



## CORPORATE POLICY STATEMENT NO. 4

### ENVIRONMENTAL OFFSETS

June 2016

#### 1. OBJECTIVE

To provide direction and guidance regarding how the Department of Parks and Wildlife (the department) is to contribute to developing and implementing environmental offsets.

#### 2. SCOPE

This policy applies to environmental offsets for proposals or actions being considered under the *Environmental Protection Act 1986* (EP Act) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). It may also apply to other legislation, including planning proposals under the *Planning and Development Act 2005* and mining proposals under the *Mining Act 1978*, where that legislation makes provisions for environmental offsets to be applied.

This policy provides direction to departmental staff involved in pre-approval (advice) and post-approval (implementation) activities associated with environmental offsets. Those environmental offsets could be for land acquisition, on-ground management or research to counterbalance significant residual impacts to terrestrial and marine biodiversity and environments.

The policy also considers the department's role when it facilitates the implementation of environmental offsets where they are directly actioned by a proponent.

The policy does *not* cover:

- on-site mitigation and remediation actions;
- proponent commitments;
- actions to address non-significant residual environmental impacts or impacts to recreation, tourism and heritage values within the conservation reserve system or the productive capacity of forests available for timber harvesting; and
- actions required by legislation such as the *Conservation and Land Management Act 1984* (CALM Act) and *Wildlife Conservation Act 1950* (WC Act);

although the implementation processes described may also apply in these situations.

#### 3. CONTEXT

Requirements for environmental offsets can be imposed under the EP Act (State) and/or the EPBC Act (Commonwealth).

The State government has prepared the [WA Environmental Offsets Policy](#) and the [WA Environmental Offsets Guidelines](#) to ensure that the basis for decision-making on

environmental offsets is understood by regulators, government officers, industry and the community, and is consistently applied by regulators.

The Commonwealth government has published the *EPBC Act Environmental Offsets Policy* and *Offsets Assessment Guide* to outline the use of environmental offsets and provide transparency around how the suitability of offsets is determined under the EPBC Act. Commonwealth environmental offset requirements may either be complementary or additional to State government environmental offsets relating to the same proposal.

This policy complements the State's and Commonwealth's environmental offsets policies and guidance, and acknowledges that the department may have any of the following roles in environmental offsets:

- as the agency with overall responsibility for planning and implementation of the protection of biodiversity in WA, providing advice on biodiversity conservation values, the significance of impacts and the suitability of environmental offset activities;
- as the agency that manages lands and waters under the CALM Act and wildlife under the WC Act; or
- as a party that may be directly responsible for management (implementation) of environmental offsets.

This policy acknowledges bilateral assessments undertaken by the State and the need to consult with both State and Commonwealth regulators to avoid duplication with offsets where a separate Commonwealth approval is required as State regulators may be making offset recommendations to the Commonwealth. Advice to proponents is to be provided in this context. This policy also acknowledges that the department may provide advice to State and Commonwealth regulators and proponents on matters relating to the development and implementation of offset calculators and metrics.

#### **4. LEGISLATION**

Under the CALM Act and WC Act, the department does not have a decision-making role in environmental approvals processes at the State or Commonwealth levels. It does not have a statutory role in the environmental impact assessment process under Part IV of the EP Act, the approval of applications to clear native vegetation under Part V of the EP Act, or environmental impact assessment under the EPBC Act. As such, it is not a decision-making authority in relation to environmental offsets, but rather provides advice in relation to biodiversity conservation values, the significance of impacts, on-site mitigation strategies and the suitability of proposed environmental offset activities and/or 'potential conservation actions'.

Further information regarding State and Commonwealth legislation relating to environmental offsets is provided at Appendix 1.

#### **5. POLICY**

The department will:

##### **Pre-approval offset advice**

- 5.1 Ensure its advice is consistent with the requirements of State legislation, the department's statutory role and State government policy and guidance.

- 5.2 Provide consistent, coordinated, timely and efficient advice to regulators and proponents, including advice on resources the department may require when implementing or facilitating the implementation of environmental offsets. Where appropriate, staff are to consult with regulators when they have discussions with proponents and the outcomes of these discussions.
- 5.3 Provide advice in a manner that delivers transparency and accountability and avoids potential conflicts of interest. Staff are reminded of the need to act in accordance with the department's Code of Conduct.
- 5.4 Ensure its advice is presented in a way that does not constrain the department and the Conservation and Parks Commission in any future provision of formal advice, and does not pre-empt any decision by regulators, on the acceptability of impacts or the adequacy of proposed environmental offsets.
- 5.5 Provide advice so that environmental offsets are effective, based on sound environmental information and knowledge, benefit the environmental value being impacted and where possible contribute to meeting departmental strategic priorities.

#### **Post-approval offset implementation**

- 5.6 Ensure environmental offsets are implemented in accordance with the relevant condition(s) of an implementation statement or a notice of decision as they relate to the operations of the department.
- 5.7 Meet appropriate standards of governance, accountability, transparency and cost effectiveness when implementing on-ground management and research offsets by preparing and adhering to third party delivery arrangements. In the case of land acquisition offsets, Director General approval in writing is necessary and where proponent land management contributions are required, a third party delivery arrangement is to be prepared and implemented in accordance with Corporate Guideline No. 14: Environmental Offsets – Proponent Land Management Contributions. Environmental offset expenditure is to meet the accountability and reporting requirements of the *Financial Management Act 2006*, the EP Act and relevant Treasurer's Instructions.
- 5.8 Contribute to the WA Environmental Offsets Register for the implementation of environmental offsets.
- 5.9 Facilitate information/knowledge sharing, including learnings and outcomes regarding environmental offset actions.

## **6. POLICY IMPLEMENTATION STRATEGIES**

The department will:

### **Communication protocol for environmental offsets advice**

- 6.1 Implement Corporate Guideline No. 26: Communication Protocol for the Provision of Advice Relating to Environmental Assessments and Approvals Including Condition Setting and Environmental Offsets. The protocol is addresses items 5.1 to 5.5.

### **Third party delivery arrangements for environmental offset implementation**

- 6.2 Ensure third party delivery arrangements are prepared and implemented for on-ground management offsets, research offsets and proponent land management contributions. The arrangements should be prepared in a consistent manner that enables transparency and accountability. The arrangements must be in accordance with an environmental offset condition outlined in an implementation statement or notice of decision, be agreed with the proponent and should as a minimum cover:
- the proponent's and department's obligations;
  - governance arrangements for the specific purpose account in which the environmental offset funding is to be deposited;
  - reporting requirements including responsibility for updating the WA Environmental Offsets Register; and
  - either a project plan or research plan outlining implementation details and responsibilities.
- 6.3 Ensure the department's Director General approves in writing all land acquisition offsets. The approval is to include a description of the land parcel to be acquired, agreed consideration to be paid, associated acquisition fees and any other land acquisition related matters such as surveying, subdivision and conveyancing procedures and costs.
- 6.4 Apply standard templates for third party delivery arrangements and make them available to staff.
- 6.5 Ensure there is a repository for all third party delivery arrangements agreed to by the department (refer to information management).

### **Offset Funding**

- 6.6 Establish a new specific purpose account for each on-ground management and research related environmental offset. Given the limited number of transactions associated with land acquisition offsets, one account may be used for multiple offsets, however procedures are to be implemented so that each offset is accounted for separately.
- 6.7 Ensure invoices for offset funding are raised only after the department's Director General has signed a third party delivery arrangement or granted approval in writing.

### **Strategic planning**

- 6.8 Undertake strategic planning for environmental offsets so that they have long-term biodiversity conservation benefits and, where possible, contribute to meeting departmental priorities.
- 6.9 Develop discrete on-ground environmental offsets targeting land profile areas or species and communities that could be implemented as part of broad conservation and recovery initiatives. Similarly, research priorities and candidate sites for land acquisition are to be identified.

## Reporting

- 6.10 Liaise with regulators to develop a clear process so the department can effectively and efficiently report on offsets it is implementing in the WA Environmental Offsets Register.
- 6.11 Ensure third party delivery arrangements clearly indicate reporting requirements for environmental offset implementation.

## Information management

- 6.12 Establish and maintain an internal information management system (database) for the implementation of environmental offsets where the department has agreed to be the third party delivery agent. The information management system is to be in a format that is compatible with the WA Environmental Offsets Register (or the data can be easily converted into a compatible format). The database should cover all types of State and Commonwealth offsets.
- 6.13 Maintain records of discussions and advice concerning environmental offsets in accordance with the *State Records Act 2000*.

## Communication, consultation and learnings

- 6.14 Consult with regulators and proponents regarding departmental advice provided on environmental offsets and how environmental offsets processes can be continually improved.
- 6.15 Consult with regulators regarding potential environmental offsets that the department is likely to implement as a third party in order to ensure a clear scope of works is included into relevant implementation statements published under the EP Act or notices of decisions issued under the EPBC Act. The sections within the department that will be responsible for implementing the environmental offset are to be consulted so that appropriate resourcing requirements are ascertained.
- 6.16 Consult with regulators when the department is likely to have a significant role in facilitating the implementation of environmental offsets so that resource requirements can be included in relevant implementation statements published under the EP Act or notice of decisions issued under the EPBC Act.
- 6.17 Assign the day-to-day implementation of this policy and role of coordinating environmental offsets to a senior position in the department.
- 6.18 Establish an Environmental Offsets Reference Group to facilitate communication across departmental divisions and information/knowledge sharing including learnings and outcomes of environmental offset actions. The group will have a defined term and will operate at the discretion of the Director General.

A Glossary is provided at Appendix 2 and Related Policies and Guidelines are provided at Appendix 3.

## 7. CUSTODIAN

Director Science and Conservation.

**8. PUBLICATION**

This policy will be made available on the department's website and intranet.

**9. KEY WORDS**

Environmental offsets, EP Act, EPBC Act.

**10. REVIEW**

This policy will be reviewed as soon as practicable after a period of five years from the date it is signed or at the discretion of the Director General.

**11. DIRECTOR GENERAL APPROVAL**

Approved by



Jim Sharp  
DIRECTOR GENERAL

Effective date: 15 June 2016

## LEGISLATION

The following information is provided on State and Commonwealth legislation relevant to environmental offsets:

### State legislation

#### *Environmental Protection Act 1986*

Under Part IV of the EP Act (Environmental Impact Assessment), the Environmental Protection Authority (EPA) advises the Minister for Environment on whether a significant proposal or scheme should be implemented, and if so, what conditions should apply. In assessing proposals or schemes, the EPA seeks to ensure that significant environmental impacts are avoided or mitigated. Where significant residual environmental impacts remain, the EPA may recommend to the Minister that environmental offsets are required. The Office of the EPA (OEPA) also has a compliance role in ensuring environmental offset conditions set by the Minister for Environmental are implemented.

Under Part V Division 2 of the EP Act (Clearing of Native Vegetation), the Chief Executive Officer (CEO) may grant a clearing permit that is subject to conditions. Under section 51I(2)(b) of the EP Act the CEO can require the permit holder to: “*Establish and maintain vegetation on land other than land cleared under the [clearing] permit in order to offset the loss of the cleared vegetation, or make monetary contributions to a fund maintained for the purpose of establishing or maintaining vegetation*”. In addition, under section 51I(2)(c) the CEO can require the permit holder to enter into a conservation covenant or some other form of binding undertaking to establish or maintain vegetation, in relation to land other than land cleared as a condition of a clearing permit.

The Department of Mines and Petroleum (DMP) has delegated authority under the EP Act to administer the clearing provisions for mining and petroleum related activities under the Mining Act, relevant petroleum legislation and State Agreements which are administered by the Department of State Development.

### Commonwealth legislation

#### *Environment Protection and Biodiversity Conservation Act 1999*

The EPBC Act is the primary element of the Commonwealth government’s environmental legislation. It provides a legislative framework to, among other things, protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places - listed in the EPBC Act as matters of national environmental significance. The EPBC Act enables environmental offsets to be applied where an aspect of the environment that is protected by national environment law is affected by a proposed action.

## GLOSSARY

For the purpose of this policy:

**Action** means controlled action as defined under the EPBC Act.

**Applicant** means a person applying for a clearing permit under Part V Division 2 of the EP Act.

**Clearing permit** means a clearing permit granted and in force under Part V Division 2 of the EP Act.

**Condition** means the conditions and procedures, if any, agreed or decided in relation to a proposal or clearing permit application under the EP Act or a proposed action under the EPBC Act.

**Conservation reserve system** means reserves managed for conservation purposes under the CALM Act.

**Environmental offsets** are an offsite action or actions to address the significant residual environmental impacts of a development or activity.

**Implementation statement** means an implementation agreement or decision under the EP Act.

**Implementer agency** means an agency responsible either solely or jointly for the implementation of an environmental offset. The WA Environmental Offsets Guidelines outline a range of expectations for government agencies implementing environmental offsets.

**Like-for-like** is a principle whereby impacts to an environmental value are required to be offset by actions that benefit the same environmental value being impacted. For example, an impact to a threatened species should be offset with actions that improve the overall viability of that species.

**Notice of decision** means a notice issued under the EPBC Act in respect to a decision on a proposed action.

**Offset funding** is funding derived from an environmental offset listed in a condition in an implementation statement, notice of decision or clearing permit for counterbalancing a significant residual environmental impact. It is a payment which is legally enforceable.

**Offset type** - there are three main offset types:

1. On-ground management including revegetation (revegetation of degraded areas to achieve set target ecological values) and offsite rehabilitation (repair of ecosystem processes and management of weeds, disease or feral animals).
2. Land acquisition – the purchase of land for conservation tenure or entering into a conservation covenant or other legally binding agreements.
3. Research which relates directly to supporting management and decision-making for the environmental value impacted.



**On-site mitigation/ remediation** comprises actions which occur on-site as part of the project and reduce the direct impact of that project.

**Potential conservation actions** - the department may be approached by regulators and proponents at various stages throughout a proposal or action for advice on environmental offsets. The department may also be approached prior to the formal referral of the proposal or action to the regulator as proponents may be seeking initial information so that they can determine the acceptability or viability of a proposal/action. In such circumstances, any advice provided by the department should be in the context of 'potential conservation actions' rather than 'proposed environmental offsets'.

**Proponent** means the person who or which is responsible for the proposal, or the public authority on which the responsibility for the proposal is imposed under another written law.

**Proponent commitments** are commitments made by a proponent to ameliorate the impacts of a proposal on the environment.

**Proposal** means a project, plan, program, policy, operation, undertaking or development or change in land use, or amendment of any of the foregoing, but does not include scheme.

**Regulator** means government agencies responsible for environmental approvals processes that include the consideration of offsets. At the State level this currently includes the OEPA, DER and DMP (for its delegation of Part V of the EP Act). At the Commonwealth level it is the Department of the Environment, which administers the EPBC Act.

**Scheme** means a local planning scheme, region planning scheme or improvement scheme that has effect under the *Planning and Development Act 2005*.

**Specific purpose account** is an account that holds money that the accountable authority has an obligation to use in accordance with the conditions or restrictions imposed by the donor or contributor.

**Third party delivery arrangements** are documents that outline agreed arrangements for the implementation of environmental offsets. They are to be prepared when environmental offset funding is provided by the proponent directly to the department to undertake agreed offsets. In such instances, actions would be implemented in accordance with a third party delivery arrangement such as a contract or MOU. The contract or MOU is to be in accordance with the environmental offset condition outlined in an implementation statement or notice of decision and must be agreed with the proponent and signed by the department's Director General.

## RELATED POLICIES AND GUIDELINES

The department may have regard for the following when considering environmental offsets:

- The [WA Environmental Offsets Policy](#), which was released in September 2011 and establishes a framework and principles for the application of environmental offsets.
- The [WA Environmental Offsets Guidelines](#), which was released in August 2014 to support the environmental offset policy and provide direction in the application of environmental offsets.
- The Commonwealth government's [Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy](#) dated October 2012.
- The Commonwealth government's [Environmental Offsets Assessment Guide](#).