



**NORTHERN
LAND COUNCIL**

**Submission to the Department of the Environment, Parks
and Water Security
on the**

Biodiversity Offsets Policy and Technical Guidelines

November 2022

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Introduction

The Northern Land Council (NLC) welcomes the development of the Northern Territory Government (NTG) Draft Biodiversity Offsets Policy and Technical Guidelines, as a component of the NT's environment protection reforms and as a key element of the NT Offsets Framework.

The NLC recognises the importance of an effective NT offsets policy framework, and the potential for biodiversity offsets to deliver outcomes for Aboriginal people. Development of the Biodiversity Offsets Policy and Technical Guidelines provides an opportunity for the NTG to put in place policy settings that not only support conservation outcomes, but also facilitate socio-economic benefits. The right settings will empower Aboriginal people in the NT to participate in an emerging industry and build economic opportunities by capitalising on Aboriginal land and unique land management skills, as already occurs with greenhouse gas emissions offsets.

However, it is unclear whether the policy as it stands will achieve this. Key policy instruments are still to be developed – in particular targets and a clear offset methodology – and in the absence of these, it is hard to see how regulators can assess whether proposed offsets for an individual project will adequately compensate for residual biodiversity impacts.

The NT context provides both unique challenges and opportunities which are very different to almost all other Australian jurisdictions. One of the fundamental differences between the NT and other jurisdictions is 30% of the NT population is Aboriginal, the majority of whom live in remote areas. Around half of the NT's land mass and 85% of its coastline is owned by Aboriginal people under freehold title, with most of the remainder subject to native title. This would suggest that Aboriginal people will play a key role in the provision of biodiversity offsets.

Traditional Owners and Aboriginal ranger groups are already significant players in the NT's greenhouse gas offsets economy. Aboriginal savanna carbon is a major emerging industry, rapidly expanded from the successful West Arnhem Land Fire Abatement project (2006) to 32 Indigenous-owned savanna fire management projects across north Australia today. Aboriginal groups have generated around 67% of savanna fire management Australian Carbon Credits Units (ACCUs) Australia-wide and around 80% of the total ACCUs from all methods generated in the NT. This method was co-designed with Traditional Owners, researchers and government and focuses on getting Aboriginal people back on country and actively involved in all aspects of the offsets process.

It is important that the NT's unique demographics and land tenure are taken into account in any offsets policies, particularly given Aboriginal people in remote areas are disproportionately affected by the types of projects most likely to be subject to the offsets framework. These projects often occur in remote regions, and due to the close relationship between Aboriginal values, identity, culture and the broad concept of 'country', negative impacts and damage to country are uniquely noticed and strongly felt by Aboriginal people.

When Aboriginal people have a genuine say in policy and planning that affect them, it can reduce negative impacts and lead to an increase in employment and business opportunities and better life outcomes. This should be considered in developing the Biodiversity Offsets Policy, consistent with the NTG's commitments under the National Partnership Agreement on Closing the Gap and the Everyone Together Aboriginal Affairs Strategy.

As this policy and other offset policy instruments are developed, implemented and reviewed, we urge the NT Government to continue to engage with Land Councils and existing Aboriginal offset networks, and work together in developing all aspects of the NT Offsets Framework, including governance, environmental targets, monitoring and evaluation, compliance and reporting.

About the Northern Land Council

The NLC was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act), the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas.

A key function of the NLC is to express the wishes and protect the interests of traditional Aboriginal owners throughout its region.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the land councils. The NLC is also a Native Title Representative Body under the *Native Title Act 1993*.

The NLC represents more than 51,000 Aboriginal people. Within its jurisdiction, the NLC assists Traditional Owners¹ by providing services in its key output areas of land, sea and water management; land acquisition; minerals and petroleum; community development; Aboriginal land trust administration; native title services; advocacy; information and policy advice. Relevant to this submission is a responsibility to protect the traditional rights and interests of Traditional Owners with interests over the area of the NLC, which is constituted by more than 210,000 square kilometres of the land mass of the Northern Territory and 85% of its coastline.

The NLC's vision is for a Territory in which the rights and responsibilities of every Traditional Aboriginal Owner are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas and intellectual property. Our mission is to assist Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas, through strong leadership, advocacy, industry engagement and management.

NLC Recommendations

Reflecting Aboriginal values and interests

Recommendation 1: Require that wherever possible offsets are sourced from the country of the Aboriginal group where the impacts occur (or as physically close as possible).

Recommendation 2: Add a requirement to section 4.1 of the Draft Biodiversity Offsets Policy that unacceptable impacts on culturally important species cannot be offset.

Recommendation 3: Give priority to offsets that provide social, cultural or economic benefits for people affected by the development.

Recommendation 4: Include a section on co-benefits in both the Biodiversity Offsets Policy and Technical Guidelines, including recognising the role played by Aboriginal people in carbon offsets.

¹ For the purposes of this submission, the term Traditional Owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*, native title holders (as defined in the *Native Title Act 1993*) and those with a traditional interest in the lands and waters that make up the NLC's region.

Recommendation 5: NT and Commonwealth Governments provide the necessary infrastructure and supports to enable Aboriginal people to take advantage of biodiversity offset opportunities.

Recommendation 6: DEPWS and NT EPA work with Land Councils and existing Aboriginal offset organisations to co-design and develop biodiversity offsets that can deliver social, cultural and economic outcomes for Aboriginal people using Aboriginal land.

Improving the NT Offsets Framework Elements

Recommendation 7: Use and cite the terms and concepts in related NT EPA policy instruments, including *Environmental Impact Assessment factors and objectives*, in the Biodiversity Offsets Policy and Biodiversity Offsets Technical Guidelines.

Recommendation 8: In the Biodiversity Offsets Policy and Technical Guidelines documents, clearly describe the relationships between policy instruments within the Offsets Policy Framework and the roles and responsibilities of NTG agencies in the risk assessment and development approval process, as was done in the greenhouse gas emissions policy.

Recommendation 9: Ensure the Biodiversity Offsets Policy and Technical Guidelines are consistent with the Offset Policy Principles document and reference key concepts such as the 'Preconditions to offsets'

Recommendation 10: Establish a statutory NT Offsets Advisory Group with membership to include offset providers, offset experts, NT EPA, Regulator staff and Land Councils.

Recommendation 11: Apply the lessons learnt from the very successful Savanna Fire Management offset method and findings from the current review of offset integrity to the development of biodiversity offsets in the NT.

Recommendation 12: In the Biodiversity Offsets Technical Guidelines, describe the process for monitoring, evaluating, reporting and improving the offset regulatory regime, to ensure a net gain in ecological condition, as well as how this process will be enforced.

Recommendation 13: Strengthen the role of the NT EPA, including providing its own staff and resources to undertake its functions.

Recommendation 14: DEPWS works with Land Councils and relevant Aboriginal organisations in refining the Technical Guidelines to address the concerns raised in this submission and deliver outcomes for Aboriginal landholders who may be impacted by development proposals.

Recommendation 15: The implementation of the Biodiversity Offsets Policy should not occur until all supporting policy instruments identified in the NT Offsets Framework have been completed, including targets.

Protection of Aboriginal values and delivering co-benefits

As written, it is not clear how the Draft Biodiversity Offsets Policy and Technical Guidelines will protect Aboriginal values and deliver outcomes for the owners of the land impacted by development proposals.

In the management of their lands, Aboriginal people do not separate environmental, social and cultural values; they are seen as interconnected. This is consistent with the western idea of ecologically sustainable development. For Aboriginal people, changes to biodiversity can have substantial and direct social, cultural, spiritual and economic implications. It is therefore essential that impacts on Aboriginal values be a fundamental consideration in determining whether offsets are appropriate and how they should be applied.

The Draft Biodiversity Offsets Policy requires offsets to be located within the same biome and broad habitat as the impact. The Technical Guidelines state it 'may be desirable' to consider offsets 'within the same Indigenous estate as the impact' (p8). To mitigate social and cultural impacts associated with biodiversity loss, offsets must be applied as locally as possible to the area of impact, and where possible within the same Aboriginal clan boundaries. The NLC strongly recommends that this be articulated in both the policy and technical guidelines.

Similarly, the policy notes not all impacts can be offset, for example the irreplaceable loss of species or ecosystems. Unacceptable impacts on culturally important species or places should likewise not be able to be offset, and the NLC recommends amending section 4.1 of the policy to reflect this.

It is recognised by DEPWS that Aboriginal people and their lands play a key role in the delivery of both offsets and biodiversity conservation in the NT. The Draft Biodiversity Offsets Policy acknowledges this role, but in our opinion understates it and is unclear about its importance to biodiversity offsets and biodiversity outcomes, as well as the potential of offsets to contribute to improved social, cultural and economic outcomes for Traditional Owners.

The Biodiversity Offsets Policy states (section 5) that where possible offsets should be delivered by, and maximise any co-benefit to, regional and remote communities. The NLC welcomes and strongly supports recognition of the need for co-benefits; however, no further information is provided. The NLC recommends including a new section outlining what co-benefits are and how they can be considered in the provision of biodiversity offsets. The NLC is well-placed to assist with the contents of this section.

Where there are direct impacts on a community, for example, the engagement of local Aboriginal businesses or local Aboriginal employment should be prioritised. Proponents seeking to offset biodiversity impacts should be encouraged to discuss options with landowners and the relevant land council. For development projects on Aboriginal land, this discussion could occur during the agreement-making process.

The Biodiversity Offsets Policy offers an opportunity to support the development and expansion of Aboriginal-led offsets industries and Aboriginal ranger groups. The existing Aboriginal offsets industry has clearly demonstrated it can deliver premium greenhouse gas emissions offsets, while providing social, cultural and economic benefits to Aboriginal people. In addition to playing a lead role in the delivery of carbon offsets nationally, Aboriginal ranger groups involved in the industry provide key employment pathways in remote communities. This success could be replicated with biodiversity offsets delivered from Aboriginal lands under Indigenous Land Use Agreements, subject to the Biodiversity Offsets Technical Guidelines, in the same way currently occurs in relation to Emissions Reduction Fund methods and guidelines. The lessons learnt from the Aboriginal carbon

industry; models applied to identifying offset methods; and guidelines related to consultation and working with Aboriginal people to deliver co-benefits and a mix of environmental, social, cultural and economic benefits, could be applied to development and use of biodiversity offsets.

There is also opportunity to draw on Aboriginal knowledge to identify new biodiversity offsets opportunities. The Aboriginal carbon abatement industry has provided a great example of what can be achieved when traditional and western sciences come together, and may provide a model that can be utilised in other areas.

Improved conservation outcomes for large areas of the NT depends on having people on country, with the presence of Traditional Owners and Aboriginal rangers enabling threats to be managed effectively. This makes them ideally placed to identify and undertake projects that mitigate biodiversity impacts. There is great opportunity to extend the work of Aboriginal ranger groups in particular, and provide more employment in remote communities. It should be noted, however, that to fully take advantage of these opportunities and meet demand will require additional infrastructure (vehicles, accommodation on country), as well as supports such as training and mentoring to enable ranger groups to expand their capacity.

Finally, it is unclear from the draft Biodiversity Offsets Policy and Technical Guidelines what kinds of activities would be approved as offset projects. DEPWS staff have indicated in discussions with NLC that approval would not be given, for example, to use funding from proponents to add Aboriginal land to the Parks estate and manage it sustainably, allowing tourism to occur while managing threats. Given the NTG's recently-developed draft Parks Masterplan highlighted such projects, and the need to work with Traditional Owners to achieve conservation outcomes, this limitation would seem short-sighted.

It is essential that Aboriginal ranger groups, Traditional Owners and Land Councils continue to be involved in the ongoing development, implementation and ultimately the monitoring and review of the offsets framework and its outcomes.

Recommendation 1: Require that wherever possible offsets are sourced from the country of the Aboriginal group where the impacts occur (or as physically close as possible).

Recommendation 2: Add a requirement to section 4.1 of the Draft Biodiversity Offsets Policy that unacceptable impacts on culturally important species cannot be offset.

Recommendation 3: Give priority to offsets that provide social, cultural or economic benefits for people affected by the development.

Recommendation 4: Include a section on co-benefits in both the Biodiversity Offsets Policy and Technical Guidelines, including recognising the role played by Aboriginal people in carbon offsets.

Recommendation 5: NT and Commonwealth Governments provide the necessary infrastructure and supports to enable Aboriginal people to take advantage of biodiversity offset opportunities.

Recommendation 6: DEPWS and NT EPA work with Land Councils and existing Aboriginal offset organisations to co-design and develop biodiversity offsets that can deliver social, cultural and economic outcomes for Aboriginal people using Aboriginal land.

Offsets policy framework

Relationship between NT EPA guidelines and DEPWS guidelines

The Biodiversity Offsets Policy and Technical Guidelines, while focused on biodiversity outcomes, are part of a larger Environmental Impact Assessment (EIA) process that is undertaken by the NT EPA. It is expected that DEPWS Policies and Guidelines would be consistent in their aims and guidance with advice provided by the NT EPA. With this in mind, the NLC suggests that the Draft Biodiversity Offsets Policy and Draft Biodiversity Offsets Technical Guidelines would be easier to understand, design and ultimately implement, if the links to existing NT EPA guidelines were made clear and the language used consistent.

The NT EPA Environmental Impact Assessment (EIA) technical guidelines provide a clear description of what is considered by the NT EPA in assessing the risks posed by a development proposal. This includes:²

- the principles of ecologically sustainable development
 - a. decision making principle
 - b. precautionary principle
 - c. principle of evidence-based decision-making
 - d. principle of intergenerational and intragenerational equity
 - e. principle of sustainable use
 - f. principle of conservation of biological diversity and ecological integrity
 - g. principle of improved valuation, pricing and incentive mechanisms
- the environmental decision-making hierarchy
- the waste management hierarchy
- ecosystem-based management
- the cumulative impacts of a proposed action or strategic proposal
- the existing threats and pressures on the environmental values
- the impacts of a changing climate

We note the Draft Biodiversity Offsets Policy refers to ‘precautionary *approach*’ (Section 5) rather than ‘precautionary *principle*’, which would make it consistent with the *Environment Protection Act 2019* (EP Act) and the NT EPA EIA process and guidelines. We also note that the Draft Biodiversity Offsets Policy does not include any consideration of cumulative impacts and the term appears only once in relation to offshore marine impacts in the Appendices of the Technical Guidelines. Given the very clear relationship between the NT EPA EIA process and offsets, these inconsistencies should be addressed.

Recommendation 7: Use and cite the terms and concepts in related NT EPA policy instruments, including *Environmental Impact Assessment factors and objectives*, in the Biodiversity Offsets Policy and Biodiversity Offsets Technical Guidelines.

NT Offsets Framework

The NLC understands the Administrative Guidelines and Offsets Register, which form part of the NT Offsets Framework and explain how biodiversity and greenhouse gas offsets will be operationalised and implemented, will not be drafted until the other elements of the Offsets Framework are

² NT EPA 2022, *NT EPA Environmental factors and objectives*, https://ntepa.nt.gov.au/_data/assets/pdf_file/0020/804602/guide-ntepa-environmental-factors-objectives.pdf

completed. To work effectively, the NT Offsets Framework requires all the identified policy elements to be completed and implemented.

For developers and stakeholders to understand what is required and how the NT Offsets Framework will operate, it is important to refer to related documents, to make the process as easy as possible for the reader. The relationships between the related policy elements e.g. Biodiversity Offsets Policy, Biodiversity Offsets Technical Guidelines and the Administrative Guidelines need to be more clearly spelled out than is currently the case.

Roles and responsibilities of NTG Agencies in the risk assessment and development approval process should also be outlined. For example, the section in the Draft Biodiversity Offsets Policy related to 'Policy Application and Scope' (p.5) does not make clear the role of each of the players, i.e. assessing entities, decision makers and regulators.

In 2010, a draft NTG Environmental Offsets Policy was created but never finalised. This draft document contains some policy ideas and technical details which are not in the Draft Biodiversity Offset Policy or the Technical Guidelines. The NLC suggests the 2010 Policy could be used to refine both biodiversity offsets documents. We recommend in particular the sections on designing and selecting offsets, securing offsets, Australian Government approvals, and the guidance for designing offset proposals.³

Recommendation 8: In the Biodiversity Offsets Policy and Technical Guidelines documents, clearly describe the relationships between policy instruments within the Offsets Policy Framework and the roles and responsibilities of NTG agencies in the risk assessment and development approval process, as was done in the greenhouse gas emissions policy.

Offsets Principles

Section 2 of the Biodiversity Offsets Policy – The Northern Territory Offsets Framework – references the Northern Territory Offsets Principles and lists the six guiding principles in an abridged form. The NLC believes the policy should explicitly refer proponents to that document, including providing hyperlinks. It would also be helpful to include key elements of the Offsets Principles document, in particular the 'Preconditions to offsets':⁴

Prior to considering the use of offsets, two preconditions must be satisfied. These preconditions reflect the concept of ecologically sustainable development and the expectation that all management approaches must first apply appropriate avoidance and mitigation techniques, prior to the potential use of offsets to compensate for any residual impacts caused by an activity. These preconditions acknowledge that:

- the mitigation hierarchy must be rigorously applied; and
- offsets will not always be available or appropriate.

The concept and application of ecologically sustainable development is essential for any modern natural resource management policies and is included in the EP Act. It should also be reflected in the Biodiversity Offsets Policy.

³ "DRAFT Northern Territory Environmental Offsets Policy: Fostering Environmental Conservation through Sustainable Development."

⁴ NT Government 2020, *Northern Territory Offsets Principles*, https://depws.nt.gov.au/_data/assets/pdf_file/0005/901877/nt-offsets-framework-principles.pdf

In addition, the process by which the preconditions will be incorporated into the approval process for the use of offsets should be explained, particularly in relation to the long-term protection of Aboriginal rights, values and aspirations.

Recommendation 9: Ensure the Biodiversity Offsets Policy and Technical Guidelines are consistent with the Offset Policy Principles document and reference key concepts such as the 'Preconditions to offsets'

Governance

In its draft 2010 Environmental Offsets Policy, NTG proposed establishing an advisory group in relation to the design and selection of suitable offsets. The NLC supports this idea and seeks to be part of such a group.

Recommendation 10: Establish a statutory NT Offsets Advisory Group with membership to include offset providers, offset experts, NT EPA, Regulator staff and Land Councils.

Relationship with Commonwealth biodiversity and offsets policy

The Biodiversity Offsets Policy recognises the links between NTG and Commonwealth environmental protection legislation and development approvals, including offsets. The NLC suggests that the findings and recommendations from the 2020 Samuels Review⁵ of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) could provide valuable and relevant policy improvement ideas for biodiversity offsets policy in the NT.

The NLC considers the recommendations in the Samuels review have direct relevance to the NT Offsets Framework and should be reviewed by DEPWS in: (a) finalising the Draft Biodiversity Offsets Policy, Draft Biodiversity Offsets Technical Guidelines, Administrative Guidelines and Offsets Registry; and in the future review of existing NT Offsets Framework policy instruments.

The NLC also suggests noting in the Biodiversity Offsets Policy and Technical Guidelines documents that changes to the EPBC Act (for example, the introduction of national standards) may result in changes to offset policies in the NT.

Biodiversity Offsets Policy and Technical Guidelines

Proposed target-based biodiversity offset method

In explaining why a target-based approach is being used, the Draft Biodiversity Offsets Policy states that 'Offsets should be applied in a way that can best contribute to broader environmental targets in the Territory, and where possible be delivered by, and maximise any co-benefit to, regional and remote communities' and 'Additionally, limited fine-scale biodiversity data for much of the Territory necessitates the need for a simple, risk-based and precautionary approach to calculating offset requirements' (p.7).

The NLC strongly supports the use of offsets that can deliver co-benefits to remote Aboriginal communities as well as biodiversity outcomes; and the application of a risk-based approach which includes the application of the precautionary principle.

⁵ Professor Graeme Samuel, "Independent Review of the EPBC Act – Final Report October 2020," 2020, <https://apo.org.au/sites/default/files/resource-files/2021-01/apo-nid310681.pdf>.

In relation to the target-based offset method, we note that DEPWS is proposing a unique and untested method that no other jurisdiction is using to our knowledge, but which has been identified by researchers as potentially being useful.⁶ The NLC does not disagree with the high-level idea being proposed, but believes further evidence regarding the merits of this method and details about how it will be used in the NT are needed before we can form an opinion on what it means for Aboriginal people in the Top End.

For example, the Draft Biodiversity Offsets Policy states that ‘poor performance of offset mechanisms in other jurisdictions suggest offsets should focus on restoration offsets rather than averted loss offsets’. No evidence is provided to support this conclusion. The NLC notes that some offsets, but not all, have been the subject of questions about their ability to deliver reductions in greenhouse gas emissions or sequestered greenhouse gas emissions; specifically, whether the offsets were delivered via land management that was additional to what would have occurred anyway. These concerns have prompted a review of the integrity of ACCUs.⁷ The NLC supports using findings of this review to inform the development of biodiversity offsets in the NT and ensure their integrity.

The NLC notes a submission by Arnhem Land Fire Abatement (ALFA)⁸ to the independent review and suggests that DEPWS reviews this submission in drafting the Biodiversity Offsets Policy and Biodiversity Offsets Technical Guidelines. While the submission relates principally to carbon offsets, the lessons learnt from the development of the Savanna Fire Management (SFM) offsets method would in our opinion prove useful to the development of any offsets that rely on the use of Aboriginal land.

Among the key elements the ALFA submission identifies as leading to the success and integrity of SFM offsets are:

- The consideration of both environmental and cultural aspirations in developing the offset method
- Extensive scientific research on which to base the method
- The uptake across a range of land tenures in northern Australia to address environmental and cultural goals
- The ability to independently review the outcomes from the offset methods used
- The transparency of the offset outcomes delivered, i.e. verified by public at anytime

The ALFA program has delivered high integrity ACCUs that maximise co-benefits, including environmental, social, cultural and economic benefits. The NLC supports this type of offsets model and has worked with ALFA to create Indigenous Land Use Agreements for offsets projects to benefit Aboriginal people in Arnhem Land.

Recommendation 11: Apply the lessons learnt from the very successful Savanna Fire Management offset method and findings from the current review of offset integrity to the development of biodiversity offsets in the NT.

The target-based method section and other parts of the Draft Biodiversity Offsets Policy make repeated references to ‘habitat- and value-specific’, ‘relevant Territory targets’ and ‘broader

⁶ Jeremy S Simmonds and et al - 17 authors - 2 Australian, “Moving from Biodiversity Offsets to a Target-Based Approach for Ecological Compensation,” *Conservation Letters*, October 31, 2019, 11.

⁷ e.g. <https://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Information%20Paper%20on%20the%20Offsets%20Integrity%20Standards.pdf>

⁸ ALFA, “Arnhem Land Fire Abatement (ALFA) Submission to the Independent Review of Australian Carbon Credit Units (ACCUs),” October 2022, <https://consult.dcceew.gov.au/independent-review-of-accu/submission/view/97>.

environmental targets'. We could find no reference to what these targets are, or where details can be found; it appears they are still under development. The absence of clear biodiversity related targets, in combination with the recognition that baseline data and other biodiversity knowledge gaps exist, are of concern to the NLC. It would appear difficult to assess the risks posed to biodiversity values and identify what offsets might be required in the absence of these targets.

In NLC discussions with DEPWS and other stakeholders, it was agreed by all parties that finalising the Biodiversity Offsets Technical Guidelines will require additional work by DEPWS, in consultation with the Commonwealth Government, experts and offset providers, to enable offset targets to be developed and implemented. This is also recognised in DEPWS documents such as the target-based offsets fact sheet.⁹

In the absence of these targets for biodiversity, it remains unclear how developers can design suitable Biodiversity Offset Plans. Similarly, it is unclear how the regulator will assess these plans and provide advice to the Minister.

Again, the NLC urges DEPWS to work with Traditional Owners and Land Councils to develop targets which consider Aboriginal values and land use aspirations. The NLC would also welcome further discussions with DEPWS and the NT EPA as the Technical Guidelines document is further developed in 2023, to clarify the role that Aboriginal people and their lands may play in relation to the design and delivery of biodiversity offsets. This may be best achieved by running workshops similar to those previously held prior to developing the Draft Biodiversity Offset Policy and Technical Guidelines.

Monitoring, adjustments and reporting

Given that targets are yet to be developed, as discussed above, it is difficult for the NLC to understand what a Monitoring, Evaluation, Reporting and Improvement program would entail and how it would assess the performance of biodiversity offsets to deliver a net overall gain in the condition of NT habitats.

While the Draft Biodiversity Offsets Policy discusses monitoring of individual offset programs, the effectiveness of the offset regulatory process as a whole to produce a net gain in ecological condition also needs to be monitored, publicly reported on and used to refine the regulatory process over time. This public reporting needs to be informed by a well-designed Monitoring, Evaluation Reporting and Improvement Program.

Recommendation 12: In the Biodiversity Offsets Technical Guidelines, describe the process for monitoring, evaluating, reporting and improving the offset regulatory regime, to ensure a net gain in ecological condition, as well as how this process will be enforced.

Offset determination, compliance and enforcement

In the absence of an Administrative Guidelines document it is difficult to make informed comment on how aspects of the NT Offsets Framework will work in practice, i.e. what actions will be required by developers, environmental assessors, regulators and the Minister. We make the following initial comments, and look forward to providing input into the Administrative Guidelines.

In a meeting with DEPWS and NT EPA on 27 October 2022, both indicated that their preferred position with regard to the decision maker for determining if offsets are required would be for the Minister to delegate the responsibility to the CEO of DEPWS. In the NLC's view, a separation of

⁹ https://depws.nt.gov.au/_data/assets/pdf_file/0006/903849/factsheet-territory-specific-target-based-offsets-model.pdf

policy making, regulation and monitoring and compliance is best practice¹⁰ and would support accountability and transparency.

Given that the EPA requires DEPWS to assess the biodiversity risks posed by a development proposal, the NLC does not support the delegation of decision maker under the EP Act to the CEO of DEPWS.

The NLC also believes that to be effective, compliance and enforcement needs to be undertaken by an independent body. This will improve the environmental regulatory process and better align this policy with the Offset Policy Principles. We note that the 2020 Review of the EPBC Act found that compliance functions should be held by a dedicated office, 'with staff assigned to work exclusively on the EPBC Act compliance and enforcement functions to support the statutory decision-maker.'¹¹ The NLC has consistently called for the NT EPA to be staffed separately from the department to ensure independence, and we repeat this call here.

Recommendation 13: Strengthen the role of the NT EPA, including providing its own staff and resources to undertake its functions.

Draft Biodiversity Offset Technical Guidelines

Given the recognition that the Technical Guidelines need further work, our preliminary comments on the Draft Biodiversity Offset Technical Guidelines are:

- There appears to be no clear reference to the EPBC Act, Key Threatening Processes under the EPBC, or related Threat Abatement Plans.
- Climate change is only mentioned once and not recognised as a threat
- No references are cited in the document, which is unusual for a technical document
- It appears to be focused almost entirely on threats to biodiversity values and does not recognise that biodiversity conservation, like development proposals, occurs within regulatory frameworks that also consider social and cultural values, and that in most cases they are interconnected. While co-benefits are mentioned in the policy, they don't appear to be discussed in the technical guidelines.
- Given the acknowledged gaps in biodiversity data in many parts of the NT, the Biodiversity Offset Technical Guidelines need to explain when and how the precautionary principle, as identified in the EP Act, will be applied in relation to the suitability of biodiversity offsets in some cases.

Recommendation 14: DEPWS works with Land Councils and relevant Aboriginal organisations in refining the Technical Guidelines to address the concerns raised in this submission and deliver outcomes for Aboriginal landholders who may be impacted by development proposals.

Recommendation 15: The implementation of the Biodiversity Offsets Policy should not occur until all supporting policy instruments identified in the NT Offsets Framework have been completed, including targets.

¹⁰ See, for example, Productivity Commission 2021: Assessment of National Water Initiative implementation progress (2017 – 2020) Inquiry Report.

¹¹ Professor Graeme Samuel, "Independent Review of the EPBC Act – Final Report October 2020," 2020, <https://apo.org.au/sites/default/files/resource-files/2021-01/apo-nid310681.pdf>.