

Our ref: 20221410:KMF

14 November 2022

By Email: environment.policy@nt.gov.au
Department of Environment, Parks and Water Security
25 Chung Wah Terrace
Palmerston NT 0830

DRAFT BIODIVERSITY OFFSETS POLICY CONSULTATION

Thank you for the opportunity to provide comment on the draft Biodiversity Offsets Policy.

A notable deficiency in the policy is in section 4.1, determining when offsets are required. That section discusses the hierarchy of avoidance, mitigation and offset, and identifying the preference for avoidance and mitigation over offsets. It also notes that significant impacts and unacceptable impacts are not synonymous.

Where the policy falls flat, though, is in its discussion (or lack thereof) of significance. In an 11-page policy, the discussion of significance is mostly limited to two sentences:

Under the EP Act, offsets will only be necessary where residual impacts can be considered. 'significant'. For further information about the assessment and approval of proposals under the EP Act, including what constitute a significant impact, refer to the NTEPA website.

The policy should give guidance on significance. Unfortunately, it does nothing of the sort. The website not only offers no guidance on significance, one cannot even easily figure out from the website where to turn for such guidance. Since the technical application of the policy flows from the determination of significance, it is incumbent upon the policy to provide a robust description/definition of significance in relation to residual impacts, even if it is done so in relative terms. Residual impacts of the irreplaceable loss of a common ecosystem type, for example, may not be significant, while the residual impact for the irreplaceable loss of a critically endangered ecological community would be.

Incorporating this notion of level of species/ecosystem vulnerability would also make the last paragraph of section 4.1 more accurate, adding to the parenthetical "for example the irreplaceable loss of endangered species ecosystems".

Yours faithfully
WARD KELLER



BRADLY TORGAN
Special Counsel

Direct Line (08) 8946 2939
Email bradlytorgan@wardkeller.com.au

Partners

Kevin Stephens
Leon Loganathan
Ashley Heath
Michael Grove
Teresa Hall
Charlie Martel
Martin Kelly
Andrew Elliott

Consultants

Carolyn Walter
Tony Whitelum

Special Counsel

Bradly Torgan

Senior Associate

Alecia Howland

Conveyancing Manager

Theresa Cocks

Darwin

Level 7, NT House,
22 Mitchell Street
T 08 8946 2999

Palmerston

Suite 2
6 Woodlake Boulevard
T 08 8931 3388

Alice Springs

PO Box 3296
T 08 8952 4200

A legal practice conducted
by Ward Keller Pty Ltd
ACN 009 628 157
ABN 83 867 405 190