



NORTHERN
TERRITORY
DIVISION

18 November 2022

Mr Paul Purdon
Executive Director, Environmental Assessment and Policy
Department of Environment, Parks and Water Security
GPO Box 3675
DARWIN NT 0801

Via email: paul.purdon@nt.gov.au
alaric.fisher@nt.gov.au
environment.policy@nt.gov.au

Dear Mr Purdon

Comments on the Draft Northern Territory Offsets Policy and Technical Guidelines

The Minerals Council of Australia (MCA) welcomes the opportunity to provide comment on the Government's Draft Northern Territory Offsets Policy ('the Draft Policy') and Draft Technical Guidelines ('the Draft Guidelines'), which were released for public review on 12 October 2022.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible, attuned to its communities' needs and expectations.

The MCA Northern Territory Division (MCA NT) advocates for policy and regulatory settings based on sound science and commensurate with risk, and developed in consultation with key stakeholders, including our organisation and Territory-based mining companies. The minerals industry is committed to the protection of Northern Territory's unique environment. Offsets are an important tool for the minerals industry as mining operations are constrained by the location of the target resource. While the industry makes all efforts to avoid, minimise and mitigate environmental impacts, offsets remain an essential option for projects that have significant residual impacts. Further, the MCA considers that more strategic and enduring environmental amelioration can be achieved through industry investment in effective offsets.

The need for biodiversity offsets to be both effective and implemented efficiently

The minerals industry recognises the need to reform environmental policy and regulation to improve environmental outcomes while also addressing inefficiencies of processes that impact investment attractiveness of Australia and its jurisdictions, investment that is urgently needed to support sustainable development, economic growth, jobs and benefits for all Australians.

The MCA NT supports the Government's intent to ensure that biodiversity offsets required to compensate for loss of biodiversity from developments in the Northern Territory are designed and implemented in ways that facilitate achievement of this objective.

As stated in the Draft Policy, offsets provide a mechanism to compensate for significant impacts from development projects on biodiversity and the environment that cannot be avoided or mitigated (residual impacts). Offsets, however, can be a significant challenge for the minerals industry where policy is applied inconsistently; requirements are unnecessarily restrictive and impractical; and other requirements (e.g. Commonwealth requirements) are poorly integrated. Where this occurs, offsets can be a source of unnecessary cost and delay for projects without commensurate environmental benefits.

Efficient assessment and approval of proposed offsets require that offset plans meet regulatory requirements and that officers assessing these plans are adequately experienced and knowledgeable to process these in a manner consistent with assessment guidelines.

The MCA NT considers that the Draft Policy and Draft Guidelines clearly communicate the requirements for proponents to follow in developing offset plans with adequate information for regulators to complete their assessments and approvals.

The MCA NT supports the development of clear administrative guidelines to clarify the roles, responsibilities and processes for regulators to follow, that should support the second objective above: consistent assessment and approvals by government officers charged with reviewing proposed offset plans.

Effective and efficient implementation of the Biodiversity Offsets Framework will also require a substantial commitment of resources by the Government, which could be considerable given demands for monitoring for compliance and achievement of offset targets.

Requirements and processes in the Northern Territory must also be consistent with and avoid duplicating Commonwealth biodiversity offset requirements under the EPBC Act, to avoid costly delays and unjustifiable additional costs to regulators and proponents in the completion of project approvals.

Key MCA NT feedback on the Draft Policy and Draft Guidelines

The MCA NT endorses the Offset Principles listed in the Draft Policy to guide the use of offsets in the Territory, including that they must contribute to relevant Territory targets; must be additional and secured; must be knowledge-based; etc.

The Draft Policy and Guidelines also meet most of the principles in the MCA's Biodiversity Offsets Policy (Attachment A).

The NT Draft Policy and Guidelines, however, are not consistent with a number of principles in the MCA's Offsets Policy described below:

Establishment and sound management of an offsets fund

Offsets should be achieved by applying fit-for-purpose approaches including financial-based offsets comprising contributions to a centralised trust or fund, administered by government or other entity and used to achieve strategic environmental outcomes through targeted actions.

The NT Draft Policy states (on page 10) that the NT Government 'is not currently considering financial payment into an offset fund as an alternative to proponents being responsible for offset delivery.'

The Government's June 2020 Draft Offsets Policy Consultation Summary, however, acknowledges that

- there are 'challenges associated with securing offsets in a complex land tenure system such as the Territory's;
- many proponents would prefer to contribute to a fund, particularly to support offsets for smaller activities such as mineral exploration; and

- lack of a fund would result in ineffective offset practices arising from project-by-project approaches rather than a strategic approach that a fund would enable’.

The MCA NT urges the Government to follow-through on its proposal to revisit the matter of establishing an offsets fund, once the offsets scheme has been established and the Framework has demonstrated operational success (p 9 of the Consultation Summary).

A financial-based approach provides significant opportunity to develop offsets more strategically. It also provides a mechanism for less-resourced proponents that may not have the internal capability to deliver offsets. The use of such an approach should be optional.

In further refinement of the draft Policy for Government endorsement this year and completion and refinement of the draft Guidelines, for further consultation next year, the documents should acknowledge that the Commonwealth Government plans to develop legislation to underpin a national voluntary biodiversity market. The market would aim to connect private sector investors with landholders to deliver biodiversity projects that protect, restore or actively manage native habitat on their land. Both the Policy and Guidelines should be amended to ensure they will be consistent with the market, allowing NT-based projects to participate in the market while meeting requirements of the NT biodiversity offsets framework.

Offset mechanisms should be developed using the available scientific information and present assumptions underpinning calculations

The MCA NT acknowledges that adequate empirical data were not available to derive the quantitative factors that have been proposed for the offsets calculator in the incomplete/conceptual version of the draft Technical Guidelines that were released with the draft Policy, and considers that the alternative use of ‘expert elicitation’ comprises an acceptable alternative. It does, however, recommend that the assumptions that the experts used in setting those values be made available for review by proponents, particularly if proponents have empirical knowledge that suggests the factors used in the calculator are unjustifiably conservative for their particular project or activities.

Advanced offsets should be accepted

The Draft Policy is silent on the matter of advanced offsets; however, the 2020 Consultation Summary indicates that ‘Advanced offsets will not be permitted at this time; however, staged offsets that align with staged impacts may be considered as part of the assessment of any offsets proposals.’

Relevant conservation activities undertaken prior to project development and associated impacts on the biodiversity value (e.g. threatened species) should be recognised and accommodated in the Draft Policy, for example by reducing requirements determined by the offset calculator commensurate with the biodiversity protection or restoration achieved by the ‘advanced offsets.’

When the Draft Guidelines are completed and re-released for further public consultation in 2023, the MCA NT recommends including another subsection in the text relating to the Offsets Calculator, highlighting the following:

- Rehabilitated/ecological restoration should be recognised in the offset calculator (e.g. provide credit toward reduction of significant residual impacts) to provide incentives for proponents to continue this practice and provide high quality rehabilitation/restoration.
- The calculator should be more than a guide to the minimum investment required to satisfy the requirements of the policy and should be applied on a case by case basis. Proponents require more clarity and transparency. A substantial amount of planning is required for offset planning and mitigation, as well as a significant financial commitment. It is very difficult for proponents to prepare biodiversity offset plans and make commitments if the calculator is not providing sufficient information and investment amounts are subjective.

Accepting performance outcomes affected by impacts by forces outside the proponent's control

Offset mechanisms should be clear in absolving the proponent of reasonable responsibility in the delivery of outcomes when offsets projects are impacted by forces outside their control, including natural variability, acts of god, willful damage by third parties or government decisions (e.g. changes in policy or regulation).

The 2020 Consultation Summary acknowledges that feedback on the 2019 Draft Offsets Policy suggested 'reasonable responsibility should be absolved when projects are impacted by unforeseen circumstances outside the proponent's control'; however, neither the Draft Policy nor Guidelines indicates what the Government's policy will be on this. The MCA NT recommends the Government include such a provision in the Offsets Policy.

Subjectivity in assessing significance of residual environmental impacts

Because the requirement for a proponent to obtain an approved biodiversity offsets plan is based on whether or not residual impacts on biodiversity are significant, it is critically important to define 'significance' in a way that avoids an unacceptable degree of subjectivity.

The Draft Policy includes the following related reference (on page 6):

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 constitutes a significant impact*, refer to the NT EPA website.

The website includes a hyperlink to the *NT EPA Environmental factors and objectives* document (revised May 2022) that indicates 'consideration of whether an impact is likely to be a significant impact, is defined in Section 11 of the EP Act, that is, an impact of major consequence having regard to the context and intensity of the impact, and the sensitivity, value and quality of the environment impacted and the duration, magnitude and geographic extent of the impact.'

The MCA NT does not believe that the current definition being used by the NT Government is specific enough to avoid the unacceptable subjectivity referred to above. Additional guidance is required. One solution might be to use the relevant 'significant impact criteria' detailed in the Commonwealth Department Climate Change, Environment and Water's (DCCEW) *Matters of National Environmental Significance – Significant Impact Guidelines 1.1 (2013)* which, for each NES matter, poses a number of questions for proponents to self-assess, or something similar adapted to Northern Territory biomes, habitats, ecological communities and species. This would promote consistency with the Commonwealth Government's approach.

Resources for implementation

The tables in the Draft Guidelines outline detailed measures of habitat restoration success to be achieved via offsets, and both assessment of proposed offset plans and monitoring reports might take considerable resources to assess.

Has a regulatory impact assessment been done to determine the costs to government to implement the Policy?

In addition to commencing implementation of the new Offsets Policies (Biodiversity and Greenhouse Gas Emissions), the NT Government will also have to increase resourcing of regulators responsible for implementing the Amended Environment Protection Legislation (Mining Amendment) Bill.

Industry is concerned that if increased demands on staffing with appropriate regulatory officers is not adequately resourced, this will lead to costly delays in assessments and approvals under all of these new policies/regulations.

The MCA NT recommends that when the current version of the Guidelines are revised and released for consultation in 2023, they include results from the recommended RIS and address the matter of adequate resourcing for assessment and administration of offset programs.

Requirement for well-written agreements on Aboriginal freehold/pastoral lands

Given the Northern Territory's land tenure situation, biodiversity offsets are likely to be on Aboriginal freehold/pastoral lands. This will require clear agreements in place to ensure offset management areas are not affected by pastoral/Aboriginal activities (e.g. cattle grazing, land clearing, weed control, etc.) that may be detrimental to project success. Agreements will have to cover activities such as land clearing, fencing, traffic and stock movement, with these associated with risks of weed transfer and habitat destruction, including riparian and wetland areas.

To underpin well-written agreements, engagement with Aboriginal land owners/managers should include a *bona fide* role in decision-making and management. The Commonwealth's 2021 *State of Environment Report* (July 2022) highlights deteriorating Indigenous well-being, and cultural heritage is in a deteriorating state. Further, governance, rights, and access to Country for Indigenous people is categorised as 'highly impacted and deteriorating'. Samuel's Review of the EPBC Act recommends increased decision-making and participation in management (e.g. biodiversity), which is also consistent with the Commonwealth's *Threatened Species Management Plan*.

Compliance-monitoring that discriminates between 'non-compliance' and 'deviations from environmental targets'

The MCA NT recommends the Government make explicit in the administrative guidelines or Policy itself that instances of failure to meet environmental performance targets are not examples of 'non-compliance,' particularly if and when these failures trigger appropriate remedial responses by the operator. This continues to be an issue in the regulation of waste discharge licences, when exceedances in concentrations of contaminants in waste discharges are deemed to be instances of 'non-compliance,' when the operators are in fact compliant with approval conditions when they respond appropriately to these.

For the Biodiversity Policy and Guidelines, these should include a notification process for non-compliance and an opportunity for a proponent to respond appropriately prior to the regulator making a determination of 'non-compliance.'

Closing comment

More detailed feedback from the MCA NT on the Draft Policy and Draft Guidelines is in Attachment B.

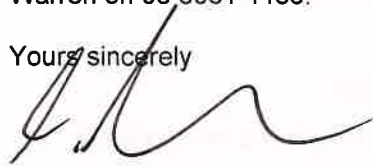
Attachment C includes a number of questions posed by MCA NT members that should be addressed when the government amends the Draft Policy (for final government approval) and the Draft Guidelines for amendment, completion and re-release for further consultation in 2023.

The MCA NT acknowledges the considerable effort the NT Government has put in, since the first very high-level proposed Draft Offsets Policy was circulated in late 2019, to more fully develop the approach that will be taken to guide proponents through the process of developing biodiversity offset plans that are more likely to meet government requirements.

We also recognise that through implementation of a well-developed Biodiversity Offsets Framework will come opportunities to support growth of the offset supply industry, particularly in regional and remote areas where communities can be well-placed to implement activities in the offsets plans. In pursuing and realizing these opportunities, Territory and Commonwealth offset planning approaches should be aligned, including in relation to biodiversity certification and strategic offset programs supported by offset funding mechanisms.

Should you have any questions regarding this submission, please do not hesitate to contact Dr Janice Warren on 08 8981 4486.

Yours sincerely



Cathryn Tilmouth
Executive Director Northern Australia



BIODIVERSITY OFFSETS POLICY

Minerals operations can impact on biodiversity values both within and surrounding the mining footprint. Biodiversity offsets are targeted actions implemented to compensate for significant residual impacts on biodiversity values, following the application of the 'avoid-minimise-mitigate' environmental management hierarchy. As minerals operations are constrained by the location of the target resource, biodiversity offsets are becoming an increasingly important consideration in project planning.

The MCA advocates for the development and application of biodiversity offset measures to compensate for significant residual impacts on biodiversity values, in accordance with the following principles:

1. Offsets should only be considered after the 'avoid-minimise-mitigate' environmental management hierarchy has been applied;
2. To promote continuous improvement, mine site rehabilitation should be recognised as either as a mitigation measure or credited as part of an offsets package;
3. Offsets should not be an automatic requirement by regulatory agencies for all impacts;
4. Offsets required through regulatory mechanisms should be limited to the proportion of residual losses that are significant in terms of biodiversity values, based on best available scientific evidence;
5. In support of their social license to operate, many companies may voluntarily implement conservation programs. Offset requirements should be complementary to these initiatives;
6. An equitable approach to offsets should be applied to all industries impacting on biodiversity values;
7. Offsets should be strategically developed to ensure investments lead to the best value-for-money biodiversity outcomes across the landscape and any research provided should have scientific integrity and be directly relevant to conservation outcomes;
8. Offset management requirements should be limited in duration and to the period where the offset commitment has been met;
9. Marine offsets should be developed in co-ordinated and strategic manner aimed at long term improvements in biodiversity values or improved resilience of the marine environment;
10. Offsets should be achieved by applying fit for purpose approaches including:
 - a) *Proponent managed*, where the proponent delivers and manages the offset utilising internal company resources;
 - b) *Third party delivery* where the proponent may enter into an arrangement with a suitable third party provider to deliver the offset requirement. This may include purchasing an existing offset through a 'biobank' or similar facility; and
 - c) *Financial based offsets* are contributions to a centralised trust or fund, administered by Government or other entity and used to achieve strategic environmental outcomes through targeted actions.
11. Centralised offset funds should be sufficiently resourced, competently administered and monitored to ensure environmental outcomes are delivered and publicly reported;
12. Offsets for significant residual impacts can include a package of 'direct' and 'indirect' measures, which must be flexible in their development and application and implemented over an appropriate timeframe;

13. A range of different offset types should be considered, including
 - a) *Direct offsets* provide on-ground protection or improved conservation outcomes for the impacted biodiversity values, including but not limited to legally securing land for conservation; and
 - b) *Indirect offsets* are a range of other measures that improve knowledge, understanding and management of the environment leading to improved conservation outcomes for the impacted biodiversity values.

14. Where offset mechanisms are applied they should be:
 - a) Developed in a consistent, transparent, non-duplicative and contemporaneous manner across jurisdictions involved in the regulatory process;
 - b) Transparent in their calculation and development, including financial contributions;
 - c) Developed using the best available scientific information, and include declarations about assumptions that underpin the calculations;
 - d) Clear and certain in their expectations for implementation, monitoring and outcomes, including long-term management arrangements and liability for financial contingencies;
 - e) Recognise 'advanced offsets' such as relevant conservation activities undertaken prior to project development and impacts on the protected matter;
 - f) Provide for staged offset development or financial contribution with agreed timeframes;
 - g) Considerate of community expectations regarding the matter that is being offset; and
 - h) Clear in absolving the developer of reasonable responsibility in the delivery of outcomes when impacted by forces outside their control including natural variability, acts of god, wilful damage by third parties or government decisions that may impact on established offsets.

October 2014



MCA NORTHERN TERRITORY DIVISION

SUBMISSION ON THE NORTHERN TERRITORY DRAFT BIODIVERSITY OFFSETS POLICY AND TECHNICAL GUIDELINES

18 NOVEMBER 2022

Minerals Council of Australia Submission on the Northern Territory Government's Draft Biodiversity Offsets Policy and Technical Guidelines

General Comments

The Minerals Council of Australia Northern Territory Division (MCA NT) believes the Draft Biodiversity Offsets Policy (the 'Draft Policy') and Draft Biodiversity Offsets Technical Guidelines (the "Draft Guidelines") provide useful contextual information and detailed guidance on government's expectations for biodiversity offset plans for those projects that have significant residual environmental impacts after avoidance and mitigation measures have been applied.

The covering letter from the MCA NT provides key feedback in relation to those aspects of the Draft Policy and Guidelines that are inconsistent with the MCA's Biodiversity Offsets Policy and other general comments (not linked to specific sections), e.g. imperative for the government to provide adequate funding and training for officers charged with assessing proposed plans and monitoring implementation of offsets.

Feedback below identifies matters requiring clarification or comprises recommendations to improve the Policy. For sections of the Policy that are endorsed by the MCA NT as written, no comments are provided.

Specific comments on the Draft Policy

1. Purpose

In this section and throughout the Policy, it is important to make explicit that offsets will be required only for projects and activities that have significant residual impacts.

The MCA NT recommends that this section include the definition of 'significant impact' to be used by the Government (i.e. the definition in Section 11 of the NT Environment Protection Act). Because this definition is highly subjective, the MCA recommends that this definition be supplemented with significant impact guidelines for relevant environmental values similar to those for the EPBC Act Matters of National Environmental Significance.

The MCA NT generally agrees with the intent of the Policy, as it provides clarity on how offsets for significant residual impacts on biodiversity should be designed and delivered in the Northern Territory and provides a basis on which substantive positive impacts can be made; however, there is a danger of misalignment in approaches outlined, in relation to Matters of National Environmental Significance (MNES) under the EPBC Act, which many Territory projects will be subject to.

If duplication and inconsistency with EPBC Act offset requirements are avoided and additional clarifications identified in this submission are adequately addressed, then the Policy and Guidelines comprise a framework with clear and transparent requirements and guidance that will facilitate achievement of biodiversity offset objectives.

2. The NT Offsets Framework

The Offset Principles are appropriate, noting the following comments:

- Principle 2 – Clarify that offsets should be designed to 'optimise' benefits to the Territory – noting offsets must also be efficient, practicable and cost-effective.
- Principle 4 – Additional information should be included below the list to explain what is meant by designs must be 'responsive'

- Principle 6 – Provide information on what is meant by ‘duplication of offsets’: if this refers to avoiding duplication with Commonwealth requirements under the EPBC Act, then this clarification should be included.

Duplication in Territory and Commonwealth offset requirements could have a negative impact on industry and increase costs associated with offsets, application of offset calculator, acceptable offsets and application of the mitigation hierarchy.

Processes should be developed that are transparent in cases where there is conflict between Commonwealth and Territory offset requirements. The requirement for stakeholder engagement is positive and supported and will support broader regional biodiversity programs. Such benefits include supporting regional Territory Land and Sea Ranger programs and employment.

The requirements to ‘contribute to relevant Territory targets’ and be a ‘maximum benefit to the Territory’ are unclear. Future reforms regarding biodiversity offsets need to be coordinated.

The MCA NT also recommends adding the following words to the last paragraph on page 4:

‘The Administrative Guidelines outline the administrative processes, requirements, roles and responsibilities for all offsets required by Territory legislation and should ensure that regardless of officer assessing proposed or implemented offsets, the outcome of the assessment should be consistent.’

4.1 Determining when offsets are required

Rather than refer the reader to the generic NT EPA website (3rd par, p 6), to access the Government’s definition of significant impact, the Policy should simply reproduce the concise definition in Section 11 of the NT Environment Protection Act, making this more complete. The generic NT EPA website has a large number of other hyperlinks and a fair amount of text to get through, before being able to access the desired definition.

MCA NT recommends that mine rehabilitation be specifically recognised as a mitigation measure, as this would incentivise the delivery of higher value environmental outcomes.

5. Territory target-based approach for biodiversity offsets

The MCA NT agrees with the proposed target-based approach and a focus on ecological restoration; however, averted loss or alternative methods are important as offsets for specific values that have niche and/or specific ecosystem requirements, where evidence is lacking or evidence suggests that the value/species does not adapt to or utilise ecological restoration.

The requirement that ‘offsets should contribute a net gain in the ecological condition of natural habitats’ may be difficult in a local context where projects are quite small. One solution might be for the regulator to take regional, collaborative offset programs and voluntary actions into account. For example, MCA NT feedback in the covering letter recommended that an advisory panel of experts be established to review and assess proposed offsets that cannot meet all requirements as in the Policy and Guidelines but can achieve desired outcomes via alternative, scientifically-sound approaches.

(Dot point 1, top of p 8) ‘transformative threats to the value or values subject to residual impact’ should be defined.

Flexibility is required to ensure type of offsets that can be employed suit the Northern Territory environmental context outlined in the policy (e.g. well connected habitat and Aboriginal land tenure etc). The MCA NT supports the focus on landscape scale management.

There are challenges in defining and achieving a net gain in the ecological condition of natural habitats. What constitutes a net gain is potentially subjective and should be clearly defined. Other actions undertaken by project – outside of offset requirements – may contribute to this objective.

This is particularly the case where the significant impact and its associated offset cease. In these cases, it is unclear whether a net gain may be achieved beyond the life of an offset. Net gains are

best achieved at a landscape level and by taking a strategic approach to offsets and other land management activities. Accordingly, offsets can complement the achievement of these outcomes.

Strict like-for-like requirements should be avoided. A more flexible approach provides opportunities for offsets to contribute to other priority environmental values (as agreed by the proponent, government and land tenure holders as appropriate) and support a more regional approach to building habitat resilience.

6. Eligible offset activities

Direct, Alternative and compensatory measures

Certain alternative direct measures noted in the policy may deliver a higher quality or more enduring environmental outcome. For example feral and invasive species management may drive improved outcomes: these initiatives should be assessed on the likely outcomes, not the activity type.

Contributions to other compensatory measures (e.g. data collection or research) should also be considered where this contributes to conservation management outcomes.

In Section 6.2, the statement relating to alternative direct measures, such as translocation or area-based protection being less likely to be supported as a compensatory measure (6.2), could be quite restrictive for sustainable development whereas a regional view of biodiversity impact may have a different outcome.

The revised Policy should provide a more clear explanation of the last sentence on the page, which relates to the statement above: 'It is important to note that in such situations, there is also a higher likelihood that offsets will not be considered an acceptable method to compensate for a significant residual impact.'

Additionality

The principle of additionality requires careful definition to avoid inadvertently creating duplication with other requirements, for example Commonwealth offset requires for similar habitat but different species. Furthermore, existing management activities may be enhanced through an offsets contribution. Consideration should also be given to the interaction of biodiversity offsets and potential carbon markets, where this provides an opportunity to secure a higher quality outcome. This approach appears to be consistent with EPBC Act requirements.

7.1 Offset delivery

The last paragraph in this section states that the Government is 'not currently considering financial payment into an offset fund as an alternative to proponents being responsible for offset delivery.' The MCA's Offsets Policy (Attachment A) indicates that offsets should be achieved by applying fit-for-purpose approaches including financial-based offsets comprising contributions to a centralised trust or fund, administered by government or other entity and used to achieve strategic environmental outcomes through targeted actions.

The NT Government's June 2020 Draft Offsets Policy Consultation Summary acknowledges that

- there are 'challenges associated with securing offsets in a complex land tenure system such as the Territory's;
- many proponents would prefer to contribute to a fund, particularly to support offsets for smaller activities such as mineral exploration; and
- lack of a fund would result in ineffective offset practices arising from project-by-project approaches rather than a strategic approach that a fund would enable'.

The MCA NT recommends the Government follow-through on its proposal to revisit the matter of establishing an offsets fund, once the offsets scheme has been established and the Framework has demonstrated operational success (p 9 of the Consultation Summary).

Financial-based approaches provide significant opportunity to develop offsets more strategically.

They also provide a mechanism for less-resourced proponents that may not have the internal capability to deliver offsets. The use of such an approach should be an option.

Multi-stakeholder strategic regional offset plans with associated offset funding mechanisms should be considered as an alternative for proponents if and where appropriate. Discounting the potential value of an offset fund may conflict with the direction of the Commonwealth as indicated by its recently released consultation on a National Biodiversity Market, which supports the purchase of credits.

The offset delivery model has the potential to be of material benefit to traditional owner groups, and ranger organisations in particular, through greater connection to country and employment activities.

7.3 Suitable habitat condition

Enhancing the resilience of habitat should also be considered where appropriate, particularly where habitat quality will be degraded without intervention. In these cases the security of habitat quality is as important as restoring degraded areas. Accordingly, the policy should include that offset activities should lead to a significant gain in habitat condition or long-term security and resilience.

Unnecessary constraints on suitable habitat are impractical and may not result in optimal environmental outcomes. For example, in areas of high quality habitat, proponents may be unable to secure and improve sufficient moderately degraded habitat to compensate for temporary significant residual impacts. In these areas, it may be preferential to instead invest in averting loss arising from known threats, contributing to management to enhance habitat resilience.

Furthermore, constraints on improving low quality habitat are unnecessary. These areas can be improved to establish and connect habitat in heavily impacted or fragmented landscapes, where it may be needed most.

There is value to be gained for restoring or rehabilitating areas of very poor condition. In addition, rehabilitated/ecological restoration should be recognised in the offset calculator (e.g. provide credit toward reduction of significant residual impacts) to provide incentives for proponents to continue this practice and provide high-quality rehabilitation/restoration.

The proposed lower-end limit in habitat condition in the Draft Policy would also limit programs such as a highly successful cane toad biosecurity program which, together with Land and Sea Rangers, has had a demonstrable effect of preserving sensitive fauna species from being threatened within a currently 'high grade' ecosystem.

It should be recognised that a degree of active management may be required for certain offsets, particularly in the short- to medium term until maturity is achieved.

7.5 Minimum offset scale and investments

The last sentence of the first paragraph indicates that 'the scale (area) of an offset program must be sufficient to generate ecological gains that are greater than those required to compensate for the potential loss from the significant residual impact of the development,' and the first sentence under the numbered list states that 'the minimum scale for an offset should also exceed the minimum practical threat management area, as specified in Schedule 2 of the Technical Guidelines.

The rationale for both of these requirements needs to be explained. In line with earlier comments in this submission, net gain may not always be practicable at a project level and should instead be considered at a regional level.

Some members of MCA NT disagree with using the calculator as a guide to the minimum investment required to satisfy the requirements of the policy and applying on a case-by-case basis. This does not provide sufficient clarity and transparency for proponents. A substantial amount of planning is required for offset planning and mitigation, as well as a significant financial commitment. It is very difficult for proponents to prepare biodiversity offset plans and make commitments if the calculator is not providing accurate information.

7.6 Offset delivery timeframes

The second last paragraph on page 12 indicates that in many cases, offsets will be required to continue (at least in a maintenance phase) for a minimum of 15 years in the monsoonal biome and 25 years in the arid biome.

The MCA NT recommends that the assumptions and rationale in the 'expert elicitation' used in setting these values be made available for review by proponents, particularly if proponents have empirical knowledge that suggests these maintenance periods are unjustifiably conservative for their particular project or activities.

The MCA NT supports the policy position of offsets not being implemented in perpetuity, as it reduces management timeframes (and associated costs), as well as potential tenure issues. This will not, however, provide for the long-term security of the offset. In addition, being open to multi-stakeholder strategic regional offset plans with associated governance and funding mechanisms/funds has potential to be of a scale to enable in perpetuity funding and associated management.

A key concern of the MCA NT is what the Government expects to be achieved by the end of the 15- or 25-year delivery timeframes for offset programs in the monsoonal and arid biomes, respectively. It is unlikely that a significantly degraded area can be restored to a pristine condition, prior to any anthropogenic impacts (fires, ferals, weeds, etc.); however, a self-sustaining habitat, with increased biodiversity, could be achievable within these timeframes.

While not advocating for offsets to be maintained in perpetuity, the industry recognises that there might be value, in terms of generating much-needed data for regulators to ground-truth the adequacy of these timeframes, for the government to continue to support monitoring for another few years (e.g. five years) to confirm the sustainability of the environmental benefits achieved within the 15 and 25 year timeframes

8. Compliance and enforcement

The Policy states that 'where a biodiversity offset approval condition has not been met, it will be regarded as a contravention of the approval conditions and dealt with in accordance with the regulator's compliance and enforcement approach.'

The MCA NT recommends the Government to make explicit in the administrative guidelines or Policy itself that instances of failure to meet environmental performance targets are not examples of 'non-compliance,' particularly if and when these failures trigger appropriate remedial responses by the operator. (This continues to be an issue in the regulation of waste discharge licences, when exceedances in concentrations of contaminants in waste discharges are deemed to be instances of 'non-compliance,' when the operators are in fact compliant with approval conditions when they respond appropriately to these exceedances.)

It is also recommended that a clear notification process be attached to any criteria for non-compliance and proponents given an opportunity to explain and/or justify the issue with performance. Preferably, the system will involve a preliminary notice or warning, to allow proponent to respond with appropriate mitigation, and an appeal process, should a non-compliance notice be served.

9. Policy Review

Given the strong intersection between Northern Territory and Commonwealth biodiversity offsets requirements, reviews should be undertaken soon after Commonwealth policy has been updated to ensure ongoing interoperability.

The MCA NT also recommends that Commonwealth biodiversity offsets reviews and amendments be tracked by the NT Government, to determine implications for the NT Policy and Guidelines, so that these can be amended, if appropriate, to maintain consistency with the Commonwealth biodiversity offsets framework.

Specific comments on the Draft Technical Guidelines

The MCA NT acknowledges that in this current round of consultation, the Government is seeking feedback only on the Policy at this stage, with industry and other stakeholders to be provided with another opportunity to provide final feedback on the Guidelines once the Policy has been endorsed, in 2023.

Feedback provided in this submission from the MCA NT should therefore be considered preliminary, with a more in-depth review of the Guidelines once they are completed and re-released for further consultation next year.

The MCA NT generally agrees with the intent of the technical guidelines to provide greater guidance and clarity regarding application of the Biodiversity Offsets Policy. Some items require greater clarification, further engagement and coordination with the Commonwealth Biodiversity Offset Policy.

It is recommended that further detail be provided on security of tenure or landholdings throughout, as this is an important consideration under other offset policy, including the EPBC Act and international guidance.

4.2 Suitable habitat condition for offsets

Figure 1. Habitat condition continuum and suitability for offsets

Text in the dark red fields of Figure 1 on the top of page 7 is very hard to read. When the Guidelines are revised and re-released in 2023, these deep red fields should be replaced with a more transparent colour.

Also, the meaning and significance of the dark blue up and down arrows is not clear. The next release of the Guidelines should explain what they are conveying.

4.3 Potential improvement in habitat condition through threat management

The second paragraph provides a very brief description of the derivation of numerical values used in the offset calculator, including that 'threat management could result in a 15-20% improvement in habitat condition in habitats in the monsoon biome and 10-15% improvement in an arid biome habitat.'

More detail should be provided here or in an appendix on how these key metrics were determined, including how the scenarios that were considered by experts were run, as part of the 'expert elicitation' approach used to develop the numerical values used in the offsets calculator.

7. Offsets calculator

The second dot point indicates that the 'loss that is being offset is considered to be of habitat in the best possible condition.' The MCA NT disagrees with this approach which will over-estimate residual impact if the impacted area is in fact already subject to a degree of degradation. Instead, it is recommended that the loss be based on the actual condition of the area to be offset.

The MCA NT recommends that the NT Offset Calculator align as much as possible with the Commonwealth Calculator

7.1.1 Key metrics

Under 'Potential gain' (top of p 10, 2nd paragraph), the Draft Guidelines state 'As described in Section 4.3, the potential gain that can be achieved through effective threat management is...' shouldn't this be 'the maximum potential gain'?

8. Offset calculation scenario

At the end of the line under 'Calculation of minimum offset area,' the 1.2 figure for 'risk requirement' should be explained as reflecting a 10% gain factor for each of the two listed threatened species in the scenario, hence 1.2 instead of 1.1.

Table 2. Territory habitat types and priority threats in the monsoonal north biome

A glossary should be included that defines acronyms used in these tables, including NVIS and MVSG and some of the technical terms (e.g. hypohoreic zone).

Why aren't feral cats included as a recognised 'priority threat,' like feral ungulates (which are included)?

Schedule 2. Priority threat benchmarks

The term 'transformative threats' (in the first paragraph) should be defined.

On page 29, under the 'Management benchmarks and minimum areas' column, the Management Benchmark for Woodland habitats merely indicates '25%.' Text is missing here, e.g. '> 25% Unburnt > 3 years' or '< 25% burnt/year.'

Pages 30-32. Shouldn't feral cats be included as threat for the Monsoonal North biome?

Page 36, right column, bottom row: the statement 'aquatic habitats are generally more isolated/closed systems from a management perspective than terrestrial habitats.' This would not be true for rivers and streams, which are also aquatic habitats.

Schedule 3. Indicative habitat condition characteristics for selected habitats

Use of opaque red for 'Ecologically compromised' condition. As indicated above, it is very difficult to read the text in these squares. A more transparent colour should be used to improve legibility.

Table 1. Top End lowland Eucalypt woodlands on various substrates (monsoonal biome) and Table 2. Top End Eucalypt woodlands on plateaus, hills and ranges. Shouldn't feral cats also be included as a priority threat?



ADDITIONAL COMMENTS AND QUESTIONS FROM MEMBERS

7.2 Offset location

Offsets in areas of Aboriginal Freehold Land

- What input have the land councils had in development of the Biodiversity Offset Policy and Draft Technical Guidelines? More clarity is required to establish the applicability of offsets when organisations are already committed to land management, rehabilitation, restoration and relinquishment as required by respective Aboriginal Land Freehold Land Agreements.
- Will offset 'credits' or the need for offsets be considered when mining organisations may already have existing land research, land management and/or ranger programs in place to manage interaction with the IPA or other conservation or protected areas?
 - An example of this is the Tanami Regional Biodiversity Monitoring (TRBM) programme which is a strategic investment commitment aligned with the Tanami Desert Ten Year Plan (TYP), with a framework of numerous stakeholders in partnership with the University of Queensland Centre for Social Responsibility in Mining, to monitor biodiversity status and threats/changes to the adjacent IPA.
- The resourcing of Indigenous rangers over the timeframes identified in the Biodiversity Offsets Policy and Guidelines is an issue and hence meeting the objective of including them may be a challenge.
 - There is a risk associated with having agreements with rangers over an extended timeframe, such as 15 or 25 years, to meet the requirements of the guideline, when the viability of maintaining ranger programs is highly dependent on funding which cannot necessarily be confirmed for the same period.

7.3 Suitable habitat condition

- The Policy does not accommodate targeting either end of the habitat condition spectrum, i.e. heavily degraded, low-diversity habitats or high diversity, self-sustaining ecosystems relatively free of anthropogenic impacts.
 - It is worth considering that ecological restoration of agricultural land is a potential offset applicable in the Western Australian and Federal contexts and useful for establishing and linking wildlife corridors to conservation areas.
 - An example of this is the Newmont Boddington Gold Mine 470 ha Ecological Restoration Offset which seeks to link an established Conservation Covenant area with State Forest area. The 470 ha area was originally used for cropping and grazing with scattered pockets of remnant vegetation and has incorporated use of analogue sites to recreate pre-farming landscapes. The work was originally guided by a panel of experts with application of the principles derived for Society for Ecological Restoration Australasia (SERA).
- The omission of high quality, diverse habitats for use as offsets will potentially be an issue for areas such as the Tanami Gold Mine where the operation is within and adjacent to habitats and ecosystems largely free of impacts from pastoral grazing and agriculture practices.
- The Guidelines also state that offsets should be within the same biome and within the same Indigenous estate. At a meeting convened by the MCA NT on 7 November 2022 with the Department of Environment, Parks and Water Security (DEPWS), DEPWS representatives indicated that the offsets should not deviate from the Guidelines; however, 'special cases' might be considered by a panel of experts established to consider such cases.

- Establishing such a panel is recommended, as this would allow flexibility to allow for offsets that are more appropriate or achievable for cases where the Guideline requirements cannot be met or where an alternative to requirements might be more practical and outcomes more likely to be achieved. Having an alternate process, such as panel consideration of special cases, should not be particularly resource-intensive, as DEPWS indicated that it did not expect a significant number of projects to require offsets. This would ensure both practicality for the proponent and best sustainable outcomes for the NT. If this model (of having a panel to assess 'special cases') is adopted in the Policy or Guidelines, more information should be provided on its establishment and functions.

7.6 Timeframe for offsets

- The Policy and Guidelines do not require an offset to be implemented in perpetuity. This suggests that there is no need to establish conservation covenants or alter land titles for areas of land identified as offsets. More information is required, as Commonwealth Matters of National Environmental Significance (MNES) require establishment of protection mechanisms in perpetuity. In addition, it does not make sense that the government would require a proponent to invest 25 years of resources, study and capital improving the condition of an offset area only for it to revert back to a pastoral, grazing or mining area after this period. The Draft Policy and Guidelines should be amended to make very clear that what is expected, at the end of funded offsets program, is at least a more biodiverse, self-sustaining habitat or ecosystem.
- What mechanisms are in place to ensure an offset area is managed for the required period should the mine change ownership, go into care and maintenance or close within a much shorter timeframe than forecasted?

Offset criteria

- Experience shows that the biggest hurdle for companies is the establishment of achievable offsets with clear objectives and criteria for success. The establishment of appropriately comparable sites is required by the Guidelines; however, this is not always possible. Though not widely and or publicly acknowledged, much of the research on ecology of endangered species comes from work completed by mining organisations that are required to generate knowledge and understanding of the species or ecosystems they are trying to manage, because of a lack of existing information. As a result, companies and government often enter into a agreements based on assumptions without adequate data that can only be obtained only through extensive fieldwork and research over time. As a result, offset programs need to be flexible and able to be adjusted based on monitoring results and information generated during the course of restoration and/or investigation of a habitat or ecological community.
- To meet requirements outlined in the Guidelines, offsets will likely require identification of large tracks of lands comparable to those in the area(s) of significant residual impact. The other challenge will be monitoring such large-scale areas that are likely to be subject to heterogeneous conditions such as wild fires, feral animals, etc.
- Although the issue was raised at the 7 November meeting, the DEPWS representatives did not make clear how DEPWS will assess or manage offsets that are undertaken by a group of proponents.

Other questions to be addressed in revising the Draft Policy and/or Guidelines

- What is the proposed mechanism to secure offset land, and will it be linked to the title of the land? Is there any mechanism to use non-freehold land as an offset?
- How do proponents relinquish the requirement to hold an offset or sell offset land? Does the end of the threat maintenance period (approved under a biodiversity offset plan) correspond to the completion point of the offset liability and/or will there be specific relinquishment criteria?

- Is the proposed maximum potential recovery value (e.g. 15% in arid biomes) intended to be set or variable (i.e. site-specific)?
- Will the cost values be proposed by the proponent based on suggested values (similar to the security calculation spreadsheet), or administered and imposed by the Department?
- Is it expected that the policy will be accredited by the Commonwealth? Does the Department intend to work towards aligning with Commonwealth expectations to ensure accreditation to the greatest degree possible?
- The policy is intended to apply to residual impacts - how will offsets interact with rehabilitation following impact (i.e. will rehabilitated land be considered “mitigated impact” or will the rehabilitation only account for 20% ecological value increase)?
- Will the offsets policy include transitional arrangements (e.g. projects ‘referred’ under the NT Environment Protection Act 2019 prior to finalisation of the policy will not require offsets)?