



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: 0490 419 779

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

Honourable Murray Watt
Minister for the Environment and Water
Australian Parliament
Email: senator.watt@aph.gov.au

Date: 30 January 2026

Submission on National Environment Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets

Dear Minister,

The Blue Mountains Conservation Society (the Society) is a community-based volunteer organisation with over 900 members. Our mission is to help protect, conserve and advocate for the natural environment of the Greater Blue Mountains. In fulfilling its mission the Society advocates for the protection of the Greater Blue Mountains World Heritage Area.

The Society's area of concern includes the entire Greater Blue Mountains World Heritage Area (GBMWhA) and adjoining natural, protected areas.¹

On behalf of the Society, I have attached our submission on the National Environmental Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets.

UNESCO states in its Guidance and Toolkit for Impact Assessments in a World Heritage Context that "Changes both within and outside World Heritage properties need to be managed in line with the Convention's objectives."²

The continued functioning of the GBMWhA's floral and faunal communities depends in part upon plant and animal species beyond the boundary of the WHA. Many species find refuge in the WHA and move across the surrounding landscape into and out of the WHA, bringing with them genetic diversity, moving nutrients between communities, performing important

¹ . These include State Forests, State Conservation Areas, Flora Reserves, and Local Council natural areas.

² <https://whc.unesco.org/en/guidance-toolkit-impact-assessments/> page 6 Introduction

functions such as pollinating eucalypt flowers, and dispersing fruits and seeds across habitats^{3 4}.

It is crucial that none of the species or places, both within and beyond the WHA, are adversely impacted by developments and it is the role of the National Environmental Standards (NES) to ensure this.

In this submission, the Society is responding to matters which relate to our area of concern:

1. Draft Policy Position: National Environmental Standard for Matters of National Environmental Significance.
2. National Environmental Standard (Matters of National Environmental Significance) 2025
 - a. Threatened species
 - b. Ecological communities
 - c. Migratory species
 - d. World Heritage Properties
3. Draft Policy Position: National Environmental Standard for Environmental Offsets 2025
4. National Environmental Standard (Environmental Offsets) 2025
 - a. Principles 1 - 8

The Society welcomes the new draft National Environment Standards for Matters of National Environmental Significance and for Environmental Offsets. However, it is the Society's view that the proposed NES draft policy and draft standards will not be able to ensure an adequate level of protection and our reasons are stated in the following pages. We question the ability of offsetting and the Contribution Restoration Fund to address loss of biodiversity resulting from impacts on protected matters, and hence strongly oppose an emphasis on these measures in the standards at the expense of retaining existing natural vegetation.

Thank you for the opportunity to comment on the important matter.

Yours sincerely,



Mrs Annette Cam
President
Blue Mountains Conservation Society
president@bluemountains.org.au

³ Examples include the vulnerable Grey-headed Flying Fox *Pteropus poliocephalus* and flocks of migrating honeyeaters that move across the Cumberland Plain, GBM WHA and beyond. The WHA also provides refuge for birds migrating from areas as far afield as Tasmania (the critically endangered Swift Parrot *Lathamus discolor*), Victoria (the critically endangered Regent Honeyeater *Anthochaera phrygia*) and from the northern hemisphere, in the case of migratory shorebirds that are protected under several international agreements.

⁴ https://www.dcceew.gov.au/environment/biodiversity/migratory-species/migratory-birds#toc_1

Summary of recommendations

Matters of National Environmental Significance

- Use clear, unambiguous language throughout that removes the excessive discretion of the Minister. Replace the weak term “is not inconsistent with” with the stronger term “Is consistent with”.
- All terms used that need definitions are to be defined in the context of MNES and included in the standards.
- Provide details about how achievement of outcomes is expected to be measured, evaluated, reported on and stored and by whom.
- The Society expects that a requirement for independent evaluating and reporting on outcomes will be included in all assessments of significant impacts and their mitigation or repair.
- If a project’s impact will have a “residual significant impact” on a protected matter (MNES), then the project should not go ahead.

Environmental Offsets

- The environmental offsets standard must be outcomes-based, clear and enforceable. The evaluation requirement for effectiveness of individual offsets needs to focus on the outcome, defined by the Standard, not the process.
- Weak and confusing language that gives the Minister excessive discretion or decision-making power should be replaced with clear, robust standards that are scientifically valid and that are non-negotiable.
- Restoration Contribution Charges must be a last resort in practice with independent oversight to ensure that it does not become an ineffective “pay to destroy” scheme as has happened with similar state schemes.
- The overriding principle needs to be: if you can’t ensure a net gain which includes like-for-like habitat, then the project must not go ahead.
- Consideration must be given as to how long-term impacts from climate change, such as increased fire risk, can be managed to prevent the offset from being lost.
- Indirect offsets need to be avoided in most circumstances. The Standard must include clearly written guidance and expectations regarding when and why an indirect offset would be approved in preference to a direct offset.
- Provide details in the Standard as to what level of Measurable Improvement is acceptable, methods used in determining improvement and how this is evaluated and reported.
- Details also need to be provided for acceptable and rigorous methods of establishing baseline data including in-the-field data collection.
- There needs to be clear guidelines for an accurate determination if a “registered advanced offset” will in fact lead to additionality, and how this is to be determined and reported.
- If there is no area of like-for-like equivalence for a potential impact, then no impacts can be allowed on the protected matter and the proposal is to be refused.

Instances of weak and confusing language in various sections have been identified in the main body of the document.

Draft Policy Position: National Environmental Standard for Matters of National Environmental Significance

Proposed application of the MNES Standard

Weak and confusing language is used throughout the draft Policy Position, allowing for excessive Ministerial discretion but with little guidance as to how this will be applied. Ministerial discretion will change depending on the Minister of the day and so does not provide the clarity and certainty either to the public nor to industry as to the reasons for their decisions.

Examples of such language include (emphasis added):

- “The Minister will only be able to approve an action **if satisfied that** doing so is **not inconsistent with**”
- “is **reasonably necessary** for an action to deliver an outcome”
- In practice **it is anticipated that** Proponents will use the Standard **as a guide** when designing their actions or classes of actions.” (Page 3)
- “the rare circumstance of the action being in the national interest”
- “When considering whether appropriate measures have been considered, the Minister **will be able to have regard to the action**, and the significant impacts the action has, will have, **or is likely to have**, on protected matters, as a whole.”
- “The Minister must **have regard to** the Standard.”

Under the heading “Anticipated use of the Standard by Proponents” the wording is (as mentioned above):

“In practice **it is anticipated that** Proponents will use the Standard **as a guide** when designing their actions or classes of actions.” (Page 3; emphasis added).

If draft Standards are written into law, the Society expects that they **will** be used, not that their use will simply be “anticipated”.

The use of the term “in the national interest” does not give anyone a clear understanding of what these “rare” circumstances might be and so is open to lobbying, dispute and variable decisions depending on the Minister of the day. This is not conducive to certainty and will lead to legal disputes.

The term “must have regard to” in relation to the application of the Standard is unclear and suggests that the Minister can sidestep the Standard at his/her discretion.

Recommendations:

- Use clear, unambiguous language throughout that removes the excessive discretion of the Minister.
- Replace weak term “is not inconsistent with” with the stronger term “is consistent with”.
- Define the likely circumstances where “in the national interest” will be appropriate.
- Replace “with regard to” with a clear statement that the Minister will follow the Standards e.g. “the Minister must apply the Standard”.

MNES Standard Outcomes

Summary of intent (Page 9)

While the Summary of intent states how the success of achieving these outcomes will be measured, it is not stated how this is to be evaluated and reported upon or who will do this work. There are no such statements included in either the draft Policy document or the draft Standards.

The following sentence on Page 9 does not make sense: “The MNES Standard must be able to achieve Outcomes through the decisions it applies to.” It would appear that a word or phrase is missing at the end of the sentence.

Again, the use of the word “should” appears “any decision or action “should actively support . . .” in this sentence, giving less certainty to the actions.

Content for the Standard [Policy] page 9

Three decisions to be facilitated through decision-making are listed here; but there is no mechanism detailed for measuring, evaluating and reporting on success of the outcome.

Recommendations

- Provide details about how achievement of outcomes is expected to be measured, evaluated and reported on and by whom.
- Edit the sentence on Page 9 to make it correct (see above).
- Replace the word “should” with “must”.

MNES Standard Principles

Application of the Principles (Page 11)

Principle 1: Actions appropriately consider the application of the mitigation hierarchy.

Policy intent (page 11)

On page 11, it is stated that:

- “the Minister **will be required to consider** whether residual significant impacts have been appropriately minimised” (emphasis added).
- “Proponents **are expected to appropriately consider** the mitigation hierarchy when planning an action. . .” (emphasis added).

The use of “consider” in Principle 1 several times is a further example of weak language used which allows the Minister and proponent to overlook the level of impact of adverse projects. Consider does not imply that anything effective needs to be done to mitigate the adverse impact.

Language used in the section on applying the mitigation hierarchy (page 11 of Policy document) provides further examples of unclear expectations which also can be avoided,

which don't include clear timelines or details of how the success of the application will be measured.

Examples (emphasis added):

- “All appropriate efforts *should* be made”
- “Degradation . . . is repaired *as soon as possible*”
- “As close to original condition *as possible*”

NES (Matters of National Environmental Significance) 2025

Requirement to have regard to the mitigation hierarchy page 6 of NES document.

The intention of the term “have regard to the mitigation hierarchy” is a vague term that does not tell the proponent what they need to do.

Other language in the draft Standards for this Principle that does not give confidence that adequate protections, mitigation or repair will be undertaken include: “*If possible*” avoid impacts, “prevent *significant* impacts”; “the impact *should* be mitigated”; “Mitigation measures *generally* form the basis of management plans and monitoring”; “any repairable impacts . . . *should* be repaired *as soon as possible*”; “repair activities *should* focus on”; “appropriate measures *should* be taken to compensate” (emphasis added).

Intended application through the Regulations (Page 13)

The term “appropriate consideration” is vague and does not convey what is required to be considered, nor the detail or depth of understanding needed.

The list of nine points provided **as an example of submissions** for relevant decisions is detailed. However, the list only considers the planning proposal and does not include any details on requirements for measurement, evaluation, reporting on the success of the planned mitigation, nor how poor outcomes will be managed by the decision-maker and what will then be expected of the proponent.

Definitions in policy and guidance

The statement on page 14: “It is proposed that considerations for whether a proposed measure in the mitigation hierarchy is feasible will be further guided by policy” effectively says “there is a proposal to consider a proposal” – this does little to define any term or statement made in this section of the document and does not provide guidance.

Recommendations:

- Strengthen use of language by requiring positive action on the part of the Minister e.g. “the Minister will be required to **ensure that** residual significant impacts have been appropriately minimised”; “Impacts to protected matters **must be** avoided. . .”. and so on.
- The Society expects that a requirement for assessing the evaluation of and reporting on outcomes will be included in the list of nine points giving examples of submissions to ensure no lasting impact on the protected matter.

- The statement under the definition on page 14 needs to be rewritten to give an appropriate definition and guidance. The Society considers that certainty is required in this matter, not simply a “proposal” that may be dropped from the policy. This certainty must be given and the words “It is proposed that” dropped from this definition.

Principle 2: Actions appropriately consider impacts to protected matters.

Policy intent (page 15)

Again, the term “regard should be had to the context” which is vague and not related to any real action.

The “Policy intent” text includes mention of “compounding impacts” which are detailed as combined impacts of various aspects of a controlled action. Little attention has been given to cumulative impacts of more than one action over time.

In the *Definitions* section of this Principle, the final dot point states that “The context may also . . . include . . . adverse impacts that . . . accumulate. . .” but there is no detail on how these accumulating impacts will be determined, or how they will be considered and by whom. These are instances of “death by a thousand cuts” can lead species to extinction.

The Society is acutely aware of both cumulative and compounding impacts on the GBMWA and considers that this impact needs to be treated with stronger recognition and regulation.

Recommendations

- Define “appropriate consideration” and detail the depth of understanding of the impact on the protected matter that is required.
- Include a statement in the Standards on how adverse, cumulative impacts on protected matters will be prevented, mitigated or repaired.

Principle 3: Actions with residual significant impacts to protected matters are compensated.

Policy intent (page 17)

If the Proponents have put forward a comprehensive project proposal with adequate rigorous data, which addresses all aspects of Mitigation hierarchy (Figure 3 page 11) then there should be no residual significant impact on the protected matter. If there is, then this outcome demonstrates a weakness in the Standards and the Policy documents, and of the processes contained within.

The statement “Offsets will be required to result in a net gain, relative to an agreed baseline; reflecting what would occur in the absence of the development activity.” gives no information about how this “agreed baseline” will be determined, nor who will be parties needing to agree.

Recommendations:

In the Society’s view, if a project’s impact will have a “residual significant impact” on a protected matter (MNES), then the project should not go ahead. Offsetting MNES is

problematic and is likely to lead to a decline in the security of the protected matter in question. This issue is further discussed in the Society's response to the Draft NES for Environmental Offsets 2025.

The Standards need to include details about how to determine a baseline and report on this. Further comments on this are contained in the Society's submission on NES Offsets.

Principle 4: Actions are supported by evidence.

Policy intent page 18

The Society welcomes the inclusion of this Principle, the intent of which is to provide robust scientific evidence on which to base decisions. There is a list of seven actions which need to be supported by evidence and these will lead to subsequent enabling Standards.

However, there is no mention of who will be assessing the quality and suitability of the seven dot point actions included.

The word "should" is used in "Actions should be supported by. . ."

Recommendations

- Replace the word "should" with "must".
- It is the Society's view that actions which will be supported by evidence are to be independently assessed and not be at the discretion of the Minister. This requirement needs to be included in this Principle.

Draft Policy Position: National Environmental Standard for Environmental Offsets

It is pleasing to see that the recommendations of the “Independent Review of the EPBC Act – Final Report October 2020” by Professor Graham Samuel⁵ are being used as a basis for the new draft policy.

However, there are some areas of the draft policy that fail to address Prof Samuel’s recommendations and the Society is of the view that these need to be addressed. We have listed our recommendations in each section below.

Language and terms used

The Society is of the view that the language used in both the Draft Policy Position National Environmental Standard for Environmental Offsets (hereafter referred to as the Draft Policy Position) and the NES Standard (Offsets 2025) documents is weak and will not ensure strong biodiversity outcomes.

Examples include:

- “If satisfied”, “so long as the Minister is satisfied”, “The Minister must be satisfied that”,
- “not inconsistent with”
- “has considered whether”, “can only be considered by the Minister”, “may be considered”
- “can only be considered by the Minister where the impact to a protected species is not unacceptable”
- “significant impact”, “unacceptable impact”
- “National interest”
- “Should”

Terms such as those listed above are vague, subjective and open to different interpretations by different ministers. This wording is not beneficial to either conservation or to industry as it does not give a clear understanding of what is to be expected. This will lead to different interpretations by different people and Ministers, consequent lobbying by both industry and conservation organisations, legal challenges and subsequent continued loss of biodiversity.

Recommendations

The weak wording should be replaced with wording which includes unambiguous definitions.

Examples include:

- “Significant” and “unacceptable impacts” need to be clearly defined in terms of the level of adverse impacts upon species, plant and animal communities, geology, aesthetics. These definitions should be advised by independent scientific experts.
- The Minister should not have the power to decide what impacts are either “unacceptable” or “acceptable”. There needs to be a clear, unambiguous definition and scientifically determined guidelines as to what it “unacceptable”.

⁵ <https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

- “not inconsistent with” is a weak phrase which leaves room for additional adverse impacts to be passed. It should be replaced with “is consistent with”.
- The policy and standard documents need to be clear on what the standard is, leaving no room for different interpretation by different Ministers. The term “if satisfied” needs to be removed and replaced. An example is:
 - “It is proposed that the Minister will only be able to approve an action if satisfied that doing so is not inconsistent with any relevant National Environmental Standard.” (page 3) should be replaced with:
 - “It is proposed that the Minister will only be able to approve an action if the action clearly meets any relevant National Environmental Standard.”
- “may be considered” is an invitation to overlook or only give cursory attention to a requirement. The word “may” needs to be replaced with “will” or “must”.
- “reasonable expectation” provides very low-level assurance of an outcome. To overcome this, the action needs to be based on quality, rigorous scientific advice provided to the Minister prior to the project’s impact occurring. The term “reasonable” should then be replaced with “high”.
- “Should” needs to be replaced with “must”.

Offsets and weaknesses

Issues reported in Samuel Review 2020

The Samuel Review reported on many of the problems arising from using “offsets” in various Governments’ attempts to ensure no net loss (NNL) of biodiversity. The Draft Policy Position pleasingly refers to this review in the “Background” section of the document.

Problems with Offsets.

Offsets have been used in Australia since the late 20th century.

Audits and scientific reviews of offsets indicate current schemes are not meeting their primary goals of “no net loss” (NNL) or “net gain” for biodiversity. A 2025 analysis of Western Australian offsets found as little as 39 per cent were effective, and 30 per cent were inadequately implemented or not implemented at all.⁶ Research in Queensland reported that 97 per cent of environmental offsets were delivered as a financial settlement after the introduction of the scheme in 2014 until the review date and of the \$9.6 million received for these offsets, only \$1.5 million had been spent.⁷

Research has also shown that while the initial environmental damage is permanent, the offsets may take 20 years or more to accrue. This leads to a substantial loss of biodiversity during the

6

[https://www.sciencedirect.com/science/article/abs/pii/S0006320716309363#:~:text=Highlights,and%20inadequate%20reporting%20\(18%25\).](https://www.sciencedirect.com/science/article/abs/pii/S0006320716309363#:~:text=Highlights,and%20inadequate%20reporting%20(18%25).)

⁷ <https://www.edo.org.au/wp-content/uploads/2022/06/190424-EDO-Submission-to-Review-of-Biodiversity-Offset-Framework.pdf>

time lag which may never be made up, particularly in the case of threatened or endangered species or communities.⁸

Questions regarding the effectiveness of offsetting

Whilst the **draft Offsets standards** have attempted to address some of these issues, the Society has serious concerns about the overall effectiveness of offsetting.

Any clearing of habitat is most obviously a loss of biodiversity initially as the area of that habitat has been reduced in size.

If there is a requirement to restore a similar degraded or previously cleared nearby habitat, it might take a considerable length of time to provide suitable habitat to replace what was cleared. However, obviously the animals and plants in the original area cannot wait 20 years for the habitat to grow. And many old -growth forests take far more than 20 years to grow.

Also, there is absolutely no guarantee that restoration will result in effective reinstatement of full or even significant ecological functioning; degradation may be so significant and widespread that only partial ecological functioning may eventually be reinstated e.g. Temperate Grassy Woodlands. In effect then, offsetting is a form of gambling with Australia's environmental heritage. Furthermore, the ethic of restoration is to restore valued degraded ecosystems; restoration has not been developed in order to justify environmental degradation. Australian has reached a point of environmental crisis where all undegraded ecosystems should be conserved; where feasible, degraded ecosystems should be restored.

Evaluation of effectiveness of individual offsets

In **Figure 1 Expected use of the Offsets Standard by different stakeholders** (page 4 Draft Policy Position) it is stated under the row headed "Post approval":

"the Proponent:

Supports design of efficient and effective monitoring, evaluation and reporting activities to meet requirements of approval or bioregional plan."

This statement emphasises some aspects of the process and not the development of a comprehensive ecological restoration plan and not the outcomes, which must be a net gain in biodiversity. There is no clear statement about how this requirement of the proponent will be assessed or enforced by the Minister prior to the commencement of the proponent's project, nor an indication of how the success of the offset will be assessed in achieving NNL.

⁸

<https://www.sciencedirect.com/science/article/pii/S1470160X25011124#:~:text=Highlights,%2Dto%2Ddevelopment%20area%20ratio.>

Recommendation:

- The Society's view is that the evaluation requirement for effectiveness of individual offsets needs to focus on the development of a comprehensive ecological restoration plan OUTCOME (which will be defined by the Standard), not the process.

Restoration Contribution Charges

In the Draft Policy Position, "offsets" allows for the achievement of offsets through payment to a contribution scheme prior to the relevant impact commencing. The situations where this is allowed include:

- if offsets fail to compensate for the impact to achieve net gain
- if the 'like-for-like' requirement for an offset is not feasible within the required timeframe.

Potential benefits of a restoration fund include the enabling of large-scale restorations and regional environmental restoration projects, rather than many small, fragmented projects. However, if this reduces the requirement of "like-for-like" offsets, then crucial habitat risks being lost, with detrimental effects on sensitive species which may become endangered.

However, if this weakens the requirement for 'like-for-like' offsets, there is a risk that crucial habitat will be lost, with detrimental impacts on sensitive species, potentially pushing them towards more endangerment. A Restoration Contribution Scheme risks becoming a "pay to destroy" scheme.

Recommendations

- Restoration Contribution Charges must be a last resort in practice with independent oversight.
- Projects that will cause damage to a protected area that cannot be offset by "like-for-like" must not be approved.
- If restoration contribution charges are used, then there must be an independent body with oversight to audit the Restoration Contribution Fund to ensure funds are adequately spent in a timely manner (preferably before works starts) to ensure like-for-like is achieved.
- This independent body must further provide a detailed report on how the funds were spent, what was achieved and what further work must be done to ensure future protection of the offset area

National Environmental Standard (Environmental Offsets) 2025

Eight Principles are considered in the NES (Environmental Offsets) 2025, and each is addressed below .

Principle 1: Feasibility: *Compensation for the affected protected matter is appropriate and the impact is able to be compensated for at the time approval is sought or a bioregional plan is made.*

Policy intent page 11

The Standard [policy] statement (page 11) is:

“Offset activity is to be **feasible** and based on appropriate and suitable data and information and expert assessment such that there is a reasonable expectation that the offset will contribute to the recovery or conservation of the affected protected matter with **high certainty**.”

The terms “reasonable expectation” and “high-certainty” (also used in the draft Standards document – see below) are vague and not-defined and so open to subjective interpretation. Also, accelerating climate change impacts now make it difficult to accurately estimate the effectiveness of restoration projects, and calculate outcomes. A far safer policy is to not destroy ecosystems and habitat in the first place, especially as indigenous wildlife struggling to cope with climate change require all possible habitat.

Offset activity/restoration projects should adhere to the *National Standards for the Practice of Ecological Restoration Edition 2.2, 2021* (https://www.seraustralasia.com/standards/NationalStandards2_2.pdf).

In the NES (Environmental Offsets) 2025 (page 3) is the statement:

(2) “The delivery of offsets activities should be:

(b) based on appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity *will likely contribute to* the recovery or conservation of the affected protected matter.” (emphasis added)

This statement uses the term “will likely contribute to” – this sets a very low level of expectation for something that crucial to achieving NNL, especially when climate change impacts are factored in.

The definition of “feasibility” provided in this section is from the dictionary, but it would be more useful if it was defined in the context of offsets.

Recommendation:

- Policy and Standards need to be written using clearly defined, objective terminology to enable the decision-makers to act in a clear and consistent manner across different projects.

Principle 2: Security: *Offset activities are committed and the offsets site is protected and managed to prevent its loss and degradation.*

Policy intent (page 14) states:

Securely protected: “Security mechanisms⁹ provide assurance that offsets are not at risk of being degraded or lost, underpinning the integrity and effectiveness of leveraging offsets to protect and enhance protected matters.”

“Where it can be demonstrated that these mechanisms are not available, alternative options *can be considered* where it is *reasonable to expect* there is a low risk of other activities occurring that *may* diminish the outcomes for the protected matter.”

The language used in these statements includes vague, undefined terms including: “can be considered”, “reasonable to expect”, “a low risk”, “may diminish”.

In the NES (Environmental Offsets) 2025 (page 4) is the statement:

- (6) The outcome of an offset activity will be **self-sustaining** where the expected outcome will continue without the need for intervention or assistance.

There are no details provided to indicate how “self-sustaining” will be determined, other than to say no further intervention is needed. The draft Standards do not contain detail about oversight, reporting or evaluation of the outcome.

The requirement that further intervention or assistance is not required is unreasonable. In fact, most restoration projects require ongoing support, as the original source of degradation cannot be removed and is often ongoing e.g. adjacent environmental weeds. Therefore, project proponents should be required to provide ongoing funding for offset activities, as required.

Australian ecosystems are poorly understood in general, and it is not possible to say that any area will continue unchanged into the future. This is significant for all areas of biodiversity, but is particularly critical for threatened species, threatened ecological communities and migratory species.

Whilst security mechanisms should provide assurance that offsets are not at risk of being degraded or lost, there is a high chance that with the warming climate, this loss will happen, particularly in fire-prone areas. Forests burn and are at increasing risk of being lost due to fire. Hence, offsets can be lost through bushfire, in addition to the loss of the original forest through development. In these instances, there will be a net loss of biodiversity and not a net gain.

Recommendations:

- Approving negative impacts from development on threatened species, ecological communities and migratory species must not be approved. Each time an approval is granted, the viability of this biodiversity is further diminished and the risks of extinction increased.

⁹ Security measures suggested include legal, regulatory, practical such as covenants on land titles.

- Project proponents should be required to provide ongoing funding for offset activities, as required, to manage degrading impacts
- Consideration needs to be included in the long-term management requirements of an offset as to effective fire management and how assistance will be provided by fire-fighting organisations such as Rural Fire Service to prevent the offset being lost. Presently, protection of these places is a low priority and loss from fire will become increasingly more likely in the future.
- The Standard must include clearly written guidance as to how both direct and indirect offsets will be managed, evaluated and reported on during the term of activity, after the outcome has been delivered and during the maintenance period.

Principle 3: Direct and tangible: *Offsets provide a tangible benefit to the affected protected matter by directly contributing to its overall conservation outcome.*

Policy intent (page 16) states:

Offsets providing direct and tangible benefits are intended to “offer clear, measurable improvements that contribute to the overall recovery or conservation of an affected protected matter.”¹⁰

The NES (Environmental Offsets) 2025 states for Principle 3:

- (1) “Offset activities **should provide** a direct, tangible and quantifiable benefit to the affected protected matter by contributing to its overall recovery and conservation.
- (2) The benefit achieved by an offset activity **should be** a direct and tangible benefit . .
- (3) Direct offset activities **should be** implemented unless . .”

Offset restoration projects involve the provision of all necessary direct and tangible benefits in order to enable full recovery of ecological functioning.

The continued use of “should” gives uncertainty to the Standard and what will be accepted and allows subjective interpretation of what provides the greater benefit.

Both terms are defined in the draft Standards, but only direct offsets are defined in the Policy document.

The Society consider a **direct benefit** as an action such as restoring habitat or keeping habitat in its original, pristine state. A **tangible benefit** must be real, physical and measurable for example the number of hectares retained or restored, or a measured increase in the population of a species.

¹⁰ Direct offsets (e.g. protection or restoration of habitat), offer clear “direct and tangible” benefits to the affected protected matter whereas indirect offsets (e.g. research on emerging threats such as disease or climate change) offer less such benefits (even though such research will have long-term benefits).

Indirect offsets are undesirable in most circumstances. Whilst it might be the case that research into new diseases will help preserve populations in some circumstances, (e.g. avian flu), most populations are far more viable when there is a large area of healthy, intact habitat.

Recommendations

- Adjust wording to: *Offsets should provide all necessary tangible benefits to the affected protected matter that will directly contribute to its overall conservation outcome.*
- Provide a clear definition for indirect offsets in the policy document as well as in the draft Standards.
- Indirect offsets need to be avoided in most circumstances. The Standard must include clearly written guidance and expectations regarding when and why an indirect offset would be approved in preference to a direct offset.

Principle 4: Measurable improvements: *Offsets deliver a measurable improvement for the affected protected matter relative to an agreed baseline.*

NES (Environmental Offsets) 2025 states:

- (1) Offset activities **should deliver** a measurable improvement to the condition of an affected protected matter relative to the baseline for the affected protected matter (emphasis added)
- (2) The *baseline* for an affected protected matter in an evidence-based estimate of **the likely condition** of a protected matter at the time the relevant decision is made under the Act and in the absence of the action or offset activity being undertaken. (emphasis added)

“Measurable improvement” has no scientific basis. The accepted recovery standard for restoration projects is recovery of substantial to full ecological functioning, as measured and calculated in National Standards for the Practice of Ecological Restoration, Edition 2.2, 2021.

The continued use of vague language in the draft Standards – “should deliver”, “the likely condition” - undermines any attempt at rigorous process or action.

The Society wonders if use of the term “the likely condition” in the Standard implies that a ‘desktop’ audit of an area will be considered sufficient to determine a baseline. There is considerable evidence to show that various databases, including some Government databases at both state and federal level, are highly inaccurate, with evidence of thousands of items of missing data. If too high an emphasis is placed on desktop audits, then a true baseline will not be determined.

Any establishment of a baseline needs include rigorous research, including on-the-ground data-collection and can take considerable time to collect, with sometimes the need for access to years of field data. How will the Minister ensure this level of accuracy occur in this context?

“Measurable improvement” – This term does not provide any information about what level of improvement is considered adequate, nor how the improvement is to be measured, nor who

will determine if this has been met. It is possible that the improvement attained can be measured but is never-the-less inadequate to ensure NNL.

Recommendations

- Adjust wording to *Offsets deliver substantial to full ecological recovery for the affected protected matter.*
- Details of proposed regulation, enforcement and oversight of these measures referred to in this Principle need to be provided.
- The draft Standards must explain what level of improvement is expected and what will be adequate, including methods used to determine this level and who will make this decision.
- A baseline must be established using a variety of detailed and authentic sources of data, including on-the-ground field work over an extended period.

Principle 5: Additionality: *Offsets deliver benefits that would not have occurred without the offset - they go beyond existing obligations, and protections.*

Policy intent page 18

The term “positive obligation” is used several times in this section but it is not defined and its meaning is unclear and neither is it clear how this differs from the use of “obligation”.

NES (Environmental Offsets) 2025 states:

- (1) “Offset activities *should deliver* a benefit to the affected protected matter which is additional to any existing conservation activities, investment, and regulatory obligations, except where the offset activity is, or will be, an approved state or territory offset or an advanced restoration action.” (emphasis added)

Use of “should deliver” lowers the expectation that the Standard needs to be reached.

The Standard as written allows an impact to be offset by an existing “approved state or territory offset or advanced restoration action”. Advanced restoration actions, registered for that purpose, have been established purposefully to provide offsets approved prior to the impact.

Whilst the idea of having an existing, registered area offset ready-to-go has merit, the use of these registered advanced offsets as the only offset will still effectively result in loss of habitat at the time of impact, result in loss of biodiversity and may not lead to NNL. They will only lead to NNL if the offset area was previously degraded, then restored when it otherwise would not have been OR was slated for clearance and then not cleared purposefully to become a registered advanced offset.

There are no details provided in the Policy or the standard to determine if a registered advanced offset will necessarily adhere to the Principle of Additionality.

Recommendations

The term “positive obligation” needs to be defined, including how it differs from “obligation”.

There needs to be clear guidelines for an accurate determination if a “registered advanced offset” will in fact lead to additionality, and how this is to be determined and reported on.

Principle 6: Like-for-like: *Offsets provide for a like-for-like outcome for the **affected protected matter** to compensate for residual significant impacts.*

Policy intent page 18

There a several times that “should” is used in this section: “Offsets should focus on”, “Like-for-lie offsetting should be supported by evidence”, “proposed offsets . . . should demonstrate a clear alignment”, “offsets should then refer to”, “offsets should be consistent with the priorities”.

NES (Environmental Offsets) 2025

This vague language is also found in the draft Standards:

(1) “An offset activity *should address* residual significant impacts . . .” (emphasis added)

(2) An offset activity *should only* deviate from like-for-like . . .” (emphasis added)

Provision of like-for-like offsets is crucial if biodiversity is to be genuinely maintained and for a net gain. Payment into a fund does not overcome this problem and so is not a suitable alternative.

A like-for like provision does not necessarily ensure that substantial to full ecological functioning is being obtained in the offset project, and this should be the target. For example, the affected protected matter may be in a state of moderate ecological functioning and recovering. It would be better to set ecologically measurable, ambitious recovery standards.

Recommendations

- If there is no area that of strict like-for-like equivalence, then no impacts can be allowed on the protected matter.
- The Society’s concerns with Like-for-Like Principle are further discussed on page 11 of the Society’s submission under the heading **Restoration Contribution Charges**.
- Set ecologically measurable, ambitious recovery standards i.e. substantial to full ecological functioning, as calculated in National Standards for the Practice of Ecological Restoration edition 2.2, 2021.

Principle 7: Relevant area: *Offsets delivered in an area that is relevant to the affected protected matter and which will enhance the effectiveness of conservation efforts for the affected protected matter.*

Policy intent page 19

Again, the use of “should” is present and does not provide for certainty of action.

“Offsets *should be* delivered in an area that is ecologically and socially relevant to the affected protected matter . . .” (emphasis added)

NES (Environmental Offsets) 2025

The same sentence using “should” as in the Policy intent is used in the draft Standards.

The Policy intent of Principle 7 states: “Offsets *should be* delivered in an area that is ecologically and socially relevant to the affected protected matter . . .”

Recommendations:

- This Principle is crucial to the success of any offset and it is a welcome addition. However, the Society is of the view that the Policy intent should read: “Offsets **must be** delivered . . .”, replacing the word “should”, to strengthen this requirement.

Principle 8: Offset commenced prior to impact: *Offset is secured and actively managed at the offset site prior to the relevant impact starting at the impact site.*

Policy intent page 20

The Policy intent uses language such as: “Offsets *need to be* secured”, “An offset *will have commenced*”, “offsets *must be delivered*”. (emphasis added)

NES (Environmental Offsets) 2025

In the draft Standards, the language requires less certainty than in the Policy intent: “Offsets *should be* secured”, “delivery of offsets *should commence*”, “an offset *may be* identified” (emphasis added). This language undermines the policy intent.

The Society welcomes the requirement that offsets are secured and actively managed prior to the relevant impact starting.

However, how the following circumstance is to be managed is unclear. In draft Standards Principle 8, it is stated that:

“Where an offset activity is to be delivered in distinct stages over an extended time period, an offset may be identified for each stage of the development, and those offsets must commence prior to the impact(s) occurring in relation to the relevant stage.”

Does this also mean that **all the offsets** for each stage of development must be identified prior to the commencement of the whole project? If these stage-dependent offsets are not identified prior to the whole development, then it is quite possible that a project could be started, and that suitable offsets cannot be identified down the track. This would then lead to a situation where the project must be ceased (unlikely and problematic for industry), as offsets are not available, or offsets become payment into a fund which can lead to an overall loss of habitat.

Recommendations

- The language used in the Standard need to be changed to give certainty to the actions required, i.e. “should” changed to “must” and so on.

- To ensure NNL, the entire suite of offsets for the whole of the project needs to be identified and set aside before the approval and commencement of the project. Principle 8 should reflect how this potential problem will be managed prior to the commencement of the project. For example, a comprehensive ecological restoration plan for the secured offset/s will be developed, including restoration goals and aims, and implementation commenced prior to project work.