



20th September 2007

Mr. Barry Carbon
Chairman
Environmental Protection Authority
The Atrium
Level 8, 168 St George's Terrace
PERTH WA 6000

By email: karen.crews@dec.wa.gov.au

Dear Mr. Carbon

DRAFT GUIDANCE ASSESSMENT No. 19: GUIDANCE FOR ENVIRONMENTAL OFFSETS

Introduction

The Urban Development Institute of Australia (UDIA) (WA) appreciates the opportunity to make this submission on the draft Environmental Offsets Guidance Statement. UDIA (WA) is a membership organisation and is the peak body representing the property development industry in Western Australia. This submission provides comment on the proposed guidance with all comments intended to be constructive.

The submission alerts EPA to the potential pitfalls of regulating offsets and refers to reported experiences in other states where the mandatory provision of offsets has had unintended consequences that have a significant impact on land development.

Position of the development industry

Our members value the contribution of the state's native flora, fauna and ecosystems to our urban and non-urban landscapes. UDIA members are recognised for their contribution to the sustainable development of Western Australian communities through award winning projects which continue to push the envelope on innovation and best practice in the environmental sphere. While members generally support the EPA's environmental offset principles, UDIA's overriding position is that environmental offsets should be a voluntary undertaking and not imposed by regulation.

UDIA recognises that urban growth has placed natural ecological systems and processes under substantial pressure and resulted in significant changes to our natural environment. Without effective policy to manage this pressure, there will continue to be undesirable declines in ecological processes which affect environmental quality including air and water quality, and in the amount of land which can properly function as habitats for our native species.

Protection of Bush Forever and Conservation Category Wetlands

UDIA fully supports the conservation of remnant bushland and wetlands in Western Australia. We consider that adequate protection is currently afforded to identified sites of high ecological value in the Perth Metropolitan Area that are captured in Bush Forever and Conservation Category Wetlands. Bush Forever has 51,200ha across 287 sites inscribed in the Metropolitan Region Scheme while Conservation Category Wetlands are protected by DEC's Swan Coastal Plain Wetlands Environmental Protection Policy.

Any remaining bushland or wetland areas that do not fall under the protection of these policies within the Perth Metropolitan Area have already been assessed as being of deficient quality or magnitude to warrant protection and to impose environmental offsets on these areas would be excessive and impractical. It is UDIA's position that offsets should only apply to high quality bush or wetlands in other parts of the State and not to degraded, low quality vegetation.

Degraded sites are not viable in the long term as habitats for native species as they are generally limited by size, fragmentation, disturbance, pollution stress and the need for active management. UDIA is concerned that the value of sites that fall outside Bush Forever or Conservation Category Wetlands in the metropolitan area will be overstated and developers will be required to provide offsets for sites that are already deemed to have little ecological value.

Developers report from Victoria, under the Native Vegetation Clearance policy, that they are required to protect degraded areas as small as a tennis court for a period of ten years. This suggests over-regulation, an exorbitant cost impost and an unrealistic burden placed on the developer to maintain degraded land that has no community value. The sites are fenced off, have no public access, no ecological value and become burdensome for local governments to maintain after the developers' obligation has ceased.

Achieving a net environmental benefit

Developers have reservations about the potential monetary costs of providing net environmental benefits particularly where these might undermine the viability of projects. Industry is concerned that assessment will be required on every site or on sites that currently have environmental approvals but are not yet developed. The retrospective environmental impact assessment of sites may render some sites unviable.

Developers are wary of the need to provide 'like for like' or better as this is almost impossible to achieve in urban areas and may be undeliverable. More beneficial outcomes for available resources would be achieved by investing in large, non urban reserve systems, where not only better outcomes can be achieved in terms of long term viability of species populations and diversity, but the relative costs of acquisition and management are substantially lower.

UDIA Victoria reports it is virtually impossible to locate suitable offset sites in private ownership to provide 'like for like' or better. Where suitable offset sites are identified, landholders are

holding developers to ransom by demanding exorbitant prices for the offset area which then makes the proposed urban development unviable.

It is unreasonable for developers to have to negotiate individual offsets. To circumvent this outcome in Western Australia, DEC should identify areas of vegetation that can be supplemented by offsets. Funds could be targeted to particular projects of lasting benefit to the State, such as the Gondwana Link project, degraded areas of national parks and areas of significant native vegetation currently under threat. A large number of our members have made sizeable financial commitments to the Gondwana Link vision which is an efficient use of resources and has greater outcomes in terms of protecting ecological processes, environmental quality and natural habitats and species populations. This particular project has traction in the development industry that could be further developed.

Multiple agencies developing offsets policies

UDIA objects strongly to the development of offset policies by different government agencies. The EPA states that they will use the Guidance Statement when schemes and other proposals (such as subdivisions in the development industry) are being formally assessed. The Guidance Statement states that other agencies may apply their own offsets using a different set of criteria and that it is up to the proponent to find out what these criteria are. An example given is that offsets may be required when clearing permits are granted. A member reports his company is currently working on a project in Perth where a clearing permit to create a road in an existing road reserve has a condition for an environmental offset even though the EPA did not assess the proposal. The different sets of criteria and when they will apply will cause confusion in the industry. UDIA recommends that there should only be one set of rules for the application of environmental offsets in Western Australia and the EPA should be the guiding agency in this regard and this should be clearly stated in the final Guidance Statement.

Clarity and consistency required

It is critical that the Environmental Offsets Guidance is practical, realistic and applies only to viable tracts of land that have a high ecological value. It is important to provide clear guidance on what is required of developers when entering into an offset arrangement and for them to have an unambiguous understanding of what will or will not be included in the offset arrangement. This ensures consistency of outcome for the industry and the environment and allows due process for business practice to be followed.

The development industry also requires projects to be assessed in a fair and equitable manner. There are concerns that advice at officer level may be inconsistent, that it may contradict advice and agreement provided from other stages of the planning process and that some officers may view offsets as an opportunity to renegotiate environmental outcomes. It is UDIA's experience that officer attitude can be anti-development and staff do not always perceive their role as facilitating development while ensuring protection of the environment. It is imperative that the Guidance Statement is not open to interpretation or subjective appraisal by assessing officers.

The report of the Land Release Coordinator (July 2007) notes the requirement for DEC's operational guidelines to be applied consistently by all DEC officers to improve certainty for the development industry. The report also notes that DEC's regionalised structure is not facilitating

consistent decision making with differences in view between local or regional offices and head office. DEC must ensure offsets are applied in a consistent and equitable manner to provide industry with consistent advice that allows certainty in decision making.

When will offsets be required?

The EPA strongly states that the requirement for offsets and the type of offset being offered should be worked out at the early stages of a project. This will be reasonably straightforward where there are obvious environmental impacts that cannot be avoided and are not so significant that the EPA would reject the proposal altogether. However, there will be some projects where the project team does not believe that the environmental impacts are so significant that an offset is required. The test of significance is determined by the EPA as stated in the definition of "Environmental Significance" on page 34 where it states that environmental significance is "a judgement of the EPA". The Guidance Statement should explain the process whereby the EPA will require an offset through the formal assessment process if the need for an offset is identified in the later stages of a project.

Application to the planning process

The Guidance Statement should give an example of how an offset can be applied to the WAPC or a Local Authority for an assessed scheme. The example given in the draft is for a change in reservation for a road reserve but this is not a typical situation. Where the EPA requires a scheme or scheme amendment to be assessed because it is going from Rural to Urban or such-like, the proponent of the scheme is the WAPC (for region schemes) or a local authority for town planning schemes. There needs to be clarification of how an offset can be applied to the WAPC or local authority through this process.

Impact on the development industry

In our view mandating for offsets will result in significant time delays in obtaining approvals. This inevitably adds to the development costs of land which the new home buyer ultimately pays for. The recent land supply crisis was partly attributable to the impact of onerous conditions being imposed on land development and industry is fearful that an offset requirement will further compound the approvals process.

The requirement for surveys to be carried out at certain times of the year or for data to be collected for more than one year will have a strong negative impact on developers' capacity to acquire sites for future residential development. This in turn will impact on land supply and housing affordability as the risk and cost factors to the developer are increased. Large projects have long lead times and developers are unlikely to add risk to a project if they are uncertain about how much data collection is required and the cost implications of this.

In addition, industry is concerned that they will be subject to long delays in having fauna and flora studies completed as they are now for contaminated sites auditing. DEC must be vigilant about reducing the impact of time delays on industry.

Conclusion

UDIA offers the following comments as a summary of our position on the Guidance Statement on environmental offsets:

- UDIA's overriding position is that environmental offsets should be a voluntary undertaking and not imposed by regulation. Mandating for offsets will result in significant time delays in obtaining development approvals.
- UDIA objects strongly to the development of offset policies by different government agencies.
- UDIA recommends that there should only be one set of rules for the application of environmental offsets in Western Australia and the EPA should be the guiding agency in this regard and this should be clearly stated in the final Guidance Statement.
- The Guidance Statement should explain the process whereby the EPA will require an offset through the formal assessment process when one is not identified in the first instance.
- The Guidance Statement must be practical, realistic and apply only to viable tracts of land that have a high ecological value.
- Offsets should only apply to high quality bush or wetlands and not to degraded, low quality vegetation.
- The Guidance Statement must ensure clarity and avoid confusion with DEC playing its role in ensuring a streamlined approvals process.
- There needs to be clarification of how an offset can be applied to the WAPC or local authority through the scheme amendment process.

Should you wish to discuss any matters raised in this submission, do not hesitate to contact UDIA.

Yours sincerely



Debra Goostrey
Executive Director