

ACT ENVIRONMENTAL OFFSETS

Draft Guidelines

Background

The position paper on the ACT Offsets Policy and Delivery Framework identifies that there are a number of issues that 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 have been prepared to inform consultation on the position paper and finalisation of the Offsets Policy and Delivery Framework.

Comments are invited on the Draft Guidelines. This will then inform the Statutory Guidelines under the *Planning and Development Act 2007*.

Draft Guideline 1

Matters relating to offsets on public land

Offsets on public land can be secured through a range of mechanisms. These are outlined in Table 1. This has formed the majority of offsets within the ACT to date. Public land offsets have a range of governance mechanisms that ensure they are permanent, secure, subject to transparent management arrangements (through Plans of Management) and are subject to scrutiny. The details of the types of credits that are appropriate, how the offset will be assessed and additional considerations for the establishment of an offset are outlined in Table 1.

Table 1 – considerations for public land offsets

Type of land	Types of Credits appropriate	Documentation of Changes	Considerations
Unleased Territory Land	<ol style="list-style-type: none"> 1. Change of zoning / landuse <ul style="list-style-type: none"> o land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone 2. Increased Security <ul style="list-style-type: none"> o Territory Plan overlay urban open space, Special Purpose Reserve, Nature Reserve, National Park 3. Increased management 	<p>EOC or Commonwealth OAG</p> <p>Territory Plan Variation</p> <p>Conservation Management Plan</p>	<ol style="list-style-type: none"> 1. Additional funding for programs may need to be quarantined/managed separately. 2. Need to consider: <ul style="list-style-type: none"> • If offset values need to be discounted because of fire management (eg in outer asset protection zones)
Urban open space	<ol style="list-style-type: none"> 1. Change of zoning / landuse <ul style="list-style-type: none"> o land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone 2. Increased Security <ul style="list-style-type: none"> o Territory Plan overlay urban open space, Special Purpose Reserve, Nature Reserve, National Park 3. Increased management 	<p>EOC or Commonwealth OAG</p> <p>Territory Plan Variation</p> <p>Conservation Management Plan</p>	<ol style="list-style-type: none"> 1. Additional funding for programs may need to be quarantined/managed separately. 2. Need to consider: <ul style="list-style-type: none"> • whether Commonwealth funding has been used on site to improve values relating to the offset • Parkcare/volunteer effort is taken into account in setting baselines • if offset values need to be discounted because of fire management (e.g. in outer asset protection zones)
Special Purpose Reserve	<ol style="list-style-type: none"> 1. Increased Security <ul style="list-style-type: none"> o Territory Plan overlay urban open space, 	<p>Territory Plan Variation</p> <p>Offset Site Management Plan</p>	<ol style="list-style-type: none"> 1. Additional funding for programs may need to be quarantined/managed

	<p>Nature Reserve, National Park</p> <p>2. Increased management</p>	<p>Reserve Management Plan</p>	<p>separately.</p> <p>2. Need to consider:</p> <ul style="list-style-type: none"> • whether Commonwealth funding has been used on site to improve values subject to the offset • Parkcare/volunteer effort is taken into account in setting baselines. • whether Special Purpose Reserve has effectively been managed as nature reserve or whether there is a real change in management as a result of changing security to nature reserve. • If offset values need to be discounted because of fire management (e.g. in outer asset protection zones)
<p>Existing Conservation Reserves (National Parks/Nature Reserves)</p> <p>]</p>	<p>1. Increased management</p>	<p>Offset Site Management Plan</p> <p>Restoration programs</p>	<p>1. This type of public land offset can only be used where there is demonstrated additionality from a baseline.</p> <p>2. It needs to be demonstrated how the values will be improved for protected matters over and above normal day to day management. For example, predator proof fencing at Mulligans Flat, significant restoration programs, reintroduction programs.</p> <p>3. Additional funding for programs may need to be quarantined/managed separately.</p> <p>4. Need to consider:</p> <ul style="list-style-type: none"> • whether Commonwealth funding has been used on site to improve values related to the offset

			<ul style="list-style-type: none"> • Parkcare/volunteer effort is taken into account in setting baselines. • if offset values need to be discounted because of fire management (eg in outer asset protection zones) • purpose of reservation
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Offsets within existing conservation reserves (National Parks, Nature Reserves)

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.

The ACT’s conservation of threatened species, ecological communities and matters of NES is unique in relation to other states and territories with:

- 55% of land managed explicitly for conservation within wilderness areas, national parks and nature reserves;
- 3% of land in special purpose reserves (reserved primarily for education/recreation); and
- 3% of land in catchment areas.

To determine additionality the following needs to be considered:

- Which areas within existing reserves are eligible;
- How funding for additional management is managed¹;
- What increases in conservation management will occur; and
- Whether offset values need to be discounted because of fire management (e.g. in outer asset protection zones).

Offsetting in reserves can only be considered if management is shown to be additional to what is generally expected of the ACT Government in the normal course of its operations. This will vary from site to site.

¹ The Commissioner for Sustainability and the Environment’s report into Canberra Nature Park indicated that it would be appropriate for offsets to be provided within existing reserves where actions are clearly over normal day to day management. The decision on the approach should be considered as part of the Environmental Impact Assessment or Strategic Assessment process.

For example, some areas may be special purpose reserves (to provide for public and community use of the area for recreation and education). Changes to the land use when these areas are transferred to nature reserves changes the underlying purpose of the reserve and expected levels of management, with resulting changes to the day to day management.

For instance, it is expected that weeds and pest animals are managed in conservation reserves. However, large scale restoration programs, predator proof fencing, translocation programs for threatened species, captive breeding and propagation programs are clearly additional to normal day to day management, and should be considered as an appropriate offset within a reserve where the programs are responding to threats to the matters being offset.

If reserves are degraded then one option may be to provide additional and dedicated funding to undertake specified additional management of these areas. This would require a baseline assessment of the ACT Government's current management obligations, to determine additionality.

Normally, the use of offsets in existing reserves would be considered against a specific development on a case by case basis. This is because the development of an offset program within a reserve would be best informed through knowledge of the particular matters that need to be offset.

Related to the issue of offsets in reserves is the issue of advanced offsets, see Guideline 5.

Commonwealth funding on public land

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

Draft Guideline 2

Matters relating to offsets on leasehold land

Although likely to be a small component of the overall offset approach, some leaseholders in the ACT may be interested in managing offset sites on their leases. This would generally apply to 99 year leases.

Offsets can be delivered through leasehold arrangements, subject to the terms of the lease (including any changes agreed with the leaseholder) and subject to any security arrangements required by the regulators (Commonwealth, Planning and Land Authority/Conservator). Offsets on leasehold land need to be agreed with the leaseholder.

Use of leasehold land is dependent upon a number of factors:

1. The offset values are present on the leasehold land.
2. Management of the site can be delivered at equal or lower cost than public land sites, over the life of the offset.
3. The leaseholder agrees to manage these values in perpetuity (for developments, including land developments, which that result in permanent loss of biodiversity values).

Issues that need to be considered in developing arrangements to deliver offset sites on leasehold land include:

1. Increased security/management of leased lands (secured through leasehold conditions and reserve overlays).
2. How funds for the management of offset sites are managed and disbursed (this is important to deal with potential changes to lessees over the timeframe of the offset).
3. What are the appropriate security measures, e.g.:
 - a. Changed lease clauses;
 - b. Changed land use, e.g., hills ridges buffers zoning;
 - c. Reserve overlays;
 - d. Precinct codes;
 - e. Land management agreements;
 - f. Offset management plans;
 - g. Commonwealth conservation agreements; and
 - h. Contingency funding.
4. How offsets on leasehold land will be monitored and enforced, e.g.:
 - a. Compliance reporting by leaseholders;
 - b. Use of conservation directions (under *Nature Conservation Act 1980*);
 - c. Use of lease withdrawal clauses as a measure of last resort (Under Planning and Development Act).

The tools and systems to manage this type of offset exist. The nature of leasehold land means that land management arrangements are more secure than in jurisdictions with freehold land. For this reason, there is no need to develop management arrangements such as biobanking agreements used in NSW for freehold land. Some mechanisms, such as registering the offset on title so that future purchasers of the lease are aware of the offset attached to the land are possible. The mechanisms that will be used to secure the long term security of an offset site on leasehold land should be considered when quantifying the conservation benefit associated with the offset.

Table 2 – considerations for leasehold land offsets

Types of Credits appropriate	Documentation of Changes	Considerations
1. Change of zoning / landuse <ul style="list-style-type: none"> o land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone. 	Territory Plan Variation to change land use – i.e. change from Broadacre/rural to Hills Ridges Buffers	1. Some transparency is needed on the management of this type of land. Consideration needs to be given to:
2. Increased Security <ul style="list-style-type: none"> o Territory Plan overlay urban open space, Special Purpose Reserve, Nature Reserve, National Park 	Territory Plan variation to include Reserve overlay	<ul style="list-style-type: none"> • monitoring and auditing of offset sites • use of Conservation Directions for rectification (if offset management actions not complied with)
1. Increased management	Conditions in Land Management Agreements	2. Additional funding for programs may need to be quarantined/managed separately.
	Conservation Management Plan	3. Need to consider: <ul style="list-style-type: none"> • whether Commonwealth funding has been used on site to improve values related to the offset

Commonwealth funding on leasehold land

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

Draft Guideline 3

Matters relating to offsets outside the ACT

Offset sites established through the Biobanking Scheme in NSW are appropriate if the scope and scale of the offsets provided at the Biobanking site are commensurate with the offsets required from a development in the ACT. This would generally only apply to offsets within the same bioregions as the ACT because of the need to meet like-for-like principles.

Other arrangements for offsets provided in NSW may include purchase of land with management by the ACT, or purchase of land with management by other parties, such as the NSW Government. These will need to be assessed on a case-by-case basis.

Other issues related to the principle of 'additionality' include:

- the treatment of past Commonwealth funding on offset sites
 - Any work funded by the Commonwealth cannot be considered as additional in regards to environmental offsets;
 - However, offsets can still be established on sites receiving Commonwealth funding for conservation, provided that a clear distinction is drawn between the conservation benefit derived from the existing funding and the conservation benefit derived from the establishment of the offset. This could be assessed by the EOC to establish likely additionality of actions. Adequate monitoring of sites will also assist; and
 - This requirement is more difficult to establish when offsets are in NSW. This may require liaison with regional organisations in NSW to establish whether particular sites have been managed with Commonwealth funds.
- Treatment of volunteer effort on offset sites including communication with Community Groups about their input (past and future) to offset site management. These issues are considered further in Guideline 4.

Draft Guideline 4

Matters relating to volunteer groups working in areas identified as potential environmental offsets

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

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

However, the development of offset packages in an established reserve can accelerate restoration efforts, and together volunteer effort and ACT government initiatives can improve the overall conservation gains for the matters specifically targeted through offsets, as well as those that are not the specific target.

It is difficult to determine the relative contribution of the various management actions to improve or maintain the condition of various sites across the ACT where ParkCare/Landcare groups have been working. For example, some of the outcomes on a site will be due to changed land use (such as the removal of domestic grazing). Management may have been undertaken or funded from several sources including Commonwealth and Territory governments, community organisations and volunteer groups. It is difficult, if not impossible, to calculate the proportion of the outcomes at a site that are directly attributable to ParkCare/Landcare groups unless detailed records have been kept as to their time and material contribution, together with before and after assessment of the outcomes.

It is important that as far as possible there is early identification and notification of potential offset sites. This way community groups can decide where they operate, and avoid undertaking volunteer work on potential offset sites.

It is proposed that potential offset sites are made known to community groups as soon as they are identified and agreed. However, in some circumstances this will not be possible until the offset is established.

A perverse outcome of this approach is that community groups may choose not to operate in areas which have potential to be used as an offset even though these areas may not actually be used as an offset site at all in the future.

Developers should include consideration of how to address past 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.

Draft Guideline 5

Advanced offsets

The concept of 'Advanced Offsets' is recognised in the EPBC Act Offsets Policy. Advanced offsets are a supply of offsets for potential future use, transfer or sale. The Australian Government recognises advanced offsets that deliver a conservation gain after the commencement of the EPBC Act, on 16 July 2000².

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

Advanced offsets are a way of ensuring high conservation value land can be secured and managed for conservation gains, without excluding them from consideration as an offset in the future. Advanced offsets must be additional to other legislation and schemes.

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

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

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

² *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy, October 2012, p. 9*

A list of advanced offsets (the Advanced Offset Bank) is important to ensure that the community understands which sites are explicitly being managed as advanced offsets. However, all areas of public land in the ACT may potentially be used as offset sites in the future, where the principles of additionality can be met.

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