CONSERVATION COUNCIL
ACT REGION

BIODIVERSITY OFFSETS ISSUES PAPER AND POLICY
April 2014

Definition of Biodiversity offsets

> Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development and persisting after appropriate prevention and mitigation measures have been implemented.
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> The goal of biodiversity offsets is to achieve no net loss, or preferably a net gain, of biodiversity on the ground with respect to species conservation, habitat structure and ecosystem services, including livelihood aspects.
>
> *Source: http://bbop.forest-trends.org/index.php.*

Background

Population growth, increased areas of land zoned for urban development and increased demand for additional and diverse housing, climate change and increased consumption and affluence have been identified as some of the key drivers of change in the ACT that are having an adverse impact on our environment (ACT State of the Environment Report 2011).

Biodiversity offset policies are being increasingly employed internationally and in Australia as a way to compensate for the impacts of development on ecological values, and in particular on matters of national environmental significance (MNES). While some States including New South Wales and Victoria have been using different offset schemes for some time, the Australian Capital Territory is yet to adopt its own policy on the use of offsets.

Consistent with our policy position in September 2009, the Conservation Council holds the view that the use of offsets for the purposes of biodiversity conservation should be a last resort after all other mitigation and rehabilitation measures have been pursued, well in advance of the impacts of any development taking place.

While in 2009 the Conservation Council held reservations about the adoption of an ACT offsets policy that potentially could have sanctioned the use of such schemes, the Council in 2014 recognises that various different offsets schemes are already being widely used across Australia, including in the ACT, to mitigate the impacts of ongoing urban development and expansion on ecological values. Indeed, both direct and indirect offsets were proposed to mitigate impacts in North Gungahlin in the

2013 Gungahlin Strategic Environment Assessment (SEA) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

The Commonwealth finalised an Offsets Policy in 2012 and its principles have been applied to recent Strategic Environment Assessment's such as North Gungahlin (April 2013). The Conservation Council ACT Region believes the Commonwealth Offsets Policy to be the most comprehensive and scientifically sound offsets policy developed in Australia to date. However, a specific ACT Offsets Policy needs to be developed to take into account the unique ecological values of the ACT and Region, and other ACT legislation and planning documents such as the Territory Plan.

Biodiversity offsetting has been considered in recent international forums, including by the International Union for the Conservation of Nature (IUCN) at the World Conservation Congress in Jeju, Korea (September 2012) finding that biodiversity offsetting is used in several countries as a compensatory mechanism for the loss of habitat and species. The development of an international 'Business and Biodiversity Offsets Standard on Biodiversity Offsets' (Business and Biodiversity Offsets Programme (BBOP) 2012, *Standard on Biodiversity Offsets*, Washington, D.C.) also provides a set of comprehensive principles to guide the development of offsets policies worldwide. These recent policy developments provide some useful guidance for the ACT to develop a clear and prescriptive statement of the principles underpinning an offsets mechanism.

The use of offsets requires careful, advanced planning, monitoring, reporting and compliance at offset sites to ensure that the required biodiversity conservation outcomes are achieved before the impacts of development projects are felt elsewhere.

The absence of a clearly defined policy makes it difficult for key stakeholders within the community to hold the ACT Government accountable for the use of such schemes and to determine whether or not they are an appropriate means for reconciling biodiversity conservation and development needs.

The Conservation Council wishes to remain engaged with the ongoing development of improved management of biodiversity, landscape permeability, and ecological processes within the ACT.

Potential Objectives for an ACT Offset Scheme

- Reduce and prevent loss and fragmentation of native vegetation;
- Conserve, maintain and improve native vegetation, including endangered ecological communities and other areas of high conservation value, threatened species habitat, and ecological processes;
- Improve ecological connectivity in the landscape;
- Improve land condition;
- Improve the streamlining and certainty of planning processes; and
- Provide long-term security for the development of the ACT.

Decision-makers applying this offsets policy and associated mechanisms should be bound to make decisions consistent with the above stated objectives.

Key concerns about offsets

While it is questionable whether offsets are appropriate for use in situations that involve matters of national environmental significance, endangered species or where there is a very low chance of success, the Conservation Council ACT Region accepts that offsetting is being widely employed across Australia as a tool to mitigate the impacts to biodiversity from ongoing development and clearing. Yet the Conservation Council has a number of key concerns with regard to the use of biodiversity offsets policies and programs in the ACT. These include:

Insufficient gain – The amount of land for offset can be insufficient and often existing nature reserves, or land already in use for an existing offset, are used as offset sites, which can lead to a net loss in biodiversity.

"Like for Like" and Equivalence – The principle of "like for like" provides that offsets should reflect the biodiversity values that are being lost. Careful planning is needed in selecting offset sites that are of equivalent value to those being lost, as there is a threat that more common woodland areas may be used as offsets for endangered natural temperate grassland or box gum grassy woodland.

The exception to "like for like" might be where the offset habitat is rarer and of higher conservation value than the area being lost. However, the goal of 'like-for-like' is ambiguous and we question whether equivalence can ever be achieved to replace what has been already lost.

Advanced Offsets – Advanced 'offsets' in the form of past conservation actions or funding cannot be applied retrospectively as this will result in net-loss. Previous conservation must be publicly declared an 'advanced offset' **at the time of reservation** and included in a public offsets register so that baseline data is put in place to ensure conservation outcomes can be achieved.

Time lag – Unless there is careful consideration of timing, the offset may not provide the outcomes needed until it is too late. Often development takes place and impacts on habitat and MNES felt before conservation outcomes are achieved at the offset site. It may not be possible for the environmental gain to have actually been achieved at the time of offsetting, since that could take decades in some instances (e.g. the time for trees to mature). However, the offset program (including long term resourcing and in perpetuity protection) should be in place before development commences.

Leakage – As the amount of available sites for offsetting in the ACT diminishes there is a risk of leakage of offsets sites into New South Wales, causing issues around the suitability of offset sites and their ability to meet key best-practice principles.

Double-dipping – Using the same offset/land parcel for both biodiversity offsetting for one project and carbon offsetting for others to achieve a carbon reduction target is a concern.

Resources for management, monitoring and reporting – Management, including ongoing monitoring and reporting of biodiversity conservation outcomes, should be mandatory in all offset sites and must be additional to the duty of care that a manager had to a site. However, we have seen poor monitoring and reporting structures for offsets in the ACT, an issue that is compounded by the lack of an ACT offsets register. There is a significant risk that gains will only be short term, or will decline over time without proper resourcing for management, monitoring and reporting in **perpetuity**.

A key concern in employing offsets schemes in the ACT is ensuring that adequate resources for management, monitoring and reporting of the offset site are provided and that both funding details and results of monitoring schemes are available for public scrutiny. For example, the 2013 Strategic Environment Assessment for North Gungahlin requires the creation of a 'Plan Implementation Team' to oversee the use of offsets, yet no details of the resourcing or key performance indicators for this team were released – making it difficult for the community to determine its potential effectiveness.

Conservation gains must be maintained in perpetuity. In this regard, there needs to be a requirement for ongoing resources for long term management and reporting (e.g. offset monies being placed in a trust/invested for long term funding generation).

Compliance – Offsets schemes in Australia and overseas have a poor record of compliance to ensure biodiversity outcomes are achieved. This is often due to a lack of resourcing for the management of offset sites as stated above. These problems can be addressed through careful consideration of the offsetting scheme that is proposed in any given project assessment, and an evaluation of whether the offsetting scheme proposed will result in the biodiversity outcomes that the community expects = no net loss or net gain of biodiversity.

There needs to be a process, with oversight by experts, in place to track each offset and take corrective action if needed, with this process being independent and including long term monitoring of the offset. Adaptive management could be a tool to achieve this.

The cost of compliance must be recognized as part of the cost of the offset, and any rehabilitation needs to be done to an acceptable standard. It is difficult to see how offsetting will be effective without penalties included in offset agreements and applied for non-compliance and liability arrangements for failed offsets (e.g. fines and bonds).

The mitigation hierarchy

The Business and Biodiversity Offsets Programme (BBOP) released its Standard on Biodiversity Offsets in January 2012, which includes the steps of a 'mitigation hierarchy' to achieve "no net loss" of biodiversity, and ideally, a net gain. The mitigation hierarchy is a useful tool to demonstrate the measures that need to be taken to ensure biodiversity offsetting is appropriate and achieves desires conservation outcomes, and is defined as:

Avoidance – Measures taken to avoid impacts at the outset, such as careful spatial or temporal development and other mitigation measures. This would include a thorough assessment of the "no go" areas of very high conservation value that should not be used for future development in the ACT. This is not to say that any areas outside of the "no go" zone could be used for future development.

Minimisation – Measures taken to reduce the duration, intensity and extent of impacts that cannot be completely avoided.

Rehabilitation/restoration – Measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided.

Offsets – Measures taken to compensate for any residual impacts that cannot be avoided, minimized or rehabilitated in order to achieve no net loss or a net gain of biodiversity. Offsets can take the form of positive management interventions such as restoration of a degraded habitat, protecting areas where there is imminent or projected loss of biodiversity – i.e. offsets need to be more than just maintaining the status quo in order to compensate for the loss.

One of the crucial issues in assessing the effectiveness of biodiversity offsetting schemes is the question of how far each step in the process should be pursued before turning to the next. Too often, avoidance, minimization and rehabilitation are done to a minimal extent in favour of moving directly to offsetting to enable a timely completion of proposed development activities, though this approach certainly compromises potential mitigation of biodiversity loss.

Further, physical direct offsets with measureable conservation gain are a priority over any indirect financial offsets such as funding for research. Any indirect offsets that are used need to be additional and have clear and transparent goals and outcomes.

Best practice principles for biodiversity offsetting

1. **Actions that will have irreversible impact to biodiversity should not be considered suitable for offsetting;**

The suitability of offsets as an appropriate remedial policy measure to compensate for the significant impact on matters of national environmental significance from proposed developments is highly questionable. The Australian Network of Environmental Defenders Office's (ANEDO) in their submission commenting on the

draft Commonwealth Offsets Policy in 2011 commented that 'the idea that impacts on such unique matters of national environmental significance can simply be offset is deeply concerning. In many cases it will not be possible to offset impacts on specific unique place and species.' This is consistent with the view that offsets should apply to residual impacts only, that is, after all efforts have been made to avoid, minimise and mitigate impacts on biodiversity.

2. Offsetting should be used as a last resort, after other measures are taken to mitigate impacts.

Putting an economic value on biodiversity (a value equivalent to the cost of restoration) and provides a signal to developers that it can be more cost-effective to minimize impacts. This occurs when they are exposed to the cost of offsets during the planning phase of a development and have the chance to avoid or minimize impacts before they occur.

3. An offsets plan should be based around physical direct offsets, with indirect offsets and other compensatory measures being considered as a last resort;

In accordance with internationally recognised principles on offsets, indirect offsets (which make it difficult to measure conservation outcomes) are a last resort after all avoidance, minimisation and compensatory measures have been achieved to ensure net gain in biodiversity. In the case where indirect offsets are used, they should be no more than 10 per cent of the overall offset package.

4. Existing nature reserves should not be considered as suitable for offsets as this will achieve a net-loss in biodiversity;

Existing nature reserves already enjoy a high level of existing environmental stewardship, relative to other sites in the ACT. They also only represent a small proportion (29%) of lowland woodland in the ACT, which is the ecological community most likely to be affected by ongoing development (Gibbons 2011). Offset actions should focus on areas outside of nature reserves that do not already enjoy a high duty of care, and can be beneficial to nature reserves in mitigating existing or future threats, and improving the functionality of existing reserves.

5. Offsets must be 'like-for-like' or be comparable with impacts;

Offsets must ensure gains that are comparable with losses – "like for like". For example, "like for like" means that the total loss from development on grassland has to be offset by gains in offset grassland, not in forest, wetland etc., even if these are of high value.

This is very hard to achieve in any offsets metric that seeks to trade biodiversity currencies in a market-like policy instrument. Instead, offset metrics seek to balance the perverse effects of substitution of the value of one site to another – they may often never be the same value. Any offset mechanism must deal with transferable attributes separately to ensure that biodiversity values are protected and not accounted for in a generic way.

6. The important role of corridors and connectivity to nature reserves should be acknowledged and form part of any offsets policy;

Reduced connectivity between nature reserves in the ACT is a key concern with the use of offsets as it leads to isolation of nature reserves from other suitable habitat and makes it difficult for movement between populations of certain species. Gibbons (2011) highlights that functional connectivity of native habitat is a recommended way to ensure native species are able to adapt to climate change.

7. Outcomes from offsets programs should deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is affected by the proposed action;

No net loss, or preferably net gain of biodiversity, is the ultimate aim of biodiversity offsets programs. The difference between loss, no net loss, and net gain of biodiversity will come down to the likelihood of success of an offset, where additionally is high, and where the delay between impact and compensation is not excessive.

8. Offsets have be efficient, effective, timely, transparent, scientifically robust and reasonable;

The best practice principles to offsetting schemes can be used to underpin an assessment of current and future offsetting methodologies employed in the ACT to evaluate whether the appropriate and necessary steps have been taken to protect biodiversity values, prior to any offsets scheme being employed and certainly prior to any impacts on biodiversity occurring. Offsets must have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced.

Legislation for offsets policy governance

In introducing any offsets scheme, the ACT Government should consider promulgating new, specific legislative mechanisms for the purpose of protecting ecological values in the ACT. It must interact, and be consistent, with the biodiversity and planning legislative requirements. It should require detailed and transparent assessment of ecological values at the outset of the development planning process.

A clear and prescriptive statement of the principles underpinning the conservation mechanism should be set out within the legislation and include:

- 'No Net Loss' and 'Real Net Gain';
- Landscape level protection, including the broader ecological considerations of habitat, fauna and ecological processes, rather than being limited to botanical value;
- Consideration of quality and quantity of native vegetation; and,
- Decision-making based on ecological principles and scientific measures.

Decision-makers applying the offsets mechanism should be bound to apply the stated principles throughout the decision-making process.

Role for the Community
There should be a clear and well-publicised community role in monitoring compliance.

The community should have a role in assessing priorities for offsetting measures and reporting achievements under the legislative requirements.

A register of applications, approvals and agreements made as part of any offsetting provisions, should be publicly available. A community representative should be appointed to any groups managing the implementation of offsets schemes for individual development projects.

Administration, Monitoring and Enforcement of legislation
Any legislative requirements for offsets should be integrated and consistent with the planning scheme, and should employ the use of triggers for referral to relevant legislation at the outset of the development application processes.

The offset policy should be audited by an independent statutory body through a transparent decision-making process based on a scientific assessment. The administration of the offsets policy must be through a comprehensive offsets register of current and proposed sites and their management actions should be publicly available and maintained. There should be **minimum monitoring standards and procedures** to be set, specifying who is capable of monitoring, what they must report, who holds and collates records, etc.

There should be a **structured sequence of enforcement** action that includes civil and criminal enforcement provisions as part of the compliance regime. Offsets legal provisions should provide for open standing in relation to enforcement of alleged non-compliance.

Civil remedies should include provision for restoration orders or 'make good' provisions. Civil enforcement provisions should provide for the onus to be on the landholder to show that the action was lawful.

Attachment One:
Conservation Council ACT Region Offsets Policy 2014

Objective:

Noting that the Conservation Council does not support offsets but recognising that offsets are being applied in the ACT, ensure the ACT Government adopts and implements an appropriate ACT offset policy during 2014.

Such an offsets policy will use an agreed calculator or methodology for determining offsets against a strong set of principles and governance arrangements which include:

Biodiversity Offset Calculator:

- use Commonwealth calculator

**Note however there are concerns that community groups have had no training in the use of the calculator, although such training has been available to consultants and the private sector.*

**Note also that the calculator is very sensitive to inputs to the "confidence in result" boxes. The community needs some understanding about how these are arrived at by consultants and developers.*

Biodiversity Offset Principles:

Principle for high conservation value ecological communities or habitats of listed threatened species

- no offsetting of high conservation value listed threatened ecological communities or habitats of listed threatened species

Principle for all other land

- avoid or minimise impacts on biodiversity values before considering offsets with clear criteria before considering alternatives;
- only offset as a last resort with a requirement to provide detailed reasons as to why other options are not feasible;
- like for like offsetting in the ACT, unless the offset area significantly improves connectivity on a regional scale with high conservation areas within the ACT and if it does not impact on the ecological integrity of other ecosystems for example grasslands;
- must be net gain and in perpetuity;
- scientifically assessed;
- additional or supplementary to existing reserves, funding, etc.;
- conservation actions **must be above the statutory duty of care** in place at the site, i.e. there is already a high level duty of care on managers in existing nature reserves so it is preferable that actions take place elsewhere, or else any conservation actions must be higher than the status quo duty of

care in those areas, this also includes the duty of care provided by volunteer input of Parkcare groups;
- assurances regarding the long-term viability of offset sites (including financial resources for ongoing management)
- direct offsets should be prioritised and make up at least 90% of the offsets package – i.e. actual on ground rather than indirect via financial contributions.
- Indirect offsets should be a last resort, but if used should make up a maximum of 10% of the offsets package.
- apply principles of connectivity and high irreplaceability to decisions regarding location of offset sites.

Biodiversity Offset Governance

- a publicly available offsets register
- baseline data of development site which is being offset
- baseline data of proposed offset site
- appropriate resourcing to manage the offset site over long time frames – including transparency of funding arrangement ideally via a Trust
- liability arrangements for failed offsets
- annual monitoring and public reporting on offset outcomes
- strategic mapping of offsets sites in advance
- independent review of offset outcomes by the Commissioner for Sustainability and the Environment
- these requirements being mandatory under the new Nature Conservation Act.
- there should be a clear and well-publicised role for the community in monitoring compliance. The community should be represented on relevant bodies and have a role in assessing priorities for offsetting sites and measures.