



#### MACKAY CONSERVATION GROUP

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23<sup>rd</sup> March 2914

### **Environmental Offsets Bill 2014**

Mackay Conservation Group is a regional ENGO covering northern Central Queensland from the Whitsundays to Broadsound and the northern Bowen and Galilee coal basins and the adjacent Great Barrier Reef marine waters. We have 150 members and a contact base of 1,600. We comment on mining and development ToRs and EISs in our region as well as government planning schemes and policies.

Protect the Bush Alliance is an alliance of twenty-two NGOs and community groups in Queensland and Australia addressing ways to prevent the continuing loss of areas of high conservation values to inappropriate developments.<sup>1</sup>

We are very concerned about the use of offsets to allow large scale inappropriate developments and mines that might otherwise never be built and the legacy that will be left.

We are also concerned about the underlying belief implicit in this bill, which is that an offset policy and regulations based on this bill will actually work to prevent further biodiversity loss in our region. This assumption has no referenced research to support it. Auditing monitoring compliance will also be an issue with regards to government staff capacity to do so. How often would audits occur? Will remote sensing be also used to monitor compliance of properties with environmental offsets? Will such data be available to the public?

Only fines appear to be punishment for infringements of an environmental offset agreement. How will any conservation outcomes that are affected by infringements themselves be offset?

The bill focuses on land conservation. No mention is made of biodiversity other than the citation of the *Environment Protection and Biodiversity Act 1999* (Cwlth). In 7(2) of the bill it

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<sup>1</sup> <http://ptba.org.au/about-us/our-member-organizations/>



appears to be meant to address conservation outcomes for biodiversity, so we assume that the bill is intended to prevent a net loss of biodiversity. Is that the intent?

7(2) An *environmental offset* is an activity undertaken to counterbalance a significant residual impact of a prescribed activity on a prescribed environmental matter.

The lack of a legal requirement for offsets to be permanent defeats the purpose of the bill to ensure protection of remaining biodiversity.

It allows offsets to be offset. Thereby high conservation areas could be repeatedly replaced by the original offset.

It also allows an environmental offset to be used for other purposes e.g. agriculture, mining or other forms of development once the offset agreement expires.

The role of offset brokers and their regulation, obligations and accreditation does not appear to have been accounted for in this bill.

There are considerable differences between marine and terrestrial offsets yet this is not addressed in the bill.

Allowing mining or other forms of development that destroy the environmental values of protected environmental areas such as nature refuges in return for offsets destroys the intellectual integrity of the bill. This bill is not in the public interest in its present form.

Please note also MCG's comments and suggestions on sections of the bill in the following table.

Sincerely,



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Mackay Conservation Group

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Section and Description in the Offsets Bill	MCG Comments and suggestions
<p><b>Division 2 Key concepts and definitions</b>  <b>7 What is an offset condition and an environmental offset</b>            (3) However, an environmental offset for a prescribed environmental matter that is a protected area, other than a nature refuge, may include the delivery of any activity that provides a social, cultural, economic or environmental benefit to any protected area.</p>	<p>The requirement for environmental benefit should be mandatory e.g. ... the delivery of an activity that provides environmental benefits to the protected area.            Social, cultural or economic benefits may also be considered if they can be demonstrated not impact on environmental benefits.</p> <p>Example: A concrete walkway was built through the centre of Sandfly Creek Environmental Reserve immediately south of the mouth of the Pioneer River. It was part of the Blue River walkway system being built around Mackay. It is popular with walkers and cyclists. The Reserve was declared to protect the high tide wader roost sites of migratory shorebirds most of which are listed under international agreements in the EPBC Act and the habitat of the false water rat listed as vulnerable under the EPBC and QLD Nature Conservation Acts.</p> <p>MCG surveys demonstrated that walkway users through this reserve are the largest source (80%) of disturbance to the roosting shorebirds. Since it was built shorebird numbers have plummeted to almost zero. This is of concern because the roost sites are the highest in the Mackay local government region and provide protection during cyclones and storms and very high tides for these shorebirds. They also adjoin the richest feeding habitat, the Pioneer River estuary, in the region.</p> <p>The walkway should have been built around the reserve, not through it to protect its highest environmental value i.e. high sand dune roosts for the migratory shorebirds. Human disturbance has caused a significant decline in the biodiversity of the system. Mackay Regional Council was warned by the regional's NRM environment officer, the Queensland Wader Studies Group who conduct shorebird surveys along the coast, and Mackay Conservation Group that human disturbance would cause a major adverse impact on the shorebirds and it happened. So giving equal weight in legislation to social, cultural, or economic values with environmental in places of high environmental conservation value does not meet the objectives of such legislation i.e. primarily to prevent a decline in biodiversity.</p>
<p><b>8 What is a significant residual impact</b>            (2) If a prescribed environmental matter is a protected area, a</p>	<p>The Queensland <i>Nature Conservation Act 1992</i> allows mining in nature refuges and it appears only National Parks will be protected from mining exploration and mining activities.</p> <p>It is not clear from 3(a) that significant residual impacts from mining</p>



<p><i>significant residual impact</i> is an adverse impact of a prescribed activity that results, or will or is likely to result, in 1 or more of the following—</p> <p>(a) the authorised clearing or inundation of all or part of the protected area for the construction of private or publicly owned infrastructure on the area;</p> <p>(b) the exclusion of, or reduction in, the public use or enjoyment of all or part of the protected area;</p> <p>(c) a reduction in the natural or cultural values, within the meaning of the <i>Nature Conservation Act 1992</i>, of all or part of the protected area.</p> <p>(3) However, an impact as mentioned in subsection (2) is not a significant residual impact for the protected area if the prescribed activity is—</p> <p>(a) conducted by an authorised person performing functions under the <i>Nature Conservation Act 1992</i>; and (b) consistent with the management of the area under the <i>Nature Conservation Act 1992</i>, section 15.</p>	<p>are a part of proscribed activities that are exempt from being labelled as a significant residual impact, because they would be conducted by an authorised (via a mining permit) person performing functions under the <i>Nature Conservation Act 1992</i>.</p> <p>Recommend that the definition of “authorised persons” be clearly described.</p>
<p><b>10 What is a prescribed environmental matter and a matter</b></p>	<p>Where do matters of regional conservation significance fit?</p> <p>There is the issue of more than one local regional council in a bioregion, and if such matters came under regional councils</p>



<p><b>of environmental significance</b>  (1) A <i>prescribed environmental matter</i> is any of the following matters prescribed under a regulation to be a prescribed environmental matter—  (a) a matter of national environmental significance;  (b) a matter of State environmental significance;  (c) a matter of local environmental significance.</p>	<p>there could be different levels of protection for the same matter under each council in the bioregion, causing confusion.  This suggests matters of regional conservation significance should be managed under  (b) a matter of State environmental significance;  And this should be stated in the legislation.</p> <p>We note that <i>matter of State environmental significance</i> means a matter of environmental significance that is dealt with under a State law.  Matters of regional conservation significance do not appear to be covered by State law and do not efficiently fit in at the local level so this matter must be addressed perhaps by including it in this legislation if a net biodiversity loss is to be avoided.  Example: Bimblebox Nature Refuge had almost every bird species of regional conservation significance for each regional ecosystem in the refuge. But protection of the habitats of these species in the refuge were not required to be taken into account in assessing the offset. Suitable habitats for two of these species in particular the speckled warbler which requires a lot of dead trees and detritus on the ground for protective cover i.e. uncleared and un-grazed, and the grey-crowned babbler are especially prevalent in this refuge and uncommon outside of it but their needs are not mentioned in the Statement of Reasons for the decision to mine the refuge.  That is how will this proposed legislation for the use of offsets prevent a net decline in near threatened and species of regional conservation significance with widespread clearing and mining as proposed for the Galilee Coal Basin and the Galilee Basin State Development Area’s proposed Rail Preconcts?</p>
<p><b>11 Conservation outcome achieved by environmental offset</b>  A <i>conservation outcome</i> is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to maintain the viability of the matter.</p>	<p>Please define “viability”.  We assume it means “no net loss” or “a net gain” in relation to biodiversity. Is that correct?  There is also the question of how viability can be scientifically proven to be maintained with the selection, design and management of an offset especially where it may take decades or centuries to demonstrate that the offset is successful.</p> <p>The approach used in this proposed legislation favours development over the high risk in many cases that the offset may fail. This does meet the objective of the Precautionary Principle to prevent environmental degradation i.e. where there is insufficient scientific certainty the offset will meet objectives the development should not proceed. In law cases have established that that the burden of proving the acceptability of a proposal where there is scientific uncertainty about its impacts lies with the developer or proponent. The wording in Section 11 implies that the offset will always work if selected, designed and managed properly. That cannot be guaranteed. The legislation needs to require an independent risk</p>



	assessment that evaluates the likelihood of the offset succeeding.
<p><b>Part 4 Environmental offsets policies</b></p> <p>12 (2) (2) As soon as possible after the prescription as an environmental offsets policy of a document made by the chief executive, the chief executive must make the policy available for inspection in the way the chief executive considers appropriate</p>	<p>Environmental offset policies should be made available to the public in an easily accessible form as environmental protection is a matter of high public interest and one of the primary responsibilities of government. This need applies at the local and state government level .</p>
<p><b>15 Restriction on imposition of offset condition</b></p>	<p>If the Precautionary Principle is to be observed the offset that provides the best level of protection for impacted prescribed matters should be selected no matter what level of government it comes from. This is because in some cases a local government may have more on ground knowledge than the Australian government. What is most desirable is that all levels of government cooperate to ensure the best outcome for the environment and knowledge and expertise at the local, state and federal level is pooled to ensure that happens.</p> <p>The proposed legislation could specify that only one offset is required for the affected matter, to be determined through the cooperation of all levels of government to ensure all available information and expertise is considered.</p> <p>Responsibility for the final offset would rest with the level of significance of the development project. If for example matter is a State Significant development the state Coordinator-General is responsible for the final offset and legal accountability to the public that all knowledge and expertise was used to establish the offset condition and it has an acceptable low risk of failure.</p>
<p><b>Division 2 Election before starting prescribed activity</b></p> <p><b>18 Election about delivery of offset condition</b></p> <p>(2) It is a condition of the authority that, before the authority holder starts any part of the prescribed</p>	<p>More than notice of the offset should be given before the authority holder starts any part of the prescribed activity to which the offset condition relates.</p> <p>Only large developers or mining companies can afford offsets and their projects are usually the result of years of prior planning so they are well in a position to have a prepared and approved offset in position before commencing the prescribed activity.</p> <p>In many cases they may be in the preferred position of having implemented a pre-emptive offset activity to ensure a high conservation value offset asset is already established and available</p>



<p>activity to which the offset condition relates, the holder must—</p> <p>(a) elect, by notice given to the administering agency, to deliver the offset condition by—</p> <p>(i) a proponent-driven offset; or</p> <p>(ii) a financial settlement offset; or</p> <p>(iii) a combination of a proponent-driven offset and a financial settlement offset; and</p> <p>(b) agree with the administering agency about the delivery of the offset condition.</p>	<p>prior to and in advance of the impact occurring</p> <p>Too often we have seen coal mines like Xstrata’s Rolleston coal mine near Springsure in central Queensland on its third mine expansion with the offset for the first expansion yet to be implemented.</p> <p>The legislation must require demonstrable proof that all alternatives to an offset were tried and were unsuccessful and that the selected and approved offset is legally signed and being implemented before the authority holder starts any part of the prescribed activity to which the offset condition relates.</p> <p>Otherwise there is no guarantee the objects of this proposed legislation will be met.</p>
<p><b>Section 18 (cont.)</b></p> <p>(5) For subsection (4)(a), the offset delivery plan must—</p> <p>(a) effectively account for and manage the risks of the offset failing to achieve the conservation outcome</p>	<p>It should be clear in this legislation what level of risk for an offset may fail determines that the development or mining project should not proceed.</p> <p>Risk levels should not only be determined by the proponent who has a vested interest in minimizing the risk of offset failure, but be also evaluated by the relevant government department and an independent expert where the government has a vested interest in seeing the proponent’s proposal proceed.</p>
<p><b>19 Reaching agreement about delivery</b></p> <p>(2) If the administering agency decides it is appropriate to deliver the offset condition in the way stated in the notice of election and any offset delivery plan, it must give the authority holder a notice that states it—</p> <p>(a) agrees with the holder delivering the offset in the stated way; and</p> <p>(b) requires the holder to enter into an agreement</p>	<p>See comments above in the first section of Division 2.</p> <p>We do not see any penalty conditions for failure to provide and implement a timely offset.</p>





<p>(an <i>agreed delivery arrangement</i>) within a stated reasonable time about delivery of the offset condition.</p>	
<p><b>Division 3 Proponent-driven offsets</b></p>	<p>It is not clear how much input, oversight and management by the overseeing authority that there is on proponent-driven offsets.</p> <p>What are the liability conditions and who has that responsibility for accountability if a third party broker is involved?</p>
<p><b>Division 4 Financial settlement offsets</b></p>	<p>This is a form of indirect offset. The difference between direct and indirect offsets needs to be explained in this legislation. And when and where they are applicable.</p>
<p><b>23 Requirements for financial settlement offsets</b> (3) In deciding the amount to be required as a financial settlement offset, the administering agency must calculate the amount in the way prescribed under a regulation.</p>	<p>This regulation needs to be made available for public review as a part of the public consultation for this proposed legislation.</p> <p>Examples of financial requirements for offsets I have seen fall far short of meeting the costs that would occur to deliver and maintain an offset. Inadequate financial requirements would threaten the integrity of an offsets program because objectives could not be delivered.</p>
<p><b>Part 7 Environmental offset Agreements</b> <b>26 Duration of environmental offset agreement</b> An environmental offset agreement has effect until the period of the agreement ends unless it is terminated earlier in accordance with the terms of the agreement.</p>	<p>It should be clear in the legislation that once the environmental offset agreement ends the offset site no longer has protection and is available for later development, and hence the risk of later contributing to long-term environmental loss.</p> <p>It could not be used twice as an offset if it is to meet the requirement of no net loss of biodiversity as another area of high conservation value would be being lost to create the need for an environmental offset.</p>
<p><b>27 Variation etc. of environmental offset agreement</b> (1) This section applies if a relevant agency has entered into an environmental offset agreement (an <i>earlier agreement</i>) under</p>	<p>That could not happen for the same offset site. See comments in section above. Otherwise it would represent a net loss of biodiversity i.e. the one site used to offset the loss of two or more significant impact actions.</p>





<p>section 25. (2) The relevant agency, and an entity bound by the earlier agreement, may enter into another environmental offset agreement (the <i>later agreement</i>) that varies, or terminates and replaces, the earlier agreement.</p>	
<p><b>Part 8 Legally secured offset areas</b></p>	<p>No requirement for permanent protection to ensure no net loss of biodiversity. Without that requirement there can be no biodiversity outcome of net benefit to future generations. So it cannot meet the public interest requirement for all legislation.</p>
<p><b>S 31</b> (5) Subsection (3) does not apply in relation to land within the area the subject of the declaration if the land cannot be registered under the <i>Land Act 1994</i> or the <i>Land Title Act 1994</i>.</p>	<p>A registered covenant is taken not to be registered under the <i>Land Act 1994</i> or the <i>Land Title Act 1994</i> to the extent that it is inconsistent with the legislation.<sup>3</sup></p> <p>What implications does this have for legally secured offset areas?</p>
<p><b>32 Amending or revoking declaration</b> A regulation may provide for the chief executive to do the following in relation to the declaration of an environmental offset protection area made under section 29— (a) amend the declaration; (b) revoke and remake the declaration; (c) revoke the declaration</p>	<p>If the declaration is removed what takes its place to ensure conservation outcomes for the land and biodiversity that was lost to development or mining?</p>
<p><b>Part 11 Amounts received as financial settlement</b></p>	<p>Under what conditions does an indirect offset involving a financial settlement apply? Best international practice<sup>4</sup> for offsets precludes the use of payments for direct offsets so why are they included in this section? How are payment amounts from the offsets account for a particular</p>

<sup>3</sup> [http://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0004/97177/ltpm-part-31.pdf](http://www.dnrm.qld.gov.au/_data/assets/pdf_file/0004/97177/ltpm-part-31.pdf)

<sup>4</sup> ICMC and IUCN independent report on biodiversity offsets. Jan 2013 <https://www.icmm.com/news/icmm-and-iucn-release-report-on-biodiversity-offsets>



<p><b>offsets etc</b></p>	<p>direct or indirect offset determined?          Is there any cap on such payments for each offset?          We have seen offsets funding in the past used for purposes other than offsets in local government in the past (e.g. Barnes Creek offsets for the East West connector road and levee in Mackay). What precludes a local government for using offset payments for other purposes than offsets? Who audits that spending? What are the penalties for non-compliance?</p>
<p><b>92 Regulation-making power 2 (b)</b>          provide for an area of land to be identified by an owner to be used for the purposes of an environmental offset in the future (an <i>advanced offset</i>) and for the use of advanced offsets, including, for example, by providing for trade in relation to advanced offsets;</p>	<p>What happens when a land owner or heirs wish to rescind an advanced offset? What implications does that have of the offsets land bank program?</p>

