

OFFICIAL

Environment, Planning and Sustainable Development Directorate

To: Minister for the Environment

Tracking No.: 22/83479

Date: 15 December 2022**From:** Conservator of Flora and Fauna (Conservator)**Subject:** ACT Environmental Offsets Policy Review and Strategic Planning**Critical Date:** 9 January 2023**Critical Reason:** To ensure timeliness in progressing environmental offsets policy work

- DDG, Environment, Water and Emissions Reduction 15/12/22

Recommendations

That you:

1. **Note** that under section 111G(2) of the *Planning and Development Act 2007* (the Act) you are required to consider at least once every five years whether the *ACT Environmental Offsets Policy, April 2015* (offsets policy) (Attachment A) needs to be reviewed.

Noted / Please Discuss

2. **Note** that as Conservator, I recommend pursuant to section 111G(3)(b) of the Act that you decide to review the offsets policy, noting the issues and risks that have been identified (Attachment B) with the current policy by the Environment, Heritage and Water Division.

Noted / Please Discuss

3. **Agree** to consult with the planning and land authority pursuant to section 111G(3)(a) of the Act before deciding whether a review is required by signing the letter (Attachment C) to the Chief Planning Executive.

Agreed / Not Agreed / Please DiscussFollowing a Reply from the Chief Planning Executive

4. **Annotate** your decision on whether the offsets policy needs to be reviewed.

Review Required / Review Not Required / Please Discuss

5. **Note** that subject to your decision on whether the offsets policy needs to be reviewed, a review will be progressed by the Environment, Heritage and Water Division.

Noted/ Please Discuss

Rebecca Vassarotti MLA



19/12/2022

Minister's Office Feedback

Background

1. The offsets policy (Attachment A) is a statutory document under section 111F of the Act that describes the ACT Government's approach to the use of environmental offsets for matters of national environmental significance (MNES) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) and for ACT protected matters.
2. The offsets policy was originally developed in 2015 in response to the anticipated transfer of assessment and approval powers from the Commonwealth Government to the states and territories. This was for the purpose of development proposals that may impact MNES. This would have established bilateral agreements under the EPBC Act.
3. Only the assessment bilateral agreement eventuated, and the Commonwealth Government continues to approve development proposals that may impact MNES. Consequently, the offsets policy has yet to be formally implemented and the EPBC offsets policy continues to be applied in the ACT. For your awareness, the majority of ACT protected matters are not recognised as MNES and, therefore, not protected under the EPBC Act.
4. Nonetheless, section 111G(2) of the Act requires that the Minister responsible for administering the *Nature Conservation Act 2014* must consider, at least once every five years, whether the offsets policy needs to be reviewed.
5. The 2020 Orroral Valley bushfire and the COVID-19 pandemic and other capacity constraints have delayed providing you with advice to consider the need to review the offsets policy.

Issues

6. The ACT's offsets program is currently driven by the Commonwealth Government's agenda. While the ACT must consider any future EPBC offset arrangements, the Territory requires a more strategic approach to achieve offset outcomes for biodiversity and habitat conservation under the current EPBC Act.
7. EPSDD conducted an internal review of the offsets policy in 2019 which focused on the policy's design and effectiveness. Separately, the Chief Minister, Treasury and Economic Development Directorate undertook an expenditure review in 2020.

8. These reviews, combined with known challenges in operational delivery and the regulatory planning system have helped inform a schedule (Attachment B) of identified issues and risks with the current offsets policy.
9. Some of the key issues include challenges in effectively evaluating existing offsets; implications of ACT development impacts being offset in NSW; emphasising avoidance and mitigation measures; limited offset site availability and the need for site prioritisation.
10. Introducing a more strategic, coordinated, evidence-based and cross-government approach will enable the issues and risks to be successfully addressed. This is an important step in ensuring the ACT Government delivers on its Commonwealth Government commitments and provides community confidence that environmental outcomes are being achieved.

Legislative context

11. The EPBC Act reform process is currently underway following a 10-yearly independent review that was finalised in late 2020. The review made a number of recommendations relating to offsets, including establishing the bilateral agreements as previously discussed.
12. The ACT's offsets policy may come into effect should the Commonwealth Government pursue approval bilateral agreements. The ACT would benefit by having responsibility for approving offset site locations and setting conditions. This would broaden consideration to include ACT protected matters rather than MNES only.
13. The ACT Government will need to consider a number of risks as part of any bilateral negotiations. This includes that there are currently not any environmental standards in the Territory, or any future Commonwealth oversight, should the ACT begin setting and approving offsets conditions.
14. This creates some urgency in reviewing and updating the offsets policy. Noting the identified issues and risks with the current offsets policy, there is utility in addressing these before an approval bilateral agreement potentially comes into effect, which may be in place for 10 years.
15. The *Planning Bill 2022* references the offsets policy and includes provisions for its review.

Proposed way forward

16. For the reasons described in this brief, I recommend that you decide the offsets policy needs to be reviewed.
17. Before making your decision however, you are required pursuant to section 111G(3)(a) of the Act to consult the planning and land authority. A letter to the Chief Planning Executive to initiate this consultation is provided for your consideration (Attachment C).
18. Subject to the reply from the Chief Planning Executive and your subsequent decision on whether the offsets policy needs to be reviewed, EHW will progress this body of work into 2023. The review will be complex and extend potentially to the first half of 2024.
19. For your awareness, EPSDD is working with the Australian National University to develop an environmental-economic accounting framework. The project will provide an evidence-based method for offsets decision-making and evaluation .
20. This is an ambitious body of work aiming to ensure the ACT Government not only achieves no net loss of MNES but also delivers comprehensive gains for all ACT protected matters

across the Territory through the offsets program.

Financial Implications

21. Current resourcing (1 x Senior Officer Grade C to June 2023) is sufficient for the policy review and strategic work plan development only. It does not permit implementation of the review recommendations or delivery of the revised policy. Recruiting to this role has proven somewhat difficult.
22. Ongoing resourcing will be required to embed the structural change necessary to address and improve the offsets program under a new policy. A business case has been proposed for the 2023-24 Budget.

Consultation

Internal

23. EPSDD Legal Policy has reviewed and supports the information in this brief.
24. Consultation is ongoing within EPSDD Parks and Partnerships, Impact Assessment, Conservator Liaison, Due Diligence and Investigations and Strategic Planning and Reform.

Cross Directorate

25. Consultation is ongoing with Treasury and the Suburban Land Agency.

External

26. Consultation is ongoing with the Commonwealth Department of Climate Change, Energy, the Environment and Water in relation to offsets policy development and the EPBC Act reform process.

Work Health and Safety

27. None for the purpose of this brief.

Benefits/Sensitivities

28. The ACT Auditor-General has identified offsets as a potential audit topic in 2023-24.
29. Current, short-term resourcing in the offsets policy space is a risk to progressing the offsets policy review beyond June 2023 and implementation requirements.

Communications, media and engagement implications

30. Nil for the purpose of this brief.

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Attachments

Attachment	Title
Attachment A	ACT Environmental Offsets Policy
Attachment B	Issues and risks in the ACT environmental offsets program
Attachment C	Letter to the Chief Planner