

**GUIDELINES ON ENVIRONMENTAL OFFSETS AND
ASSOCIATED APPROVAL CONDITIONS**

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1 Introduction

There has been a gradual increase in acceptance of the concept of industry requiring a 'social licence to operate'. The 'licence' is viewed as complementary to regulatory approvals issued by government. A 'social licence to operate' is about operating in a manner that aligns with community expectations and acknowledges that businesses share responsibility for facilitating development of strong and sustainable communities.

Originally viewed as a voluntary characteristic of good corporate behaviour, application of the concept of a 'social licence to operate' has gradually been altered by development of a variety of legislation that may impose such requirements as conditions of approval. Traditional concepts of royalties and compensation payable for resource use or loss of amenity of use of land have been added to by legislation with the potential to impose:

- provision of environmental offsets for project imposed residual risk to biodiversity, vegetation or threatened species
- community benefits packages, or
- negotiated benefits that allow projects to proceed.

All State and Territory governments and the Commonwealth government have the capacity to impose some form of 'environmental offset' or other compensatory approval condition. In many cases the "offset" is imposed as a condition of approval for a project.

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2 Objective of the Offsets Policy

These guidelines seek lasting environmental, economic and social benefits to the NT by fostering coordination of offset/condition of approval requirements that may be imposed under Commonwealth and NT legislation.

<http://www.environment.gov.au/erin/ert/epbc/index.html>

3 Limitations

This Guidance is:

- confined to generic matters relating to offsets and similar approval requirements and does not address more proposal-specific issues that may be of significance;
- not an instrument for predicting outcomes of deliberations by the NT EPA;
- designed to promote a more certain and consistent approach to assessments; and
- intended to apply to proposals prior to the proponent submitting the proposal to NT EPA for environmental assessment.

4 Legislated Potential for Offset and Similar Requirements in the Northern Territory

4.1 Northern Territory Environmental Legislation

Unlike environmental assessment legislation in other parts of Australia, the Northern Territory's *Environmental Assessment Act* makes no provision for imposition of an environmental offset, or social or other community benefit, as a part of an assessment or approval process. The NT EPA has no role in requiring, developing or managing environmental offsets or similar requirements in conditions of approval. These guidelines are provided to assist people in becoming aware of possible requirements for offsets and approval condition requirements, and to encourage optimisation of the benefits that can be derived from such requirements.

4.2 Northern Territory MMA Conditions of Approval

The Northern Territory's *Mining Management Act* (MMA) provides for the possibility of an economic or social or community benefits package as part of the mining approval process. Pursuant to section 37(5) of the MMA conditions may be imposed on an Authorisation for mining. These conditions may include a requirement for a mine operator to provide economic and social benefits to communities directly impacted by a mining venture (see section 37(5)(d), known as 'community benefits packages'), and may include requirements for a mine operator to implement appropriate systems for the protection of general or specific aspects of the environment, or to address specific outcomes of an environmental assessment of mining activities undertaken under the EA Act (see section 37(5)(a) protection of the environment and section 37(5)(b) outcomes of the environmental assessment process).

4.3 EPBC Act Offsets

The Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* provides protection for matters of national environmental significance (NES). The NES matters are:

- World Heritage properties;
- National Heritage Places;
- Wetlands of international importance;
- Nationally threatened animal and plant species and ecological communities;
- Internationally protected migratory species;
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mines); and
- a water resource, in relation to coal seam gas development and large coal mining development.

The EPBC Act also protects:

- the environment, where actions proposed are on, or will affect Commonwealth land, and
- the environment, where Commonwealth agencies are proposing to take an action.

The EPBC Act webpage has a search tool that helps determine whether NES matters occur in the area of proposed dredging activity. To generate a map and environmental report on the area refer to:

<http://www.environment.gov.au/erin/ert/epbc/index.html>

The EPBC Act provides for offsets in circumstances where a “Matter of National Environmental Significance” (for the Territory these are national and world heritage, threatened species and ecological communities, Ramsar wetlands, listed migratory species, Commonwealth marine areas and nuclear matters) is subject to some form of residual risk from a proposed development. The decision to impose an offset, and approve the nature of an offset are Ministerial responsibilities. An offset may preferably involve a direct offset and be of a size and scale proportionate to the residual impact on the protected matter. Other forms of compensatory measures may be acceptable. Direct offsets (e.g. setting aside an area of appropriate habitat) are intended to be permanent. The latter requirement can be difficult to ensure under the Territory’s system of land tenures.

The Commonwealth government’s possible requirements for environmental offsets are well defined and outside the control of the NT EPA. The potential for there being an offset requirement becomes evident during the survey and assessment of biodiversity and heritage matters as part of the environmental assessment process. Proponents are referred to the Commonwealth’s website for details of the offset program: environment.gov.au/epbc/publications/environmental-offsets-policy.html

A requirement for an offset can be implemented with a level of flexibility. Where, when, how, with whom and in coordination with which other activities an offset is implemented is subject only to the location of the targeted species, community or heritage area and the Commonwealth Minister’s approval. Innovative and tailored approaches relevant to the proposal are encouraged.

4.4 ALRA and NTA Approval Conditions

The *Aboriginal Land Rights (Northern Territory) Act* (ALRA) and *Native Title Act* (NTA) require approval for use of Aboriginal lands or lands with Aboriginal interests for mining and other ventures. The packaging of benefits associated with these approvals is negotiable and can be highly variable and innovative. These negotiations occur under the auspices of the Land Councils and occur in the very early stages of project initiation and approval.

5 Guidelines for Integrating Offset and Approval Conditions

Potential requirements for EPBC Act, MMA and ALARA/NTA related offset/approval conditions become apparent during the course negotiations for land access, studies and assessments conducted for documenting potential environmental impacts or when applying for mining approvals. A proponent may be faced with multiple offset/approval condition requirements.

Offset requirements and approval conditions are amenable to structuring to achieve synergistic outcomes in keeping with community aspirations. Proponents are urged to view the requirements as a whole and develop coordinated offsets/conditions packages in collaboration with all stakeholders. Stakeholders should be viewed as providers as well as recipients and include:

- indigenous and non-indigenous residential groups
- traditional land owners/native title holders
- other landholders
- local/regional community members
- local and regional industry groups and businesses
- local government
- Territory and Commonwealth agencies and programs with potential to provide infrastructure, training, business development opportunities and other services
- other service/infrastructure providers
- Land Councils, and Territory and Commonwealth agencies with offset/approval condition requirements relevant to the development proposal.

It is recommended that the package be developed as part of consultation for the economic and social impact assessment, and make use, as appropriate, of studies and environmental impact assessments (see NT EPA's "Guidelines on Assessment of Impacts on Biodiversity" and "Guidelines on Economic and Social Impact Assessment"). Specific notice should be taken of the potential impacts of project approval on service provision and vital investment in remote communities.