



BIODIVERSITY OFFSETS: LESSONS LEARNT FROM POLICY AND PRACTICE

THE GOOD, THE BAD AND THE UGLY

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1. INTRODUCTION

Biodiversity offsets have received a lot of attention in recent years from governments, businesses, financing institutions, consultants, conservation groups and academics. Companies are increasingly stating commitments to No Net Loss (NNL) or Net Positive Impact (NPI) and national offset frameworks and policies are emerging around the world. International guidance on best practice has been developed and there is a growing body of scientific research. However, it is widely recognised that offset implementation faces a host of technical and implementation challenges.

The questions surrounding the design and implementation of offsets are many and varied: How are they practically implemented on the ground? How big does an offset need to be? Who is responsible for the offset over the short, medium and long term? What about the people living in and around a development project and/or offset site? Who will benefit and who will lose out? Who decides? What does perpetuity mean? How can offsets work alongside other conservation strategies? Can offsets really deliver benefits for biodiversity or are they just a licence to trash? And so it goes on.

Recognising that there are many unanswered questions and lots more to be explored, Fauna & Flora International (FFI) supported by the Arcus Foundation undertook an assessment of biodiversity offset policy and practice around the world and organised a Biodiversity Offsets Learning Event to share these lessons and explore what is and what is not working when it comes to implementing biodiversity offsets on the ground.

Through FFI's assessment of offset policy and practice, we have searched for examples of offset good practice and examined whether offsets are being implemented to achieve measurable positive outcomes for biodiversity. Where offsets have failed to deliver gains or even to materialise at all, we explored the lessons from these case studies that could help others to avoid common pitfalls.

We have come across no single case study or scheme that demonstrates good practice in its entirety - from design through to implementation. In some cases the projects are simply at too early a stage, and good design has not yet been tested through implementation. Where projects have had mixed success or display both good and poor practice, project proponents have been reluctant to discuss the details in public.

To overcome this and ensure that learning generated through offset design and implementation is being shared to advance and improve offset effectiveness in the future, FFI developed three hypothetical case studies. These case studies draw on real experience and are therefore an amalgamation of examples from around the world.

Within each of these hypothetical case studies we examine four key facets of the offsetting scenario: 1) the governance in place, 2) the planning that was undertaken, 3) how the project was implemented and 4) what happened with regard to follow-up. The three case studies reflect a distillation of the good, the bad and the ugly of offsets.

2. BIODIVERSITY OFFSETTING CASE STUDY - THE GOOD

During the planning of a mine extension, internal processes identified that the mine would have to clear habitat that is crucial for a critically endangered species.

2.1 Governance

The country has an offsetting policy that is supported by tools and guidance documents to help regulators assess the suitability of offsets and to help proponents calculate losses and gains from their impacts and offset plans.

The company has its own restoration department, which functions independently, rather than being a small part of a bigger planning department. This means that it is directly managed within the operational structure – and that the CEO has Key Performance Indicators linked to restoration.

The country itself has a good level of expertise on offsetting through academic institutions, private entities as well as the government departments themselves. The government department responsible for the application of the offsets policy is easily contacted for questions and discussions on offsets.

2.2 Planning

Planning is made easier because the company can readily access publicly available, site relevant, biodiversity data including information on species populations and distribution, habitat types, habitat condition, species movements and threats, as well as a host of other ecological parameters.

The availability of data enables the offset design to be developed concurrently with the Environmental and Social Impact Assessment (ESIA). This allows time, and provides an incentive, to undertake an alternatives analysis that considers every available opportunity to modify extraction methods in order to maximise avoidance and minimise the physical footprint. Reducing the footprint leads to a reduction in the company's offsetting requirements.

The offset plan was developed by experts, with oversight from a steering group that comprised local stakeholders as well as international experts. The steering group engaged with and oversaw the development and implementation of the biodiversity offset.

With direction from the steering group the offset was designed using a landscape level approach. It was planned to align with other strategic environmental and social objectives including ecological corridor plans and health plans, and also considered the potential long-term impacts of climate change.

Throughout this process the company undertook regular consultation with local stakeholders.

2.3 Implementation

Using the tools and the steering group's oversight the company identified an offset scheme that could compensate for residual impacts prior to any impact occurring, avoiding any time lags in compensation.

The company was legally obliged to pay into a trust fund that was ring-fenced for the landowner responsible for managing the land for offsets. The money is therefore safe and secure and being used transparently.

The area designated as an offset now has permanent protected status through a conservation covenant. If the landowner sells the land the covenant remains with the land title - an example of offsetting in perpetuity.

2.4 Follow-up

The landowner is contractually obliged to provide an annual report related to the biodiversity aims of the offset. The offset funds are distributed to the landowner on receipt of this report, which ensures that management interventions are being made.

To enable it to cover the costs of monitoring and follow-up, the company's offset fee also includes a monitoring and follow-up fee, which allows for opportunities for adaptive management in the long term.

3. BIODIVERSITY OFFSETTING CASE STUDY - THE BAD

A mining company has been told that it will have an impact on a type of habitat that supports an endangered and wide-ranging species.

3.1 Governance

The country where the company operates does not include environmental offsets in its legislation or regulations. There is mention of the mitigation hierarchy, namely to avoid, minimise, restore and offset, but it is in non-statutory policy and not enforceable. It does not strongly support the 'no project' alternatives analysis.

The government department responsible for granting mining licences has responsibility for reviewing the Environmental Impact Assessment (EIA). It has no technical specialists in house to develop the Terms of Reference for the EIA or review it with adequate consideration of biodiversity, sustainability and ecosystem services.

It has identified that some form of compensation is required, but due to lack of capacity the licensing arrangements for compensation were poorly drafted and were not understood by the company.

3.2 Planning

There are two options for funding an offset – paying into a government-led offset fund or developing and managing your own offset.

The company considered the government fund to be too expensive and there was no clarity regarding what the offset fund would be used to do.

Subsequently the company decided to develop an offset on its own. The process of offset design was lengthy and involved negotiations with stakeholders and landowners, but with very little involvement from experts. The result was a plan that was based on the wishes of the most outspoken people, rather than on real science.

The design of the offset also took into account the company's proposals for restoration, which, if successful, would lead to a smaller residual impact and therefore a smaller offset requirement.

The absence of any regional planning to guide offsets into more suitable areas, and a lack of investment in landscape offset scoping on the part of the company, meant that the areas designated for offsetting, though admittedly good quality habitat under threat from background degradation, are isolated pockets with no connectivity to the main range of the species in question.

Funding arrangements for managing these sites to achieve conservation gains were agreed with the landowners, but no contract was ever drawn up.

3.3 Implementation

Due to the negotiations around the offsets, implementation was a long drawn-out process. This meant that there was no line of sight throughout the whole project, and no continuity of experts.

Meanwhile the restoration trials at the site failed to establish appropriate habitat, meaning that the offset design was not adequate to compensate for the residual losses.

3.4 Follow-up

Due to the fact that the landowners were not bound by a legal contract, they were under no obligation to continue implementation of the offset.

There was no planning regarding the long-term security of the sites, no investigation into the longer-term land management options for the site and no consideration of community land uses in the region. The failure to identify other land users and land uses in the region proved to be a major oversight, particularly as it has since come to light that some of the offset sites are under a mining concession.

Additionally, no funding was set aside for monitoring the offset, so that no one knows whether the offsets are actually delivering any of the benefits required to compensate for the original impacts.

In any event, the fact that all the offset sites are isolated patches renders the monitoring issue irrelevant. Even if land management was improving or protecting the habitat, it is unlikely that the offset sites would provide the correct conditions to accommodate the needs of such a wide-ranging species.

4. BIODIVERSITY OFFSETTING CASE STUDY - THE UGLY

An infrastructure project was looking to develop within an area important for biodiversity due to its high levels of endemism – in other words it harbours numerous species that are found nowhere else.

4.1 Governance

There is a national offsets policy within the country where the company is operating, which requires offsets to be implemented before or during the impact arising from a development.

However, there is little to no local governance surrounding the development of offsets because the push for development is so big. The inclusion of licensing conditions related to offsets is rare, and offsets are regularly subject to ministerial discretion. Subsequently, there is a lack of transparency and consistency.

There is limited public consultation and stakeholder engagement in any ESIA processes, owing to weaknesses on the side of the regulator and the proponent.

4.2 Planning

During the planning of the infrastructure development, international specialists contested the project because of the sensitivity of the site.

Given the push for development, the 'no-go' option is never seriously considered. However, the company was aware of the reputational risks surrounding the development and therefore engaged in negotiations through the involvement of a steering group.

The company decided that the best way to resolve the controversy was to offer compensation, in the form of a biodiversity offset, to mitigate the assumed residual impact. This improved the company's position with the international specialists.

The company provided high-level and theoretical plans to the government, who approved these and granted a licence to operate.

The company also managed to negotiate a payment of annual management fees for the offset, which would be linked to the successful phases and profitability of the development project. This is a risky and non-committal approach to offsetting.

Throughout this entire process there was minimal local stakeholder engagement.

4.3 Implementation

Ultimately, the company was unable to secure suitable offset sites, and the conditions of the licence to operate were therefore changed. At no point were the public or steering group stakeholders able to scrutinise the changes that were made.

Additionally, during the implementation of the offset the company faced a downturn in the market and the development phases that were linked to the offset payments never materialised. But the impacts did.

4.4 Follow-up

Due to the fact that the licensing conditions relating to offsets were based on high-level plans, monitoring or accountability mechanisms were never mentioned. Consequently, no monitoring of implementation, process or outcomes took place, nor was there any verification of whether any biodiversity gains at all were made at the offset site.

5. CONCLUSION

Real biodiversity offset case studies that are both succinct and comprehensive, and which demonstrate offset practice from planning through implementation, were not readily available. This is in part due to the relative infancy of offsetting in many countries, such that many offset projects are still in the planning phase. However, it also reflects a reluctance on the part of project proponents to share case studies publicly, warts and all.

Project lessons are much more valuable when the specifics about the projects – how and why one activity has worked and why another activity might not have worked – are made available. The current state of offsetting could be vastly improved if there was greater transparency in placing case studies in the public domain, and if everyone was more willing to share their experiences, challenges and failures as well as the successes.

The case studies presented in this report are distillations of the good, the bad and the ugly in biodiversity offsetting. In reality, there are instances of good and bad practice in most projects, but the number of positive examples is growing. The challenge now is to start building on these models of good practice and finding solutions for the bad, so that offsets can work for biodiversity, and for the people who depend on that biodiversity and the services it provides.

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This document is one of a series of outputs from FFI's assessment of biodiversity offset policy and practice.

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