



DRAFT BIODIVERSITY OFFSETS POLICY COMMENTS REGISTER

Reviewer	INPEX Operations Australia Pty Ltd
Review document title	Draft Biodiversity Offsets Policy
Document revision No.	0.2
Document author	Environment Policy
Date reviewed	9 November 2022

No.	Context	INPEX Comment
1	Section 3	In Section 3 of the Policy it states "...under the EP Act or Prescribed Acts.". The term 'Prescribed Acts' is not defined anywhere in the Policy. For clarity a definition should be provided. INPEX interprets 'Prescribed Acts' as those prescribed under the <i>Environment Protection Regulations 2020</i> . This is on the basis that Section 2 states "... or any other Territory Act prescribed under the <i>Environment Protection Regulations 2020</i> ". If this interpretation is correct, INPEX recommends including 'Prescribed Acts' in parentheses following the statement in Section 2 for clarity.
2	Section 4.1	"Under the EP Act, offsets will only be necessary where residual impacts <u>can be</u> considered 'significant'." Under the EP Act and associated <i>Environment Protection Regulations 2020</i> (EP Regulation) offsets may be included in approval conditions for residual impacts that 'are' significant, not 'can be'. INPEX suggests amending the wording from 'can be' to 'are' to reflect the EP Act and EP Regulation.
3	Section 4.1	"Offsets are not an always an appropriate response." Delete the word 'an'.
4	Section 4.3	"The NT Offsets Principles establish that there should be no duplication in offsets required by the Commonwealth and Northern Territory for projects in the Territory." INPEX strongly supports this statement and that for any offset there should be one regulator.

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5	Section 5	<p>Has the Northern Territory Government considered the Independent Review of the EPBC Act – Final Report. Recommendation 28 (b) states the Commonwealth should formally investigate and consider “<i>establishing a central trust or point of coordination for private and public investment in restoration to be delivered (including offsets)</i>”.</p> <p>A centralised and consistent funding and delivery mechanism may help address some of the Northern Territory Government concerns about ineffective small, isolated and fine-scale biodiversity offset projects which do not deliver broad landscape environment gains or co-benefit to regional and remote communities.</p>
6	Section 7.3	<p>As described in the Policy, offsets are to be outcome based and seek to deliver ecological gain. In INPEX’s view, identifying habitats for exclusion (i.e. ‘Good’ and ‘Poor’ condition) does not align with the intent of the Policy. Different proposals will require different offsets (size and scale) so what may not be achievable for one proponent may be for another based on their significant residual impacts that are to be offset. In these scenarios a proponent may be able to actively rehabilitate and manage threats effectively to successfully restore habitat from ‘Ecological compromised’ or ‘Poor’ to ‘Good’ condition, thus achieving ecological gain and fulfilling their offset requirements. If ‘Ecological compromised’ or ‘Poor’ condition habitats are excluded, then there may be no ability or opportunity to achieve ecological gain for these habitats. Further, habitats that require intervention to recover to support species to be offset should have priority over those that may naturally recover without intervention.</p> <p>Please also see INPEX comment made on Technical Guideline, Schedule 3 of the Technical Guideline includes two separate categories for “Poor” and “Ecological compromised” this should also be reflected in the Policy rather than grouping “Poor” and “Ecological compromised” as based on the Technical Guideline some “Poor” habitats may be considered suitable for offsets.</p>
7	7.5.1	<p>As described in the Policy, offsets are to be outcome based and seek to deliver ecological gain. The Policy also provides “<i>An offsets calculator is provided in the Technical Guidelines to help proponents estimate the offset scale and investment for a biodiversity offset plan that will meet the requirements of this policy.</i>” (Section 7.5.1). The Policy also states that the calculator provides “<i>the minimum investment requirement for an offset and that if the delivery of a proposed offset is less than the calculator robust justification must be provided</i>”.</p> <p>Inclusion of minimum investment requirements does not align with the Policy intent and wording should be reconsidered. An offset program or project should be assessed on the basis of the ecological gain it delivers, not the money spent on the Project. While the calculator provides guidance on financial risk to a proponent entering into an offsets agreement, it should not form the basis of assessment on a ‘successful’ offsets project.</p> <p>Note there is numerous references to ‘minimum investment’ throughout Policy that should also be reconsidered (e.g. Section 7.7). The Technical Guideline also states investment values are indicative and not intended to be prescriptive - “<i>A consultancy will review current landscape scale threat management practices in the NT and provided cost estimates for a range of activities. These values will inform the indicative investment level set by the calculator. These values are not intended to be prescriptive, but are indicative of the appropriate level of investment in an offset, for the benefit of both proponents and decision makers assessing a proposed biodiversity offset plan.</i>” (Section 3.3, Technical Guideline).</p>

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8	Section 7.6	<p><i>"In many cases this will require offsets 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."</i></p> <p>This sentence should be revised to reflect Technical Guideline in that the offset period should continue for the life of the proposal or the set minimum offset periods for the relevant biome, whichever is the longest. For example <i>"In many cases this will require offsets to continue for the life of the project or a minimum of 15 years in the monsoonal biome and 25 years in the arid biome."</i></p>
9	Section 7.6	<p><i>"This policy does not generally require an offset to be implemented in perpetuity."</i></p> <p>Based on INPEX experience implementing offsets in the Northern Territory this statement should be revised that proponents will not be required to implement offsets in perpetuity. Protection or implementation in perpetuity is not likely to be possible. This is because such agreement in perpetuity would effectively bind future generations of landowners without their consent and without any opportunity for consultation. This raises issues of intergenerational inequality that may prevent both a proponent and landowner entering any perpetual, binding agreement.</p> <p>An alternative may be to require that the proponent define a period of protection commensurate with the level of impacts being offset.</p>
10	Section 7.7	<p><i>"The NT Government recognises it has a role in assurance monitoring to assess success of the biodiversity offset framework in contributing to the maintenance of the Territory's biodiversity"</i></p> <p>Final sentence in Section 7.7 is missing a full stop.</p>

DRAFT BIODIVERSITY OFFSETS TECHNICAL GUIDELINES COMMENTS REGISTER

Reviewer	INPEX Operations Australia Pty Ltd
Review document title	Draft Biodiversity Offsets Technical Guidelines
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No.	Context	INPEX Comment
1	Section 3.1	<p><i>"For most habitats, key threats are one or more of inappropriate fire regimes, weeds and feral animals (which may include ungulates, pigs and predators)."</i></p> <p>Suggest removing 'pigs' as pigs are an ungulate. The definition should also be expanded to include feral cats.</p>
2	Section 4.2	<p><i>"The Policy recognises that areas at either end of this habitat condition continuum are not suitable for offsets (Figure 1). Areas at the lower end of poor condition are considered to be ecologically compromised, meaning such areas cannot recover to the required condition without active rehabilitation actions, even if threats are managed effectively. Within the Territory context, active rehabilitation would not generally be a cost-effective offset, compared to natural recovery following threat reduction in areas of moderate condition."</i></p> <p>As described in the Policy, offsets are to be outcome based and seek to deliver ecological gain. In INPEX's view, identifying habitats for exclusion (i.e. 'Good' and 'Poor condition) does not align with the intent of the Policy, especially if the assumption is <i>"active rehabilitation would not generally be a cost-effective offset"</i> as offsets are outcome based not financial. Different proposals will require different offsets (size and scale) so what may not be achievable (i.e. cost prohibitive) for one proponent may be achievable for another based on their significant residual impacts that are to be offset. In these scenarios a proponent may be able to actively rehabilitate and manage threats effectively to successfully restore habitat from 'Ecological compromised' or 'Poor' to 'Good' condition, thus achieving ecological gain and fulfilling their offset requirements. If 'Ecological compromised' or 'Poor' condition habitats are excluded, then there may be no ability or opportunity to achieve ecological gain for these habitats in the future.</p>
3	Section 4.2, Figure 1	<p>Based on the wording provided in Section 4.2 habitats in 'Poor' condition are not suitable for offsets. If this is the case then there should be no overlap in Figure 1 which indicates 'Poor' condition habitats can be offset. It is suggested that the habitat condition classifications presented in Figure 1 match those in Schedule 3. In Schedule 3 'Ecological compromised' is included as a habitat classification and identified as unsuitable for offsets. This comment is also applicable to in text statements that may need revising.</p> <p>Please also see Comment #3 regarding exclusion of habitats.</p>

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4	Section 6	<p>"The <i>investment</i> required for threat management may be lower during this phase (for example maintaining a low density of feral animals may require significantly less effort than the initial reduction from high to low density)."</p> <p>Suggest amending sentence to remove the word 'investment' and replace with 'resources'.</p>
5	Section 7.2.1	Under Offset Period definition in Section 7.2.1 the minimum period for arid zone is 20 years. This appears to be an error as the Policy and Technical Guideline in other sections state 25 years.
6	Schedule 1, Table 2	The acronym 'MVSG' should be spelt out in full on first use as it isn't clear what this means.
7	Schedule 1, Table 4	<p>In the row habitat type <i>Nearshore marine</i> the description states "May extend to the edge of the Territory's jurisdictional boundary, 3 nautical miles from the coastline.". INPEX suggests this wording is revised to reflect the relevant Territory legislation in regard to coastal waters. For instance, the Territory's legislative remit is not 3 nm from the coastline, it is within the defined 3 nm coastal waters boundary, which although is generally 3 nm from the coastline it can be greater than 3 nm from land to encompass islands and bays, for instance the Beagle Gulf. This is an important clarification given the different legislation that is applicable either side of this defined boundary.</p> <p>Alternatively, if the description intent is to be from mainland Australia than use of the term '<i>coastline</i>' is not suitable as this can include islands. A term such as 'mainland Australia' may be more suitable or clarify that coastline excludes islands.</p>
8	Schedule 1, Table 4	In the row habitat type <i>Offshore marine</i> it states it includes " <i>swift turbid water channelling between smaller isolated islands (e.g. Wessel Islands)</i> ". It is not clear what channel this is referring to as Wessel Island is less than 3 nm from mainland Australia, as such would fall into the habitat type of <i>Nearshore marine</i> . Suggest clarifying the channel if between two offshore islands or remove this example to avoid confusion.
9	Schedule 2	In Section 3.3 it is stated that cost estimates for threat management have been provided to the Northern Territory Government and that these have been used to derive the offset calculator. Further, the values provided by the calculator are indicative and are not intended to be prescriptive. This is also evident in Section 7.2.2, which is titled ' <i>Indicative minimum offset investment</i> '. Schedule 2 states " <i>Minimum area and investment requirements for offsets will be based...</i> ", which does not align with the previous wording of the Technical Guideline or the intent of the Policy; offsets are to be outcome based and seek to deliver ecological gain. Wording should be revised so that it does not infer minimum investment but investment, for example revised text could read " <i>Investment and minimum area requirements for offsets will be based...</i> "