Australian Government

Department of Sustainability, Environment, Water, Population and Communities

EPBC ACT ENVIRONMENTAL OFFSETS POLICY

Consultation draft

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Consultation Draft
Environmental Offsets Policy

August 2011

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Consultation draft

Environmental offsets policy

1. Introduction

This policy outlines the Australian Government's framework on the use of environmental offsets ('offsets') under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) including when they can be required, how they are determined and the framework under which they operate.

This policy statement focuses on the use of offsets under Part 9 (Approval of Actions) of the EPBC Act. The policy focuses on terrestrial impacts and offsets, although some aspects of the approach are also relevant to the marine environment.

This policy will help to ensure that offsets deliver high-quality conservation outcomes for matters protected under the EPBC Act. The Government recognises that there are different ways to achieve good conservation outcomes. This policy provides more flexibility in delivering those outcomes. For example, the enduring protection and management of important habitat for a threatened species can be achieved through the declaration of a national park, or through conservation land management by farmers, for whom this is a business opportunity, or Indigenous Rangers. The policy is intended to provide a transparent framework to give greater certainty for businesses considering actions that may potentially be subject to an offset requirement, while also promoting consistency.

This draft policy will be finalised on Friday 21 October, after a public comment period. To make a comment on the draft policy, email EPBC.reform@environment.gov.au. The Department of Sustainability, Environment, Water, Population and Communities will also be conducting a series of workshops with key stakeholder groups to discuss the draft policy.

The policy will also be reviewed as needed in the future, including following five-yearly reviews of the evaluation of the effectiveness of the policy. Offsetting is a developing policy area, and this draft policy incorporates current international best practice. Further, the Australian Government is leading discussion through the Council of Australian Governments on a set of national standards for biodiversity banking and for environmental offsets more generally.

The government is committed to moving to a more strategic approach to environmental assessments. Offsets have an important role to play in achieving strong environmental outcomes. They can increase connectivity across the landscape, build ecosystem resilience to a changing climate and protect essential ecosystem services while increasing certainty for industry.

2. Aims of the policy and overarching offset requirements

This draft Environmental Offsets Policy has four key aims, which are to:

1. ensure the efficient, effective, transparent, proportionate, scientifically robust and reasonable use of offsets under the EPBC Act
2. provide proponents, the community and other jurisdictions with greater certainty and guidance on how offsets are determined and applied under the EPBC Act
3. deliver improved environmental outcomes by consistently applying offsets policy
4. explain the Government's position on a range of issues, including:
    a. when it is appropriate to consider offsets as part of a project
    b. the appropriate nature and scale of offsets
    c. the use of market-based instruments for the delivery of offsets.

Box 1: Offset requirements

Suitable offsets must:

1. deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environment law and affected by the proposed development
2. be efficient, effective, transparent, proportionate, scientifically robust and reasonable
3. be built around direct offsets but may include indirect offsets
4. be of a size and scale proportionate to the impacts being offset
5. be in proportion to the level of statutory protection that applies to the affected species or community
6. effectively manage the risks of the offset not succeeding
7. have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced.

In assessing the suitability of an offset, government decision making will be

1. informed by scientifically robust information
2. conducted in a consistent and transparent manner.

3. The EPBC Act

The EPBC Act is the Australian Government's principal piece of environmental legislation. It is designed to protect national environmental assets. These protected matters are:

- world heritage properties
- wetlands of international importance (Ramsar wetlands)
- listed threatened species and ecological communities
- listed migratory species protected under international agreements
- the Commonwealth marine environment
- the whole of environment on Commonwealth land
- the whole of environment where it relates to actions carried out by a Commonwealth agency
- the whole of environment where it relates to nuclear actions
- national heritage places
- the Great Barrier Reef Marine Park.

If a proposed development or other action ('proposed action') is likely to have a significant impact upon a protected matter, then it must be referred for assessment under the EPBC Act. These proposed actions may range from a housing development, to an offshore gas project, or a road project.

4. What are environmental offsets?

Environmental offsets broadly mean measures to compensate for the adverse impacts of an action on the environment. More specifically, offsets are measures to compensate for environmental impacts that cannot be adequately reduced through avoidance or mitigation. Offsets do not reduce the impacts of an action. Instead they provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining impacts are termed 'residual impacts'.

Offsets can help to achieve long-term conservation outcomes for matters protected under the EPBC Act, while providing flexibility for proponents seeking to undertake an action that will have unavoidable environmental impacts.

Offsets are not intended to make proposals with unacceptable impacts acceptable. They simply provide an additional tool that can be used during project design and the Environmental Impact Assessment process.

4.1 How are offsets different to avoidance and mitigation measures?

Avoidance and mitigation measures are the primary strategies for managing the potential impact of a proposed action. They directly reduce the scale and intensity of the potential impacts of a proposed action. Offsets do not reduce the likely impacts of a

proposed action, but instead compensate for any residual impact. Offsets cannot be used to allow an action with unacceptable impacts to proceed.

Avoidance of impacts on protected matters may be achieved through comprehensive planning and suitable site selection—for example, by changing the route of an access road to avoid an endangered ecological community.

After all reasonable avoidance measures have been put in place, mitigation of any remaining impact must be undertaken—for example, putting in place measures to reduce sediment runoff from a development site that may otherwise affect a threatened fish species. Only after all reasonable avoidance and mitigation measures have been identified will an offset be considered.

Avoidance and mitigation can reduce and, in some cases, remove the need for offsets. The Government will not consider offsets unless the intended measures to avoid and mitigate the anticipated impacts are presented at the same time, or good reasons are provided as to why avoidance or mitigation of impacts is not reasonably achievable.

In proposing avoidance, mitigation and offset measures, the proponent must provide clear information about the scale and intensity of impacts of the proposed action and the relative on-ground benefits to be gained through each of these measures.

4.2 Types of offsets

Offsets can be categorised into *direct* and *indirect* offsets. Direct offsets generally provide a better and more certain conservation outcome than indirect offsets, and therefore are considered an essential component of a suitable offsets package. The scale of the offset required is proportionate to the impacts and the risk that an offset will not achieve its aim. As that risk grows, so should the scale of offset required. Direct offsets present a lower risk than indirect offsets.

4.2.1 Direct offsets

Direct offsets provide on-ground protection and improved conservation outcomes for the impacted protected matter. They involve the following attributes:

- the acquisition of land for enduring protection through inclusion in the conservation estate (including covenanting arrangements on private land)
- maintenance or improvement of that land through positive conservation actions (both passive and active actions) targeted toward the impacted protected matter.

These actions may include:

- protecting existing good or better quality habitat
- rehabilitation of existing vegetation in poor condition
- revegetation of environmentally degraded land.

Contracting this work through an accredited third party organisation or through buying credits in an accredited biodiversity banking scheme is acceptable.

4.2.2 Indirect offsets

Indirect offsets are a range of other measures that improve our knowledge, understanding and management of environmental values leading to improved conservation outcomes for the impacted protected matter. They may include:

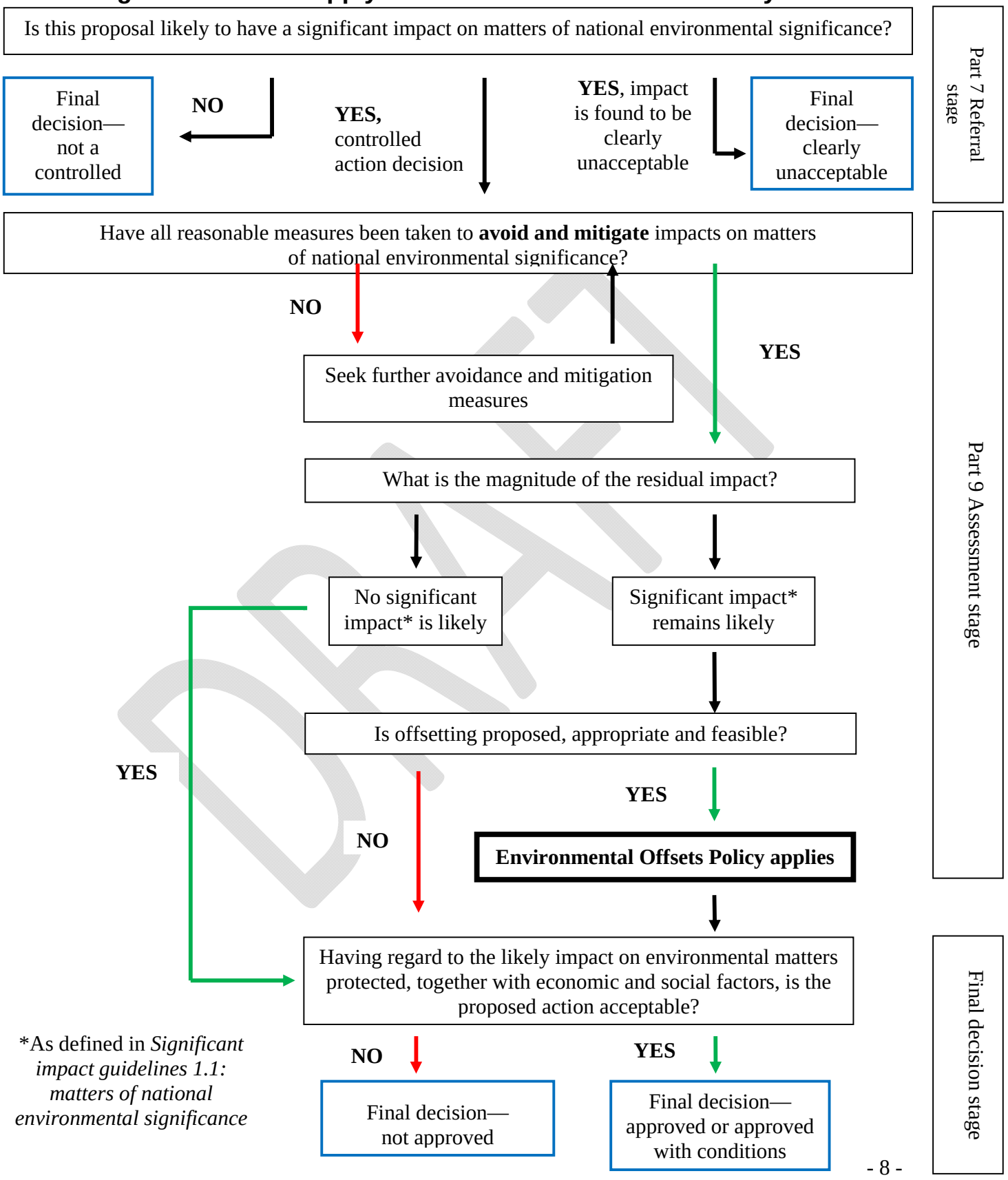
- implementing priority actions outlined in the relevant recovery plans
- enhancing habitat quality or reducing threats to the protected matter on a site that is not part of the direct offset, for example by removing invasive species
- contributing to relevant research or education programs.

The delivery of offsets that establish positive social or economic co-benefits is encouraged. This could include funds to employ Indigenous rangers or to pay existing landholders to manage their land for conservation purposes as a direct offset.

5. When to apply offsets within the EPBC Act

Figure 1 illustrates when the Environmental Offsets Policy will be applied, and demonstrates the role of offsets within the broader Environmental Impact Assessment process.

Figure 1: When to apply the Environmental Offsets Policy



*As defined in *Significant impact guidelines 1.1: matters of national environmental significance*

5.1 Referral stage

The referral stage, under Part 7 of the EPBC Act, is the initial screening stage of the EPBC Act impact assessment process. Referrals are used to determine whether significant negative impacts on protected matters are likely to occur and to make a formal decision on whether a proposed action requires full assessment under the EPBC Act. If the Minister or the Minister's delegate (the decision maker) decides this is required, the proposed action becomes a 'controlled action' and requires full assessment under Part 9 of the EPBC Act. If approval is not required then it is declared 'not a controlled action' and no further assessment under the EPBC Act is required.

The EPBC Act does not allow for offsets to be considered at the referral stage. This includes any offset that may have already been developed as part of a state or territory approval process. The need for an offset is determined following the more thorough assessment of the environmental impacts of the proposed action under Part 9 of the EPBC Act.

5.2 Assessment stage

In order to determine if an offset is necessary, the impacts of a proposed action need to be fully understood. At the assessment stage the decision maker considers the following issues in detail:

- **What is the nature of the proposed action?** For example, what sort of construction is involved, when and for how long will construction occur and how large is the area to be developed?
- **What sort of impacts on protected matters are likely?** For example, could there be clearing of a threatened ecological community, could there be negative changes to the water quality of an internationally important wetland, or could important habitat for a migratory species be disturbed?
- **Can impacts on protected matters be avoided?** For example, could the proposed action be designed to avoid clearing of habitat for a threatened species?
- **Can impacts on protected matters be mitigated?** For example, will erosion from construction be controlled or will areas adjacent to the proposed action be managed to mitigate the impacts of weeds on a disturbed site?
- **What are the residual impacts?** For example, what are the residual impacts on protected matters that are still likely to occur after the proposed activities to avoid and mitigate these impacts are taken into account?
- **How severe are the residual impacts likely to be?** That is, after avoidance and mitigation, will the proposed action only slightly disturb an area of potential habitat for a threatened species or will it destroy an area of habitat known to be used by a threatened species?
- **Are offsets a suitable approach?** That is, are offsets needed to help compensate for residual impacts on the protected matter and are they feasible?

5.3 Decision stage

If the decision maker agrees that an offset can be considered, then the proponent needs to submit an offsets proposal. This proposal should describe the offset and demonstrate how it will provide the appropriate benefit to compensate for any remaining impact on the protected matter.

The decision maker then assesses the offset proposal in considering whether the proposed action should be approved, taking into account relevant environmental, economic and social issues. Any offset requirements would then be included as a condition of approval.

It is important to note that offsets are not required for all approvals under the EPBC Act. Each approval must be considered on a case-by-case basis and must take into account the scale and intensity of impacts from the proposed action on the site and the potential for conservation outcomes through offsets. Offsets are not required where the impacts of a proposed action are considered to be minor in nature or could reasonably be mitigated. In some cases, a suitable offset may not be available and a decision on the overall acceptability of the project will need to be made.

5.3 Post-approval stage

If an approval has been granted that incorporates offsets into the conditions of approval, the proponent is responsible for ensuring that the offsets are delivered.

6. Offset requirements

Suitable offsets are determined by applying the requirements outlined in Box 1, and as illustrated by Figure 2 below.

Offsets must deliver an overall conservation outcome that *improves or maintains* the viability of the aspect of the environment that is protected by national environment law and affected by the proposed development. Offsets must:

- Contribute to the ongoing viability of the impacted protected matter *and*
- Be improved or maintained as compared to *before* the action occurred.

When the matter protected is the whole of the environment (nuclear actions, proposals involving the Commonwealth and actions that affect Commonwealth areas), offsets must be targeted to the aspect of the environment that is being impacted.

An improved conservation outcome may be achieved by:

- revegetating environmentally degraded land
- rehabilitating habitat that is in poor condition, or
- protecting habitat that is already in a good condition.

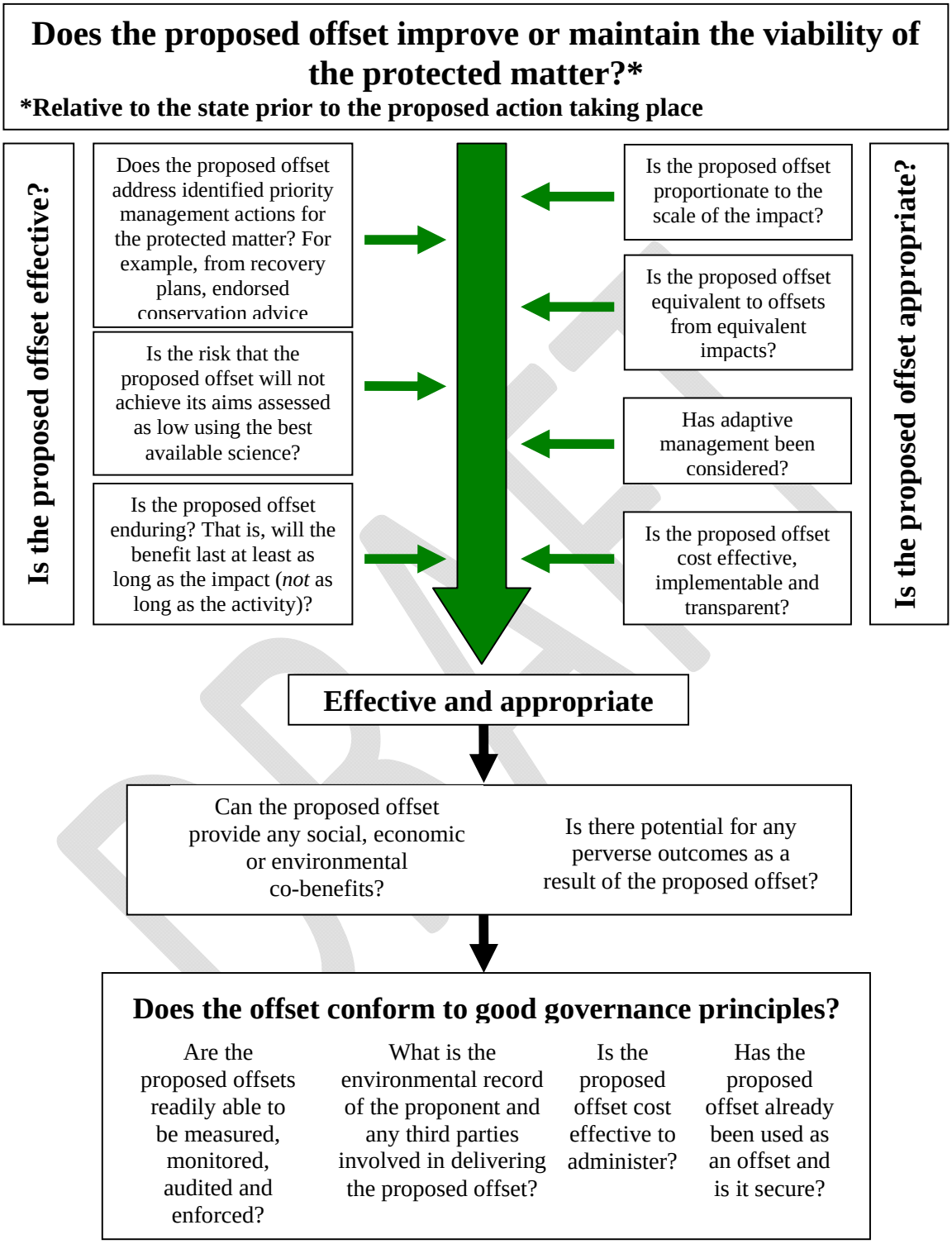
These types of direct offsets must improve the environmental value of the land through conservation management actions and securing the land on title in an enduring way for conservation. An *improved overall conservation outcome* is not achieved by an offset that simply increases the amount of habitat or ecological community that is *protected* by

covenant or other mechanism. Protection must be matched by management of the protected matter that is impacted.

An appropriate offsets package is developed by proponents in consultation with departmental assessment officers. Assessment officers then consider the appropriateness of the offset through conducting desktop research, sourcing advice from experts and consulting with states and territories. The appropriate magnitude of an offset is determined on a case-by-case basis. Matters to be considered include:

- the scale and intensity of the impacts of the proposed action, including direct and indirect impacts
- the maturity and health of relevant vegetation communities impacted by the proposed action
- the composition and presence of relevant species impacted by the proposed action
- the importance of the impacted site in context, whether of the landscape or of other values relevant to the matter protected. This would include factors such as the value the site may have in providing habitat important in allowing species to adapt to climate change
- achieving the greatest long-term conservation gains. Wherever possible this would be in the context of a 'like-for-like' approach, which requires offsets to target the specific environmental value being impacted by the proposed action (for example, a particular type of foraging habitat for a threatened species)
- the approach of the relevant state or territory, with a view to complementing and building upon that approach
- the level of certainty that the offset will deliver the conservation gain said to be achievable. In the case of uncertainty, such as using a previously untested conservation technique, a greater variety and/or quantity of offsets may be required to minimise risk.

Figure 2: Factors contributing to offset suitability



6.1 What constitutes a suitable offset?

6.1.1 A suitable offset must be built around direct offsets but may include indirect offsets

Offsets must deliver a conservation outcome that would not otherwise occur. For example, funding an open-ended research program which delivers little or no on-ground benefit for the relevant protected matter is not a direct offset.

Also, the purchase of existing unprotected habitat only provides a real conservation outcome if that habitat is protected in an enduring way and is actively managed for long-term conservation purposes (for example, by rehabilitating degraded areas). Payment of monies to a trust fund would not be acceptable as a standalone offset; however, monies paid to a third party to purchase and manage the land may be acceptable if the land purchased conforms to these offset requirements. Trust funds, as an indirect offset, need to be accredited as being fully transparent, auditable and accountable, with publically available annual audited statements.

6.1.2 A suitable offset must be of a size and scale proportionate to the impacts being offset

Offsets must be proportionate to the impact, in both size and scale. The offset required for each impact is determined by taking account of risk, the level of impact, the best available science and other considerations mentioned below. The offset-to-impact ratio required will depend on a range of factors including the conservation status of the relevant protected matter, the time between the impact, the delivery of the ecological benefit and the type of habitat impacted.

6.1.3 A suitable offset must be in proportion to the level of statutory protection of the affected species or community

Due to the higher risk involved with protected matters of greater conservation status, the offsets required for those protected matters with higher threatened status must be greater than those with a lower status.

6.1.4 A suitable offset must effectively manage the risk of the offset not succeeding

Each proposed action that is determined to be a controlled action will have offsets considered as part of its assessment process. As each proposed action is different, so too are the offsets that may be required. Departmental assessment officers will look closely at each proposed action before recommending to the decision maker whether offsets are appropriate and what a suitable offset may be. They will use a risk-based approach to determining suitable offsets due to the inherent risks associated with the use of offsets.

There are two types of risks involved in using offsets to compensate for the residual, unavoidable impacts of an action. First there is the risk that the impact on the protected matter will be too great and that any offset will not be able to compensate for the impact. This risk is addressed in the assessment process. Second, all offsets involve some risk that they will not fulfil the aims for which they were designed. It is this risk that is

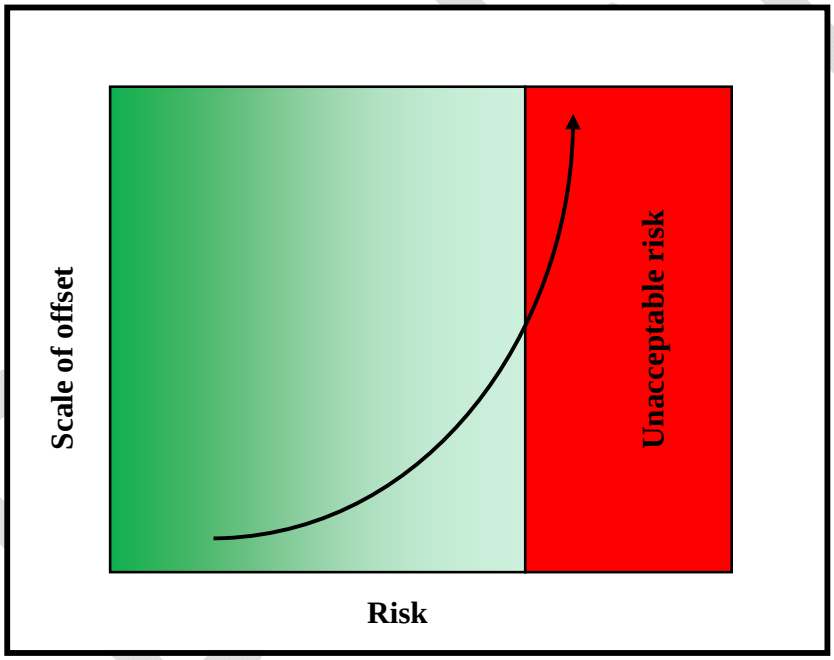
considered in determining a suitable offset. Risk is considered when making judgements on what constitutes a suitable offset including:

- What is the impact?
- What type of offset should be provided?
- What size should the proposed offset be?
- Where should the proposed offset be located?

There is also the risk that offsets may result in perverse outcomes, either for the environment as a whole or for other aspects of the community, for instance social and economic factors. To avoid perverse outcomes, analysis of the possible perverse outcomes will form part of the decision making process in deciding on the suitability of an offset package.

The magnitude of a suitable offset increases with risk, as outlined in Figure 3.

Figure 3: Relationship between scale of offset and



6.1.5 A suitable offset must have transparent governance arrangements, including being able to be readily measured, monitored, audited and enforced

Offsets must be determined within appropriate and transparent governance arrangements. Proponents, or their contractors, must report on the success of the offsets so that conditions of approval can be varied if the offsets are not delivering the desired outcome.

Offset proposals will need to include clearly articulated measures of success that are linked to the purpose of the offsets and provide clear benchmarks about their success or failure. Annual reports will be required by the department and will be made publicly available.

Performance of offsets will be reviewed as part of the monitoring, compliance and audit program for all proposals considered under the EPBC Act. All offsets will be placed on a register that will include, among other details, spatial information (for example GPS data), information on the relevant protected matters and the ongoing management actions required. This information will be publicly available on the department's website from the start of the policy. The register will ensure that offsets cannot be used more than once to compensate for the environmental impacts of development—that is, no double counting.

Establishment costs of offsets required as a condition of approval under the EPBC Act must be borne by the proponent and the offset must be designed in a way that is able to be measured, monitored, audited and enforced.

While offsets may be used as an approval condition to achieve the best environmental outcomes for a proposed action, the department should not bear undue cost for assessing offsets as a necessary condition. The department will not be responsible for the costs of establishing an offset, or any costs associated with the ongoing management of an offset. These costs must be borne by the proponent. Where the proponent elects to have a third party manage or establish the offset area or program, the proponent must make financial arrangements with the third party.

In determining the success of an offset, proponents will be required to report data that allow for the performance of an offset to be evaluated. Obtaining such data is part of the ongoing management of an offset and the cost therefore lies with the proponent. Conditions will require that data be made readily available to the department and in a format that can be easily integrated into a departmental database.

6.2 Requirements of offsets decision making

6.2.1 Government decision making will be informed by scientifically robust information

In keeping with the entire environmental impact assessment process under the EPBC Act, the determination of offsets is based on the latest scientific evidence and empirical data. This is obtained from a variety of sources including consulting scientists, scientific literature and data collected by both the department and proponents.

The environmental characteristics of the site of the proposed action will provide information about what will be regarded as a suitable offset. There are two key points that will need to be addressed:

- The **role** which the site of the proposed action plays in the environment. Examples of this for protected matters include:
    - for threatened animal species—feeding habitat or breeding habitat
    - for wetlands of international importance—maintaining water quality or providing habitat for species that use the wetland
    - for heritage places—contributing to the aesthetic value, cultural value, or natural value
    - for migratory species—feeding sites or migratory pathways
    - for actions taken in Commonwealth land, Commonwealth marine areas and nuclear actions where the whole of the environment is protected—supporting ecosystem values, heritage values or social values.
- The **quality** of the environment at the site of the proposed action. This refers to how pristine or natural the environment is at the site. Sites that have few weeds and support a large number of native plant species are likely to be higher quality than sites that have weeds and few native plant species.

6.2.2 Government decision making will be conducted in a consistent and transparent manner

An Offset Assessment Guide at Appendix 1 is being developed in order to translate the requirements of this policy into a quantitative format. This will help ensure that offset requirements are consistent and transparent, and help project proponents to consider offset requirements early in their project planning. The guide will provide flexibility to ensure that the most efficient offsets can be determined, but within limits that ensure that they improve or maintain the viability of the protected matter.

Project proponents or departmental assessment officers can use the guide to help determine a range of suitable offset options for a proposed action. The guide can also be used to examine how offset requirements might increase or decrease with variations to a project's design that would result in different impacts on protected matters.

Once finalised, the guide will assign points to a proposed action based on its impact. These 'impact points' will vary with the severity, type and duration of the impact. Once total impact points for a proposed action have been calculated, an equal or greater number of offset points is required in order to compensate for the impact. In order for activities to be considered eligible to earn offset points, they must be targeted towards the protected matter to be impacted by the proposed action, and must also meet the other requirements of this policy (see summary in Box 1).

The guide shows that a minimum of 75% of the total offset points required must be derived from direct offsets. Particular activities involved in direct offsets that accrue points include revegetation and other habitat improvement measures, reduction in key threatening processes, and the enduring and secure protection of the land for

conservation purposes. The remaining 25 per cent of offset points can be accrued a range of suitable indirect offset measures.

Once finalised, the guide will be used in developing suitable offset packages, but as it is a general guide it is not binding on decision-makers. Specific guides may be developed for specific areas or environmental matters. For example, the Tasmanian devil is suffering from devil facial tumour disease, and so a guide may need to be tailored in this case to reflect that offsets relating to the Tasmanian devil may give more than usual weight to funding for research into this disease, or to the establishment of refugia.

As part of the consultation process on this draft policy, the government is seeking feedback on:

- the methodology used in the guide, including:
    - the appropriateness of the factors that influence impact points
    - suggestions for quantifying the impact categories of low, medium, high and very high
    - the proposal that 75 per cent of offset points must be earned from direct offset
    - the appropriateness of the actions that can earn offset points
    - suggestions for appropriate weightings of offset points for particular actions
- potential matters for which the guide may need to be tailored to particular circumstances.

7. Interactions with other legislation and schemes

7.1 Links with state and territory approval processes—no double jeopardy

All of the states and territories have laws that protect the environment. The majority of proposed actions that need approval under the EPBC Act also require environmental approval from the relevant state or territory government before they can proceed.

It is important to note that while there are many similarities between the environmental laws of the states and territories and the EPBC Act, they also differ in a fundamental way. The EPBC Act focuses on protecting matters of national environmental significance and only protects the broader environment in certain circumstances. State and territory laws on the other hand usually protect all aspects of the environment (for example, air quality, noise quality, water quality biodiversity, and heritage values).

Offsets may also be required under state and territory environmental legislation. As a consequence, some proponents may need to provide offsets under both state or territory laws and the EPBC Act. Therefore, a state or territory offset will count toward an offset under the EPBC Act to the extent that it compensates for the residual impact to the protected matter identified under the EPBC Act.

To help make sure that an offset can meet the requirements of both the relevant state or territory and the EPBC Act, proponents should consider referring their project under the EPBC Act as early as possible in the planning process. Making an early referral helps to align the impact assessment processes of the state or territory with the EPBC Act.

8. Offset delivery options

8.1 Use of market-based mechanisms to deliver offsets

Market-based approaches are based on choice. They accept the principle that decisions are best made at the most local level possible. Market mechanisms allow policy to be made plain and for businesses to help drive the most efficient pathway to reach the destination.

Biodiversity banking schemes create markets of potential conservation properties from which interested parties can purchase offsets. The Government supports the use of these schemes, where they are based on reproducible and scientifically robust metrics as the means of determining the conservation value of the proposed action site and the potential offset. The Government believes a market approach allows a policy goal to be achieved through the most efficient and cost-effective means. It allows rural landholders to make decisions that combine conservation with the commercial, diversifying their income streams and optimising the outcomes for communities.

A number of state governments are developing or have already developed biodiversity banking schemes, such as BushBroker in Victoria and BioBanking in New South Wales. The Government has commenced leading consultation through the Council of Australian Governments on a set of national standards for biodiversity banking. The Government will consider accreditation of biodiversity banking schemes, providing they meet these standards.

While development of offsets using a state biodiversity banking scheme may satisfy the requirements of the EPBC Act, this will only be possible within the scope of the scheme (that is, the scheme may not cover the species or other matter that is protected by the EPBC Act). Proponents should engage early with the department during the assessment process to allow for streamlining of processes between different jurisdictions.

8.2 Use of third parties to deliver offsets

The Government encourages the use of approved third parties to deliver offsets. In many cases enhanced environmental, social and economic outcomes can be achieved through proponents contracting rural landholders to mange land for conservation as a way of meeting their offset obligations. As most proponents are not in the business of land management it is not appropriate that they be required to manage land for conservation purposes. In contrast, third parties such as rural landholders or private conservation organisations may have the knowledge and skills to manage land for conservation. Contracts with third parties to manage an offset may be through a biodiversity banking scheme or not, but in either case the third party must be accredited by the department, which must be satisfied that appropriate mechanisms are in place to ensure the enduring delivery of the offset.

9. Further information

For further guidance on whether an action has, or is likely to have, a significant impact on a protected matter, please refer to:

- 'Significant impact guidelines 1.1—matters of national environmental significance,' and
- 'Significant impact guidelines 1.2—actions on, or impacting upon, Commonwealth land and Actions by Commonwealth Agencies'

These are available at: www.environment.gov.au/epbc/protect/index.html

For further general information about the EPBC Act, including information about the referral, assessment and approval processes, please contact the Department of Sustainability, Environment, Water, Populations and Communities Community Information Unit on 1800 803 772, or access the EPBC Act website at: www.environment.gov.au/epbc

BIO175.0811