



**ACT**  
Government

Environment and Planning

# ACT Environmental Offsets Policy Delivery Framework



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## 1. PURPOSE

This document outlines the delivery framework for offsets in the ACT. It is separate to the ACT Environmental Offsets Policy and provides a summary of the delivery framework and administrative processes involved in offset assessment and implementation.

## 2. BACKGROUND AND CONTEXT

The *Planning and Development Act 2007* (the Planning Act) together with ACT Environmental Offsets Policy (the Policy) and ACT Environmental Offsets Guidelines (the Guidelines) provide for the assessment and approval of environmental offsets in the ACT. The delivery of environmental offsets is embedded in the environment assessment and approval processes of the Planning Act. Embedding offsetting requirements in the environmental assessment and approval process facilitates consideration of offsets 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 *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Planning Act now requires offsets for matters of national environmental significance (matters of NES) and ACT protected matters. The proposed approach aims to streamline offset requirements and delivery by considering offsets that meet both Commonwealth and ACT requirements together. The Planning Act has been amended to ensure transparency and accountability for the assessment and management of offsets.





### 3. SUMMARY OF STAGES IN THE DELIVERY OF OFFSETS

The ACT Environmental Offsets Delivery Framework provides an outline of the framework and administrative processes involved in offset assessment and implementation. Stages in offset assessment and administration provides an outline of the major steps in assessing and implementing offsets.

#### Stages in offset assessment and administration

##### Assessment of offsets (refer to Section 4)

- a. Ensure that all possible avoidance and mitigation measures have been considered in the design of the project.
- b. Determine that an offset is required for residual impacts (refer to Planning Act and ACT Environmental Offsets Policy).
- c. Assess offset requirements through environmental assessment processes (appropriate tools to assess offsets are dependent on scale/type of project).

##### Conditions of approval

- d. Establish offset requirements as conditions of approval for development applications (refer to Section 5).

##### Securing offset arrangements

- e. Secure offsets through appropriate mechanisms (e.g. Territory Plan variations, Offset Management Plans and/or changes to lease clauses and/or Land Management Agreements) (refer to Section 6).<sup>1</sup>

##### Register of offset sites

- f. Include the offset on the offset register and ACTMAPi (refer to Section 8).

##### Management of environmental offset sites

- g. Manage offset sites including implementing Offset Management Plans (refer to Section 7).

##### Monitoring, compliance and audit

- h. Monitor offsets as required by conditions of approval, compliance and auditing (refer to Section 9).

##### Reporting, review and evaluation

- i. Reporting, review and evaluation (refer to Section 10).

<sup>1</sup> Securing offset arrangements may occur earlier in process.



## 4. ASSESSMENT OF OFFSETS

### Environmental Impact Assessment framework

The assessment of an offset is a requirement of the Planning Act. Offsets are considered during Environmental Impact Assessment (EIA) processes and are required as conditions of approval for DAs in the Impact Track.

The assessment of an offset site may be part of an Environmental Impact Statement (EIS), or an application for an EIS exemption under Section 211 (S. 211). Assessment will include both matters of NES and ACT protected matters.

EIAs will be informed by environmental offset calculations. Methodologies for calculating offsets are established through the Planning Act.

### Scoping of requirements

Scoping documents for an EIS will include a requirement to provide offsets where the project is likely to have a significant adverse impact on a matter of NES or ACT protected matter. In relation to the process for S. 211, the requirement for an offset would be addressed in the initial Form 1M and preliminary risk assessment, a compulsory part of the application for an EIS exemption.

A standard requirement will be included in the scoping document for proponents to provide details about how impacts have been avoided, including through prior processes such as strategic assessments or otherwise. The Planning Act requires proponents as a minimum, to include a statement in an EIS about whether an offset is likely to be required.

### Methodologies for calculating offset requirements

The principles outlined in the Policy require the development of methodologies for calculating offset requirements.

Appropriate methodologies for calculating offsets include the ACT Environmental Offsets Calculator (ACT EOC), Commonwealth Offset Assessment Guide (Commonwealth OAG) or any other methodology established under the Planning Act. The decision about which calculator is most appropriate is guided by the criteria outlined below.

### ACT Environmental Offsets Calculator

#### Description

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 and Environmental Offsets Assessment Methodology (EOAM) are based on sound ecological principles, current threatened species listings and native vegetation data. The ACT EOC provides a rigorous, consistent and credible means of assessing relative biodiversity values. It specifies:

- which species must be surveyed for at a particular location and the survey methodology that must be employed
- what vegetation or habitat is of such importance that in most circumstances it will be inappropriate to clear and offset and
- for habitat that can be cleared, the offset requirements that can compensate the biodiversity loss caused by the clearance.

The ACT EOC is used to apply the 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 a notifiable instrument under the Planning Act. It will be made available through the Environment and Planning Directorate (EPD) website.



### Appropriate uses of the methodology

The ACT EOC and EOAM are most appropriately used to assess offsets that are considered through the EIS process. 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. Potential offsets generated by the ACT EOC may be modified to better conform to the ACT Environmental Offsets Policy, such as the requirements outlined in the policy for direct and indirect offsets.

The ACT EOC includes data on lowland species and vegetation communities of conservation importance. Lowlands are generally those below 750 metres. For proposals that may impact on upland species (above 750 metres), aquatic or riparian ecosystems or vegetation within Namadgi National Park or Tidbinbilla Nature Reserve, the Commonwealth OAG should be used.

The ACT EOC can be used to inform early consideration of options for strategic assessment but may not be appropriate to use as it may not cover all matters that need to be considered, including documenting the environmental value of avoidance and mitigation measures. It is not appropriate for assessing off-site impacts.

### Updates to the methodology

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.

### Advance offsets

The ACT EOC is used to assess advance offset sites. This sets a baseline of credits that can then be used as the basis for ensuring that the values are maintained or improved over time and count towards the use of the offset. The data inputs for the tool are stored. If the methodology changes, the data can be re-entered to ensure the baseline has not deteriorated. Matters that were not measured during setting of the original baselines (because of timing or resource constraints) can also be measured at the time the offset is used.

## Commonwealth Offset Assessment Guide

### Description

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 guide utilises a balance sheet approach to estimate impacts and offsets for threatened species and ecological communities. The Commonwealth OAG uses a decision support framework to determine offsets for a given impact.

The Commonwealth OAG can be used to assess both development and offset sites.

The OAG is available at <http://www.environment.gov.au/node/18729>.

### Appropriate uses of the methodology

The Commonwealth OAG can be used to assess offsets that cannot be assessed by the ACT EOC. 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. If an offset is to be secured through a biobanking agreement in NSW, then the offset may need to be assessed using the biobanking assessment methodology as well as the EOC or OAG.

## 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 notified under the Planning Act.



## 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 impacts 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 fungible<sup>2</sup>, as different methodologies will calculate offsets differently.

The differences in requirements generated by each tool are not significant. That is, the offset requirements generate a similar quantum of offset credits required. The outcomes are similar.

## Criteria for choosing the most appropriate tool to inform assessment

The EOC is the most appropriate tool to use for:

- projects that are being assessed through an EIS or S. 211 exemption (offsets will become conditions of approval for DAs in the Impact Track), except for proposals with potential impacts on:
  - upland species or ecological communities (above 750 metres)
  - aquatic species or aquatic or riparian ecological communities
  - listed migratory species (except for the Regent Honeyeater which is included in the ACT EOC)
  - listed natural heritage sites such as Namadgi National Park or Tidbinbilla Nature Reserve and
  - Ramsar sites.

For the following exceptions the OAG will apply and in any other circumstance:

- Proposals with potential impacts on:
  - upland species or ecological communities (above 750 metres)
  - aquatic species or aquatic or riparian ecological communities
  - listed migratory species (except for the Regent Honeyeater which is included in the ACT EOC)
  - listed natural heritage sites such as Namadgi National Park or Tidbinbilla Nature Reserve and
  - Ramsar sites.

If the proponent wishes to use a tool differently to the situations identified above, then the agreement of the Conservator of Flora and Fauna (the Conservator) should be sought.





## 5. CONDITIONS OF APPROVAL

### Matters of NES

For matters of NES the Conservator would be responsible for providing advice on offsets and for confirming that they meet the ACT Environmental Offsets Policy. Conservator advice would be taken into account in applying conditions of approval relating to offsets, and to any variations to those conditions.

In approving a development, the planning and land authority will not be able to approve a development that is inconsistent with the advice of the Conservator, where the decision relates to matters of NES.

In relation to decisions made by the Planning Minister under Ministerial call-in powers, a decision resulting in impacts on matters of NES could only be made if the approval is consistent with the offsets policy and the approval would provide a substantial public benefit. In this situation, the Planning Minister would also be required to refer the proposed decision to the Commonwealth Minister for advice. It should be noted that the reason for calling in a project may not be linked to issues regarding matters of NES or environmental offsets, so the situations where the Conservator's advice is not taken are likely to be limited.

### ACT protected matters

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.

A key offset principle is that offset requirements be in proportion to the level of statutory protection that applies to the protected matter. This principle was applied to the process of agreeing offsets as part of an approval decision. As such the Conservator provides advice, and this advice informs the DA, but the decision maker can make alternative decisions under the provisions of the Planning Act. Decisions of the Conservator relating to ACT protected matters to have the same requirements for approval as those relating to matters of NES. Species that are only listed in the ACT (and not a matter of NES) are of regional significance, rather than national significance.

### Variation of the conditions of development approval

It is preferable that environmental offsets are in place and agreed before development approval is given. However, there may be some circumstances where the offset is negotiated and agreed before development approval, but is not finalised. The circumstances in which this occurs may be that the proposed offset is to be delivered by a third party and contracts fall through, or the Legislative Assembly disallows a Territory Plan variation creating a new reserve.

The Planning Act provides for variation of conditions of development approval. In circumstances where variation is sought that may affect an offset condition, the amended offset condition must be equivalent to the original condition. This means that an amendment to a development approval would not be approved if it:

- reduced the level(s) of protection afforded to protected matters
- reduced the effectiveness of any avoidance, mitigation and/or offset measure imposed to address impacts on protected matters and
- resulted in an increase of impacts on protected matters.



## 6. REGISTER OF OFFSET SITES

### Register of offset sites

The planning and land authority will be responsible for maintaining a register of offset sites.

All offsets will be registered and details, such as the location of the offset, information on the relevant protected matters and ongoing management actions required will be recorded. This information will be made publicly available on EPD's website.

- The register of offset sites should include details of all offset sites that are declared for land in NSW, if any.
- The offset sites displayed on ACTMAPi should include details of all offsets within the ACT that are determined for matters of NES.
- The register of offset sites together with ACTMAPi should include details of all offsets within the ACT and in NSW (if any) that are determined under the *NSW Environmental Planning & Assessment Act 1979*.

### 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 areas indicated as offsets on ACTMAPi reflect offsets that have been agreed through a range of processes including those that have been agreed under the EPBC Act. ACTMAPi may include advance offsets. These will be clearly labelled. In addition, EPD will maintain a list of advance offset sites.

## 7. SECURING OFFSET ARRANGEMENTS

Offset requirements imposed through conditions of approval need to be secured through appropriate mechanisms. There are a number of features of the Planning Act which can be used to secure offsets. For example:

- provisions within the Territory Plan (e.g. reserve overlays, Hills Ridges Buffers Zoning, precinct codes etc)
  - changes are made through variations to the Territory Plan
- Offset Management Plans and funding of management and
- 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.

### *Planning and Development Act 2007*

#### The Territory Plan

The Planning 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. The Territory Plan must not be inconsistent with the National Capital Plan.

Variations to the Territory Plan are subject to public consultation, approval by the Planning Minister and are presented to the Legislative Assembly. The Assembly has the power to reject the plan variation.

The Territory Plan includes requirements for zoning of areas of land such as Mountains and Bushland, Hills Ridges and Buffers and River Corridors and Urban Open Space.



These zoning requirements restrict certain developments and, together with Offset Management Plans and/or reserve overlays and lease conditions, can be used to secure offsets.

## Reserves

The Planning Act sets the management objectives for all public lands, including reserved lands in the ACT. Reserved lands include reserves managed primarily for nature conservation (nature reserves, national parks, wilderness areas) and other areas such as Special Purpose Reserves, water catchments and Urban Open Space etc. that can be used to provide security for offset management over the longer term. The certainty that an area will be managed for nature conservation purposes is highest when it is a wilderness area, national park or nature reserve. The policy provides information how this increased certainty is applied to the assessment of offset requirements. Other reserve overlays also provide appropriate security for offsets. This is further identified in the policy.

The *Nature Conservation Act 2014*<sup>3</sup> was established to make provision for the protection and conservation of native animals and native plants and the management of reserves. Once offset sites are agreed, the provisions in the Nature Conservation Act may apply to offset sites. If an offset is secured as a nature reserve (or other protected area) the Nature Conservation Act provides for ongoing management and implementation of Plans of Management. This would be in addition to management required under an Offset Management Plan.

## Leasehold arrangements

The Planning Act also establishes and manages the leasehold land system which includes requirements for Land Management Agreements to be prepared. Land Management Agreements can identify features and areas with special conservation values and set out management requirements to achieve agreed land management outcomes. A leaseholder can apply to have the terms of the lease changed if there has been agreement between the leaseholder and the government. Changes can also be made at the expiry of a lease. This is in addition to any requirements under an Offset Management Plan.

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

The Planning Act enables conditions of approval requiring a lease for an offset site to be subject to a condition that the lessee must comply with an offset management plan for the site. Any lessee would be consulted on this arrangement.

## Offset Management Plans

Offset Management Plans may be required as part of conditions of approval for development. An Offset Management Plan guides management of the offset site. It is supplementary to the conditions of approval.

The draft Offset Management Plan must describe how the offset may be achieved and include provisions about how the effectiveness of the plan is to be monitored and when the plan is to be reviewed. In preparing a draft Offset Management Plan, the proponent must consult the Conservator, the custodian and lessee.

Funding arrangements for offset sites would generally be specified either in the conditions of approval or the Offset Management Plan.

The development of the Offset Management Plan is the responsibility of the developer. Monitoring of implementation of Offset Management Plans will be the responsibility of the regulator (the planning and land authority). The legislation will require an offset manager to report on their Offset Management Plan every three years. The regulator will be required to report to the Planning Minister on Offset Management Plans every three years. Offset Management Plans will be monitored for their effectiveness in improving outcomes for matters of NES and ACT protected matters. It is proposed that the Conservation Planning and Research section within the Environment and Planning Directorate will have a key role in this.



## 8. MANAGEMENT OF ENVIRONMENTAL OFFSET SITES

### Third party responsibility for the delivery of offsets

In the ACT, the developer is responsible for finding, securing and managing offsets.

Suitable third parties can be used to deliver offsets. In many cases, enhanced environmental, social and economic outcomes can be achieved through the use of third party offset providers such as rural landholders, private conservation organisations, and Indigenous corporations. Contracts with third parties to manage an offset may be through a biodiversity banking scheme, however the use of a third party to deliver an offset must be approved by the decision maker. In all cases, the decision maker must be satisfied that appropriate mechanisms are in place to ensure the successful delivery of the offset and that the offset will meet the compliance requirements of any conditions of approval.

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.

### Offset Management Plans

Once Offset Management Plans have been agreed there is a responsibility outlined in the Planning Act for the Offset Management Plan to be implemented.

Offset Management Plans are able to be amended. However, any amendments need to ensure that the offset for the amended Offset Management Plan is equivalent or better than the original offset and is consistent with the Environmental Offsets Policy.

Provisions for monitoring and review of Offset Management Plans are included within the plan.







## 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 will be 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.

## 9. MONITORING, COMPLIANCE AND AUDIT

### Monitoring

The Planning Act provides that the Environment Minister must monitor the effectiveness of the Environmental Offsets Policy. The Environment Minister must also monitor the effectiveness of the Offsets Policy Guidelines.

An appropriate regime for monitoring offset sites and offset actions will be established through each Offset Management Plan as required through 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 sites in poor condition that need 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 Act which can be used to ensure compliance. In particular, offence and penalty provisions for non-compliance with conditions of approval apply, and this would include non-compliance with an offset condition. If a lease variation is required to ensure compliance with an Offset Management Plan, the compliance framework built around leases would be relevant.

The *Nature Conservation Act 2014* (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 and Conservator's Directions.

### Audit

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

A comprehensive compliance and enforcement framework will outline the provisions for auditing.



## 10. REPORTING, REVIEW AND EVALUATION

### Reporting

Reporting on the implementation of the Policy will be consistent with requirements embedded in bilateral agreements between the ACT and Commonwealth Governments. Data will be recorded in the register of offsets and the OMS.

Reporting will also be undertaken for individual offset sites, in line with Offset Management Plan requirements. Reporting is the responsibility of the proponent unless there is a formal arrangement with a third party to provide this reporting.

### Review

The Act outlines the processes for undertaking a review of the Policy and Guidelines, if a review is considered necessary.

The Planning Act requires consideration of whether a review is necessary at least every five years. In deciding whether the Policy and Guidelines should be reviewed, the Environment Minister must consult the Conservator.

Updates to the declaration of ACT protected matters will be made as required, for example, when a new species is listed. This would also require changes to be made to the EOAM. New matters of NES are automatically required to be considered.

The databases underpinning the ACT 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 Policy and delivery framework will be undertaken as required under the Planning Act.

## 11. ROLES AND RESPONSIBILITIES

### ACT Planning and Land Authority – the Regulator

The planning and land authority coordinates assessment and approval of ACT development proposals.

The authority is also responsible for monitoring a proponent's compliance with conditions of approval, and coordinating post approval applications, including requests to vary conditions.

### Conservator of Flora and Fauna, Conservation Planning and Research and Flora and Fauna Committee

To ensure transparency in this process and adequate safeguards are in place, the Conservator has significant roles in advice on matters of NES and environmental offsets. This includes providing advice on Offset Management Plans to ensure that offsets meet the Policy.

An approval relating to a matter of NES cannot be inconsistent with the advice of the Conservator.

The Conservation Planning and Research section will support the Conservator.

The Flora and Fauna Committee (proposed to become the Scientific Committee) can provide advice on the appropriateness of methodologies for calculating offsets and, in particular, threshold issues for species that are included in the methodologies.



## 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 EOWG 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 and
- ensuring input is received at appropriate times to reduce delays.

## 12. SUPPORTING INFORMATION

This delivery framework outlines the key elements of the delivery framework established under the Planning Act and through the Policy.

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

- the Environmental Offsets Policy;
- Offset Implementation Guidelines;
- Offset Management Plan provisions
- a register of environmental offsets and
- Environmental Offset Methodologies.

Other supporting material includes fact sheets.

## Endnotes

1. It is preferable to have offsets agreed and in place before development approval is given. In circumstances where this is not the case, a condition of approval will require that the offset arrangements are in place before development commences.
2. Fungibility is the property of a good or a commodity whose individual units are capable of mutual substitution.
3. The Nature Conservation Act is proposed to be replaced by New Nature Conservation Act.

