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Planning and Environment

Environmental offsets and intergenerational equity

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Environmental offset requirements have existed in Queensland for around 10 years. It is only in more recent times, however, that 'specific-issue' offset policies have evolved to capture a broad range of environmental values and to include more prescriptive and onerous requirements. The drafting of offset policies has changed over time from high-level, strategic policies that set an overarching framework and broad objectives to policies that are now lengthy, detailed and prescriptive in their approach.

At a Federal level, there have been two iterations of environmental offset policy. The first was released as a draft *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) offset policy in 2007. That draft was replaced by a further draft in August 2011. A final document is expected to be endorsed in the near future.

At a State government level, the first specific-issue offset policy, known as *Mitigation and Compensation for Works or Activities Causing Marine Fish Habitat Loss* (2002), was released in 2002. It was followed in 2005 by the specific-issue *Vegetation Management Offset Policy*, with that policy replaced in 2009, and again in September 2011. In 2006, *Offsets for Net Benefit to Koalas and Koala Habitat* (2006) (the *Koala Offset Policy*) was introduced, and in 2008 the Queensland Government released an overarching *Queensland Government Environmental Offset Policy* (QGEOP), which sought to identify key principles for offsets that were to be followed in any other specific-issue offset policy developed by the State, or by a local government where it sought to introduce an offset policy. The most recent environmental offset policy is the *Biodiversity Offset Policy,* which took effect in October 2011.

In addition to the range of policies at a Federal and State level, local governments are now seeking to introduce local offset policies through local planning instruments and local laws. For instance, Logan City Council is intending to adopt an environmental offset policy as part of its new planning scheme.

What is an offset policy?

The Department of Environment and Resource Management's (DERM) website describes environmental offsets broadly:

> "*Environmental offsets are used to replace environmental values lost through development that supports a rapidly growing economy and population.*"

In Queensland, environmental offsets are administered under the QGEOP, which came into effect on 1 July 2008 to guide the appropriate use of environmental offsets across terrestrial and aquatic ecosystems based on the principles of ecologically sustainable development (ESD). The QGEOP is also described as equipping "*government, industry and the community with an integrated, consistent and transparent approach to using environmental offsets in Queensland*".

The QGEOP is based on seven policy principles that direct the way offsets must be used to contribute to ESD. The range of principles in the QGEOP is not dissimilar to those embodied in offsets policies at every level of government. The first key principle is that an offset cannot make an otherwise unacceptable impact acceptable. Secondly, there is a hierarchy in terms of impacts. To the extent reasonably possible, impacts should firstly be avoided or minimised, and only after that has occurred are impacts to be mitigated by way of an offset. Taking the example of a residential subdivision that will potentially impact on remnant vegetation, the general principle of offsetting requires the developer to take steps to avoid impacting the area of remnant vegetation (through project design, for example), and also to seek to minimise impact, for instance through selective clearing. It is only after steps have been taken to first avoid and minimise loss or impacts that it is appropriate to mitigate any unavoidable impacts that remain through offsetting.

An offset is frequently described as a tool designed to ensure that there is 'no net loss' in terms of the particular environmental value to be protected. In some instances, policies require not only 'no net loss', but a better environmental outcome or 'net gain'. An example of this is the *Koala Offset Policy*, which requires that particular values be either maintained or enhanced.

Offsets can be broadly described as 'direct' or 'indirect', and in other instances they are called 'direct' offsets and 'other compensatory measures'. Generally, direct offsets are land based offsets - that is, where a particular area of land and, more particularly, the values that land contains are enhanced and protected in perpetuity as a replacement for the values lost. The site where the values are lost is often called the 'impact site' or the 'send site', and the site that is the offset is often called the 'receive site'.

Indirect offsets or other compensatory measures are, as the name suggests, other means by which the loss of particular value is offset. Examples include financial payments, undertaking targeted research in relation to a particular value (such as a threatened species), or other more broad measures such as weed eradication programs or surveying a particular species to improve the body of information available about that species. Most policies that exist at the moment require between 75 and 90 percent of the offset to be a direct offset.

What types of values require offsetting?

The types of values that require offsetting are usually apparent from the different document titles. Values such as marine habitat, remnant vegetation and koalas and koala habitat are the more obvious examples. The *Biodiversity Offset Policy*, however, covers a much broader range of values including matters such as watercourses, wetlands, a range of threatened plant and animal species, regrowth vegetation, and a concept described as 'connectivity', which is concerned with corridor values.

There is therefore a wide variety of values possibly present on any project or development site that may require offsetting. It is not simply well-known values such as remnant vegetation that are the subject of offset requirements, particularly since the introduction of the *Biodiversity Offset Policy*. With the introduction of local government offset policies, it is likely that the range of values will expand even further.

When do offset policies apply?

There are many instances in which environmental offset policies might apply. One example is urban development projects within the coastal zone. Of course, offset policies are of far wider application (for instance, policies apply to mining and other resource projects and to the establishment of infrastructure).

The *Biodiversity Offset Policy* states that it applies broadly to "developments within the coastal zone under the *Coastal Protection and Management Act 1995*". The recently introduced *State Planning Policy 3/11: Coastal Protection* identifies that the provision of environmental offsets "consistent with offsets under the QGEOP and relevant specific issues policy" in an acceptable solution for development impacting on areas of "high ecological significance". Generally, with some exceptions, an offset requirement is triggered in the coastal zone for development impacting on an area of high ecological significance (for which mapping is provided), even where such areas are within a designated urban locality.

In other words, despite the fact that land has been earmarked for urban development by a planning scheme or regional plan, impacts on different environmental values are required to be offset in many circumstances. Challenging the mapping in terms of whether an area is truly of high ecological significance is possible, and may assist in certain circumstances. However, there is then the chance that local government mapping or values will pick up values that might otherwise have escaped under the State instrument.

Issues surrounding intergenerational equity

Although preservation of various environmental values is important, the incremental creep of new and more rigorous offset policies raises issues of intergenerational equity and impacts on housing affordability.

Historically, 'offsetting' was achieved in a more simplistic fashion. At its broadest level, 'offsetting' of new towns and suburbs was achieved by the government designating particular areas as national park or some other type of publicly-owned land. In other words, if a suburb was to be established, governments recognised that land should also be set aside for conservation purposes.

This approach has traditionally been carried through in local government planning instruments and development approvals. For instance, it is common that as part of a master planning exercise for a broad scale residential or mixed use development, parts of the development area are dedicated to parkland, open space or other conservation uses. Often developments are approved with a requirement that they either dedicate parkland or pay a contribution to the local government to enable it to secure particular parkland, or some combination of both. Also, certain land may be set aside by way of a condition or at the developer's choosing where that land is constrained, whether by special conservation values or because of drainage, slope stability or other constraint issues. This has been the approach for decades, and it is the approach that has created our cities and suburbs. Some land is given away to urban development, and other land is conserved and protected for the benefit of the broader community.

With the introduction of environmental offset policies, we see not only the continuation of the traditional approach in relation to land development, but the introduction of a further level of offsetting requirement over and above requirements to either contribute to parkland through providing land or a financial contribution, and to set aside land that is unsuitable for development purposes. Never before has land that is otherwise identified as being required for urban development had to provide an offset for any impacts on matters identified as being of high ecological significance, remembering that these values are very broad in their scope.

Anecdotally, the cost involved in securing a (land-based) offset, where one is in fact available, is very high. In particular, securing an offset in South East Queensland is a difficult and expensive exercise, because the pool of available land for offsetting purposes is constrained. The cost involved includes not only the initial cost of securing the offset (for instance, by buying a parcel of land or by entering into an agreement with a land owner to set aside part of their land for offset purposes), but also in the ongoing requirement that the land and the values be maintained in perpetuity.

In other words, where previously dedicated parkland and national park becomes part of the public estate and is maintained and managed by the relevant government body, the new concept of offsets contemplates that, in many instances, ongoing management will be the responsibility of private individuals or companies. All of this comes at considerable cost, and arguably provides less certainty and consistency in achieving environmental outcomes than where government bodies assume responsibility for maintenance and management.

It is unlikely that offset costs will be borne by the project proponent or the land developer. In the case of residential development, it seems obvious that the costs will become one of the myriad of development costs that are ultimately passed on to purchasers of land in the subdivision, alongside charges like infrastructure charges, thereby elevating the price of the parcels of land. However, the broader conservation values, if achieved by the offset, are enjoyed by the entire community, or indeed at a higher level by the State or nation, in the same way that parkland that is dedicated to a local government is available for the benefit of the broader community, not simply for owners within an estate.

It is apparent that any loss in biodiversity that has occurred over time is a product of development and land use that has also occurred over time. On one view, every project or subdivision that is developed results in some loss of biodiversity. Yet in the past, the loss of those values was not the subject of a requirement to offset or compensate.

An outcome of the multitude of offsetting policies seems to be that the next generation of new home owners will bear the cost for the broader community of conserving biodiversity and other environmental values, in circumstances where the broader community does not contribute to the cost of securing those values, but benefits from their security. Moreover, it is a cost borne by new home owners in circumstances where those entrants already in the market before offsetting requirements were introduced have not had such a cost imposed on them, despite the likelihood that biodiversity loss occurred in undertaking their particular subdivision or development.

Options for achieving equity

Infrastructure contribution policies, and priority infrastructure plans and infrastructure charge schedules, attempt to deal with issues of equity in relation to existing infrastructure and new infrastructure, and the benefits that might be shared by the broader community by an 'apportionment' approach. For instance, in relation to contributions for road networks, infrastructure contribution plans and policies acknowledge that although new development might require particular road network upgrades or contribute to the need for upgrades, in many cases the benefit of network upgrades is not limited to the residents of the new development but is enjoyed by the broader community.

Similarly, there is an acknowledgement that in relation to augmentation of existing networks, it is not only the new entrants to the market that ought to bear those costs, but that there should be some apportionment between new users and existing users. The notion of apportionment is enshrined in the *Sustainable Planning Act 2009*, which specifies that an infrastructure charge:

> *"must not be more than the proportion of the establishment cost of the network that reasonably can be apportioned to the premises for which the charge is stated, taking into account:*
>
> *(i) the usage of the network by the premises; or*
>
> *(ii) the capacity of the network allocated to the premises."*

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While such an approach might be considered difficult in an environmental values sense, it is warranted if issues of intergenerational equity are to be addressed.

In principle, there seems no reason why biodiversity planning cannot be approached in the same fashion as planning for the provision of other types of infrastructure. At a local government level, for instance, if biodiversity planning for the local government area has been undertaken (in the same way as a local government would undertake park and recreation facility network planning), the local government would be in a position to identify its existing network and network requirements. A process of apportionment could follow, identifying requirements for new users, while recognising the benefits enjoyed by the broader community.

If such an approach is not considered achievable or practical, then government should seriously investigate the concept of a broader-based rate or tax levied across the entire community to secure environmental outcomes, as the broader community plainly benefits in the short and long term from conservation and offsetting measures. It is inequitable that the broader community not contribute to this conservation, but instead expect new participants to bear the cost.

If there is resistance to the concept of spreading the cost of conservation across everyone who benefits, then perhaps questions need to be raised regarding the true value that the community places on species and biodiversity conservation. It is easy to advocate for the preservation of the environment when someone else is required to pay.