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Review of the native vegetation clearing regulations
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning
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Review of the native vegetation clearing regulations - consultation paper

The Minerals Council of Australia Victorian Division (MCA) has been pleased to participate in the Stakeholder Reference Group established to assist the Department of Environment, Land, Water and Planning (DELWP) to undertake the review of native vegetation clearing regulations (the regulations).

From the outset, the MCA supported the intent of the Native Vegetation Management Framework when it was developed in 2002. However MCA has expressed considerable frustration over the inconsistent interpretation and implementation of it since its inception. Despite a number of reviews spanning the past decade there has been marginal improvement in the functionality of native vegetation clearing regulations.

Unique to the minerals sector is the geological determination of any development. The industry applies significant effort firstly to avoiding (where possible), mitigating and minimising its impacts and in the continuous improvement of rehabilitation practices (attachment A – MCA Offset Policy). Because geology determines location it is not always possible to avoid or minimise clearing, and as such the minerals industry is a significant user of offsets.

The key issues surrounding the regulations are its implementation and the availability of offsets. Offsets can be prohibitively expensive and not available close to the permitted clearing area or even at all.

Compliance with the regulations has proven to be very costly for mine operators. These high costs have resulted from not only the requirement to purchase offsets on freehold land, but also as a result of the inherent complexity which has required engaging consultants. In addition, delays in approvals along with multiple meetings with departmental personnel to reach a common understanding have created an additional unnecessary burden on business.

Constraints embedded in the regime result in less than optimal native vegetation and biodiversity outcomes for communities and land users.

The MCA broadly supports the proposed improvements outlined in the consultation paper, in particular the improved clarity in the regulations, guidance material to support proponents, increased accuracy of maps and greater collection and use of data to enable assessment of the objectives of the regulations and the outcomes desired. However, as with previous reviews the drafting of clearing regulations and the interpretation and implementation of same have led to undesirable outcomes for industry and the community – rather than reducing complexity, cost and time.

Two key issues for the minerals industry are highlighted below
Offsets on Crown land

It is critical that offsets are able to be sought in a flexible way. It is also desirable that offsets are kept within the local community however there are numerous occurrences where suitable offsets simply do not exist on private land. Therefore the ability to offset on Crown land is essential. MCA has long viewed shortcomings in the way that Crown land is managed. Offsets for native vegetation on Crown land, beyond normal government programs, must be available. There should be no discrimination between private and public land.

Some companies have only been able to secure offsets at great distances from the permitted clearing activity. This compromises the company’s relationship with the community within which it operates, as they do not see the offsets. Where there is Crown land adjacent to or in the region, being able to offset on this land provides additional benefit to the community.

MCA has long argued that the Crown land manager will simply never have sufficient resources to manage Crown land. Industry contribution, through appropriate offsetting arrangements, could provide improved biodiversity outcomes than possible under existing management arrangements. For example in alpine locations with very high conservation status, fencing off areas to prevent brumbies and deer from entering would enable land owned by the public to be enhanced for broad public benefit.

The flexibility to develop offsets on Crown land has a number of benefits including:

- Greater capacity to strategically develop offsets for improved biodiversity outcomes
- Greater flexibility to link biodiversity assets and increase resilience
- Opportunity to complement social and economic outcomes
- Reducing the need to acquire land used for existing purposes.

MCA therefore strongly supports the recommittal to creating a framework for offsetting on Crown land.

Rehabilitation credits

Rehabilitation of land under the Mineral Resources (Sustainable Development) Act 1990 should also be considered in determining offset requirements. The MCA considers that recognition of rehabilitation will further encourage best practice and progressive rehabilitation.

The NSW Biodiversity Offsets Policy for Major Projects enables rehabilitation of a mine site to contribute to fulfilling an offset requirement for a major project. The policy allows the ecological rehabilitation of a mine site to be considered as an offset where there are good prospects of restoring biodiversity on that land.

In Western Australia offsets may include rehabilitation and revegetation or acquisition of land with a secure conservation purpose.

It is recommended that a similar approach be taken in Victoria.

Following the conclusion of the review, the MCA looks forward to working with DELWP to develop sector specific guidance material to support the regulations.

Yours sincerely

MEGAN DAVISON
EXECUTIVE DIRECTOR, VICTORIA

3 Unfortunately the previous Native Vegetation Guide for Mines and Quarries was withdrawn following the 2012 amendments to the regulations
Biodiversity Offsets Policy

Minerals operations can impact on biodiversity values both within and surrounding the mining footprint. Biodiversity offsets are targeted actions implemented to compensate for significant residual impacts on biodiversity values, following the application of the ‘avoid-minimise-mitigate’ environmental management hierarchy. As minerals operations are constrained by the location of the target resource, biodiversity offsets are becoming an increasingly important consideration in project planning.

The MCA advocates for the development and application of biodiversity offset measures to compensate for significant residual impacts on biodiversity values, in accordance with the following principles:

- Offsets should only be considered after the ‘avoid-minimise-mitigate’ environmental management hierarchy has been applied;
- To promote continuous improvement, mine site rehabilitation should be recognised as either as a mitigation measure or credited as part of an offsets package;
- Offsets should not be an automatic requirement by regulatory agencies for all impacts;
- Offsets required through regulatory mechanisms should be limited to the proportion of residual losses that are significant in terms of biodiversity values, based on best available scientific evidence;
- In support of their social license to operate, many companies may voluntarily implement conservation programs. Offset requirements should be complementary to these initiatives;
- An equitable approach to offsets should be applied to all industries impacting on biodiversity values;
- Offsets should be strategically developed to ensure investments lead to the best value-for-money biodiversity outcomes across the landscape and any research provided should have scientific integrity and be directly relevant to conservation outcomes;
- Offset management requirements should be limited in duration and to the period where the offset commitment has been met;
- Marine offsets should be developed in co-ordinated and strategic manner aimed at long term improvements in biodiversity values or improved resilience of the marine environment;
- Offsets should be achieved by applying fit for purpose approaches including:
  - **Proponent managed**, where the proponent delivers and manages the offset utilising internal company resources;
  - **Third party delivery** where the proponent may enter into an arrangement with a suitable third party provider to deliver the offset requirement. This may include purchasing an existing offset through a ‘biobank’ or similar facility; and
  - **Financial based offsets** are contributions to a centralised trust or fund, administered by Government or other entity and used to achieve strategic environmental outcomes through targeted actions.
- Centralised offset funds should be sufficiently resourced, competently administered and monitored to ensure environmental outcomes are delivered and publicly reported;
- Offsets for significant residual impacts can include a package of ‘direct’ and ‘indirect’ measures, which must be flexible in their development and application and implemented over an appropriate timeframe;
• A range of different offset types should be considered, including:
  o *Direct offsets* provide on-ground protection or improved conservation outcomes for the impacted biodiversity values, including but not limited to legally securing land for conservation; and
  o *Indirect offsets* are a range of other measures that improve knowledge, understanding and management of the environment leading to improved conservation outcomes for the impacted biodiversity values.

• Where offset mechanisms are applied they should be:
  o Developed in a consistent, transparent, non-duplicative and contemporaneous manner across jurisdictions involved in the regulatory process;
  o Transparent in their calculation and development, including financial contributions;
  o Developed using the best available scientific information, and include declarations about assumptions that underpin the calculations;
  o Clear and certain in their expectations for implementation, monitoring and outcomes, including long-term management arrangements and liability for financial contingencies;
  o Recognise ‘advanced offsets’ such as relevant conservation activities undertaken prior to project development and impacts on the protected matter;
  o Provide for staged offset development or financial contribution with agreed timeframes;
  o Considerate of community expectations regarding the matter that is being offset; and
  o Clear in absolving the developer of reasonable responsibility in the delivery of outcomes when impacted by forces outside their control including natural variability, acts of god, wilful damage by third parties or government decisions that may impact on established offsets.

October 2014