



**NORTHERN  
LAND COUNCIL**

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

***Greenhouse Gas Emissions Offsets Policy and Technical  
Guidelines***

**November 2021**

## NLC Recommendations

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## Introduction

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

However, a lot of key policy instruments remain incomplete and under development. As such, the NLC concludes that at the present time it would be difficult for regulators to accurately and effectively assess potential Greenhouse Gas (GHG) emissions risks (individual projects and cumulative), and to set and enforce offset requirements.

An effective NT offset policy framework is essential; however, in its incomplete state we believe it provides more risks than benefits to Aboriginal people. As such, the NLC cannot support the draft Policy until the significant issues raised in this submission are addressed and all the supporting elements of the NT Offsets Framework are completed.

*Recommendation 1: The implementation of this Greenhouse Gas Emissions Offsets Policy and Technical Guidelines should not occur until the issues raised in this submission are addressed and the supporting policy instruments identified in the NT Offsets Framework have been developed.*

### **Aboriginal people, lands and established carbon abatement industry**

The NT context provides unique challenges and opportunities. One of the fundamental differences between the NT and other jurisdictions is tenure, 50% of the lands and 85% of the coastal intertidal waters are owned and managed by traditional Aboriginal owners, who make up 30% of the population, and live in remote and very remote areas.

Traditional Owners and Aboriginal ranger groups are already significant players in the NT's GHG offsets economy. Aboriginal savanna carbon is a major emerging industry that has rapidly expanded from the successful West Arnhem Land Fire Abatement (WALFA) project (2006) to 32 Indigenous-owned savanna fire management projects across north Australia today. In the NT Aboriginal groups have generated around 80% of the total Australian Carbon Credit Units (ACCUs) (Indigenous Carbon Industry Network, *pers. comm*, 18 October, 2021).

When Aboriginal people and their representatives have a genuine say in policy and planning that affect them, an increase in employment and business opportunities and better life outcomes are achieved.

As this policy and other policy instruments related to offsets are developed, implemented and reviewed, we urge the NT Government to continue to engage with Land Councils and build and maintain formal collaborative relationships to work together in developing all aspects of the framework, including governance, targets, implementation guidelines, monitoring and evaluation, compliance and reporting. This is essential given the extensive landholdings of Aboriginal people; and the disproportionate impact that development projects have on them and their country.

There is also opportunity to draw on Aboriginal knowledge to identify GHG offset 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.

## About the Northern Land Council

The NLC was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976*, 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 Owners<sup>1</sup> 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.

## Overarching comments

### Intersection with large emitters policy

The very high caps in place for both industry and land clearing under the Large Emitters Policy<sup>2</sup> mean offsets might rarely come into play, making this Policy very weak. This goes against the principles of emissions reduction (avoid/reduce/offset) from new developments. The ICIN recommends that the caps on the Large Emitters policy need to be immediately halved if they are to capture even the biggest polluters in the NT.

*Recommendation 2: That emissions caps and an explanation of the science and Climate Change policy response underlying the setting of those caps be included in this Greenhouse Gas Emissions Offsets Policy document.*

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<sup>1</sup> 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.

<sup>2</sup> Office of Climate Change, "Greenhouse Gas Emissions Management for New and Expanding Large Emitters" (NTG, August 2021), [https://depws.nt.gov.au/\\_\\_data/assets/pdf\\_file/0008/1041938/ntg-large-and-expanding-emitters-policy-2021-version-1.0.pdf](https://depws.nt.gov.au/__data/assets/pdf_file/0008/1041938/ntg-large-and-expanding-emitters-policy-2021-version-1.0.pdf).

## Incomplete Offset Policy Framework

Key elements of the NT Offsets Framework remain under development and others are unclear or possibly absent. As a result, a number of questions that arose during our review of this Policy could not be answered by reading this policy document, and from a regulatory perspective will be very difficult for the NTG to assess the GHG emission risks posed by individual large developments or cumulatively by smaller GHG emitters.

The NLC believes that to be effective, this policy needs supporting policy instruments and clearly defined, evidence-based and time bound emissions reductions targets and therefore lack a holistic policy approach in combination, with clear offsets targets and an overarching NT climate change policy is a concern for the NLC. Responding to climate change will be complicated and require an overarching and coordinated policy response<sup>3 4</sup> that considers a wide range of social, cultural, economic and environmental risks as well as potential benefits.

To align NTG offset policy with Australian best practice, in further refining this Policy and the NT Offsets Framework the NTG would benefit from reviewing the Queensland Offset Offsets Framework and related policy instruments, if this has not already occurred, for example:

<https://www.qld.gov.au/environment/pollution/management/offsets/review>.

### Offsets criteria

The NLC believes the policy, which also acts as technical guidelines, could be strengthened and made more useful to proponents by explaining when offsets will not be required and outlining criteria for when they will be applied, For example, ‘...for approval the decision maker will require emissions to be an approval condition where one off, or cumulative emissions over -time exceed...’.

*Recommendation 3: Criteria for when offsets will and will not be required should be included in this Policy.*

### Role of Aboriginal lands in NT offsets policy

Aboriginal people are major land holders and managers in the NT and therefore play a lead role in providing offsets and carbon sinks in the NT. Given the active engagement that Aboriginal people and their lands already play in NT offsets, and the significant potential for this to expand, it is disappointing that this is not recognised in the Policy.

*Recommendation 4: Including text that outlines the role that Aboriginal people, their lands and existing Aboriginal carbon industries currently and will continue to play in the future should be included in this Policy.*

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<sup>3</sup> “An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems,” Climate Change and Land (IPCC, August 7, 2019).

<sup>4</sup> Ellin Lede, “Increasing Climate Resilience in the Northern Territory: Harnessing Opportunities and Mitigating Climate Risk: A Response to the Northern Territory Government’s Climate Change Discussion Paper.” (Darwin, 2018).

## Section specific comments

### Purpose of the greenhouse gas emissions offsets policy and technical guidelines

The NTG requirement for an offset policy is partly a response to the NTG accepting the recommendations from the Pepper Inquiry<sup>5</sup>. Recommendation 9.8 from this Inquiry states:

*‘That the NT and Australian Governments seek to ensure that there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in Australian.’ (p.217)*

Notably there is no reference to either the Pepper report or this recommendation in the Policy. Similarly, the NTG Scientific inquiry into hydraulic fracturing: Implementation Plan<sup>6</sup>, which details the actions the government will take to act in response to the Pepper Inquiry recommendations, has not been mentioned.

*Recommendation 5: That any relevant links to the Pepper Inquiry and its recommendations and the Implementation Plan are included in this Policy and related Offsets Framework elements.*

### The NT Offsets Framework

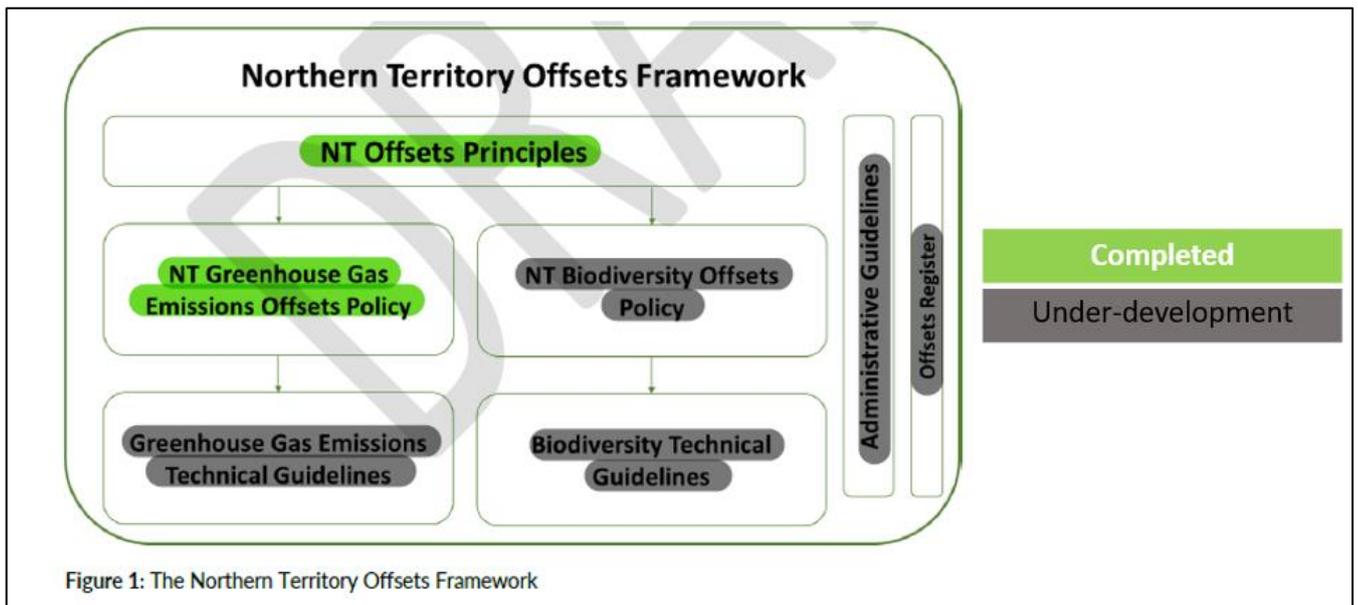
The inclusion of the NT Offset Framework diagram (Figure 1) is useful in making the relationships between the various policy instruments easier to understand. However, these relationships, the individual contribution of each instrument to the overall offsets policy, their aims and ultimately their contribution to an Emissions Reduction Strategy is not clearly stated. Similarly, the roles and responsibilities, that is who assesses emissions risks, sets offset conditions tied to approvals, and regulates the use of offsets and their outcomes, is not clear. The diagram below illustrates NLC’s understanding of aspects of the framework still in development. We note some of the gaps we have identified may be addressed in these future documents.

The NLC recommends that this section of the Policy explicitly instructs users that the Policy needs to be read in conjunction with the separate document *Northern Territory Offsets Principles*, with an appropriate citation showing people where to find this document. It should be clearly stated that offsets must be applied in accordance with the Principles and with the more detailed information provided in that document.

*Recommendation 6: That the relationships between the policy instruments within the Offsets Policy Framework and the roles and responsibilities of NTG Agencies in the risk assessment and development approval process are more clearly described.*

<sup>5</sup> Rachel Pepper et al., “Scientific Enquiry into Hydraulic Fracturing in the Northern Territory: Final Report” (Darwin: Scientific Enquiry into Hydraulic Fracturing in the Northern Territory Panel, March 2018), <https://frackinginquiry.nt.gov.au/inquiry-reports?a=501716>.

<sup>6</sup> Northern Territory Government Department of Chief Minister, “Scientific Inquiry into Hydraulic Fracturing: Implementation Plan” (Darwin: NTG Department of the Chief Minister, July 2018), [https://cmsexternal.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/673123/fracking\\_implementation\\_plan.pdf](https://cmsexternal.nt.gov.au/__data/assets/pdf_file/0004/673123/fracking_implementation_plan.pdf).



## Use of emissions offsets in the NT

The introduction of this Policy, as part of the larger NT Offsets Policy Framework, offers an opportunity to support the expansion and development of the local Aboriginal Carbon Industry and Aboriginal ranger groups. In addition to playing a lead role in the delivery of carbon offsets nationally, ranger groups provide a key employment pathway in remote communities, with 80 percent retention levels, a young workforce, and a high demand exceeding the availability of funded positions. As noted in our previous submission, there is potential to increase capacity and employment outcomes, build the wealth of Aboriginal carbon farmers and develop partnerships with the correct policy drivers on GHG and biodiversity offsets.

The framework provides an opportunity to prioritise offsets that deliver additional social benefits in the NT. This would also align with other NT Government policies to support Aboriginal development on their own estate. Where offsets can be purchased in the same region as the development project, this could also help mitigate negative impacts of development activities.

We emphasise that it is essential that ranger groups, Traditional Owners, native title holders and Land Councils continue to be involved in the ongoing development, implementation and ultimately the monitoring and review of the offsets framework outcomes.

*Recommendation 7: That priority be given to develop sustainable carbon offsets initiatives and partnerships that have a demonstrated ability to provide additional social, cultural, environmental or economic benefits to Aboriginal people.*

## Policy application and scope

It is unclear from the Policy the extent to which the Minister has decision-making powers over different aspects of the offsets process, including whether or not an offset is required. It needs to be clarified who the decision maker is with respect to both triggering the need for offsets as a condition for development approval and the specific offset requirements. This is however clearly stated in the Offset Principles (p.7); which highlights the need for Recommendations 2, 3 & 6 in this submission to be adopted.

## Relationship with Commonwealth Safeguard Mechanism

The NLC believes that the policy should exclude Safeguard Mechanism Credits proposed by the Australian Government as a potential form of alternative emissions offsets given that they are not additional, and therefore not a real offset.

## Target for emissions offsets

The absence of NTG targets, aside from the longer-term 2050 net zero greenhouse gas emissions target, makes it very difficult to understand how the offsets process can be applied. In particular, it is unclear how the costs and benefits to the NT and therefore risks will be calculated, made conditional in development approvals, monitored and regulated.

As international and domestic pressures<sup>7,8</sup> increase on the Federal Government, States and Territories to set interim targets for emissions, to facilitate reaching the 2050 target of net zero, it is a timely reminder for the NTG that more ambitious short and medium-term targets and related action and implementation plans are needed. Although additional targets are not the focus of this particular policy, the NLC highlights this deficiency, as this policy cannot successfully work without them.

*Recommendation 8: That a NT Emissions Reduction Strategy, including short, medium and long-term NT emissions targets, be developed and included in the NT Offsets Framework. The Offsets Policy should not be implemented in the absence of this Strategy.*

## Types of emissions offsets

The NLC has significant concerns about the proposed use of indirect offsets, as it is unclear how they will be identified, measured and regulated. Indirect offsets appear to be unique to this Policy and not guided by any existing State or National guidelines or regulations. Given these uncertainties, the NLC is concerned that the use of indirect offsets could both fail to reduce the impacts of NT generated GHG emissions and potentially undermine the existing Indigenous Carbon Industry.

*Recommendation 9: That until technical guidelines and a regulatory process are in place for indirect offsets, they are not used in the NT and should be removed as an option in the Policy.*

## Regulating Offsets

There is a reasonable level of explanation in this document about when offsets can be applied, but the risk assessment and regulatory process remain unclear and appear to still be under development. For a technical guidelines document it lacks some key details, such as how a developer or the EPA will calculate potential emissions and therefore identify suitable offsets.

There is a heavy reliance on Australian Government (AG) policy instruments, in particular guidelines and regulations administered by the Federal Clean Energy Regulator (CER). The application of these national policy instruments is very useful for ensuring regulatory consistency and there are CER guidelines that are purpose built for NT conditions (e.g. savanna burning guidelines). Some caution is warranted though in assuming CER guidelines and regulations will satisfy all of the NT offsets regulatory needs. This increases the

<sup>7</sup> "The Right Thing to Do': NSW Sets Ambitious Emissions Target despite Coal Industry Growth, Federal Deadlock," *ABC News*, September 28, 2021, <https://www.abc.net.au/news/2021-09-29/nsw-new-carbon-emissions-reduction-target-for-2030/100498444>.

<sup>8</sup> Australian Associated Press, "Business Council Shifts Climate Position to Back 50% Emissions Cut by 2030," *The Guardian*, October 9, 2021, sec. Australia news, <https://www.theguardian.com/australia-news/2021/oct/09/business-council-backs-50-emissions-cut-by-2030-to-avoid-damaging-costs-for-australians>.

requirement for a well-designed monitoring, reporting and evaluation process embedded and enforced within the NT Offset Framework.

*Recommendation 10: That the effectiveness of the offset regulatory process to reduce net NT GHG emissions is monitored, publically 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.*

The NLC is concerned about the scope for large developers to use offsets generated outside the NT – both interstate and international. While there are requirements in the policy to try and minimise the extent to which non-NT generated offsets will be allowed, the NLC expects it will be very difficult for large emitters to source offsets (both direct and indirect) within the NT. This raises lots of questions about: (a) the benefits to the NT and particularly land owners where large emissions originate from; and (b) the extent to which the NTG or AG can monitor and regulate offsets which are outside the jurisdiction that approved the development. We acknowledge these questions may be answered in the *Administrative Guidelines*, which are still under development.

The NLC believes that to be consistent with the concept of **Ecologically Sustainable Development (ESD)** and the stated preconditions in the Offset Principles, additional detail is required in this Policy, and/or supporting policy instruments, to explain how projects that may significantly alter the NT’s GHG emissions, will consider the potential risks to Aboriginal people and their values; where their values include social, cultural, environmental and economic development considerations.

*Recommendation 11: That the concept of Ecologically Sustainable (ESD) and the preconditions requirements described in the Offset Principles be explicitly mentioned in this Policy.*

## **Monitoring, Evaluation, Reporting and Improvement of the Policy**

Given the combination of elements missing from the framework or under development; the effects of the Large Emitters Policy on the application of this Policy; and the absence of clear and measurable short and medium term emissions reduction targets, it is difficult for the NLC to understand how a MERI program would assess emissions reductions and progress toward net zero by 2050.

## **Compliance and Enforcement**

The NLC believes that, to be effective, compliance and enforcement need to be undertaken by a body that is more independent of government. This would improve the environmental regulatory process, better align this Policy with the Offset Policy Principles and make the offset determination and approval process more transparent.

*Recommendation 12: That the role of the NT Environment Protection Authority (EPA) in relation to offsets be significantly strengthened; this should include the Minister delegating powers to the EPA to assess and determine whether or not an offset is required.*

## **Review of the policy**

*Recommendation 13: In addition to reviewing the policy in two years, a commitment to ongoing reviews (e.g. every five years) is included. This will enable the policy to respond to changes in the offsets environment.*