

Northern Territory Offsets Principles

Part of the Northern Territory Offsets Framework

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1. Introduction

The Northern Territory (NT) is incorporating an Offsets Framework into its broader environmental protection regime, in recognition that when appropriately used, offsets are a tool that can add value to an effective environmental regulatory system.

This document explains the design of the NT's Offsets Framework (the Framework) and identifies the overarching Offsets Principles (the Principles) that are embedded within the Framework.

The Principles outline the foundations for the use of offsets in the Territory. Other more specific policies and guidelines, addressing the administrative and technical aspects of designing and implementing an offset, are integrated into the Framework as related but discrete components.

Comprising the Offsets Principles, Policies, Administrative and Technical Guidelines, the Offsets Framework assists in providing certainty and transparency for industry, the community and decision makers about the application of offsets in the Territory.

1.1. Offsets explained

Offsets are measures designed to compensate or "offset" the residual impact of an action or set of actions on the environment. The use of an offset is only considered when avoidance and mitigation measures have been exhausted and residual impacts remain. Offsets are used to compensate for these residual impacts and are intended to achieve long-term, secure and measurable environmental outcomes. Without the use of offsets, residual impacts from multiple projects will lead to a gradual, long-term, degradation of the Territory's environment.

There are different types of offsets currently in use around the world, reflecting the different types of residual impacts that may arise from a development action. The most commonly used are biodiversity offsets and greenhouse gas (GHG) emissions offsets.

Biodiversity offsets: are offsets designed to compensate for impacts on the environment or biodiversity at one site through activities elsewhere.

GHG emissions offsets: actions undertaken to reduce or absorb GHG emissions in one location/locations (e.g. via sequestering carbon in replanted forests) in order to compensate for an increase in GHG emissions produced elsewhere.

Offsets are not an all-encompassing solution to address challenges associated with environmental degradation, biodiversity declines and GHG emissions. Offsets are a tool that can assist in addressing residual impacts associated with development projects. Other important policy and regulatory drivers are also required to adequately address biodiversity decline, ecological conservation and restoration, climate change and emission reductions.

2. Northern Territory Offsets Framework

Section 125 of the NT's *Environment Protection Act 2019* (EP Act) provides a legislative power to require offsets from projects that have undergone environmental impact assessment or are subject to regulatory approval under another Act that has been prescribed in the *Environment Protection Regulations 2020* (EP Regulations). As part of this power, the Minister may establish an environmental offsets framework for use under the EP Act, or any other Act prescribed in the EP Regulations¹.

¹ No other Acts are currently prescribed in the EP Regulations.

The NT's Offsets Framework (Figure 1) comprises a number of components to provide guidance and certainty to proponents, landholders, offsets providers, decision makers and the community about the application of offsets in the Territory.

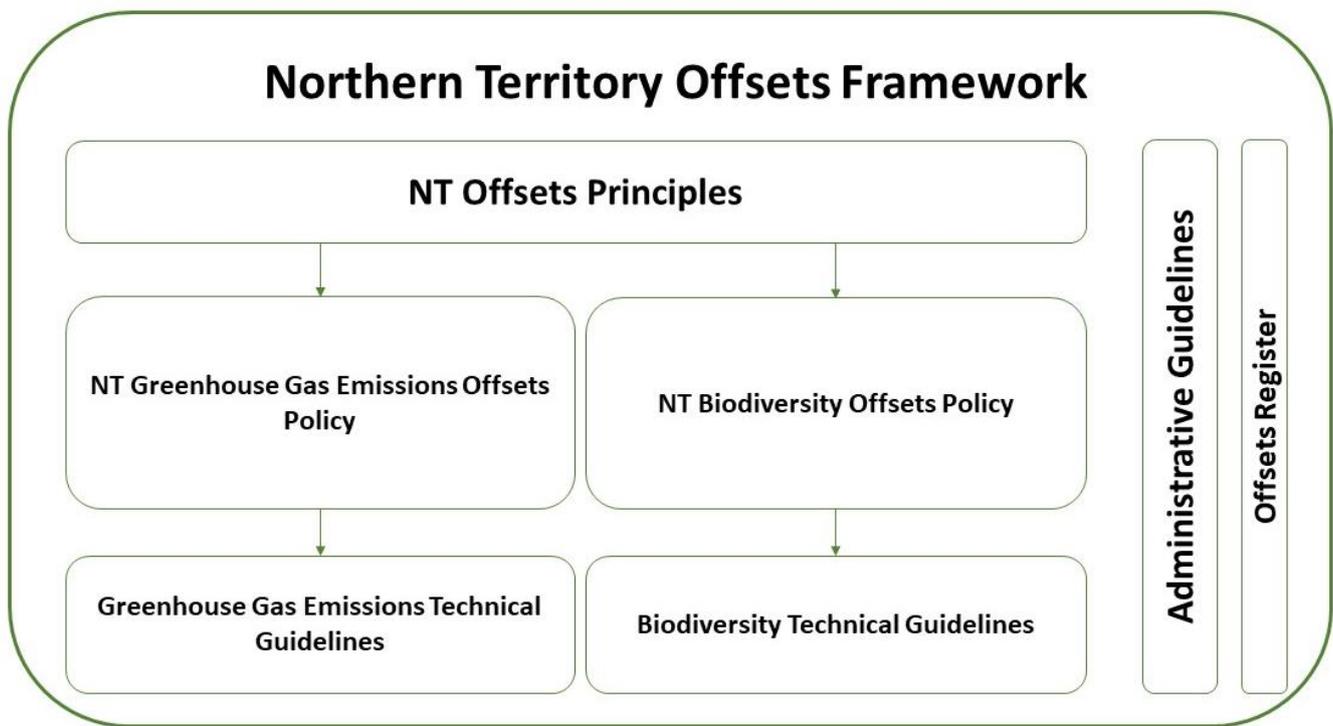


Figure 1: Components of the Northern Territory Offsets Framework

The Framework has adopted a principles based approach in order to have broad application across biodiversity and GHG emission offsets, and potentially other types of offsets as the evidence base and assessment tools become more sophisticated.

The Framework comprises separate policies for the different types of offsets. This reflects differences between the types of residual impacts and subsequent offset requirements, including the intended outcomes and practical application of offsets.

The Territory is applying a target-based implementation model that will be supported by the Framework's underlying policies and guidelines. The target-based implementation model will allow for a Territory-specific approach to offsets to enable improved environmental outcomes at landscape or regional scales. An Offsets Policy identifies target(s) that offsets should aim to contribute to. The targets are developed in consultation with stakeholders. The percentage of a target a specific offset should contribute to will be proportionate and adequate to address the residual impact.

The biodiversity targets allow offset designs to be strategic and focus on addressing the most serious environmental threats or those elements of habitats or biodiversity that are most threatened, valued or amenable to recovery across landscapes, rather than focusing on a singular habitat or species impacted by a project.

The Territory Government's objective is to move towards a low carbon economy, which is reflected in the target of net zero GHG emissions by 2050. Achievement of this objective will be guided by the Territory's

emissions reduction strategy and supported by the offsetting requirements established under the GHG Emissions Offsets Policy.

Technical Guidelines under the Framework will establish the specific methodology for determining the offset. They will provide a simple set of consistent and transparent rules to be used to 'calculate' an offset as it relates to a residual impact and identified target of relevance in the Offsets Policy.

Administrative Guidelines explaining the development, assessment and approval processes for an offset proposal, including expectations about offset outcomes and reporting obligations, will facilitate the operation of the Framework as a whole.

To ensure transparency about offsets that are applied in the Territory, an Offsets Register will be established to publicly identify agreed offsets and provide relevant information about the residual impact being offset, the offsets location and responsible parties.

3. Territory context

The Territory has a unique set of environmental characteristics that require a Territory-specific approach to offset implementation. These include:

- relatively intact landscapes which mean that biodiversity loss cannot generally be averted in the NT by simply 'locking up' an offset area. Rather, management of loss generally requires the reduction of pervasive threats such as inappropriate fire, weeds and feral animals, which is most effectively achieved at a broad landscape scale
- the fine-scale ecosystem mapping and habitat integrity metrics used in offset calculations in southern states are not available for the NT
- Aboriginal or pastoral freehold land makes up 95% of the Territory's land mass. The complexities associated with these land tenure regimes create challenges in securing land for conventional offsets, particularly in perpetuity, making it difficult for many potential offset scenarios.

These characteristics have informed the development of the Territory's Offset Framework, including adoption of the target-based implementation model.

4. When offsets may be required

Under the Framework, there are two statutory avenues where offsets may be required for a development activity. The primary avenue is that imposed under the EP Act following an environmental impact assessment of a proposed action. The secondary avenue is through a statutory approval process under another Territory Act, if that Act has been prescribed in the EP Regulations. In addition to the statutory avenues, voluntary offsets may be applied in the Territory should a proponent implement such an agreement as part of their corporate responsibilities.

4.1. Projects subject to environmental impact assessment under the EP Act

The Northern Territory Environment Protection Authority (NT EPA) assesses proposed actions that are likely to have a significant impact on the environment. In the NT EPA's Assessment Report of the proposed action, the NT EPA will identify any significant residual impacts - those impacts that have not been adequately avoided or mitigated by management measures for the proposed action.

To inform the NT EPA's recommendation to the Minister concerning whether a project should be granted an Environmental Approval under the EP Act, the NT EPA will consider the nature of the significant residual impacts identified in the Assessment Report and whether the use of offsets would be appropriate to adequately address the impacts. Should the NT EPA form the view that an offset is appropriate for a significant residual impact, the recommendation to the Minister would include advice to impose a condition on the Environmental Approval to require the proponent to offset the identified significant residual impact.

The final decision about whether or not to impose an offset condition on an Environmental Approval resides with the Minister responsible for the EP Act.

4.2. Projects not under environmental impact assessment

The Offsets Framework may be applied to other statutory approval processes under other Territory legislation should the legislation be prescribed in the *Environment Protection Regulations 2020*.

In instances where another piece of legislation has been prescribed in the EP Regulations, an assessment of the environmental impacts of the regulated activity could identify that the proposal is likely to have residual impacts that cannot be avoided or mitigated by the proposed management measures, and offsets in accordance with the Territory's Offsets Framework would be appropriate.

The final decision about whether or not to impose an offset condition resides with the authority responsible for the statutory approval under the prescribed legislation.

4.3. Voluntary offsets

When a proponent chooses to implement offsets to compensate for impacts of a project as part of their corporate responsibilities, the Offsets Framework and Principles provide useful guidance for a proponent to use as they develop any offset proposals. To allow public transparency, the proponent is encouraged to provide details of the offsets to the regulator so relevant details about the offsets can be recorded in the Offsets Register.

5. Preconditions to offsets

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.

5.1. The mitigation hierarchy must be rigorously applied

All precursor steps in the mitigation hierarchy must be appropriately applied before the use of an offset is considered.

In the design and assessment phase of a project, the proponent must demonstrate that all reasonable avoidance and mitigation measures have been applied and that there has been a thorough examination of lower impact and lower emissions alternatives. Management practices should first prioritise avoidance practices that prevent damage to environmental values and reduce GHG emissions. Mitigation measures

should be designed to drive improvements that can respond to outcomes and any advancements in technology and available management processes.

5.2. Offsets will not always be available or appropriate

Offsets are not a suitable alternative or replacement for a well-designed activity that avoids and mitigates impacts to the greatest extent possible. Not all residual impacts can be offset (for example, the irreplaceable loss of species or ecosystems). Offsets cannot be used to make acceptable an activity with unacceptable impacts, or where the uncertainty around impacts and/or mitigation is so great that the magnitude of the residual impact cannot be determined.

6. Northern Territory Offsets Principles

The Northern Territory Offsets Principles are the central component of the Framework and provide the overarching policy position for the use of offsets in the Territory. They reflect contemporary approaches to offsets while allowing the Territory's context to be considered.

The Principles are to be used to guide the design and development of all types of offsets to provide consistency and certainty to community, land holders, industry and businesses operating in the Territory.

6.1. The Principles

The Principles apply to offsets aimed at compensating for the significant residual impacts of an action subject to environmental impact assessment under the EP Act, the residual impacts of an action authorised through legislation prescribed in the EP Regulations, and voluntary offsets.

The Principles will be used to guide decision-making with respect to the adequacy (or not) of the measures proposed by a proponent to offset the residual impacts of their project.

1. Offsets must contribute to relevant Territory targets

Offsets must result in a benefit to the environment. In the Territory context, this is generally best achieved by management activities applied strategically at landscape or regional scales.

Offsets proposals must identify the Territory targets identified in the relevant Offsets Policy, explain the relationship of the target to the residual impact that requires offsetting, and identify the expected environmental outcomes arising from the offsets. Offsets should be proportional to the level of residual impact and incorporate measureable outcomes.

Offset actions with uncertain outcomes or outcomes which cannot be demonstrated to contribute to the delivery of the relevant targets will not be accepted.

2. Offsets must be designed to deliver maximum benefit to the Territory

Offsets must be designed to deliver against the identified relevant targets. This means that outcomes must generally be delivered in the Territory and be designed to deliver environmental, and wherever possible social, benefits in the affected region and to the communities impacted. To facilitate social and community benefits, it is expected that proponents engage with relevant communities in the development of any offsets proposals.

Offsets should be designed and implemented to ensure that responsibilities, risks and rewards are distributed in a fair and balanced way, respecting legal and customary arrangements including recognised rights of indigenous peoples and local communities.

Where offsets are not available within the Territory, the proponent will need to demonstrate lack of availability and negotiate an alternative approach that ensures benefits are maximised within the Australian context.

3. Benefits of offsets must be additional and secured

Offsets must be additional to what is already required under existing legislation and not already funded under another scheme. For example, offsets implemented within existing protected areas must clearly demonstrate that additional conservation outcomes will be secured. Remediation and rehabilitation activities required as part of developing, conducting and completing a development project, and any financial securities or environmental bonds held for the development project, are not offsets.

Offset activities should not displace or shift costs of other management activities being undertaken by local, Territory or Commonwealth governments, land managers or other entities that are aimed at achieving environmental, economic or social improvements.

Mechanisms for securing offsets will differ depending on the offsets. Long-term, legally binding approaches will be prioritised and required where available.

A proponent must be able to demonstrate it has (or will secure) the requisite management and technical capacity to deliver and maintain any offsets once the offsets proposal is agreed.

Offsets should last at least as long as the residual impacts of the development project. Measures which do not contribute to the Territory's offsets targets for an appropriate period are not acceptable offsets and will be considered mitigation measures.

4. Offsets must be knowledge-based and design must be responsive

The design and implementation of an offset is to be a documented process informed by sound science, including an appropriate consideration of Aboriginal traditional knowledge.

Offsets are to be applied within a framework of responsive management with management responses and corrective actions to be determined by best practice. Monitoring measures should include identifying progress towards the relevant target and allow for consideration and identification of any negative consequences that the offsets may be causing to allow for corrective measures to be applied.

Responsive management approaches that include monitoring, evaluation and adjustment thresholds should be reflected in offset proposals. Offset design should have inbuilt flexibility to allow management practices to respond to reported outcomes and adopt improved practices to ensure offsets deliver against relevant targets over identified timeframes.

5. Stakeholder engagement, disclosure and transparency is required

Transparent governance arrangements that include robust monitoring and reporting of offset outcomes by the proponent will be expected as part of sound offset design. Proponents will bear the cost of providing information about offset outcomes in a way that allows it to be made accessible to the public.

Offset proposals should demonstrate effective, transparent and appropriate engagement and negotiation of offsets with relevant stakeholders. Processes for community engagement needs to be flexible and undertaken locally and in a culturally appropriate manner.

Offsets will be subject to audit and compliance measures.

Approved offsets, including any associated performance reports, will be disclosed in a timely manner through the public Offsets Register established under the EP Act.

6. Duplication of offsets must be avoided

Residual impacts that are identified as requiring an offset under this Framework and an alternate offsets scheme will not be subject to duplicated offset requirements. Offset arrangements under this Framework that satisfy alternate offsets schemes are preferred.

An offset cannot be imposed under this Framework if the Commonwealth Government intends to impose an offset for the same or substantially the same matter that has been assessed in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* unless the Commonwealth agrees that the NT offset arrangement developed in accordance with this Framework is adequate to satisfy the Commonwealth's offset requirement.