

# Draft Northern Territory Offsets Policy December 2019 Consultation Summary

June 2020

<b>Document title</b>	Draft Northern Territory Offsets Policy December 2019 Consultation Summary
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<b>Date approved</b>	June 2020
<b>Document review</b>	Not applicable
<b>TRM number</b>	NTEPA2016/0004-072~0003

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Changes made</b>
1.0	June 2020	Department of Environment and Natural Resources	First and Final Version

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# 1. Introduction

The Northern Territory Government (the Government) is committed to developing an overarching policy framework to guide environmental offset arrangements in the Northern Territory (the Territory).

The Government released the draft Northern Territory (NT) Offsets Policy (the draft Policy) on 13 December 2019 for public consultation. The draft Policy proposed a principles-based approach to enable it to have broad application across a range of offsets types and outlined a set of principles to underpin decision making processes in relation to the use of offsets. It also outlined (at a high level) the process and requirements for offset design, assessment and approval. In addition to the draft policy the Government proposed a target based implementation model, based on the concept of offsets contributing to the achievement of environmental targets developed for the Territory at regional or Territory-wide scales.

The purpose of consultation on the draft Policy was to facilitate community and stakeholder input on the overarching policy framework for offsets in the Territory in order to inform the next steps in the process to develop a final NT Offsets Policy. The consultation process included targeted stakeholder meetings across the Territory, a formal request for written submissions, and an online survey through the 'Have your say' website. Consultation closed on 14 February 2020.

Fifty two people from 33 different organisations participated in workshops held in Darwin and Alice Springs throughout January and February 2020. Fourteen people completed the online have your say survey and 20 written submissions were received. Stakeholders involved in the consultation process represented industry, business, peak bodies, not-for-profits, community services groups, universities, land councils, government departments, Aboriginal land management associations, environmental groups, commercial enterprises and the general public.

## 2. Consultation Outcomes

Consistent feedback was received on some key areas throughout the consultation process. These have been categorised into the following broad subject areas:

- the overall policy intent
- the offsets principles
- biodiversity and greenhouse gas (GHG) emissions (carbon) offsets
- transparency and administrative issues
- targets and technical considerations
- further public consultation and implementation, and
- alignment with the Commonwealth.

### 2.1. The overarching policy intent

Most of the submissions received identified that the draft Policy was lacking in detail and therefore did not provide a clear policy position. While submissions supported the purpose of the draft Policy, others stated that it was too focused on enabling development, rather than biodiversity conservation, and that was at odds with what an offsets policy should be. There was also a view that the draft Policy had a greater focus on biodiversity offsets and limited provision for GHG emissions offsets.

In addition to concerns about the draft Policy's messaging, a number of submissions identified that the relationship of the Territory's offsets policy to other Government policies and the new *Environment Protection Act 2019* (EP Act) was not entirely clear. Submitters noted that the draft Policy missed an opportunity to create these synergies.

Some submitters articulated an expectation that the offsets policy should be about addressing climate change and GHG emissions reductions more broadly, and were critical that the draft Policy failed to deliver on these matters. These submissions suggested identifying a clear link in the offsets policy to the Government's climate change response strategy and any emission reduction targets to make the relationship between the offsets policy and these other policies clearer. These submitters considered the draft Policy could be improved by being clearer on how the offsets framework sits within the Territory's broader environmental regulatory and policy regime.

### 2.1.1. Response

The Government does not consider the use of offsets to be an all-encompassing solution to address challenges associated with environmental degradation, biodiversity declines, climate change or GHG emissions. Offsets are a regulatory tool that can assist in addressing residual impacts associated with development projects. The Government recognises that other important policy and regulatory drivers are required to adequately address biodiversity declines, ecological conservation and restoration, climate change and emission reductions more broadly.

It is recognised that further detail is required about aspects of implementing offsets in the Territory, and that there are other important policy and regulatory drivers that are intended to provide protection and management of the Territory's natural environment, address climate change and facilitate emissions reductions. To provide greater clarity about this context, the draft Policy has been renamed the Northern Territory Offsets Principles. The Principles will form part of a broader Northern Territory Offsets Framework (the Framework). The Framework sits within the Territory's broader environmental regulatory regime, which includes the EP Act and the 'Northern Territory Climate Change Response: Towards 2050' (the Climate Change Response; in draft), amongst other things.

Section 125 of the EP Act provides the legislative power to require offsets from projects if it is considered appropriate, and the EP Act also provides that the Minister may establish an environmental offsets framework for use under the EP Act, or any other Act prescribed in the *Environment Protection Regulations 2020*<sup>1</sup> (EP Regulations).

The Climate Change Response is the Government's strategic policy commitment that identifies the Territory's target to transition to a low carbon economy and reduce GHG emissions to net zero by 2050, and provides guidance to address climate change adaptation initiatives.

The Framework will comprise a number of components including the Offsets Principles, a Biodiversity Offsets Policy, a GHG Emissions Offsets Policy, Technical Guidelines for each offset policy, and Administrative Guidelines. Further work and targeted stakeholder consultation will be undertaken to develop and finalise the Biodiversity Offsets Policy and GHG Emissions Offsets Policy and supporting material. Agreeing to the broad Framework and Principles will provide the basis for further work on these components.

## 2.2. Offsets Principles

The principles-based approach and principles suggested in the draft Policy were generally supported by all stakeholders. Some stakeholders requested greater clarity on how the principles will be applied throughout

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<sup>1</sup> No other Acts are currently prescribed in the EP Regulations.

the design and assessment stage of offsets proposals, and greater certainly that offsets requirements will not be duplicative with other offsetting schemes.

A few of the submissions made suggestions to amend the principles to provide greater consistency with peer reviewed and published literature on offsets principles, with a number of submissions making specific suggestions to improve the principles by ensuring concepts such as equivalence, proportionality, net gain, additionality, like for like, direct/indirect, perpetuity and permanence were clearly captured within the intent of the policy. In some cases, submitters thought that there should be application of the precautionary principle with a greater emphasis on avoidance and mitigation measures.

In some instances there were differing views in the feedback provided on the principles, with concern existing about the principle of additionality potentially limiting offset opportunities, particularly on country by Aboriginal rangers, by not allowing an offset to add value to existing projects. Other submitters were strenuously against any flexibility in the principle of additionality citing concerns about cost shifting and a failure to deliver improved environmental outcomes. Likewise, there were differing views in allowing offsets designs to be flexible and responsive – with some stakeholders emphasising the need for offsets to be responsive to allow for changes in circumstances, while other stakeholders viewed flexibility as a potential risk to overall offset delivery.

There were also mixed views in terms of stakeholder engagement and the level of community participation in offset design, decision making and delivery. While all stakeholders agreed with the inclusion of stakeholder engagement requirements and were generally supportive of the community being involved in decision-making processes, some submissions raised concern that the scope of community involvement appeared very broad and may extend to involvement in decision-making. It was stated that specialist ecological considerations would be required to inform decisions, particularly with regards to biodiversity offsets, and the vast majority of stakeholders would not be likely to have this expert knowledge. Some submissions also raised general comments about engagement during environmental impact assessment processes, and potential duplicative requirements for offsets.

A number of submissions provide direct suggestions for revised wording of the principles, with some submissions stating that the language used was opaque and open for interpretation. Suggestions to include some additional principles were also made.

### 2.2.1. Response

A number of changes have been made to the draft principles to take into account the feedback received and to improve the language used to provide greater clarity and certainty, particularly in relation to the application within the Territory's context of key offset concepts, such as equivalence. Not all suggestions or alternate wordings were adopted in the revised principles provided in the Framework as they were considered unnecessarily duplicative or not appropriate.

The Government considers that offsets must be additional and able to be responsive to observed outcomes to ensure beneficial environmental outcomes for the Territory are achieved. To encourage Aboriginal land owners to access all the potential benefits that an offset market in the Territory could provide, a nuanced approach to additionality may be appropriate if it is recognised that there are indirect social benefits that will arise from the offsets. Any such arrangements would be transparently reported and align with the Biodiversity or GHG Emissions Offsets policies developed in consultation with stakeholders and the Framework's Administrative Guidelines.

To make it explicit that the application of offsets will only ever be considered after avoidance and mitigation measures have been applied, and that in some instances the precautionary principle will take precedence and the use of offsets will not be considered appropriate, two principles (principles two and

three in the draft Policy) have been made preconditions to offsets in the Framework. These preconditions align the Framework clearly with the EP Act that requires consideration of the precautionary principle and the environmental decision-making hierarchy (avoid, mitigate, offset) in decisions made under the legislation.

Other changes have been made to the principles to clearly identify that transparency and reporting are of fundamental importance for offsets in the Territory, and that an important component of transparency requirements is engagement with relevant stakeholders. The Framework's principles provide the clear intent of stakeholder engagement requirements, while not being overly prescriptive, to allow proponents to determine the most culturally appropriate and time responsive manner to engage relevant stakeholders.

A new principle that specifically states that duplication of offsets for the same residual impacts cannot occur has also been included to ensure certainty.

Detailed information that builds on the application of the principles in terms of development of offsets designs, proponent responsibilities, and stakeholder engagement will be provided in the Framework's Administrative Guidelines.

## 2.3. Biodiversity and GHG emissions offsets

There was a consistent theme in the feedback that the draft Policy was more focused on biodiversity offsets, with limited provision for GHG emissions offsets. There was criticism the 'target based outcomes implementation model' document provided for information with the draft Policy did not address how it would apply to GHG emissions offsets, with it being unclear what would constitute a GHG emissions target.

Given the differences between the types of offsets, the majority of submissions suggested that biodiversity and GHG emissions offsets should be addressed in separate policies, with some stakeholders considering they needed further detail before they could assess the draft Policy and proposed target based model. It was also suggested that any GHG emissions offset policy should be made iterative given the frequent changes to GHG emissions methodologies.

Some submissions noted biodiversity targets would not directly avoid or reduce GHG emissions and that clarity was needed on whether an offset could address both biodiversity and GHG emissions impacts. Generally it was not considered appropriate to allow a biodiversity offset to account for a GHG emissions impact and vice versa.

### 2.3.1. Response

In recognition that the draft Policy provided information that was mostly relevant to biodiversity offsets, and it is the intent of the high level principles to apply to both GHG emissions and biodiversity offsets, the Framework described above has been adopted.

Incorporated into the Framework are separate policies for each type of offsets that will identify the targets that are to apply and how an offset may be designed to achieve this target and adhere to the Framework's principles. The separate offsets policies and specific targets will be developed in further consultation with stakeholders. Nevertheless, the amended Principles will apply to all offset types.

## 2.4. Transparency and administrative issues

Multiple submitters across a range of different sectors raised a number of administrative issues including: the importance of clear governance; monitoring and reporting on implementation and completion; auditing and adequate resourcing for regulating offsets in the Territory.

Ensuring transparency throughout the offset process was supported by all stakeholders. However, some submissions noted challenges with ensuring transparency in offsets processes, particularly in relation to the technical methodologies used, decision making processes and compliance. The need for the Government to commit resources to establish and maintain an offsets register was raised and a number of submissions suggested an independent and adequately resourced body or ministerial advisory committee be established to oversee offset design and implementation.

As identified when discussing the Principles, the administrative arrangements concerning stakeholder engagement processes for offsets were of interest to many stakeholders. One submission suggested that clarification was needed on whose responsibility it would be to fund any consultation requirements for offsets. In addition to integrating the consultation processes and community engagement on offsets into the environmental impact assessment system, it was also suggested that offsets negotiations should be conducted as part of Indigenous land use agreement negotiations.

Some submissions raised land tenure arrangements in the Territory noting that they may be a barrier to the efficient implementation of offsets. Conversely, a few submissions did not agree that land tenure was a potential issue with one suggesting amendment of the *Pastoral Land Act 1992* to enable offsets on pastoral leases. A small number of stakeholders were concerned that offset providers who can deliver offsets on Aboriginal Freehold land will potentially hold a monopoly, and suggested the Government have the ability to regulate the offset market if required. There was also concern that some landholders could have vested interests in offset delivery potentially leading to an economic benefit by using the environmental assessment process.

Some stakeholders raised questions concerning accountability and the legal responsibility to offset between a proponent, a broker and an offset supplier, and how the responsibility operates within the context of an environmental approval, including when an environmental approval is transferred or surrendered. It was suggested reasonable responsibility should be absolved when projects are impacted by unforeseen circumstances outside of the proponent's control.

A number of submissions stated that offsets must be legally enforceable with legal mechanisms to ensure compliance and enforcement. It was also suggested that the offsets approval process should have statutory timeframes and clear legislated steps. The timing of an offsets approval was queried with some submissions expressing concern that it was not clear in the draft Policy about whether a project could cause residual impacts prior to securing any required offsets. In some cases, the submission assumed that the offsets approval is required prior to the commencement of a project. The responsible entity for offsets within Government was also queried, with it stated that the draft Policy did not make it clear which Government agency would be responsible for administering offsets and what role the Northern Territory Environmental Protection Authority (NT EPA) would have.

A number of submissions supported the Government's position to not establish an offsets fund, with some submissions noting the potential reputational risk and conflict arising from funding paid for one type of impact used to manage another environmental issue. However some submissions requested the position be reviewed citing the challenges associated with securing offsets in a complex land tenure system such as the Territory's; the preference for a payment into a fund by proponents, particularly for smaller activities such as mineral exploration; and ineffective offset practices arising from project by project approaches rather than a strategic approach that a fund would enable. One submission suggested a financial security be established to ensure there are funds available to address failed offsets. Multiple submissions emphasised that any offsets fund must be appropriately and transparently managed.

## 2.4.1. Response

The Government is committed to ensuring the Framework adopts robust administrative processes and operates within a transparent system. Administrative Guidelines will be developed to provide this detail. The potential establishment of an independent advisory committee will be considered as part of the development of the Administrative Guidelines.

The establishment of an offsets register is a legislative requirement under the EP Act. The register will be developed in line with implementation of the Framework and new environmental impact assessment process under the EP Act. It is anticipated the register will be an online portal that identifies agreed offsets and where possible will be supported by spatial mapping systems such as NRmaps. The responsible parties and associated project causing the residual impacts will be identified within the register. Practical and reasonable monitoring and reporting on offsets outcomes will form part of any offsets arrangements.

The proponent will be responsible for meeting any funding requirements for any community engagement and negotiations associated with offset design, assessment, approval, implementation and monitoring.

Land tenure in the Territory is recognised as being quite complex, however it is also recognised that there are potential economic opportunities that can arise for Aboriginal land owners and pastoral lease holders as a result of an offsets scheme in the Territory. As with any development project in the Territory, land tenure negotiations will likely be required and proponents will be encouraged to commence these discussions as early as possible. As may be appropriate, certain aspects of any agreed positions may be required to be kept confidential – however this will not limit the required information concerning any offsets from being published on the offsets register.

Where offsets are required as part of the Territory's environmental impact assessment and approval system, they will be legally enforceable as these will form part of the conditions placed on an environmental approval. It will be the responsibility of a proponent to ensure there are legal commercial arrangements in place to deliver any offsets should they utilise a broker or offsets supplier. If an environmental approval is transferred, any conditions are also transferred, and the EP Act provides that certain obligations may extend beyond the duration of a project or the expiry of the approval. This may include conditions relating to offsets.

A proponent that is required to provide offsets in accordance with their environmental approval under the EP Act will not be permitted to conduct any activities that will cause residual impacts associated with the offsets condition prior to the offsets arrangement being approved.

The Department of Environment and Natural Resources will be responsible for administering the Offsets Framework. The NT EPA will advise the Minister for Environment and Natural Resources about the environmental acceptability of a project. This may include advice or recommendations that an offset is appropriate to address significant residual environmental impacts. To ensure complete transparency and remove any potential perceived influence in decision making about the environmental acceptability of a project, the NT EPA may be invited to provide guidance and advice regarding proposed offset arrangements. However, it is not envisaged that offsets arrangements will be developed, assessed, approved or administered by the NT EPA.

The Government does not intend to establish an offsets fund at this point in time, and does not consider that the introduction of an offsets security is appropriate. Once the offsets scheme is established, and the Framework has demonstrated operational success, the Government may review this position.

Further details that are more specific to the governance arrangements for the Framework will be provided in the Administrative Guidelines.

## 2.5. Targets and technical considerations

The target-based approach and its relevance to the Territory context was supported by the majority of submitters, however a number of submissions raised concerns about the lack of information on what the targets would be and how they would be determined. A few submitters suggested that the Territory should have a biodiversity strategy or regional conservation targets for the Policy to be effective. More generally, some submissions raised concerns about developing the targets given the known lack of baseline data.

Almost all submissions requested specific details on how the targets would be set, with some submitters emphasising the importance of Aboriginal organisations being involved in defining the environmental targets. A number of submissions provided suggestions on how to develop the targets, including using evidence-based methods and SMART<sup>2</sup> policy targets. Some submissions identified the Territory Natural Resource Management targets as an appropriate starting point for the Framework's targets. In some cases, submissions advocated for direct links to the 'NT EPAs Factors and Objectives' or to identified environmental values, and details were requested about what the rules and benchmarks would be for requiring offsets.

A number of submissions suggested direction was needed from the Government on appropriate circumstances for offsets and the definition of significant residual impacts or unacceptable impact. Stakeholders also expressed concerns about how the NT EPA determines the magnitude of residual GHG emissions impacts, and how the policy would ensure 'like for like' offsets for GHG emissions, and the permanence of a GHG emissions offsets. The importance of the Government supporting new methodologies related to GHG emissions was raised, particularly in relation to savannah burning.

Some submissions identified it was difficult for the NT EPA to determine the duration of residual impacts from an activity. Submissions also stated that offsets should be required to achieve targets beyond the duration of residual impacts, and monitoring should continue beyond decommissioning or the institutional control period to guarantee intended environmental outcomes. It was also suggested that a minimum level of equivalency should be required between the impact and the offset, with the addition of a multiplier when there is uncertainty around an impact or outcome. Other submissions identified that offsets should be cost effective, relative and proportional to ensure the competitiveness of projects.

The practical and legal challenges associated with offsets being secured in perpetuity was raised by a number of submitters. These submissions identified the challenges associated with land tenure in the Territory and the difficulty in being able to secure land forever, but also the difficulty in being able to measure the duration of residual impacts and applying it to the concept of perpetuity. Some submissions also noted that offsets will likely be required to utilise active land management techniques in order to deliver on the proposed target based model, and it was questioned how these requirements could be managed in perpetuity.

However, while challenges with perpetuity were raised by submitters, there was also broad emphasis in most submissions on the requirement for offsets to achieve targets that reflect the residual impact and extend beyond the duration of the impact for environmental reasons, as well as for business certainty and social licences.

Concerns about conflict with the Commonwealth's no-net-loss offsets model were also identified, with a number of submissions identifying that the draft Policy did not specifically state that the offsets should benefit the impacted matter. Some submissions also expressed a view that, irrespective of the proposed model and challenges with land tenure, land must be locked up for it to be counted as an offset. The benefits of offsets being developed strategically to allow for the best outcomes across the landscape was noted by a

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<sup>2</sup> Specific, measureable, achievable, realistic and time bound.

number of submitters. One submission identified that projects that demonstrate a cumulative impact on a species should trigger some form of regional or collective response.

A few submissions advocated for staged offsets to be permitted to accommodate staged residual impacts from a project as it progresses over time. There was also a recommendation that offsets established in advance of an impact should be recognised.

It was noted that under some offset schemes a portion of an offset can be supplied through relevant research and it was questioned if this will be permitted in the Territory, and, if so, what portion of an offset can be supplied through research.

### 2.5.1. Response

The Government is committed to developing the targets in consultation with key stakeholders, including Territory Natural Resource Management. The practical suggestions made about developing the targets will be taken into account when developing these next steps. Further information about this process will be provided in due course.

The definition of significant impact is provided in section 11 of the EP Act. Through the environmental impact assessment process the NT EPA will utilise its skills and expertise to determine the occurrence of any significant residual impacts and identify these in its assessment report. To support the environmental impact assessment process, the NT EPA has, and will continue to, prepare a range of guidance material to support its decision making processes. The Government's objective to transition to a low carbon economy and achieve the target of net zero emissions by 2050 outlined in the Territory's Climate Change Response also informs the NT EPA's decision making processes.

The practical and legal challenges associated with securing land in the Territory in perpetuity is recognised by the Government. While it is expected that offsets must be additional and secured, the Framework's Principles do not mandate perpetuity, although perpetuity may be required in some circumstances depending on the nature of the impacts.

It is the intent of the Territory's Offset Framework that offsets deliver benefits that are related to the matter impacted, without being overly prescriptive about like-for-like. To make this position clearer in the Framework, principle one which requires offsets to contribute positively to relevant Territory targets, has been revised to state that offsets proposals must identify the relevant target, explain the relationship of the target to the residual impact, and the expected environmental outcomes arising from the offsets.

Other details in relation to the technical aspects of determining an offsets, including rules in relation to quantum, duration and timing of offsets will be developed in consultation with experts and incorporated into Technical Guidelines.

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.

## 2.6. Further public consultation and implementation

To support implementation of offsets in the Territory, some submitters had suggestions for the delivery of offsets, noting that there was not an established offsets market in the Territory. These included a suggestion for the Government to develop a suite of acceptable offset projects (which would allow for advanced planning to meet targets) or to plan strategic regional conservation programs. It was identified that such measures would allow Aboriginal Ranger groups to align themselves to take up these opportunities.

A number of submitters also requested further public consultation on various elements of the proposed offsets system, in particular targets and methodologies, prior to the policy being finalised.

### 2.6.1. Response

The Government does not intend to develop and provide offsets for the use by proponents, expecting instead for proponents to be responsible for securing their own offsets, and for the offsetting market to develop organically. Government's role is to establish a supportive policy environment to facilitate the establishment of an offsets industry. However, the development of targets will provide clear signals about land management actions that may be applicable to potential requirements for offsets.

The Framework and Offsets Principles have been finalised with the understanding that further consultation on the targets and technical rules and methodologies is required.

## 2.7. Alignment with Commonwealth

The draft Policy aims to avoid duplication for offset requirements for the same impact. This intention was strongly supported with submissions generally noting the value of the Territory's offsets policy being endorsed by the Commonwealth. While there was a clearly stated desire to ensure the approach adopted in the Territory is harmonised with Commonwealth requirements, to the extent this is possible, there was some concern expressed by submitters that the target based implementation model would conflict with the Commonwealth offset requirements, potentially requiring a proponent to secure two offsets for the same impacted matter.

Some submissions were strongly of the view that any GHG emissions offsets should be managed by the Commonwealth Government alone; while some submissions also suggested that any offsets related to matters of national environmental significance should be provided through the Commonwealth's system only.

To support any GHG emissions offsets, it was suggested the policy references the National Carbon Offset Standard as using these measures would allow for credibility and certification. Other suggestions included that the Government should collect funds from projects emitting GHG emissions and use these funds to support new green export industries, renewable energy projects, and the acquisition of Australian Carbon Credit Units (ACCUs), in line with the zero net carbon emissions by 2050 goal expressed in the Climate Change Response.

### 2.7.1. Response

The Government is in negotiations with the Commonwealth concerning a new bilateral assessment agreement as a result of the introduction of the Territory's new environmental impact assessment process under the EP Act. Once finalised, endorsement of the Territory's Offset Framework and all its components will be pursued.

The Government's intention is that there be no duplication in requirements, and that proponents will not be required to provide two separate offsets for the same impacts or matters. To provide greater certainty of this intent, a new principle (principle six) has been included as part of the Offsets Principles.

## 3. Conclusion and Next Steps

The consultation demonstrated consistent support for the principles underpinning the offsets policy, and the strong view that the implementation arrangements for biodiversity and carbon offsets need to be

differentiated. The majority of feedback included advice on how the operational arrangements could be structured to deliver efficient, flexible and sustainable outcomes that reflect the Northern Territory's circumstances. While acknowledging that the proposed approach is innovative and somewhat complex, it was generally agreed that offsets would contribute to improved environmental management in the Northern Territory.

A small component of feedback received on the draft Policy was not directly relevant because it relates to other Government policies and decisions – this feedback will be shared with relevant Government agencies.

The Department of Environment and Natural Resources will move to finalise the Offsets Framework and Principles by mid-2020, and develop a separate Biodiversity Policy and supporting material by early 2021. Development of a GHG Emissions Offset Policy is also being pursued, and will be one component of the Government's broader policy response to climate change and emissions reduction.