



ACT
Government

Environment and Planning

ACT Environmental Offsets Revised Draft Guidelines



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Background and Purpose

Changes to the *Planning and Development Act 2007* (the Planning Act) make provisions for the development of Offset Policy guidelines which assist in the implementation of the Environmental Offsets Policy (the Policy).

The ACT Environmental Offsets Guidelines (the Guidelines) have been developed to be consistent with the EPBC Act Environmental Offsets Policy¹ and to facilitate Commonwealth accreditation of ACT processes.

The Minister for the Environment is responsible for approving and notifying the Guidelines for the Policy. This includes responsibility for consultation on draft Guidelines and for monitoring and reviewing the Guidelines.

The purpose of the Guidelines is to provide additional detail about how the Policy is to be implemented taking into account the circumstances within the ACT. The Guidelines cannot be inconsistent with the Policy and do not override it.

In preparing draft Guidelines, the Minister must consult the Conservator of Flora and Fauna. The Minister must monitor the effectiveness of the Offsets Policy Guidelines and must consider, at least once every five years, whether the Guidelines need to be reviewed. The Minister must consult the Conservator of Flora and Fauna regarding this.

The Planning Act requires consultation on Guidelines before they are finalised and notified. The majority of these Guidelines were developed in conjunction with the Policy.



Guideline 1 – Matters Relating to Offsets on Leasehold Land

Rural land in the ACT provides a distinctive landscape setting for the city, helps to conserve habitats and species and provides for productive and sustainable agriculture use and other compatible uses. In some localities, the non-urban areas also provide a land bank for future urban uses. Where this is the case, wherever possible the length of leases offered reflects planning intentions for the locality while providing a degree of security of tenure for rural landholders.

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.

Environmental offsets on leasehold land:

1. should be legally secured for conservation purposes for at least the duration of the impact
2. the securing scheme should actively monitor for compliance, with offset agreement requirements enforced
3. any change in legal status should require Ministerial or statutory approval and
4. should only be considered with the agreement and cooperation of the landholder. This would generally apply to 99 year leases.²

The tools and systems to manage this type of offset exist in the ACT. 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 the biobanking agreements used in NSW for freehold land. Some mechanisms, such as registering the offset on the 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.

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 (planning and land authority/Conservator). Offsets on leasehold land need to be agreed with the leaseholder. If this does not occur, there is a significant risk of the offset failing over the longer term.

The Planning Act enables a condition to be applied to an impact track development approval requiring a lease for an offset site, which is not the development approval land, to be subject to a condition that the lessee must comply with an offset management plan for the offset.

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

1. The offset values present on the leasehold land
2. The cost of managing the site to deliver offsets compared to public land sites, over the life of the offset
3. The leaseholder's willingness to manage these values in perpetuity (for developments, including land developments, 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 the appropriate security measures are, 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 the *Nature Conservation Act 2014*) and
 - c. use of lease withdrawal clauses as a measure of last resort (under Planning Act).

In deciding whether an environmental offset is appropriate or the best option, proponents, landholders, and the regulator need to consider:

- the financial viability of the whole of the property where there has been substantial reduction of the ratio of viable agricultural land to non-viable agricultural land, i.e. productive land subsidises the control of weeds and pest of the areas of high ecological value
- local knowledge and expertise in management of the offset area by the current lessee
- how management may be facilitated such as through having convenient access to tools, machinery (spray units etc.) and livestock for Bushfire Abatement Zone commitments
- options for fire risk management through livestock management while maintaining and improving ecological values and
- trespass risk on offset sites if under private management. Trespass is the major cause of dumping of rubbish, damage by domestic pest animals, the introduction of weeds and vandalism.

Table 1– considerations for leasehold land offsets

Types of Credits appropriate	Documentation of Changes	Considerations
1. Change of zoning / land use <ul style="list-style-type: none"> • land use zoning changed to Hills Ridges Buffers, River Corridor Zone, Mountains and Bushland Zone.³ 	Territory Plan variation to change land use – i.e. change from Broadacre/Rural to Hills Ridges Buffers Territory Plan variation to include Reserve overlay	1. Some transparency is needed on the management of this type of land. Consideration needs to be given to: <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)
2. Increased security <ul style="list-style-type: none"> • Territory Plan overlay Urban Open Space, Special Purpose Reserve, Nature Reserve, National Park 	Changed lease arrangements (conservation clauses) Conditions in Land Management Agreements	2. Additional funding for programs may need to be quarantined/managed separately.
3. Increased management	Offset 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

Additional considerations

The establishment of an environmental offset on leasehold land needs to take into account the range of provisions relating to the management of leasehold land. Some of these are outlined below.

Land Management Agreements

The planning and land authority (the Authority) may only grant a rural lease, grant a further rural lease, vary a rural lease or consent to the assignment or transfer of a rural lease if the person to whom the lease is to be granted, assigned or transferred, or whose lease is to be varied, has entered into a Land Management Agreement with the Territory.



The Agreement must be in a form approved by the Minister and signed by the Conservator of Flora and Fauna and the person. The Agreement may contain a provision allowing the Agreement to be varied other than by agreement between the parties.

Dealings

A rural lessee or anyone else with an interest in a rural lease cannot deal with the lease without the written consent of the Authority. There are also circumstances when the Authority must not consent to a dealing; for example, the Authority must not consent to the consolidation or subdivision of a lease during the holding period unless the discharge amount is paid. A dealing without consent has no effect.

Length and form of grant

Leases are typically granted for 99 years and land held under a lease is typically held as one undivided parcel. The lessee can make an application to the Authority for a further Crown lease at any time during the term of the lease. Further leases can be granted provided neither the Territory nor Commonwealth needs the land. In deciding to grant a further lease, the Authority will consider whether such land is required for a public purpose. If so, the further lease would not be granted.

Methods of grant

Leases may be granted by auction, tender, ballot or direct sale. Eligibility to be granted a lease may be restricted. The Authority may be required to prepare a planning report in relation to a proposal to grant a lease and must do so if directed by the Minister. Granted leases are lodged with the Registrar-General.

Use of land

Leased Territory land, or a building or structure on the land, can only be used for a purpose authorised by the lease. Transitional arrangements apply to existing uses provided for in existing leases. Except for rural leases, a lease or further lease granted does not give rights to the use, flow and control of water under the land comprised in the lease.

Surrender or termination of a lease

A person may surrender a lease or part of a lease at any time with the consent of the Authority. The Authority may accept the surrender with or without conditions. The surrender does not necessarily entitle the lessees to a refund or remission of any rent already paid or owing.

If a lease is surrendered or terminated, the Authority may authorise the payment of the amount prescribed by regulation to the person who is surrendering the lease or the person whose lease has been terminated.

Commonwealth funding on leasehold land

Any work funded by the Commonwealth on leasehold land for the purposes of managing matters of NES 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 ACT Environmental Offsets Calculator (ACT EOC) to establish likely additionality of actions. Adequate monitoring of sites will also assist.



Guideline 2 – Matters Relating to Offsets Outside the Act

Background

The Policy requires consideration of the 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, this will be considered.

The Policy provides the following guidance. 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.

The ACT is surrounded by similar ecosystems in NSW. Across the border in NSW there are sites with the same ecological communities that could be protected as offset sites.

Conservation actions in NSW can contribute to conservation outcomes in the ACT through increased connectivity and through improving the scale of areas protected or managed for matters of NES.

The most common conservation values impacted by urban development in the ACT that require offsets are outlined in Table 2.

Table 2 - ACT, Commonwealth and NSW status of key ACT conservation values

Ecological community/Species	ACT status	Commonwealth status	NSW status
Natural Temperate Grassland	Endangered	Endangered	Not listed
White Box-Yellow Box-Blakely's Red Gum Grassy Woodland	Endangered (Yellow Box/Red Gum Grassy Woodland)	Critically endangered	Endangered
Golden Sun Moth	Endangered	Critically endangered	Endangered
Grassland Earless Dragon	Endangered	Endangered	Endangered
Pink-tailed Worm Lizard	Vulnerable	Vulnerable	Vulnerable
Striped Legless Lizard	Vulnerable	Vulnerable	Vulnerable
Superb Parrot	Vulnerable	Vulnerable	Vulnerable

These conservation values are all present in areas adjacent to the ACT border in NSW and the broader region. Environmental offsets sourced in NSW need to meet the ACT Environmental Offsets Policy.

Securing offsets in NSW

To ensure that the offset persists in perpetuity, an offset site in NSW would require active management and appropriate tenure protection under NSW law. Options need to be assessed on a case-by-case basis. Some examples follow.

Adding land to the NSW public reserve system

The proponent would purchase freehold land in NSW and transfer it to the NSW Government for incorporation into the NSW system of national parks and nature reserves. It would be gazetted as a reserve under the *National Parks and Wildlife Act 1974* (NSW) and managed by the NSW National Parks and Wildlife Service (NPWS). In order to accept responsibility for managing the land, the NSW Government may require an up-front payment towards the management costs in perpetuity.



Freehold land with a biobanking agreement under the *Threatened Species Conservation Act 1995* (NSW) which is managed by a private owner

The proponent would purchase NSW biobanking credits from a private landholder. These credits would be retired. Ongoing compliance monitoring would be the responsibility of the NSW Government as administrator of the NSW Biobanking Scheme.

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.

Freehold land in NSW owned by the ACT Government and managed by an ACT Government agency or a third party

The ACT Government purchases freehold land in NSW and retains the title to the land. The land is managed either by an ACT Government agency such as the Parks and Conservation Service, or is managed by a third party under contract to the ACT Government. The ACT Government would establish some transparency mechanism, possibly under legislation or through development approval conditions, to require monitoring and reporting of environmental outcomes on the land.

Other considerations

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 ACT EOC to establish likely additionality of actions. Adequate monitoring of sites will also assist.
 - 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 and
- the treatment of volunteer effort on offset sites including communication with community groups about their input (past and future) to offset site management.



Guideline 3 – Indirect Offsets for Matters of NES

Criteria for research and educational programs

Proponents should consult with the Conservator of Flora and Fauna regarding priorities for research and education projects that meet these guidelines.

A suitable research or education program must:

1. endeavour to improve the viability of the impacted protected matter, for example:
 - signage in key areas to educate the public regarding the risks to a threatened animal or
 - research into effective re-vegetation techniques for a threatened ecological community
2. be targeted toward key research/education activities as identified in the relevant Commonwealth approved recovery plan, threat abatement plan, conservation advice, ecological character description, management plan or listing document, or relevant ACT Action Plans
3. be undertaken in a transparent, scientifically robust and timely manner
4. be undertaken by a suitably qualified individual or organisation in a manner approved by the department and
5. consider best practice approaches.

The proponent is required to:

1. select an institutional or individual host (for the purpose of executing the program) through tender process or provide evidence that the program will be undertaken through the Conservation Planning and Research team of the Environment and Planning Directorate
2. provide updates on progress and key findings through periodic reporting
3. ensure that funds are managed appropriately and that auditable financial records are kept and maintained and
4. apply a 'no-surprises' policy to the publication, whereby research publications and outputs are provided at least five working days before release.

Research programs should:

1. be tailored to at least a postgraduate education level; however, there will be scope to engage other educational levels in educational programs
2. present findings that can be peer-reviewed
3. publish findings in an internationally recognised peer-reviewed scientific journal or be of a standard that would be acceptable for publication in such a journal. Publications should be submitted to free open access journals. Data and information collected should have creative commons licensing and be free and accessible and
4. research outputs should inform future management decisions on the protected matter and, where possible, be readily applicable to other similar matters (species groupings etc).

Educational programs:

1. will be likely to vary in scope, mode of delivery and duration according to the target audience and the protected matter, (for instance, school or community programs, signage or printed materials)
2. should seek to attain measurable outcomes, noting it can be difficult to link education activities to behavioural change and subsequent improvement in the viability of the protected matter and
3. should be targeted toward behavioural change and subsequent improvement in the viability of the protected matter.



Endnotes

1. <http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy>
2. Note: a range of provisions apply to the resumption or acquisition of leases. The Environmental Offsets Policy and Guidelines do not change those provisions.
3. Note: a change in zoning does not change rights to use current lease holdings in accordance with the lease agreement.

