https://consult.dcceew.gov.au/natl-environmental-standards-mnes
30 January 2025

AUSTRALIAN ALUMINIUM COUNCIL LTD
info@aluminium.org.au

Dear Minister;

Re: National Environmental Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets

The Australian Aluminium Council (the Council) represents Australia's bauxite mining, alumina refining, aluminium smelting and downstream processing industries. The Council and its members have been actively engaged in consultation on reforms to the *Environment Protection and Biodiversity Conservation (EPBC) Act,* as part of a broader suite of policy reforms needed to support the ongoing operation of Australia's vertically integrated aluminium industry, including securing existing facilities and enabling future investment. The National Environmental Standards (NES) must deliver on their stated objectives in order to effectively support the operation of the reformed EPBC Act framework.

Australia's historic advantage in the aluminium industry stemmed principally from its substantial high quality bauxite reserves. The ongoing success of the industry requires an integrated and coordinated policy framework, including regulatory settings that support continued access to bauxite resources and provide timely approvals consistent with the requirements of the energy transition. The industry directly employs more than 21,000 people, including 6,600 full-time equivalent contractors. It also indirectly supports a further 55,000 families, predominantly in regional Australia. The integrated industry contributes around $18 billion to Australia's Gross Domestic Product.

The Council welcomes the opportunity to make a submission on the draft NES currently open for consideration, namely MNES and Environmental Offsets. In developing these standards, it is important that they provide clear, practical requirements that deliver measurable improvements in environmental outcomes. The NES should reflect the best available information from industry experience, research and collaborative approaches, while also recognising the internationally competitive environment in which Australian industry operates. While the Council appreciates the early release of these draft standards, the consultation periods must reflect the complexity of the content and the need for a more iterative and consultative approach in their development. Updates to the NES must also reflect changes made during the passage of the legislation.

The Council's submission focuses on constructive feedback which is specific to the bauxite mining and integrated aluminium industry. Globally, most bauxite is sourced from surface mines in tropical and sub-tropical regions, where deposits typically occur in extensive, relatively thin near-surface layers beneath a small depth of overburden. Because bauxite deposits often cover a very large area, bauxite mining involves disturbance of comparatively large land areas compared to the mining of other minerals, though for a shorter time and therefore well suited to progressive rehabilitation. Australian bauxite deposits have high grades and are shallow and relatively easy to mine. While maintaining high environmental, social and governance standards is essential, it is also important to recognise that global demand for bauxite and aluminium will continue to be met from alternative jurisdictions at an arguably lower environmental standard, if supply is not available from Australia.

The Council requests a meeting to discuss how the issues raised in this submission, specific to aluminium and bauxite operations, can be resolved in parallel with the redrafting needed to reflect the changes made during the passage of the legislation.

Kind regards,

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Overarching Key Issues

State & Territory Accreditation

Accreditation of state and territory processes is a key priority for business, with the Standards acting as a critical enabler. States and territories should have priority input to ensure the Standards are drafted in a manner that facilitates accreditation to occur efficiently and expeditiously. The final NES must support consistency with existing state and territory approval and regulatory processes.

Science Based

Both NES require a high degree of certainty to demonstrate the promotion of 'diversity' and 'abundance' of protected matters or the delivery of measurable improvements. However, for many MNES species there is substantial scientific uncertainty, and a high degree of confidence may not always be achievable.

Adaptive management of critical and supporting habitat, based on evolving knowledge and the best available science, should be explicitly encouraged. Expectations of proponents in relation to data quantity, data quality and NES should be sufficiently flexible to enable innovation, trials of new offset approaches, and the application of adaptive management to improve outcomes over time.

MNES Key Issues

Practicality

The MNES principles should be drafted with appropriate reference to "reasonably practicable" tests, rather than relying on absolute requirements. Obligations for proponents and project scale assessments must be reasonable, achievable and practicable, and should support an outcomes-based rather than prescriptive regulatory approach.

Principle 1. Mitigation Hierarchy and Progressive Rehabilitation

The application of the mitigation hierarchy should appropriately consider, rather than exclude, rehabilitation and be compatible with existing state and territory mitigation hierarchy frameworks. The required level of avoidance and mitigation remains unclear, particularly in relation to the unacceptable impact threshold for overall project acceptability.

The draft NES explicitly states that rehabilitation activities 'at the conclusion of an action' are not considered repair. The NES should explicitly recognise progressive rehabilitation as a function of repair and incentivise progressive rehabilitation so that rehabilitation is not deferred until closure. This is particularly relevant for bauxite mining, where shallow surface mining occurs over large areas and land can be progressively rehabilitated as ore is extracted to reduce residual significant impacts.

The NES as drafted excludes progressive rehabilitation from the mitigation hierarchy which disincentivises early rehabilitation and risks poorer environmental outcomes. As a defining feature of bauxite mining, progressive rehabilitation occurs higher in the mitigation hierarchy and materially reduces residual impacts through addressing scale, duration and timing of impact, yet the current drafting appears to treat rehabilitation as a post-impact activity rather than a continuous mitigation measure. This approach risks overestimating residual impacts and inflating offset requirements. As such, the NES should explicitly recognise progressive rehabilitation.

The NES should incentivise proponents to advance rehabilitation, remediation and offsets in ways that deliver improved outcomes for MNES. As currently drafted, the NES create barriers to effective remediation and restoration by including principles that are difficult to achieve in practice and are not always scientifically meaningful or robust.

Principle 4. Socio Economic Considerations

The NES should balance and appropriately integrate environmental outcomes with safety, community wellbeing, regional economic stability and cultural considerations. Ecologically Sustainable Development (ESD) factors are currently understated and should be embedded within the Principles and the application of the mitigation hierarchy.

The MNES NES also intersect with cultural heritage obligations, state and Commonwealth cultural heritage legislation, and emerging regional planning frameworks. Without clear alignment, there is a risk of duplication or contradiction, creating unnecessary complexity and uncertainty for long-life bauxite operations. Alignment across these frameworks is essential to avoid regulatory inefficiency.

First Nations Standard Alignment

While the First Nations NES is still under development, it will be important to consider Traditional Owner values, expectations and future aspirations, and how these interact with MNES requirements. Some bauxite operations operate under Indigenous Land Use Agreements (ILUAs) that provide for the relinquishment of land back to the state or the advancement of outcomes relevant to the Traditional Owner group once mining concludes. The application of the MNES Standard must allow flexibility in future land use and restoration requirements, aligned with ILUA terms and evolving Traditional Owner aspirations.

Offsets Key Issues

Completeness

The Offsets NES will operate alongside other new tools, including an offsets calculator to establish net gain requirements and a new offsets fund. These tools should be developed and consulted on concurrently. Without visibility of how the NES interacts with the calculator and fund, stakeholders cannot fully evaluate its impact or operability.

Principle 2. Offset Timing and Security

While feasibility of offsets is important, there should be clear guidance that offsets are not required to be in place prior to project approval. Further, additional guidance to ensure relevant mechanisms can be used to achieve the intent of securing the offset will avoid narrow interpretation as to what constitutes an offset. To reflect scientific uncertainty for some protected matters, the requirement for a "high degree of certainty" should be replaced with a "reasonable expectation of certainty." Flexibility should also be provided for example where formal expert endorsement is not practical and where site based data and knowledge is advanced beyond that in the public domain.

Commencing land-based offsets prior to impact is challenging and may deter investment, given typical project development and implementation timeframes. This approach risks approval delays and investment uncertainty, forcing proponents to either delay impacts until offsets commence or undertake offsets prior to approval, creating substantial risk to investment.

The requirement to maintain offsets for 25 or 100 years does not appear to be scientifically based nor practically achievable in circumstances where offset land must be relinquished following mine closure. Maintenance periods should be practical, science-based, and conclude once the significant impact has been demonstrably offset.

Given the commercial and financial realities of staged resource developments, upfront offset or restoration payments of the entire amount can be prohibitive. The Offsets NES should explicitly enable staged or progressive offset delivery in advance of when residual significant impacts are reasonably expected to occur, with staged financial contributions aligned to the timing of impacts and supported by appropriate financial security mechanisms.

Principle 4. Net Gain

Net gain, or measurable improvement, should be assessed at the project level rather than at the level of individual protected matters, while retaining a no-net-loss requirement for each matter. Where applicable, net gain should be assessed against a dynamic baseline rather than a fixed point in time.

At present, environmental baselines, improvement requirements and measurement methodologies remain unclear and largely untested. For species that naturally occur at low densities, establishing a meaningful baseline or demonstrating measurable improvement may be impractical due to biological constraints and external pressures. Accordingly, the NES should prioritise measurable improvements in appropriate and fit-for-purpose metrics such as habitat condition, which are more directly within the control of proponents. Where species population metrics

are not meaningful, particularly for those MNES where scientific knowledge is low, the use of surrogate indicators should be explicitly permitted.

Baselines for offsets (including advanced offsets) should be established at the completion of baseline surveys and monitoring, rather than at the point of approval. Baseline setting should consider the expected condition of the habitat in the absence of the action, taking into account natural change, climate change impacts, existing threats and land-use trends. To support this approach, a new definition of "baseline trajectory" should be introduced, defined as the expected condition of the protected matter's habitat if the action does not proceed.

It is critical that the baseline trajectory, once defined, is fixed and protected from retrospective reinterpretation, resetting or expansion over time. Protecting baseline integrity is essential to avoid retrospective changes to offset obligations and should be explicitly addressed in the Draft Offsets NES.

Without clear thresholds and practical guidance, current definitions risk inadvertently excluding large areas of Australia where MNES values occur across extensive, continuous landscapes. In the absence of such guidance, decisions may default to a precautionary interpretation that treats any interaction with MNES as unacceptable, even where impacts are shallow, temporary and reversible through progressive rehabilitation. Clear thresholds and appropriate guidance are therefore required to avoid unintended consequences for long-life bauxite operations.

Principle 5. Additionality of State Requirements

The NES should clearly state that there is no additionality requirement for offset payments made to accredited state or territory funds for the same residual impact or for voluntary conservation actions for the same protected matter. Additionality provisions should not unintentionally exclude advanced offsets or voluntary conservation actions.

Principle 6. Like for Like Offsets and Principle 7. Relevant Area

Decision makers should be provided with flexibility to approve "like-for-similar" outcomes where strict like-for-like offsets are not feasible. Strict like-for-like requirements are not reasonably practicable across much of Australia due to complex land tenure arrangements, uneven habitat distribution, and the scale and variability of bioregions.

While it is recognised that an *offset activity can deviate from the like-for-like requirement where a conservation planning document, bioregional guidance plan, or bioregional plan identifies a higher conservation priority for the affected protected matter*; these documents may not allow for adaptive management. Adaptive management should be encouraged to support delivery of a net gain for the affected protected matter based on evolving knowledge and best available science, even in the absence of bioregional and conservation planning documents.

The NES should also recognise that restoration contributions may not meet strict like-for-like principles where alternative restoration actions are selected by the contribution's holder.

Where appropriate, like-for-similar outcomes should be prioritised, particularly where restoration to the same specific attribute, scale or ecological complexity is not possible but comparable outcomes can be achieved for the MNES. This flexibility is critical to enabling adaptive management and prioritising ecological outcomes that support an overall net gain. This approach could be preferred in cases where there is opportunity to expand and / or increase ecotone diversity by offsetting like-for-similar areas external to the existing National and State / Territory reserve systems, as opposed to offsetting small and non-contiguous ecotones which may arise through a strictly enforced like-for-like requirement.

Requirements should be amended to allow offsets outside the immediate bioregion where superior outcomes for the protected matter can be demonstrated. This would presumably also be of benefit to the restoration contributions holder where a restoration contribution option is taken.