Information sheet

Environmental Protection Act 1994

How to address environmentally sensitive areas and offset requirements in an application for an environmental authority for resource activities

This information sheet describes the application and assessment requirements for site-specific, variation and amendment environmental authorities for resource activities under the Environmental Protection Act 1994 *that may trigger a requirement for an environmental offset under the* Environmental Offsets Act 2014*. In particular, it provides guidance on how to describe proposed impacts to vegetation communities (regional ecosystems) that are both environmentally sensitive areas and matters of State environmental significance.*

Background

Pursuant to sections 125 (for variation and site-specific applications) and section 226 (for amendment applications) of the *Environmental Protection Act 1994* (EP Act) an application for an environmental authority (EA) includes an assessment of the likely impact of each environmentally relevant activity on environmental values. 'Environmental value' is defined in section 9 of the EP Act to include a quality or physical characteristic of the environment that is conducive to ecological health, public amenity or safety, as well as any other qualities of the environment identified and declared to be an environmental value under an environmental protection policy or regulation. Environmental values that should be considered and addressed in an EA application include:

- Category A and category B environmentally sensitive areas (ESAs) as defined under Schedule 12 of the Environmental Protection Regulation 2008 (EP Reg);
- Category C ESAs where defined in a relevant model conditions document[1] or ERA standard[2]; and
- Matters of State environmental significance (MSES) as defined in Schedule 2 of the Environmental Offsets Regulation 2014 (EO Reg).

It is important to note that some regional ecosystems (REs) may be listed as a category B or category C ESA, as well as a MSES; however, the way in which REs are defined and the methodologies used to describe and classify them, differ under the EP Act and the EO Reg. As a result, there may be instances where a significant residual impact to an ESA that is an 'endangered' or 'of concern' RE is authorised, but an environmental offset is not required due to the different definitions and methodologies that define the RE. Therefore, it is important that applicants understand the differences to ensure that a well-supported application that meets the application requirements under the EP Act and the *Environmental Offsets Act 2014* (EO Act) is lodged.

The following sections outline how REs that are both ESAs and/or MSES should be addressed in an EA application, and steps out the approach the administering authority will use when conditioning an EA.

[1] The Streamlined model conditions for petroleum activities (ESR/2016/1989) and the Model mining conditions (ESR/2016/1936) are available on the Business Queensland website, using the relevant publication number as a search term.

[2] ERA standards for petroleum and mining activities are available on the Business Queensland website, using "Activities suitable for standard applications" as a search term.

1. Identifying likely impacts to environmental values

a) Environmentally sensitive areas

The EA application should address whether the proposed activities will impact any category A, B and C ESAs, including any REs. The boundaries of some ESAs (e.g. protected areas) are defined by statute and therefore there should be no discrepancy about whether an activity proposes to impact these types of ESAs. However, whilst indicative State mapping is available for REs, under the EP Act it is the on-ground values that discern whether a RE is actually present at the site proposed to be impacted, and therefore, whether an ESA occurs. Importantly, the EP Act recognises the biodiversity status of REs and not its class under the *Vegetation Management Act 1999* (VMA).

Applicants are encouraged to undertake ground-truthing surveys to accurately assess the RE type, condition and ecological value of any vegetation proposed to be significantly disturbed before lodging an EA application, however this is not mandatory. Where ground-truthing surveys are undertaken, the survey approach adopted should be consistent with the relevant methodologies published by the Queensland Government[3]. If ground-truthing surveys are not undertaken prior to the application being made (e.g., if exact locations of proposed activities are unknown; or if the resource tenure has not yet been granted so access to the site has been limited; or if other means have been used to determine vegetation cover), the outputs of various mapping tools available may help the applicant when describing the possible impacts to environmental values for the EA application.

Importantly, if ground-truthing surveys are not undertaken prior to the EA application being made, the on-ground values will need to be confirmed once the EA has been granted and before any impacts occur. Depending on the conditions of the granted EA, a subsequent EA amendment may need to be applied for, if impacts to the ground-truthed ESAs are not currently authorised.

Some of the mapping tools available for use include:

- the 'environmentally sensitive areas maps for mining and petroleum' service available on the Department of Environment and Science (DES) website; or
- the 'environmental reports online' service available on the Queensland Government (QGov) website to map environmentally sensitive areas, regional ecosystems and terrestrial biodiversity and aquatic conservation values over the resource tenure area[4].

As each mapping tool has been developed for a specific purpose, applicants should note that the outputs of each mapping tool will vary depending on the mapping rules adopted for that tool. For example, some tools may show only the remnant extent of particular REs whereas others may also include high value regrowth areas. The granted EA should specify how each matter is defined, and applicants should discuss any concerns with the relevant DES business centre.

When describing the likely impacts to category A, B and C ESAs from the proposed activities in an EA application, the applicant will also be required to provide details of:

- any emissions or releases likely to be generated by the activities;
- descriptions of the risk and likely magnitude of the impacts;

[3] For example, REs should be described in accordance with the 'Methodology for survey and mapping of regional ecosystems and vegetation communities in Queensland' published by the Queensland Herbarium and available at www.publication.qld.gov.au/dataset/redd/resource. If ground-truthing is also being undertaken to describe a future land-based offset proposal, then the survey approach should consider any additional mapping requirements of the 'Guide to determining terrestrial habitat quality' available at www.des.qld.gov.au.

[4] A more comprehensive list of the mapping tools that have been developed by the Queensland Government is available at www.des.qld.gov.au/maps-imagery-data/online/.

- details of the management practices proposed to be implemented to prevent or minimise adverse impacts; and
- details of how the impacted land will be rehabilitated after the activities cease.

The administering authority will take these details into consideration when assessing the EA application against the decision criteria.

b) Matters of State environmental significance

When describing the matters of State environmental significance (MSES) that may be affected by the proposed activities, the EA application should refer to the EO Act, the EO Reg and the Queensland Environmental Offsets Policy 2014 for the definition of each MSES. Under the EO Act framework, most MSES are defined initially as per how the Queensland Government has mapped the location of the matter (e.g., in the vegetation management maps prepared under the *Vegetation Management Act 1999*), and therefore, it is not necessary to undertake ground-truthing surveys prior to the lodgement of an EA application if the applicant is willing to accept the mapping.

In the case of REs that are also MSES, the relevant classification is the VMA class of the RE and not its biodiversity status, as is the case under the ESA framework. Therefore, there could be REs with an 'endangered' biodiversity status, and a 'least concern' VMA class. The different definitions adopted under the EP Act and the EO Act ensure that the environmental values captured under the relevant framework best align with the objectives of each Act. A RE's biodiversity status is used under the EP Act because it factors in additional threats to the conservation of environmental values other than land clearing, such as ecological functioning, consistent with the objective of the EP Act to maintain ecologically sustainable development.

If ground-truthing surveys are undertaken by an appropriately qualified person using an appropriate methodology[5], either prior to an EA application being lodged or once an EA has been granted, and the surveys show that the on-ground values differ from the mapped values, the EO Act framework allows the administering authority to accept the ground-truthed values[6]. For example:

a) if ground-truthing shows that an MSES is not present on the ground, despite being mapped by the Queensland Government, the administering authority will accept the ground-truthed values and therefore an offset will not be required; and

b) if ground-truthing shows that a different MSES is present on the ground to what is mapped, and has a different value to what is mapped (e.g. the mapped MSES displays an area containing an endangered RE, but ground-truthing confirms the MSES is an of concern RE), then the offset rules applicable to the ground-truthed RE would apply.

Should an applicant seek to challenge the mapped values for MSES during the EA application stage, they may provide details of the ground-truthing surveys undertaken to confirm the presence/absence of ESAs, if available, so long as an appropriately qualified person can confirm that the surveys completed were sufficient for describing ESAs and MSES.

As stated above for ESAs, the application is also required to provide details of any emissions and releases, the risk and likely magnitude of impacts, the management practices and rehabilitation proposed for the impacts to MSES. This includes a commitment to undertake all reasonable on-site avoidance and mitigation actions, and

[5] An appropriately qualified person would be someone who has professional qualifications, training or skills or experience relevant to the undertaking of ecological surveys and can give authoritative assessment, advice and analysis about performance using relevant protocols, standards, methods or literature. It is expected that the appropriately qualified person determines an overall surveying approach that is consistent with any relevant published guidelines relevant to the purposes of the surveying being undertaken.

[6] Refer to section 3.2.2 of the Queensland Environmental Offsets Policy, General Guide, accessible at www.des.qld.gov.au.

the extent of any significant residual impacts that will remain following the implementation of the avoidance and mitigation actions.

The applicant should refer to the definition of 'significant residual impact' as per the EO Act[7] as well as the Significant Residual Impact Guideline[8] available on the QGov website for help with determining whether any significant residual impacts will, or is likely to result from the proposed activities. The application should define the maximum extent of significant residual impact on each MSES anticipated for the life of a project, if this information is available, and whether staging of the project is proposed[9].

2) Conditioning an environmental authority for resource activities

When deciding an EA application and determining the appropriate conditions to impose, the administering authority must consider the regulatory requirements for the decision outlined in the EP Reg[10], and the standard criteria defined in the EP Act[11]. The EP Act requires that any condition imposed on an EA is necessary or desirable to achieve the object of the EP Act[12], which the administering authority will consider based on the particular facts and circumstances provided in the application, and any further information provided during the assessment of the application.

a) Environmentally sensitive areas

Where an application proposes a likely impact to an ESA, the administering authority will determine whether the level of impact proposed is acceptable, taking into consideration the management practices proposed, and will impose conditions on the EA that are necessary and desirable to protect these environmental values beyond that acceptable level. ESAs are grouped in descending order of significance; therefore greater levels of protection are given generally to category A ESAs than category B and category C ESAs. These conditions may be in the form of scaled, site-specific maps that outline where disturbance to ESAs is authorised, or a risk-based constraints table that restricts certain types of activities being undertaken in different categories of ESAs, and may include set-back distances (protection zones) for certain ESAs.

As stated earlier, where indicative State mapping and reports are available for environmental values that do not have clear boundaries such as REs or essential habitat, this information is to be used as a guide only. Some EAs for resource activities specify that ground-truthing surveys are required to verify the 'true' extent and value of vegetation before any significant disturbance occurs. If the administering authority has imposed conditions on the EA that authorise activities in REs or areas of essential habitat, this authorisation is usually based on the confirmed values from ground-truthing, rather than mapped values. In these instances, it is expected that ground-truthing surveys, or other high-resolution surveys if allowed for in EA conditions, are conducted prior to any significant disturbance to land occurring, and records are kept to show the differences between the State-mapped and ground-truthed values.

b) Matters of State environmental significance

When deciding an EA application that proposes to impact MSES, the administering authority must also consider whether to impose a condition requiring the delivery of an environmental offset under the EO Act, as provided

[7] Refer to section 8 of the EO Act.

[8] The guideline is available at www.qld.gov.au, using 'significant residual impact guideline' as the search terms.

[9] Refer to section 2.4.3 of the Queensland Environmental Offsets Policy.

[10] Refer to Chapter 4 of the EP Reg.

[11] Refer to Schedule 4 of the EP Act.

[12] Refer to section 3 of the EP Act.

for under section 207(c) of the EP Act. However, the administering authority may only impose an environmental offset condition if:

1. the application is for a 'prescribed activity'[13], i.e. a new variation or site-specific EA application, or an amendment application for an existing EA has been lodged for a resource activity; and
2. the activity will have an impact on a 'prescribed environmental matter'[14], i.e. the resource activity will have an impact on a matter of State environmental significance (MSES); and
3. despite undertaking all reasonable avoidance and mitigation measures, the activity will have a 'significant residual impact' on a prescribed environmental matter, i.e. the activity will have an adverse impact on an MSES that is both significant, and likely to remain either temporarily or permanently; and
4. an environmental offset is a suitable outcome for that impact; and
5. the same, or substantially the same, impact to a prescribed environmental matter has not been assessed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)[15].

The EO Act outlines the framework for how an environmental offset should be provided, e.g. the requirements related to the notice of election, agreed delivery arrangement and/or offset delivery plan which are also taken as being conditions of the EA[16].

It is important to understand that the offset framework does not change requirements under the EP Act for EAs, and that the provision of an offset will not replace or undermine existing environmental standards or regulatory requirements, e.g. the rehabilitation of impacted land, or a requirement to avoid certain areas with known environmental values. In some instances, successfully completed rehabilitation may be used to reduce an offset requirement; however this will need to be considered on a case by case basis.

The model environmental offset conditions are included in the relevant model conditions for resource activities documents[17] and may be imposed on environmental authorities to manage resource activities and are considered appropriate to meet the objectives and regulatory requirements of the EP Act and EO Act. The conditions are based on acceptable management approaches and constraints to protect environmental values and are consistent with the requirements under the EO Act.

Further Information

For more information on environmental offset requirements refer to the EO Act, the Queensland Environmental Offsets Policy and the Significant Residual Impact Guideline on the Queensland Government website[18].

The administering authority encourages applicants to use its pre-design/pre-lodgement service. Persons wanting to arrange a pre-design/pre-lodgement consultation should contact Permit and Licence Management on 13 QGOV (13 74 68).

[13] Prescribed activities are defined in Schedule 1 of the EO Act.

[14] Prescribed environmental matters are defined in Schedule 2 of the EO Act.

[15] Refer to section 15 of the EO Act.

[16] Sections 19B, 22, 24 and 25 of the EO Act are taken to be EA conditions if an environmental offset condition has been imposed on an EA.

[17] The Guideline – Streamlined model conditions for petroleum activities (ESR-2016-1989) and the Guideline – Mining model conditions (ESR-2016-1936).

[18] Available on the QGOV website at www.qld.gov.au/environment/pollution/management/offsets/

Version History

Version	Effective date	Description of changes
1.00	9 May 2016	First published version of the guideline.
1.01	17 May 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.