures for mitigating impacts on natural habitats. Data from Section 404 permitting under the US *Clean Water Act* reveals conclusively that in the US more wetland habitat is being restored or created than is being impacted through actions permitted under the Act, therefore implying a high level of protection of wetland resources. However, more detailed analysis of Section 404 data has shown that mitigation requirements have not completely compensated for destroyed wetland habitat.

A study by Sudol and Ambrose (2002) assessed the effectiveness of wetland mitigation sites in Orange County, California. This research reviewed 535 permitted actions undertaken between 1979 and 1993 that impacted 157 hectares of wetland habitat. Mitigation measures were required for 70 of these actions, with 152 hectares of enhanced, restored or created habitat required for 136 hectares of impacts. Of these 70

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actions, mitigation projects were completed for 55 actions; of the other 15 actions, only two developmental projects proceeded. Based on an assessment of habitat quality, only 9 (16%) out of the 55 mitigation projects were considered to be successful. Thus, of the 126 hectares lost due to the 55 projects, only 26 hectares of compensatory mitigation was considered to be effectively compensating for impacted wetland habitat.

This research concluded that ineffective, unsuccessful compensatory habitat projects were a result of inadequate compliance with permit conditions. The researchers suggest that better enforcement of permit conditions and improved mitigation and monitoring plans would improve mitigation success. Permit conditions should focus on replacing the functions lost when natural habitats are impacted and should avoid vague goals and objectives. The effectiveness of compensatory habitat projects should be measured by using performance standards linked to habitat functions such as wildlife habitat; hydrologic flow; erosion control; water quality improvement; food chain linkages and resilience to invasive species.

### *3.2 Compensatory habitat as a genuine replacement for destroyed habitat*

The ability of compensatory habitat to provide a genuine replacement for destroyed or substantially altered natural habitat can be limited by a lack of information on the ecological function of habitats, an insufficient understanding of the complexity of ecosystems, a neglect of landscape-level interactions, and by inadequate compliance efforts by regulatory authorities. Indeed, the Natural Heritage Places Handbook considers compensatory habitat as an option of last resort on the basis that the current knowledge of the complexity of natural habitats and the interactions of its components is insufficient to guarantee success.

It could be suggested that efforts to rehabilitate degraded habitat or to create artificial habitat will prove ineffective as compensation for the destruction or alteration of natural habitats. However, there are numerous examples of habitat rehabilitation, restoration and creation that provide valuable ecological functions. The creation of Little Tern and migratory shorebird habitat on Towra Spit Island in Botany Bay is a prime example of the effectiveness of habitat creation in compensating for the loss of natural habitat. A key environmental requirement for the development of the Sydney Airport parallel runway into Botany Bay was the establishment of suitable alternative breeding habitat for the endangered Little Tern. Towra Spit Island was recommended for the creation of Little Tern breeding habitat and works included increasing the island's area to a minimum of 3 hectares of land above the high water mark, erecting signs to deter landing on the island and establishing a 100m exclusion zone around the island. The island is now managed by NSW National Parks and Wildlife Service as a Little Tern breeding site and as a site for feeding and roosting for migratory shorebirds and other wetlands birds. A Little Tern colony, displaced from the northern shores of Botany Bay by airport construction, has successfully relocated to the island. Based on breeding productivity, Towra Spit Island is now the second most significant breeding site for Little Terns on the Australian east coast with the number of breeding pairs increasing each year.

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The Towra Spit Island example provides an example of the effectiveness of habitat creation in compensating for the loss of natural habitat through development actions. To be successful, habitat creation for wildlife conservation requires some understanding of both the ecological requirements of the species concerned, and the ecosystem processes responsible for maintaining those features in the environment. Habitat creation and restoration should not focus on a single species but should strive to replicate the original natural system to support numerous species. The goal of habitat remediation is to advance natural processes to result in a healthy, functioning natural ecosystem that functions similarly to the areas of natural habitat destroyed or altered through the impacts of development.

### **4.0 Legal aspects of compensatory habitat in Australia**

The provision of compensatory habitat can be a valid means for mitigating impacts on listed threatened species and communities. However, to provide long-term conservation through the use of compensatory habitat, it is essential that legal protection in the form of landowner agreements, covenants or other conservation initiatives be established. Such protection should seek to not only offer immediate, short-term conservation outcomes but should run with the title of the land so as to ensure long-term conservation benefits regardless of tenure. A range of conservation mechanisms is available to provide protection to compensatory habitat projects throughout the States and Territories with the level of ongoing protection differing from jurisdiction to jurisdiction. A summary of these mechanisms can be viewed in Table 1.

#### *4.1 Conservation Covenants*

Conservation covenants are an important and increasingly common means of ensuring environmental protection. Private owners of areas of environmental significance can make a commitment to conserving and managing their property in the public interest but retain private ownership of it. In return the owner may receive financial assistance or relief from rates and land tax, to enable the area of environmental significance to be effectively managed, preserved or maintained. Covenants, when registered on title, will bind future purchasers of the area of environmental significance and thus long-term, permanent protection will not simply depend on the attitude of the landowner.

Conservation covenant agreements are usually made between the owner of an area of environmental significance and the appropriate State/Territory government authority. However, local councils and conservation bodies may be empowered by legislation to enter into covenants with private landowners to restrict the future use and development of land in order to protect areas of environmental significance.

Conservation covenants are designed to protect the natural values of an area such as its natural vegetation, wetlands, wildlife and related habitat and special landscape features. Covenants can also protect habitats that have been created, restored or rehabilitated. In this way, conservation covenants offer an opportunity to extend long-term protection to areas of compensatory habitat, thus ensuring that the benefits of compensating for lost

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<b>Table 1: Conservation Mechanisms for Compensatory Habitat</b>			
<b>State/Territory</b>	<b>Mechanism</b>	<b>Legislation</b>	<b>Extent of Tenure</b>
<i>Commonwealth</i>	Tax Incentives for Conservation	Income Tax Assessment Act 1997	To be eligible, must bind successors in title
<i>ACT</i>	Conservation Order Property Management Agreements	Land (Planning and Environment) Act 1991 Nature Conservation Act 1980	May bind future lessees and occupiers Not specified
<i>NSW</i>	Conservation Agreements Joint Management Agreements Public Positive Covenants	National Parks and Wildlife Act 1974 Threatened Species Conservation Act 1995 Conveyancing Act 1919	When registered, binds successors in title Agreement is only binding on the parties Runs with successors in title
<i>NT</i>	Conservation Management Plans Conservation Agreements	Heritage Conservation Act 1991 Territory Parks and Wildlife Conservation Act 1976	May impose long-term management obligations on the land holder, and run with title Not specified
<i>Queensland</i>	Conservation Agreements Conservation Covenants	Nature Conservation Act 1992 Nature Conservation Act 1992	When registered, binds successors in title Binds successors in title
<i>SA</i>	Voluntary Heritage Agreement Scheme Voluntary Sanctuaries Heritage Agreements	Heritage Act 1993 National Parks and Wildlife Act 1972 Native Vegetation Act 1991	Binding on the current owner of the land Agreement is only binding on the parties Binding on the current owner of the land
<i>Tasmania</i>	Conservation areas Threatened Species Protection Agreements Conservation Covenants	National Parks and Wildlife Act 1970 Threatened Species Protection Act 1994 Public Lands (Administration and Forests) act 1991	Does not automatically flow with title Agreement is only binding on the parties When registered, binds successors in title
<i>Victoria</i>	Land Management Cooperative Agreements Wildlife Management Cooperative Areas Conservation Covenants	Conservation Forests and Lands Act 1987 Wildlife Act 1975 Victorian Conservation Trust Act 1972	When registered, binds successors in title Can run with title if included in agreement When registered, binds successors in title
<i>WA</i>	Voluntary Agreements Conservation Covenants Conservation Covenants	Conservation and Land Management Act 1984 Soil and Land Conservation Act 1945 Land Administration Act 1997	Agreement is only binding on the parties When registered, binds successors in title When registered, binds successors in title

habitat extend beyond the life of the developmental project. When drafting conditions of approval for controlled actions, the protection of areas of compensatory habitat through the establishment of a conservation covenant should be taken into account. This is especially so when conditions seek to achieve a no-net loss of natural habitat.

**DRAFT***4.2 Conservation Easements*

In Australia, easements are more often associated with electricity, water and sewerage supply. They confer certain rights to the provider of these services to carry out particular activities on private land. However, in the United States there is widespread use of conservation easements whereby landholders place voluntary restrictions on their land to protect natural resources such as top soil, water quality, wildlife habitat or to protect the land for a certain type of land use such as farming. Landholders donate land of conservation value in the form of an easement to land trusts. By placing voluntary restrictions on their land, the landholder is provided with a range of taxation benefits, while the trust is provided with a legally enforceable right over the easement conditions. The taxation benefits of voluntarily providing an easement are promoted by the trusts.

In general, the conservation easement program in the United States corresponds with Australia's use of conservation covenants. However, the easement program is driven primarily by non-government organisations (land trusts) rather than through government authorities as it is in Australia. There are over 1000 non-profit national, regional and local land trusts across the United States operating under the national umbrella organisation, the Land Trust Alliance. The use of trusts in Australia is expanding through bodies such as the Nature Conservation Trust, the National Trust of Australia, and the Trust for Nature. The aim of these organisations is to promote and encourage conservation on private land by providing incentives for landholders to protect areas of high conservation value. These incentives are supplemented by Commonwealth Government tax concessions for entering into a perpetual conservation covenant. These land trusts and covenanting schemes thereby provide an alternative to an agreement with a State/Territory government authority for the long-term conservation of compensatory habitat projects.

*4.3 Conservation Banking*

Conservation banking involves the establishment of land banks dedicated to conservation, which sell credits to developers who are required to purchase them to offset the environmental impacts of approved developments. The developer who proposes the impact pays money to the conservation bank to buy 'credits'. These credits enable the conservation bank to undertake land restoration and protection activities that offset, or mitigate, the impacts of the development. Conservation banks are legally protected through a conservation easement. To finance the bank, a market must exist for its product, the 'conservation credit', so the system is dependent on environmental regulation through the conditions attached to development approvals.

Conservation banks have been established in the United States without any specific legislation that refers to banks, credits or credit trading. Despite this lack of legislation, conservation banking is reliant upon legislation and regulations requiring assessment and approval of development applications and for environmental impacts to be mitigated. In response to the growing use of conservation banking in the US, federal legislation has

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been drafted to provide uniformity and consistency to this increasingly popular mitigation tool.

Conservation banking is still a relatively new concept in environmental management in the Australian context. However, as governments strive to achieve no net loss of native vegetation, the need for appropriate tradeoffs or offsets will arise. For example, the Victorian and NSW Governments are currently investigating the applicability of conservation banking as a means to offset the impacts of road construction. For condition setting under the EPBC Act, conservation banking may offer a way to require proponents to acquire areas of natural habitat to mitigate the impacts of developmental actions. Areas of land purchased through the conservation banking system are then provided long-term protection by the establishment of conservation covenants.

### ***5.0 Criticisms and Shortcomings of Compensatory Habitat***

American policies have been heavily criticised for leading to the managed loss of environmental values, rather than achieving their stated aim of 'no net loss'. Ongoing issues with such systems have included:

- difficulties in measuring credits and debits;
- whether out-of-kind mitigation is permissible (that is, where a credit is of a different environmental type to the debit, can be offset by improvements to a forested wetland);
- the sequencing of the damaging activity and the offset action (that is, the time lag before the credit is effective);
- permit conditions that are reflective of the ecological values or functions of natural habitat;
- concerns about ensuring compliance; and
- whether protecting existing habitat can generate credits for environmental impacts.

Australian policies addressing offsets and environmental compensation have also been criticised by industry groups and non-government environmental organisations. The Property Council of Australia has strong concerns with a number of the principles and the equity of the NSW green offset policy proposal. The Property Council believe that green offsets would merely be another impost on new development which is already burdened by a large array of taxes, levies and charges, that this impost would have no relationship with the actual environmental impacts of an individual development, and that the impost inequitably imposes a liability on new development for addressing the past environmental mistakes of others whereas other sectors are not subject to any liability. The Property Council would like offset schemes to be undertaken on a voluntary basis as an alternative to other forms of regulatory control to ensure equitable and practical outcomes with the greatest environmental impact.



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The Peak Environment Non-Government Organisations have expressed their opposition to the introduction of offset schemes. These organisations believe that such schemes use habitat destruction as a ‘driver’ for environmental conservation and improvement, attempt to transfer responsibility for environmental protection and improvement from the public to the private sectors, and that high levels of ongoing, long-term political and administrative commitment are needed for the scheme’s regulation, coordination, management and monitoring. They also argue that the complexity of implementing and monitoring schemes requires large amounts of resources, information and scientific knowledge, much of which is not yet available and that man-made systems do not provide the levels of habitat function, stability and diversity of natural ecosystems. Rather a system that compensates for the environmental impacts of development, these organisations believe that a more positive approach is needed which is driven by the needs of environmental protection, along with the development of alternative economic activities which recognise that conservation is an ‘*investment in natural capital, which underwrites material wealth*’. The organisations also advocate that the Precautionary Principle should be applied to prevent activities that degrade the environment when there is a lack of scientific knowledge or understanding.

**6.0 Guidelines for Condition Setting for Approvals under the EPBC Act**

Overseas experiences have shown that the effectiveness of compensatory habitat projects can be increased if sufficient consideration is applied during policy drafting and condition setting. Specific consideration should be given to:

- clarifying the overarching objectives of the compensatory habitat policy in regard to no net loss, net gain, compensation ratios, and the equivalency of habitats;
- condition setting should, where possible, require the proponent to develop compensatory habitat concurrent with the approved action to ensure that the time-lag between the loss of natural habitat and the availability of compensated habitat is reduced;
- condition setting should aim to prescribe compensatory habitat that replicates the ecological functions and values of the impacted habitat;
- baseline surveys of the impacted habitat should be a requirement of condition setting in order to determine the ecological character of the site and to provide the basis for the development of functional compensatory habitat;
- condition setting should include compliance checks, monitoring strategies and follow-up procedures to ensure the ongoing functionality of compensatory habitat and should have goals related to improving/maintaining species richness, resilience to invasive species, and ensuring self-sustainability;
- compensating through habitat creation must replicate the impacted habitat by utilising the same plant species, should attempt to mimic the hydrology and topography of the impacted habitat and may require substantial site preparation prior to establishment of vegetation;
- compensating through the restoration of degraded habitat must aim to re-establish the ecological character of the site to that of natural habitat through utilising the

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- naturally occurring plant species and must address the causes of habitat degradation;
- compensating through the acquisition of natural habitat should seek to attain sites with known conservation value, and could include areas adjoining existing conservation reserves or areas that provide a link between isolated fragments of natural habitat;
  - condition setting for all types of compensatory habitat should consider the landscape function of sites including capacity to provide links or corridors between areas of existing natural habitat or location in regard to existing conservation reserves. Compensatory habitat sites should avoid being isolated islands within a larger matrix of degraded or substantially modified lands;
  - condition setting should seek to offer long-term protection to compensatory habitat by requiring proponents to negotiate with State/Territory authorities for the application of conservation covenants or other conservation agreements. Such covenants or agreements must run with title to ensure lasting protection regardless of ownership, and;
  - investigations should be undertaken into the applicability of conservation banking schemes in condition setting for approvals under the EPBC Act. This investigation could examine the effectiveness of conservation banking in the US and its introduction as an additional tool for mitigating environmental impacts in Australia.

# **Guidelines for the Use of Offsets for difficult to locate species**

**December 2010**

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## **Introduction**

Proponents sometimes experience difficulties securing environmental offsets for species which are difficult to locate and/or are poorly understood.

Examples of species which are difficult to locate due to their unusual biology or lack of knowledge include the Golden Sun Moth (GSM) (*Synemon plana*), the Underground orchid (*Rhizanthella gerdneri*), the Northern Marsupial Mole (*Notorcytes caurinus*) and Brock's Pipefish (*Halicampus brocki*). This guide is intended to assist assessment officers considering securing offsets for such species through the assessment and approval processes under the EPBC Act.

## **Environmental Offsets**

Environmental offsets can be defined as measures to compensate for proposals where the environmental impacts cannot be adequately reduced through avoidance or mitigation. In this context, offsets do not reduce the impacts of a development. Instead they seek to ensure that the health, diversity and productivity of the environment overall are maintained or enhanced.

Environmental offsets are not appropriate for all approvals under the EPBC Act. The Department's current approach to offsets is described in the 'Draft Policy Statement: Use of environmental offsets under the *Environment Protection and Biodiversity Conservation Act 1999*' and is available on the intranet at <http://www.environment.gov.au/epbc/publications/draft-environmental-offsets.html>. The draft policy statement includes eight principles for the use of environmental offsets under the EPBC Act. These eight principles are used to assess proposed offsets to ensure consistency, transparency and equity. They are not intended to be applied where the impacts of a development are considered to be minor in nature or could reasonably be mitigated. In some circumstances suitable offsets may not be available to adequately compensate for the impacts of a development and a decision on the overall acceptability of the project will need to be made.

## **Surveying for species presence**

In order to determine if a threatened species may be impacted by a proposed action, or if it is present at a proposed offset site initially, species presence or potential likelihood of occurrence at the site usually needs to be determined through field surveys. The type of survey method used depends on a number of factors, including the target species, size of survey area and vegetation cover.

EPBC Act listed species are by the nature of their listing rare, and therefore it is unlikely that enough is known about their ecology, reproduction or habitat use to determine with confidence that any survey method or effort will guarantee detection. This means that even when a threatened species is known to be present at a locality, detection of it may require greater survey effort than what is required to detect a common species, or the species may be so difficult to detect that determining its range is an ongoing process. Lack

of detection does not necessarily mean that the species does not occur at that location.

To increase the chances of detecting a species, surveys should:

- Be undertaken at times the targeted species is known to be active. For example, breeding/feeding/flowering times;
- determine the context of the site within the landscape;
- be conducted by a suitably qualified person, and
- account for uncertainty and error.

### **Difficult to locate species**

Some species may be difficult to locate and survey as a result of:

- limited survey opportunity due to species characteristics such as only being identifiable above ground for 2-3 months of the year;
- lack of knowledge about their reproduction, lifecycles, habit and distribution; and
- limited number of people with relevant survey technique expertise.

The above factors can create challenges in locating and estimating populations of the species at an impact site and can also make it difficult to accurately identify whether a species in this category is present at any potential offset sites. As a consequence, it can be difficult for proponents to find offsets which benefit these species, within a reasonable timeframe.

These challenges are compounded in situations where there is rapid development in the area in question and limited availability of suitable offset sites. For example, potential GSM habitat sites in the Melbourne metropolitan area are in high demand, and may be purchased for other developments in the time it takes to hire a consultant and undertake the required surveys at specific times of the year. Added to this, even if a site is available, there is no guarantee that the targeted species will be found on the site; this will not be known until the surveys are complete. (See 'Case Study: Golden Sun Moth, *Synemon plana*' at [Attachment A](#)).

### **Selecting an offset for difficult to locate species: applying the draft offset principles**

In addition to the challenges mentioned above, there are a number of other considerations when developing offsets for species which are difficult to locate:

- does the offset provide a real **conservation outcome** specific to the particular MNES affected?;
- is the **species present** at the proposed offset site?;
- is the **location** of the proposed offset in the vicinity of the impact site?;
- is the proposed offset **commensurate** with the impact?;
- can the proposed offsets be delivered in the required **timeframe**?; and
- can the offset be reasonably **secured**?

#### **Conservation outcome**

Offsets should deliver a real conservation outcome (draft Offset Principle 3). Offsets which offer money for research into topics such as what the species



eat are unlikely to provide on-the-ground benefits commensurate with the loss of habitat. The protection of existing habitat which is known to support the species is usually a higher priority. However, as survey work is a key step in protecting the habitat of some species, it may be suitable to accept some offsets which undertake coordinated surveys, preferably as part of a package of offsets (draft Offset Principle 4) which also includes the protection of known habitat sites.

### **Species presence**

Proponents sometimes assume that an impact site contains habitat and individuals of a difficult to locate species. In such circumstances the reasons for making this assumption should be sought from the proponent (e.g. habitat characteristics, previous surveys, other sources). A decision will need to be made on the acceptability of the assumptions and whether or not surveys are necessary. A key consideration is whether there is sufficient information to determine the value the site represents for the species. This information would be taken into account in the evaluation of any offset.

In some circumstances, proponents may propose offset sites with the *potential* for the affected species to be present. However without confirmation of the species presence, there is a risk that proposals with known impacts on a listed species will provide no benefit to the impacted species. It is therefore important to confirm the presence of the species on the site before securing the offset. Additionally, species do not need to be present at the site at all times and surveys can be used to demonstrate the value of the site to intermittent users of habitat such as migratory species.

In the case of species which are well understood, knowledge of preferred habitat, distribution, etc, can provide for the use of habitat surrogates (areas of similar habitat type, structure, etc) to determine species presence, i.e. as used by the NSW BioBanking system. However, with many species which are difficult to locate, there is insufficient knowledge of their preferred habitat and distribution to use habitat surrogates as confirmation of species presence at a given site. For example, surveys undertaken by qualified practitioners are the only reliable method of detecting GSM presence at a given site. This will also be true for many other species.

### **Location**

A challenge in areas of high development is finding an offset in the vicinity of the development; for example, offsets in the Melbourne metropolitan area for developments that impact on the GSM. Draft Offset Principle 6 states that offsets should be located in the vicinity of the development activity (for example, the same bioregion or sub-region) to ensure that one area of importance to a species does not become severely degraded. Bioregions can be quite large and may extend beyond areas of concentrated development. In the case of the GSM, there are considerable areas beyond the Melbourne metropolitan area, within the same bioregion, that are potential offset sites and may be considered.



However, proponents may sometimes propose offsets outside the same bioregion. For example, purchase of GSM habitat in ACT/NSW to offset an impact in Melbourne would be inconsistent with draft Offset Principle 6 as such an offset would not be in the same bioregion. Large distances between the impact site and offset site should be avoided to prevent substantial reductions in the distribution of the species and to conserve the unique genetic composition of each population. In the case of the GSM, the Melbourne population is genetically distinct from the NSW/ACT populations.

### **Commensurate**

Environmental offsets should, as a minimum, be commensurate with the magnitude of the impacts of the development and ideally deliver outcomes that are 'like for like' (draft Offset Principle 5). ~~For example, offsets for GSM habitat in the Melbourne area have often been secured at a ratio of 3:1. This ensures that some GSM habitat will be protected and improved within the Melbourne area and reduces substantial contraction of the species within Victoria. However,~~ there are many considerations other than the area of habitat being impacted that can be taken into account and a higher ratio could ~~be used~~ sometimes be required to compensate for impacts such as:

- loss of high quality habitat;
- ~~loss of sites with observed females (if females are rarer or more sensitive to disturbance);~~
- removal of key connecting habitat; and
- increased urbanisation leading to fragmentation and reduction in size of remaining populations.

Lower ratios could be considered where the impact site has a low quality habitat value and proposed offset has high quality habitat with additional values such as key connecting habitat.

### **Timeframes**

In the case of difficult to locate species, there may be circumstances where it may not be practical to meet draft Offset Principle 7 – '*Environmental offsets should be delivered in a timely manner and be long lasting*'. Difficulties identifying and securing suitable land, limited survey opportunity and availability of consultants with appropriate survey experience, may require other offsets to be explored. These should still be consistent with the draft Offset Principles. For example, contributions to trust funds, bonds, multi-party offsets and the use of third party brokers, etc, could be considered. Although it is preferable to ensure offsets are implemented prior to the commencement of development, the aforementioned challenges, as well as social and economic issues, may in some cases justify approving an offset which is delivered after the development has commenced. In this case a proponent may be asked to identify a series of potential offset sites at the approval stage. This option provides the Department with confidence that there is likely to be a suitable offset available, with a specific site secured in post-approval.

### **Secure**

Offsets need to be secured in order to provide a beneficial outcome. Where suitable land cannot be delivered within the required timeframe, the use of

trust funds and third party brokers to secure offsets may be appropriate. However, the provision of funds for the acquisition and management of habitat at a later date has a number of potential risks such as:

- the cost of securing habitat may increase over time, devaluing the purchasing power of the funds provided;
- additional costs such as the legal costs of securing habitat;
- additional costs for management and improvement of the site; and
- the administration of trust funds can be problematic. Trust fund structures can be complex and slow to take real action. They usually require a substantial amount of monitoring by the Department to ensure they deliver. In some cases the Department may be required to play a role in the management and administration of a trust fund, which has resource implications.

One possibility for addressing these risks is the provision of funds to an independent third party organisation which then seeks and negotiates a final offset that is in turn approved by the Department. Thus, the offset is secured and much of the administrative workload for the Department has been eliminated. For example, some recent proposals in Victoria have provided for arrangements whereby a proponent makes a pre-payment to a not-for-profit organisation like Trust for Nature who then seeks, negotiates and secures an offset on their behalf.

Further information on the use of trust funds and third party brokers to secure offsets can be found in the draft 'Guidelines for the Use of Trust Funds under Part 9 of the EPBC Act'.

**Case study: Golden Sun Moth, *Synemon plana***

The Golden Sun Moth (GSM) is a highly unusual species whose widespread presence in areas of undeveloped land on urban fringes means that it is frequently at the centre of offsetting proposals, but whose peculiar life-cycle characteristics mean that securing offsets can be challenging.

The GSM has two life stages: a larval stage, underground for 2 to 3 years and an adult stage, typically only 1-4 days for barely two months of the year (late Oct-early Jan). Disturbance of the species during either life stage is likely to disrupt its life cycle. GSM are known to be present in Victoria (Vic), New South Wales (NSW) and the Australian Capital Territory (ACT).

There is a high level of demand for land in the Melbourne area, primarily for urban development. As a result, proponents of actions around Melbourne have repeatedly cited difficulties in finding offsets for GSM which satisfied the department's draft offsets policy within reasonable timeframes. In summary, these were:

- limited availability and high cost of land providing suitable habitat in the same general area as the impacts;
- limited season within which surveys for the species can be conducted effectively (late October to early January) due to the predominantly larval existence of the GSM; and
- limited availability of consultants to survey both impact area and potential offset sites during the short survey season.

Because of difficulties in identifying suitable offsets for GSM, a number of offsetting arrangements have been put forward which are not simply the protection and management of identified habitat. Such proposals include:

- money to secure unidentified habitat at a later date;
- money for research including identifying where the moth lives and what it eats;
- assisting the Victorian Government with the purchase of grasslands reserves through a land trust arrangement;
- purchasing habitat outside the bio-geographic area, possibly in the ACT or NSW.

These alternative offset proposals result primarily from the unusual nature of the GSM. Although such offsets are not ideal in terms of the draft offset principles, if the proposal is going to be approved, many of these approaches will be likely to achieve a better outcome for the GSM than rejecting the proposed offsets and approving the proposal on social and economic grounds alone. The cumulative impacts of development proposals being approved on the grounds of social and economic grounds without offsets could result in substantial reduction in the remaining GSM habitat.



Offsets such as the purchase of GSM habitat in ACT/NSW to offset an impact in Melbourne would be inconsistent with the draft offset principles. Securing of offsets outside the bio-geographic area should be avoided to prevent substantial reductions in the distribution of the species and to conserve the unique genetic composition of each population. In the case of the GSM, the Melbourne population is genetically distinct from the NSW/ACT populations (See 'A guide to offsets for species which are difficult to locate and/or are poorly understood)' for examples of suitable offsets for this species.)

Funds for the future acquisition and management of GSM habitat can be considered for an offset, but the key question is how much money is appropriate. An appropriate financial contribution could be determined based on the amount of money required to purchase and protect habitat within the same bioregion that is ~~at least three times the size of the impact to be offset, depending on factors that weigh on the significance of the impact~~ of sufficient size and quality to offset the relevant impact. However, the provision of funds for the acquisition and management of GSM habitat at a later date has a number of potential risks and this figure should be increased to manage risks such as:

- identifying and securing habitat. This approach is dependent on surveys being undertaken to identify suitable habitat;
- suitable GSM habitat may not be identified, which would mean no suitable offset would be delivered;
- the cost of securing habitat may increase over time, devaluing the purchasing power of the funds provided;
- additional costs such as the legal costs of securing the habitat;
- additional costs for management and improvement of the site; and
- administration of trust funds can be problematic. Trust fund structures can be complex and slow to take real action. They usually require a substantial amount of monitoring by the Department to ensure they deliver. In some cases the Department may be required to play a role in the management and administration of the trust fund which has resource implications.

In view of the above risks, contributions to a fund would need to be greater than the equivalent cost of purchasing habitat. In addition, the use of separate trust funds for individual offset proposals is resource-intensive with a high administrative workload for the Department. This may mean that it may not be feasible to undertake a large number of such offsets. However, some recent proposals have provided for arrangements whereby a proponent makes a pre-payment to Trust for Nature who then seeks and negotiates a final offset that is approved by the Department. Such an arrangement eliminates much of the administrative workload for the Department.

## **GSM offsets for the Melbourne Newest Sustainable Communities proposal**

As part of the strategic assessment of the Melbourne Newest Sustainable Communities proposal, the Victorian Government is intending to acquire and put into reserves approximately 15,000 ha of grasslands of which approximately two thirds are native (Western Grasslands Reserves) to offset the loss of 6,000 ha of likely GSM habitat in the development area. In addition, proposals within the area of the strategic assessment which are found to impact on GSM may also be required to provide offsets which specifically benefit GSM. Targeted surveys for GSM in peri-urban areas, Green Wedges and elsewhere in regional Victoria will be undertaken over the next two years or more. This will enable a sub-regional strategy and revised prescription for the Golden Sun Moth to be developed. Site data collected on native vegetation condition and GSM presence to be used to address the sub-regional habitat requirements for the species, factoring in habitat condition and connectivity, as well as Victoria's progress towards the overall protection goal.

DRAFT



## Module 4: Decisions and Outcomes



# Timetable

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<b>09.00 – 10.00</b>	<b>Introduction</b>
<b>10.00 - 10.30</b>	<b>Decision process (Part 9, EPBC Act)</b>
10.30 - 10.45	MORNING TEA
<b>10.45 - 11:45</b>	<b>Making the right recommendation</b>
<b>11.45 - 12.30</b>	<b>Outcomes – achieving a conservation aim</b>
12.30 – 1.30	LUNCH
<b>1.30 – 3.00</b>	<b>Condition setting</b>
3.00 – 3.15	AFTERNOON TEA
<b>3.15 – 4.15</b>	<b>Offsets: the what, when, where and how</b>
<b>4.15 – 4.30</b>	<b>Summary and close</b>

# Steps in the Process

Referral  
Information

Preliminary  
Documentation

Public Environment  
Report (PER) or  
Environmental Impact  
Statement (EIS)

Bilateral or  
Accredited Process

Public Inquiry

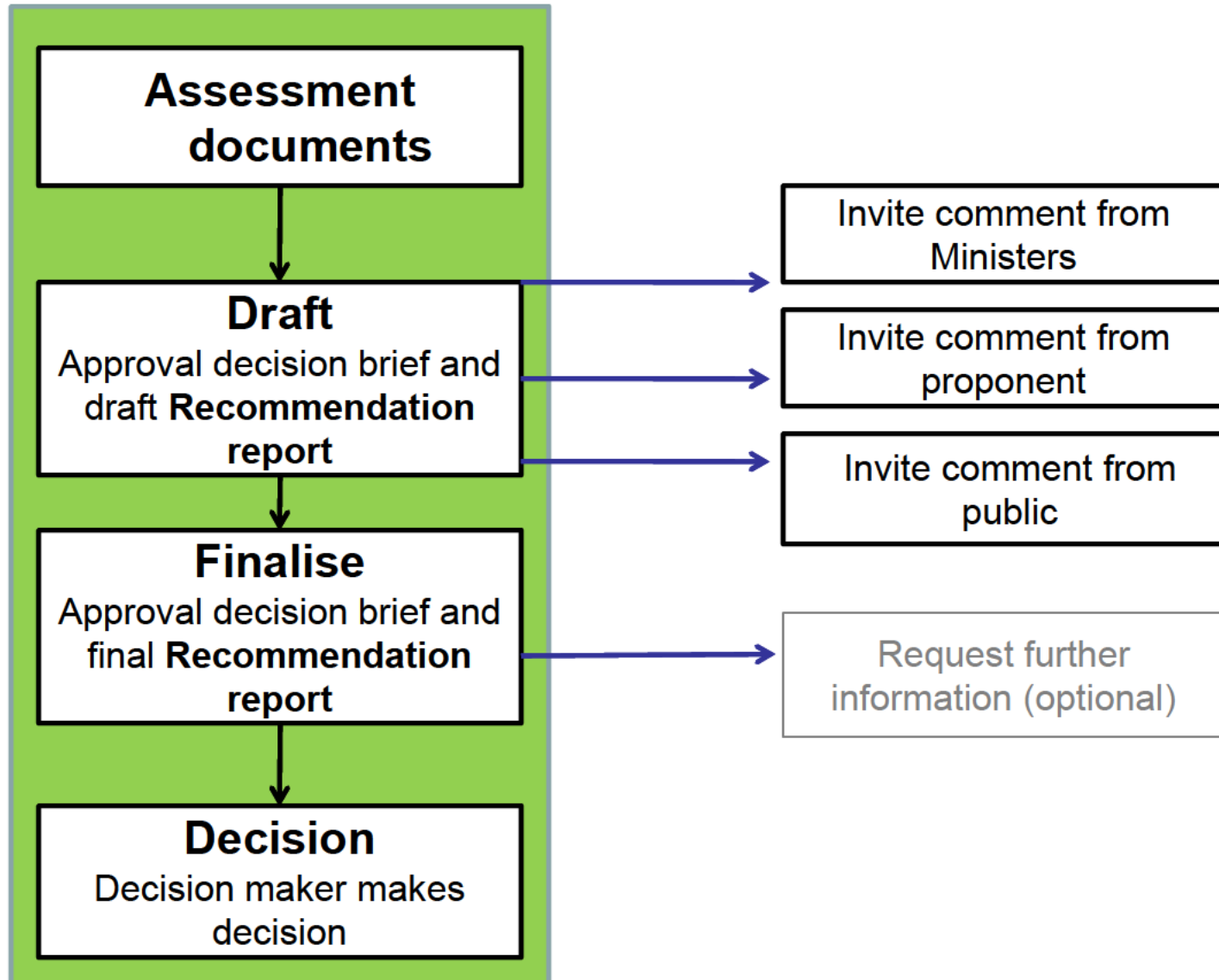


## Key steps in the process:

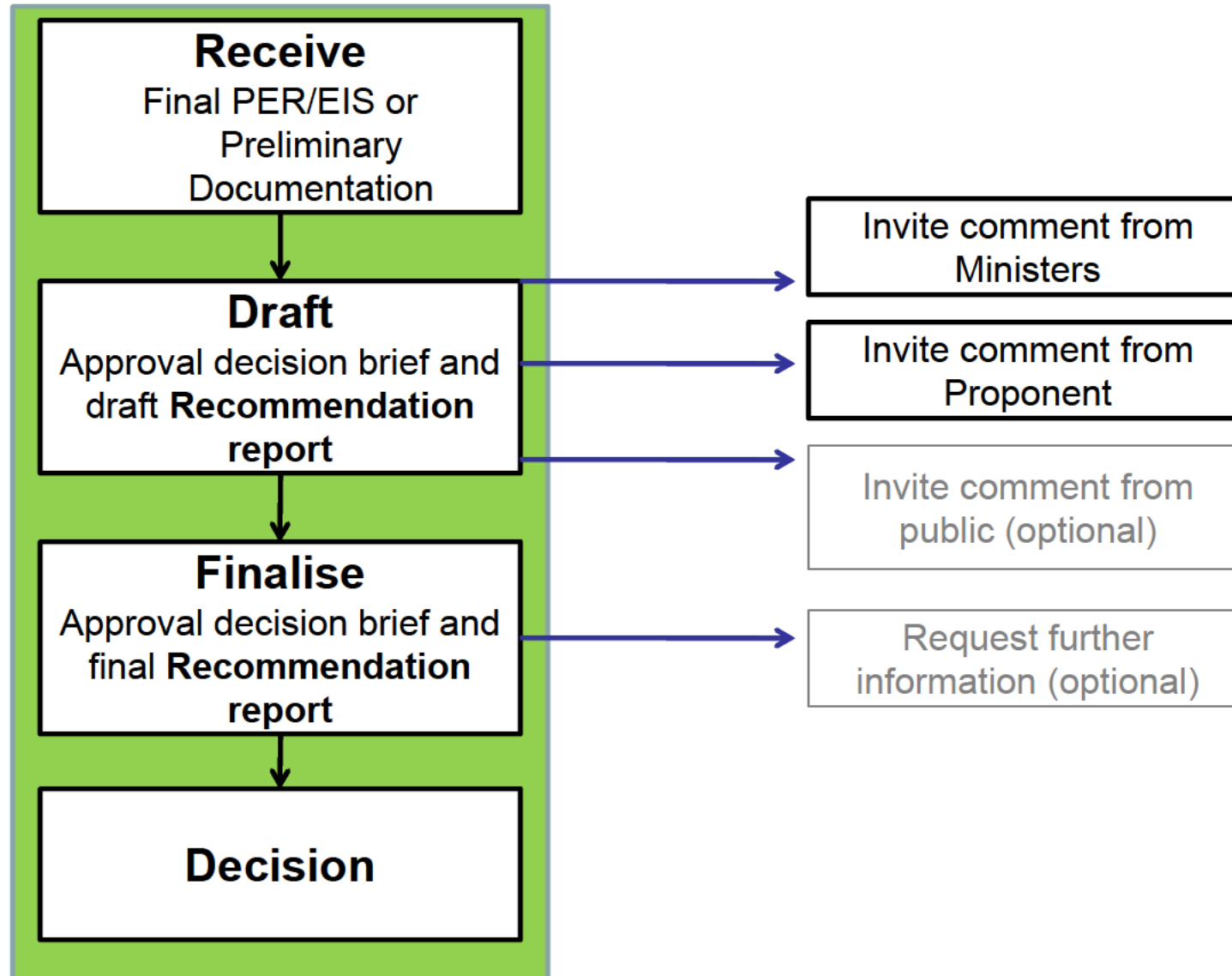
1. Understand the proposed action
2. Investigate possible impacts to the environment
3. Set objectives – terms of reference
4. Consider options
5. **Recommend conditions**
6. **Finalise the recommendation in a decision brief**



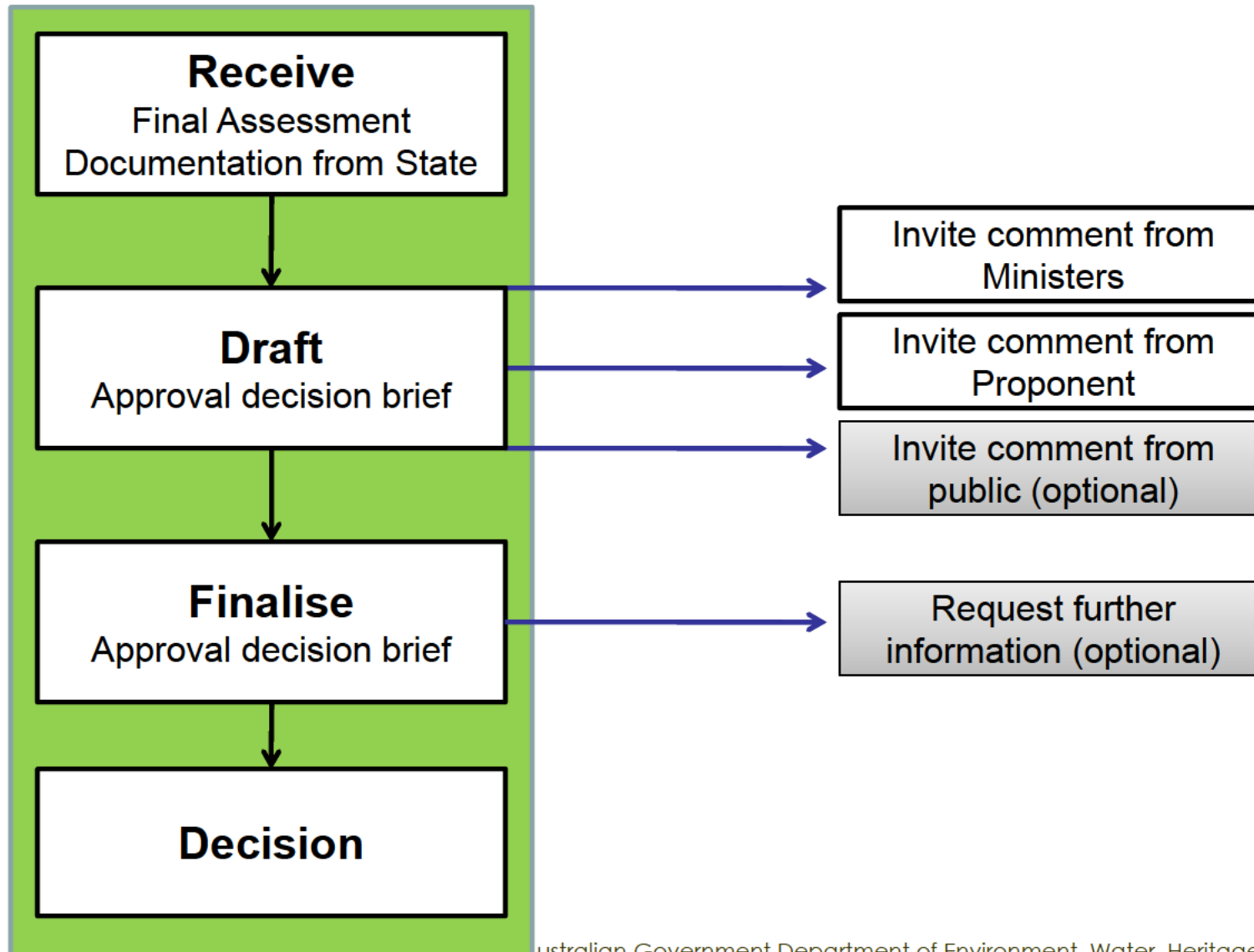
# Referral Information



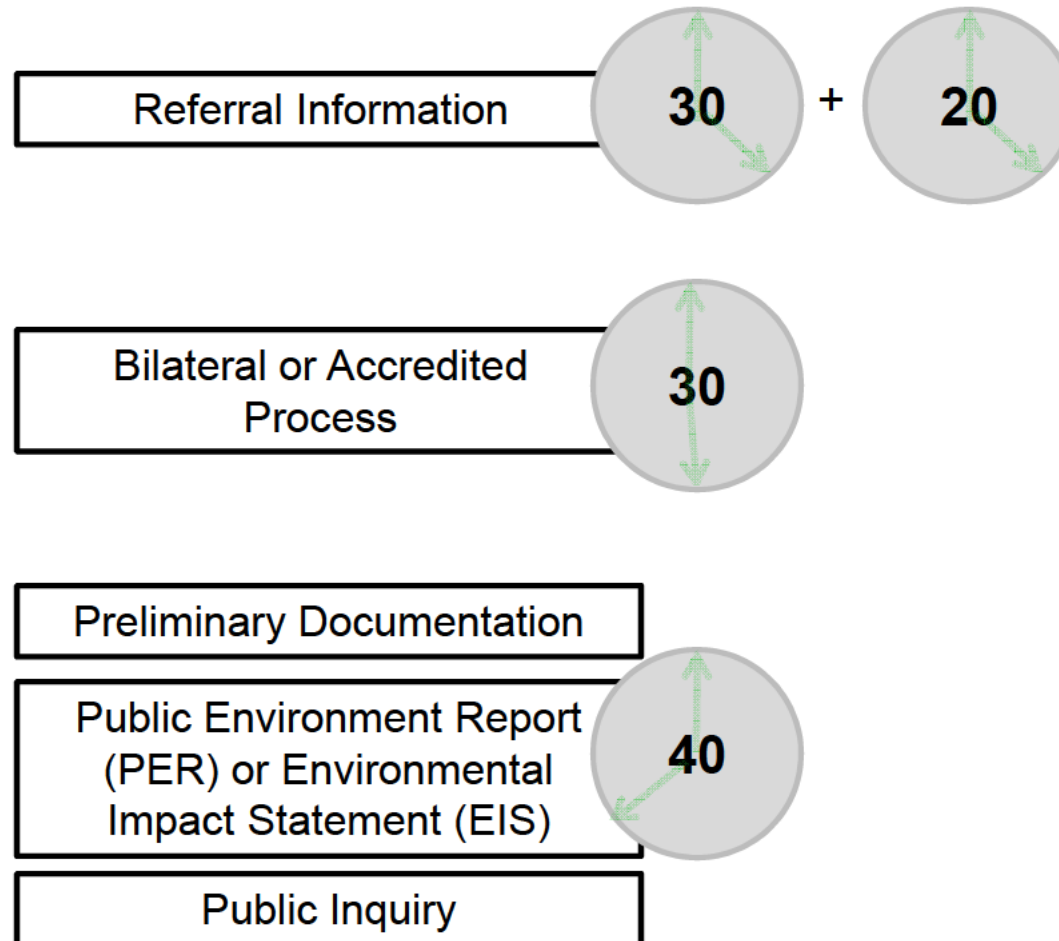
# PD and PER/EIS



# Bilateral/Accredited



# How much time do I have?



## Mandatory considerations

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### Economic and social matters

*These may be positive or negative aspects*

*Elements that may constitute social or economic include.....*



\$\$



Services



Employment



Disturbance



Amenity & Access



Quality of life

## Minister must 'take into account'



- Principles of ecologically sustainable development
- Finalised assessment documentation from the proponent
- Environmental history of the person taking the action

Note that Minister cannot consider matters other than those relating to the relevant controlling provisions and social and economic issues; ie. he can't consider State level issues (e.g State listed species)



# Case studies



Christmas Island

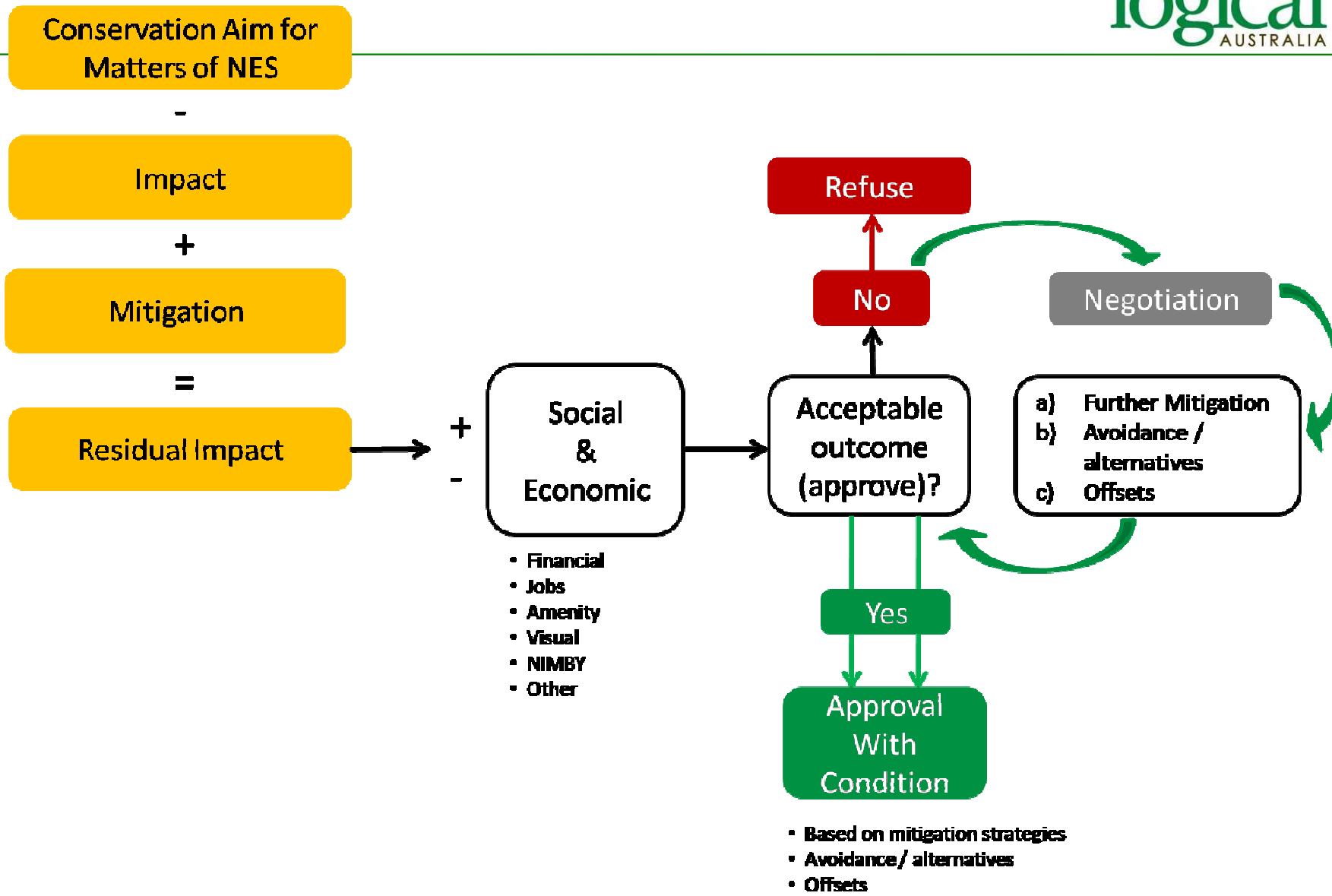


McArthur River Mine



## Also keep in mind

- Variation of conditions, Suspension, Revocation of approval (4B, 4C, 4D)
- Extension of approval timeframe (4E)
- Transfer of approvals (3H)
- Administrative procedures (3F)

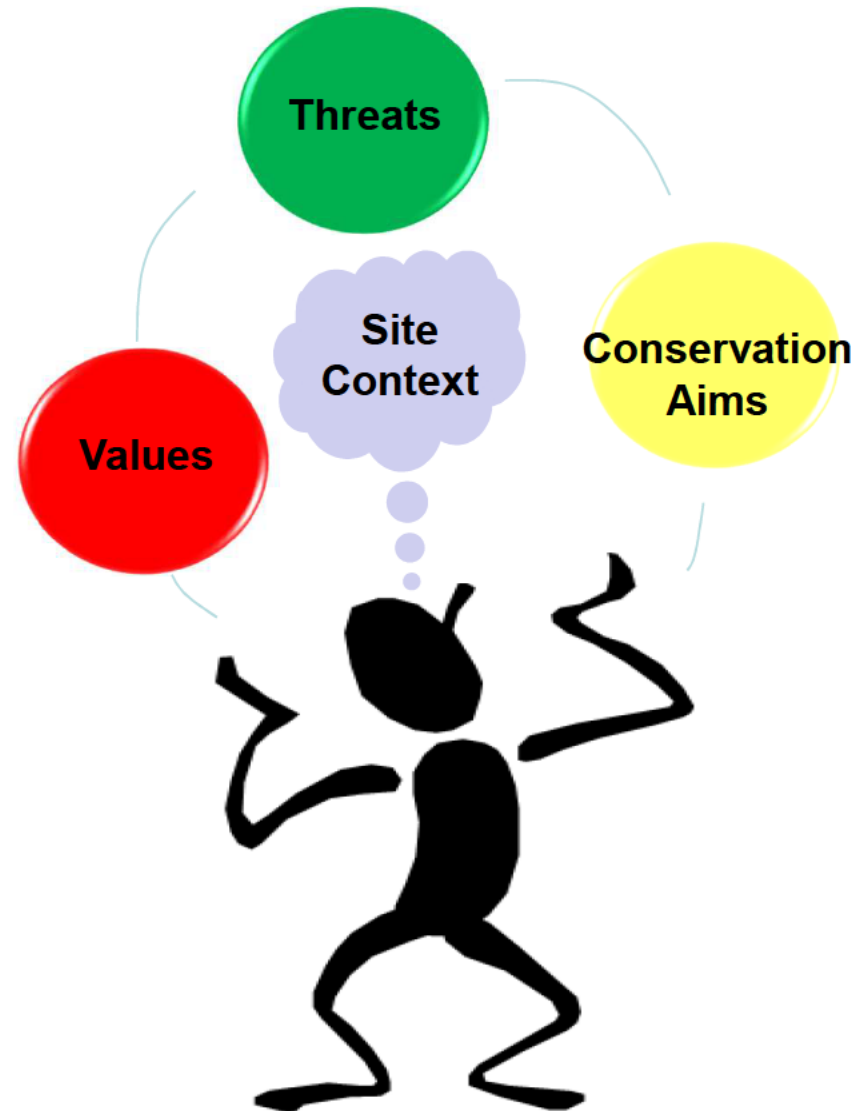


## Possible recommendations

- ✓ Approve
- ✓ Approve with conditions
- x Refuse

*How do we get there?*

# Achieving the conservation aim



## Key aspects of the environment

- Ecosystems and their constituent parts
- Natural and physical resources
- Qualities and characteristics of locations, places and areas
- Heritage values of places
- Social, economic and cultural aspects



# Threats

What threatens the natural, heritage, social or economic environment?

- Changes to water/air quality leading to impacts on ecosystems
- Increases in traffic leading to disturbance of the local community



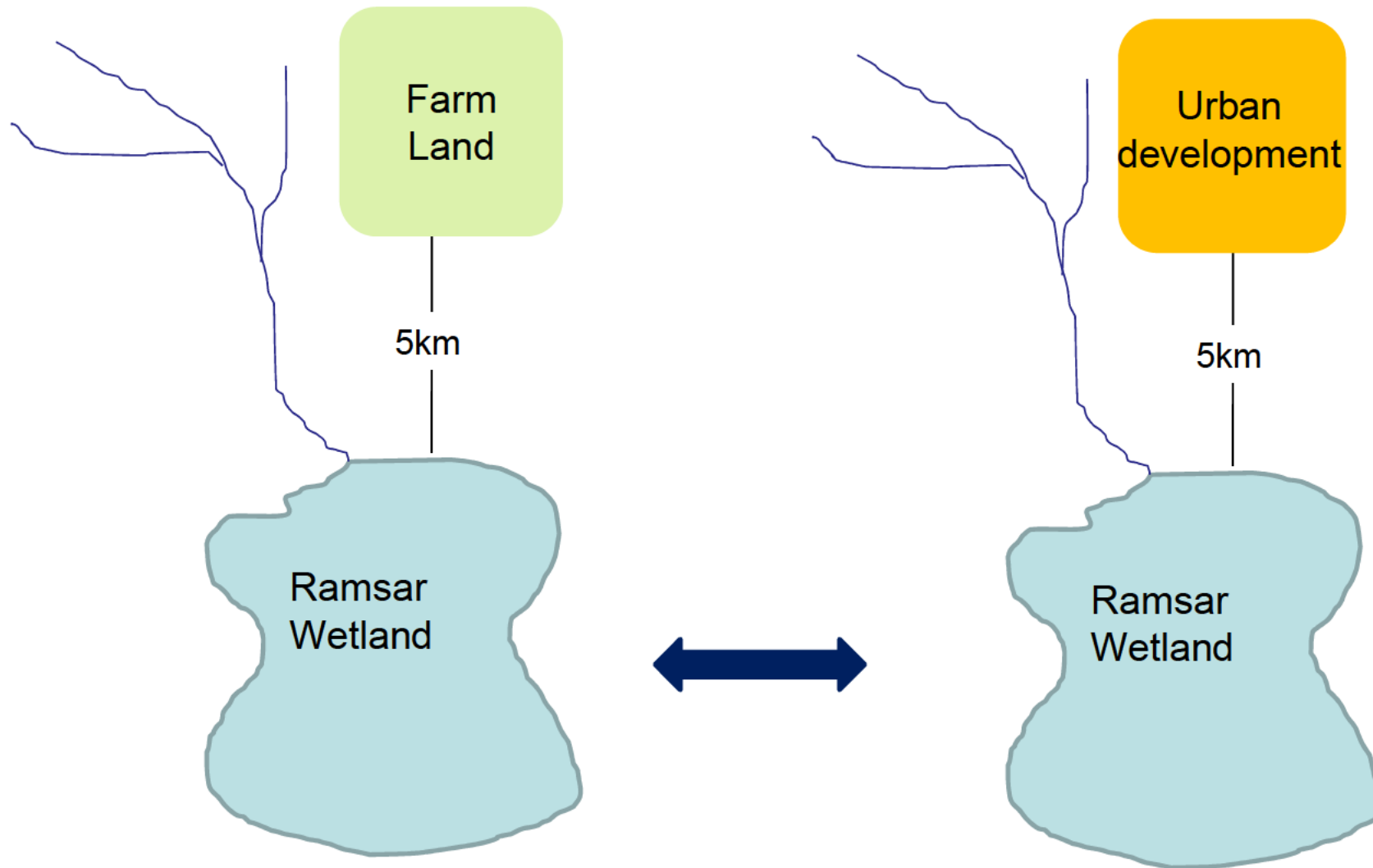
# Conservation Aims

What are the conservation aims for the environment on site?

- Maintain viable populations of key species?
- Preserve heritage values?



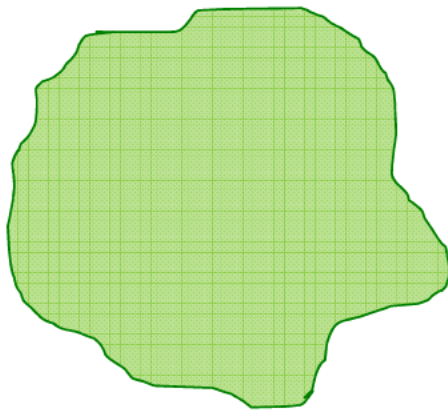
# What outcomes are possible in this scenario?





# What has a greater impact and why?

Clearing of:



15 ha  
Remnant vegetation

OR



30 ha  
Remnant vegetation

# Condition Setting

- Conditions should be **SMART**
  - Specific
  - Measurable
  - Achievable
  - Reasonable
  - Time specific
- Conditions should relate to the protected matter

# Types of Conditions

- Outcome
- Activity

Can relate to:

- on-site mitigation
- management actions
- protective measures
- monitoring and reporting
- offsets



**Monitoring and Audit Section  
are there to help!!**

## Good condition setting

### Use specific terminology that is measurable

“... The person taking the action must develop and implement actions to monitor, and where necessary, protect this species and its habitat...”

“... The person taking the action must develop and implement actions to monitor this species. Where monitoring indicates that the population has declined from the initial baseline results the person taking the action must develop and implement further measures to protect this species and its habitat...”

## Good condition setting

### Make sure the condition is reasonable and achievable

“...ensure that the hydrological regime is permanently maintained at the site.”

“...ensure that the hydrological regime is maintained at the site for the life of the approval.”

## Good condition setting

### Make sure condition is time specific

“...monitoring will be undertaken periodically, and must include, but not limited to...”

“...monitoring will be undertaken annually from [XYZ date/date of commencement], and must include, but not limited to...”

## What, when, where and how?

Eight principles;

- Targeted to the matter of NES that is being impacted
- Flexible approach
- Deliver a real conservation outcome
- Developed as a package of actions
- ‘Like for like’ outcomes
- Located within the same general area as the development activity
- Delivered in a timely manner and be long lasting
- Enforceable, monitored and audited



# Summary

- Approval or refusal of an action and any conditions needs to consider the overall conservation outcome
- Minister must consider economic and social matters and take into account environmental history, ESD, assessment documentation
- Conditions must be SMART and relate to the relevant matter of NES being impacted
- Use of offsets should consider the 8 principles in the draft offsets policy statement