[redacted] NV)

From: [redacted]
Sent: 05 May 2014 09:21
To: ENV CAD
Subject: FW: EBL comment on IEEP study 'Policy Options for an EU NNL Initiative'
Attachments: 7_Busting-the-offsetting-myths_Sept2013.pdf; Environment Bank Ltd comment on IEEP NNL Policy Options report.pdf

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From: [redacted]
Sent: Friday, May 02, 2014 4:45 PM
To: FALKENBERG Karl (ENV); BUCELLA Pia (ENV); [redacted]

Cc: [redacted]

Subject: EBL comment on IEEP study 'Policy Options for an EU NNL Initiative'
Importance: High

Dear Mr Falkenberg, Mrs Bucella, [redacted]

On behalf of The Environment Bank Ltd, I am pleased to send you, in the attached, our comment on the IEEP Report on *Policy Options for an EU No Net Loss Initiative*. Our comments focus on the report's analysis in relation to biodiversity offsetting. I also attach, for your information, our brief information sheet on 'Busting the Offsetting Myths.'

As you know, The Environment Bank Ltd has strong first-hand experience in implementing offsetting in England and our comment also draws on recent research I led (with [redacted] for the UK Government (as yet unpublished), looking at evidence from the US and Australia on the costs and benefits of offsetting for developers.

I take the liberty of copying this to [redacted] in the Cabinet of Commissioner Potocnik as I believe our views should be of substantial interest to them and to the Commissioner.

We do hope you will wish to take our comments in to account in formulating policy options for the No Net Loss Initiative. I would be happy to meet with you to elaborate further on any of these points if you would find that helpful.

Sincerely,

[redacted]

[redacted]

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A critique of the analysis of biodiversity offsetting options as presented in the report '*Policy options for an EU No Net Loss Initiative*'[1]

[redacted] Director Europe and Research[2]

This paper relates to the report 'Policy options for an EU No Net Loss Initiative' by IIEP, which was commissioned by the European Commission DG Environment. This paper represents the views of The Environment Bank Ltd on the analysis presented in the report with regard to biodiversity offsetting.

We believe the views contained in this paper, which are based on our first hand experience in implementing offsetting in England, and on recent research carried out for the UK Government on lessons learnt from the US and Australia,[3] provide important qualifiers to the IIEP report, and should be taken in to account in the consideration of policy options.

The Environment Bank Ltd welcomes the prominence afforded by the IIEP study to biodiversity offsetting as a key mechanism to deliver NNL. We fully support the view (Section 5.10 Offsetting, p.213 ff) that offsetting will be essential if the EU is to achieve NNL. We also agree that this requires a well-developed legal, governance and institutional framework (p.213). **We therefore support the recommendation (Section 7.2.4, p.308) that offsetting should be a mandatory requirement for all activities that have potential for significant detrimental impact on biodiversity or ecosystem services.**

The following comments respond to specific issues raised in the IEEP report:

1. The IEEP study gives insufficient attention to **the critical importance of, and value added by, creating an offsetting market using third-party providers** (although Table 5-30, p235, does specify some advantages of this approach). A recent study[4] for The UK Department for Environment, Food and Rural Affairs (Defra) has provided strong evidence from the US and Australia that third party offsetting is better for developers and better for nature than either 'in lieu fees' (i.e. trust fund administered

[1] Tucker, G., Allen, B., Conway, M., Dickie, I., Hart, K., Rayment, M., Schulp, C., van Teeffelen, A. (2013) *Policy Options for an EU No Net Loss Initiative.* Report to the European Commission. Institute for European Environmental Policy, London.

[redacted]

[3] Duke, G. and ten Kate, K. (2014) *Exploring lessons learned from biodiversity offsetting markets in other countries that could inform appraisal of options for delivering offsets in England.* Final Report to the UK Department for Environment, Food and Rural Affairs. Forest Trends, Washington, D.C. 84 pages.

[4] Duke, G. and ten Kate, K. (2014) *op cit.*

offsets) or direct (first party) offsetting (i.e. bespoke offsetting by the developer). Third party offsetting enables offsetting to 'go to scale' by delivering greater supply more rapidly, thereby facilitating (rather than blocking) development, enhancing competition among offset providers and reducing unit costs for developers, accelerating the creation and enhancement of habitats, and delivering greater aggregation of offsets and therefore more ecologically viable offset sites.

2. In presenting the various 'weaknesses' of offsetting (Section 5.10.2, p.215 ff), **the analysis fails to consider the baseline against which offsetting should be compared.** The reality is that, for most Member States and in most development contexts, the baseline is zero, or very limited, compensation for residual impacts. In this context, any offsetting will certainly deliver an improved outcome for nature. There has been a failure to date to require developers to mitigate and compensate for their impacts (especially where these occur outside protected areas) and the effect of this on biodiversity through attrition and fragmentation has been extensively documented.

3. While in principle we support the idea that offsetting should apply also to agriculture, forestry and fisheries activities (Section 7.2.4, p.308 last sentence), we believe that including these activities could delay or block progress on a regime to address built developments and extractive industries. Indeed, there is an argument to be made that offsetting is to some extent happening in relation to agriculture and forestry, at the policy and programming level, through cross-compliance and agri-environment schemes. **We would therefore urge that offsetting for agriculture, forestry and fisheries is addressed separately.**

4. **The four policy options presented (Section 5.10.5, p.238 ff) are helpful, but of these only Option 4 (Mandatory EU requirements to offset losses to all biodiversity and ecosystem services) will deliver NNL.** This is because the majority of development impacts on biodiversity are on (presently) non-scarce biodiversity and on non-priority ES and only Option 4 addresses these impacts. Option 2 (EU Framework with mandatory offsetting of residual impacts of EU funded development projects on scarce biodiversity and priority ecosystem services) captures only EU-funded projects, which are a small fraction of all development activity in the EU. And Option 3 (Mandatory requirements to offset significant losses of scarce biodiversity and priority ecosystem services) captures only impacts on scarce biodiversity and priority ES, which omits the much greater quantity of impacts on non-scarce biodiversity and on non-priority ES which, together probably do more cumulative damage to biodiversity and ES than impacts on scarce biodiversity and on priority ES. Option 1, which adopts a voluntary approach, would not effectively deliver large scale offsetting.

5. **We agree that the best approach at EU level would be something along the lines of a framework directive** (section 7.2.4, p.308), which gives MS freedom to determine the precise means of implementation.

This is because the offsetting regime will need to be tailored to national planning systems and to national ecological conditions.

6. **We agree that offsetting should be proportionate to the expected impacts.** A threshold should be set, below which offsetting is not required, to avoid imposing offsetting on very small developments, such as house extensions. An appropriate threshold might be 0.25 ha; in the UK, for example, this would engage with only 10% of all planning applications but catch 66% of the total housing market. We agree that streamlined and rapid procedures, similar to the Australian over-the-counter system, should be used for smaller and less significant impacts.

7. **The analysis gives considerable attention to the costs of offsetting, but without sufficient balancing attention to the economic benefits.** This may give the misleading impression that Option 4 would be damaging for growth and jobs. This is not the case, as has been shown by recent evidence gathered for the UK Government from the US and Australia.[5] For example, the analysis (Table 5-35, p.249) suggests that Option 4 would 'cost' developers €7.4 bn per year and would cost the public sector €800 m per year to administer. We agree that Option 4 might result in developers needing to pay in the region of €7.4 bn per year for offsets. However, this has to be put in context. First, this amount of **€7.4 bn represents a fraction of 1% of the total development value** (as stated in the table on p.249). Second, experience from the US and Australia shows that, if developers know up-front that they will be required to offset, they will work these costs in to their budget and, in most cases, pass the cost to the landowner selling land for development i.e. the cost for the offset, as with other deductibles, comes off the residual land value. Thus, **there is no impact on the developer's bottom line.** Third, offsetting (and in particular third party offsetting), offers **considerable financial gains to developers,** notably increased certainty and speed through the planning system, decreased risk, and transfer of long-term liabilities, but also in many cases other benefits including gain in net developable area, and reputational enhancement. Thus, **offsetting does not put a brake on development; rather, the evidence from the US suggests it brings forward c. $100 bn per year of development by an average of 5 months.** Not only does offsetting under such a framework represent economic improvement, it also contributes to rural economic growth; economically challenged rural areas should see disproportionally greater gains, which supports a number of other important rural policy initiatives.

8. The 'cost' of offsetting – which is actually and simply the proper internalisation by society of the costs of damaging the environment - ultimately falls on the landowner selling land for development. In this context, it is important to note that, in most cases, these landowners have already received a windfall gain in the value of their land as a result of it having been designated developable land. For example, in the UK in 2014 agricultural land is valued at £21,000 per hectare, but this value increases

[5] Duke, G. and ten Kate, K. (2014) *op. cit.*

to an average of £2 m per hectare if converted to development land. The 'cost' of the offset is a small fraction of this windfall gain.

9. **Furthermore, the €7.4 bn cost does not involve any net burden on the economy (or on jobs and growth). Rather the opposite, the €7.4 bn stimulates growth and jobs.** It pays for offsets, which stimulates a range of businesses involved in offset delivery, including landowners supplying offsets (for whom it provides secure long-term income), companies and NGOs involved in the creation and enhancement of habitats, and brokers. Many more jobs are created indirectly. Evidence from the US suggests that **every $1 m invested in ecological restoration creates 7-40 jobs, mainly in rural areas (which would support EU regional policy).** Moreover, ecological restoration is a rapid growth industry worldwide and by creating expertise in this industry, the EU will be increasing its ability to generate income from the export of services, for example linked to the delivery of REDD+, contributing to the EU balance of payments.
10. **Any public (administrative) costs can be recouped through the offset price,** as is done in many US states.
11. **It would be a grave error to focus only on habitats and species of community interest, and delay the introduction of offsetting for significant impacts on <u>all</u> other biodiversity components.** This would result in the continuing and highly damaging decline of 'common' biodiversity and ecosystem services in the wider countryside for many more years. Ecological restoration in the wider countryside would therefore cost considerably more than if we addressed the restoration needs, paid for by offsetting, now.
12. Finally, we do not agree with the suggestion that impacts on 'individually distinct and significant' biodiversity and ES should be delivered through Trust Administered Conservation Credits (Table 7-1, p.309). **The experience in the US is that private sector third party offsets are preferable to in lieu fees (in terms of cost-efficiency and in terms of ecological outcomes) and indeed this preference is now enshrined in US law.** [6]

[6] Duke, G. and ten Kate, K. (2014) *op cit.*

Biodiversity Offsetting Information sheet 7

September 2013

the Environment Bank

BIODIVERSITY OFFSETTING—BUSTING THE OFFSETTING MYTHS

The recent launch of a Government Green Paper on biodiversity offsetting attracted some negative coverage in the press – superficial reporting of the issue threatens to stifle an opportunity to turn the 'lose-lose' of our current planning system into 'win-win'.

First - the issue. Generally, the current planning system copes with the environment either by ignoring it or, where that's impossible, then by setting up an adversarial process that pits developers against conservationists. Lengthy battles are waged, at great time and expense to everyone, with ultimately a winner and loser. Usually, it's the environment that loses (albeit at a financial cost to the developer), and that's one of the reasons why our wildlife is seriously declining. But 'development vs. environment' is a false, as well as a damaging, dichotomy. We need development, and we should instead be asking the question "how do we make sure it's sustainable?"

Biodiversity offsetting is simply a tool for planners – no more and no less. It allows society to accurately quantify any environmental impact in one place, account for it, compensate for it financially, and use the money to bring back to glory wildlife habitats somewhere else (usually very close to the impact site). In return for making sure that there is a net gain in wildlife the developer gets his planning permission quickly and effectively – and this is what developers want from the system.

This simple tool, based on Government-agreed metrics that calculate both loss and gain of biodiversity, turns the existing lose-lose into a win-win. It is not 'anti-environment' nor is it 'anti-development' – it works for both, it delivers sustainable development, development that produces the economic recovery the country needs whilst at the same time the environmental recovery that is, in the long term, every bit as vital.

Myths about offsetting

- "Offsetting undermines existing environmental protection" – no it doesn't, it's simply a tool for planners to use when they are calculating environmental impact. It's a safety-net to increases environmental protection, not diminish it.

- "Offsetting is a 'licence to trash'" – no it isn't, the fundamental principle behind offsetting is that developers must first avoid impact, then minimise any impact on site, and *only then* compensate for it off-site. Offsetting is a last resort, not the first option - but it is a very important last resort, because it gives developers more options to make sure that what they do is sustainable.

- "Offsetting is a tax on developers" – no it isn't, it actually saves developers money because it speeds everything up, and treats environmental impact in a transparent, measured and non-confrontational way. Developers that respect the environment will be rewarded by getting efficient and transparent decisions.

- "Offsetting is going to cost developers (and house-buyers) money" – no it's not. Not only does it save time and money on process, but any extra costs for restoring wildlife will come from the net land value. In this country farmland is worth £8,000 per acre, whilst development land with permission is worth up to £800,000 per acre[1]. As developers recognise that they are going to have to put, for instance, £50,000 per acre into the offsetting wildlife scheme, then they will deduct this from the price and the cost of land with permission will drop slightly to £750,000 per acre – an uplift still of over 90 times the arable value. Offsetting is a mechanism for 'externalising' the costs of society's environmental footprint. Our ongoing failure to do this is what is driving wildlife loss – it's not 'valued'.

- "Offsetting will just encourage developers to destroy green sites" – no, exactly the opposite is true. Once the 'wildlife value' of sites has some financial meaning, then developers will look for sites with the least wildlife value, because they'll be the cheapest to develop. Good wildlife sites will have the development market working *for* them, not against them. At the moment many sites with some conservation value are developed without appropriate mitigation precisely because they have no external 'value' - offsetting enables these impacts to be measured, captured and accounted for so that not only no net loss, but net gain, can be achieved in the wider countryside.

- "You can't value wildlife, it's immoral" – language is a problem here. Offsetting *doesn't* seek to put a financial price on 'value' – the 'value' of site is very personal to an individual and those value judgements will continue to be fought through the planning system; but offsetting does ascribe a *'cost'* i.e. if you were to damage this, this is how much it would cost to restore that damage elsewhere

- "Offsetting is going to be costly and expensive to run" – well, there are costs in the system, but elsewhere in the world (where offsetting has been successfully working for decades) the work is mainly done by independent brokers whose costs are covered by adding a percentage to the developers bill when they get their planning permission. And, don't forget, overall developers will save money.

- "You can't offset loss of habitat by replacing it hundreds of miles away" – the decision on where to offset is made by local planning authorities – there is no rule on how many miles away the offset must be, but early experience in England suggests offsetting will be done on a very local basis.

- "You can't offset all habitats, some habitats are irreplaceable" – everyone agrees, and all the offsetting rules ensure that this doesn't happen.

- "Offsetting just creates another industry" – well this is true, but the industry it creates is one of wildlife restoration projects across the country, which is badly needed! At the moment, nature conservation in this country is largely a charitable exercise, or imposed upon farmers as conditions for receiving taxpayers money. There are great examples of both but, as a whole, it's not working – as evidenced by the numerous reports detailing widespread loss and decline of our wildlife. If we are going to reverse this decline we need to do something differently, and soon. Offsetting will potentially pay for any land managers - farmers, landowners, charities – who want to do long-term land management to restore and create our native habitats and wildlife, and will cover the costs of them doing so.

If it works well, biodiversity offsetting will not only encourage economic recovery but will also generate hundreds of millions of pounds a year for wildlife conservation at no net increased costs to developers. The Government proposals for offsetting set out in Defra's Green Paper deserve rather more careful and serious consideration than they are currently receiving.

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