

Department of Climate Change, Energy, the Environment and Water

**Re. The draft National Environmental Standards for  
Matters of National Environmental Significance and Environmental Offsets (Standards)**

The Conservation Council (**Council**) is the leading environmental advocacy organisation in Canberra and hub for over 40 community groups. The Council's mission is to protect nature and safeguard ecosystems in the ACT and region. We also support broader initiatives to counter regional and global climate change. The Council is a non-profit, non-government organisation that runs campaigns, promotes and upskills local groups, undertakes research, advocates passionately, and engages and informs our community.

The Council has analysed projects approved to occur in the ACT since the *Environment Protection and Biodiversity Conservation Act 1999 (Act)* commenced (Attachment A). By far the protected matter impacted the most has been Listed threatened species and communities (**TSPs** and **TECs**). All 53 of the proposals determined to be controlled actions have been assessed and then 'approved with conditions'. Three landscape scale urban development proposals have also been approved following 'strategic assessments'. No proposal has been refused.

The Council has listed the main impacts, on the TECs and on *some* of the TSPs supposedly protected under the Act in the ACT, of 25 of arguably *the* most damaging one-off project approvals, and of the three approvals granted following strategic assessments (Attachment A, Table 1).

The 25 one-off project approvals have been granted for: nine linear developments including six roads, two transmission lines and a water pipeline; seven residential developments; and nine other localised developments, e.g., a hospital etc. The three approvals granted following strategic assessments have each been granted for residential and linear developments including roads and water pipelines.

Approvals have been granted repeatedly authorising the loss of two TECs, Natural temperate grasslands (**NTG**) and Box Gum grassy woodlands (**BGW**); together, they are the ACT's '**temperate grassy ecosystems**'. These protected matters are among the most at risk TECs in Australia. They are both 'critically endangered'.

### **Draft MNES Standard**

the outcomes and objectives presented are not clear or enforceable

Compared to the draft included in the Samuel Review<sup>1</sup>, the draft MNES Standard provides a weaker, less clear and much less enforceable benchmark for projects and decisions.

- Prof Samuel's MNES Standard contains clear, unqualified requirements for actions, decisions, plans and policies, whereas the draft MNES Standard qualifies requirements with phrases like "if possible".
- In a mitigation hierarchy to be "appropriately consider[ed]", grassy ecosystems will not enjoy strong protection with an outcome drafted like this, "If possible, impacts to protected matters should be avoided by ..." (s 8(2), underline added). This does little if anything to limit decision-makers' discretion. Elsewhere, the draft MNES Standard is focused on procedural rather than substantive/on ground matters, e.g., in s 8(1), "Actions should be planned and taken having regard to the mitigation hierarchy provided for in this section" (underline added). A strong standard would require the application of the mitigation hierarchy full stop.

The outcomes in the MNES Standard must ensure important habitat is protected to reduce decline in temperate grassy ecosystems and their constituent biota. Rather than 'providing for protection of' and

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<sup>1</sup> Samuel, G. (2020) *Independent Review of the EPBC Act – Final Report*, pp. 203-224

‘contributing to the promotion and enhancement of the diversity’ etc, outcomes should be practical and closely align with Prof Samuel’s recommendations, e.g., “Threatened species and ecological communities are protected, conserved, managed and recovered over time.”<sup>2</sup> Language must be clear, obligatory and directed to practical outcomes on the ground, not process or aspiration.

#### pathways to loss and degradation

The Council considers that the MNES Standard should recognise a wide range of pathways that result in ‘serious damage’ to temperate grassy ecosystems – before and after controlled action decisions – and that all such pathways should be treated as “actions”, where the Act allows.

#### monitoring and evaluation

There is nothing in the draft MNES Standard that provides for monitoring and evaluation; this was viewed as essential by Prof Samuel.<sup>3</sup> The lack of monitoring and evaluation compromises the ability of approval holders and decision-makers, and any other stakeholder, to properly demonstrate or understand the achievement (or otherwise) of the objectives set out in the Standards.

### **Draft Offset Standard**

#### development and use of an offset calculator

The Department’s Draft Offset Policy Paper accompanying the draft Offset Standard suggests that the offset calculator developed and used to date by the Department in implementing the 2012 *EPBC Act Environmental Offsets Policy (2012 Offsets Policy)* will continue.

Without change to the calculator, any ongoing reliance on it will be a problem. The Department’s Offset Assessment Guide describes the terms included in the Department’s calculator, such as *time horizons, risk of loss, changes in habitat or vegetation quality over time, and confidence in input data*. Prof Samuel did not discuss the implementation of this Guide, yet it is critical to and looks set to continue to be central to offset decision-making. The Council recommends a review of its use by the Department and industry<sup>4</sup>, including the Guide’s approach to habitat quality scoring and its manipulation by consultants through scoring and weighting of inputs in ways that will continue to prejudice net gain outcomes.

On this topic, we agree with the detailed comment provided by Mr Vaughn Cox to the Senate Inquiry that is continuing to examine the Environment Protection Reform Bill 2025 and six related bills.<sup>5</sup>

#### ‘like for like’ and timeliness are at risk

The amended Act provides for approval holders who proceed with approved actions that cause residual significant impacts to choose whether to deliver offsets themselves or to register to pay into the Restoration Contributions Fund.

The Council understands approval holders making payments to acquit their offset obligations won’t have to satisfy two principles, the ‘like for like’ and ‘timeliness’ principles, the latter being that the compensation should happen before or at the same time as the impact.

Compromising the ‘like for like’ principle will ensure restoration payment dollars accumulating in the Restoration Fund can be expended quickly; however, it will put at even greater risk the protected matters under the greatest pressure, i.e., that the offset activities delivered will not benefit them.

Abandoning ‘like for like’ in the name of administrative expediency earns the label ‘pay to destroy’.

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<sup>2</sup> Samuel n 1, p. 211

<sup>3</sup> Samuel n 1, p. iii

<sup>4</sup> The Policy states “The Offsets assessment guide is a tool that has been developed for expert users in the department to assess the suitability of offset proposals. The guide is also available to proponents to assist with planning and estimating future offset requirements.

<sup>5</sup> Mr Vaughn Cox (2025) *Submission 462* to the Environment and Communications Legislation Committee Inquiry into the Environment Protection Reform Bill 2025 and six related bills,

<https://www.aph.gov.au/DocumentStore.ashx?id=e895347e-1478-4280-98c6-53fe78f4eb1b&subId=781041>

an offset should compensate for an impact 'for the full duration of the impact'

The Council hold very serious concerns with draft Principle 2 concerning 'security'.

Both the 2012 Offsets Policy and the Draft Offset Policy Paper state the intention that offsets will compensate for an impact 'for the duration of the impact'.<sup>6</sup> This is consistent with Prof Samuel's recommendations, i.e., that offset sites must (among other things) "be identified and legally secured prior to commencement of the approved impact" and then be managed to "ensure attainment and maintenance of the required improvement of indicator(s) for the duration that the [matter protected] is affected by the impact."<sup>7</sup>

From what the Council can see, whenever impacts are determined to be significant and approved anyway, they are rarely if ever temporary impacts. In our view, this begs a simpler principle.

The Council suggest 'For the benefit of any matter(s) that is to be permanently impacted at an impact site, if the approval holder proceeds with the approved action, then net gains must be delivered through management activities on offset sites that are securely protected *in perpetuity*.'

Draft Principle 2 in the Draft Offset Standard does nothing of the sort. It states (with all underlining added):

#### **9 Principle 2—Security**

(1) Offset activities should be securely protected.

(2) An offset activity is **securely protected** where there are, or will be, suitable mechanisms in place to ensure that the offset activity will be delivered and, if relevant, maintained for the duration of the impact.

'Securely protect' must be about the formal (legal) protection of an offset site, i.e., the protection of the places on which offset activities occur. It is most *unclear* what securely protecting any offset *activity* means. 'Activities' are about offset management, not protection. Conflating these two discrete sets of processes does not work. It is confused and very confusing.

As drafted, there exists serious doubt about whether offset sites need to be legally protected from future development, at all. It would be of limited benefit to repair any offset site that has no legal protection, or protection for no more than a short 'activity period'.

#### what data will be published about offsets

Prof Samuel recommended "A public register of offsets should also be established for all Commonwealth, State and Territory offset sites. This register should be designated as a National Environmental Information Asset."<sup>8</sup>

The Draft Offset Standard makes no provision at all for the publication of *any* data about offsets. An absence of evidence of attainment of net gain would be a serious transparency and accountability problem. The problem will be exacerbated if disparate state and territory databases are taken as presenting sufficient information.

In the Council's view, a centralised Offset Register is essential to reveal:

- the basis on which any offset was assessed suitable and adequate by whoever made the decision;
- the outcome required, e.g., the form of protection to be relied upon for the offset site, and the extent of condition improvement to be delivered;
- how the outcome is to be delivered - in the case of grassy ecosystems, this might be via weed control and/or biomass management;
- which government entity is to oversee, monitor and report on that delivery.

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<sup>6</sup> 2012 Offsets Policy, p. 8; Draft Offsets Policy Paper, p. 13

<sup>7</sup> Samuel n 1, p. 140, underline added

<sup>8</sup> Samuel n 1, p. 141

## **Both Standards**

The draft Standards assume temperate grassy ecosystem loss can be prevented by regulating clearing and remediation, and that compensation can be adequate from offsetting. The Council considers none of these assumptions hold true.

### management requirements for remediation and offset outcomes

In the case of temperate grassy ecosystems, remediation and offset solutions must be accompanied by requirements to actively manage weeds and biomass on an ongoing basis. This is because the conservation of temperate grassy ecosystems requires not only the prevention of clearing (including conversion to exotic pastures) but active management, i.e., they are conservation dependent.

Temperate grassy ecosystems need weed control and periodic reduction in grass biomass by fire, sustainable pulse grazing or, in limited cases, slashing. Grass biomass needs to be maintained in a 'goldilocks' state of not too much and not too little so that there is adequate foraging habitat for grasslands animals and there are gaps between grass tussocks where a diversity of forb (wildflower) species grow.

Local examples that demonstrate it is not easy to rehabilitate degraded grassy ecosystems include:

- *Jam Land Case*, illegal clearing of NTG, subject to a remediation order — 105 ha of NTG required to be remediated, no evidence of recovery.
- *Taxiway Bravo Case* at Canberra Airport, EPBC 2008/4170 — 6 ha of NTG destroyed, 17 ha required to be rehabilitated to NTG benchmark, little evidence of successful rehabilitation.

The Standards need to make clear remediation and offset proposals that are or prove unrealistic or inadequate will not be accepted or tolerated over time.

### clarity and enforceability

The outcomes and objectives in Standards are meant to be clear and enforceable. This is necessary to ensure actions and decisions taken and made under the Act can be relied on to hold approval holders and decision makers to account, respectively. We cite examples below, under the heading Draft MNES Standard, that demonstrate a lack of clarity. To ensure enforceability, Standards need to specify SMART requirements, i.e., requirements that are specific, measurable, actionable, realistic and time-bound.

- The Samuel Review stated (at p. 10) "The ability of the public to hold decision-makers to account is a fundamental foundation of Australia's democracy."

The Draft Policy Papers presented with the Standards indicate further detail will be set out in policies and guidance. To provide clear and enforceable Standards, and to provide the granular detail envisaged by Prof Samuel, all necessary considerations should be included in the Standards themselves rather than in further (and changeable) policies and guidelines. If policies and guidance are required, these should be provided for public consultation with draft Standards so they can be considered together.

Yours sincerely,

SIGNED

Dr Simon Copland  
Conservation Council ACT Region

30 January 2026

## **Attachment A: Analysis of projects approved in the ACT since the commencement of the Act**

There have been 279 'one-off' proposals for development referred in the ACT since the Act commenced. 27 proposals have been withdrawn or lapsed and five remain under assessment. Of the 247 proposals where decisions have been made, 194 have been allowed to proceed on the basis they were not likely to have a significant impact.

In the other 53 cases, it was determined early that the proposals were likely to have a significant impact on a matter protected by the Act; by far the protected matter impacted the most has been Listed threatened species and communities (s 18 & s 18A) (**TSPs** and **TECs**). The same or other proposals have involved impacts to National Heritage places (s 15B & s 15C), Listed migratory species (sections 20 & 20A) and 'the environment' as defined in s 528. The environment is the matter protected when the actions are actions by Commonwealth entities (s 28) or on Commonwealth land (s 26 & s 27A); many of the proposals likely to impact 'the environment' have also been likely to impact TSPs and TECs.

These 53 cases have been the 'controlled actions', i.e., before they could proceed, each required an assessment and an approval.

All 53 of the controlled actions that have been assessed to improve understanding of what has been at risk of a significant impact have then been 'approved with conditions'. No proposal has been refused.

Three separate landscape scale approvals have been granted under the Act following 'strategic assessments'. Each of these approvals have also resulted in impacts to TSPs and TECs.

The Council has prepared a Snapshot listing the main impacts, on *some* of the TSPs and TECs supposedly protected under the Act in the ACT, of:

- 25 of the most damaging one-off project approvals and
- the three approvals granted following strategic assessments ([Table 1](#)).

The 25 one-off project approvals have been granted for:

- nine linear developments - six roads, two transmission lines and a water pipeline
- seven residential developments
- nine other localised developments, e.g., a hospital etc.

The three approvals granted following strategic assessments have each been granted for residential and linear developments including roads and water pipelines.

**Table 1: A selection of arguably *the* most damaging projects that have been approved, under the Act, to occur in the ACT**

Project title	Approved	Limit on the key biodiversity loss(es) that was approved
Monaro Highway - Lanyon Drive Upgrade Package 1C	14/08/2025	4.05 hectares (ha) of Striped Legless Lizard habitat
Infrastructure Upgrade and Construction at Canberra Airport	30/07/2025	20.5 ha of Natural Temperate Grassland (NTG)
William Hovell Drive Duplication	27/08/2024	6.41 ha of B-G W and 10.87 ha of Swift & Superb parrot foraging habitat including 7 hollow-bearing trees
Territory Battery Energy Storage System	31/05/2024	6.19 ha of B-G W and 0.5 ha of Pink-tailed Worm-lizard habitat
Mugga Quarry overburden expansion project	2/08/2021	5.52 ha of Box Gum Woodland (B-G W)
Cotter Dam Expansion	3/12/2019	controlled water flow and the management of Macquarie Perch
Extension of Taxiway Bravo	3/06/2019	5.7 ha of NTG
Hotel and Carpark Development	16/04/2019	golden sun moth and its habitat at York Park
Construction of new substation and transmission line works	7/03/2019	33.9 ha of Hoary Sunray habitat, which may overlap with 14.9 ha of impacts (as defined in unpublished documents) on Spotted-tailed Quoll, Pink-tailed Worm Lizard, Superb and Swift parrots and Regent Honeyeater
Canberra Brickworks Precinct access road and Dudley Street upgrade	27/02/2019	0.29 ha of NTG and 3.08 ha of Golden Sun Moth habitat
Blocks 3 and 15, Section 22, Barton, ACT Divestment	21/02/2019	0.32 ha of NTG and 1.46 ha of Golden Sun Moth habitat
Expansion of the Mugga Lane Resource Management Centre	13/09/2018	9.8 ha of B-G W
Lawson South residential development	13/09/2018	1.35 ha of impacts on NTG and 37 ha Golden Sun Moth habitat
Residential Development in Watson including an extension of Negus Cres	13/09/2018	4 ha of B-G W
Residential Estate Stage 2C	13/09/2018	14.8 ha of Golden Sun Moth habitat
University of Canberra Public Hospital	13/09/2018	7.6 ha of B-G W
Residential and commercial development in Campbell	24/07/2018	0.47 ha of NTG and 0.78 ha of Golden Sun Moth habitat
Campbell Station 5 Development	13/05/2013	0.48 ha of NTG and 1.25 ha of Golden Sun Moth habitat
Development of cabin, camping and possible hotel accomodation	19/12/2011	14.65 ha of impacts on Striped Legless Lizard habitat
Removal of Trees on National Land	31/01/2011	removal of 563 trees
Murrumbidgee to Googong Water Transfer and associated infrastructure	29/10/2010	unspecified area of impacts on fish + 1.7 ha of NTG + 5 ha of B-G W
Clarrie Hermes Drive Extension	27/10/2010	1.77 ha of B-G W
MacGregor West 2 Estate	8/09/2010	0.65 ha of NTG and 21.2 ha of Golden Sun Moth habitat
Kings Highway Deviation	25/08/2010	direct impacts to 2.6 ha, and indirect impacts to 42 ha, of B-G W
132kV Sub-Transmission Line, Tuggeranong	7/08/2009	70 trees in unspecified area of NTG
Urban development of East Molonglo	20/12/2011	121 ha of direct impacts, plus an unspecified area of indirect impacts, on B-G W which includes habitat for Swift and Superb Parrot; 16.15 ha of Pink-tailed Worm Lizard habitat
Completion of the Gungahlin development (several suburbs were earlier approved in one-off approvals)	17/07/2013	126 ha of B-G W; 180 ha of golden sun moth habitat; loss of potential nesting trees for Superb Parrot within Throsby Ridge; 3 ha of striped legless lizard habitat
Urban development of West Belconnen	1/09/2017	16.4 ha of Pink-tailed Worm Lizard habitat; 4.2 ha of B-G W; 1.8 ha of Golden Sun Moth habitat + fragmentation of Jaramlee NR;