

**Draft Policy Statement:
Use of environmental offsets under the
*Environment Protection and Biodiversity
Conservation Act 1999***

August 2007



Australian Government

Department of the Environment and Water Resources

Environment Protection and Biodiversity Conservation Act 1999 **Draft Environmental Offsets Policy**

'Environmental offsets' are broadly understood to mean actions taken by developers to compensate for the adverse impacts of their developments. The Australian Government is increasingly considering environmental offsets as part of its process of taking a decision on whether to approve proposed actions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The purpose of this draft policy statement is to outline the Australian Government's position on the use of environmental offsets under the EPBC Act. The aim is to ensure the consistent, transparent and equitable use of environmental offsets under the Act. This draft policy should also provide developers, the community and other governments with greater certainty about the Australian Government's position on a range of issues including: what is an environmental offset; when is it appropriate to consider offsets as part of a project and what is the appropriate nature and scale of environmental offsets?

Comments on this draft policy statement are being invited from interested groups and individuals until [date]. The Australian Government will take any comments received into account when finalising this policy.

This document presents a very short summary of the Australian Government's draft policy on environmental offsets. A more detailed discussion of the issues associated with this policy statement can be found in the companion document 'Use of Environmental Offsets under the *Environment Protection and Biodiversity Conservation Act 1999* – Discussion Paper'.

What are environmental offsets?

There are many definitions of environmental offsets. The Australian Government defines environmental offsets as 'actions taken ***outside a development site*** that compensate for the impacts of that development - including direct, indirect or consequential impacts'.

Environmental offsets provide an opportunity to achieve long-term conservation outcomes whilst providing flexibility for proponents seeking to undertake development which will have environmental impacts.

Environmental offsets are not intended to make proposals with unacceptable impacts acceptable. They are simply intended to provide another tool that can be used during project design, environmental assessment and implementation to achieve the principles of ecologically sustainable development.

Is there any difference between environmental offsets and mitigation measures?

Environmental offsets provide compensation for those impacts which can not be adequately reduced through avoidance and mitigation. They should be distinguished from 'mitigation', which refers to the range of actions that can be undertaken to reduce the level of impacts of a development (typically undertaken on-site).

Types of environmental offsets

Actions that can be considered as environmental offsets are generally categorised into *direct* and *indirect* offsets.

Direct offsets

Direct offsets are aimed at on-ground maintenance and improvement of habitat or landscape values. They may include:

- long-term protection of existing habitat – including through the acquisition and inclusion of land in the conservation estate, and covenanting arrangements on private land;
- restoration or rehabilitation of existing degraded habitat; or
- re-establishing habitat.

Indirect offsets

Indirect offsets are the range of other actions that improve knowledge, understanding and management leading to improved conservation outcomes. They may include:

- implementation of recovery plan actions – including surveys;
- contributions to relevant research or education programs;
- removal of threatening processes;
- contributions to appropriate trust funds or banking schemes that can deliver direct offsets through a consolidation of funds and investment in priority areas; or
- on-going management activities such as monitoring, maintenance, preparation and implementation of management plans etc.

Use of environmental offsets under the EPBC Act

Environmental offsets can be used under the EPBC Act to ***maintain or enhance*** the health, diversity and productivity of the environment as it relates to matters protected by the EPBC Act (i.e. matters of national environmental significance and the environment more broadly for actions involving the Commonwealth).

Environmental offsets can be applied as an approval condition under the EPBC Act for developments that have undergone assessment. They may be used when a development will result in impacts on a matter protected by the EPBC Act.

Environmental offsets are not applicable to all approvals under the EPBC Act. Each approval must be assessed on a case-by-case basis and must take into account the scale and intensity of impact from the development on the site and the potential for conservation outcomes through offsets. They should not be applied where the impacts of a development are considered to be minor in nature or could reasonably be mitigated. In some circumstances suitable offsets may not be available to adequately compensate for the impacts of a development and a decision on the overall acceptability of the project will need to be made.

Principles for the use of environmental offsets

The Australian Government has identified eight principles for the use of environmental offsets under the EPBC Act. These eight principles will be used to assess any proposed environmental offsets to ensure consistency, transparency and equity under the EPBC Act.

The Australian Government's position is that:

1. Environmental offsets should be targeted to the matter protected by the EPBC Act that is being impacted.
2. A flexible approach should be taken to the design and use of environmental offsets to achieve long-term and certain conservation outcomes which are cost effective for proponents.
3. Environmental offsets should deliver a real conservation outcome.
4. Environmental offsets should be developed as a package of actions - which may include both direct and indirect offsets.
5. Environmental offsets should, as a minimum, be commensurate with the magnitude of the impacts of the development and ideally deliver outcomes that are 'like for like'.
6. Environmental offsets should be located within the same general area as the development activity.
7. Environmental offsets should be delivered in a timely manner and be long lasting.
8. Environmental offsets should be enforceable, monitored and audited.

These eight principles are discussed in greater detail below.

1. Environmental offsets should be targeted to the matter protected by the EPBC Act that is being impacted.

Environmental offsets may be appropriate when they:

- are necessary or convenient to protect or repair impacts to a protected matter – i.e. a matter of national environmental significance or the environment more broadly for actions involving the Commonwealth;
- relate specifically to the matter (for example, species) being impacted; and
- seek to ensure that the health, diversity and productivity of the environment is maintained or enhanced.

Offsets are **not appropriate** where the impacts of a development are considered to be minor in nature; or could reasonably be avoided or mitigated.

2. A flexible approach should be taken to the design and use of environmental offsets to achieve long-term and certain conservation outcomes which are cost effective for proponents.

Offsets are not intended to replace avoidance and mitigation which are expected to be the primary strategies for managing the potential impacts of development proposals. The Australian Government **will not consider** any proposal for environmental offsets unless the intended measures to avoid and/or mitigate the anticipated impacts are presented at the same time.

However, consideration should be given to how offsets can combine with avoidance and mitigation measures to achieve the best outcomes for the matters protected and the proponent. This means that if it can be demonstrated that better conservation outcomes would be achieved by the use of an environmental offset rather than measures to avoid and/or mitigate certain impacts, then the Australian Government will be prepared to consider such an approach.

In assessing the merits of avoidance, mitigation and offsets there needs to be clear information about the scale and intensity of impacts of the development and the relative benefits to be gained through various actions.

3. Environmental offsets should deliver a real conservation outcome.

The Australian Government aims to ensure that offsets deliver a conservation outcome that would not otherwise be achieved. For example, funding open ended research programs which deliver little or no on-ground benefit for the matter impacted are not considered to deliver a conservation outcome. Also, the purchase of existing unprotected habitat only provides a real conservation outcome if that habitat becomes protected in perpetuity and actively managed for long term conservation purposes.

4. Environmental offsets should be developed as a package of actions, which may include both direct and indirect offsets.

When available, direct offsets (e.g. reservation or covenanting of land) are more desirable than indirect offsets (e.g. contribution to research) as they are more likely to lead to long-term conservation outcomes and it is easier to demonstrate a consistent, transparent and equitable relationship between the offset and the impact.

In some cases, however, a package of offsets incorporating direct and indirect actions may deliver the best results. A package of measures increases the scope of possible conservation outcomes, spreads the risk of offsets failing to deliver, and may provide greater flexibility for proponents to successfully deliver a sustainable outcome.

5. As a minimum, environmental offsets should be commensurate with the magnitude of the impacts of the development and ideally deliver outcomes that are 'like for like'.

Environmental offsets should be developed to ensure the relevant matter protected by the EPBC Act is 'maintained or enhanced' by adequately compensating for the impacts of the development.

The appropriate magnitude of an offset package is determined on a case-by-case basis, with consideration of the following:

- the scale and intensity of impacts of the development – including direct and indirect impacts. As a minimum, offsets should be commensurate with the level of impacts of the development and should provide for both maintenance and enhancement of the relevant protected matter;
- achieving the greatest long-term conservation gains – wherever possible in the context of 'like for like' which requires offsets to be targeted towards the specific environmental value being impacted by a development (e.g. foraging habitat for an endangered species). Offsets are required that are (at a minimum) of equal quantity and quality to the area to be impacted, but preferably of greater quantity and/or higher quality;
- precedents for the previous development of similar offsets – with a view to delivering consistency. Offset ratios may be applied when available;
- the approach of the relevant state or territory – with a view to complementing and/or building on that approach; and

- the level of certainty in the offset providing a conservation gain. In the case of uncertainty a greater variety and/or magnitude of offsets may be required including a focus on lower risk actions.

6. Environmental offsets should be located within the same general area as the development activity.

Environmental offsets should generally be located in the vicinity (e.g. same bioregion or sub-region) of the development site to ensure that one area of importance to a protected matter (e.g. a Ramsar listed area or part of a species' range) does not become severely degraded. This may be less relevant for those indirect offsets that are not location-based.

The Australian Government recognises that it may not always be desirable or possible to locate offsets in the vicinity of a development site. In some cases, greater conservation outcomes may be delivered by locating offsets elsewhere.

7. Environmental offsets should be delivered in a timely manner and be long lasting.

Given that environmental offsets are often complex to develop and may have a time lag before delivering a conservation outcome, it is important that an offset package be well formulated at the time of approval and preferably implemented prior to the commencement of the development. This is likely to maximise the chances of the offset package succeeding.

Environmental offsets should deliver a long lasting benefit to ensure environmental impacts are adequately compensated over the long-term. As a guide, offsets should generally compensate for the impact of a development for the period that the impacts occur. Consideration should be given to mechanisms for guaranteeing the security and long-term management of offset sites.

8. Environmental offsets should be enforceable, monitored and audited.

To ensure the success of environmental offsets, it is important that they are enforceable, monitored and audited. Proponents, or their contractors, must report on the success of the offset so that conditions of approval can be varied if the offset is not delivering the desired outcome and future offset packages can have greater chance of success.

The Australian Government will measure the success of environmental offsets by:

- requiring environmental offsets or offset packages to include clearly articulated measures of success that are linked to the purpose of the offsets and provide clear benchmarks about their success or failure;
- monitoring the performance of agreed offsets as part of the monitoring, compliance and audit program for all projects considered under the EPBC Act; and
- seeking feedback at regular intervals from parties affected by and/or interested in environmental offsets to inform offset policy and future offset negotiations with proponents and state, territory or local governments.