



Green Offsets Concept Paper

A submission to the NSW Environment Protection Authority

Property Council of Australia

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Executive Summary

The Property Council of Australia represents the companies that help shape, build and finance our cities, companies that have a long term interest in the future of our urban and regional centres. They include the bulk of the state's investors in office towers, shopping centres, industrial parks, tourism accommodation and infrastructure.

Among our industry there is a growing acceptance of the importance of sustainability issues, with a considerable focus on practical measures of how sustainability principles can be translated into better actual built outcomes. To this end, the Property Council last year launched Australia's first sustainability roadmap for the commercial property sector and continues to promote a number of other sustainability measures around the country.

The Property Council recognises that some environmental areas may be so degraded as to need urgent or planned improvement, however we do not support the green offsets concept as described in the Environment Protection Authority concept paper.

While we would encourage the NSW Government to consider innovative solutions to address environmental degradation, the Property Council has strong concerns with a number of the principles and the equity of the EPA's proposal.

In summary, our concerns are:

- green offsets would merely be another impost on new development which is already burdened by a large array of taxes, levies and charges,
- this impost would have no relationship with the actual environmental impacts of an individual development,
- 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 impost is highly likely to be biased against large development due to the inability to assess when environmental controls are cost effective,
- no incentives are provided to participate in a green offset scheme,
- no recognition or credit is provided of remediation work done on the owner's own site or their other sites.

The beneficiaries of an offset scheme will be the local community in which the environmental works are to be undertaken. For this reason alone, it would be inequitable to merely tax a small segment of the community to pay for these works. The Property Council challenges the EPA to develop a more equitable funding framework whereby the broader community that benefits from such works also pays for them.

If the Government were to proceed with a green offsets scheme, we recommend this be done on a voluntary basis as an alternative to other forms of regulatory control. This would ensure equitable and practical outcomes with the greatest environmental impact. Parties could voluntarily participate in the scheme in one of two ways:

1. voluntarily participating in a scheme which has been set up by an established scheme manager, or
2. combining with one or more parties to form a scheme which is recognised by relevant regulatory authority (whether it be the EPA, local council or other organisation).

Schemes should be used as a substitute for alternative regulatory controls, with the result that:

- any condition of a development consent or other type of approval which is inconsistent with the scheme will be negated,

- local councils, the EPA or other regulatory authorities will not be able to take any actions or issue any directions which are inconsistent with the scheme. For example, if a developer participates in a scheme to provide an overall improvement in sedimentation entering a waterway by carrying out control works on neighbouring properties, no authority should be able to require the developer to carry out any further sedimentation control works on his property.

Schemes which are entered into voluntarily will overcome most of the equity issues listed above. Parties will be prepared to take the commercial risk associated with carrying out a green offset scheme with the resulting environmental benefit on the basis that they have freely negotiated a contractual relationship with other participants in the scheme. If schemes are imposed as a compulsory requirement upon property owners and developers, then the scheme will no longer be a market based method of achieving environmental outcomes, but will be an imposition upon development and then suffers the equity problems summarised above.

There are also significant administration issues which need to be dealt with. These include:

- Who should administer green offset schemes – the Property Council considers that the best form of management would involve the participants in the scheme. They have the most interest in ensuring that it is managed properly and efficiently.
- There will need to be transparency in accounting, costs management and expertise to ensure that the scheme is officially managed, as well as clear obligations upon the participants so the parties know what has to happen.
- There will need to be legislation to enable schemes to be implemented, as they do not fit in with any of the current approval or licensing regimes. They do not have sufficient nexus with development to become a condition of development consent, and are too broad in their application to be a condition of an environmental protection licence under the *Protection of the Environment Operations Act 1997*.

1. Equity Issues

1.1 Environmental impact of the built environment

In general, the existing codes and standards do not lead to sustainable developments. The market is the main driver for greater sustainability. We are concerned that a green offsets scheme would allow an individual developer to buy their way out of producing a more sustainable building by shifting the load to other owners.

Much of the environmental impact of the built environment is actually derived from the materials used in construction and the operation of tenants and users of a building, not the base building itself. In both cases, very few of the environmental impacts occur in the same area in as the development. Most occur at the point of resource use to create and sustain the building.

It is virtually impossible for a development to attain or demonstrate a zero environmental impact. In addition, there is currently no agreed measurement or benchmarking of these variables.

1.2 Compensating for past mistakes

There is a real risk that a green offsets will result in a newcomer to an environmental catchment paying for the environmental degradation caused by existing participants in the catchment. The Concept Paper attempts to address this by stating as a basic principle that environmental impacts must be avoided using all cost-effective prevention and mitigation measures (p.4). This basic principle should apply to all participants in the scheme, and not just to newcomers. People should only be able to take the benefit of a scheme if they are currently using all cost effective prevention and mitigation measures to control outputs from their sites.

The essential problem is that existing development in a catchment is likely to have been constructed according to previous environmental standards and laws of the time. However, standards and legal requirements change over time along with community expectations, with the result that the environment may have been degraded by practices which were once acceptable, but now no longer are. As a result, existing development may not be using all cost effective prevention and mitigation measures to control environmental impacts, but there is nothing at law or in practice requiring it to do so.

To impose green offset scheme upon a newcomer to such a situation would be requiring that newcomer to essentially fix up the inadequacies of history. The fact that existing development is not required to use best practice prevention measures does not mean that a newcomer should be required to pay for it to do so.

These concerns are in addition to the practical problems of enforcing environmental controls generally. It is likely to be the case that the environment has been degraded because some operators are breaching the law in not using all cost effective prevention and mitigation measures. The problem is that local councils and other authorities only have a certain amount of resources with which to enforce conditions of development consent and other legal requirements, and many mistakes often go unaddressed. It would be an unjust result if a newcomer was required to enter into a green offset scheme to fix up the legal errors of third parties.

1.3 Impost upon development

The property industry is already subject to a very large range of taxes, levies and other financial payments. Members of the Property Council would be justified in being concerned that a green offsets scheme is just another impost upon development.

To avoid this result, it should be recognised that new development could also benefit from a green offsets scheme, rather than pay for its implementation. It is frequently the case that new industrial

and residential development may involve significant environmental benefits (such as remediation of brownfields sites, innovative of soil erosion prevention measures, or waste water treatment), that exceeds the requirements of council DCPs and related regulatory instruments. It would be entirely consistent with the green offsets concept if a scheme was applied to assist the developer in constructing those measures, rather than requiring the developer to construct those measures and contribute to others as part of a scheme.

1.4 Bias against new developments

The concept paper clearly envisages that newcomers to an environmental catchment will be the main people who contribute towards a green offset scheme. This is not necessarily a fair position to start the implementation of a scheme. New development has no greater or lesser right to impose impacts upon the environment than does existing development. All of those who had impacts upon the environment should be required to contribute to a green offsets scheme to achieve the intended environmental improvement. It will be inequitable if only new development has to contribute towards the funding of a green offsets scheme.

1.5 Assessing when controls are cost effective

One fundamental problem with the Concept Paper is the murkiness of the concept of "cost effective" controls. The Concept Paper envisages that all participants in the scheme will use cost effective prevention and mitigation measures before entering into a scheme. Cost effectiveness is understood by the Concept Paper to be a measure of the cost of implementing controls against the value provided to the environment.

However, the examples cited in the concept paper suggest that it may be more cost effective for a large developer to pay the costs of environmental controls of a small property owner. This confuses the issue of cost effectiveness. Even if a large developer pays for a small property owner's controls, the same amount of money is still being paid for the same benefit to the environment. In this sense it is just as cost effective to implement the environmental controls which benefit the environment, whether they are paid for by a small or large pocket. It may be that a larger pocket can more easily afford the cost (ie it is cost-effective from its own internal accounting viewpoint), but this does not affect the concept of cost effectiveness as added environmental value as used in the Concept Paper. As a result, to require a larger organisation to pay for environmental upgrades is a misapplication of the definition of cost effectiveness in the Concept Paper.

Of course, individual organisations should be free to voluntarily participate in a green offsets scheme which is more cost-effective for the environment and for itself.

The issue of cost effectiveness also assumes a value can be fixed upon the environment. There will always be ongoing debate as to what is the value of any environmental improvement. The cost of building it? Some estimate of the public's appreciation of a cleaner environment? Reduced public health costs? Different economists will argue different values, usually depending on their political and commercial interests.

Continuing arguments over the value to the environment may result in litigation in the Land & Environment Court and excessive costs of consultants which may, at the end of the day, negate any benefits of green offset schemes.

1.6 Delivering an environmental benefit

If environmental improvement is needed, who should pay for that improvement? The green offsets concept carries a significant risk that environmental improvement will be paid for by developers. This is a totally new concept which has significant implications for the property industry.

Under the current law, property owners and developers are required to minimise their impacts upon the environment, not benefit it. If they are at all required to compensate for an impact upon the environment it is usually in relation to such things as s.94 contributions where a developer pays

for the improvement to the public amenity which is occasioned by the development being carried out. For example, a development project might give rise to the need for a community centre because it increases the number of people needing child care in the area where it is built. However, the developer should not be required to build a community centre which provides for more people than the development attracts to the area.

This is the heart of the problem with green offsets requiring an environmental benefit. Why should a property owner be required to contribute money to the public good when other property owners and users of the environment are not?

1.7 Voluntary schemes

The property industry should be free to enter into green offset schemes on a voluntary basis. This will allow them to make a commercial decision about the risks associated with the equity issues discussed above. It is quite conceivable that two or more parties might strike a commercially acceptable agreement which results in an environmental benefit, and they should be allowed to do so. However, if a green offsets scheme is imposed upon a particular property owner, there is a significant risk that that property owner will be severely disadvantaged as a result of the inequities resulting from the above issues.

If a scheme is entered into it should offer protection to those who participate in it on the basis that they are creating an environmental benefit. For example, it may be that a scheme results in a particular property owner continuing to emit sedimentation or waste water into a waterway even though controls implemented off site mean there is an overall benefit to the environment. Regulatory authorities should not be able to require further control measures to be carried out by that property owner.

2. Administration issues

2.1 Scheme Management

The Property Council does not consider that local councils or state agencies should be nominated to administer green offset schemes.

Green offset schemes will often cross council boundaries, with a result that council officers will not have the competence to deal with the issue.

State agencies are too narrowly defined in the scope of the authority and it will not have the flexibility to deal with the various issues that will arise under any green offset scheme. For example, the EPA would not have the legislative or technical competence to administer a green offsets scheme relating to native vegetation conservation.

At the very least, the participants in the scheme should have the opportunity to participate in its management and operation, so as to ensure that their financial contribution to the scheme is properly managed and accounted for. Government agencies could provide specialist advice on the scheme.

This is likely to result in some form of scheme manager being established, either by trust or board, with representation from the participants in the scheme as well as input from relevant areas of expertise and government interest.

2.2 Costs of the scheme

Green offset schemes may involve considerable costs, in addition to the mere cost of carrying out the actual controls which are to be implemented under it.

For example the cost of implementing a scheme will include:

- the cost of auditing participants of the scheme before they enter the scheme;
- the cost of apportioning any value to the works need to be undertaken (involving quantity surveying, land valuation, environmental consultants etc);
- the cost of monitoring the various environmental controls which had been implemented under the scheme (which again will involve input from independent consultants); and
- the cost of paying for the time of those involved in the management and enforcement of the scheme; and
- the cost of any enforcement of the scheme against either of the participants, including court costs, legals, expert consultants etc.

These forms of costs may well render a scheme ineffective. The concept paper does not canvas any incentives to offset the cost of an offset scheme – a major absence.