

ACT Environmental Offsets Policy and Delivery Framework Position Paper: Submissions

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4. Environmental Defender's Office, ACT
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6. Friends of Mt Majura (Jochan Zeil)
7. Dr Philip Gibbons, Fenner School of Environment and Society, Australian National University
8. Ginninderra Catchment Group
9. Mark Hartmann, Yealambidgie Estate
10. Gillian Helyar, Watson Resident and member of Watson Woodlands Working Group
11. Institute of Applied Ecology, University of Canberra
12. Michael Sim, Isaacs Ridge Mount Mugga Mugga Parkcare
13. National Parks Association of the ACT
14. Office for the Commissioner for Sustainability and the Environment
15. Waltraud Pix, Friends of Mt Majura
16. Red Hill Regenerators
17. Richard Sharp, Fellow of the Environmental Institute of Australia and New Zealand
18. Dr David Shorthouse, Visiting Fellow, Fenner School of Environment and Society, Australian National University
19. Southern ACT Catchment Group
20. John and Craig Starr

Comments on the draft documents relating to environmental offsets in the ACT.

The ACT Rural Landholders' Association is in principle willing to see environmental offsets occurring on privately held land in the ACT.

We are conscious that this needs to be done in a way which protects the existing rights of private landholders.

The principle with environmental offsets is that the developer is responsible for finding offsets for any environmental damage caused by development. The problem we see in practice is that the ACT Government itself is often the developer in question. Hence, there will be a temptation for the ACT Government to create environmental offsets on private land by means which do not require the landholder's consent. Examples of methods for working which might be forced without the landholder's consent are in the draft document, including:

- rezoning land from "Rural" to "Hills, Ridges and Buffers"
- creating conservation requirements on privately held land
- creating an offset on public land which was privately held until it was forcibly acquired for the purpose of creating an offset on that land.

We accept that the draft document mentions in passing that offsets on privately held land should be created with the landholder's consent, but would like to see this spelled out in more detail. We believe it is essential that the private landholder participate in the creation of environmental offsets purely on a voluntary basis. If creation is voluntary, it is probably best to leave the question of compensation up to the landholders themselves.

In the event that offsets are created on private land without the landholder's consent, we always uphold the principle that landholders should be compensated fairly for any government actions. This is also true in the area of offsets. Landholders should always be compensated for any loss of amenity or land value, or ongoing management costs created by government actions.

We also believe that rural land use in the ACT is in itself worthy of protection, in a similar way to environmental assets. There is a need for local food security in the ACT region, and the amount of land available for food production continues to shrink.

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10 July 2014

Heather Tomlinson
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ESDD
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Dear Heather,

ACTEW is pleased the ACT Government has invited comments on the ACT Environmental Offsets Policy and Delivery Framework Position Paper (the Position Paper), and associated ACT Environmental Offsets Draft Guidelines (the Guidelines). ACTEW Water is the government-owned corporation responsible for supplying water and sewerage services to Canberra and the ACT region and works in partnership with the ACT Government to manage the environment in our drinking water catchment areas.

ACTEW Water is one of the few organisations other than the ACT Government with recent experience of planning, implementing and monitoring biodiversity offsets in the ACT, specifically associated with the enlargement of the Cotter Dam and the construction of the Murrumbidgee to Googong Water Transfer pipeline (M2G). ACTEW therefore brings a sound practical understanding of biodiversity offsetting in the ACT to this discussion. ACTEW recognises that any ACT Biodiversity Offsets Policy has the potential to impact on future infrastructure projects and appreciates the opportunity to provide feedback on the Position Paper.

Consideration of the following comments and suggestions should assist in finalisation of the policy.

1. Biodiversity offsets are applied differently in each jurisdiction with regards to the 'like-for-like' principle in terms of area, volume and existing habitat potential. The Position Paper identifies a range of options for offsetting 'an area of developable land which contains BGW', or by 'creating new habitat for the protected matter'. It would be wise for the ACT Biodiversity Offset Policy to provide the criteria for the 'like-for-like' that provides some certainty for proponents on the avenues available for offsetting their impacts to protected matters, for example:

- Will it be mandatory for offset sites to include protected matters already, or will rehabilitation of degraded sites to re-establish protected matters be equally acceptable as an offset?
 - How will the suitability of such sites be determined, and what are the likely expectations regarding timeframes for restoration of protected matters?
 - What are the expectations for future landuse of sites that are used for offsets? For example in NSW many of these sites are protected by Conservation Agreements.
2. If rehabilitation of degraded sites is not acceptable as a direct offset, this could adversely impact the viability of the 90% to 10% ratio for direct to indirect offsets. Available land which includes protected matters such as BGW is relatively scarce in the region and likely to be allocated within a relatively short timeframe when the lifetime of the policy is considered. The target of 90% for direct offsets may not reflect the practical reality of delivering biodiversity offsets for large infrastructure projects on-ground. While the stated ratio should be preserved as a target for developers to aim for, there could be more flexibility in the weighting of different offset options to recognise the fact that the ACT is uniquely placed to add significant value to biodiversity conservation through research initiatives due to its concentration of excellent academic and research institutions.
3. Many of ACTEW's water infrastructure assets are located within Canberra's reserves and Nature Parks and it will be necessary to ensure that any sites selected as offsets do not impact on the organisations ability to effectively operate the water network. With regard to the use of existing reserves as offset sites:
- What is the process to allow developers other than the ACT Government access to reserves for use as offset sites?
 - Could private developers provide funding to TAMS to undertake management activities in addition to their usual program of works, or will they have to assume more direct control of management of offsets within reserves and employ their own consultants and contractors to undertake works to provide additionality?
 - The Guidelines suggest that the policy will allow developers to provide funding directly to experienced community volunteer groups to undertake additionality projects on reserves. It should be noted that this Policy might significantly increase the onus of record keeping imposed on volunteer groups and/or land managers to constantly set a baseline of their efforts to improve a parcel of land, in case of future use of that land for offset and developer's proof of additionality. Will this Policy include more detail on the record keeping required?
 - In any of these scenarios, how will work be monitored and reported on to ensure that legal requirements and community expectations are met?

4. The Guidelines include an explanation of additionality in regards to management effort (compared to the baseline management requirements of a particular parcel of land) however there could be more detail on how additionality will be quantified and measured in terms of how the extra effort required converts to an increased land area or biodiversity volume. For example, if 10ha of protected matters were destroyed as part of a development, would the developer be required to demonstrate a 100% increase in protected matters at a 10ha offset site, or a 10% increase in protected matters across a 100ha offset site?
5. Compliance with the multi-jurisdictional approval conditions for ACTEW's M2G project offsets requires that all documentation associated with offset site management and monitoring is made publically available on ACTEW's website. ACTEW has employed independent consultants to monitor and report on the success of the offset sites to ensure full transparency and remove bias. Conversely, for the Cotter Dam project offsets there are no such requirements. ACTEW would appreciate further clarification regarding the level of public scrutiny that will be applied to management of offset sites under the proposed ACT Biodiversity Offsets Policy and whether the intention is to follow the example of NSW and the Commonwealth.
6. Further clarification around the mechanisms for the regulation of offset sites and potential penalties for non-compliance should be included in the Policy. For example, will this include assessment by government personnel employed to inspect offsite sites and ensure that all developers adhere to the required standards, or will developers be able to assess and report through the use of independent consultants?
7. The Position Paper provides a clear consideration to climate change. Given that the ACT's bioregion is forecast to decrease due to the impacts of climate change, ACTEW believes there is potential for the policy to include future-proofing as part of permitted offsets. This could include both management and research activities.
8. While this Policy would provide increased benefits to the environment of the ACT region, there is a risk that it could increase fragmentation of protected matters in the region and this will need to be carefully managed through its implementation. Connectivity is increasingly being recognised as an important factor in biodiversity conservation. Fragmentation might occur as small remaining pockets of protected matters are developed and resources are then concentrated in a few well-protected but isolated areas. Increased options for rehabilitation of degraded sites as a permissible direct offset, as outlined above, would have the effect of improving connectivity in the region. An appropriate weighting should also be applied to the level of connectivity and the significance of this locally and regionally.



Given that ACTEW already operates substantial offset sites in the ACT, we would appreciate further information about whether there is intention to apply the new policy retrospectively to existing offsets.

ACTEW believes it would be beneficial to implement a publically available database of sites that have been identified as suitable for use as offsets in future. This would simplify the process for developers to identify and secure offset sites, and facilitate the development of a local market that could be a potential revenue source for local leaseholders.

Thank you for considering our submission.

Yours sincerely

Bronwen Butterfield
Manager Environment and Sustainability
ACTEW Water

Submission from Canberra Ornithologists Group

(received by email)

ACT Environmental Offsets Policy

The Canberra Ornithologists Group (COG) is responding to the invitation to comment on the ACT Environmental Offsets Draft Guidelines and associated documents.

COG is dedicated to the study and conservation of native birds and their habitats in the ACT and surrounding region. COG is essentially concerned with better protection for native vegetation which provides habitat for various species of birds, especially birds which are associated with grassy woodlands. COG surveys and research show that woodland bird species continue to decline in abundance, including birds which are listed as threatened under Commonwealth and ACT legislation. The primary cause is the overall loss of woodland habitat and fragmentation of habitat, overlaid by a variety of other pressures and threats including urban related pressures around peri-urban Canberra.

COG supports the detailed submission which the Conservation Council ACT Region is submitting.

COG welcomes the fact that the ACT Government has now developed and released a policy and some guidelines based on the Commonwealth's Environmental Offsets Policy 2012, and COG broadly supports governance and administrative arrangements which are more transparent and publicly accountable, such as the offsets register. COG is also pleased that ACT listed species (including birds) which are not listed by the Commonwealth, will also be subject to this policy and guidelines. COG, however, has a number of concerns/key points to highlight as follows.

1. COG does not support the ACT having responsibility for a "One-Stop-Shop" by taking on Commonwealth environmental approval responsibilities (as premised in the documents). The ACT Government is the proponent or developer in the majority of cases, and should not also be the regulator. There is a clear conflict of interest for the ACT Government, which relies on land sales for a significant part of its revenue. In the event that there will be cases of significant conflict of interest it would be preferable to have an independent authority in the interests of ensuring transparency and accountability that can be called on in such situations to adjudicate appropriate outcomes.
2. While COG is pleased that in cases where the Conservator's advice is not taken, the regulator (ACT Government) would not be able to approve the development/offset, and there would be other possible processes. However, we do not agree that such cases could potentially be dealt with/decided under the Minister's call-in powers. In COG's view, the only options in these cases should be immediate referral to the Commonwealth (for their decision) or the developer re-considering options and re-submitting for further consideration by the Conservator.
3. The policy and ACT guidelines do not appear to take enough account of contemporary science and thinking, where a whole of landscape scale approach to biodiversity conservation should underpin any offsets scheme (for example, in terms of core sites and functional connections across the landscape), rather than what continues to be largely a site by site

consideration/approach. While we understand the Commonwealth's guidelines/tools do include matters such as connectivity, COG would like to see more emphasis or detail in the ACT guidelines regarding functional connectivity issues across the landscape, especially for the particular listed species concerned.

4. COG is of the view that any offsets scheme must be based on the principle of "additionality" or "net gain" and "like for like" principles. The principle of "like for like" is an internationally accepted principle and underpins the Ramsar Convention on Wetlands with respect to potential loss of habitat through development. These principles need to be better articulated/clarified in guidelines, particularly in the objectives. Offsets policies have tended to deliver a "net loss" as the result is an overall loss of habitat across the landscape. There continues to be an overall loss of habitats for birds and biodiversity generally across the ACT landscape, despite the application of various offsets principles in recent years.

5. Offsets should only be used as a last resort. Our experience in the ACT is that these policies, in practice, are generally used as a first course of action or to facilitate development. Offsets should not be the first consideration in potential impacts on biodiversity. Proponents for developments should be required to exhaust all reasonable avoidance and mitigation measures before resorting to offsets.

6. The Table, Attachment A, in the Position Paper, has minimal information, we understand essentially brief, breeding related information for ACT listed species. COG recommends that more detailed information needs to be developed/provided here on issues such as overall habitat/feeding habitat requirements, and movement patterns. Also, all ACT species should be included here, including the Superb Parrot, a species which uses a very large area of the landscape for feeding and has specialised breeding requirements. More comprehensive information will benefit both planners and developers, by providing a better, more comprehensive understanding of species' habitat needs and produce more effective outcomes to ensure proper conservation of such species and their habitat needs.

In particular, the information related to the Hooded Robin does not provide a meaningful picture of that species' minimum requirements overall, as a focal species needing very large patches of suitable habitat (significantly more than what is listed in the table as a breeding territory). The Hooded Robin is one of the first woodland bird species to be lost as habitat is cleared and fragmented into smaller and smaller patches. If only a relatively small (minimal) area of breeding habitat is retained/protected, the species is unlikely to persist.

Further, the Action Plans for the listed species could be usefully referenced at the end of that Table, as they provide more detailed information.

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Environmental Defender's Office
AUSTRALIAN CAPITAL TERRITORY

11 July 2013

Manager – Natural Environment
ESDD
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Via email: environment@act.gov.au

Dear Manager,

The Environmental Defender's Office (ACT) Inc (the EDO) is a community legal centre specialising in public interest environmental law. We provide legal representation and advice, take an active role in environmental law reform and policy formation, and offer educational publications and programs designed to facilitate public participation in environmental decision-making.

This submission responds to the *ACT Environmental Offsets Policy and Delivery Framework Position Paper* and *ACT Environmental Offsets Draft Guidelines* in general terms by identifying the fundamental principles that we recommend need to be applied to any offset scheme.

The EDO has serious concerns about the establishment of an offset policy in the ACT. As the Australian Network of Environmental Defenders Offices (ANEDO) has previously noted, the idea that impacts on such unique matters of national environmental significance can simply be offset, is deeply concerning and in many cases it will not be possible to offset impacts on specific unique places and species.¹ We provide these comments recognising that offsets do form a part of Australian jurisdictions' policies and to the extent that the ACT government is committed to the use of offsetting, we would recommend that it seek to ensure positive biodiversity outcomes are maximised based on rigorous science and that achieving those biodiversity outcomes is placed at the centre of any offsetting scheme and policy. We also attach at **Annexure A** a summary of the IUCN's Independent Report on Biodiversity Offsets recommending best practice activity for biodiversity offsetting.

¹ ANEDO Submission on the draft EPBC Act Environmental Offsets Policy 21 October 2011, p 2. Available at: <http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/302/attachments/original/1380674370/111021epbc_offs ets.pdf?1380674370>

Given the accreditation of the Territory's standards for environmental assessment and the imminent equivalent for approvals under the 'one stop shop' policy, it is vital that the offsetting regime is subject to legislation and not to mechanisms such as regulation or policy which are subject to changes attracting less scrutiny.

In light of the as yet incomplete review of the *Nature Conservation Act* 1980 (the NC Act) and that the introduction of an offset policy will necessitate further amendments to the NC Act as well as the *Planning and Development Act* 2007 (the PD Act), the EDO do not recommend the offsets regime is developed expeditiously. Rather the ACT government ought to aim to develop rigorous standards based on robust and objective science as well as applying the fundamental principles as outlined in this submission.

Historically, offsets have been developed and applied in a variety of ways, with variable outcomes in Australia and internationally. Offset schemes are also widely criticised by the community and scientists as failing to protect our environment.² Further, ANEDO has previously submitted that there is a lack of consistency, ecological credibility, rigour, enforceability and legislative parameters for offsetting in Australia and that offsetting regimes are improved when the relevant legislation implements fundamental principles discussed below.³

In the development of the offset strategy we urge the ACT government to also closely examine the Senate (Environment and Communications Committee) Environmental Offsets Report, June 2014.⁴ The Senate Committee made 21 recommendations, including the EPBC Act Environmental Offsets Policy be revised. We note the ACT government is developing its offsets policy based on the Commonwealth Government's Offset policy⁵ and we are of the opinion that it ought assess what the outcomes of the Inquiry and the Committee's recommendations will be rather than developing a policy on a regime that was found to be inadequate in some respects and may otherwise be outdated in the near future. Otherwise, in the interests of environmental protection and future-proofing, scientific rigour and community confidence in the ACT scheme, we urge the ACT government take the Senate Committee's recommendations into account when developing the offset framework.

Offsetting regimes are improved when legislation implements the following fundamental principles:⁶

² See:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets/Submissions

³ ANEDO Submission to the Inquiry into Environmental Offsets, 4 April 2014, p 3.

⁴ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets/Report/~media/Committees/Senate/committee/ec_ctte/enviro_offset/report/report.pdf

⁵ <http://www.environment.act.gov.au/environment/environmental-offsets-policy>

⁶ (For an analysis of current offset principles used in Australia – see: Fallding, Martin, "Biodiversity offsets: Practice and promise" (2014) 31 Environment and Planning Law Journal 11. Fallding identifies 5 generally accepted common offsets principles: (p15) (1) Biodiversity offsets will be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts; (2) Offsets must be based on sound ecological studies and principles; (3) Offsetting must achieve benefits in perpetuity; (4) Offsets must be

- i) *Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts.*

The 'mitigation hierarchy' should be clearly set out in the PD Act as a mandatory pre-condition before any offsetting option is considered. The ACT offsetting regime must provide appropriate guidance and emphasis on how a proponent can demonstrate its endeavours to genuinely 'avoid' and 'mitigate' aspects of the proposed development prior to considering offsets.

We note it is the ACT's intention that *environmental offsets are considered only after feasible and appropriate avoidance and mitigation measures have been taken.* (Page 2 of the Position Paper) however the policy currently lacks clear guidance around when offsetting is not appropriate. The policy and resulting legislation must give appropriate direction for proponents to avoid an environmental impact. Without proper guidance such as a compulsory comprehensive assessment avoidance measures, the process might be construed as being merely a box ticking exercise. A transparent assessment of whether appropriate avoidance measures have been undertaken is essential particularly for MNES. To do otherwise will simplify the process and will allow proponents to place undue reliance on offsetting in order to obtain project approval. Clear and transparent instruction is therefore required as to how proponents should be seeking to undertake avoidance measures.

Similarly, guidelines are needed on when it is appropriate to mitigate biodiversity impacts, and how mitigation should be undertaken. Without this direction, it will be difficult to assess whether reasonable and legitimate mitigation attempts have been made by a proponent before progressing to the offsets stage in a development approval process.

Further, there must be capacity in the legislation for a development proposal to be rejected where some impacts cannot be avoided or mitigated rendering the proposal inappropriate.

- a) *The development of the offset model must combine strategic conservation planning with the 'mitigation hierarchy'*

The primary driver for a successful offsets scheme is the securing of environmental conservation. We recommend that the offsets policy be developed using a combination of mitigation hierarchy and strategic conservation planning. Strategic conservation planning in the context of offsetting recognises that there are considerations to be made that are critical to the success of existing conservation policies as well as to developments.

We note the intended use of ACTMAPi as described at 6.5 of the Position Paper and stress that prior to the commencement of an offsetting scheme, a strategy needs to be developed that clearly identifies at a regional scale areas of natural habitat that are unable to be offset (for example, species or ecological

based on principles of "net gain;" (5) Offset arrangements must be enforceable.

communities listed as critically endangered), areas of natural habitat, the conservation of which is crucial to the perseverance of species or ecological communities, areas of natural habitat that are adequately conserved within the region and areas of high development potential. A scientifically quantified risk must be determined in terms of the spatial and temporal requirements for the offset to achieve its conservation goals; and identification of benchmarks to indicate the offset is achieving its conservation goals. Identifying these areas allows for strategic offsetting that result in maximum conservation benefits.

Best-available science indicates that offsets that are selected at a location close to the development site are more successful in offsetting the loss from development than offsets that are randomly chosen, or chosen because of reasons other than environmental suitability.⁷

If offsetting is to provide an opportunity to deliver conservation goals, then it must be done with an appraisal of remaining biodiversity, coupled with an analysis of present and future conservation and development goals. In this respect, we support that part of the ACT Position Paper that considers the suitability of the location of the offset site to be as close to the impact site as possible, however we strongly disagree that a greater conservation benefit could be achieved by providing a distant offset site either within or outside the ACT as proposed in the draft Guideline 3 and page 6 of the Position Paper.

We note the amended Objects of the NC Act in the *Nature Conservation Bill 2014* to conserve, protect and enhance the biodiversity of the ACT and how this will be achieved.⁸ While offsetting is a tool often promoted as providing opportunities for conservation, we caution that the science on offsetting remains uncertain, and as yet there is little scientific evidence to demonstrate its success. Offsets ought to be developed in a strategic context with a long term vision for the achievement of the conservation objectives.

Implementation of these objectives in relation to the offsets policy requires that there be an audit of existing protected matters and their respective conservation statuses. Not all protected matters should be eligible for offsetting and these areas ought to be clearly defined prior to the commencement of the offset scheme. For example, any matter with the conservation status “critically endangered” should never be allowed to be offset. This is particularly critical to the ACT with its relatively small land mass. Strategic planning should be implemented from the outset, to create a holistic and forward-looking policy that reflects the overall conservation goals of the ACT Government. We recommend a strategic plan that not only addresses offsetting, but also resolves the greater issue of diminishing biodiversity in favour of economic development.

⁷ Gordon A., Langford W.T., Todd J.A., White M.D., Mullerworth D.W, Bekessy S.A. (in press) "Assessing the impacts of biodiversity offset policies", *Environmental Modelling and Software*.

⁸ *Nature Conservation Bill 2014*, s. 6(1)-(3).

- ii) *Offsets must be based on sound ecological studies and principles, such as 'like for like.'*

The 'like for like' requirement as acknowledged in the ACT Position Paper on page 5 is fundamental to the ecological integrity and credibility of any offset scheme. The PD Act must incorporate the requirement of like-for-like offsets, to ensure that the environmental values of the site being used as an offset are equivalent to the environmental values impacted by the proposed action. To do otherwise risks the resulting actions not being a true offset. We recommend the legislation should make it clear that a proposal to offset an environmental impact through a greater amount of land with lower environmental values will not be accepted. Like for like is necessary for all proposals to ensure protected matters are not degraded over time. If like-for-like is not available then the proposal ought to be rejected. Again this must be enshrined in legislation.

- iii) *Legislation and policy should set clear limits on the use of offsets.*

The PD Act and the offsetting framework must include clear parameters. The use of 'red flag' or 'no go' areas are essential to make it clear that there are certain matters and areas in relation to which offsetting cannot be an appropriate strategy. This is particularly relevant to critical habitat and threatened species or communities that can withstand no further loss and to MNES. Guidance in the legislation is required so that there is certainty around on what is an unacceptable impact. Some species or vegetation may be so threatened that it is impossible to apply an offset. It is essential that the regulatory framework set out clear sites, species and communities ('red flag areas') where it is simply not appropriate to offset or allow any further detrimental impact.⁹

Further, the use of the 'mitigation hierarchy' as described above should not be used to override the principle of red flags/no go areas. To do otherwise is to risk all matters amenable to offsetting even where a development could cause a local extinction.

- iv) *Offsetting must achieve benefits in perpetuity.*

We note the ACT Guidelines on page 5 that the leaseholder agrees to manage values in perpetuity for developments, including land developments, which that result in permanent loss of biodiversity values. We are in support of this aspect as an offset area must be legally protected and managed in perpetuity, as the impact of the development is permanent. Offset areas should not be amenable to being offset again in the future. We would like to note, however that in many cases, impacts are permanent. There must therefore be a corresponding obligation to ensure that any offset site is maintained in an appropriate form, in perpetuity. Again, a legal mechanism is required in the PD Act to assure this outcome is obtained. Enforcement mechanisms must also be available and we support the use of noting the offset interest on the leasehold title (draft Guideline 2). We also support the register of offset sites

⁹ ANEDO, *Submission on the Use of environmental offsets under the EPBC Act 1999 – Discussion Paper*, 3 December 2007, http://www.edo.org.au/edonsw/site/pdf/subs/071204epbc_offsets.pdf.

(at 6.5 of Position Paper) as it is an important measure to ensure future users of offset sites are informed about the existence of the offset interest before the site is used in any way.

v) *Offsets must be based on principles of “net gain”*

Page 2 of the Position Paper states the aim of offsetting, as part of the environmental approvals process, is to *maintain or improve* the likelihood of ecological communities and threatened species and their habitats, including matters of NES, persisting in the ACT. We submit that the *‘improves or maintains’* standard is insufficient, and that the offsets policy should have the goal of *enhancing environmental quality* as posited in WA and Victoria. Enhancing environmental quality is a mechanism that could be incorporated into the PD Act and is one which acknowledges the current trajectories of biodiversity loss and that positive action is required to halt and reverse this trend.

vi) *Offsets must be additional*

It is of great concern to the EDO that the ACT are seeking to use offsets within existing conservation reserves and that the Guidelines on page 4 states that the Commonwealth requirement for additionality and conservation gain does not preclude offsets within existing reserves as long as it can be demonstrated that the outcomes to be gained through the offset are additional to current requirements. We strongly disagree with this statement. It appears this highly controversial policy is being taken due to the ACT’s relative small land mass so as to permit, in our opinion, what will eventually result in disproportionate development in the ACT.

Any offset action must be additional to what is already required by law. The requirement of ‘additionality’ must be based on clear criteria to ensure that offsets are not approved unless they provide a conservation benefit additional to what would otherwise occur. An offset in an otherwise protected area does not provide an additional net value. It is effectively not an offset at all. This would therefore fail to meet the principle of additionality. The application of the additionality principle (both nationally and internationally) generally prohibits use of a protected area as an offset. There is a very high duty of care by governments to conservation in nature reserves, so there is little capacity to obtain gains in biodiversity within nature reserves that are additional to existing commitments. The application by the ACT government of the offsets policy in this manner is fundamentally changing the way we go about conservation.¹⁰

The Senate Committee into Environmental Offsets examined the application of the principle of additionality in relation to offsets being used to protect land that it is already protected as a park or nature reserve. The committee reported that this practice does not deliver a conservation gain and that it has the potential to undermine the objectives of the EPBC Act to promote the conservation of biodiversity. The Committee recommended the Commonwealth Environmental Offsets Policy be revised

¹⁰ Dr Phil Gibbons, <http://www.canberratimes.com.au/comment/its-becoming-harder-to-see-the-trees-for-the-revenue-20140128-3112b.html>.

to provide further clarity on the principle of additionality and that the Environment Department ensures all offsets adequately reflect the principles of additionality, and are not granted in relation to areas that are already protected under existing Commonwealth, state **or territory** legislation or policy (our emphasis).¹¹

In our view, protecting existing habitats only provides an additional conservation outcome in the following circumstances:

- if habitat is good quality – where it is under a *real threat* of clearing or significant decline in quality;
- if habitat is not of good quality – where it is *actively managed* in perpetuity to achieve a *gain in biodiversity values* equivalent to the loss.

Neither of these scenarios apply to nature reserves in the ACT if the protected area is not left to be protected as originally intended.

The criteria on which offset sites are selected must be clear and it is essential that it is applied consistently and accurately. For additionality to prosper in an offsets policy, it must provide clear decision-making criteria for determining when an offset is additional. Examples of appropriate decision-making criteria for determining when an offset is additional include:

- An offset must be additional to current regulatory requirements;
- An offset must be additional to best practice on-site environmental management;
- An offset must not be currently funded / potentially funded in the future under another program.

vii) *Monitoring requirements must be specified in the legislation and offset arrangements must be legally enforceable*

We note monitoring, compliance and audit is described very briefly at 6.7 of the Position Paper.

Monitoring and evaluation of approved offsets arrangements must be established and adequately resourced to determine whether promised environmental outcomes are achieved over the short and long term and offsets in the ACT must be underpinned by strong enforcement and compliance mechanisms in legislation, with adequate resourcing, established from the outset.

Evidence to show that offset schemes actually achieve the intended biodiversity outcomes is severely lacking. The field of restoration ecology is still relatively new, and even those schemes that have been in existence for some time – such as the Wetlands Restoration Scheme in the USA – cannot show

¹¹http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets/Report/~/media/Committees/Senate/committee/ec_ctte/environ_offset/report/report.pdf, recommendation 2 & 3, pages 96-97.

conclusive results in terms of beneficial environmental outcomes.¹² In most cases it is too early to say whether an offset ecosystem has been restored to an equivalent of the ecosystem that was cleared at the development site.

Furthermore, ecological outcomes may be threatened by further development. In other jurisdictions, offset areas do not get managed in the long term as they end up being the site of new development (and further offset). An example of this is the current Warkworth Mine extension near Bulga in NSW, where a previous offset area was proposed to be mined.

Bulga Milbrodale Progress Association Inc. vs Warkworth Mining Limited & Ors

On April 7, 2014, the NSW Court of Appeal ruled in favour of the residents of the Hunter Valley village of Bulga and the protection of a rare forest containing endangered plants and animals, by upholding the refusal of an open cut coal mine expansion. Rio Tinto was seeking to open cut mine a biodiversity offset area, containing an endangered ecological community, the Warkworth Sands Woodland, and threatened animal species including the squirrel glider and the speckled warbler. This woodland is unique to the area and only 13 per cent of the original forest remains. Rio Tinto had previously promised to permanently protect this area, under an agreement with the NSW government, as part of the existing approval from 2003. The protected area also includes Saddleback Ridge which provides a buffer between the mine and Bulga.

This case study demonstrates that environmental outcomes are uncertain and in this respect we recommend the legislation explicitly refers to the principle of permanence.

We note pages 4 and 6 of the Guidelines states ‘adequate monitoring of sites would also assist.’ And at page 10 of the Position Paper that ‘an appropriate regime for monitoring offset sites and offset actions should be established as part of the conditions of approval for each development’.

We recommend conditions of an approval should be very clear about monitoring and compliance including, for example, specific requirements that must be met for a monitoring program such as the undertaking of research with respect to the listed threatened species and communities.

¹² For example see: Maron et al, “Can Offsets Really Compensate for Habitat Removal? The Case of the Endangered Red-Tailed Black Cockatoo” (2010) 47 Journal of Applied Ecology 348, at 348; Maron et al, “Faustian Bargains? Restoration Realities in the Context of Biodiversity Offset Policies” (2012) 155 Biological Conservation 141, at 144; Gibbons & Lindenmayer, “Offsets for Land Clearing: No Net Loss or the Tail Wagging the Dog” (2007) 8(1) Ecological Management and Restoration 26; Bekessy et al “The Biodiversity Bank Cannot be a Lending Bank” (2010) 3 Conservation Letters 151; Ambrose, Richard F, (2000) “Wetlands Mitigation in the United States: Assessing the success of mitigation policies”, Wetlands (Australia) 19(1) 2000; Lake, PS (2001) “On the maturing of restoration: Linking ecological research and restoration” Ecological Management and Restoration Vol 2, No. 2, August 2001; and Chapman M.G. and Underwood A.J. (2000) The need for a practical scientific protocol to measure successful restoration Wetlands (Australia) 19(1), 28-45

In particular, there should be guidelines on:

- The period over which monitoring will be required;
- The funding for monitoring activities (funding should be built into project cost from the beginning, including on a 'cost recovery' basis as necessary);
- Circumstances in which remedial actions will be required;
- Types of remedial actions that may be appropriate;
- Liability issues for failed offsets (which we recommend should rest with the proponent).

A policy that cannot be adequately enforced is a policy that should not be approved. The extent to which the ACT government will be able to undertake enforcement and compliance measures will depend on its resource constraints. More detail is required on the proposed monitoring, auditing, enforcement and compliance measures and such measures must form a part of the Policy from the outset and later enshrined in the legislation. EDO notes page 10 and 11 of the Position Paper that the legislative provisions in the PD Act and the NC Act be used to ensure compliance. The EDO supports the use of sanctions that will prevent non-compliance with offset conditions and we recommend the PD Act is specifically amended to contain offence provisions for non-compliance with the conditions of an approval (for example see s 142A of the EPBC Act). The development of policy should also look at the adoption of cost recovery options.

viii) *Indirect offsets must be strictly limited.*

There should be extremely minimal use of indirect offsets. Allowing expanded use of indirect offsets would result in net loss of impacted matters. The EDO opposes the use of indirect offsets or 'compensatory measures' as described at page 5 of the Position Paper to achieve the goal of enhancing, or even '*improving or maintaining*', environmental quality. This principle essentially allows a developer to buy their way out of a difficult offsetting requirement. This will be particularly detrimental for areas where there is no offset available because of the scarcity of the impacted matter. This will also be a **breach** of the like for like principle and the red flag principle. What is being suggested is a compensatory payment, not an offset. Use of indirect offsets result in even higher uncertainty of linkages with impacts, and higher risk that biodiversity outcomes may not be achieved.

Four reasons support this position.¹³

1. It is very difficult, if not impossible, to measure the environmental gains when the results of indirect offsets are balanced against the losses occasioned by a development. In order for an offsets policy to be viable, the gains must be measurable with a reasonable degree of certainty. This is simply not the case when indirect offsets are deployed.

¹³ Submission on the draft EPBC Act Environmental Offsets Policy, 21 October 2011, p 9.

2. The relationship between many types of indirect offsets and the environmental gain sought to be achieved is dependent on many contingent and uncertain factors. Many proposed schemes currently contemplate, for instance, that funding for research may comprise part of an acceptable offset. In order to achieve an effective environmental outcome, however, research must not only be performed to an acceptable level, but it must also be implemented and there must be systems in place for evaluation of its impacts. This in turn is dependent on adequate funding. The uncertainty inherent in this process renders such forms of indirect offsetting ill-suited to achieving enhanced environmental outcomes.
3. As noted, effective offsets must be additional to activities that would have been undertaken in the normal course of events. It is difficult to demonstrate that indirect offsets comprise the requisite degree of additionality.
4. The use of indirect offsets contradicts the principle of 'like for like' offsetting that is a fundamental component of any offset strategy.

Other matters:

a) Assessment tools:

For detailed comment on the legal application and science underpinning assessment tools please refer to previous technical submissions by ANEDO listed in the Appendix of ANEDO's submission to the Senate Inquiry into Offsets.¹⁴ EDO supports the development of a robust assessment methodology based on the best available science that consistently implements the fundamental principles of offsetting including like for like and additionality.

In the absence of a robust tool, the criteria on which offset sites are selected is unclear. Where an assessment method does exist, it is essential that it is applied consistently and accurately. In the ACT for example, serious concerns have been raised about the choice and location of offsets.¹⁵

Similarly, concerns about how proposed offsets are developed and assessed have been raised in other Australian jurisdictions. For example, in relation to offsets for BHPB Roxby Downs Olympic Dam Expansion project.¹⁶

b) Minister's Call-in Power

Page 13 of the Position Paper discusses proposals that are subject to Ministerial call in powers (s.159 PD Act) and that in these circumstances the Conservators advice would not apply to conditions of approval relating to offsets for MNES. We recommend caution is exercised as the provision potentially allows environmental concerns to be overridden by socio-economic criteria. As biodiversity has not been given

¹⁴ <http://www.edo.org.au/policy/140408-ANEDO-Submission-To-Senate-Inquiry-Into-Offsets.pdf>, p 22.

¹⁵ Ibid, p5.

¹⁶ For further detail see the submission on the draft EIS prepared by the Conservation Council of South Australia.

a dollar value, the ledger will always tip in favour of major projects if the criteria in the decision making process are economic.

Planning policy already attempts to prioritise economic considerations in planning decision-making (s6 & 9 of the PD Act) As noted above in relation to the *Warkworth* decision, the Land and Environment Court found Rio Tinto's economic modelling deficient in many ways, including its methodology that over-estimated the benefits of the mine. The Court of Appeal found no fault with the Land and Environment Court decision that the economic benefits of the coal mine did not outweigh the significant impacts on Bulga residents and the destruction of rare forests containing endangered plant and animal species.

Such economic prioritisation policies are likely to contribute to the incremental and permanent loss of significant biodiversity and undermine the ecological credibility of the ACT offset framework.

c) Timing of offset plan requirements

We note page 9 of the Position Paper that the appropriate mechanisms to secure an offset site would need to be considered at the time the offset is assessed and included in the conditions of approval for the development. Approvals will only be made where there is a reasonable degree of certainty around the success of securing the offset. We support the ACT government's approach that an offset should be fully implemented and verified prior to a development proposal going ahead.¹⁷ The PD Act will also need to nominate the timing within which the offset plan must be submitted by the proponent as well as deadlines for securing the actual offset. Requirements to secure offsets at a late stage increases the pressure for an inadequate offset to be approved, simply because the project has already been approved or is already underway. A project that will cause a significant impact upon the environment should not be approved until an appropriate offset is secured. Otherwise, there is no guarantee that the goals of offsetting will be achieved.

d) Unanticipated Outcomes

Offset framework in the ACT must address the risk of unanticipated events that destroy the value of the offset site, such as bushfires. Responsibilities of the various parties should be made clear in circumstances where such an event were to occur and specify whether alternative biodiversity management strategies would be entered into at this stage. Consideration of unanticipated events should also take account of increased likelihood of extreme events as a result of climate change.¹⁸ In

¹⁷ ANEDO, *Submission on the Use of environmental offsets under the EPBC Act 1999 – Discussion Paper*, 3 December 2007, http://www.edo.org.au/edonsw/site/pdf/subs/071204epbc_offsets.pdf

¹⁸ Diffenbaugh et al have found that "extreme temperature and precipitation events are likely to respond substantially to anthropogenically enhanced greenhouse forcing and that fine-scale climate system modifiers are likely to play a critical role in the net response. At present, such events impact a wide variety of natural and human systems, and future changes in their frequency and/or magnitude could have dramatic ecological, economic, and sociological consequences." See: Diffenbaugh, N. S., J. S. Pal, et al. (2005). "Fine-scale processes

these circumstances it is all the more important that the legal and practical mechanisms in place to respond to those events are effective, particularly with regard to biodiversity outcomes.

e) Public consultation

We note changes to the PD Act and the NC Act are proposed to enable delivery of offsets (page 13 Position Paper) and we urge the government make relevant exposure drafts available for public consultation before the amendments are made.

Please do not hesitate to contact the writer at the EDO ACT should you wish to discuss any matter arising.

Yours sincerely
Environmental Defender's Office (ACT) Inc

Camilla Taylor
Principal Solicitor

regulate the response of extreme events to global climate change." *Proceedings of the National Academy of Sciences of the United States of America* **102**(44): 15774-15778.

ANNEXURE A

The International Union for Conservation of Nature's Independent Report on Biodiversity Offsets recommends the following principles be applied as best practice activity for biodiversity offsetting.

Fundamental Principles of Offset Design

1. **Recognise the limits of offsetting:** Not everything can be offset. Some losses are so great that no offset can sufficiently compensate for them. A common example of this is species extinction where no offsets policy can adequately compensate for losses incurred. Limits to offsetting are justified by the uniqueness, irreplaceability and vulnerability of biodiversity features. Additionally, some compensation targets may be so great a suitable offsets scheme does not actually exist.
2. **Additionality:** Offset gains are the result of additional offset actions. Gains would not have occurred in business-as-usual scenarios. If little or no additionality occurs, no offset would have occurred and the residual impacts of development remain.
3. **Equivalency:** A balance of losses and gains must represent a fair exchange. This involves quantitative measurement of losses and gains. Equivalency must be achieved in terms of the type and amount of biodiversity. There must also be equivalency in time and space. Trading systems such as like-for-like, like for better or trading up should be considered.
4. **Permanence:** Gains must last at least as long as impacts

Offset Approaches:

1. **Involve appropriate stakeholders and rights-holders in** developing offset policy. This ensures offsets policy is appropriately designed to recognise local, regional and global values. Stakeholder involvement increases the acceptance of offsets and ensures long-term support for the enduring success of offsets. Additionally, stakeholder involvement should be equitable. Rights and responsibilities should be shared. Customary and legal arrangements should be respected.
2. **Use regional or national conservation plans:** National governments should take responsibility for devising holistic plans which encompass entire ecosystems despite internal political boundaries.
3. **Use a decision-making framework.** An appropriate framework approach will help to outline a general approach, establish the evidentiary burdens of proof required to prove the appropriateness and achievability of offsets and help to articulate the varying levels of conservation concern for affected biodiversity, residual impacts, opportunities for suitable offsets and the feasibility of offset implementation in practice.

Framework for calculating biodiversity offset losses and gains

1. **Prioritise and select biodiversity features to include:** Consider competing stakeholder values, biodiversity value and ecosystem services. Additionally, irreplaceability and vulnerability are central tenets to judging levels of conservation concern

2. Select methods to collect data on amounts of each feature in the field: Measure quantities of biodiversity features using direct or indicative measurements.
3. Convert data into a currency: Use one or more currencies to allow comparison of biodiversity losses and gains. E.g. Extent (such as the length or volume) x Condition (quality) of the ecosystem
4. Decide on adjustments needed for a fair exchange: Use the global best-practice guidance of No Net Loss

Offset Implementation

The IUCN considers many countries' legislation, guidelines and methods for offset design and delivery to be outside a No Net Loss definition of biodiversity offsets. The IUCN recommends a corporate offset approach and flexibility in methods to suit local circumstances.

Examples of regulatory offset options include private conservation banks, government conservation banks, contracts with private organisations, partnerships or contracts with NGOS/DIY offsets by developers and in lieu fees.

Voluntary offset options include private conservation banks, government conservation banks, public-private conservation banks, contracts, partnerships, DIY Offsets by developers and in lieu fees.

Furthermore, biodiversity offsets will necessarily involve changes to land management and land use. For financial and legal sustainability, the IUCN recommends long-term financing mechanisms (such as a conservation fund) and handovers to a competent authority after gains have been achieved. Lessons about land management can be learnt from the conservation sector. Mechanisms such as protected areas, legal agreements and payments for environmental services can be extremely effective if properly implemented. Permanence (or longevity) of offsets must be ensured so that gains last as long as impacts. This can be achieved through insurance mechanisms, changing land tenure (e.g. the Bowen Basin, Qld) through stewardship or conservation agreements and third party enforcement provisions.

Friends of Mt Majura ParkCare Group (FoMM)
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Submission addressing the ACT Environment Offsets Policy and Delivery Framework

Background

- (1) One of the ACT Government's most significant sources of revenue is to be able to release land for development.
- (2) Increasingly, this land release involves nationally and globally unique, Critically Endangered Ecological Communities, such as Grassy Woodlands.
- (3) There is thus a conflict of interest within the ACT Government, between revenue raising and its international and national obligations to protect globally unique, Critically Endangered Ecological Communities.
- (4) Offset-Policies attempt to compensate for the resulting loss of unique Critically Endangered Ecological Communities by assigning other land to be sustainably managed.
- (5) **It needs to be acknowledged and clearly recognized that – by definition – the irreversible damage to biodiversity, the destruction of unique, Critically Endangered Ecological Communities, of functional connectivity, and of one hundred year old trees cannot be offset.**

Recommendations

- (1) It would be most rational to remove the pressure at the root of the need for the development of an offset policy, by **Quarantining from Development** in perpetuity all land that can presently be identified as including Critically Endangered Ecological Communities, regardless of the degree of modification. ParkCare has demonstrated repeatedly that such modified Critically Endangered Ecological Communities can be rehabilitated.
- (2) **Developments Should be Restricted to Infill**, recognizing that ample opportunities exist to make use of land that is currently being wasted in the ACT, for instance, for surface car-parking and unnecessarily wide road reserves in Canberra suburbs.

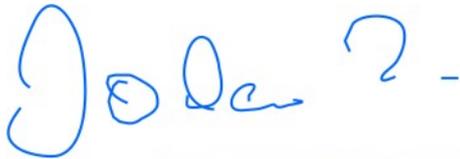
(3) A policy framework including recommendation (1) and (2) would be cheaper, would cause less conflict, would provide certainty to developers, to policy makers, to the conservation community and to the wider public, while allowing the ACT Government to claim Canberra to be a truly innovative and ecologically sustainable city.

(4) If the implementation of (1) and (2) appears politically too hard at present and instead, an offset policy is being developed, we recommend the following:

- (a) Any offset scheme requires an **Independent Panel of Environmental Experts** that has the last say in offset decisions, with the power to overrule any other considerations – in particular – revenue considerations and considerations of vested interests.
- (b) This Independent Panel of Environmental Experts is the only bulwark against the obvious and inherent **Conflict of Interest** of the ACT Government, currently being the proponent of land release, the conservation land manager, the offset policy developer, the offset decision maker and the overseer of offset management.
- (c) Offsets should be the **Last Resort** and should not be allowed to become the default option. The only way to assure that offsets are being used as a last resort is a very significant price signal: **offsets must be costly**.
- (d) Offsets should be **Like for Like**. It must be made very clear that the destruction of specific Ecological Communities cannot be offset by actions in other, unrelated communities and that high-quality land cannot be offset by offset actions in low-quality land.
- (e) Offsets should be **Local**. The destruction of Critically Endangered Ecological Communities here in the ACT cannot be offset by actions beyond the ACT border, especially because connectivity on a local scale is of critical importance and because compliance is virtually impossible to ensure.
- (f) Offsets must demonstrate **Additionality**, meaning that actions must be implemented that go beyond the present and ongoing duty of care, such as erosion control, pest and herbivore control, track maintenance and re-vegetation. Offset actions must improve biodiversity and it must be made very clear that offset management cannot involve existing, in-kind, chronically underfunded and understaffed land management resources.
- (g) Offsets must demonstrate **Perpetuity**, meaning that clear organizational and budgetary plans have to be established that assure the appropriate and long-term

management of offset sites. These plans need to be immune against budget-cycles and changes of government.

- (h) Areas under current biodiversity conservation management, such as Canberra Nature Reserves must not be used as offset sites.
- (i) In an offset policy, the loss of functional connectivity should be considered as severe as the loss of habitat and the loss of Critically Endangered Ecological Communities.
- (j) It is crucial for an offset policy to include funding, staffing, clearly structured responsibilities and very strict rules for compliance monitoring and for actions to be taken in case compliance is lacking.



Jochen Zeil
10 July 2014

Friends of Grasslands

supporting native grassy ecosystems

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Dear Sir/Madam

ACT offsets policy

Friends of Grasslands (FOG) is a community group dedicated to the conservation of natural temperate grassy ecosystems in south-eastern Australia. FOG advocates, educates and advises on matters to do with the conservation of grassy ecosystems, and carries out surveys and other on-ground work. FOG is based in Canberra and its members include professional scientists, landowners, land managers and interested members of the public.

FOG welcomes at last the release of the draft ACT offsets policy. When FOG representatives met with Minister Corbell in December 2009, we were advised then that the offsets policy was being worked on but would not be available for public comment earlier than the middle of 2010. It is well overdue, given many decisions have been made that have included a range of offsets, some of which we consider may not meet the guidelines in this draft. We welcome the opportunities provided by TAMS staff to brief members of the public in this matter, and the frank discussion about concerns expressed by participants in these events.

As a primary principle, FOG's believes that there should be no development that impacts on vulnerable or endangered species' habitat or ecosystem communities, and it opposes the use of offsets in these circumstances. However, recognizing the reality of the current situation where offsets are mandated by government for the destruction of native vegetation, FOG has provided comments on the proposed ACT offsets policy in an attempt to achieve the best conservation outcome. These comments should not be taken as support for the concept of offsets as a way of allowing developments to impact on vulnerable or endangered species or ecosystems.

Statement of principles

In general, FOG is disappointed that the position paper does not include a clear articulation of the ACT's offset principles, including and especially a principle to achieve 'no net loss'. The Commonwealth, for instance, gives a clear set of offset requirements in its "EPBC Act Environmental Offsets Policy", and most other jurisdictions have done the same. The ACT position paper, on the other hand, in the section titled "ACT Offsets Policy" merely lists the endangered species and communities that are matters of NES or that are listed as ACT threatened species, with some very general principles for the Conservator to consider at the end – basically that an offset package "must deliver an overall positive conservation outcome..... and improves or maintains outcomes for the species' habitat" – no statement of no net loss for the species itself. It also lists matters to be considered for offset sites (making frequent reference to the EPBC policy for matters of NES). Overall, the paper lacks a clear statement of the principles the ACT government proposes to use in determining offset requirements. This is surprising in view of the length of time FOG is aware that the government has been considering this issue. While FOG would expect that the ACT's biodiversity offset principles might be quite similar, if not identical, to the EPBC principles, the ACT's policy on biodiversity should be a stand-alone document. Without such a clear articulation of the

principles, it is difficult to give complete feedback on the community's views on this policy, or for the community to understand fully the implications of the policy.

Additionally we believe that it needs to be clarified up front that this offset policy does not relate to Commonwealth land in the ACT.

Application of offsets and loss of Natural Temperate Grassland (NTG)

Many NTG sites are quite small and most occur within the urban framework of Canberra, i.e. are prime development land. FOG has major concerns about the application of the offset policy to NTG sites. One concern relates to whether or not offset calculators can be applied appropriately to such small sites, given that the EPBC calculator is generally used for larger areas of land containing other vegetation, such as woodlands and forests.

An associated concern relates to the decline that we and others have noticed in NTG sites around the ACT, due to insufficient management, with subsequent approval of the site for future development. Campbell 5 is a case in point. In his recent report to the ACT's Commissioner for Sustainability and the Environment, Dr Kenneth Hodgkinson concludes that "The generally poor condition of the remnants of Australia's most threatened natural plant community in Canberra is of concern and the ACT Government should allocate more resources, especially for weed and fire management, to secure a future for this natural capital and quintessential grassland of Canberra." Dr Hodgkinson goes on to state that "These grasslands are now at sub-marginal levels in the ACT and there should be no offsets of this threatened community in land development.

FOG agrees with Dr Hodgkinson's statement,, that given the parlous state of this community a better legacy for future generations would be to conserve them all in good condition. We further elaborate on this and consider that all NTG sites should be included as Advance Offsets.

Specific comments

The following comments relate to specific parts of the two documents. Note that some of these comments apply to multiple parts of the documents – we have only covered them in one place for the most part.

ACT Environmental Offsets Policy and Delivery Framework: Position Paper

Page 3 – ACT threatened species

There is reference to the EPBC Act requirements for offsets being sufficient for any ACT threatened species. Whether or not this is the case surely depends on the level of the listing in the two jurisdictions, i.e. whether species or communities are listed as critically endangered, endangered or vulnerable. FOG's view is that the offset calculation providing the highest gain for the environment should always be used, given the uncertainty surrounding the effectiveness of offset outcomes at this point in time.

Page 5 – Direct offsets

FOG supports a minimum of 90% of offset packages to be direct offsets. Indirect offsets such as research and education campaigns, while very important, do not necessarily give a positive result in the long term. For instance, a piece of research may give a negative result, e.g. that a particular endangered species cannot be translocated. This is important information to have, but the net effect across the landscape is that the species has disappeared both from the site initially being developed and from other sites developed subsequently but before the research results are available.

A second concern about this paragraph is that it only refers to matters of NES. FOG's view is that the minimum of 90% direct offsets should apply to all ACT threatened species.

A third concern relates to the sentence "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)." FOG considers that adding offset areas to the reserve network is essential, as it removes most (although not all) future development threats. However, by itself this is not an adequate offset; given that another site

is being destroyed, the effect across the landscape is a net loss of the endangered species or community. Reserving land must always be accompanied by a) a commitment to improve the values of the land in the short term, and b) resources to ensure adequate long term management of the land. As budgets for reserve management have been cut in recent years, staff managing reserves cannot be expected to maintain the values of areas being added to reserves without long term funding that is exempt from cuts in future budgets.

P5 – Indirect offsets

If research is part of an offsets package, FOG's view is that it must be long term research that is likely to be of benefit in managing or restoring endangered ecosystems or increasing endangered species populations, i.e. research should only be considered if:

- a. Research proposals are specifically directed at species or ecosystem recovery, and obtaining practical management information leading to enhanced conservation of grasslands and grassy ecosystems.
- b. A valuable component of an offset may also be implementation of well-designed trials to determine and then apply best practice management directly to the offset sites, as well as other sites.

P5 – Matters to be considered for offset sites – point 1:

We do not believe that we can fully understand the extent to which impacts are compensated for, without demonstrations of the assessment tools. We request that FOG and others be given opportunities to have demonstrated and to try out these multiple tools to see what different outcomes are achieved using different tools (this also relates to pp. 8-9, Tools for assessing offsets).

P5 – Matters to be considered for offset sites – point 2:

FOG has significant concerns about proper measurement of “averting the future loss, degradation...” of an offset site. It would be very easy for this to be inflated or misrepresented, to the benefit of the proponent. As well it begs the question of duty of care if the offset site is on public land. Offsets should be in addition to the management of higher value conservation sites on public land. If a site is of sufficient conservation value to be considered an offset (presumably with some regeneration needed), then doesn't the landholder or land manager have a responsibility to protect that site anyway? Losing one area and averting possible future loss on another results in net loss across the landscape, which is contrary to the concept of offsets (although not stated as a clear principle in this policy document).

The second sentence states that “Conservation gain is assessed using assessment tools such as the ACT EOC or Commonwealth OAG and would often be outlined in Offset Management Plans”. In FOG's view, this should read “...and would always be specified in detail in...”. If the assessment tools are not included in an Offset Management Plan, what assurance do we have that it will actually occur?

P7, Box 2 Stages in offset assessment and administration

FOG supports the monitoring and evaluation in points 7 and 8. However, it is concerned about what happens if compliance does not occur. There is no mention of enforcement or actions to be taken for non-compliance in these stages.

Another concern is the type of audit. A desktop audit of whether or not all reports have been submitted is in itself insufficient. Audits need to include content and whether or not actions on ground have achieved specified conservation outcomes.

P8 – Tools for assessing offsets – ACT Environmental Offsets Calculator

There is no information given about how the ACT Environmental Offsets Calculator (EOC) works. The position paper advises that it will be made publically available, but until this is done or more information is made available about its methodology, FOG can have no assurance that it will be an effective measure, particularly for the small but important NTG sites in the ACT to which it will be applied.

The third paragraph in this section is unclear. The third sentence states about the EOC that “While it can inform strategic assessment processes, it is not as useful in this type of process...”, while the fourth sentence says that “The ACT EOC does not deal with avoidance and mitigation measures and so should only be used to inform strategic assessments”. The first sentence in the next paragraph then goes on to say that “The benefit of using the EOC is that a range of thresholds for individual species...”. Is the EOC meant to apply to individual species? Can it be applied to ecological communities? Can it be used for strategic assessments? What are the situations where it can and cannot be applied? Further clarification of the different uses of the tools would be beneficial.

It is not at all clear what the Environmental Offsets Assessment Methodology (EOAM) is. The fourth paragraph mentions that it “is based on sound ecological principles, current threatened species listings, and native vegetation data”. What are these principles? What native vegetation data? Why won’t it be as useful for strategic assessments? When will the community find out about all of this?

While strategic assessments are more complicated and may need a different approach, there still needs to be a clear methodology about how offsets are calculated, with consultation with the community about the basic assumptions being made.

As mentioned previously we request a demonstration of the use of the multiple offsets calculator tools.

P8 – Tools for assessing offsets – Commonwealth Offset Assessment Guide

The community has no training in the use of the Commonwealth OAG. It appears to be quite sensitive to some of the input parameters, leading to concerns that these may be manipulated by proponents to their advantage. The information about assumptions and selection of input parameters provided to the community in documentation available for public comment is often insufficient to allay our concerns in this regard. In particular, because of the small size of important and viable NTG sites, FOG is uncertain as to whether the use of these calculators is appropriate in the way it might be for larger communities such as woodlands or forests.

P9, section 6.3 – Conditions of approval

Under the section *ACT listed threatened species* there is reference to the Conservator supplying advice about offset packages but no commitment at all to take this advice. There should be a sentence similar to the second sentence in the preceding section (*Matters of NES*), giving some assurance that the Conservator’s advice will be followed. This is particularly important in the situation we have in the ACT where the government is often the proponent and the decision maker, as well as the entity responsible for conservation matters – a clear conflict of interest. There is also no reference to ACT offset principles in this section (not surprising, given the lack of clarity of what these principles are).

Another concern is that the Exposure Draft of the Nature Conservation Act (a document FOG recently commented on together with the Conservation Council) made no mention of offsets in the role of the Conservator. Will this draft be amended to include this important function in the role of the Conservator?

Given that under the ‘One Stop Shop’ ACT listed species (where they are not listed under the EPBC Act) will effectively be treated the same as Commonwealth listed species, there should be no discrimination between conditions of approval for MNES as compared with non-MNES. This does not appear to be the case as outlined in this section.

P9, section 6.4 – Securing offset arrangements

What type of funding arrangements are being considered? FOG’s view is that, if money (e.g. for research or management) is part of an offset package, it should be placed in a trust fund. This would allow for:

- a. Employment of an expert bush management team to undertake management and rehabilitation of offset conservation areas or to work with landholders who have conservation agreements or government managers;
- b. Combination of funds from several smaller offsets into something large enough to fund a major project and make a significant impact on conservation outcomes; and/or

- c. Stewardship-type payments to be made to private landholders where their land is used as an offset

P10, section 6.6 Environmental Offsets Working Group

The development of an Environmental Offsets Working Group is supported. However, we would like further clarification of who is on this working group, and the qualifications of the members of this group to ensure they have the skills and knowledge to plan and implement environmental offsets. The five roles identified are all related to management of the projects, not the outcomes. It is not clear whether their role is in any way related to the effectiveness (i.e. ecologically) of the offsets. What are the terms of reference for the working group?

P10, section 6.7 – Monitoring

What monitoring is to be done? This information needs to be made public - monitoring needs to effectively measure ecological outcomes, with the methods used to monitor, and the results being peer reviewed.

Who is to do the monitoring? Given the Government's conflict of interest (being proponent, manager and enforcer), transparency in monitoring processes and results is important to ally the community's concerns about the efficacy of offsets. One option might be for the Commissioner for Sustainability and the Environment to have a bigger role in monitoring offset outcomes.

P10, section 6.7 – Compliance

What are the provisions in the Planning Act that are proposed to be used to enforce offset provisions? As this Act does not mention offsets, how can existing provisions be applied to offsets? What changes to the Act will be made to ensure that these provisions can be used?

How can the Nature Conservation Act provisions be used for enforcing offsets when the Act doesn't mention offsets? While provisions of this Act can be applied to any offset area placed in a reserve, how can they be used to ensure that offset requirements are met in the first instance?

P11, section 6.8 – Reporting

Once a development has been completed, most proponents move on to other projects, or for other reasons may not be around to continue long term reporting and monitoring. However, offset packages usually take a number of years to meet criteria when rehabilitation is involved. How will long term monitoring and reporting of offset sites occur in such situations?

P10, section 6.8 – Review

It is identified that new species may be listed, but there is no mention of the possibility that additional ecological communities may be listed. It is not clear what changes would be required if new communities are listed.

As with monitoring, reporting, review and evaluation need to be undertaken in as transparent a way as possible, given the Government's conflict of interest. Again, this would be best undertaken by an independent body such as the Commissioner for Sustainability and the Environment.

P13, section 7.2 – Planning and Development Act 2007

Point 2 under the proposed legislative changes mentions limiting the Conservator's advice to certain aspects of the appropriateness of offsets. What does this mean? The Conservator should be free to provide whatever advice he/she thinks is needed on the ecological, scientific and conservation aspects of offsets.

Point 4 allows the Minister of the day to override the Conservator's advice, based on a section of an Act that was drafted before the question of offsets come into being. Our concern with this is that section 261 of the Act makes mention of "a market value lease", i.e. part of the definition of "in the public interest" is saleable land, or land that might accrue income for the Government. There is no mention of long term environmental or conservation interests that would also be "in the public interest". If the

argument is that these should be in the Nature Conservation Act rather than the Planning and Development Act, our argument is that environmental offsets themselves should be in the Nature Conservation Act not the Planning Act.

P14, section 7.3 – Nature Conservation Act 1980

As stated previously there is no mention of offsets in the draft Nature Conservation Bill. This will need to be remedied. The statement “*Once offset sites are agreed, the provisions in the Nature Conservation Bill 2014 may apply to offset sites*”. We submit that the provisions of the Bill must apply to offset sites, or clear information provided as to why they may or may not be applied.

Attachment A

Without referring to the Commonwealth offsets policy papers it is not clear what are the offset requirements for species and communities listed under the EPBC Act. We recommend that this be attached to the policy paper, and be amended as required.

ACT Environmental Offsets Draft Guidelines

Guideline 1

One concern FOG has with this guideline is the frequent reference to outer impact zones being in offset areas. While the ACT Strategic Bushfire Management Plan does take account of conservation concerns where possible, there can be conflict between bushfire management and conservation management. There is reference to discounting offset values because of fire management. If this situation arises, this definitely needs to occur at the time the offset package is developed. However, outer asset zones should not be in high conservation areas of natural vegetation, including offset sites, thus avoiding the problem. This issue is being addressed in the review of the Strategic Bushfire Management Plan, and these two documents need to be consistent.

There is reference to consideration of Parkcare/volunteer effort being taken into account in setting baselines. This issue is similar to that of the duty of care issue – offsets should always be in addition to existing duty of care or volunteer activity. In addition, it is inappropriate to rely on factor in volunteer activity in any rehabilitation of offset sites.

In this context, FOG supports the inclusion of reference to needing to demonstrate that any offsets applying to existing conservation areas (pages 3 and 4) are in addition to existing areas.

Guideline 2

FOG welcomes the opportunity to protect leasehold land through voluntary application of offsets, thereby increasing the opportunities for protecting extensive areas of threatened communities and associated species outside the unleased land bank. Adequate resources need to be provided to ensure lessees can achieve enhanced ecological outcomes (see our point under section 6.4 above). We do not believe that Land Management Agreements, as they currently operate, provide an appropriate mechanism for such agreements. The outcomes of these offsets need to be reviewed as rigorously as if they were on public, unleased land. We also believe that there needs to be provision for applying offsets on other unleased land that may not result in reservation. This includes some roadsides (e.g. on Tidbinbilla Road), Hall Cemetery and, particularly important for NTG, open space within the urban area.

Guideline 4

See comments under Guideline 1.

Guideline 5

FOG supports the concept of Advanced Offsets, as long as funding to manage and improve (not just maintain) these areas is provided at the time of identification as Advanced Offsets. We believe that such offsets should work to protect core areas of high conservation value from future development or neglect. However, we do believe that Advanced Offsets are not appropriate for areas that are already

within the nature reserve system, even if they are to be subjected to higher levels of enhancement (e.g. restoration).

Conclusions

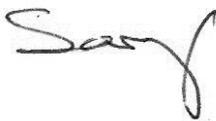
FOG is disappointed that the ACT offsets policy, as presented in the position paper, is vague, relies heavily on the Commonwealth government's policy concerning matters of NES and discriminates between MNES and ACT listed species (and potentially ecological communities).

FOG's view is that the ACT offset policy should include a number of explicit guiding principles for the delivery of offsets, such as the following:

- Offsets should be within similar habitat to that being lost, i.e. "like for like".
- Offsets for losses within the ACT should also be within the ACT if possible.
- Offsets should primarily be for land protection, improved management and enhanced conservation outcomes.
- Government should take advice from or refer offset proposals to an independent expert body to assist in determining the offset's suitability.
- Offsets should be aimed at 'net gain', not maintenance of the status quo.
- Offsets must be supplementary and not substituting for already existing commitments.
- Offsets should be in place before the development commences.
- There must be a process, with oversight by experts, in place to track each offset and take corrective action if needed, with penalties must be included in an offset agreement and applied for non-compliance.
- The cost of compliance must be recognized as part of the cost of the offset.
- A properly formulated management plan must be in place for any land in an offset package, with the land managed according to "bush regeneration" principles and rehabilitation being done to an acceptable standard.
- A review by an independent body is required to assess compliance and achievement of conservation gains as identified in the offset agreement.

In addition, FOG's view is that the ACT offset policy should state that NTG sites will not be developed and therefore will not need to be offset. This could be achieved by identifying all unsecured areas as Advanced Offsets, so that they are clearly protected from development.

Yours sincerely



Sarah Sharp
President

10 July 2014

14 July 2014

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CRICOS Provider No. 00120C

Submission on ACT Environmental Offsets Policy and Delivery Framework

Please accept this as my submission on the above position paper.

I welcome the ACT Government's initiative to develop an environmental offset policy and the opportunity to comment on it. Environmental offsets are becoming an increasingly popular policy instrument, with their adoption, or proposed adoption, in 72 countries and by 38 companies (Madsen et al. 2011). However, governments adopting biodiversity offsets are now attracting increasing criticism in Australia and internationally. For example, biodiversity offsetting in the United Kingdom has attracted [significant public opposition](#) from environment groups. Rapid growth of, and opposition to, biodiversity offsets has led to the passing of a resolution by the World Conservation Union (IUCN) to develop a position on this policy instrument. The ACT, by dint of its relatively small area, the existence of effectively a single developer and good resource information, has a unique opportunity to deliver an environmental offsets policy that can be an exemplar for other jurisdictions in Australia and internationally. However, I believe the policy in its current form falls short of this standard for the following reasons:

1. How will the ACT measure the effectiveness of its offset policy?

The ACT Government has proposed an offset policy that is modelled on elements of the federal and New South Wales policies. However, neither of these jurisdictions can demonstrate they have met their stated objective of “improve or maintain” environmental outcomes. For example, there has been a largely unchanged trajectory of land clearing in New South Wales since the introduction of the Native Vegetation Regulation 2005; in the recent Senate Inquiry to environmental offsets the federal Department of the Environment admitted that there have been no rejected development applications under the current policy and approvals are routinely granted in advance of a suitable offsets being found; and a recent report by the Commonwealth Auditor General concluded that the federal government cannot demonstrate compliance under the EPBC Act. I see nothing in this proposed policy that is a significant advance on these existing policies. **The current position paper does not sufficiently explain how the ACT Government will measure the effectiveness of its offset policy.**

2. An “improve or maintain” standard can only be met if development is constrained to least sensitive areas

International research (e.g. Maron et al. 2012, Bull et al. 2013) indicates that only a narrow range of impacts on biodiversity—typically highly modified sites or very small impacts—can be offset to a no net loss standard. For example, only 36% of development proposals met the “improve or maintain” standard in NSW (Gibbons et al. 2009). **Thus, the standard of “improve or maintain” can only be met where the policy also reduces demand for biodiversity loss. This is lacking from the current position paper.** In the ACT, strategies such as a geographical demarcation on future urban development, urban infill and public transport (reduced demand for roads) are therefore a critical component of an effective policy to improve or maintain environmental outcomes.

3. The policy will only meet the objective if the cost of development is higher in sensitive areas

The position paper lacks demonstration of a commitment to the fundamental premise that biodiversity offsets is a market-based instrument that seeks to overcome market failure with respect to biodiversity. It does this by placing an economic value on biodiversity (equivalent to the price of replacement) and therefore creates a disincentive to impact on biodiversity via development. **There must be an acceptance by the ACT Government, its Land Development Agency and relevant stakeholders that developments will incur additional cost commensurate with their impacts on biodiversity under this new policy.**

4. The policy should be consistent with other states

The ACT has elected to apply this policy only to Matters of National Environmental Significance listed in the EPBC Act and to ACT listed threatened species. This is a lower standard compared with offset policies applied in Victoria, NSW and Queensland in which offsets are applied to all impacts on biodiversity that are not exempt under the respective legislation in these states. Given most impacts in the ACT are on ecological communities that are >90% cleared, then modified examples of these communities (that do not currently meet definitions for threatened under federal or ACT legislation) are important for the conservation of these ecological communities. **To be consistent with other states and to avoid the ACT setting a precedent that can diminish the reach of other State policies, the ACT Environmental Offsets Policy should apply to all impacts on biodiversity, not just listed threatened species and ecological communities.**

5. Key data are lacking from the position paper

The position paper lacks an analysis of the causes of biodiversity loss in the ACT and which species and ecological communities are affected. This represents an important evidence-base to develop appropriate policy.

6. Hazard reduction should not be exempt from offsets

Further to my previous point, the position paper does not indicate how much biodiversity in the ACT is affected by hazard reduction. After examining these data, the ACT policy should consider Recommendation 42 of the Bushfires Royal Commission that states **an offset solution should apply to removals of native vegetation for the purposes of fire protection.**

7. Learnings from North Watson

A recent urban development at North Watson approved under the federal offset policy highlights:

- the need for explicit and unambiguous additionality criteria currently lacking from the position paper;
- that data underpinning all assessments should be publicly available to ensure independent oversight; and
- upfront transparent identification of sites that are proposed as advanced offsets—preferably as part of a public register.

8. Advanced offsets

Offsets established—and providing credits—in advance of losses is the preferred approach recommended by the Business and Biodiversity Offsets Program since this eliminates uncertainty about future gains and delays between losses and gains in biodiversity. The ACT should establish a mitigation banking agency that strategically establishes offsets in advance of expected impacts and sells these to the LDA and other developers within the ACT.

9. Urban planning in the ACT should be guided by the capacity to “improve or maintain”

Proposing to establish offsets in NSW is an admission that the ACT cannot contain its ecological footprint within its borders. If committed to ecologically sustainable development, the ACT should be presenting a policy for future development that is sustainable within its own borders. Strategic application of offsets at a landscape scale is more desirable than an incremental or ad hoc approach. The ACT Government should embark upon a planning process to identify sites for future development, and those sites that are appropriate for offsets. **The capacity to “improve or maintain” environmental outcomes as set out in the position paper, is a useful standard that can be used to demarcate the limits of urban spread in the ACT.**

10. Public register

All development in the ACT should be detailed on a **public register** that includes information on: the location of the development and offset, all relevant information and data that underpins the assessment, including all data used in any assessment calculator, conditions of approval and up-to-date progress towards the conditions of approval. The public register developed by the Western Australian Government (<https://offsetsregister.wa.gov.au/>) is the best in the country, but still lacks key data underpinning the assessment.

11. The offset policy should be evidence based and the assessment methodology subject to peer review

It is important that the ACT offsets policy is underpinned by the, now quite extensive published scientific, economic and policy literature on this instrument from the experiences in Australia and other countries such as the United States of America, Canada and New Zealand. **The position paper does not demonstrate that this large body of evidence has been used to develop the policy. It is critical that any offset assessment guide, or calculator, is also developed in light of this literature and is subject to independent peer review as was the case for the NSW and federal assessment methodologies.**

Yours sincerely,



PHILIP GIBBONS

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- Gibbons, P., S. Briggs, D. Ayers, J. Seddon, S. Doyle, P. Cosier, C. McElhinny, V. Pelly, and K. Roberts. 2009. An operational method to assess impacts of land clearing on terrestrial biodiversity. *Ecological Indicators* **9**:26-40.
- Madsen, B., N. Carroll, and K. Moore Brands. 2011. Update: State of biodiversity markets report: offset and compensation programs worldwide. *Forest Trends, Washington D.C.*
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RE: ACT Environmental Offsets Policy and Delivery Framework and ACT Environmental Offsets Draft Guidelines

Dear Sir/Madam,

Thank you for the opportunity to comment on the “ACT Environmental Offsets Policy and Delivery Framework” and “ACT Environmental Offsets Draft Guidelines” documents.

GCG staff have received numerous comments and enquiries about the environmental offsets process during this short period of consultation. At present there is a strong sense of distrust and lack of confidence in environmental offsets among our members, including Parkcare and Landcare groups, rural landholders and other members of the community, largely a result of the North Watson experience. We have concerns about the 'one stop shop' as in the ACT the developer/proponent will very often be the same body as the regulator (ACT Government). The principle of the policy should include the need for a net gain in conservation value in the ACT.

Below is a list of three of our key concerns with the documents, which include the need for more strategic and integrated investment between offsets and other funding sources to protect Matters of National Environmental Significance (MNES), increased transparency, and strengthened public consultation. More specific feedback regarding the draft guidelines and draft offsets policy is also outlined below.

GCG’s key concerns with the documents

The role of integrated and strategic investment in offsets area needs to be more clearly explained in the documents.

Our primary concern with the offsets policy is how the offsets policy will affect our core business of supporting and coordinating Landcare activities across the Ginninderra catchment, which is largely focused on enhancing MNES. To ensure investment from offsets is strategic and integrated and does not lead to perverse outcomes, greater coordination between the ACT Government and the Catchment Landcare Association combined with the development of written guidelines is required. GCG do not want to be in a situation of not being able to support our volunteers or rural landholders in ways we previously have due to a declared offset.

There is a need for transparent decision making and reporting re: offsets to be more strongly highlighted in both documents.

GCG is concerned about the way offsets are determined using the various methods. Environmental offsets tools can be manipulated, as can the base line and post offset monitoring data and hence these need to be transparent. For example, Dr Phil Gibbons (ANU Senior Lecturer and expert in biodiversity offsets) highlighted the need for transparency in the use of environmental offsets tools at the public meeting on 4th July. He explained that he had reassessed the North Watson experience and found it was out by ‘seven orders of magnitude’ stating this was a ‘blatantly poor decision’. It is unclear how this is done and how in the future these methods are updated using new knowledge. Particularly concerning are the vague references to aquatic species. Greater transparency is required to reduce the risk of disenfranchising Parkcare and Landcare volunteers, who through their in-kind effort, contribute million of dollars each year to improving the ACT environment. Further consultation with conservation groups and scientists are also needed to ensure that these methods are applicable given the local areas considered. One avenue for

increased transparency in decision making we would like to see is for a member of the community (likely a representative from the Catchment Landcare Association) to sit on the Environmental Offsets Working Party, which at this stage is dominated by ACT Government.

The opportunity for public comment early in each stage of the environmental offsets process needs to be strengthened in the documents.

To address the potential conflict of interest in ACT Government being the developer, regulator and land manager, we would like to see the opportunity for public comment early in each stage of the environmental offsets process, promised in the consultation process, enshrined in the guidelines and environmental policy. In the public consultations we have been assured that there will be ample opportunity for public comment on various aspects of the environmental offsets process, particularly regarding the choice of advanced offsets and the role of volunteers in advanced and declared offsets area. This consultation process will need to be written into the legislation so that the community, particularly the volunteers involved in Landcare and Parkcare can be confident that their view will be taken into account.

Additionality clearly demonstrated, particularly on reserve land and in areas where volunteer work

Additionality is at the core of the offsets policy. Our volunteers are concerned about the use of offsets on already declared reserve land (especially as federal policy generally prohibits this) and in areas where there are active Landcare/Parkcare Groups. Advanced offsets is perhaps the area of biggest concern among our members as it is not clear which public lands may be targeted. Volunteers have expressed that they are unlikely to work in an Offset area (either advanced or declared) as they do not want their work to be contributing towards offsetting the degradation of habitat elsewhere in the ACT. They have explained that there would need to be clear benefits from the offsets funds in these areas, well above their regular work, for them to continue to dedicate their time to improving the biodiversity of the ACT in their local areas. The additionality would need to be included in the Advanced Offsets list. This issues would in part be addressed by early consultation with affected groups, adequate public consultation and transparency of reporting when offsets are proposed as part of development approval, however more emphasis in the policy and guidelines documents would be beneficial.

Specific feedback on the ACT Environmental Offsets Draft Guidelines:

GCG's main concern with the draft guidelines is regarding guidelines 4 and 5.

Re: guideline 4 "Matters relating to volunteer groups working in areas identified as potential environmental offsets" we would like to advocate a number of changes:

Guideline 4 currently indicates that those working in the areas to be declared offsets or advance offsets will be notified. *GCG suggests "notified" be changed to "done in consultation with groups actively working in the offset area or adjoining the offset area, prior to the area being declared as an offset".*

We strongly object to the sentence that explains 'in some circumstance this (community notification of offset sites) will not be possible until the offset is established'. We consider that community consultation regarding the establishment of offsets must occur at early stages and then throughout the offsets process. We suggest removing this line.

GCG would like to see current and ongoing work of volunteers in offsets sites recognised in the guidelines. The words 'and current' should be included in the following sentence "*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.”

GCG appreciate that there has been recognition that volunteers may choose not to participate in offset areas, however take issue with this not being addressed more fully in the guidelines. Guideline 4 states “*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 used as an offset site at all in the future.*” Volunteers have dedicated many years of their lives and millions of dollars in in-kind support hours to protecting natural areas of the ACT. Maintaining the support of volunteers must be a key priority of the offsets policy and should be reflected in this document. Increased transparency and opportunities for public involvement, mentioned above, will help to encourage volunteer retention.

We welcome the last sentence of draft guideline 4 "additional support could be provided to the community as part of the offset package". GCG's core funding, through the CFoC RIS is focused on enhancing MNES. To achieve improvement in MNES GCG supports Landcare and Parkcare Groups and undertake catchment wide projects to enhance ecologically threatened communities or the habitat of ecologically threatened species. We understand that Commonwealth money can not be used in offsets areas, which has potential to affect GCG's core functions. Landcare and Parkcare groups that continue to work in offset areas would need to be assisted in their work via other means (if they decide to continue working there). The most cost-effective strategy would likely be offsets funding being forwarded to the Catchment Groups, who have demonstrated expertise in supporting community environmental activities.

Regarding Guideline 5; compiling a list of advance offsets to ensure that the community understands which sites will be managed as advanced offsets is welcomed by GCG, however when deciding on an Advanced Offset site the work of groups will need to be considered. We would expect that an Advanced Offsets list would be compiled in consultation with group working in the area to achieve the stated aim of “early consultation with potential groups who may be impacted”. Therefore, this sentence should include “*wherever possible volunteers will be involved in determining the sites of Advanced Offsets*”.

Feedback on the ACT Environmental Offsets Policy and Delivery Framework

The main legislative changes that are proposed in the ACT Environmental Offsets Policy are to the Planning and Development ACT, as outlined in page 13 of the Policy Delivery Framework document.

Regarding the first point, the frequency on effectiveness should be specified and be done no more than every 5 years.

Under point 7, the offset register will need to be publicly available and be placed on the ACT government website. It will need to be updated on a regular occurrence (monthly) to ensure the public are kept well informed of current and advance offset areas. Also GCG advocates that the register contain reference to any submissions ACT Government receive on the posting of an area as an offset. This will enable the public to be aware of the positive or negative responses the ACT Government received in the declaration of an offset.

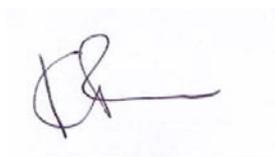
GCG suggests that the process that will be undertaken to establish monitoring and management of offsets be outlined in the legislative changes proposed. Once an area has been determined as an offset, the monitoring and continued assessment of an area to ensure the offset is maintained will need to be specified. There is little information regarding the governance, money available and

responsibilities regarding the monitoring and management of offset areas. Further consultation will be needed to establish the overarching principles and objective for governing, monitoring and managing offsets.

Also more information will need to be included that consider the offsite impacts of a development and how providing an offset will ensure protection of MNES. This is particularly important for aquatic species and migratory birds. The range of these species can be considerable as well as the habitats that support them. It would be very important to have an assessment that includes offsite impacts when assessing potential offsets to continue to protect these species.

If you have any questions regarding these comments please do not hesitate to contact me on 6278 3309.

Kind regards,

A handwritten signature in black ink, appearing to be 'K. Preuss', written on a light-colored background.

Karissa Preuss
Coordinator
Ginninderra Catchment Group
On behalf of GCG members

Comments on
ACT Environmental Offsets
Policy and Delivery Framework Position Paper
and
Draft Guidelines
June 2014

The objective of environmental offsets should be no net loss to biodiversity, habitat and species.

The offsets approach taken in the ACT is to preserve habitat in compensation for habitat being lost to development. This still results in a net loss of habitat in the Territory. The environmental offsets analysis should insist of a zero sum result. The loss of habitat to development must be offset by an equivalent increase in habitat.

Environmental offsets should address compensation for biodiversity, not just threatened habitat and species.

Victoria and New South Wales both include biodiversity in their environment offsets policies. The document seems to rely solely on the EPBC Act Offsets Policy to address this. Biodiversity should be brought into the ACT Offsets Policy as well.

Environmental offsets should prevent species and habitats that are not currently listed as threatened from becoming so.

Successive developments can move a species or its habitat to a threatened state. The document does not call for action until the species has actually been listed as threatened. By then, it's too late. The Conservator should be tasked with assessing whether the development has the potential to move a species or habitat onto the threatened list and require an environmental offset if that is likely to be the case.

The data used to make an environmental offset decision and the results of analysis and modelling should be transparently available without having to go through a FOI process.

In the past (i.e. Watson), it was difficult to obtain the information needed to challenge environmental offset initiatives. These barriers need to be removed.

The Conservator's position should be independent.

The Conservator should not report to a Minister within the ACT Government whose priority is land development or raising revenue from land sales. This would put the Conservator in a conflicted position.

Ministers should not be permitted to use call-in powers to override inadequate environmental offsets.

The document suggests at one point that call-in powers can be used. In public discussions, ESDD representatives indicated the Commonwealth has the power to override these actions, particularly where the Conservator's has advised the Minister that the environmental offsets are inadequate. A Guideline needs to be developed clearly showing how a Minister can be prevented from using their call-in power to ride roughshod over the environmental offsets process.

Leaseholders should not be compelled to enter into environmental offsets on their leasehold land.

The documents say in several places that environmental offsets on leasehold land are subject to leaseholder agreement. In particular, Guideline 2 states, "Offsets on leasehold land need to be agreed with the leaseholder". The documents should clearly state that no mandatory land acquisition (i.e. lease withdrawal), land use rezoning or imposition of lease conditions will be used to force a leaseholder to enter into an environmental offset agreement.

Leaseholders must be compensated for the economic impact of establishing environmental offsets on leasehold land.

Inevitably, establishing an environmental offset on leasehold land will have an economic impact on the leaseholder. This can arise from additional costs incurred, reduced income from land withdrawn from production, loss of capital value of the lease due to restrictions on land use or all of the above. The document (and subsequent legislation) should explicitly recognise this and provide a basis for realistic payment compensating the leaseholder.

Loss of land used for food production should be avoided when evaluating environmental offset alternatives.

Over the life of this environmental offsets policy, we can expect to experience increasing economic pressure on providing food to the ACT's population as the effects of peak oil and climate change increase the cost of producing and transporting food. Being able to meet our food requirements with local production will become increasingly important. We need to set aside the land we require for this while at the same time preserving environmental habitat. The new policy needs to include this factor in the evaluation of environmental offset proposals.

Mark Hartmann
Yealambidge Estate
11 July 2014

Relevant Positions

Rural Landholder's Association, Public Officer
ACT Regional Landcare Facilitator Steering Committee, RLA Representative
Molonglo Bush on the Boundary, RLA Representative
Upper Murrumbidgee Catchment Coordinating Committee, RLA Representative
Molonglo Community Reference Group, RLA Representative
Food Security Roundtable, RLA Representative

Gillian Helyar

Watson Resident and member of Watson Woodlands Working Group

(Received by email)

I, as an interested member of the public, wish to make following comments:

1. Transparency in the process of establishing offsets, and establishing and publishing a clear pathway for seeking information on both the process and the detail of each assessment, I think is crucial to retaining community engagement (cynical persons will read intergovernmental collusion or governmental secrecy with every action even if none is happening, and lack of transparency builds cynicism).

2. Identification of potential offset sites as early as possible, and retaining a public register of these, is helpful to all parties including multiple government departments, leaseholders, interested public, and developers. (surprise announcements have potential to build antagonism).

3. Identifying a hierarchy of selection of potential offsets for pieces of land earmarked for development would be helpful for all in terms of planning, management and bringing in new information about the sites.

4. You will probably agree that though it may be irritating and time consuming to have to deal with public comment and disagreement, it is magnified if there is a hotbed of unrest from people who feel disenfranchised from decision making about something they are putting voluntary community effort into. Early engagement of park volunteer groups is something I would like to see written into the guidelines, if not the policy.

4. Biodiversity per se perhaps needs to be considered in the ACT. Though the ACT in general was likely managed as an open woodland by aboriginal management, about half is now primarily designated as residential development for humans. It may be that some areas that contain a higher degree of biodiversity are now extremely important to protect, and that this should be considered an important aspect to consider when development is proposed, as well as species habitat and ecological communities (we do not know a lot of what we are losing from very diverse ecologies).

5. I agree with the hierarchy of location of offset sites (Point 6, Page 6 of Position Paper), and also ensuring a good level of certainty of success of offset management. The latter would appear to be easiest achieved with already protected areas, but where there is a choice of another less secure piece of land that serves all other criteria (location, general ecosystem etc), and provides something extra (e.g. important connectivity, improved biodiversity, improving highly degraded ecosystem), then changing the zoning of the latter would be the preferable choice. I do not think highly degraded areas should be ignored as offsets - the future is hundreds of years not just within our lifetimes.

6. Point 6.6 of Position Paper (Environmental Offsets Working Group). Sounds like a great idea. Documenting that there should be a representative from each Government Department involved in offset selection and management would be an improvement. I also

think this Group should include a few (3?) community representatives including someone with a strong ecological profile, someone with a good link to park care volunteer groups, and someone representing leaseholders.

7. Point 7.1 of Position Paper (EPBC Act) last para - it sounds good to give to give the Conservator a stronger role in giving advice. I heard in the Friday session that the Conservator is backed by a scientific group (Conservation, Planning and Resource?). Documenting this group and its composition would be helpful I think for the public so we can appreciate the depth of the advice.

8. Proposed legislative changes - there was quite a lot of non specificity and therefore made comment difficult.

In general, I live in Watson, an older suburb with a lot of area still not covered completely by housing. Every proposed development in Watson becomes a sudden battleground between community and developer because there is no agreed plan of action for non-built areas with active transport networks, community facilities or parklands built-in as there are for greenland suburbs. There will never be unified agreement on land use, but ad hoc development wastes a lot of time, leads to potentially poor outcomes in the long term, and does not build a community working with government. So prior planning with advanced offsets sounds extremely important in suburbs like Watson.

Gillian Helyar

Watson Resident and member of Watson Woodlands Working Group



INSTITUTE FOR
APPLIED ECOLOGY

10/7/2014

A submission to the ACT Government in relation to the Draft ACT Environmental Offsets Policy and Delivery Framework Position Paper and associated guidelines from the Institute for Applied Ecology at the University of Canberra

Who are we and why are we making a submission?

The Institute for Applied Ecology (IAE) is a research institute at the University of Canberra that contributes to the understanding and improved management of species, communities and ecosystems in Australia and internationally. The IAE supports a portfolio of research activity that contributes to policy development and management decision-making. Staff and associates from the IAE have worked extensively across the ACT and region and have made a significant contribution to the science that underpins the management of matters of National Environmental Significance in the region.

A step forward

We consider that the development of a clear and consolidated policy in relation to offsets is of considerable benefit to the ACT. The formalization of the policy provides for transparency of decision making and will guide actions by developers.

Some additional considerations

The draft policy addresses several of the key issues for implementing offsets (McKenney & Kiesecker, 2010¹) with the principles of Equivalence, Location, Additionality, Timing, Duration, Management and Currency, at least in part covered by the draft policy. We suggest that some elements of these principles require further consideration in the finalisation and implementation of the policy.

Additionality:

We consider that where offsets are used to compensate for adverse effects on matters of NES and ACT listed species, the offsets should always be additional rather than 'equal or additional'. This will buffer uncertainty in the biodiversity outcomes

¹ McKenney, B.A. & Kiesecker, J.M. (2010) Policy Development of Biodiversity Offsets: A Review of Offset Frameworks. *Environmental Management*. 45:165-176



INSTITUTE FOR
APPLIED ECOLOGY

associated with the offsets, as well as providing a contingency for future adverse outcomes.

Duration and Management:

The proposal that the offset be put in place for the duration of the impact is consistent with international approaches to offsets. However it is generally agreed that offsets in perpetuity are of greater value than those set for a finite time period. We suggest that after their establishment offsets should be maintained in perpetuity so that they cannot be affected by future developments. Such long term actions require that compliance is carefully managed.

The on-going management of offsets is not well articulated within the draft policy and greater detail is required. For example, the policy should address the responsibilities associated with the provision of finances and resources where active management is required during establishment and for the life of the offset (such as weed control or fire management). If long term finance is required, then the mechanism for ensuring this is provided needs to be established. In addition, the ongoing monitoring required to evaluate conservation outcomes should be established and the responsibilities for funding the monitoring clearly defined.

The consequences for not achieving the conservation outcomes should also be established within the policy to ensure there is a clear line of responsibility and recompense should the offset outcomes not be achieved. This is best established within the management and monitoring component of the policy. We argue that clear consequences should be defined, and include fair and transparent methods of assessing the outcomes.

Cross jurisdictional arrangements should also be clearly defined within the policy with appropriate management, longevity and consequence arrangements in place.

Other considerations:

The role of Science:

It is encouraging to see science forming the basis for assessment criteria in the draft policy. We do, however, have some concerns that the demands on environmental



science exerted by the offsets assessment process may go beyond the current published knowledge base. We urge the ACT Government to incorporate a breadth of independent expert opinion in considering offset proposals, particularly with regard to evaluating risk of failure and likelihood of achieving successful outcomes. It is felt that as it stands, the policy asks questions that environmental science is not currently equipped to answer.

It is also important to have independent expert advice in considering the effects of offset proposals given both species specificity and the need to understand habitat requirements for a range of life stages and activities. For example, raptors can live within city environments finding sufficient food resources and vegetation within small pockets of vegetation to survive reasonably well. However, they will rarely breed within small, fragmented, patches of vegetation, hence dividing habitat into patches often means the loss of viable raptor populations (Olsen, 2014²). A direct replacement of the area of vegetation removed (or even additional vegetation) will not provide suitable habitat for breeding for raptors.

The Conservator:

The role of the Conservator in advising on the appropriateness of proposed offsets is positive and recognizes the Conservator's role within the ACT. However, the main mechanism for the provision of expert advice to the Conservator is the Flora and Fauna sub-committee, which is not funded to address the workload that may arise. The operationalization of this step in implementing the offsets policy requires careful consideration and funding dedicated to the task.

Transparency:

It is possible for the Minister to overturn a requirement for offsets in the ACT. We suggest that any decision taken by the Minister to limit the requirements for biodiversity offsets should be subject to a transparent and public process.

² Olsen, J. Australian High Country Raptors. CSIRO Publishing



INSTITUTE FOR
APPLIED ECOLOGY

We are happy to provide additional input and if you require more information feel free to contact us.

Yours Sincerely

Dr Fiona Dyer, Professor Ross Thompson, and Professor Richard Duncan
On behalf of the Institute for Applied Ecology, University of Canberra

DELIVERIES



NATIONAL PARKS ASSOCIATION OF THE ACT INC.

2014 – CELEBRATING THE 30TH ANNIVERSARY OF THE GAZETAL OF NAMADGI NATIONAL PARK

Manager – Natural Environment
ESDD
GPO Box 158
Canberra, ACT 2601

ACT Environmental Offsets Policy

Thank you for the opportunity to make a submission on the proposed ACT Environmental Offsets Policy (the Policy). As you may know, the National Parks Association of the ACT (NPA ACT) is a community-based conservation organisation with more than fifty years of working to protect our natural environment through an active outings and workparty program; participation in Parkcare activities; an extensive publication program; public meetings and conferences and engagement with government policies and programs.

Key Points

- The policy and delivery framework is premised on the ACT taking up responsibility for a "One-Stop-Shop" by taking on Commonwealth environmental approval responsibilities. The NPA ACT does not support the devolution of the Commonwealth's environmental powers.
- The NPA ACT believes that offsets must be only used as a last resort. By its definition offsetting entails the destruction of environmentally important habitat. The criteria on whether an offset is adequate compensation should be extremely strict.
- There is nothing in the policy outlining the assessment processes for ensuring a developer has taken all feasible and appropriate avoidance and mitigation actions.
- There is the potential for the ACT Government to be the developer and the regulator. There needs to be clear mechanisms to avoid conflicts of interest.
- Offsets should be assessed in a strategic context as opposed to simply looking at the impacts of the individual development.
- Advance offsets are likely to lead to a reduction in the creation of conservation reserves in their own right.
- Developers need to contribute to the long term maintenance of areas used as offsets.

National Parks Association of the ACT Submission on the ACT Offsets Policy

- Parkcare activities in areas offered as an offset should not be counted as part of the value of that offset.
- Monitoring and reporting of offsets is vitally important and the results of these must be publicly available

Detailed comments of these and other points are included as Attachment A.

The NPA ACT would be happy to discuss any of the issues raised within its submission and can be contacted, either by writing to our office address or through email (noting that the NPA ACT office is manned by volunteers and a daily presence is not able to be maintained). Alternatively, I can be contacted on 0410 875 731.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Griffiths', is centered on a light-colored rectangular background.

Rod Griffiths
President
NPA ACT
10 July 2014

Attachment A Detailed Comments

Offsets In General

The NPA ACT believes that offsets must be only used as a last resort. By its definition offsetting entails the destruction of environmentally important habitat. Use of offsets means an overall reduction in a habitat unless it is being offset by the transformation of another habitat into the one being offset.

Because an offset will almost always result in a reduction in the quantum of a habitat, the assessment criteria on the adequacy must be extremely strict. The NPA ACT believes that the ACT environmental offsets calculator must be made available for public scrutiny prior to it being implemented.

Avoidance and Mitigation

There is nothing in the policy outlining the assessment processes for ensuring a developer has taken all feasible and appropriate avoidance and mitigation actions. The Policy and/or amendments to the Planning and Development Act must clearly identify this requirement. Such evidence put forward by a developer should be subject to public scrutiny.

Strategic Context

When deciding whether an offset is acceptable the decision must take into account the strategic impact of the loss of habitat. While individual losses may not be significant in their own right, the accumulative impact may be significant. If assessments are only made on a site specific basis this overall impact may be missed.

Conflict of Interest

The ACT Government is a major developer in the ACT. Where an offset is required in these circumstances there is, as a minimum, a perceived conflict of interest. The Policy does not address how such conflicts will be managed.

Existing Reserves

The NPA ACT believes that the use of existing reserves as offsets should be rare and only occur where there is an obvious and significant potential for environmental improvement in the existing reserve. The NPA ACT believes that even then the value of the offset in the existing reserve should be counted only as an indirect offset value.

Advance Offsets

The creation of advance offsets while welcomed may have a negative impact on the ACT Government's willingness to declare conservation reserves that are not linked to potential future offsets. As stated above the NPA ACT would only support the use of existing reserves as offsets in rare situations. Therefore, it would be tempting for the ACT Government to delay the gazettal of candidates for reserves to safeguard their value as potential offsets. The Policy makes no comments on this potential situation.

Long Term Maintenance of Offset Sites

The NPA ACT welcomes the Policy's statement that developers are "responsible for finding, securing and managing offsets". Any introduction of additional land to the

National Parks Association of the ACT Submission on the ACT Offsets Policy

public conservation estate increases that estate's maintenance expenses. Developers should be providing sufficient resources to meet any additional management costs in the public conservation estate.

Parkcare Activities

Many areas around the ACT are subject to environmental activities by Parkcare or equivalent volunteer groups. These activities can significantly enhance the environmental value of an area of land. However, where these volunteer activities have not funded by the developer, then they should not be included in the area's offset value. This approach would help ensure continued volunteer activity across all ACT land.

Offset Management Plans

"Offset Management Plans (OMP) will be required as part of conditions of approval for some developments. An OMP guides management of the offset site. It is supplementary to the conditions of approval". The Policy does not specify why OMPs do not apply to all offset affected developments.

Given the potential for a proponent to not meet the requirements of the management plans the Policy should clarify how defaults will be addressed.

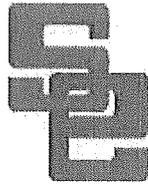
"An Offset Management System (OMS) will be used to ensure conditions of approval relating to offsets are monitored and managed in the long term. The OMS ensures that offset requirements can be monitored regardless of changes in staff, land owners, or government structure." All offsets should be covered by the OMS.

Monitoring and Reporting

Both these activities are vital for the proper functioning of the offset regime. However, the Policy does not appear to specify that monitoring must be completed by an entity independent to the developer. The developer needs to bear the costs of the monitoring.

The Policy states that "(r)eporting on the broad program of offsets will occur every four years through the Commissioner for Sustainability and the Environment's State of the Environment Report. Data will be recorded in the OMS." Details of progress towards complying with management plans should be reported as part of this process.

The Policy also states that reporting "will also be undertaken for individual offset sites, in line with offset requirements, generally on an annual basis". What does 'generally' mean and will this be voluntary or required?



Office of the Commissioner for
Sustainability and the Environment

Manager – Natural Environment
Environment and Sustainable Development Directorate
GPO Box 158
CANBERRA ACT 2601

Dear Sir / Madam

**Submission to inform the *ACT Environmental Offsets Policy and Delivery Framework
Position Paper***

Introduction

I am writing to provide comment on the *ACT Environmental Offsets Policy and Delivery Framework Position Paper*. As you may be aware, the Office of the Commissioner for Sustainability and the Environment has four main objectives; investigation and resolution, monitoring and reporting, engagement and advocacy, and capability.

The legislative role of the Office also encourages decision-making that facilitates ecologically sustainable development, and supports the adoption of sound environmental practices and procedures by the Territory and Territory authorities.

This response addresses the issues raised in the *Offsets Policy and Delivery Framework Position Paper* (the framework). It draws from, among other things, the Office's work on complaints, investigations and strategic environmental reporting across the ACT. This work includes the making of several recommendations relating to the implementation and management of offsets in the Act. Drawing this work together, in March 2011, the Office

Canberra Nara Centre, Level 2, Corner London Circuit and Allara St ACT 2602

Commissioner: Mr Robert Neil

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This Office is independent of, but funded by, the ACT Government.



commissioned a paper titled "Potential Biodiversity Offset actions and sites for the Australian Capital Territory". This paper provided independent advice to the Office on potential biodiversity offset management actions and sites for the ACT in the context of the Canberra Nature Park Investigation. The following important points were raised in the above mentioned paper.

- Sites that are adjacent to existing nature reserves may be advantageous as offset sites if they are able to enhance connectivity between habitat patches and if they are able to mitigate current and future threats to these nature reserves.
- Active management of offset sites: The act of simply setting aside an area of land for conservation may not be sufficient as an offset. For example, rezoning an existing area of grassland as Nature Reserve may protect the site but it does not necessarily result in improved biodiversity value. Management actions must be implemented on such sites to improve the biodiversity value and ensure the principle of additionality is met.

These points are expanded upon in this submission.

General Comments

The Australian State of the Environment 2011 reported, *'Our unique biodiversity is in decline, and new approaches will be needed to prevent the accelerating decline in many species'*. Given the decline in biodiversity, combined with increasing population pressures, land clearing, invasive species and climate change it is vital that offsetting does not contribute further to this decline, and that offsetting provides a mechanism to attain gains in species habitat and biodiversity in the ACT.

Issues

Offsets and Impact Assessment

Environmental offsets are designed to compensate for "unavoidable significant adverse environmental impacts". For this reason it is vital that, at a minimum, the principles if not the actual topics and procedures, which must be addressed when assessing environmental

impacts are included in any biodiversity offsets policy. This is particularly the case for the ACT government's *Offsets Policy and Delivery Framework* as offsets inter-relate so intrinsically with planning and specifically the ACT Planning and Development Act.

Further considerations in relation to this submission are:

- Some degree of caution should be exercised in determining the extent to which biodiversity offsets should be integrated with impact assessment, due to the risk that, if biodiversity offsets are considered a part of impact assessment from the outset, they might be seen as a means of short-circuiting requirements for mitigation, thereby reducing efforts to avoid adverse impacts at source through project re-design.
- The cumulative effect of residual impacts should be considered as part of the initial impact assessment appraisal.

Conservation gain

The policy uses the phrase "conservation gain" when discussing what should be achieved by offsetting. While the framework provides a definition of "conservation gain" it does not make it clear whether there will be a resultant "no net loss" or a "net gain". In particular the framework does not specify goals, in terms of net gain or no net loss, for species richness, biodiversity of species, ecosystems services etc.

The framework would benefit from improved clarity around the definition and achievable outcomes from a "conservation gain".

The requirement for an offset

The framework does not provide adequate guidance about when an offset should be considered in the assessment or approval process. The framework states that an offset is required where a development may have a significant impact on a Matter of National Environmental Significance or on ACT listed threatened species or communities. The framework should state that offsets should only be considered as an option if avoidance and mitigation strategies are not able to reduce impacts to an appropriate level. The policy needs to incorporate appropriate guidance on how a proponent can demonstrate they have "avoided" and "mitigated" aspects of the development and why impact requiring offsetting is unavoidable as part of the development application/assessment and approval process.

Legislative amendments

The *framework* outlines how the use of environmental offsets will be incorporated into the Planning and Development Act. As discussed above, any amendments to the legislation should clearly state that avoidance and mitigation of impacts are mandatory pre-conditions before offsetting will be considered as an option.

Indirect Offsets

The framework includes the use of indirect offsets or compensatory measures for up to 10% of the offset requirements when a proponent is not able to fulfil all the requirements with a direct offset. In principle, offsets are supposed to provide additionality to biodiversity values lost through development. It is hard to show how indirect offsets comply with the principle of additionality and for this reason it is important that all other avenues are explored for direct offsets before an indirect offset or compensatory measure is accepted.

The framework also states that there will be a requirement to provide 90% direct offsets and no more than 10% indirect offsets for Matters of National Environmental Significance (MNES). It further states that the indirect offset must relate to the MNES that is impacted. However, for ACT listed threatened species, indirect offsets which improve outcomes for species other than the species impacted by the development are allowable. There are two areas of concern in relation to this last point:

- The framework does not make clear whether the ACT's allowance of indirect offsets that provide outcomes for the species other than the species impacted by the development is as well as OR instead of the species impacted by the development.
- In the interest of maintaining and improving biodiversity in the ACT more broadly it would seem important that ACT listed species and communities and their habitat are maintained and protected to the same degree as MNES.

It would be useful for the framework to provide clearer guidance on the type and use of indirect offsets (compensatory measures), for example:

- The framework should clearly state that indirect offsets should be linked as closely as possible to offsetting of the impact. They are strictly speaking not

really an offset but a compensatory measure and as such should add value to the rest of the mitigation and offsets package.

- Guidance should be provided on the type of indirect offsets that may be considered and how each type will demonstrate a measurable contribution to environmental outcomes. For example, research is often used as an indirect offset so guidelines should be provided explaining how the research will be implemented, evaluated and funded.
- Offsets should improve conservation values – it is very difficult to measure with any certainty the likely conservation gains from an indirect offset or a compensatory measure. The framework should include the requirement for the proponent to outline measures to monitor and ensure the effectiveness of any indirect offsets they wish to use.

Land tenure for offsets

Land tenure arrangements in the ACT present a difficulty in terms of being able to manage an offset site and implement the required measures on that site in perpetuity. The policy suggests several methods for managing offset sites on leasehold land including changes to zoning, the use of conservation leases, land management agreements, Commonwealth conservation agreements and reserve overlays. Due to the complexities associated with the leasehold system in the ACT, clear methods of ensuring the success of these measures will need to be decided before the approval of offsets on leasehold land.

Offsets must be legally (and practically) enforceable – Land Management Agreements have so far proven to be an ineffective tool in terms of managing a site and providing tangible and verifiable conservation outcomes. If these are used, compliance and enforcement of the conditions of the agreement must be part of the offset and development approval.

Conditions placed on the lease of land containing an offset site should be attached to that site and transferable from lease to lease so that the offset is maintained in the long term. The transfer of an offset site to the Government and subsequent zoning for nature conservation is undoubtedly one of the most effective approaches available to ensure the security and viability of an offset site. A potential issue with this arrangement is the resources required by Government to manage and maintain the offset site. In this case, and

potentially in all approvals involving an offset, the ability of the manager (Government or otherwise) to fund the offset and required management long term must be considered in the approval process. If the Government is to manage the site, all arms of Government involved in the management of that site must be consulted before the development and offset are approved.

Additionality

Offsets should provide additionality in terms of an increase in habitat or biodiversity values associated with the matter impacted upon by development. Offsets that have been set aside for projects in the ACT in the past have tended to use areas that are already part of nature reserves; for example, impacts on threatened species from Kenny and Throsby developments are to be offset with actions in the existing Mulligan's Flat, Mulangarri and Gungaharra Nature Reserves. A large percentage of the ACT is already set aside as Nature Reserves and while I understand that this may make it difficult to find offsets outside of reserves, this is an area of concern. Nature Reserves are likely to already have high conservation value so it may be difficult to show additionality in terms of conservation improvement or gains.

In addition not all Management Plans or Action Plans or strategies for sites managed for conservation contain specific enough information to be able to determine the activities of the land manager. Conservation management activities must be better recorded and reported to ensure that activities funded under an offset are additional to those already being carried out. Strict guidelines need to be put in place relating to the use of an offset site in an existing nature reserve or other area that is already used for biodiversity conservation to ensure that additionality is achieved and that extra resources are put into the conservation and management of the offset site. There should be strict criteria to ensure that offsets are not approved unless they provide a conservation benefit additional to that which would otherwise occur.

Monitoring and compliance

The policy would be strengthened by the inclusion of a more rigorous monitoring and compliance framework including a more detailed description of how compliance will work and who will be responsible for enforcement of approval conditions relating to offsets. It

should also include the requirement for adaptive management measures and details of how management will be funded to be included in offset management plans.

Advanced offsets

The concept of an advanced offsets list is encouraging as it may allow a more strategic approach to be taken when looking at areas of land suitable for offsets in the ACT. However, there are some areas of concern with the use of advanced offsets. If a site is found suitable and put onto the advanced offsets list, it is safe to assume that it may be on the list for a long period of time before it is sought to be used as an offset. If the site is unmanaged, the condition of the site may have deteriorated over time if it has been left unmanaged. Draft Guideline 5 states that "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.

In order to address this potential issue, the offset policy should indicate if and how sites on the advanced offsets list are reassessed to ensure they still meet requirements. This would seem to be an important step in ensuring the validity of environmental offsets in the ACT and ensuring that the goal of a conservation gain is able to be met.

Having a list or register of advanced offsets can provide the Government with an opportunity to look at offsets more strategically and determine the most appropriate sites given broader conservation goals moving forward. It may be useful for the offsets policy or perhaps the Nature Conservation Strategy to outline what these broad goals are in terms of species and biodiversity richness and conservation, and how the use of advanced offsets can work towards achieving these goals.

Other matters

I understand that the public will be given a chance to provide comment on the Offsets Calculator Tool and a draft of the Environmental Offsets Assessment Methodology (EOAM) for the calculator. This is an important step in the public consultation process regarding the implementation of an offsets policy in the ACT and comments received during this process should be taken into account in the finalisation of the Offsets Policy and calculator.

Thank you for this opportunity to provide comment. Please contact my office on 6207 2626 if you would like to discuss this submission in more detail.

Yours sincerely,

Julia R Pitts on behalf of the Commissioner

Mr Robert Neil

Commissioner for Sustainability and the Environment

11 July 2014

11. July 2014

Waltraud Pix
Friends of Mt Majura

9 Selwyn St
Hackett ACT 2602
wpix@bigpond.net.au

Submission

ACT Environmental Offsets Policy and Delivery Framework Position Paper

I strongly oppose the concept of offset – the idea that the loss of endangered and critically endangered ecosystems, habitat of threatened species, habitat trees that are several hundred years old and functional connectivity crucial for the survival of species can be offset is fundamentally flawed.

I do not support the ACT taking up the environmental approval responsibilities of the Commonwealth for Matters of National Environmental Significance (MNES). The ACT Government is the proponent of development (residential and infrastructure) in most cases and has a strong financial interest in development which conflicts with its role as the custodian of biodiversity conservation in the ACT.

The development of Block9/64 in North Watson demonstrates this conflict of interest. First, the proponent, the ACT Government (Economic Development Directorate) invented new criteria for EPBC listed Box-Gum Grassy Woodland (BGGW) as to prevent the proposed development being considered under the Commonwealth EPBC Act. This attempt failed and the proposed development was referred to the Commonwealth following community submissions. The proponent then proposed to use Justice Robert Hope Park (JRHP) already managed for protecting EPBC listed BGGW to offset the development by declaring JRHP retrospectively as advanced offset – there is no documentation to indicate JRHP was intended as offset – despite advice from the ACT Conservation branch to use BGGW land in the vicinity of the proposed project which is not managed for biodiversity conservation (information received under FOI). Unfortunately the proponent succeeded. The proponent then tried to “downgrade” the quality of biodiversity of JRHP proposed for offset and forced the Commonwealth to inspect the site as community documents showed the proponent provided incorrect information. The Commonwealth confirmed the findings of the community assessment. Furthermore the proponent tried to declare volunteer work carried out on JRHP as ACT Government actions for offset purposes simply because the ACT Government set JRHP aside for conservation thus “permitting” volunteers to work to improve the environmental conditions. Again the proponent did not succeed and the Commonwealth did not credit the ACT Government for the work carried out by volunteers.

The ACT Government attempted to achieve offset at the cheapest possible way regardless of biodiversity conservation outcomes. This demonstrates the little interest it has in protecting MNES and a great interest in saving money at the expense of threatened species and ecological communities.

The Commonwealth Government offset policy allows development to proceed only if the impacts on threatened flora and fauna can be offset with gains elsewhere, in other words development

should result in no net loss of biodiversity. However the process described above will result in a loss of EPBC listed BGG, a loss of connectivity, a loss of old habitat trees and a community in despair.

There is no incentive for the ACT Government as the principal proponent or for any other proponent to use offset only as the very last resort to compensate for the loss of biodiversity.

There should be a significant price signal for a proponent of a development that will significantly impact on threatened species and communities, otherwise offset will become the default action rather than the last resort.

Additionality

Areas that are already managed for biodiversity conservation such as nature reserves should not be used to offset the impact of development on listed flora, fauna and ecological communities – the result of using those areas to offset the development impact on threatened species and ecological communities would be a net-loss.

Management actions that are “duty of care” should not count towards offset – there is a great danger that day-to-day management will become dependent on offset, in other words on the destruction of biodiversity.

The following provides an example. The *Plan to protect and manage the Offset Area at Part Block 13 Section 2 Bonner (Bonner 4 East) to protect Golden Sun Moth Habitat (Sept 2011)* outlines an offset package that consists of in kind actions drawing from PCS or ESD resources, and \$200,000 funding “to manage the offset area in perpetuity”. \$71,000 of the funding are one-off outlays for implementation of tracks and signs to manage access and improve the experience of park visitors - measures that are not particularly upgrading threatened habitat - and roughly half of the funding is for annual rabbit and weed control which is “duty of care” and not additional to management input in nature reserve.

Like-for-Like

It is not acceptable to use Offset for the destruction for a listed ecological community or species habitat for the restoration or management of degraded areas that do not have these attributes (The example discussed at the parkcare information session was to use offset to restore the lower Cotter).

The Like-for-Like principle should apply for the quality of habitat or ecological community; it would be not acceptable to destroy higher quality systems and to use the offset to upgrade lower quality systems.

Offset should stay within the ACT borders

Consideration of risk in regard to protection in perpetuity, management practice, and downgrading, e.g. it would be not acceptable to manage low quality BGGW remnants in NSW with offset generated by destruction of higher quality BGGW in the ACT.

Functional connectivity

Functional connectivity is crucial for the survival of threatened species and integrity of ecological community; the loss of functional connectivity must be given the same status and consideration as the loss of threatened species or ecological community.

Red Hill Regenerators Submission on the ACT Position Paper on Environmental Offsets

Introduction

The ACT Government has invited comments on the ACT Environment Offsets Policy and Delivery Framework Position Paper (the Position Paper). The following statements form the submission from the ACT Red Hill Bush Regenerators Inc (RHRG), a park care group that cares for the Red Hill Nature Reserve.

RHRG appreciates the opportunity to comment on the Position Paper.

Background

The Position Paper and draft guidelines have been made available on the ACTG website.

The ACT Red Hill Regenerators have considered both the Position Paper and the Guidelines, and representatives attended the presentation provided on 1 July 2014. The RHRG appreciates the offer from ESDD to provide further briefings with parkcare groups.

Summary

The concept of environmental offsets has the potential to make a worthwhile contribution to environmental management in Australia. However, it is a challenging concept to implement effectively and the current proposal gives little indication that it will contribute positively to the management of the land in the ACT.

Details

While the RHRG welcomes the development of an ACT policy, it is concerned that there is a significant risk of diminution of ecological values in the ACT. In particular:

- 1) The offsets policy does not replace the land and biodiversity that has been lost. It merely identifies a deemed equivalent existing area of land and attempts to apply some level of protection or management regime to it. This could lead to removing a valuable ecological asset and replacing it with another, which may take many, many years to reach the same value, if at all. It is therefore a least worst solution to the problem of developments which destroy valuable ecosystems. The significant downside to the policy is that it provides a mechanism to develop over existing valuable ecosystems while giving a superficial assumption of improvement.
- 2) The ACTG has indicated that offsets will be used as a last resort. This will be a 'judgment call' and there will be little or no substantial justification supporting that judgment.
- 3) The policy notes that an offset area should be improved - the term used is 'additionality'. The policy is silent on the definition of additionality and therefore could result in very little improvement being carried out.

Red Hill Regenerators Submission on the ACT Position Paper on Environmental Offsets

- 4) The offset only needs to be 90% of the area of the land developed. The remaining 10% could be 'education' for example and this may have only ephemeral or temporary benefit.
- 5) Because the ACT is all leased land, it is highly likely that the only proponent of a development will be the ACTG. This will have the effect of removing other third parties eg developers, from being required to long term fund offset works (a highly unlikely prospect).
 - a) It also means that the proponent is also the approver and while there are some safeguards they are not foolproof and may be subject to call in powers and the like. While the Minister is supposed to be publicly accountable for a call in decision, in practice this has become a statement of values and judgments and no real evidence.
- 6) Much of the development and identification and management of offsets will be the responsibility of the ACTG, leading to a significant conflict of interest within government
- 7) Because of the shortage of potential offset sites in the ACT, it is likely that existing reserves could be identified as an offset. An example of 'additionality' to an existing nature reserve is Mulligans Flat feral animal fencing and removal program. While this looks good, it seems an easy way out for the ACTG to nominate existing reserves to justify continued ecosystem destruction.
- 8) While offsets are required to be improved and managed in perpetuity, it is highly unlikely that operational funds will be earmarked or hypothecated to Parks and Conservation Services (PCS) for this purpose for the necessary periods which could be many, many years. It is much more likely that PCS will receive no extra funding and will continue to be subject to annual budget reprioritising management of offsets along with all their other responsibilities.
- 9) Because of the small size of the ACT, it is possible that offsets could be sought in NSW or elsewhere. It is entirely unclear how this would work in practice - legislation, management, funding etc.
- 10) The Conservator has only an advisory role. While there may be triggers to elevate considerations to other decision makers, this is an insufficient safeguard

The RHRG would appreciate further consultation as this policy progresses.

Ross Kingsland
President
Red Hill Regenerators

8 July 2014

**Submission from Richard Sharp,
Fellow Environment Institute of Australia and New Zealand**
(Received by email)

Provided below are several points that I request be incorporated into the final policy and delivery framework for environmental offsets in the ACT:

6.5 Register of Offset Sites

- The register of offset sites together with ACTMAPi should include details of all offset sites that are declared for land in NSW.
- The register of offset sites together with ACTMAPi should include details of all offsets within the ACT that are determined under the EPBC Act.
- The register of offset sites together with ACTMAPi should include details of all offsets within the ACT that are determined under the NSW *Environmental Planning & Assessment Act 1979*.

6.6 Management of Environmental Offset Sites

Offset Management Plans

- It should be a requirement that all Offset Management Plans are independently reviewed a Certified Environmental Practitioner to ensure that the actions identified in the OMP are consistent with the policy and practice frameworks for managing impacts on threatened species and threatened species habitat. The preparation of OMPs including the independent review by a Certified Environmental Practitioner should be funded by the proponent.

6.7 Monitoring, compliance and audit

Audit

The audit of approval conditions associated with an offset should be undertaken by a suitably qualified and experience environmental professional who is independent of the design, construction and operations of the development for which the offset was approved. Such an audit should be funded by the proponent.

--

Richard Sharp FEIANZ, CEnvP
PO Box 62 Fyshwick ACT 2609
Tel: 0427 953 053

10 July 2014

ACT Environmental Offsets Policy and Delivery Framework Position Paper June 2014

Comments on Draft Guideline 5 - Advanced Offsets

While the concept of ‘Advanced Offsets’ may be recognised in the EPBC Act Offsets Policy its adoption as set out in this guideline is not strictly valid in the ACT, due in part to the special planning process in place here.

The ACT has a long-standing approach to planning of land that identifies large areas of non-urban land as Hills Ridges and Buffers (HRB). Some of this land may be leased on a short-term basis (near to future urban areas) or for much longer terms (when alternative land use is not known or is able to continue for the long –term (e.g. much rural land). Other areas cannot be developed due to National Capital constraints. Intact native vegetation (not always threatened communities) in HRB areas is often eventually added to the nature reserve system. Other areas do not require such protection due to the constraints placed by a limited list of approved uses for HRB land. Since the first Action Plans for threatened species and ecological communities were produced under the Nature Conservation Act 1980 they have identified some areas of HRB land as a high priority for conservation management and inclusion in the ACT’s nature reserve system.

In some cases a priority action in an Action Plan has proposed protection of land identified as suitable for a nature reserve, has also been endorsed by the ACT Government (e.g. Kinlyside, Caswell Drive Aranda Bushland, Majura grasslands) on release of the Action Plan. Due to administrative delays and a lack of priority given to changing the Territory Plan, these lands have not been given the protection foreshadowed or due to them. This, in turn, has lead to their ecological condition deteriorating due to poor management or uncertain management responsibility, often due to spread of weeds, loss of ecosystem structure (timber, rocks) or poorly managed grazing.

To now identify these lands that have been committed to or recognised by Government as requiring protection as a nature reserve, to now await an offset process through a further banking process is offensive to the community and demeans any more legitimate offset process. Worse of all, it will allow these lands to deteriorate while remaining on a banking list, thus enabling even more future offset credits to accumulate.

If a banking process is to be included in the new ACT process, I recommend there should be a moratorium to including in an offset bank any lands previously identified in Action Plans as suitable for protection in the ACT's nature reserve system.

If this were done previous Government announcements can be put in place. As well offset actions can then be focussed on improving management, restoring ecosystem structure, and eliminating feral animal pests and grazing animals (rabbits) via establishing more and larger areas with exclusion fences, so that recovery can begin in earnest. Including areas previously identified in Action Plans in the bank will result in easy offset areas being picked off, by simply changing their statutory status rather than land use status. Then offset actions can prioritise tackling the more significant action of improving management and directing resources to recovery.

Yours sincerely



Dr David Shorthouse
Visiting Fellow

**Submission from Michael Sim,
Isaacs Ridge Mount Mugga Mugga Parkcare**
(received by email)

Offsets within reserves must include long term management and resources, since govt and volunteers should already be working on environmental protection and conservation so there might be nothing new.

Offsets incorporated in reserves have a cumulative effect but only if they include ongoing resources and management.

There should also be micro-offsets that enhance conservation/environment efforts when there is disturbance to reserves etc through development or use, such as pipes and communication cables, where rectification and rehabilitation is not 100%.

Some examples.

Some of East O'Malley became nature reserve about 2004 but has had little more than volunteer care and is still shown as "proposed" in maps. It is unclear whether this was an offset to East O'Malley development or simple recognition that the development was an environmental disaster.

The East O'Malley pond was formed about 2005 but has had little attention. The developer has gone and the government has paid little or no attention.

Land along Mugga Lane near the tip is now going to be incorporated in Isaacs Ridge Nature Reserve as an offset under EPBC to expansion of the tip, but it had been proposed for incorporation in IRNR in xAction Plan 27 in 2004 so it is debatable whether this is genuine offset. At least there is going to be an ongoing management plan - not yet seen.

The Centenary Trail had environmental considerations but calculations were based on width of the trail, not on the width of the effect, which could be several times wider, when animal routes, weed spread, etc. are taken into account (see Tim Low's Environment books) Cable trenches and track upgrades on Isaacs Ridge have caused damage that is not fully repairable and should be micro-offset for example by doing track repairs in other areas, or payment for replanting.

I am overseas at the moment and have poor internet connection and cannot access other information I might have put together so please forgive the brevity of my comments. I will be back on 8 August.

Michael Sim
Isaacs Ridge Mount Mugga Mugga Parkcare



Dear Sir/Madam,

I am writing on behalf of the Southern ACT Catchment Group (SACTCG) to provide comment on the recently released ACT Government Environmental Offsets Policy and Delivery Framework Position Paper and accompanying draft guidelines. It should be noted that the SACTCG is sceptical about the current evidence that offsets provide a genuine long-term solution to the destruction of Australia's natural habitats and species through development. Nevertheless, the group recognises the reality of the situation, especially in the ACT where land for development is relatively scarce, and appreciates the opportunity to comment on the position paper.

The SACTCG welcomes the provisions for species which are threatened in the ACT but not protected under Commonwealth legislation in the policy position paper.

The SACTCG's main concern about the new policy regards the principle which is summarised in the following statement from the draft guidelines:

To achieve conservation gains for protected matters in the ACT it is necessary to improve management and reduce threats to existing habitat. This cannot be done in a strategic way for the overall benefit of the species and ecological communities, unless management within reserves is part of the mix. The Commonwealth requirement for additionality and conservation gain does not preclude offsets within existing reserves as long as it can be demonstrated that the outcomes to be gained through the offset are additional to current requirements.

Further, the policy position paper actually states that: *Incorporating offsets into public reserves which have a higher public oversight are preferred*, suggesting that such areas will be used in preference to unprotected areas of NES matters on leasehold properties and other tenures.

The SACTCG is opposed to the idea that areas which are already protected should be eligible for use as offset sites. The proposition that adding management activities to an existing area of protected matter could compensate for biodiversity lost through the complete destruction of an equivalent area of the same matter elsewhere simply does not seem plausible. Biodiversity loss at the latter site will be 100%, and it will not be possible for management activities at another site to result in anything close to a 100% gain in biodiversity. Installing a predator proof fence on a reserve is not going to come close to compensating for the destruction of an area of habitat elsewhere and it is impossible to see how the two are to be comparatively measured. The SACTCG has no confidence in the ability of developers to prove 'additionality' in the management of the reserve system, and no confidence in the ability of regulators to effectively measure and monitor such additionality.

The NSW OEH includes the following in its environmental offset principles:

12. Offsets must be supplementary.

They must be beyond existing requirements and not already funded under another scheme. Areas that have received incentive funds cannot be used for offsets. Existing protected areas on private land cannot be used for offsets unless additional security or management actions are implemented. Areas already managed by the government, such as national parks, flora reserves and public open space, cannot be used as offsets.

Source: <http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>.

SACTCG would like to see a similar clause in to the ACT offsets policy.

The SACTCG has a number of questions and concerns which it would like to see addressed with regard to this proposal:

- How will the policy ensure that improvement activities undertaken on offset sites within existing protected areas (e.g. Canberra Nature Park) are in addition to works that would have taken place anyway? Both volunteer organisations such as Parkcare groups and TAMS staff work continuously to restore and improve protected matters within protected areas as part of ongoing and long term work plans. This already includes projects to provide additionality; for example many Parkcare groups working on reserves which include box-gum grassy woodland have recently implemented habitat improvement projects through funding provided by the ACT woodland restoration project. It is very hard to see how additionality above and beyond works and projects which would have occurred as a matter of course could be proven, especially since many of these projects happen opportunistically and may not be identified in long-term reserve planning. It also seems possible that opportunities for such projects may be reduced if reserve areas are used as offset sites (see below).
- Can the ACT government provide a guarantee, and in the future provide proof such a guarantee has been upheld, that the proposed offsets policy will not result in cuts to the ACT government's own environmental management budget? It is easy to foresee a scenario where funding which would have been allocated for restoration projects on reserve lands will no longer be distributed as developers are doing similar work.
- Will Parkcarers be excluded from working in areas of reserve that are used as offsets? If they are excluded, this would be extremely disenfranchising and likely to lead to a reduction in engagement among volunteers. If they are not excluded, how will monitoring take into account additional work that they do in such areas? The guidelines state that *'Parkcare/volunteer effort is taken into account in setting baselines'* for offsets in reserve areas, but do not mention how volunteer effort will be accounted for once these areas are being managed as offsets. Parkcarers and other volunteers are unlikely to want projects which they undertake on such sites to be used by a developer to meet their additionality requirements.
- How will reserve offsets be administered? Will developers effectively assume responsibility for the management of parts of the reserve being used as offsets? Or will money for additional management actions be provided to TAMS?
- The position paper states that developers will responsible for 'finding, securing and managing' offset sites. For non-government aligned projects, how are developers expected to achieve this and what processes will be put in place to ensure that offset sites are suitable and offset projects meet community expectations?

SACTCG accepts that the incidence of EPBC listed habitat and species outside of protected areas in the Territory is relatively low, and consequently the likelihood of such habitat being impacted by development is correspondingly low. However, much of the dialogue around biodiversity conservation in recent times has focussed on the principle of connectivity, which is increasingly being shown by a number of studies to be key to the dispersal and survival of many threatened species and habitats on a regional scale. Using protected matters which already receive protection

through inclusion in the ACT reserve system as offsets will do nothing to help regional biodiversity conservation. The SACTCG proposes that more consideration should be given the connectivity in the selection of offset sites, recognising that re-establishing habitat in unprotected areas where it has become degraded may offer substantially greater benefits for biodiversity, including matters of NES, than trying to further 'improve' areas which are already protected. This would also be easier to measure and monitor over time.

Recent work in the ACT, such as ongoing research projects at Mulligans Flat, is demonstrating that our understanding of appropriate management of protected matters is still evolving. An alternative way of achieving additionality in development projects which require offsets could be to require developers to make significant contributions to the funding of research into conservation management for protected matters in the ACT. This would be especially welcome given recent cuts to research budgets at major scientific institutions across Australia at the Federal level. By contributing to a body of information which would enable us to more effectively manage the precious remnants of EPBC listed habitat and species which remain, developers could make a more lasting contribution to biodiversity conservation than would be possible by short-term contribution of money for management of the existing reserve system. We would also add that the benefit of education as part of the offset package is doubtful; it is very hard to envisage how this could have real, measurable benefits for biodiversity.

Glenys Patulny
On behalf of the
Southern ACT Catchment Group
9th July 2014

Response to ACT Environmental Offsets Policy Position Paper Gold Creek Station

We thank you for the opportunity to respond to this paper and would welcome the opportunity to be part of the process. Accordingly, we make the following comments:-.

Tenure,

99 year leases I am given to understand that offsets on 99 year leases will only be considered with the approval and co-operation of the landholder.

Short term leases Generally, these leases have a withdrawal clause. Offset may stay under management by the lessee, or the land may be withdrawn for the use of an offset.

Management When considering keeping the land under lease, consideration should be given to the following :

1. Local knowledge and expertise in management of the offset area by the current lessee.
2. An offset kept within a lease can benefit by having convenient access to tools, machinery, (spray units etc.) and livestock for BAZ commitments.
3. The financial viability of the whole of the property where there has been substantial reduction of the ratio of viable agricultural land to non-viable agricultural land. i.e. productive land subsidises the control of weeds and pest of the areas of high ecological value.

Risk Management

1. **Fire Risk management.** Offset areas close to suburbia are generally in a Bush Fire Abatement Zone. The management of BAZ's over Offset areas is difficult for a balanced outcome. Livestock under constant supervision is most likely to deliver the best results
2. **Trespass Risk.** Trespass is the major cause of the dumping of rubbish, damage by domestic pest animals, the introduction of weeds and vandalism .

actmapi and Environmental offsets

The areas indicated as offsets on the appropriate **actmapi** site indicate existing environmental offsets. This is confusing. Are they in fact areas now managed as particular designated offsets or are they areas set aside for offsets or advanced offsets (draft guideline 5)?.

Regards

Craig Starr

John Starr 11/7/2014