



ACT
Government

Environment and
Sustainable Development

ACT Environmental Offsets Policy and Delivery Framework

Position Paper



JUNE 2014



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1. Purpose

This environmental offsets position paper has been prepared to provide the community with an opportunity to provide comments on the proposed content of an ACT environmental offsets policy. Finalising a policy is a requirement for a one stop shop for environmental approvals.

The position paper includes:

- the ACT environmental offsets policy and delivery framework and
- offset requirements for Act listed species (Attachment A).

Comments received by ESDD will be considered in finalising one stop shop arrangements negotiated with the Australian Government.

2. Background and context

Managing the environmental impacts of development requires a balanced approach, taking into account environmental, social and economic factors. The primary approach to balancing social, environmental and economic goals is through planning processes specified in the *Planning and Development Act 2007* (Planning and Development Act). Environmental offsets are a subsidiary approach to managing impacts on threatened species and threatened species habitat. This position paper outlines the approach to offsetting within the ACT.

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 national environmental significance (matters of NES), persisting in the ACT. Offsetting also applies to other matters of NES such as migratory species and in certain circumstances, Ramsar Wetlands¹ and national heritage listings. Offsetting for national heritage is only appropriate in some circumstances, where an offset improves the integrity and resilience of the national heritage's place values. Offsetting is unlikely to be appropriate for built or indigenous heritage in most instances.

Environmental offsets are a measurable conservation outcome resulting from actions designed to compensate for unavoidable significant adverse environmental impacts of development on threatened species and ecological communities. Environmental offsets are considered only after feasible and appropriate avoidance and mitigation measures have been taken. Under current arrangements, offsets are delivered as conditions of approval under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), after environmental impact assessment processes have been undertaken.

The reason for embedding offsetting requirements in the environmental assessment and approval process is that offsets are then able to be seen within the context of the avoidance and mitigation measures that are also considered in the assessment process.

Environmental offsets for ACT development projects have previously only been given effect by the EPBC Act. Under new one stop shop for environmental approvals arrangements that are currently being negotiated with the Commonwealth, it is proposed that the Planning and Development Act will provide for offsets for ACT matters, and that the ACT will facilitate the implementation of EPBC Act offset requirements. The proposed approach aims to streamline offset requirements and delivery by considering offsets that meet both Commonwealth and ACT requirements together.

An assessment bilateral agreement and approvals bilateral agreement (forming the one stop shop) have not yet been finalised. Some of the content of this position paper is subject to these agreements being signed by the ACT and Commonwealth Governments, as well as amendments to the Planning and Development Act occurring.

A number of environmental offset sites have been established in the ACT to protect particular matters of NES, in accordance with the EPBC Act. These include offsets agreed through the Molonglo and Gungahlin Strategic Assessments and those associated with the Cotter Dam expansion. The total area of land currently managed as offsets is approximately 2,240 hectares².



The ACT has also established conservation reserves to protect matters of NES. These include Gungaharra, Mullangarri, Crace, Mulligans Flat, Goorooyarroo, West Jerrabomberra, Callum Brae and Kama nature reserves. Other reserves within Canberra Nature Park also protect lowland ecosystems, such as Mt Ainslie, Mt Majura and Black Mountain. These areas are also protected as part of the hills, ridges and buffer zones under the Territory Plan.

3. ACT Offsets Policy

Matters of National Environmental Significance

The ACT Government has adopted the Commonwealth's *EPBC Act Environmental Offsets Policy* (EPBC Act Offsets Policy) for matters of NES³. This policy provides a framework to deliver offsets for matters of NES and for those ACT threatened species and ecological communities that are listed under both the EPBC Act and the *Nature Conservation Act 1980* (and proposed Nature Conservation Bill 2014).

Matters of NES to be managed under the EPBC Act Offsets Policy that are relevant to the ACT are:

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

The EPBC Act Offsets Policy requires offsets to be considered for significant residual adverse impacts against all matters of NES. In practice, offsets in the ACT are primarily required for listed threatened species and ecological communities, and listed migratory species.

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

ACT Listed Threatened Species

As well as providing offsets for matters of NES this policy also provides a framework for the delivery of offsets for ACT listed threatened species.

Additional environmental offsets are not required for all ACT listed threatened species. Offsets for ACT threatened species are not required:

- If an ACT listed threatened species is also listed as threatened under the EPBC Act, because the offset requirements are considered to have been met through the EPBC Act requirements.
- Where an ACT listed species is strongly associated with box-gum woodland (BGW) or natural temperate grassland (NTG) these would not be subject to any additional offset requirements, because offset requirements under the EPBC Act for the ecological community will provide an offset for the species as well. Species with strong associations to an EPBC Act listed ecological community are:
 - little eagle (foraging requirements are covered by requirements for NTG and BGW)
 - Perunga Grasshopper (covered by requirements for NTG)
 - varied Sittella (covered by requirements for BGW)
 - painted honeyeater (covered by requirements for BGW) and
 - white-winged triller (covered by requirements for BGW).
- For minor impacts where there is no appreciable long term impact on the threatened species.



Environmental offsets are not required for ACT listed ecological communities. While differing in description to EPBC Act ecological communities, the listed communities are essentially protecting similar habitat.

The ACT listed species identified below are required to be separately assessed for an offset through the environmental assessment and approvals process:

- Murrumbidgee bossiaea (*Bossiaea grayi*)
- glossy black cockatoo (*Calyptorhynchus lathami*)
- little eagle (*Hieraaetus morphnoides*) – breeding habitat
- hooded robin (*Melanodryas cucullata*) and
- brown treecreeper (*Climacteris picumnus*).

Offset requirements for the above species are outlined at [Attachment A](#).

The ACT Environmental Offsets Calculator (ACT EOC) would be used to assess potential offsets, where appropriate.

Offset requirements for the following aquatic threatened species will be considered on a case-by-case basis through the environmental assessment and approvals process:

- two-spined blackfish (*Gadopsis bispinosus*)
- Murray River crayfish (*Euastacus armatus*) and
- silver perch (*Bidyanus bidyanus*).

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

- an offset package (of direct offsets and other compensatory measures) must deliver an overall positive conservation outcome taking into account the viability of the species affected by the proposed development and ensuring that the package improves or maintains outcomes for the species' habitat
- direct offsets should be in the same bioregion⁴ as the development site, as defined by the Interim Biogeographic Regionalisation for Australia, version 7 (South-East Highlands or Australian Alps) and
- other compensatory measures (indirect offsets) must be in the ACT.

Offset requirements for any newly listed ACT species will need to be considered following listing.⁵ Offsets would not be required to be applied retrospectively.





4. Type of offsets

Direct Offsets

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

Other compensatory measures (indirect offsets)

Matters of NES

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

ACT Threatened Species

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

5. Matters to be considered for offset sites

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

1. Extent to which the proposed offset actions correlate to, and adequately compensate for, the impacts on the attributes for the protected matter.

- This is assessed using assessment tools such as the ACT EOC or Commonwealth Offset Assessment Guide (Commonwealth OAG) or through Strategic Assessments.

2. Conservation gain to be achieved by the offset:

- **This may be through positive management activities that improve the viability of the protected matter'; or**
- **averting the future loss, degradation or damage of the protected matter.**
 - Conservation gain is the benefit that a direct offset delivers to the protected matter, which maintains or increases its viability or reduces any threats of damage, destruction or extinction. A conservation gain may be achieved by:
 - improving existing habitat for the protected matter
 - creating new habitat for the protected matter
 - reducing threats to the protected matter
 - averting the loss of a protected matter or its habitat that is under threat⁶
 - Conservation gain is assessed using assessment tools such as the ACT EOC or Commonwealth OAG and would often be outlined in Offset Management Plans.
 - Conservation gain is determined using judgement based on an assessment of the current land use and threats versus the proposed new zoning or tenure and the proposed changes in land management practices to address the threats.



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

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

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

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

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

- This is a judgement based on an assessment of the current land use and threats versus the proposed new zoning or tenure and the proposed changes in land management practices to address the threats.
- Incorporating offsets into public reserves which have a higher public oversight are preferred. A differential security score is incorporated into the ACT EOC and the Commonwealth OAG.

6. Suitability of the location of the offset site. In most cases this will be as close to the impact site as possible. However, if it can be shown that a greater conservation benefit for the impacted protected matter can be achieved by providing an offset further away, then this will be considered.

- This is a judgement for the developer and the regulator. In the ACT preference is for offsets to be provided in the following order:
 - in the ACT in the same district as the impact;
 - in the ACT, but in a different district to the impact;
 - outside of the ACT, but close to the ACT border;
 - in the relevant bioregion (Australian Alps or Southern Tablelands); then
 - elsewhere in Australia where the protected matter occurs.

7. The EPBC Act offsets policy requires that an offset package includes a minimum of 90% direct offsets, maximum of 10% other compensatory measures. Both components should correlate to the specific nature of the impact and its timeframe.

- This is assessed using assessment tools such as the ACT EOC or Commonwealth OAG.

The following issues require additional guidance on how they will be addressed. Statutory Guidelines under the Planning and Development Act 2007 will outline the proposed approach to how these particular issues will be addressed within the ACT context.

Draft Guideline 1: Offsets on public land.

Draft Guideline 2: Offsets on leasehold land.

Draft Guideline 3: Offsets outside the ACT.

Draft Guideline 4: Volunteer groups working in areas identified as potential environmental offsets.

Draft Guideline 5: Advanced offsets.

These Draft guidelines are also available for separate public comment.



6. ACT Environmental Offsets Delivery Framework

Implementation of the EPBC Act Offsets Policy and the ACT Environmental Offsets Policy will be delivered through the ACT Environmental Offsets Delivery Framework. This framework provides a consistent and streamlined approach to environmental offsets through streamlining processes. Box 2 outlines the stages in offset assessment and administration.

Box 2 Stages in offset assessment and administration

1. Determine that an offset is required (refer to EPBC Act Offsets Policy, ACT Offsets Policy) (refer to Section 6.1 below and ACT Offsets Policy).
2. Assess offset requirements through environmental assessment processes (appropriate tools to assess offsets dependent on scale/type of project) (refer Section 6.2 below).
3. Establish offset requirements as conditions of approval for development applications (refer to Section 6.3 below).
4. Secure offsets through appropriate mechanisms (e.g. Territory Plan variations, offset management plans, funding arrangements, EPBC Act conservation agreements, and/or changes to lease clauses and/or land management agreements) (refer to Section 6.4 below).
5. Include the offset on the offset register and ACTMAPi (refer to Section 6.5 below).
6. Manage offset sites including developing management plans (refer to Section 6.6 below).
7. Monitor offsets as required by conditions of approval, compliance and auditing (refer to Section 6.7 below).
8. Reporting, review and evaluation (refer to Section 6.8 below).

In the ACT, the developer is responsible for finding, securing and managing offsets. Transfer of the responsibility for management and reporting on offset sites for Government projects is appropriate, and administrative arrangements will be put in place to formalise transfer arrangements.

6.1 When is an offset required

An offset is required for significant impacts on matters of NES, as outlined in the ACT Offsets Policy above:

- National heritage places
- Wetlands of international importance (Ramsar convention)
- Listed threatened species and ecological communities
- Listed migratory species.

Offset requirements also apply to significant impacts on ACT listed threatened species where they are not covered under EPBC Act requirements. The requirements are outlined in the Act Offsets Policy.

6.2 Assessment of offsets

Assessment of offsets

The assessment of offset requirements will be delivered through the Planning and Development Act. Changes to the Planning and Development Act are proposed to enable delivery of offsets. These are outlined in more detail in Section 7.



Environmental Impact Assessment framework

Requirements for offsets will be assessed through the environmental impact assessment and approval process. The assessment of an offset site may be part of an EIS, a strategic assessment or an s211 exemption application. Under a proposed new approvals bilateral agreement this will include both matters of NES and ACT listed threatened species.

Offsets will be assessed (but not approved) using the:

1. ACT EOC;
2. Commonwealth OAG;
3. Any other methodology endorsed by the Conservator.

Tools for assessing offsets

ACT Environmental Offsets Calculator

The ACT EOC gives effect to environmental offset principles in a quantifiable, transparent, repeatable, timely and equitable manner. The calculator allows ACT and Commonwealth offset requirements to be addressed concurrently.

The ACT EOC is used to apply the Environmental Offsets Assessment Methodology (EOAM), which provides rules for determining the type and number of credits that will be required to offset the impacts of a development. These incorporate Commonwealth requirements and were largely based on the NSW Biobanking scheme. The tool also calculates the credits that can be created at an offset site by additional management actions. Details of the methodology will be made publically available.

The ACT EOC and EOAM provide the mechanism for determining offsets for the majority of likely developments in the ACT. The tool is most appropriately used to assess offsets that are considered through the EIS process. While it can inform strategic assessment processes, it is not as useful in this type of process as strategic assessment processes take into account avoidance and mitigation measures, as well as offset measures. The ACT EOC does not deal with avoidance and mitigation measures and so should only be used to inform strategic assessments.

The benefit of using the EOC is that a range of thresholds for individual species have been built into the methodology which simplifies the assessment process. The EOAM is based on sound ecological principles, current threatened species listings, and native vegetation data. Potential offsets generated by the EOC may be modified to better conform to the EPBC Act Offsets Policy.

The EOAM may be updated from time to time as new information becomes available or if new species are listed. Changes made to the EOAM would not affect existing offsets or advanced offset bank sites. It will not be as useful for strategic assessments, because the nature of the trade-offs are different at larger scales, but could still be used to inform the scope of issues for early consideration.

Commonwealth Offset Assessment Guide

The ACT EOC does not apply to all protected matters. It does not apply to developments that impact instream threatened aquatic species, or to upland species and ecosystems in Namadgi National Park or Tidbinbilla Nature Reserve.

In these situations, or in the absence of a more detailed assessment methodology (such as the ACT EOC), the Commonwealth's OAG is more appropriate. The OAG is available at <http://www.environment.gov.au/node/18729>.

The Commonwealth OAG can be used to assess both development and offset sites. The guide utilises a balance sheet approach to estimate impacts and offsets for threatened species and ecological communities. The OAG uses a decision support framework to determine offsets for a given impact.

The Commonwealth OAG provides flexibility to ensure that the most efficient offsets can be determined, while ensuring that offsets improve or maintain the viability of the impacted protected matter.

The tool is most appropriately used to inform offsets that are considered through the EIS process but can also be used to inform a strategic environmental assessment process.



Other methodologies

Methodologies could be developed to assess other matters required to be offset, such as for in-stream threatened species. If this is required the methodology would need to be agreed by the Conservator.

Compatibility of tools

The development of tools and processes to assess offsets are all based on the same principles and achieve similar offset outcomes. However, the metric (the currency used) in each tool is different so the credits and debits between each system vary (similar to exchange rates for international money transfers). For this reason, it is important that the assessment of offsets at the development site be undertaken using the same methodology as that used to assess the corresponding offset site. This is to ensure the resulting credits are fungible⁷, as different methodologies will calculate offsets differently.

6.3 Conditions of approval

Matters of NES

For matters of NES the Conservator would be responsible for providing advice on the package of offsets and for confirming that it meets the EPBC Act Offsets Policy. Conservator advice would apply to conditions of approval relating to offsets, and to any variations to those conditions.

The decision maker approving the development will not be able to sign a development approval that is inconsistent with the advice of the Conservator, where the decision relates to matters of NES.

This does not apply to proposals that are subject to Ministerial call in powers, or where the ACT and Commonwealth agree that a project would not be subject to approval using the approvals bilateral agreement.

ACT listed threatened species

For ACT listed threatened species the Conservator provides advice to the planning and land authority about the appropriateness of the offset package. This would include advice about whether the mix of offsets meets overall conservation goals, whether significant habitats are protected, and where other compensatory measures such as research are proposed, whether they would contribute to the conservation of the species or ecosystem.

6.4 Securing offset arrangements

Offset requirements imposed through conditions of approval need to be secured through appropriate mechanisms. There are a range of existing legislative or contractual mechanisms that can be used to secure offsets, for example:

1. Territory Plan variations (e.g. reserve overlays, hills ridges buffers zoning, precinct codes etc);
2. Offset Management Plans;
3. Funding arrangements;
4. EPBC Act Conservation Agreements; and
5. Changes to lease clauses and/or land management agreements.

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.

6.5 Register of Offset Sites

Register of Offset Sites

The planning and land authority will be responsible for maintaining a register of offset sites. Offsets will be established through conditions of approval. The Offset Register will be made publicly available and will include conditions of approval and any variations.



ACTMAPi

An environmental offsets layer is included on ACTMAPi. ACTMAPi is the ACT Government's interactive mapping service. Publishing an environmental offsets layer on ACTMAPi improves the transparency of existing offset arrangements and provides easily accessible information to the public.

The Environment and Sustainable Development Directorate will maintain a list of advanced offset sites.

6.6 Management of Environmental Offset Sites

Environmental Offsets Working Group

An Environmental Offsets Working Group (EOWG) has been established to identify issues related to environmental offset site management that would benefit from a multi-disciplinary trouble-shooting approach. This team is involved in planning and implementing environmental offsets for the ACT Government.

The role of the Environmental Offsets Working Group includes:

- improving efficiencies in the offset planning and establishment process
- improving communication between Directorates
- avoiding duplication
- ensuring Directorates are involved in relevant projects from an early stage
- ensuring input is received at appropriate times to reduce delays

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.

Offset Management System

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.

The OMS is a centrally located system accessible to all ACT government agencies. It provides a tool for managing, monitoring and auditing offset agreements.

The OMS will enable more efficient reporting to the Commonwealth and to the ACT Commissioner for Sustainability and the Environment. It is proposed that the system will link to the publicly available offset register.

6.7 Monitoring, compliance and audit

Monitoring

An appropriate regime for monitoring offset sites and offset actions should be established as part of the conditions of approval for each development. The appropriate monitoring regime for an offset site is dependent upon the type of offset (public, leasehold or NSW land), the scale of the offset site, and its current condition. For example, sites in good condition which only need passive management, such as allowing natural regeneration, may need less monitoring than a site in poor condition that needs active management for increased weed and pest control or the addition of landscape elements such as coarse woody debris.

Compliance

The appropriate compliance and audit regime will depend upon the type of offset – whether it is on public land, leasehold land or land in NSW.

A range of legislative provisions are contained in the Planning and Development Act which can be used to ensure compliance.



The Commonwealth will also retain powers to ensure compliance. For example, if matters of NES are not being appropriately protected, it is proposed that the Commonwealth will be able to revoke or suspend the bilateral agreements.

The *Nature Conservation Act 1980* (and its proposed replacement) also includes provisions to ensure compliance over the longer term. These include the use of offence and penalty provisions in the Act, the reserve management provisions, Conservator's directions and the ability to enter management agreements with utility providers.

Audit

Audit of approval decisions will be undertaken to ensure proponents comply with conditions of approval. This includes conditions relating to offsets.

6.8 Reporting, review and evaluation

Reporting

Reporting 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.

Reporting will also be undertaken for individual offset sites, in line with offset requirements, generally on an annual basis. Reporting is the responsibility of the proponent.

Review

The approach to offsets will be subject to periodic review to ensure the policy and associated tools and regulations remain adequate for their purposes.

Updates to the policy will be made as required, for example, when a new species is listed. This would also require changes to be made to the EOAM.

The databases underpinning the EOC are periodically reviewed and updated when new information becomes available or changes or corrections to the ecological principles and assumptions are required.

Evaluation

An evaluation of the offsets policy and delivery framework will be undertaken as required through the proposed approval bilateral agreement.





7. Legislation

Offsets are currently only delivered under the Commonwealth EPBC Act. There are currently no legislative provisions which allow offsets to be included as conditions of approval under the Planning and Development Act. A range of minor amendments to the Planning and Development Act are proposed to provide for offsets and to ensure transparency and accountability for the assessment and management of offsets. These amendments will support implementation of an approval bilateral agreement between the Commonwealth and the ACT.

7.1 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act is the key environmental legislation of the Commonwealth Government. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the EPBC Act as matters of NES. Actions that have the potential to significantly impact on matters of NES are currently referred to the Commonwealth for consideration.

Environmental offsets can be required as an approval condition under the EPBC Act where a development proposal is designated as a controlled action because of its impact(s) on one or more matters of NES. Offsets are also applied to developments that are subject to strategic assessments under the EPBC Act.

Offsets are established in accordance with the EPBC Act Offsets Policy.

Under proposed bilateral approval arrangements, the ACT would be accredited to assess and approve projects which are likely to have impacts on matters of NES. This would include responsibility for determining conditions of approval, which may include offsets.

To ensure transparency in this process and that there are adequate safeguards in place, it is proposed that the Conservator of Flora and Fauna be given a stronger role in providing advice on matters of NES and offsets. This would include providing advice on offset packages, to ensure that offsets meet the EPBC Act Offsets Policy. Proposed legislative changes to the Planning and Development Act to enable this new arrangement are outlined below.





7.2 Planning and Development Act 2007

The Planning and Development Act sets the management objectives for all public lands, including reserved lands in the ACT. The Planning and Development Act establishes the Territory Plan, which is the key statutory planning document in the ACT. The Territory Plan is used to manage land use change and development in a manner consistent with strategic directions set by the ACT Government, Legislative Assembly and the community.

There are a number of features of the Planning and Development Act which can be used to secure offsets. These include reserve overlays, zoning of land, precinct codes and leasehold conditions.

For nature conservation purposes, the Territory Plan identifies nature reserves, national parks, wilderness areas and special purposes reserves within the public land. The Planning and Development Act also establishes and manages the leasehold land system which includes requirements for Land Management Agreements to be prepared. They identify features and areas with special conservation values and set out management measures required to achieve agreed conservation outcomes.

Under a new approvals bilateral agreement, offsets will be an option to compensate for significant impacts to ACT listed threatened species in accordance with the ACT Offsets Policy. Offsets will be considered through the environmental assessment and approval process with offset provisions becoming a condition of approval for development applications.

Proposed legislative changes to the Planning and Development Act

It is proposed that legislative changes to the Planning and Development Act be made to:

- 1. Require the Minister to have an offsets policy and provide for regular review of the effectiveness of the policy.**
- 2. Ensure the Conservator of Flora and Fauna would provide advice about the appropriateness of environmental offsets for matters of NES and ACT listed threatened species.**
 - The Conservator's advice will be limited to certain aspects.
 - A statement of reasons for the advice will be required.
 - Time limits would apply.
- 3. Ensure that a development which has a significant impact on a matter of NES cannot be approved by the Planning and Land Authority if it is inconsistent with the advice of the Conservator.**
 - A process for reconsideration will be established.
- 4. The Minister would be able to make a decision that is inconsistent with the Conservator's advice but this would need to be subject to the public interest test. The public interest test is outlined in section 261 of the Planning and Development Act⁸. This would also apply to variations to development approvals relating to matters of NES.**
- 5. Ensure offset requirements identified through strategic approaches will be conditions of the strategic approval and that no further assessment of offsets is required.**
- 6. Offset conditions established through the EIS process are able to be included as part of a condition of approval. This would include:**
 - a. Variations to approval decisions where these relate to environmental offset conditions; and
 - b. Post offset site implementation, allowing variations to management and/or substitution of offset sites.
- 7. The Planning and Land Authority must maintain a register of offset sites.**



7.3 Nature Conservation Act 1980

The *Nature Conservation Act 1980* was established to make provision for the protection and conservation of native animals and native plants and the management of reserves. The Act provides for the identification of threatened species and threatened ecological communities.

The Act makes provision for the appointment of the Conservator of Flora and Fauna and establishes the ACT Parks and Conservation Service to assist the Conservator in exercising his or her functions under the Act. The Conservator is able to be given other functions in other statutes.

The Act also establishes the ACT Flora and Fauna Committee (proposed to be Scientific Committee), with responsibilities for assessing the conservation status of ACT flora and fauna and the ecological significance of threatening processes.

Proposed changes to the 1980 Act through the Nature Conservation Bill 2014 do not change these core features of the 1980 Act.

Decisions about impacts of development on threatened species are made under the Planning and Development Act but are informed by threatened species listings, Action Plans and Reserve Management Plans, which are part of the Act.

Once offset sites are agreed, the provisions in the Nature Conservation Bill 2014 may apply to offset sites. If an offset is secured as a nature reserve (or other protected area) the Nature Conservation Bill provides for ongoing management and implementation.

If offsets are provided on land managed under leasehold arrangements a range of measures within the Nature Conservation Bill may apply. This includes the use of Conservator Directions.



Attachment A

Offset requirements for ACT listed species

| Species | Offset requirement notes |
|---|---|
| Murrumbidgee bossiaea <i>Bossiaea grayi</i> Endangered | <ol style="list-style-type: none"> 1. All known population clusters along the Murrumbidgee River/Molonglo River occur in land zoned as River Corridor (Nature Reserve and/or Special Purpose Reserve) under the Territory Plan. 2. Any areas proposed for development within river corridors should be surveyed for <i>Bossiaea grayi</i> and Conservator advice should be sought on the survey method. 3. Impacts should generally be avoided. 4. If occurrences of <i>Bossiaea grayi</i> are found during surveying for other species then Conservator advice should be sought. |
| Glossy black cockatoo <i>Calyptorhynchus lathami</i> Vulnerable | <ol style="list-style-type: none"> 1. All known habitat for the glossy black cockatoo has been mapped. A map is provided in the EOC operational manual. 2. The current extent is already protected in reserves <ul style="list-style-type: none"> • Development outside mapped areas (as shown in the EOC operational manual) does not need to be surveyed for Glossy Black Cockatoo. 3. If occurrences or habitat of the Glossy Black Cockatoo are found during surveying for other species then conservator advice should be sought. 4. Impacts should generally be avoided. Conservator advice should be sought if impacts cannot be avoided. |
| Little eagle <i>Hieraaetus morphnoides</i> Vulnerable | <ol style="list-style-type: none"> 1. The Little Eagle has large territories across a wide range of habitat. 2. If areas of significant habitat (as defined in threatened species action plans) are identified then these should be avoided. 3. For non-significant habitat, offset requirements for foraging habitat are covered through EPBC Act ecological community requirements. 4. Impacts should be avoided where the Little Eagle is known to nest. <ol style="list-style-type: none"> a. During breeding– no clearing within 800 metres of nest. b. Other times – no clearing within 300 meters of nest tree. c. There are currently two known nesting areas in the ACT. |
| Hooded robin <i>Melanodryas cucullata</i> Vulnerable | <ol style="list-style-type: none"> 1. The species is territorial and uses specific areas of woodland (5–25 ha). 2. This species uses undisturbed areas and avoids dense forest and urban areas. 3. Impacts on foraging habitat will be covered by EPBC Act woodland offset requirements. 4. Impacts on breeding territories should be avoided. 5. Surveys should be undertaken to identify any breeding territories which will be impacted. If breeding habitat is going to be impacted it will raise a flag in the EOC. 6. If a red flag is raised in the EOC the proposal will need to be referred to the Conservator for final decision on whether the impact is acceptable or not. |
| Brown treecreeper <i>Climacteris picumnus</i> Vulnerable | <ol style="list-style-type: none"> 1. The species is sedentary and territorial and uses specific areas of woodland (300 ha⁹). 2. It likes large undisturbed areas and avoids urban areas 3. Impacts on foraging habitat will be covered by EPBC Act woodland offset requirements. 4. Impacts on breeding territories should be avoided. 5. Surveys should be undertaken to identify any breeding territories which will be impacted. Impacts on breeding habitat should be avoided. 6. If a red flag is raised the proposal will need to be referred to the Conservator for final decision on whether the impact is acceptable or not. |



Endnotes

- 1 In other jurisdictions offsetting might apply to Ramsar Wetlands, however, because the ACT's only Ramsar site is within a conservation reserve it would not be necessary or appropriate.
- 2 http://www.actmap.act.gov.au/SilverlightViewer_1_10/Viewer.html?ViewerConfig=http://www.actmap.act.gov.au/Geocortex/Essentials/GE3151/REST/sites/Development/viewers/Development/virtualdirectory/Config/Viewer.xml&layerTheme=9 accessed 13 March 2014
- 3 <http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy>
- 4 Bioregions are large, geographically distinct areas of land with common characteristics such as geology, landform patterns, climate, ecological features and plant and animal communities. Bioregions establish a biologically relevant framework. Biogeographically, the ACT is a component of the South-eastern Highlands and Australian Alps bioregion sharing its environmental characteristics with surrounding New South Wales and parts of Victoria.
- 5 The Scarlet Robin has been recommended for listing as a vulnerable species in the ACT. A decision is yet to be made.
- 6 EPBC Act Environmental Offsets Policy, p. 8
- 7 Fungibility is the property of a good or a commodity whose individual units are capable of mutual substitution
- 8 S 261 No decision on application unless consideration in public interest
- (1) The planning and land authority, or Minister, must not decide a development application to which this part applies under section 162 (Deciding development applications) unless the Minister decides whether it is in the public interest to consider the application.
- 9 ACT Lowland Woodland Conservation Strategy