

EPA Submission:

EPBC Act Environmental Offsets Policy Consultation Draft

21 October 2011

The Northern Territory Environment Protection Authority (EPA) was established in March 2008 with a primary function of providing independent advice and recommendations to government, businesses and the community about ecologically sustainable development. We view environmental offsets as providing real potential for the maintenance and improvement of environmental and cultural values, alongside socio-economic development. Accordingly, we welcome the opportunity to provide comment on the *EPBC Act Environmental Offsets Policy Consultation Draft*, and in particular, the opportunity to present a Northern Territory perspective. This submission presents firstly some pertinent observations of particular relevance to the Northern Territory and then proceeds to discuss the draft policy in more detail.

Specific observations about the impact of the Policy as drafted on Northern Territory

- There appears to be a contradiction in indicating that offsets cannot determine acceptability and then indicating that a suitable offsets are not available a project may be rejected (para 3, page 10). As written this is confusing and adds to uncertainty. Is it sensible to imply that an impact may be so unique in type and/or value affected that an offset cannot be found, yet insufficiently serious to warrant treatment of a project as unacceptable under any terms? It would perhaps be preferable to indicate that a decision will be delayed until suitable offsets can be found whenever there is shown to be residual detriment requiring offsetting.
- The provision is obscurely worded but there is a suggestion that formal action against title is a requirement for all offsets (last para page 10). This will be difficult to arrange for some forms of land tenure, especially Aboriginal lands. Does this mean, for example, that offsets cannot be secured through action to create an Indigenous Protected Area (IPA) or through specific action taken on an IPA?
- Territory and state Offsets will be treated as though they operate independently of Commonwealth offsets (although potentially complementary). This seems at odds with existing arrangements and COAG intent to emphasise accreditation of state and territory processes. It implies that offsets procedures that make up part of state and territory processes will not be accredited even though this draft policy establishes offsets as an integral part of the environment assessment process. A more consistent approach would be to design accreditation arrangements to require state and territory procedures to deal with matters of NES (as well as local obligations) rather than to have two distinct processes.
- The dichotomous definition of offsets as direct or indirect is unhelpful. The policy proposes that direct offsets are those dealing with the protected matter impacted. Indirect offsets are measures that improve knowledge, understanding and management leading to improved conservation outcomes for the protected matter. This leaves an important gap, which is particularly significant for the Territory. Where a relatively common environment type is affected, it may make more sense to direct offsets to improvements in matters other than those impacted but for which more urgent conservation action is required or much greater conservation benefits will be achieved for the same offsets outlay.

Direction to other matters would, of course, be subject to evidence that the benefits exceeded those that could be achieved by an exact like-for-like arrangement. The direct/indirect dichotomy could be taken to rule out such use of offsets no matter how great the benefits.

Whilst care must be to manage some of the conceptual difficulties such as offsets being interpretable as a buying of approvals if too far from the specific matters impacted, the environmental benefits may be greater.

- Development of a guide is a potentially useful step. However, the guide as proposed is too prescriptive in some respects and too loose in others. Given the treatment of offset types, the arbitrary 75% of points from direct offsets is particularly unwelcome. Despite the indication that the guide would not be binding on decision-makers, it will undoubtedly be interpreted by the community as national best practice, even if it does not fit the particular circumstances of the state or territory. For example, if the logic set out in the guide is followed, offsets requirements will probably be low for developments entering previously undisturbed environments if they impact widespread habitat types (habitat is also undefined but in contemporary wildlife management parlance refers to resources used by wildlife: is this what is intended?). Given the value of avoiding fragmentation of "habitat" and the inevitable increase in management challenges (weeds, fire, ferals) that follow any such entry irrespective of the on-site impacts, this would be a perverse result.
- Offset providers are to be accredited by the Department, irrespective of their status in the state or territory (bottom of page 10). Will this be additional to accreditation required under the Carbon Farming Initiative? How will projects producing multiple benefits (cobenefits) be treated? Again, won't this work against streamlining sought by COAG? It is suggested that the costs of accreditation will act against offset participation by smaller proponents and in addition will act counter to the COAG intent to reduce green tape.

Guiding principles, requirements and scope

The Environment Protection Authority recommends that the policy state upfront that "offsets cannot be used to allow an action with unacceptable impacts to proceed" (p. 5).

With the above clarifications regarding direct and indirect, we support the requirements that offsets must (p. 4):

- improve or maintain the viability of the affected aspect of the environment;
- be efficient, effective, transparent, proportionate, scientifically robust and reasonable;
- be built on direct offsets, but may include indirect offsets;
- be of a size and scale proportionate to the impacts;
- be in proportion to the level of statutory protection that applies to the affected species or community;
- manage the risks of not succeeding; and
- be readily measured, monitored, audited and enforced.

Offsets should not be used as an alternative to high standards of development assessment and environmental management, nor should they be used to make up for poor planning

processes on the part of government. Once the necessary obligations to avoid, minimise and mitigate negative impacts are met, including strict repair and remediation protocols for mining and hydrocarbon developments, offsets can be used to support the protection of national environmental assets and values by addressing residual impacts.

We agree that the Federal government's approach to offsets should complement and build on the Territory government's approach. Due to the largely intact nature of our landscapes, which have been subject to relatively low levels of development to date, and yet, face considerable threat from pervasive processes such as fire, feral animals and weeds and the challenges this presents to management in a region with a small geographically dispersed population, it is likely the Northern Territory offsets policy will place more value on indirect offsets. The Commonwealth policy will need to be cognisant of this.

Where indirect offsets are considered to be more appropriate than direct offsets, then justification should be provided and made public. It is recognised that indirect offsets may be difficult to measure and quantify, particularly where they address multiple environmental, cultural and social values, nonetheless, where appropriate data are available it should be used to guide decision-making.

Guidance and justification for indirect offsets can be drawn from priority actions outlined in relevant recovery plans for threatened flora, fauna and ecological communities; threat abatement plans; and other national strategies (e.g. management of WoNS species, especially those that impact on matters of national environmental significance). Additionally, to promote meaningful assessment of indirect offsets options and outcomes, the Northern Territory and Commonwealth governments could jointly develop some goals related to the protection of national environmental assets. An example of such a goal would be, "coverage of 'X' weed species to be reduced by 'Y'% in Kakadu National Park by 2015". Indirect offsets may also provide opportunities for conservation innovation e.g. captive breeding and reintroduction programs for threatened species.

Methodological and procedural issues

We strongly support the preclusion of offsets considerations during the referral stage of the impact assessment process. The decision-making stage is the appropriate time to evaluate offsets proposals, with reference to relevant scientific evidence and sound assessment and governance principles such as:

- offsets being suited to target-setting, measuring, monitoring, auditing, enforcement and cost-effective and transparent administration;
- the proponent and any third parties involved in offsets delivery having a good environmental track record and the financial and technical capacity to deliver;
- establishment of an enforceable agreement guaranteeing offsets delivery;
- avoidance of perverse outcomes; and
- achievement of offset durability and security.

The above principles should help to provide assurance that offsets are not being used to compromise standards of assessment or the environmental management obligations of developers. As a general rule, the environmental assessment process and its results should inform choice of offsets but offsets must not unduly influence environmental assessment.

Any offset requirements determined by the decision-maker need to be included as a condition of approval, and there must be follow-up monitoring and assessment to ensure that offsets are delivered. We agree that where uncertainty exists with regard to offsets

delivering on conservation gains, then a greater variety and/or quantity of offsets should be required to counterbalance the inherent risk. A publically-available register of offsets will be critical for promoting transparent governance and ensuring there is no double-counting of offsets actions.

We note however that the COAG reform agenda being concurrently considered seeks to reduce the time costs of development and this may be at odds with what seems to be a suggestion for a sequential process in this policy. The procedural guide proposes consideration of offsets is delayed until late in the assessment process when acceptability has been determined, when a proponent may be invited to submit an offsets proposal (top of page 10). **There is a risk that this will add substantially to the total time required, which appears at odds with the intent of the COAG reform agenda.**

If a series of developments occur in a region that encompasses a national environmental asset (or assets), then consideration needs to be given to cumulative impacts when assessing residual impacts. Cumulative impacts can be seen to raise the level uncertainty around the delivery of desired conservation outcomes, and hence, should be dealt with by requiring a greater variety and/or quantity of offsets.

The Offset Assessment Guide that has been developed to promote consistent and transparent decision-making around offsets has merit, although questions still remain about the calculation of 'impact points' and 'offset points'. The methodologies that are developed for these calculations need to be subject to peer review and made publically-available, once finalised, to promote transparency and accountability.

We support actions for earning 'offset points' being derived from recovery plans for threatened flora, fauna and ecological communities. We would also welcome provisions to allow actions to also be derived from threat abatement plans and other relevant national strategies (e.g. management of WoNS species).