LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

Georgina Woods
Policy Officer
PO Box 290
Newcastle NSW 2300

3 April 2014

Submission: Inquiry into offsetting

Thank you for the opportunity to make a submission to the inquiry into biodiversity offsetting in the Federal environmental approvals process. This is a very important inquiry, and we would be very glad to discuss our submission, and our experience of biodiversity offsetting, in more depth at public hearings if the Committee wishes.

Our submission addresses the matters raised in the terms of reference, particularly the history, appropriateness and effectiveness of the use of environmental offsets in federal environmental approvals for coal and gas projects. The examples that we have to share with the Committee expose the shocking failure of the Federal Department of Environment and successive Environment Ministers to apply the principles of offsetting and uphold any kind of consistency, care or common sense.

Over the last ten years, the same species and communities have been subjected repeatedly to extensive habitat loss and poorly enforced, failed and abandoned offsetting proposals. Irreparable loss and damage to unique places has been approved using "offsetting" as a glib placebo to disguise our failure to fulfil basic obligations under international conventions and domestic law.

Lock the Gate believes that it is crucially important that the Committee examines "the processes used to develop and assess proposed offsets," as laid out in the terms of reference, but the ability of community groups to do this is severely hampered by the lack of transparency and accountability in the practice of offsetting. It is a proponent-driven process, not systematic, rigorous or transparent at all.

The Committee is asked to address "the adequacy of monitoring and evaluation of approved offsets arrangements to determine whether promised environmental outcomes are achieved over the short and long term." In short: there is none. Our examples demonstrate the Department of Environment complying repeatedly with requests by coal and gas project proponents to change the conditions of their approvals multiple times to allow for their repeated failure to fulfil the offset conditions imposed on their approvals.

Summary

Our submission uses four case studies to highlight the failings of the system, failures of implementation, and failure to recognise and act on losses and impacts that are irreversible and unacceptable. These are:

Great Barrier Reef

Four LNG terminals are approved for construction in the Great Barrier Reef World Heritage Area, leading to direct criticism from the World Heritage Committee monitoring mission that "the decisions that were taken to proceed with approvals based on offsetting therefore appear to not correspond to an agreed approach within the World Heritage Convention."

Hunter Coal Mines, NSW

In what can only be described as an 'approve first, make amendments later' approach, **t**wo coal mines, the Ravensworth extension and the Ulan mine, were approved with strict offsetting conditions that imposed deadlines by which offset areas must be securely protected, only to have these conditions repeatedly changed after the approval was secured, because the company concerned had not fulfilled them. Three years after their approval, neither company has fulfilled the offset conditions imposed for these mines.

In the case of the disappearing offset, the Mt Thorley-Warkworth mega mine in the Hunter is expanding again, and the offsetting conditions imposed on the mine when it was approved ten years ago have recently been changed so that the owner of the mine can open-cut the offset area.

Leard Forest Coal Mines, North West NSW

In what might be called 'the impossible offset' case, the NSW Office of Environment and Heritage described Leard State Forest as having "irreplaceable, ecologically unique values, including the highest quality remnant patch of grassy woodland on the heavily-cleared Liverpool Plains." However, the offset area agreed in the approval of the Maules Creek coal mine does not support the critically endangered woodland to be cleared by the mine, the mapping conducted by proponents of the offset site has been shown to be markedly incorrect, and there are no areas available in the landscape that could replace or offset the "irreplaceable" and "unique" forest that will be cleared under the approval.

China First Coal Mine, Galilee Basin

The China First coal mine in the Galilee Basin will clear over 5% of the National Reserve System area in the Desert Uplands bioregion, a bioregion that is already among the most poorly reserved in the country. The property will be cleared is private land with a binding conservation covenant that is formally recognised as forming part of the National Reserve System by the Federal Government. The Department of Environment gave approval for this mine in December 2013, on the proviso that the proponent of the mine, Waratah Coal, "legally secure" 10,000ha of (as yet unspecified) habitat for the Black-throated finch (southern) within two years of clearing the habitat on Bimblebox. If being part of the National Reserve System doesn't provide legal security, what does?

Summary

In our view, and based on our experience and that of our members around the country, these case studies are not isolated incidents, but expose systemic and institutional failures in the Department

of Environment and the "offsetting" culture. We recommend that the Committee requests senior staff from the Assessment and Compliance Division of the Department of Environment, as well as Environment Minister Greg Hunt and former Environment Minister Tony Burke appear as witnesses for the inquiry, to answer questions raised by these case studies, and that the Committee make recommendations that prevent such abuses of the law and derelictions of duty from occurring again.

Further investigation by the Committee into the offsetting practises of the Federal Department of Environment may uncover further failures to adhere to the principles of offsetting, the spirit and objectives of the Environment Protection Biodiversity Conservation Act and the terms of the international conventions to which Australia is party. With regard to the specific instances raised in our case studies, we believe there are strong grounds for the Committee to recommend to the Minister that he suspend the approval of these projects, particularly those for which the damage they will cause is not yet done.

The "appropriateness" of offsetting

The Committee's terms of reference include the "appropriateness" of offsetting. We are not aware of any identified thresholds for identifying impacts that cannot be offset, or circumstances when offsetting is not appropriate. We have never seen any discussion in submissions or evaluations from the Federal Department of the Environment that consider the appropriateness of offsetting in circumstances where irreplaceable values are proposed to be degraded or lost. The history of recent approvals in the Great Barrier Reef World Heritage Area is a case in point. In our view, the community holds a reasonable expectation that large scale industrial development in a World Heritage Area is an activity that cannot be offset.

The first principle of offsetting in the Federal Department of Environment's Environmental Offsets Policy is that offsets must "deliver an overall conservation outcome that ***improves or maintains*** the viability of the aspect of the environment that is protected by national environment law and affected by the proposed action."[1] Our experience of offsetting practises by the Department of Environment is just the opposite. Offsetting is being used to help in the degradation and loss of matters of national environmental significance, particularly the Great Barrier Reef World Heritage Area and threatened species and communities in regional areas targeted for coal mining and gas extraction.

However, the Department of Environment's Offset Policy does not provide any benchmark at the assessment stage. Section 5.2 of the policy outlines the considerations for the Department. They ask themselves "what is the nature of the impact?" but include no provision to ask if impacts are "clearly unacceptable" for which the Act allows. The flow chart on Figure 1 of the policy includes the possibility that impacts are "clearly unacceptable" but nowhere else in the policy is this threshold defined or even mentioned. The Department then asks "Can Impacts on protected matters be avoided?" but the policy includes no provision to ask "should the proposed action proceed at all?"

[1] Department of Sustainability, Environment, Water, Population and Communities. October 2012. *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf

The Offset policy states that "In cases where offsetting of adverse impacts on heritage values is considered possible and appropriate, the principles of this policy apply with regard to determining what constitutes a suitable offset. Offsets for impacts on heritage values should improve the integrity and resilience of the heritage values of the property involved."[2] There is no guidance provided about how the Department determines when offsets are considered "possible and appropriate" for heritage properties, but the section concludes with the advice that proponents "contact the department" for further information, which gives some indication of the process involved: an opaque negotiation between the Department and the proponents.

Case study: Great Barrier Reef and fossil fuel exports

For over three years, Australian Governments have been failing to heed warnings from the international community in relation to the fossil fuel export developments under construction and still being proposed, assessed and approved in the Great Barrier Reef World Heritage Area. Australian Governments have approved three LNG terminals, two capital dredging programs and three coal terminals in the Great Barrier Reef World Heritage Area, since first becoming aware that the World Heritage Committee might place the Reef on the "in danger" list in October 2010.[3]

The APLNG LNG plant on Curtis Island (EPBC 2009/4977) was approved on 21 February 2011, including approval to dredge 900,000m^3 in the Great Barrier Reef World Heritage Area. The approval included a requirement for an Environmental Offsets Plan, which secured a property of at least 1,153ha "under a secure land tenure" within the Great Barrier Reef World Heritage Area "preferably on Curtis island or nearby" and specifies that it is the World Heritage values that will be lost as result of the development, not just the specific flora and fauna species, that needed to be offset. The approval however, concedes the possibility that this requirement will not be fulfilled, and instructs the proponent to make an alternative proposal for an offset outside the GBRWHA within 24 months of the approval, if they can't find anywhere suitable inside it.

QGC's LNG terminal (EPBC 2008/4402) was approved on 22 October 2010, and included construction of another LNG terminal on Curtis Island. Like the APLNG terminal the QGC project conditions included an Environmental Offset Plan that offset, not only habitat losses, but also loss of "associated World Heritage and National Heritage values" including securing property of at least 1,375ha that must be "located within the Great Barrier Reef World Heritage Area, preferably on Curtis Island or nearby.

Santos' LNG terminal on Curtis Island (EPBC 2008/4057) was also approved on 22 October 2010. Like the other two terminals, this approval included conditions requiring the proponent to secure an offset property "of at least 1,200ha" located within the Great Barrier Reef World Heritage Area, and specified that it must be additional to any similar offset required by an approval given to any other proponent of an LNG facility on Curtis Island.

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[2] Offset policy

[3] Brief Number B10/2033, released under Freedom of Information to Greenpeace revealed that then Environment Minister Tony Burke noted in an internal Government brief that the World Heritage Committee may consider placing the GBR on the "World Heritage in Danger" list due to developments of LNG plants on Curtis Island.

All three approvals specified that these World Heritage offsets must be "additional to any similar offset required under an EPBC Act condition of approval for another proponent of an LNG facility on Curtis Island." All three LNG terminal proponents are now pursuing a joint offset strategy, the "*Monte Christo Offset Proposal.*" Santos report in their annual environmental report for last year that, "The LNG Facility Environmental Offset Plan (LNG Facility EOP) submitted to the Department by GLNG and other LNG proponents for approval on 15 August 2013 was approved by the Minister on 27 September 2013 as meeting the requirements of conditions 12, 13(a), 13(b), 14(a), 14(b), 14(e), 14(f), 14(g), 14(h), 15(a), 15(b), 16, 22(c) and 32(d) of the EPBC Approval."[4] This does not mention condition 18, which required the offsets to be additional to offsets secured by other Curtis Island LNG terminal proponents. The details of this offset plan and arrangement are not, as far as we are aware, available to the public, but in August last year, the Queensland Government announced additions to reserves on Curtis Island, purchased with funding from LNG terminal proponents, comprising a 1,912ha addition to Curtis Island National Park and a 1,000ha addition to Curtis Island Conservation Park[5]. Altogether, the offset requirements of the three proponents were 3,728ha of land in the Great Barrier Reef World Heritage Area. If this is the extent of the implementation of these conditions of their approvals, the Department of Environment have signed off on a program that is over 800ha short of the requirement in the approval.

Even were the specified area secured in National Park, in the three years since these facilities were approved, it has become clear that the Department of Environment erred gravely in recommending their approval. It is clear that the first principle of offsetting, that the value in question be "maintained or improved" by the offsetting, was abandoned in these cases, and that the World Heritage Area is at very real risk of being removed from the register, in large part due to the impact of these developments. This is patently clear from the analysis and decisions of the World Heritage Committee and its mission, who clearly and unequivocally believe that he Outstanding Universal Value of the World Heritage Area have been compromised. In hindsight, this should have been obvious: the OUV for which the Reef is listed include its integrity, its beauty, complexity and size. The unique values that it holds cannot, by definition, be "offset," since it is the only one of its kind on the planet.

In June 2012, UNESCO's Monitoring Mission, which visited the Reef in March that year, including Curtis Island, released its report into the state of conservation of the Great Barrier Reef. The report noted "that developments on Curtis Island are not consistent with the leading industry commitment to not develop oil and gas resources in natural World Heritage properties." The mission specifically noted that "The currently applied "offsets" to the development of Gladstone Harbour and on Curtis Island were reviewed briefly by the mission, and the approach involved is not one that has the support by the World Heritage Committee. Furthermore, the offsets that have been proposed do not appear to compensate for the losses resulting from these developments." The mission also criticised the decision to allow the damaging development activity to proceed before the offset

[4] Annual Environmental Return 2013 EPBC No 2008/4057 LNG Facility
http://www.santosglng.com/media/pdf3349/131118_glng_epbc_lng_facility_annual_environmental_return_final.pdf

[5] 30 August 2013. Minister for Environment an Heritage Protection, Minister for National Parks, Recreation, Sport and Racing. Media Release "Curtis Island land becomes protected area"
http://statements.qld.gov.au/Statement/2013/8/30/curtis-island-land-becomes-protected-area

arrangements were in place: "Notwithstanding the mission's concern (see below) regarding the principle of offsets, it is not clear why the offset plan is not to be prepared and approved before dredging is authorised to proceed."

The mission report concludes that "The mission considers the concept of "offsets" in relation to impacts on OUV to be problematic, and this is not something which to date the World Heritage Committee has considered as appropriate. In principle the decisions that were taken to proceed with approvals based on offsetting therefore appear to not correspond to an agreed approach within the World Heritage Convention. Beyond this point of principle, the mission also questions to what extent the proposed offsets are actually likely to compensate for the loss of values that will result from the LNG construction, and how this can be determined objectively."[6]

In 2012, in their decision on the conservation status of the Great Barrier Reef, the World Heritage Committee noted with "great concern"

> …the potentially significant impact on the property's Outstanding Universal Value resulting from the unprecedented scale of coastal development currently being proposed within and affecting the property, and further requests the State Party to not permit any new port development or associated infrastructure outside of the existing and long-established major port areas within or adjoining the property, and **to ensure that development is not permitted if it would impact individually or cumulatively on the Outstanding Universal Value of the property** (our emphasis)

On June 2013, they went even further, again noting with concern

> … the limited progress made by the State Party [Australia] in implementing key requests made by the Committee (Decision 36 COM 7B.8) and the recommendations of the March 2012 joint World Heritage Centre/IUCN reactive monitoring mission as well as on-going coastal development on the Reef, and urges the State Party to strengthen its efforts in order to fully implement the Committee requests and mission recommendations that have not yet or only partially been implemented, including by making commitments to:
> a) **Ensure rigorously that development is not permitted if it would impact individually or cumulatively on the OUV of the property**, or compromise the Strategic Assessment and resulting long-term plan for the sustainable development of the property[7] …

The Australian Government has never adequately responded to the criticism that offsetting impacts on World Heritage Values is not supported by the World Heritage Committee, and has given approval to two new coal export terminals, another capital dredging program and another Curtis Island LNG terminal since the June 2012 World Heritage Committee meeting that made these decisions. In December 2013, following recommendation from the Department of Environment, the Environment Minister gave approval for a fourth LNG terminal in Curtis Island, by Arrow Energy. The Department admitted that there were impacts to the Outstanding Universal Value of the GBRWHA

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[6] June 2012. *Mission Report: Reactive Monitoring Mission to Great Barrier Reef (Australia) 6th to 14th March 2012*. UNESCO World Heritage Centre – IUCN http://whc.unesco.org/download.cfm?id_document=117104

[7] WHC Decision 37COM 7B.10 http://whc.unesco.org/en/decisions/4959/

that could not be avoided or managed, and that, as a results "an offset property of at least 1,400 hectares on Curtis Island to be transferred into the national reserve system."

Failure to fulfil offset conditions

In several of the case studies we highlight in this submission, coal mines have been approved with strict offsetting conditions that impose deadlines by which offset areas must be securely protected, only to have these conditions repeatedly changed after the approval is secured, because the company concerned has not fulfilled them. There are multiple instances of approval conditions relating to offsetting being changed after the approval has been given and after the damage has been done, to accommodate the failure of proponents to fulfil those conditions.

This exposes a failure not only of the offsetting program, but of the EPBC compliance process: failure to comply with offsetting commitments is basically forgiven and erased by the Department of Environment's willingness to rewrite conditions, rather than enforce them. Indeed, this approach is written into the Department's offset policy, which states that "Where a proponent becomes aware that they may not be able to fulfil a condition of approval, they should approach the department in the first instance to discuss the matter and see what options are available to remedy the situation"[8] There is no mention in the policy of any environmental analysis by the Department at this stage, and the case studies outlined below show a pattern of behaviour by the Department of negotiation and discussion behind closed doors after approval is secured to amend offset conditions.

In the case study of the Ravensworth expansion and the Ulan mine, summarised below, the loss of habitat for an endangered bird of which there are only hundreds left in one case and a critically endangered woodland community in the other has already now taken place, and yet the promised offsets, which were a condition of the approval, are yet to be secured.

Case study: Ravensworth Operations

The Ravensworth Operations Project (EPBC 2010/5389) to extend open-cut mining in Ravensworth was given Federal approval in April 2011. The original approval included the stipulation that "to offset the impact to foraging habitat of the Regent honeyeater, Swift Parrot, and Grey-headed Flying-fox, the person taking the action must register a legally binding conservation covenant over the Ravensworth North, Hillcrest, Clifton and Stewart Offset Areas identified in the map at Appendix 1" to be "in perpetuity" and within 2 years of the approval. It is estimated that there are only 400 Regent Parrots left in existence[9]. The approval condition specified that the offset area needed to provide 1,398 hectares of habitat for the Grey-headed Flying Fox and 1,231 hectares for the Regent Honeyeater and Swift Parrot.

On 2 July 2012, the approval was amended to change the offset condition.

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[8] Offsets policy October 2012. page 12.

[9] Department of the Environment (2014). *Anthochaera phrygia* in *Species Profile and Threats Database*, Department of the Environment, Canberra. Available from: http://www.environment.gov.au/sprat. Accessed Wed, 19 Mar 2014.

On 3 April 2013, the approval was amended again, because the covenant had not been placed on the offset area. Condition 4 was changed so that "the covenant/s must protect these areas in perpetuity and be registered by no later than 8 April 2014."

On 23 December 2013, the approval was amended again, to further push back the date by which the covenant had to be secured, to 30 June 2014.

Case study: Ulan mine

The Ulan mine (EPBC 2009/5252) was given Federal approval on 30 November 2010.
The approval included conditions that the company must not clear more than 69 hectares of White Box – Yellow Box Blakeley's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community in the project area." and that to offset this loss, and the loss of habitat for the Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the proponent "must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area" within two years of the date of the approval. The approval also required the proponent to submit an Offset Management Plan for the Minister's approval and to "provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area" to offset impacts on the bat, agreed to in writing by the Department and finalised within 2 years of the date of the approval.

On 24 December 2012, nearly a month after the deadline to have the conservation covenants in place had passed, the approval was varied to extend the deadline for the covenants to be finalised to 31 May 2013. The new conditions also set out that "If the conservation mechanism cannot be finalised by 31 May 2013, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval."

On 22 May 2013, the approval was varied again, this time extending the deadline for the covenants to be finalised to 31 December 2013.

On 6 January this year, the approval was varied for a third time, extending the deadline by which the covenants must be finalised to 30 June 2014, and changing the time by which the proponent must submit alternative arrangements if the mechanism can't be established to four years from the date of the original approval.

Approving development in offset areas

Our review of cases where Federal environmental approval for coal mines involved offsetting conditions also revealed cases where development was permitted in areas that were supposed to be set aside

There is no public register of areas supposedly set aside as offsets, and we suspect that there is no internal register in Government and between Governments, given the behaviour of companies and bureaucrats cannibalising old offsets for new, and approving development in offset areas. We are aware that the NSW Office of Environment and Heritage is preparing a map of existing offset areas

for the Upper Hunter Strategic Plan, an EPBC process, and this would be welcome, though we would be surprised if rigorous scientific analysis revealed that any further loss of bushland in the Hunter Valley could reasonably be sustained. The case of the Warkworth extension is among the most egregious of the cases where areas previously set aside as offsets are later proposed for development, and is outlined below. Essentially, an area that was supposed to be set aside "in perpetuity" and expressly excluded open-cut mining is now available to be mined after the Department of Environment last year changed the conditions of approval for the mine ten years after it was given.

As has already been noted, we are not aware of any register that keeps track of properties that have been designated under EPBC approval conditions as offset areas, so this kind of damage could easily be done accidently. In the case of Warkworth, it is unlikely to have been an accident at all, as the parallel change to the NSW *Environmental Planning and Assessment Act* approval has been the subject of a huge amount of controversy.

In other cases, an approval for the proposed fourth coal terminal in Newcastle is not yet secured, but that project is being assessed under a bilateral assessment and neither the Federal Environment Department nor the NSW Department of Planning have objected so far that the rail for that project conflicts with offsets set aside for the Newcastle Coal Infrastructure Groups's third coal export terminal in Newcastle, and are, in any case, public lands already managed for conservation under NSW law.

Case Study: Warkworth extension

Approval for the Warkworth extension was given on 18 February 2004, and included the stipulation that "Warkworth Mining Ltd must not clear any vegetation in areas designated as Non Disturbance Areas (NDA's) in Annexure 2 without the prior written agreement of the Minister" and requiring the proponent to submit a plan to the Minister within three months of the date of the approval for managing impacts on threatened and migratory species, including measures to "provide long-term protection and ongoing management for NDAs and Habitat Management Areas." The approval expressly excluded open-cut mining in the NDA. Though the Federal approval does not explicitly describe this NDA as an "offset," the project was assessed under a bilateral accredited assessment with NSW, and the documentation provided by the proponent for that assessment presented the 755ha area for protection in non-disturbance areas as an offset area.

Six days after the deadline for the plan to be submitted had passed, the approval was varied for the second time, extending the deadline for the submission of that plan to 31 October 2004. A third variation was made on 19 November 2004, replacing the map of the non-disturbance area.

On 13 July 2012, the approval was varied a fourth time. The original condition requiring a plan to be submitted to provide for the "long-term protection" of the non-disturbance area, was replaced entirely with a new condition that within two years of the date of the variation (so, by July this year, more than ten years after the mine was approved) "the person taking the action must register a legally binding conservation covenant over the Biodiversity Management Areas" identified in map, a long way from the mine. It stipulated that "The mechanism/s must provide enduring protection of

no less than 1586 ha of suitable habitat for *Anthochaera Phrygia* (regent honeyeater) and *Lathamus discolour* (swift parrot)." the new variation also required the proponent to submit an "offset Management Plan" for approval "within 12 months of the date of this variation."

In December 2013, the approval was varied a fifth time. This time, the original six conditions of the approval dealing with the environmental protection areas were deleted, as were the map and the definitions of non-disturbance area, which had specified that the areas that were not to be open-cut. Five months after the deadline had passed, this variation also extended the date by which the "Offset management plan" had to be submitted, which is now 13 April – nine days from when this submission is being made to the Committee.

It is our understanding, based on anecdotal evidence, that the 1800 hectare block now proposed as an offset for the biodiversity to be lost by this decision to allow mining in the non-disturbance area does not support the same kind of ecological communities as the Warkworth non-disturbance area, being of a different climate, soil type and elevation, with different fauna and flora assemblages, though the limited time available to us to complete this submission prevented us from collecting hard evidence of this.

Offset conditions that cannot be fulfilled

One of the major problems with offset conditions in recent years is that they are made without the necessary confidence that they can be fulfilled. Though many coal and gas companies arrive at the Environmental Impact Statement stage with properties already purchased that they intend to propose as offset areas, the Department of Environment in other cases proposes to coal and gas companies that they acquire and protect offsets without specific knowledge that any lands are available that can fulfil the requirement. This has been the case in the Galilee Basin, and as also the case with the notorious Maules Creek controversy which is still unresolved.

In the case of Maules Creek, the proponent of the mine did have properties that it was proposing to use as offsets, but the Department of Environment did not verify for itself the truth of the proponent's claims about the bushland on those properties, even after environmental groups raised doubts about the veracity of those claims. The Department is now, following a complaint from the community, conducting a criminal investigation into whether the proponent of the mine used false and misleading information to obtain its approval for this mine. Meanwhile, construction is underway and the clearing of the forest is imminent.

The Offsets Policy comes with an "Offset assessment guide" which the policy states "gives effect to [the Department's offset requirements] and provides a decision-making framework for the department to consider the appropriateness and adequacy of proposed offsets for listed threatened species and ecological communities." This tool was used to determine the offsets for the Maules Creek project.

In truth, it is not clear if it is possible at this stage for the proponent to fulfil the conditions of its approval, but this failure will not be tested until 544ha of a critically endangered ecological community is lost.

Case study: Maules Creek, Boggabri and the Leard State Forest

The Maules Creek project (2010/5566) was approved on 11 February 2013. The approval gave the proponent, Whitehaven Coal, legal authority to clear 544ha of the critically endangered ecological community White Box – Yellow Box – Blakeley's Red Gum Grassy Woodland and Derived Native Grassland (Grassy White box Woodland) and 1665ha of habitat for the regent honeyeater, swift parrot and greater long-eared bat. Conditions attached to the approval required the proponent to "register a legally binding conservation covenant" over offset areas comprising 9,334ha "of an equivalent or better quality habitat for the regent honeyeater, swift parrot and greater long-eared bat and 5,532ha of an "equivalent or better quality" Grassy White box Woodland, allowing for overlap of these two areas.

Immediately prior to signing this approval, the then-Environment Minister, and the Department of Environment were given a report by an independent ecologist querying the claim by the proponent that properties they had purchased to fulfil this requirement sustained the area of Grassy White box Woodland they claimed it did. The report included photo points which proved sites mapped by the proponent were not correct. Perhaps in response to this, the approval also included a condition requiring the proponent to "verify through independent review the quantity and condition class of White Box – Yellow Box – Blakeley's Red Gum Grassy Woodland and Derived Native Grassland" and the quantity of quality of habitat for the listed species, to submit details of all such verified offsets to the Minister for approval by 30 December 2013, and publish the findings on their website. If the review found the offset requirements set out in the conditions were not met, "then additional areas must be included in the offset area until all relevant criteria under these conditions are met." The mechanism by which these areas are to be protected "must provide protection for the offset areas in perpetuity and be registered within 5 years of the date of this approval" which will be well after the loss of the woodland takes place, if the project proceeds.

It worth noting that the National Recovery Plan for this ecological community says that, "Given the currently highly fragmented and degraded state of this ecological community, all areas of Box-Gum Grassy Woodland which meet the minimum condition criteria outlined in Section 3 should be considered critical to the survival of this ecological community."[10] The woodland present in Leard State Forest fits these criteria, and was described by the NSW Office of Environment and Heritage as having "irreplaceable, ecologically unique values, including the highest quality remnant patch of grassy woodland on the heavily-cleared Liverpool Plains."[11] Indeed, in the Department's own decision brief to the Minister, it admitted that the Offset assessment guide "indicates that there is a shortfall in offsetting the impact of Condition C Box Gum woodland where both a native understorey and an over-storey of eucalypts exist in conjunction (highest quality)" and that there was a shortfall in offsetting for "each of the woodland species".[12] Despite this, the decision brief prepared for the Minister said that "the offsets proposed by the proponent (summarised in the table of offsets at

[10] Department of Environment, Climate Change and Water NSW. 2010. National Recovery Plan for White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland.
[11] NSW Office of Environment and Heritage. 11 October 2011. Review of Publicly exhibited environmental assessment report for the Maules Creek project.
[12] Department of Sustainability, Environment, Water, Population and Communities. December 2012. EPBC Act Briefing Package, Attachment A File No 2012/11287 Appendix M.

Appendix M) meet the requirements of the EPB Act Environmental Offsets Policy (October 2012)"[13] There is nothing in the Offsets Policy that mentions "habitat critical to the survival of a species"

It seems to us impossible that the loss of something described as "irreplaceable" and "unique" could be offset at all, in the way the term is generally understood, but as we have seen with the Great Barrier Reef World Heritage Area, the Department of Environment has repeatedly failed to ask fundamental questions about the appropriateness of offsetting, preferring instead to mechanically assess and process the proposals put to it by the mining industry, and send these to the Minister for approval.

In a court challenge to the Federal approval of this project, the Northern Inland Council for the Environment submitted that the offset conditions would not be able to be fulfilled if Whitehaven could not obtain adequate offset areas as per the conditions, and that this affected the legality of the approval itself. Tellingly, the Federal Court judge found otherwise, saying "The offset conditions are not rendered uncertain by virtue of failing to identify what Aston Coal should do if adequate offset areas cannot be obtained. In that circumstance, the offset conditions will necessarily be breached … This could trigger a number of consequences, including the imposition of penalties as provided for by Division 2 of Part 9 of the EPBC Act. Most relevantly however, the powers of the Minister to vary, add to, or revoke the conditions, or revoke the entire approval of the project, would also be enlivened"[14]

There is no need under the terms of the approval, the court found, for the offset conditions to be satisfied prior to commencing approved clearing. There was also no need, clearly, for the Department of Environment to be satisfied that these conditions were capable of being fulfilled – that the properties already acquired supported the kind of woodland the proponent claimed, or that there was even 5,532ha of an "equivalent or better quality" Grassy White box Woodland in existence and available for the proponent to acquire and protect. The area of woodland they are required to secure is over 1% of the entire estimated remaining extent of the community across its large range from southern Queensland to northern Victoria. There is no evidence that the Department of Environment investigated whether the conditions could be met before recommending approval of this project, even after they had been alerted to discrepancies in the mapping provided by the proponent by independent ecologists.

No legal mechanism to deliver offset commitments

Environmental approvals that are given on the basis of offsetting arrangements routinely include requirements for offset areas to be protected "in perpetuity" under conservation covenants. The trouble with these requirements, however, is that the Department of Environment has not made specific requirements for the nature of the covenant, and has, in fact, approved the most damaging developments in areas covered by such covenants.

In the Planning and Assessment Commission hearing for the modification of the NSW consent for the Warkworth mine, a representative of Singleton Council made the observation that there is no mechanism available under NSW law for the in perpetuity protection of offset areas on private land.

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[13] Department of Sustainability, Environment, Water, Population and Communities. December 2012. EPBC Act Briefing Package, Attachment A. File No 2012/11287

[14] Federal Court of Australia. 20 December 2013. Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1419.

This is even more obviously the case for Federal offsets. The Federal Department of Environment must rely on state-based conservation covenants and instruments to provide security for offsets, or the state-based public land reserve estates. We are not aware of any offset conditions at the Federal level that specify the type of covenant that must be entered into to secure the offsets. The APLNG approval for their Curtis Island LNG terminal requires the proponent to "use its best endeavours to secure National Park status" for their offset property, but does not require it.

Case Study: China First and the Galilee Basin

The China First coal mine, also called the Galilee Coal Project (EPBC 2009/4737) was approved by the Federal Environment Minister in December 2013. This mine, and the others proposed adjacent to it, will substantially alter the character of the region and will collectively remove over 50,000ha of remnant vegetation in a region that is very poorly reserved. The China First project mine proposes to clear 4,017ha of the Bimblebox Nature Refuge, and a further 3,677ha of Bimblebox will be subject to subsidence, meaning a total area of 7,694ha will or could be affected by the mine. To "offset" the clearing approved by the Environment Department, the proponent of the mine, Waratah Coal, must "legally secure" 10,000ha of habitat for the Black-throated finch (southern) within two years of clearing the habitat on Bimblebox. The problem with this approval is that Bimblebox is already protected with the highest form of conservation covenant available on private land under Queensland law, and is an IUCN category VI reserve, part of the Australian National Reserve System.

In fact, Bimblebox contributes 10% of the total area of the National Reserve estate in the Desert Uplands bioregion, and the clearing approved at Bimblebox by the Department of Environment represents over 5% of the protected areas in the entire bioregion. If the Federal Department of Environment can approve clearing half of an NRS privately-owned reserve for a coal mine, it does not appear to us possible for Waratah Coal to "legally secure" the offsets required of them on private land, as the conditions of approval require. The only way to achieve higher security for the offsets than Bimblebox was supposed to provide, is to hand them over to the Government as a National Park, though this is not proposed by the Environment Department.

If the area of land that would be cleared or degraded by China First coal mine were to be removed from the National Reserve System, it would take the proportion of the bioregion represented in reserves down to less than 1%. There is only 75,114ha of land in the National Reserve System in the Desert Uplands bioregion, where China First and several other large coal mines are proposed, three of which are approved. Protected areas account for just over 1% of the area of the bioregion, and adjacent bioregions in Central Queensland are also under-reserved. Importantly, one fifth of the reserve estate in the bioregion, or 16,217ha, is in reserves classed as IUCN category VI, with Bimblebox being the biggest of these four reserves. Three of the four IUCN VI reserves in the Desert Uplands are currently threatened directly (Cudmore Resources Reserve and Bimblebox Nature Refuge) or indirectly going to be impacted (Doongmabulla Mound Springs) by coal mining proposals. In the *National Reserve System Strategy 2009-2030*, the target for achieving comprehensiveness in the reserve system notes that "Priority will be given to under-represented IBRA bioregions with less than 10 per cent protected in the National Reserve System." As a result of this mine, the area of protection in the Desert Uplands bioregion, which is among the highest priority areas, will actually

decline. There was no recognition of any of this by the Department of Environment in their approval and their offset conditions.

It is also worth noting that the three coal mining projects already approved for construction in the Galilee Basin all require large areas of offsets to be secured for the Black-throated finch (southern.) The Galilee Coal Project requires 10,000ha of Black-throated finch (southern) habitat to be protected. The Alpha coal mine (EPBC 2008/4648) approval states that eight times the area of clearing, or 57,232ha, of habitat for the Black-throated finch "must be found" to be protected. The Kevin's Corner (2009/5033) approval required the proponent to acquire 3170ha of Black-throated finch habitat in the "Galilee Basin region."

None of these approvals require the offsets to be in place prior to construction commencing. The China first approval requires them to be finalised within two years of the major construction works commencing. The Alpha approval requires a Biodiversity Offset Strategy be prepared which "must identify land within the Galilee Basin region that has been acquired by the proponent and will be managed for environmental gain and protected by a covenant until 2073" within three years of construction commencing. The assessment process for both mines failed to confirm the presence of Black-throated finches in the areas nominated, but not yet protected, as offsets.

Cumulative impacts on species and communities

We believe that the practise of approving offsets that are presented by the proponents of coal and gas projects is enabling the cumulative loss of biodiversity to the point where species and communities are at risk of extinction.

In the time available to us to prepare this submission, we were not able to comprehensively collect and analyse approvals for coal mines and gas projects that have contributed to a cumulative loss of species habitat and endangered ecological communities, but we believe this is a matter that requires the urgent attention of the Committee.

There are examples of species that have been disproportionately impacted by coal mine projects, where neither the proponents nor the Department are assessing the cumulative impact on these species, or taking into account the current deficit in habitat for these species and communities. Time and again, the same species have habitat removed for coal mines (Regent honeyeater, Swift parrot, black-throated finch, Squatter pigeon, Koala), the same communities are cleared for mines and gasfields (Grassy White box woodland, Semi-evergreen vine thicket, Brigalow) and the same species and communities are lost for export terminals and railways (migratory shorebirds, Green and Golden Bell frog, Australian painted snipe).

There is almost never any assessment, when considering these requests for approval, of the amount of habitat for that species or the extent of that community that has been approved for clearing for other developments in the same bioregion in the recent past. Even species with highly specialised habitat needs, like cave bats, migratory shorebirds and the Australian painted snipe, have their known habitat removed for coal and gas developments, without any confident knowledge that these species do or will utilise proposed offset areas, or what the threshold for extinction for them may be.

There is no cumulative counter of how much habitat for these heavily-impacted species is lost, but we have summarised the cumulative impact of ten coal mines in NSW just over the last three years on White Box – Yellow Box Blakeley's Red Gum Grassy Woodlands and Derived Native Grasslands and on the Regent honeyeater and Swift parrot. The Department of Environment has given or is expected to give, approval for over 4,000ha of clearing of this critically endangered ecological community for these mines, close to 1% of the total remaining extent (see Appendix). Each mine has offset proposals or conditions, some of which have been fulfilled as set out in the conditions of approval, but given the advice of the NSW Office of Environment and Heritage that all areas of good condition of this community are critical to its survival, it seems clear to us that the Department of Environment is progressively driving it toward extinction, and the Regent honeyeater and Swift parrot along with it. In each case, the practice of offsetting enables these decisions to be made with a patina of environmental credibility which disguises an abject failure to fulfil basic policies, commitments and principles.

Similar analysis could be done in Queensland for the Squatter pigeon, Black-throated finch (southerm) and Semi-evergreen vine thicket community.

Conclusion

In the time available to us to make this submission, we were only able to draw together case studies of bungled and abused environmental offsetting arrangements of which we were already aware. The cases that we have highlighted, however, cover a range of circumstances across more than a decade and took place in different regions in two states. We believe that further investigation by the Committee into the offsetting practises of the Federal Department of Environment will uncover further failures to adhere to the principles of offsetting, the spirit and objectives of the Environment Protection Biodiversity Conservation Act and the terms of the international conventions to which Australia is party. With regard to the specific instances raised in our case studies, we believe there are strong grounds for the Committee to recommend to the Minister that he suspend the approval of these projects, particularly those for which the damage they will cause is not yet done.

Appendix: NSW Coal projects harming the Regent honeyeater, Swift parrot and Grassy White box woodland approved or under consideration since 2011

Project	Status	Grassy White box	Regent honeyeater/Swift parrot habitat	Offset required
Bulga optimisation project 2012/6637	Still being assessed		507 to be cleared	NA
Cobbora coal mine 2011/6158	Still being assessed	28 ha to be cleared	1,196	NA
Mount Arthur extension EPBC 2011/5866	Approved 30 April 2012	693.8	362.7	707.7 ha of Grassy White box woodland and 738.7ha of habitat under conservation covenant within a year of the date of the approval. Subsequently amended more than a year later, to extend the deadline to 30 April 2014.
Boggabri extension 2009/5256	Approved 11 February 2013.	82	650	Legally binding covenant over 5866.1ha of 'equivalent or better' quality habitat for the birds and 1537.4 'equivalent or better' Grassy White box woodland.
Tarrawonga extension 2011/5923	Approved 11 March 2013.	13	279	1055 ha 'equivalent or better' quality habitat for the regent honeyeater 232ha 'equivalent or better' quality Grassy White box woodland
Rocglen coal mine extension EPBC 2010/5502	Approved 21 December 2011.	5.9	47.04 ha, including 15ha of their original offset area.	231 Regent honeyeater 153ha Grassy White box woodland. Now secured under Biobanking agreement.
Ravensworth Operations EPBC 2010/5389				1,231 hectares for the Regent Honeyeater and Swift Parrot. See longer story in submission
Mount Pleasant EPBC 2011/5795	Approved 29 February 2012	2,591 ha (572ha of which is wooded)		Within two years of approval, legally binding covenant over areas specified: 12,875 ha Grassy White box and 8475 ha Regent honeyeater and Swift parrot.
Maules Creek 2010/5566	Approved 11 February 2013.	544	1665	See longer story in submission.
Ulan mine EPBC 2009/5252	Approved 30 November 2010	69		See longer story in submission.
Total approved for clearing for coal mines since 2010.		**4,026**	**4,706.74**	