

28th November, 2005.

Senior Policy Officer,
Resource Management and Conservation Division
DPIWE
GPO Box 44,
Hobart TAS 7001

Dear Sir,

Re: OFFSETS POLICY DISCUSSION PAPER

Thank you for your invitation for FIAT to provide comment on the Offsets Policy Discussion Paper. We apologise for this late response and express our appreciation that our comments can still be provided and considered on this extremely important matter.

The Forest Industries Association of Tasmania (FIAT) is an industry association formed in 1983 to represent the interests of processors of Tasmanian forest products. Our members' activities are diverse and include the production of veneers, hardwood and softwood timber processing, pulp and paper, woodchip production and plantation and private forest management.

FIAT's 18 member businesses include all of the State's larger processors of forest products, including a significant proportion of the crown sawlog output, as well as all of the veneer produced in the State. FIAT Members' activities account for more than 75% of the gross value of production in the forest and wood products industry in Tasmania.

In the context of this submission FIAT members are directly or indirectly involved through the conduct of a broad range of forestry operations and are able to demonstrate many examples of voluntary protection on freehold land owned by our members.

Overview

FIAT generally are supportive of the conceptual underpinning of formulating an Offsets Policy and endorse much of the detail contained within the discussion paper. There are however a number of issues we seek to raise as part of this consultation process and these are dealt with later in our submission under each of the headings extracted from the original paper.

In broad terms we believe any steps taken that are designed to improve the openness and transparency of the decision making process in the sensitive and controversial area of environmental protection is worthy of support.

Our overarching view is that any such policy formulation must proceed against the fundamental tenet of the application of a triple bottom line approach. Such an approach must ensure proper and equal weight is provided to all three criteria – environmental, social and economic. The pursuit of any one of these tenets to the exclusion of the others will inevitably lead to perverse and often unintended outcomes and lead to further rancor within the community.

We also believe that a further overarching consideration must be that the promulgation of an Offsets Policy must not create any increase in the bureaucracy of current processes nor impose any additional burden on private sector landowners. We will comment further on this issue later in our submission.

In general FIAT endorses responsible, practical measures designed to protect the natural values of our State including those relating to biodiversity and geodiversity but these measures must be tempered by a proper consideration of Tasmania's need to generate investment for the creation of wealth and employment for the prosperity of the State as a whole. Pursuit of environmental protection outcomes to the detriment of investment potential could have a long term devastating effect on the States economic wellbeing.

We also believe that an offsets policy must not be applied in a manner that increases private landowners stewardship burden beyond a reasonable 'duty of care' threshold and in this context the Policy should consider offsetting potential on public land for private sector developments considered to be in the interests of the State.

Private landowners duty of care and compensation

FIAT strongly believe that any Government action that impinges on a private landowners capacity to manage their land in the most productive and profitable manner should not require the landowner to bear the burden of that increased stewardship beyond a reasonable 'duty of care' threshold without compensation being payable.

This issue has received much attention over recent years by both the Commonwealth Government and the Tasmanian Parliament wherein various statements of principle have been pronounced.

In the case of the Commonwealth Government the Productivity Commission inquiry into the "Impacts of Native Vegetation and Biodiversity Regulations" contained the following Recommendation:-

“Over and above agreed landholder responsibilities, additional conservation apparently demanded by society (for example, to achieve biodiversity, threatened species and greenhouse objectives), should be purchased from landholders where intervention is deemed cost-effective.”

In its response to this recommendation, the Commonwealth Government said: -

“The Australian Government agrees with these recommendations. It is important to build a shared understanding and agreement around the roles, rights and responsibilities for the delivery of natural resource management outcomes.

The Australian Government supports the principles that landholders, individually or as a group, should bear the costs of actions that directly contribute to sustainable resource use (including, for example, land and water quality) and hence, the long-term viability of agriculture and other land-based operations.

Over and above agreed landholder responsibilities, additional biodiversity conservation services sought by the community should generally be purchased from landholders, where intervention is deemed necessary and cost-effective. For example, purchase could be through providing transitional assistance payments where mandatory biodiversity conservation standards are changed, incentives for voluntary biodiversity management services, or purchase of specific biodiversity management services.

It is the Australian Government’s position that, prior to the removal of landholders’ rights, State and Territory governments must consult fully with landholders and any other interested parties and meet any legal requirements for direct compensation to property rights holders. This is a precondition before the Australian Government will consider adjustment assistance.”

In the case of Tasmania the Joint Standing Committee – Environment, Resources and Development conducted an enquiry into Conservation of Private Land in 2003 and made a number of broad findings pertinent to this issue viz:-

“The Committee recommends that: -

- 1. The Tasmanian Government establish a rolling or revolving fund for the purpose of funding the conservation of natural and cultural values on private land by means of purchase, covenant and re-sale of parcels of land identified as worthy of protection.*

The Tasmanian Government negotiate with the Commonwealth Government to secure matching funds for this rolling or revolving fund and tax deductibility for corporate and private donations to the fund.

- 2 *The Premier's Local Government Council investigate amending the Local Government Act 1993 to enable municipal councils to compensate private landowners for any financial losses resulting from actions of councils to protect natural and cultural values on private land."*

FIAT believe the thrust of these comments must be encapsulated in any policy position that impacts on private landowners by requiring them to adopt increased responsibilities for "public good" outcomes. The cost of this increased requirement must be borne by the community as a whole not by the individual landowners.

UNDERLYING PRINCIPLES

1. Certainty, Consistency, Predictability and Transparent Decision-making

FIAT suggest the addition of the words "simplicity and expeditious" to the title of this section.

2. Monitoring, Regulation and Compliance

Provided an offset is agreed by a proponent, FIAT see no problem with the use of an enforceable instrument as the means of recording an offset. We do not however agree to a blanket rejection of a subsequent impact in offset area, in fact we believe further offsetting should be considered to allow for full flexibility and best possible results eg vital infrastructure public or private where the currently stated blanket rejection is highly inflexible and could act to the detriment of the overall outcome in a performance based system.

Regular reporting is supported but this should adopt a principle of simplicity, minimal cost and minimal bureaucracy.

3. Information Requirements

FIAT agree to the approach of using the best available information for informing the decision making process however we do not agree that informing and/or updating data bases should not be permissible as an offset. Increased knowledge is a vital component in the management of natural resources and offsetting may provide a cost effective mechanism to achieve improved knowledge.

We say the cost of providing additional information should not fall on private land owners rather it is in the nature of a "public good" outcome and the cost should be borne by the community (refer House Select Committee on Environment Protection on Private Land).

Any cost incurred in providing baseline data should be considered against the overall value of the Development Application.

A mechanism must be incorporated to facilitate compensation where any application is rejected due to a lack of adequate offsets.

4. *Environmental Outcomes*

FIAT do not agree that offsets should be on an “equal or better” basis as set out in the discussion paper. Some use and/or impact on natural resources is inevitable in an industrialized society and especially one where economic growth and wealth creation are an important social imperative.

Almost inevitably the assessment of the adequateness of offsets in any particular case will require an element of subjectiveness and, given that, a “would be rejected” approach as stated by the discussion paper is unsatisfactory.

Any consideration of the adequateness of an offset should be against a set of objective criteria to the greatest extent possible with proper regard to the nature and purpose of the development and the extent of any net gain/loss in protection of natural values balanced by other relevant considerations including social and economic benefits.

5. *Managing Uncertainty and Risk Based Assessment*

The slavish adoption of the precautionary principle is strenuously opposed. We accept there is a need to incorporate a process to deal with applications made where there is less than perfect knowledge however the precautionary principle is biased too far in favour of conservation and as a consequence is insufficiently weighted to social and economic considerations. We propose therefore the adoption of far more balanced criteria that weights appropriately all relevant considerations.

ISSUES

1. *Application of the Policy*

FIAT endorse the preferred approach that offsets should be considered where **reasonable** options to avoid, minimize or remedy the impacts of a proposal have been pursued.

Care needs to be taken to ensure this policy does not become one of requiring a full accounting for all environmental impacts of every proposal. For example a proposal that poses a minor or minimal impact on natural values could be approved without a requirement for offsets if it contains other social or economic benefits.

It is unacceptable for a policy to result in such a blinkered or highly prescriptive approach such as “there would be cases where the proposal will be rejected” as stated in the discussion paper.

Any concept of requiring “zero impact” is not supported as it clearly is not premised on a triple bottom line accounting approach.

The IUCN example quoted may well be relevant in respect to very large resource projects but would not be overly appropriate for small projects by individual small private land owners eg a dam development on a farm. A facility must be incorporated to differentiate between such proposals.

The “Preferred Approach” is supported with the above mentioned cautionary notes.

We propose the word “would” appearing in the 3rd line be replaced by the word “may” to remove the mandated nature of the current expression. This would permit small incidental impacts without requiring a full accounting by way of offsetting.

2. *Types of Conservation Gains (“like for like or better” issue)*

In general FIAT support the inherent flexibility contained in the discussion paper under this heading.

The term “like for like or better” is a little troublesome given the interpretation that could be applied that it only connotes an overall approach of nil impact or positive environmental gains.

Some care will need to be exercised in formulating any policy settings utilizing these criteria.

3. *Magnitude of Offset*

The overall direction of this section of the discussion paper is of concern as it proceeds on an “accounting basis”. Conservation values are not so easily measured as to allow such a rigid approach and a more flexible mechanism ought to be considered. The mathematical calculation method would not be acceptable to FIAT and would provide a poor policy platform.

We would be supportive of the creation of a set of criteria that could be utilized as a guide however acceptance by industry will require that these criterion are not prescriptive or rigid in themselves or in their operational application.

We agree with the five identified areas where criteria should be considered but are concerned that they do not proceed on a triple bottom line assessment of any proposal. Tasmania is not so independently wealthy that it can easily reject proposals for economic development for the benefit of the whole community. The unidirectional approach embodied in the discussion paper places all weight on protection of natural values with no weight being applied to other equally important considerations. In many cases this might well support Tasmania Together goal 22 but

may well do so at the expense of a number of other goals and as such may well produce perverse outcomes.

The above comments mean we are unable to agree with the Preferred Approach on this aspect in the Discussion Paper as currently framed.

In particular we are concerned at:-

First dot point – the use of the terms “sum” and “account for” connote an arithmetic approach which is inappropriate and fails to recognize that some residual impact may be unavoidable or warranted. It also fails to recognize any other considerations that may be apposite.

Second dot point – the “as good or better than” criteria is not supported. For example it may be possible that a proposed offset site that is inferior due to previous impact could be rehabilitated as an offset but could not satisfy the “as good or better than” criteria. We believe a broader more flexible approach is needed to avoid perverse or inappropriate outcomes.

Third dot point - a facility to evaluate the existing extent of a value in non-affected areas needs to be incorporated or individual areas will become the dominant issue rather than a regional/whole of State or landscape approach that will provide for more balanced outcomes.

It is worth bearing in mind that the public benefit is achieved by a more balanced approach to an assessment process. For example the development of a tourism proposal within a National Park may well come at some expense in terms of conservation outcomes but the other benefits that may flow from such a development may outweigh those costs eg

- Increased tourism potential
- Economic benefits particularly in more isolated regional communities
- Social benefits including employment opportunity, stimulus of otherwise moribund communities
- Access to our natural wonders for those less able to walk into remote parks areas
- Etc

For this reason the concept of a higher ratio of offset for certain land tenures reservation status’ could well be problematic unless accompanied by a properly formulated analysis of non-conservation values.

We also believe that regard should also be had to the values/communities/species that have been recognized by the reservation status of a particular area and the prevalence of that value/community/species in other reserved areas.

4. *Offset Mechanisms*

We have considerable difficulty with this aspect of the Proposed Policy as on a first reading it appears, in part, to conflict with the Information Requirements discussion under Underlying Principles.

Our difficulty stems from the inclusions as potential offset mechanisms of “actions to improve knowledge of a conservation value, including its distribution and management requirements” whereas this appears to be precluded by the earlier provision. We believe such a facility ought to be included but are concerned at the potential internal inconsistency.

Again the prescriptive nature of some elements of this proposal are concerning especially the view that principles may be developed to ensure a “specific type of conservation gain is always achieved for a specific type or level of impact”. In our view there is no demonstrated need for such a prescriptive approach and a better outcome may be possible by a listing of offset mechanisms that could be considered in the context of any case.

In our view nothing is achieved through a highly prescriptive approach other than to limit flexibility, innovation and thereby possible best outcomes.

5. *Location of Offsets*

We favor the less prescriptive approach identified in the last sentence of the discussion under this item and therefore we agree, generally, with the preferred approach.

Care must be exercised to take appropriate account of an applicants capacity to influence outcomes away from the immediate area of a project. This will be exacerbated for smaller private landowners.

6. *Long-Term Nature of Offsets*

In most part the discussions within this section appear to be quite pragmatic and common sense. We would caution again however against the adoption of a prescriptive approach and also again highlight the potential for quite harsh and perverse outcomes for individual private landowners.

It might also be relevant to consider the cost implications for private landowners of the potentially extensive analysis and evaluations of the continual references to “assessments”, “reviewing”, “comparative analysis” etc. For this policy to achieve acceptability and provide a focus for a positive approach to offsets the policy must offer simplicity and a minimum of red tape and cost.

In respect to the preferred approach we note as follows:-

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| First dot point | There is no reason to specify that an offset should last for at least the duration of the impact. This is too prescriptive and does not allow for a flexible and balanced approach. Outcomes should include a facility to evaluate and nominate a duration. |
| Second dot point | The costs of all assessments, comparative analysis etc, should be borne by the Crown given it proceeds on a “common good” basis. |

7. *Past and Current Practices*

We do not agree with the approach adopted to this section. Offsets applied, whether philanthropic or required by an existing regulatory instrument such as the Duty of Care requirements of the Forest Practices Code, should be eligible to be counted as offsets. This is not “double counting” as suggested as the discussion paper applies within the confines of existing regulation. The proposed approach, if adopted, discriminates against proponents embraced by regulation that incorporate “duty of care” requirements over those not equally constrained by such a proposal.

We do not endorse the Preferred Approach for this reason and comment that the suggested approach is ill-conceived and severely detracts from the scheme of the policy as a whole that is purportedly to “avoid, minimize or remedy” an impact. The refusal to permit an offset imposed by a regulatory instrument does nothing to further this approach rather it is penal in nature.

Equally, measurement of the “degree of philanthropy” of an action, is crass and not in keeping with an outcomes based policy position as the motivation is immaterial, surely it is the results that are important.

8. *Fragmentation and Cumulative Impacts*

We are concerned that the impact if this section could be to increase the requirements progressively over time for proponents due to the cumulative impacts on a specific natural value. This is not a reasonable approach in our view.

Proper analysis from commencement should mean an equitable approach to all developers not an incrementally increasing onus.

In our view this section requires some revision to ensure this increasing severity is not incorporated.

9. Responsibility for the Identification of Offsets

This section appears to proceed upon a presumption that the significant cost and all of the requirements of an offsets policy should be borne by proponents for any particular project.

This presumption ignores a number of recent policy statements on the issue of costs associated with environmental protection measures on private land. These comments are incorporated into the overview of our comments.

It is for the overall benefit of the public that conservation measures are put in place and clearly the costs associated with those measures should in the main be borne by the public through representative government.

It is not inappropriate for a proponent to suggest potential offsets but detailed analysis etc should be borne by the Government.

10. Staged Developments

In our view an holistic approach at the commencement of a development would provide the best model with offsets wherever possible proceeding in a similarly staged manner as the project itself. That said each application will be characterized by its own idiosyncratic facts and a degree of flexibility should be retained to facilitate a proper outcomes based process.

We again thank you for the opportunity to make these comments and indicate our wish to be involved in the other stages of this process of consultation as outlined in your correspondence received on 28 September 2005.

Yours sincerely,

Terry Edwards
Chief Executive