

Planning and Development Initial Offsets Policy 2015 (No 1)*

Notifiable instrument NI2015–178

made under the

Planning and Development Act 2007, s 111F (Initial offsets policy)

1 Name of instrument

This instrument is the *Planning and Development Initial Offsets Policy 2015 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Initial Offsets Policy

I make the initial offsets policy as set out in the schedule.

Simon Corbell
Minister for the Environment
13 April 2015

*Name amended under Legislation Act, s 60

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



ACT
Government

Environment and Planning

ACT Environmental Offsets Policy



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1. PURPOSE

The ACT Environmental Offsets Policy (the Policy) outlines the ACT Government's approach to the use of environmental offsets ('offsets') for matters of national environmental significance (matters of NES) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and for ACT protected matters. The Policy has been developed to be consistent with the *EPBC Act Environmental Offsets Policy*¹ and to facilitate Commonwealth accreditation of ACT processes.

The Policy is a requirement under the *Planning and Development Act 2007* (the Planning Act) and is implemented through a range of provisions under the Act. These include provisions relating to:

- the consideration of matters of NES through environmental assessment processes
- processes for referral to the Conservator of Flora and Fauna (the Conservator) and the Commonwealth Minister responsible for administering the EPBC Act
- conditions of approval for protected matters as part of development approvals
- development of guidelines to assist in the development and consideration of environmental offsets
- methods for calculating offsets
- the offsets register and
- Offset Management Plans.

The Policy is supported by a Delivery Framework which reflects the provisions of the Planning Act and a number of administrative processes.

This Policy commences from the day of its notification and applies to any new referrals and variations to approval conditions from this date. It also applies to any projects applying to matters of NES currently under assessment for which a proposed decision has not yet been made.

2. SCOPE OF THE POLICY

Background and context

The aim of offsetting as part of the environmental approvals process is to maintain or improve the likelihood of matters of NES and ACT protected matters persisting in the ACT.

Environmental offsets are a measurable conservation outcome resulting from actions designed to compensate for unavoidable significant adverse environmental impacts of development on matters of NES and relevant ACT protected matters.

The Policy applies to all matters of NES that are subject to the Bilateral Agreement between the Commonwealth and the Australian Capital Territory (ACT) on environmental assessment.

Matters of national environmental significance

The EPBC Act is the Australian Government's principal piece of environmental legislation. It is designed to protect national environmental assets, known as matters of NES, and other protected matters. If a proposed development or other action ('proposed action') is likely to have a significant impact upon a protected matter then it must be referred for assessment. Further information on the EPBC Act can be found at www.environment.gov.au/epbc/index.html.

The ACT Government has developed this Policy to be consistent with the Commonwealth's EPBC Act Environmental Offsets Policy (EPBC Act Offsets Policy) for matters of NES.

This Policy relates to all matters protected under the EPBC Act ('protected matters'). The Policy requires offsets to be considered for significant residual adverse impacts against all matters of NES. In practice, the matters of NES most relevant within the ACT are:



- national heritage places, including Australian Alps National Parks and Reserves
- wetlands of international importance (Ramsar Convention)
- listed threatened species and ecological communities and
- listed migratory species.

In the ACT, significant impacts associated with development on wetlands of international importance (Ramsar Convention) and in the Australian Alps National Parks and Reserves are avoided because they are already securely reserved and managed specifically for conservation. Impacts on many other matters of NES are also avoided through the ACT's extensive network of conservation reserves.

Offsetting for national heritage is only appropriate in some circumstances, where an offset improves the integrity and resilience of the national heritage place's values. Offsetting is unlikely to be appropriate for built or Indigenous heritage in most instances.

ACT protected matters

As well as providing for the consideration of offsets for matters of NES this Policy also provides a framework for the delivery of offsets for ACT protected matters (ACT listed threatened species). ACT listed threatened species are required to be assessed for an offset: however, to avoid overlap with the EPBC Act Offsets Policy additional environmental offsets are not required. Offsets for ACT threatened species are not required:

- if an ACT listed threatened species is also listed as threatened under the EPBC Act, because the offset requirements are considered to have been met through the EPBC Act requirements
- where an ACT listed species is strongly associated with box–gum woodland (BGW) or natural temperate grassland (NTG) as these would not be subject to any additional offset requirements, because offset requirements under the EPBC Act for the ecological community will provide an offset for the species as well. Species with strong associations to an EPBC Act listed ecological community are:
 - Little Eagle (foraging requirements are covered by requirements for NTG and BGW)
 - Perunga Grasshopper (covered by requirements for NTG)
 - Varied Sittella (covered by requirements for BGW)
 - Painted Honeyeater (covered by requirements for BGW) and
 - White-Winged Triller (covered by requirements for BGW).
- for minor impacts where there is no appreciable long-term impact on the threatened species; and
- for ACT listed ecological communities. While differing in description to EPBC Act ecological communities, the listed communities are essentially protecting similar habitat.

In determining offset requirements for species in the ACT that are not covered by the EPBC Act Offsets Policy, the Conservator will take into account the following principles:

- An offset package (of direct offsets and other compensatory measures) must deliver an overall positive conservation outcome taking into account the viability of the species affected by the proposed development and ensuring that the package improves or maintains outcomes for the species' habitat.
- Direct offsets should be in the same bioregion² as the development site, as defined by the Interim Biogeographic Regionalisation for Australia, version 7 (South-East Highlands or Australian Alps).
- Other compensatory measures (indirect offsets) must be in the ACT.

Offset requirements for any newly listed ACT species will be considered following listing and included in the guidelines.³ Offsets would not be required to be applied retrospectively.



3. ACT OFFSETS POLICY FRAMEWORK

Context

The Policy is delivered in a broader framework for the development of the ACT and for biodiversity conservation.

Managing the environmental impacts of development requires a balanced approach, taking into account environmental, social and economic factors. The primary approach to balancing social, environmental and economic goals is through planning and development processes specified in the Planning Act.

Environmental offsets are a subsidiary approach to managing significant impacts of actions, primarily urban development, on matters of NES and ACT protected matters. Offsets provide flexibility for proponents seeking to undertake an action that will have residual impacts on those protected matters, while achieving long-term environmental outcomes for those protected matters.

The Policy is delivered in a broader framework for biodiversity conservation articulated in the *Nature Conservation Act 2014* (Nature Conservation Act) and Nature Conservation strategy 2013-2023 (Nature Conservation Strategy) which aim to improve outcomes for biodiversity through measures such as management of protected areas, programs for the restoration of biodiversity and implementation of a range of strategies and plans. Impacts on biodiversity, other than actions subject to development approval, such as invasive species and climate change, require alternative approaches not specifically dealt with through this Policy, although they may be important considerations in deciding the appropriate management of offset sites.

The Policy operates in this broader framework for making appropriate decisions about the development of the ACT and in providing for an overall maintenance and improvement of the ACT's environmental assets.

Aims

The Policy and associated Guidelines⁴ and Delivery Framework aim to:

1. ensure the efficient, effective, timely, transparent, proportionate, scientifically robust and reasonable use of offsets
2. provide proponents, the community and other stakeholders with greater certainty and guidance on how offsets are determined and considered in development approvals
3. deliver improved environmental outcomes by consistently applying the Policy
4. outline the appropriate nature and scale of offsets and how they are determined and
5. provide guidance on acceptable delivery mechanisms for offsets.

Objectives

The primary objectives of the Policy are:

1. To ensure areas of high conservation value or irreplaceable assets are avoided⁵, or avoided and mitigated:
 - a. environmental offsets are considered only after feasible and appropriate avoidance and mitigation measures have been taken.
 - b. the use of environmental offsets cannot be used to make inappropriate actions⁶ appropriate.
2. Should impacts be acceptable, to ensure the impacts from the loss of ecological communities and habitat are balanced by commensurate gains in extent or quality elsewhere.

Principles

The following principles⁷ apply to environmental offsets in the ACT. The principles include some key concepts which are explained in key concepts.

Environmental offsets must:

1. deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is within the scope of the Policy and is impacted by the proposed action [net gain];
2. be built around direct offsets but may include other compensatory measures [indirect offsets and other compensatory measures];
3. be in proportion to the level of statutory protection that applies to the protected matter (this principle is taken into account through offset methodologies);
4. be of a size and scale proportionate to the residual impacts on the protected matter [like for like];
5. effectively account for and manage the risks of the offset not succeeding [security of offsets];
6. be additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs [additionality];
7. be efficient, effective, timely, transparent, scientifically robust and reasonable; and
8. have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced.

In assessing the suitability of an offset, government decision-making will be:

1. informed by scientifically robust information and incorporate the precautionary principle in the absence of scientific certainty; and
2. conducted in a consistent and transparent manner.





Key concepts

Residual impacts

Offsets provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining, unavoidable impacts are termed 'residual impacts'. Offsets are generally only required if residual impacts are significant.⁸

Types of offsets

Direct offsets

The Environmental Offsets Policy requires offset packages to deliver 90% of the offset requirement through direct offsets for matters of NES. Direct offsets are those with an on-ground outcome that directly compensate for the impact on the species or ecological community being offset. For example, transferring an area of developable land which contains BGW into the reserve network and improving its condition would be considered a direct offset for an action that is significantly impacting on another area containing BGW (like-for-like).

Deviation from the 90% direct offset requirement for matters of NES will only be considered where:

- it can be demonstrated that a greater benefit to the protected matter is likely to be achieved through increasing the proportion of other compensatory measures in an offsets package or
- scientific uncertainty is so high that it is not possible to determine a direct offset that is likely to benefit the protected matter.

Other compensatory measures (indirect offsets)

For matters of NES, other compensatory measures can include education and training, research or projects which relate to the matter of NES that is impacted.

For ACT protected matters, in addition to education, training or research, compensatory measures may also include broad habitat measures that improve outcomes for a broad range of species, and not just the species impacted by the development. This might include the provision of funds for improving general connectivity or for establishing buffer areas around significant habitat areas.

Advance offsets

Advance offsets are a supply of offsets for potential future use, transfer or sale.⁹

Like for like

The principle of like for like means that any offset must relate to that same specific matter which is impacted. It is inappropriate for an action that impacts on a specific threatened or migratory species, ecological community, Ramsar wetland or heritage property to be offset by a gain in another protected matter.

For impacts on habitat for threatened species, migratory species and threatened ecological communities, any direct offset must meet, as a minimum, the quality of the habitat at the impact site. Where a proposed offset site has a lower habitat quality than that of the impact site, the offset must be managed and resourced over a defined period of time so that its habitat quality is improved to meet the quality of habitat originally impacted. Supporting and/or recreating non-endemic vegetation or ecosystems would not be considered a suitable offset.

For ACT protected matters, some flexibility around the like for like principle may be considered. The Guidelines will identify when this is appropriate.



Additionality

The Policy requires that environmental offsets are additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs. What this means is determined by considering what is required under a range of regulations and agreements and making judgments about what actions are additional to what is required. This can be difficult in some circumstances as there is a degree of variability in what regulations and agreements apply, and the documents are not always explicit about what components are obligations and what elements are aspirational. This Policy provides additional guidance about consideration of additionality.

Net gain

The Policy requires delivery of an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is within the scope of the Policy and is impacted by the proposed action. The ACT approach to assessing net gain is included in the environmental offsets assessment methodologies.

Net gain is the concept of maintenance and improvements of the protected matter from an ecological perspective. The assessment of net gain is complex and varies across species and ecosystems but generally has two key components:

- improving current quality of a site to a better condition and
- increasing the functional extent of a site.

Security of offset sites

Offsets are generally required to be put in place for the duration of the impact. For urban development, this essentially requires offsets to be delivered in perpetuity. Some consideration needs to be given to the security of the offset over the long term. In the ACT a range of measures can be used to secure outcomes. The primary mechanism for securing offsets on public land is to provide for management of offsets within the system of conservation reserves (wilderness, national parks and nature reserves). Other mechanisms such as zoning or other public land reservation can also be used. The risk of an offset failing is required to be considered in determining the most appropriate mechanism for securing an offset. The arrangements for management including the provision of funding for the management of the offset are important considerations. This Policy provides additional guidance.

Timing of offsets

Ideally, offsets are secured and in place before the development is approved. However, some offsets such as changes to lease conditions etc. for an offset on leasehold land will not be able to be finalised until there is some certainty about the development proposal being approved. In general it is important to have the offset secured and an offset management plan substantially in place before development occurs. The timing requirements for offsets are generally included as part of the conditions. The use of advance offsets can assist in ensuring an offset is in place before development occurs. This Policy provides additional guidance.



4. MATTERS TO BE CONSIDERED

Matters to be considered at development sites

The Policy requires the following matters to be considered at development sites. These matters need to be assessed in determining whether a package of offsets is appropriate. How they are considered in the ACT is outlined below each matter to be considered.¹⁰

1. Presence and conservation status of protected matters likely to be impacted by the proposed action.
2. Specific attributes of the protected matter being impacted at a site, for example: the type of threatened species or ecological community habitat, the quality of habitat, population attributes such as recruitment or mortality, landscape attributes such as habitat connectivity, or national heritage values.
3. Scale and nature of the impacts of the proposed action including direct and indirect impacts.
4. Duration of the impact (not of the action).
 - a. In the ACT a range of data exists and is publicly available that assists in identifying the presence and conservation status of protected matters.
5. These matters are considered through Environmental Assessment processes and have been included in the ACT Environmental Offsets Calculator (ACT EOC) and Offsets Assessment Methodology (ACT OAM) and the Commonwealth Offset Assessment Guide (Commonwealth OAG). Guidance will be provided to inform the most appropriate approach to assessing offsets.

Matters to be considered for offset sites

The EPBC Act Offsets Policy outlines the following matters to be considered for offset sites. These matters need to be assessed in determining whether a package of offsets is appropriate. How they are considered in the ACT is outlined below each matter to be considered.

1. Extent to which the proposed offset actions correlate to, and adequately compensate for, the impacts on the attributes for the protected matter.
 - a. This is assessed using assessment tools such as the ACT EOC or Commonwealth OAG. These tools inform assessment and approval processes such as through environmental impact assessment and conditions for development approvals.
 - b. For impacts on habitat for threatened species, migratory species and threatened ecological communities, any direct offset must meet, as a minimum, the quality of the habitat at the impact site. Where a proposed offset site has a lower habitat quality than that of the impact site, the offset must be managed and resourced over a defined period of time so that its habitat quality is improved to meet the quality of habitat originally impacted. Supporting and/or recreating non-endemic vegetation or ecosystems would not be considered a suitable offset.
 - c. In determining offset requirements for ACT protected matters (the Conservator will take into account the following principles:
 - an offset package (of direct offsets and other compensatory measures) must deliver an overall positive conservation outcome taking into account the viability of the species affected by the proposed development and ensuring that the package improves or maintains outcomes for the species' habitat
 - direct offsets should be in the same bioregion¹¹ as the development site, as defined by the Interim Biogeographic Regionalisation for Australia, version 7 (South-East Highlands or Australian Alps) and
 - other compensatory measures (indirect offsets) must be in the ACT.



2. Conservation gain to be achieved by the offset.

- a. Conservation gain is the benefit that a direct offset delivers to the protected matter, which maintains or increases its viability or reduces any threats of damage, destruction or extinction. A conservation gain may be achieved by:
 - improving existing habitat for the protected matter
 - creating new habitat for the protected matter
 - reducing threats to the protected matter or
 - averting the loss of a protected matter or its habitat that is under threat.
- b. Conservation gain is assessed using assessment tools such as the ACT EOC or Commonwealth OAG and would often be outlined in Offset Management Plans.
- c. Conservation gain is determined using judgement based on an assessment of the current land use and threats versus the proposed new zoning or tenure and the proposed changes in land management practices to address the threats.

3. Current land tenure of the offset and the proposed method of securing and managing the offset for the life of the impact.

- a. Offsets can be established on public land through Territory Plan variations (such as a reserve overlay or changes to zoning).
- b. A range of options for securing offsets on leasehold land can also be used. These include changes to zoning and other mechanisms, agreed with the current leaseholder, such as through conservation leases, use of land management agreements, Commonwealth conservation agreements and use of reserve overlays.
- c. The arrangements will be secured through conditions of approval and outlined in Offset Management Plans.

4. Time it will take to achieve the proposed conservation gain.

- a. The Commonwealth OAG provides a credit for shorter timeframes for achieving conservation gains, reducing the number of credits required where outcomes are achieved more rapidly.

5. Level of certainty that the proposed offset will be successful. In the case of uncertainty, such as using a previously untested conservation technique, a greater variety and/or quantity of offsets may be required to minimise risk.

- a. Consideration should be based on an assessment of the current land use and threats versus the proposed new zoning or tenure and the proposed changes in land management practices to address the threats.
- b. Offsets can be provided on either leasehold land or public land. There is increased security of public land established through land use zoning (such as Hills, Ridges and Buffers or River Corridor) and, additionally, identifying land as a reserved area of public land that is required to be managed according to the objectives for that type of reservation. Incorporating offsets into a public reserve managed specifically for nature conservation under the Nature Conservation Act provides a higher level of certainty that the proposed offset will be successful. These offsets have a high level of public oversight and require a statutory based management plan in addition to an Offset Management Plan.
- c. Offsets on leasehold land can be secured through lease conditions and changes to land use zoning.
- d. A differential security score is incorporated into the ACT EOC and ACT OAM to reflect the increased level of certainty about an offset.
- e. The Commonwealth OAG includes provision for consideration of the time over which loss is averted, risk of loss of the offsets and confidence which require consideration.



6. Suitability of the location of the offset site. In most cases this will be as close to the impact site as possible. However, if it can be shown that a greater conservation benefit for the impacted protected matter can be achieved by providing an offset further away, then this will be considered.
7. In the ACT preference is for direct offsets to be provided in the following order:
 - in the ACT in the same district as the impact
 - in the ACT, but in a different district to the impact
 - outside of the ACT, but close to the ACT border
 - in the relevant bioregion (Australian Alps or Southern Tablelands)¹² then
 - elsewhere in Australia where the protected matter occurs.
- a. Other compensatory measures (indirect offsets) must be provided in the ACT for ACT protected matters



5. OFFSETS ON PUBLIC LAND

Offsets on public land have formed the majority of offsets within the ACT to date. Public land offsets have a range of governance mechanisms that ensure they are permanent, secure, subject to transparent management arrangements (through management plans) and are subject to scrutiny.

Offsets on public lands:

- should be legally secured for conservation purposes for at least the duration of the impact
- should be statutorily defined and resourced and
- any future change in management status should require Ministerial or statutory approval.

There are three potential sources of gain from an offset site:

- landscape and environmental values – recognising the values of the site and its place in the landscape. This is needed to be assessed to meet the principle of like for like
- improvement values – which recognises active management such as fencing, replanting and high level activities, designed to improve biodiversity values. This assesses net gain and
- certainty value – which removes the threat of future changes in landuse and recognises additional management obligations, long-term security and conservation network gains. This is needed to assess the long-term security of the gains.

Offsets on public land can be secured through a range of mechanisms. These are outlined in Table 1. The details of the types of credits that are appropriate, how the offset will be assessed and additional considerations for the establishment of an offset are outlined in Table 1.

Suitable offsets must be additional to what is already required, determined by law or planning regulations, or agreed to under other schemes or programs. Offsets must deliver a conservation gain for the impacted protected matter, and that conservation gain must be new, or additional to what is already required by a duty of care or to any environmental planning laws at any level of government.

This requirement would generally prohibit using a piece of land already set aside in the conservation estate (wilderness areas, national parks, nature reserves). However, this policy allows for the recognition of advance offsets from 16 July 2000. This may include areas that have been reserved from 16 July 2000.





Table 1 – considerations for public land offsets

| Type of land | Types of Credits appropriate | Considerations | Documentation of Changes |
|--|--|--|--|
| Unleased Territory land | <ol style="list-style-type: none"> Change of zoning / land use <ul style="list-style-type: none"> land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone Increased Security <ul style="list-style-type: none"> Territory Plan overlay Urban Open Space, Special Purpose Reserve, Nature Reserve, National Park Increased management | <ol style="list-style-type: none"> Additional funding for programs may need to be quarantined/managed separately <ul style="list-style-type: none"> need to consider if offset values need to be discounted because of fire management (e.g. in Outer Asset Protection Zones) (see Table 2) | <p>EOC or Commonwealth OAG</p> <p>Territory Plan variation</p> <p>Offset Management Plan</p> |
| Urban open space | <ol style="list-style-type: none"> Change of zoning / land use <ul style="list-style-type: none"> land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone Increased Security <ul style="list-style-type: none"> Territory Plan overlay Urban Open Space, Special Purpose Reserve, Nature Reserve, National Park Increased management | <ol style="list-style-type: none"> Additional funding for programs may need to be quarantined/managed separately. Need to consider: <ul style="list-style-type: none"> whether Commonwealth funding has been used on site to improve values relating to the offset ParkCare/volunteer effort is taken into account in setting baselines if offset values need to be discounted because of fire management (e.g. in Outer Asset Protection Zones) | <p>EOC or Commonwealth OAG</p> <p>Territory Plan variation</p> <p>Offset Management Plan</p> |
| Special Purpose Reserve/ catchment areas | <ol style="list-style-type: none"> Increased security <ul style="list-style-type: none"> Territory Plan overlay Urban Open Space, Nature Reserve, National Park Increased management | <ol style="list-style-type: none"> Additional funding for programs may need to be quarantined/managed separately. Need to consider: <ul style="list-style-type: none"> whether Commonwealth funding has been used on site to improve values subject to the offset ParkCare/volunteer effort is taken into account in setting baselines whether Special Purpose Reserve has effectively been managed as nature reserve or whether there is a real change in management as a result of changing security to nature reserve if offset values need to be discounted because of fire management (e.g. in Outer Asset Protection Zones) | <p>Territory Plan Variation</p> <p>Offset Management Plan</p> <p>Reserve Management Plan</p> |



Discounts for existing duty of care

Public lands have a duty of care for management. The ACT Environmental Offsets Calculator (ACT EOC) includes provisions to reduce the number of credits to reflect the duty of care for particular types of public land. Table 2 identifies the discounts that should be applied to reflect the duty of care.

The use of these discounts applies where there is no change of land use. Where there is a change of land use from one category of public land to another the discount must be applied to the original discount for the land use as this represents the duty of care prior to the change in land use as a result of the offset.

Table 2 - Discounts for existing duty of care

| Type of land | ACT EOC discounts |
|--|---|
| Unleased Territory land | Exclusion of fire 5% |
| Urban Open Space/ Hills Ridges Buffers/River corridors | Exclusion of fire 5% Weed control 7.5% Erosion control 5% Control feral herbivores (rabbits/deer etc.) 7.5% |
| Special Purpose Reserve | Exclusion of fire 5% No grazing of domestic stock 5% Weed control 7.5% Erosion control 5% Control feral herbivores (rabbits/deer etc.) 7.5% |
| Existing conservation reserves (wilderness areas/national parks/nature reserves) | Exclusion of fire 5% Weed control 7.5% Manage human disturbance 7.5% No collection of fallen timber for commercial purposes 1% Erosion control 5% Retention of rocks 5% Control feral herbivores (rabbits/deer etc.) 7.5% Vertebrate pest management (foxes, pigs etc.) 7.5% Control exotic fish species 1% |

Certainty scores for public land

The consequences for not achieving the conservation outcomes is an important consideration. The premise of applying a certainty score is that reservation adds security and provides additional ecosystem services through incorporating the area into a protected area network.

Suitable offsets must effectively account for and manage the risks of the offset not succeeding. This risk relates to whether individual offsets are likely to be successful in compensating for the residual impacts of a particular action over a period of time.

The Business and Biodiversity Offsets Program¹³ (BBOP) is an international organisation that aims to develop leading practices in offset development. This program recognises there is a range of ways in which offsets can be designed to benefit biodiversity.



The BBOP notes that in Europe “preservation and enhancement of existing areas may deliver a wider range of ecosystem services if they protect existing ecological functions that are harder to establish in habitat creation schemes ... there are considerable advantages to creating large areas of habitat, especially for some species of high conservation concern. Such considerations are widely adopted in existing offset schemes, where additional credits are given to measures that restore or enhance large areas of habitat.”¹⁴ The BBOP recognises it is appropriate to use a multiplier to take into account the risk of failure, or partial risk of failure, of offset sites.¹⁵

This risk is considered in determining a suitable offset and has direct bearing on the scale of the offset required. The magnitude of a suitable offset will increase proportionately to the risk posed to the protected matter by the proposed action. The ACT EOC includes a score to recognise the long-term certainty of outcomes. The score applies to reservation of conservation reserves only from unleased public land. Table 3 indicates the appropriate increase in the offset site score to recognise both a higher duty of care and increased certainty about the long-term maintenance of the offset site values.

Table 3 - Certainty scores

| Certainty attribute | Certainty multiplier | Justification |
|---|----------------------|--|
| Conservation reserve (wilderness/ national park/ nature reserve) | 40% | <ul style="list-style-type: none"> • primary purpose nature conservation • highest level of security • managed under the Nature Conservation Act • significant penalties apply to clearing and damaging land • use can be restricted using Resource Protection Areas • higher duty of care applies |
| Special Purpose Reserve/ catchment areas | 30% | <ul style="list-style-type: none"> • purpose of reservation includes conservation as well as other purposes • management plan applies • managed under the Nature Conservation Act • significant penalties apply to clearing and damaging reserves • use can be restricted using Resource Protection Areas • permits for use • higher duty of care applies • requires Territory Plan variation for change |
| Urban Open Space/other reserves/Hills Ridges/Buffers/ River Corridor | 20% | <ul style="list-style-type: none"> • areas managed for multiple values, such as landscape • managed under Planning and Development Act • Reserve Management provisions do not apply • lower duty of care/requires more management |
| Biobanking agreements/ lease agreements | 10% | <ul style="list-style-type: none"> • Lease agreements once agreed require approval for sale • lease can include withdrawal clauses • ongoing management through Offset Management Plan • less public oversight • lower duty of care • areas smaller, less connected, subject to higher edge ratios |
| Public unleased land | 0% | <ul style="list-style-type: none"> • public unleased land can include roadsides, land banked for future urban uses etc. |



Commonwealth funding on public land

Any work funded by the Commonwealth on public land cannot be considered as additional in regards to environmental offsets. However, offsets can still be established on sites receiving Commonwealth funding for conservation, provided that a clear distinction is drawn between the conservation benefit derived from the existing Commonwealth funding and the conservation benefit derived from the establishment of the offset. This could be assessed by the ACT EOC to establish likely additionality of actions. Adequate monitoring of sites would also assist.

Volunteer groups working in potential environmental offsets

It is important that community groups volunteering time and effort to work within existing conservation reserves are informed of the likelihood that the areas they are working on, or have worked on in the past, could be used as offsets.

The ACT Government does not wish to discourage community involvement in environmental management. As identified in the ACT Nature Conservation Strategy, the ACT Government is committed to encouraging the work of volunteers who contribute substantially to nature conservation in the ACT.

It is important that as far as possible there is early identification and consultation on potential offset sites. This way community groups can decide where they operate, and avoid undertaking volunteer work on potential offset sites. It is proposed that potential offset sites are made known to community groups as soon as they are identified and agreed. A perverse outcome of this approach is that community groups may choose not to operate in areas which have potential to be used as an offset even though these areas may not actually be used as an offset site in the future.

Developers should include consideration of how to address past and current volunteer effort in proposing offset packages. An option could be to discuss whether additional support could be provided to the community as part of the offset package.





6. ADVANCE OFFSETS

Background

Advance offsets are a supply of offsets for potential future use, transfer or sale. The Australian Government recognises advance offsets that deliver a conservation gain after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*, on 16 July 2000.¹⁶ An example of an advance offset is protection or improvement of habitat for the conservation of a protected matter before an impact is undertaken.

Advance offsets allow for the protection or improvement of habitat for the conservation of a protected matter before an impact on an associated development site occurs. This is an important approach to offsets because it is likely to achieve more accelerated conservation gains because conservation management is commenced before the associated development impact occurs. However, consideration needs to be given to what management can be undertaken within existing resources, as additional resources are not generally available until the offset is realised.

Advance offsets are a way of ensuring high conservation value land can be secured and managed for conservation gains, without excluding them from consideration as an offset in the future.

Advance offsets are encouraged where practical, given that they provide a means to better manage the risks associated with the time delay in realising the conservation gain for a protected matter.

When can advance offsets be considered?

Advance offsets may be appropriate where:

- it can be demonstrated that a site or action was established for the purposes of advance offsetting
- there is sufficient baseline information to enable a clear assessment of the conservation gain and
- such offsets are demonstrably additional to existing obligations under other planning regimes, legislation, schemes or duty of care (at the time they were established).

Additional considerations

Advance offsets must satisfy all requirements in the Policy. Advance offsets do not in any way prejudice the outcome of any future assessment of an action. That is, while planning advance offsets may result in lower overall offset requirements, it does not influence whether or not an action will be determined as acceptable.

Confidence in result

Conventional offsets often take years to establish and may carry considerable uncertainty in their ability to fully deliver a conservation benefit. For example, an offset that involves revegetation of a degraded site may have uncertainty associated with the survival rates of tree and shrub plantings. Approved offset calculation methods capture this uncertainty.

Advance offsets will often increase confidence that the required conservation gain will be delivered, thereby decreasing the magnitude of the offset required.

Time until ecological benefit

Advance offsets will also reduce the interval between the anticipated impacts of the project and when the offset delivers a conservation gain. Advance offsets should deliver a conservation benefit before an impact occurs.

Conservation gain

Advance offsets require sufficient baseline data and documentation to provide evidence of conservation gain. It is important that this data focuses on the relevant values for a particular matter that is benefitting from the offset, such as monitoring data on the improvements in the vegetation quality over time. An assessment of additionality can be established through:



- assessing current management requirements – established by referring to the objectives for a reserve under the Territory Plan, and any proposed changes to reserve classification
- monitoring and recording baseline data associated with the establishment of the offset and improvements over time. The ACT EOC tool or Commonwealth OAG can be used to establish how many credits the site may use
- reassessing baselines to ensure the values identified in the baseline assessment have been maintained; and
- decisions about when management of the advance offset site commences would be dependent upon resourcing. However, advance offset sites should be managed to maintain current matters of NES and overall condition of the site.

It is desirable that actions to restore significant areas should not be delayed until a time when an offset is potentially required in the future. If action is delayed, then the asset could deteriorate to a point where it is no longer feasible or even possible to restore as an offset site.

Additionality

A key requirement for all offsets (including advance offsets) is that they are additional to what is already required by an existing duty of care; or under any legal or planning instruments at any level of government. That is, advance offsets must deliver a conservation gain for the impacted protected matter that would not have occurred in a business-as-usual scenario.

Advance offsets established since 16 July 2000

Advance offsets are able to be recognised from July 2000. This may include areas that have been established as conservation reserves since 16 July 2000.¹⁷ Because there is significant concern in the community about the potential for offsets in existing conservation reserves, the use of advance offsets that have been secured in existing conservation reserves¹⁸ will be subject to additional public consultation before use.

Commonwealth funding

Any work funded by the Commonwealth in an advance offset cannot be considered as additional in regards to environmental offsets. However, offsets can still be established on sites receiving Commonwealth funding for conservation, provided that a clear distinction is drawn between the conservation benefit derived from the existing funding and the conservation benefit derived from the establishment of the offset. This could be assessed by the EOC to establish likely additionality of actions. Adequate monitoring of sites will also assist.

Volunteers and advance offsets

It is important to ensure the community understands which sites are explicitly being managed as advance offsets. However, all areas of public land in the ACT may potentially be used as offset sites in the future, where the principles of additionality can be met.

The Advance Offset Bank aims to let community groups know that an area may be used as an advance offset. While most advance offset sites are not likely to have active volunteer groups working in them, some may. Early consultation with potential groups who may be impacted will be undertaken.

Wherever possible, volunteers will be consulted in determining the sites for advance offsets.

Alignment with other Australian Government policies and strategies

Proponents or offset providers may wish to consider how a proposed advance offset could potentially align with Australian and ACT governments' policies and strategies, including:

- *ACT Nature Conservation Strategy 2013-2023*
- *Australia's Native Vegetation Framework*
- *ACT threatened species action plans*
- *National Wildlife Corridors Plan*
- *Australia's Biodiversity Conservation Strategy 2010–2030* and
- *Australia's Strategy for the National Reserve System 2009–2030.*



What would proponents need to consider?

Like other investments, there is an element of risk attached to establishing an advance offset. Proponents and offset providers would need to consider a range of issues when establishing advance offsets:

- Proponents and offset providers may wish to assess their proposal to judge the potential suitability of an advance offset.
- An advance offset may meet the requirements of multiple projects, but must be able to sufficiently offset the residual impacts of each of those actions. Each offset area on the advance offset site must be clearly delineated to clarify which offset area relates to which protected matter, for compliance purposes.
- An advance offset may not sufficiently compensate for all the residual impacts on a protected matter, perhaps because the intended conservation gain did not eventuate, or the proposed action impacted on a protected matter different to that which occurs in the advance offset.
- An advance offset may not be considered at all where an action is determined to have an unacceptable impact on a protected matter and the proposed action is refused.

What information could be included in an advance offsets proposal?

An advance offset proposal could be prepared when:

- a future action is likely to significantly impact a protected matter and is likely to, or may, require an offset, i.e. the offset has not yet been developed or
- a proponent wishes to demonstrate how a previously established advance offset may meet the requirements for offsetting a future action, i.e. the offset has already been developed.

An advance offset proposal would need to ensure that sufficient baseline data has been collected and recorded to enable a thorough assessment of the proposal, including by using the offset value calculation determination.

The proposal would also need to provide for ongoing monitoring data collection and documentation to provide evidence of the conservation gain. It would be important that this data focuses on the relevant values for the protected matters that are benefitting from the offset, such as a particular threatened species or ecological community. The baseline design would need to ensure that any changes that occur as a result of management actions can be systematically measured to assess the conservation gain that an advance offset delivers.

An advance offset proposal could outline key information, including:

- the proposed offset activities, such as plantings, management, etc., and associated timeframes for implementation
- the data collected, methods used, and the data and metadata standards applied. Monitoring and data collection methods may include such things as aerial photos, LIDAR and other remote sensing, photo points and field surveys
- spatial information relating to the location of the offset, including where the offset is located in relation to the future action, where known, and relevant ISO 19115 compliant Geographic Information – Metadata
- relevant baseline data on the condition and ecological function of the offset and the protected matter within it at the time the offset is/was established
- the modelled state of the offset as a result of the proposed management activities supported by clear evidence, as well as the modelled state of the offset in a business-as-usual (or 'without offset') scenario. This should include a description of the modelling method being used or reference to a standard procedure, and the variables and values applied to the method
- the intended conservation gain for each specific protected matter that the offset is targeting and
- the proposed action or actions and, if known, the likely significant impacts of the action(s), for which the site may be an offset.

It would be the proponents' or offset providers' role to manage and collate relevant information about the advance offset, including spatial data and to ensure it is available, as per the principles outlined in the Environmental Offsets Policy.



7. SUPPORTING INFORMATION

This Policy is a requirement of the Planning Act. The Planning Act outlines requirements for monitoring and review of the Environmental Offsets Policy.

This Policy is supported by a range of statutory requirements and documents. Statutory requirements under the Planning Act include:

- Offset Policy Guidelines
- Offset Management Plan provisions and
- a register of environmental offsets.

Other supporting material includes:

- an outline of the Environmental Offset Delivery Framework and administrative arrangements and
- fact sheets.



ENDNOTES

- 1 <http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy>
2. Bioregions are large, geographically distinct areas of land with common characteristics such as geology, landform patterns, climate, ecological features and plant and animal communities. Bioregions establish a biologically relevant framework. Biogeographically, the ACT is a component of the South-eastern Highlands and Australian Alps bioregion sharing its environmental characteristics with surrounding New South Wales and parts of Victoria.
- 3 The Scarlet Robin has been recommended for listing as a vulnerable species in the ACT. A decision is yet to be made.
- 4 The aims and objectives have been developed to be consistent with the EPBC Act Environmental Offsets Policy.
- 5 The policy only applies to those matters that are in the scope of the policy.
- 6 Inappropriate actions are those that create an unacceptable risk that a species could become extinct.
- 7 The principles have been developed to be consistent with the EPBC Act Environmental Offsets Policy.
- 8 As defined in Significant impact guidelines 1.1 – matters of national environmental significance and Significant impact guidelines 1.2 – actions on, or impacting upon, Commonwealth land and actions by Commonwealth agencies, available at www.environment.gov.au/epbc/guidelines-policies.html.
- 9 The EPBC Act Offsets Policy recognises advanced offsets that deliver a conservation gain after the commencement of the EPBC Act, on 16 July 2000”
- 10 The principles have been developed to be consistent with the EPBC Act Environmental Offsets Policy.
- 11 Bioregions are large, geographically distinct areas of land with common characteristics such as geology, landform patterns, climate, ecological features and plant and animal communities. Bioregions establish a biologically relevant framework. Biogeographically, the ACT is a component of the South-eastern Highlands and Australian Alps bioregion sharing its environmental characteristics with surrounding New South Wales and parts of Victoria.
- 12 Bioregions are large, geographically distinct areas of land with common characteristics such as geology, landform patterns, climate, ecological features and plant and animal communities. Bioregions establish a biologically relevant framework. Biogeographically, the ACT is a component of the South-eastern Highlands and Australian Alps bioregion sharing its environmental characteristics with surrounding New South Wales and parts of Victoria. Guideline 1 – Offsets on Public Land
- 13 <http://bbop.forest-trends.org/offsets.php>
- 14 http://www.forest-trends.org/documents/files/doc_2408.pdf
- 15 <http://bbop.forest-trends.org/guidelines/odh-appendicies.pdf>
- 16 *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October 2012, p. 9
- 17 *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October 2012, p. 9
- 18 A Conservation Reserve is a Wilderness Area, National Park or Nature Reserve managed in accordance with Schedule 3 of the *Planning and Development Act 2007*.