

MINISTERIAL BRIEF

To: Minister for the Environment, Parks and Land Management

Tracking No.: **24/53487**

Date: 24/06/2024

From: Executive Group Manager Environment, Heritage and Parks

Subject: Environmental offsets policy work - update

Critical Date: 05/07/2024

Critical Reason: In normal course of business

- DDG, Environment, Water and Emissions Reduction 27/6/24

Recommendation

That you note this update on the review of the ACT offsets policy and proposed next steps

Noted / Please Discuss

Rebecca Vassarotti MLA

Minister's Office Feedback

Thank you for this information. While I understand the challenges, particularly given the intersection with the work occurring federally, I am extremely concerned regarding our lack of progress in this area. I believe option (business as usual) is not a tenable option given the findings of the various reviews.

As I have previously noted:

- I am extremely concerned about the fact we are seeing the degrading of significant areas of environmental value across the territory as there seems to be a default of 'land banking' areas for future offsets, while not having appropriate land management strategies in place while they are not recognised for their environmental value.
- We are soon to be needing making decisions regarding land as part of the Eastern Broad-acre Strategic Assessment and do not currently have the full suite of options to contemplate which will deliver the best environmental outcomes for this land.
- we do not seem to have a clear plan on how we draw together this work with other work occurring in other areas of the team including NRM regarding best practice methods to protect land that is currently held on private leases
- I am concerned we have not been able to bring together a briefing on these issues and the pathway forward with myself and the Minister for Planning. Again, we will be in a position where we will need to make decisions and we don't have a framework to do this currently

I would appreciate a more detailed discussion regarding what needs to be put in place to move this conversation forward in a way that enables appropriate decision making for the Government, noting the reality that some of these decisions are likely to be presented in the near future

Background

1. On 14 November 2023, you presented the ACT Environmental Offsets Policy review (Review) to the Planning Subcommittee of Cabinet (PSC) and discussed its recommendations (23/630). The Review was completed by Rooftop Social in August 2023 (Attachment A).
2. In 2022, Environment, Heritage and Parks compiled a schedule of issues preventing the successful delivery of environmental outcomes associated with offsets policy and implementation in the ACT. These issues span policy, governance, data and risk (22/83479).
3. Prior to this, you presented an overview of how offsets work in the ACT to the PSC in February 2021 (21/026).
4. Following on from the Review, this brief provides a status update on the offsets policy space. It then outlines some of the opportunities and issues to be considered as we develop a way forward to ensure the best environmental outcomes can be achieved for the ACT.

Issues

Commonwealth context

National offsets audit

5. Offsets continue to be a critical focus in the ongoing national environment reform process. A Commonwealth Government audit of offsets across the country has found one in seven developments could be in breach of its offset conditions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The audit and its wider findings have not yet been released.
6. The Department of Climate Change, Energy, the Environment and Water (DCCEEW) has recently commenced audits of ACT Government compliance with EPBC Act approval commitments and requirements for two projects: Molonglo Valley Strategic Assessment, and Canberra Brickworks Precinct access road and Dudley Street upgrade. DCCEEW has indicated that further audits of other ACT Government projects are likely, particularly as they relate to offsets, once the current two are completed. It is unclear when DCCEEW expects this to happen.
7. Legislation to establish Environment Protection Australia (EPA), an independent national environment protection authority, was introduced to Parliament on 29 May 2024 (along with legislation for Environment Information Australia). Once established, the Minister for Environment and Water, the Hon Tanya Plibersek MP, has publicly tasked the EPA with investigating illegal land clearing and offset conditions as a priority.
8. If passed, the legislation will increase maximum penalties for intentional breaches of federal environment law to align with punishments for serious financial offences. This includes fines of up to \$780 million or seven years of prison time for individuals.

National Environmental Standards

9. The National Environmental Standards (NES) are the central piece of the national environmental reform process, legislating the environmental outcomes that must be achieved under the new environment laws. The NES package's introduction to

Parliament has been further delayed and is now not expected before the next federal election.

10. The draft NES for Environmental Offsets has been renamed the Restoration Actions and Restoration Contributions standard. The draft sets out that restoration actions and restoration contributions may only be used following application of the mitigation hierarchy. Proponents will be able to choose to compensate the impacts to Matters of National Environmental Significance (MNES) by either a direct restoration action or a financial contribution, or a combination of both. The decision-maker must have high confidence that the compensation method will achieve a projected gain for the impacted MNES.
11. Should proponents choose restoration contributions, these contributions will be made to a new Restoration Contribution Fund, managed by the EPA. The Commonwealth will take on liability for delivering a restoration action once the proponent has made a payment into the fund.
12. The Commonwealth is developing new calculators for both actions and contributions.
13. Averted loss offsets are now being referred to as “secure protection”. Secure protection, whereby loss of an environmental value can be offset by *protecting* another like-for-like area (rather than actual restoration, or creating more, of the environmental value), will be limited. This is a significant improvement on current offset arrangements, shifting the focus to restoration and net gain rather than perpetual net loss.
14. EPSDD (led by the Office of Nature Conservation) is engaging with the Commonwealth as offset policy arrangements progress, along with other areas of the broader reform. The draft NES is currently open for public consultation.

Bilateral agreement and accreditation

15. The ACT Government has an assessment bilateral agreement with the Commonwealth which allows the ACT to assess the likely impacts to MNES of proposed developments, on behalf of the Commonwealth. The agreement lapsed when the *Planning Act 2023* came into effect.
16. Impact Assessment branch (Statutory Planning Group) is working with the Commonwealth to determine whether the new Act still meets bilateral requirements. In the meantime, the Commonwealth is considering whether the ACT Government can be accredited to assess on a project-by-project basis. Approval decisions, including approval of proposed offset conditions, continue to be made by the Commonwealth.
17. Accreditation will replace bilateral agreements under the new environment law reforms. Should jurisdictions wish to assess, or assess and approve, developments that may impact MNES, they will need to demonstrate their legislation and policies meet the new NES. Accreditation status will be granted by the EPA, however, limited detail about how accreditation will work has been provided at this stage.

ACT offsets governance review

18. Impact Assessment branch has engaged a consultant, Aestra, to undertake a review of the ACT Government’s offsets governance arrangements. This is in response to a Review finding that the current governance structures are neither efficient nor effective. Specifically, this work is focused on the Environmental Offsets Executive Group and Environmental Offsets Working Group.

19. Aestra is due to develop a governance improvement plan by end of July 2024.

ACT Nature Conservation Act and Nature Conservation Strategy review

20. The ACT *Nature Conservation Act 2014* (NC Act) and Nature Conservation Strategy 2013-2023 (NC Strategy) are currently under review.
21. These documents do not currently provide for or address offsets or establish a high-level framework for how offsets contribute to a larger-scale strategic conservation outcome. (Provision for offsets is made through the *Planning Act 2023*.)
22. A Discussion Paper on the NC Act and NC Strategy review was released for public consultation on 20 May 2024 and will close at the beginning of July. A NC Act Review Paper is expected to be presented to the Legislative Assembly in early 2025. Internal consultation on the structure of a new NC Strategy is ongoing and opportunities for broader public and community input are planned for the second half of 2024. The new NC Strategy will be released in 2025.

Proposed next steps

23. With the completion of the Review, EPSDD has identified two options for the Government to consider in relation to the ACT's environmental offsets policy.
24. One option is to continue with business-as-usual arrangements where the ACT defaults to the Commonwealth's offsets policy. Impacts to EPBC Act-listed MNES are compensated for via offsetting, should avoidance and mitigation efforts fail. The NC Act, however, does not afford the same level of protection to ACT threatened species and communities. Impacts to NC Act-listed matters (that are not also MNES) must be considered, but this does not preclude a development application from being approved under the *Planning Act 2023*. Those protected matters are then subject to net loss. Without a requirement to offset impacts to ACT protected matters, there is less incentive for proponents to practice avoidance.
25. Alternatively, the ACT Government could revise and implement the ACT Environmental Offsets Policy to ensure the greatest level of protection possible is provided to both MNES and ACT protected matters. This could be extended to include species and vegetation types unlisted and under-represented in the ACT's Nature Reserve System.
26. The timing of the NC Act and NC Strategy renewal presents an opportunity to consider offsets policy improvement as part of a coordinated, strategic landscape-scale approach to environmental protection and restoration that delivers net gains in biodiversity and habitat outcomes. This would adopt a cumulative and forward-thinking approach rather than treating development impacts and conditions, as well as potential environmental benefits through offsets, in isolation from each other.
27. Further assessment on the benefits, challenges and risks of each option will be undertaken and presented to you, or the future Minister, in due course.
28. Further biodiversity opportunities can be harnessed through ensuring offsets policy aligns with a suite of other ACT and Commonwealth strategies and bodies of work, in addition to the NC Act and NC Strategy. These include the ACT's Climate Change Strategy, potential Carbon Offsets Policy, Biodiversity Sensitive Urban Design guidelines, and the Biodiversity Network initiative with rural landholders; as well as the Commonwealth's Regional Plans, 30 x 30 target and Nature Repair Market under the Nature Positive Plan.

29. While any policies the ACT Government implements must meet requirements under federal environment legislation, there is no reason why the ACT cannot set more ambitious requirements where appropriate. The national environment reform will be ongoing for some time which presents some uncertainties in developing offsets policy for the ACT. However, the direction the Commonwealth is taking, particularly in relation to offsets reform, is reasonably clear and should not delay the ACT from progressing our own policy in this space.
30. A revised ACT offsets policy would make clear any new objectives. However, multiple issues relating to implementation of the offsets program, as outlined in the Review and [22/83479](#), require attention before offsets can be delivered more effectively. These include issues such as governance, financial and compliance challenges associated with impacts in the ACT being offset in NSW; addressing the now-obsolete ACT offsets calculator; and determining clarity around risk ownership and financial liability should an offset fail to meet Commonwealth commitments.
31. Transparency around decision-making and biodiversity outcomes relating to offsets continue to be a concern for the ACT conservation community. This would be addressed as part of the offsets policy reform, along with improving proponent understanding of mitigation hierarchy requirements.
32. The Director Offsets Policy Reform (OPR) position has been established to lead this work, based in the Office of Nature Conservation. The Director, OPR will work closely with the Environmental Offsets Planning, Monitoring, Reporting and Evaluation team in Parks and Conservation Service.
33. Work is underway to develop a project plan and determine timeframes to deliver a new offsets policy and address the issues identified. The Director OPR will progress establishment of a cross-directorate committee to improve visibility and understanding of environment matters as relevant across government, including offsets. For example, communicating whole-of-government implications of the national environment reform and new NC Act, and identifying collaboration opportunities as appropriate.

Financial Implications

34. Nil financial implications associated with this brief.

Consultation

Internal

35. Consultation is ongoing within EPSDD PCS Parks and Partnerships, Impact Assessment and Conservator Liaison.

Cross Directorate

36. Nil associated with this brief.

External

37. Consultation is ongoing with DCCEE in relation to offsets policy development and the broader national environment reform process.

Work Health and Safety

38. Nil associated with this brief.

Benefits/Sensitivities

- 39. Revising the ACT Environmental Offsets Policy provides a much-needed opportunity to improve biodiversity and habitat outcomes associated with development impacts.
- 40. This is a complex piece of work requiring effective coordination between multiple ACT and Commonwealth policies and strategies, at various stages of development, to ensure successful delivery of offsets and environmental outcomes in the Territory.

Communications, media and engagement implications

- 41. Nil associated with this brief.

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Attachments

Attachment	Title
Attach A	Review of the ACT Environmental Offsets Policy. Final Report August 2023