

ACT environmental offsets program: Issues and risks

Issues and risks are interrelated but described separately.

	Issues and risks	Description
	Policy Gaps	
1	Offsetting ACT development impacts in NSW	Due to a lack of register of potential offset sites, there is increasing interest from proponents to offset ACT development impacts in NSW. A number of policy and practical uncertainties exist, including: • whether habitat and population fragmentation precludes achievement of no net loss; • implications of revenue being redirected to the NSW Government and NSW landholders; and • legal and administrative arrangements with the NSW Government for managing offset sites and commitments.
2	Offsetting offsets	In some situations proponents are seeking to develop on existing offsets sites, requiring a new offset to be established – effectively “offsetting offsets”. Neither the Commonwealth nor ACT offsets policies provide guidance on how this additionality should be considered.
3	Third party land management arrangements	There is increasing interest in scenarios involving third parties; for example, where either the ACT Government or private developer is the proponent for offsets on privately-owned land (e.g., rural leasehold). Policy gaps include: • the role and responsibility of the proponent for managing the offset in perpetuity; • the standard and effectiveness of non-ACT Government land management activities (including monitoring and reporting); and • long-term funding requirements and implications should the private developer business model fail.
4	Multiple offsets on single site	Limited site availability for some MNES may see multiple offsets on a single site become more prominent. A key challenge is that habitat requirements and management actions for different species and communities are not always compatible. Policy guidance is required for multiple offsets on the same site established at the same time, and for additional offsets to an existing site.
5	Establishing advanced offsets	Advanced offsets are presented by the EPBC Act as an opportunity to protect and restore MNES before a site has been identified as an offset for a particular development. Proponents, understandably, do not want to commit long-term investment for a site years’ ahead of unguaranteed development approval. This lack of funding limits land management activities to the extent that, in some cases, the status of the MNES has declined and the site is no longer suitable as an offset.
6	Establishing retrospective advanced offsets	The most likely application of a retrospective advanced offset would be in an existing nature reserve. Offsets funding could enable restoration to enhance MNES in nature reserves that currently only receive ad hoc funding. The ACT Government needs to clarify the Commonwealth would accept this approach; ensure it has social licence with the community; and that benefits and outcomes are clearly demonstrated.
7	Appropriate offset types	Offsets in the ACT are predominantly by averted loss, where an area of land is protected that contains the same MNES as that impacted by the development activity. Continued use of averted loss may perversely result in

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		environmental decline. Policy guidance is required to reduce default use of, and strengthen criteria for, averted loss offsets (e.g., demonstration that an offset site was genuinely at risk); and to increase application of restoration offsets, which have the potential to achieve net gains for threatened biodiversity and habitats.
8	Avoidance and mitigation measures	The first interaction proponents currently have with the mitigation hierarchy is at the EIS stage in the regulatory planning system. This is generally too late in the development process for proponents to consider alternative avoidance and mitigation measures, resulting in offsets often being the only remaining option. There is limited guidance to assist developers understand the costs and risks associated with offsets, including their responsibility for compliance with the offset commitment throughout the duration of the multiple year approval period.
9	Climate change	Climate change impacts to biodiversity and habitats, both now and under future scenarios, are not factored into planning and decision-making relating to offsets. Risks include that decisions continue to be made with limited knowledge to understand the impacts to threatened species and communities at both the development and offset sites; whether the conditions set are sufficient to deliver environmental outcomes over time; and whether land management activities and funding arrangements are adequately planned for and resourced.
10	Strategic review of offsets policy and delivery	There has been limited evaluation of the effectiveness of current ACT offsets policy and program settings for achieving the intended environmental outcomes. Continuing with current approaches risks strategic allocation of funds and perpetual decline in MNES and ACT protected matters.
Data and Transparency		
11	Offset site availability	There is perception of insufficient offset site availability in the ACT, primarily due to limited biodiversity and habitat value data to identify and prioritise sites in the Territory. The result is a lack of a strategic, coordinated and evidence-based approach to offsets planning and delivery. This pressure will likely increase with future climate change; and should approval powers be devolved from the Commonwealth to the ACT Government where offsets consideration will need to expand to include ACT protected matters.
12	Offsets register	The offsets register is a legislated requirement under the <i>Planning and Development Act 2007</i> (s111(v)) and the only means by which to report on offsets to the community. The register does not currently provide the comprehensive range of information needed to demonstrate transparency and effectiveness of individual offsets and strategic assessments in the ACT. This includes the inability to statistically analyse offset data from baseline assessments at both the development and offset sites through to establishment and monitoring.
13	Offsets calculator	The ACT Environmental Offsets Calculator is no longer supported by ACT Government software. The calculator will need updating to reflect changes to the revised ACT Offsets Policy and any relevant policy changes to the EPBC Act.
14	Data availability	Critical information collected by external consultants to support development proposals to the Commonwealth on behalf of other Directorates is inconsistently provided to EPSDD. This includes, for example, biodiversity assessments at the development site and offset strategies that outline the actions and funding requirements for offset establishment and ongoing maintenance. Without this information we are unable to rigorously assess whether an offset is successful in achieving no net loss.

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15	Rezoning delay	There is a significant time lag (often multiple years) between an offset site being identified and being rezoned as part of the offset overlay under the Territory Plan. This delay results in inaccurate public information on what land is and is not available for development and risks impacts to offset sites. A further risk is the inability to protect advanced offsets through zoning.
Funding, Governance, Legislated Responsibilities and Resourcing		
16	Governance	Introducing a more strategic, coordinated, evidence-based and cross-government approach will enable the issues and risks to be successfully addressed. This includes more clearly defining the roles and responsibilities of all parties.
17	Resourcing	Inconsistent resourcing in offsets policy has significantly reduced corporate knowledge and prevented policy development on key issues, increasing risk to the overall success of the offsets program. Inconsistent resourcing in offsets planning and operational spaces creates ongoing uncertainty to program delivery.
18	Legislated responsibilities and risk	Unequal authorising arrangements between the <i>Nature Conservation Act 2014</i> and <i>Planning and Development Act 2007</i> undermine the capacity of the offsets program to deliver offsets commitments and achieve effective conservation outcomes. Improvements would provide additional assurance to the community that a rigorous, evidence-based approach is applied to offsets decision-making.
19	Funding discrepancy	Funding requirements to establish and maintain an offset, as proposed to the Commonwealth by the ACT Government proponent and on which basis approval is granted, is generally greater than the funding later provided by Treasury. The difference in available funding impacts the delivery of the Commonwealth commitment and therefore the required environmental outcomes.
20	Funding uncertainty	The requirement to seek funds to manage sites through the annual business case process is a barrier to effective planning and management. Offsets approval process do not always align with the timeline for the budget build process.
21	Business case development	Generally, business cases for developments and their associated offsets are submitted independently of each other – and prepared by the proponent and PCS, respectively. Without joint business cases the line of sight connecting funding and approvals for both projects is jeopardised.
22	Coordination across government	Lack of coordination and clear processes across government, in relation to offsets, is likely causing significant delays to critical infrastructure and development projects and increasing costs.
Risk Exposure		
23	Legislative and financial risk	Failure to deliver Commonwealth offset commitments exposes the ACT Government to legislative and financial risk, resulting from fines for non-compliance.
24	Reputational risk	Lack of evidence to demonstrate the effectiveness of offsets and limited transparency in decision-making will undermine community confidence in the ACT Government's ability to successfully deliver on Commonwealth commitments and achieve the required environmental outcomes.

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25	Third party impacts	Offsets are subject to risk from existing and future adjacent developments through construction and other indirect impacts. Policy guidance and communications would assist approval holders to understand their obligations.
26	Conflict of Interest	The ACT Government is both the developer and approver for the majority of developments requiring offsets in the Territory.
27	Compliance	Investigation of appropriate compliance functions would support improved developer behaviour in meeting their development approval conditions in relation to offsets.