



Northern Territory  
Environment Protection Authority

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

DRAFT

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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 a variety of legislatively imposed 'requirements to operate'. Traditional concepts of royalties and compensation payable for resource use or loss of amenity of use of land have been added to by legislation requiring:

- 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 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 by fostering coordination of offset/condition of approval requirements and voluntary application of the 'licence to operate' concept.

## 3 Legislative Requirements

Environmental Impact Assessment may involve assessments and approvals in relation to matters regulated under a range of Northern Territory and Commonwealth legislation. Relevant legislation includes that listed below. The list is indicative of matters related to AMD that may require assessment. It is not exhaustive.

Proponents should carefully review projects to determine legislated requirements relevant to particular projects.

The legislation listed has been used in developing these Guidelines.

- *Fisheries Act*
- *Marine Pollution Act*
- *Mining Management Act*
- *Public and Environmental Health Act*
- *Territory Parks and Wildlife Conservation Act*

- *Waste Management and Pollution Control Act*
- *Water Act*

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; and
- Nuclear actions (including uranium mines).

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>

## 4 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.

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## 5 Offset and Similar Requirements in the Northern Territory

Offset/conditions of approval requirements in the Northern Territory are imposed under:

- the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act)

- section 37(5)(d) of the *Mining Management Act* (MMA)
- the *Aboriginal Land Rights (Northern Territory) Act* (ALRA) and the *Native Title Act* (NTA).

No additional offset requirement is proposed.

## 5.1 EPBC Act Offsets

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. An offset must 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 requirements for environmental offsets are well defined and outside the control of the NT EPA. The particulars of any such requirement become evident during the survey and assessment of biodiversity and heritage matters as part of developing a Public Environment Report or Environmental Impact Statement. Proponents are referred to the Commonwealth’s website for details of this offset program: [environment.gov.au/epbc/publications/environmental-offsets-policy.html](http://environment.gov.au/epbc/publications/environmental-offsets-policy.html)

The highly inflexible 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 innovative and tailored approaches relevant to the proposal are encouraged.

## 5.2 MMA Conditions of Approval

Approval of mining under the MMA is subject to conditions under section 37(5)(d). The conditions may include economic and social benefits to communities directly impacted by a mining venture (‘community benefits packages’), protection of the environment and outcomes of the environmental assessment process.

## 5.3 ALRA and NTA Approval Conditions

The ALRA and 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.

## 6 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 of studies and assessments conducted for a Public Environmental Report (PER) or Environmental Impact Statement (EIS). A proponent is often 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 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 assessments conducted for the biodiversity assessment (see NT EPA's "Guidelines on Assessment of Impacts on Biodiversity" and "Guidelines on Economic and Social Impact Assessment").