



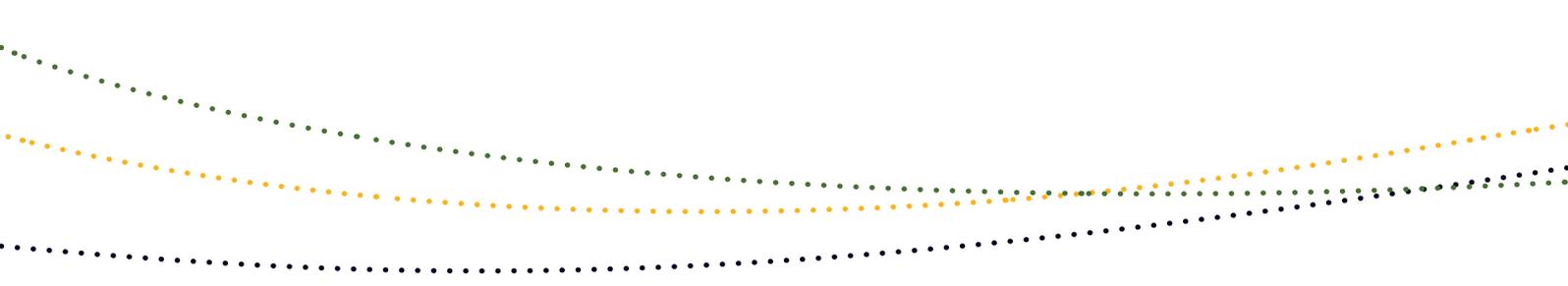
Australian Government

Department of Sustainability, Environment,
Water, Population and Communities



Environment Protection and Biodiversity Conservation Act 1999 **Environmental Offsets Policy**

October 2012



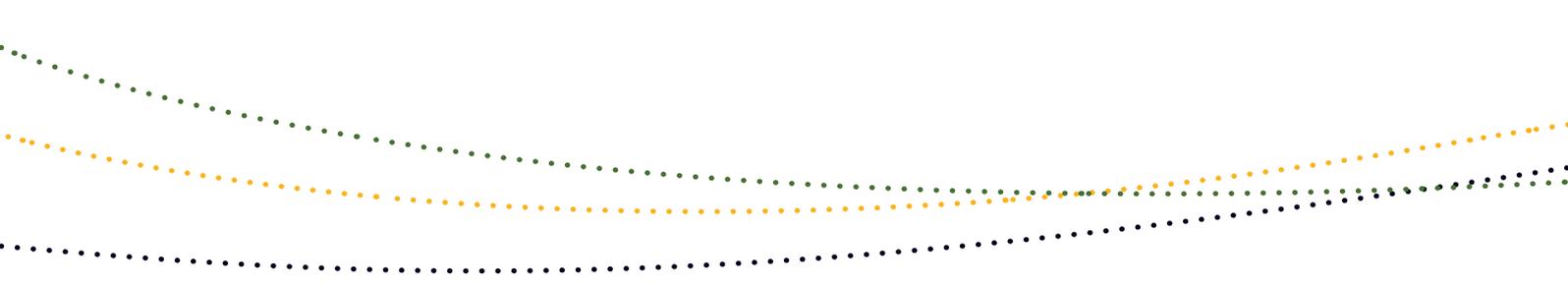
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1. EPBC ACT ENVIRONMENTAL OFFSETS POLICY

Introduction

This policy outlines the Australian Government's approach to the use of environmental offsets ('offsets') under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). It replaces the draft policy statement *Use of environmental offsets under the EPBC Act (2007)*.

Offsets are defined as measures that compensate for the residual adverse impacts of an action on the environment. Where appropriate, offsets are considered during the assessment phase of an environmental impact assessment under the EPBC Act, as outlined in Section 5 of this document. This policy provides transparency around how the suitability of offsets is determined. The suitability of a proposed offset is considered as part of the decision as to whether or not to approve a proposed action under the EPBC Act.

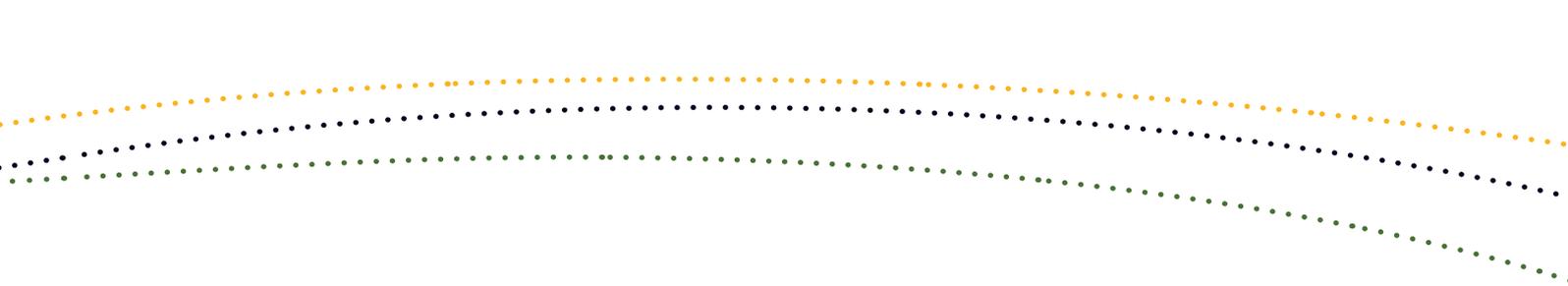
There are different ways to achieve good environmental outcomes. This policy provides flexibility in delivering those outcomes. For example, the enduring protection and management of a threatened species' habitat can be achieved through a variety of methods, including through conservation land management by rural landholders, or in partnerships with

Indigenous communities. The policy is intended to provide a transparent framework to give greater certainty for businesses and others considering actions that may potentially be subject to an offset requirement, while also promoting consistency and providing robust, positive environmental outcomes.

The *Offsets assessment guide*, which accompanies this policy, has been developed in order to give effect to the requirements of this policy, utilising a balance sheet approach to measure impacts and offsets. It applies where the impacted protected matter is a threatened species or ecological community. The *Offsets assessment guide* is a tool that has been developed for expert users in the department to assess the suitability of offset proposals. The guide is also available to proponents to assist with planning for future development proposals and estimating future offset requirements.

A technical review of the policy and guide will be undertaken one year after they come into effect. Subsequent reviews will be undertaken every five years. The use of offsets is a developing policy area, and this policy incorporates current international best practice.

This policy was finalised on 20 September 2012, and applies to any new referrals and variations to approval conditions from 2 October 2012. It also applies to any projects currently under assessment for which a proposed decision has not yet been made.



2. SCOPE OF THIS POLICY

The EPBC Act is the Australian Government's principal piece of environmental legislation. It is designed to protect national environmental assets, known as matters of national environmental significance, and other protected matters. 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. Proposed actions may range from a housing development, an offshore gas project, a mining project, to the construction of a road. Further information on the EPBC Act can be found at www.environment.gov.au/epbc/index.html.

This policy relates to all matters protected under the EPBC Act ('protected matters'). These are:

- world heritage properties
- national heritage places
- wetlands of international importance (listed under the Ramsar Convention)
- listed threatened species and ecological communities
- migratory species protected under international agreements
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- the environment, where nuclear actions are involved;
- the environment, where actions proposed are on, or will affect Commonwealth land and the environment,

- the environment, where Commonwealth agencies are proposing to take an action.

The policy applies to offsetting requirements in terrestrial and aquatic (including marine) environments.

The policy applies to both project-by-project assessments and approvals under Parts 8 and 9 of the EPBC Act and to strategic assessments under Part 10 of the EPBC Act. Proposed new strategic assessments may consider alternative metrics other than the *Offset assessment guide* (e.g. if a jurisdiction has developed a metric tailored to their needs) provided the principles of this policy are met. This will be considered on a case by case basis.

2.1 Application of the policy to heritage values

The use of offsets to compensate for adverse impacts to heritage values is appropriate in some circumstances. In cases where offsetting of adverse impacts on heritage values is considered possible and appropriate, the principles of this policy apply with regard to determining what constitutes a suitable offset. Offsets for impacts on heritage values should improve the integrity and resilience of the heritage values of the property involved. This may include offsets in areas adjacent to the property. For further information, please contact the department (contact details are at section 10).

3. AIMS OF THE POLICY AND OVERARCHING OFFSET REQUIREMENTS

The *EPBC Act environmental offsets policy* has five key aims, to:

1. ensure the efficient, effective, timely, transparent, proportionate, scientifically robust and reasonable use of offsets under the EPBC Act
2. provide proponents, the community and other stakeholders with greater certainty and guidance on how offsets are determined and when they may be considered under the EPBC Act
3. deliver improved environmental outcomes by consistently applying the policy
4. outline the appropriate nature and scale of offsets and how they are determined
5. provide guidance on acceptable delivery mechanisms for offsets.

Box 1 provides the overarching principles that are applied in determining the suitability of offsets.

Box 1: Offset Principles

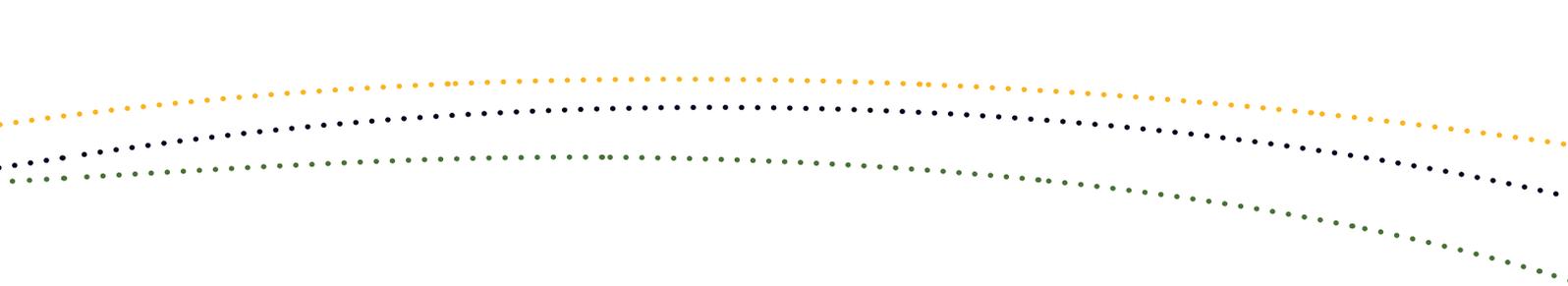
Suitable offsets must:

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 action
2. be built around direct offsets but may include other compensatory measures

3. be in proportion to the level of statutory protection that applies to the protected matter
4. be of a size and scale proportionate to the residual impacts on the protected matter
5. effectively account for and manage the risks of the offset not succeeding
6. be additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs (this does not preclude the recognition of state or territory offsets that may be suitable as offsets under the EPBC Act for the same action, see section 7.6)
7. be efficient, effective, timely, transparent, scientifically robust and reasonable
8. 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:

9. informed by scientifically robust information and incorporate the precautionary principle in the absence of scientific certainty
10. conducted in a consistent and transparent manner.



4. WHAT ARE ENVIRONMENTAL OFFSETS?

The term 'environmental offsets' refers to measures that compensate for the residual adverse impacts of an action on the environment. Offsets provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining, unavoidable impacts are termed 'residual impacts'. For assessments under the EPBC Act, offsets are only required if residual impacts are significant.¹

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

Offsets do not mean proposals with unacceptable impacts will be approved. They simply provide an additional tool that can be used during the environmental impact assessment process.

¹ As defined in 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, available at www.environment.gov.au/epbc/guidelines-policies.html.

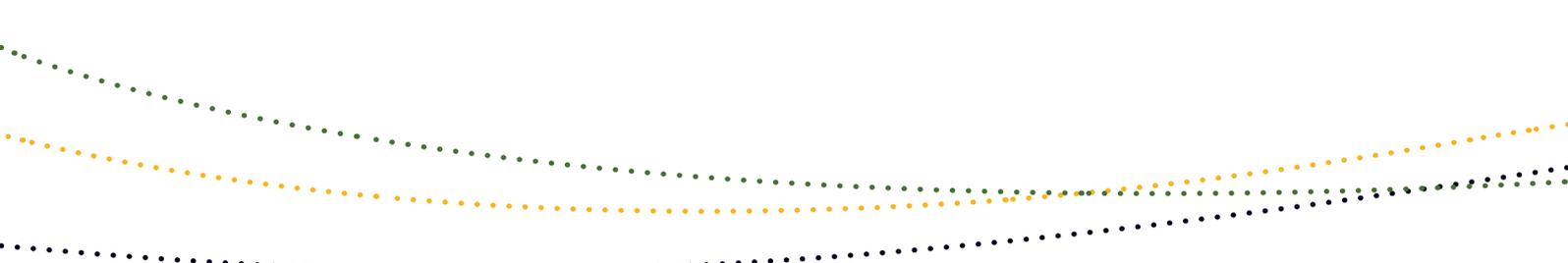
4.1 How are offsets different to avoidance and mitigation measures?

Avoidance and mitigation measures are the primary strategies for managing the potential significant 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 significant impact.

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 significant 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.

Avoidance and mitigation measures can reduce and, in some cases, remove the need for offsets if the residual impact is not significant. Offsets will not be considered until all reasonable avoidance and mitigation measures are considered, or acceptable 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 on-ground benefits to be gained through each of these measures.

4.2 Types of offsets

An offsets package is a suite of actions that a proponent undertakes in order to compensate for the residual significant impact of a project. It can comprise a combination of *direct offsets* and *other compensatory measures*. Offsets should align with conservation priorities for the impacted protected matter and be tailored specifically to the attribute of the protected matter that is impacted in order to deliver a conservation gain. For instance, if the proposed action is likely to have impacts on foraging habitat for a particular protected matter, then the offset should create, improve, protect and/or manage foraging habitat.

Offsets should compensate for an impact for the full duration of the impact. Offsets that deliver an outcome prior to the impact commencing are encouraged, as they minimise effects on the protected matter resulting from offset time delays (see section 4.2.3 Advanced offsets).

Offsets that deliver social, economic and/or environmental co-benefits are encouraged (See Box 2).

4.2.1 Direct offsets

Direct offsets are those actions that provide a measurable conservation gain for an impacted protected matter.

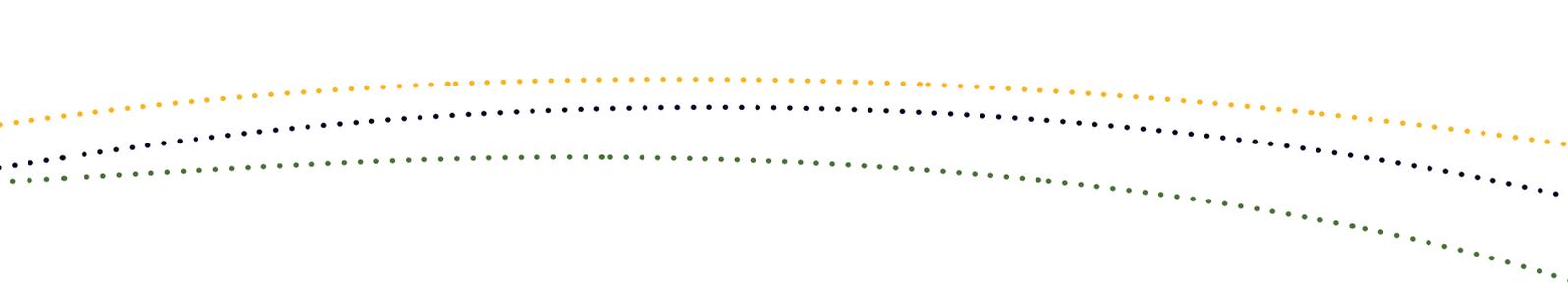
Direct offsets are an essential component of a suitable offsets package. A minimum of 90 per cent of the offset requirements for any given impact must be met through direct offsets.

Deviation from the 90 per cent direct offset requirement will only be considered where:

- it can be demonstrated that a greater benefit to the protected matter is likely to be achieved through increasing the proportion of other compensatory measures in an offsets package or;
- scientific uncertainty is so high that it isn't possible to determine a direct offset that is likely to benefit the protected matter. For example, this can be the case in some poorly understood ecosystems in the Commonwealth marine environment

Conservation gain is the benefit that a direct offset delivers to the protected matter, which maintains or increases its viability or reduces any threats of damage, destruction or extinction. A conservation gain may be achieved by:

- improving existing habitat for the protected matter
- creating new habitat for the protected matter
- reducing threats to the protected matter
- increasing the values of a heritage place, and/or
- averting the loss of a protected matter or its habitat that is under threat.



Conservation gain in the marine environment may include improving protection of important protected species habitat, such as sea grass, or by addressing pressures on the protected matter or its habitat, such as removing derelict fishing nets and other marine debris.

Averting the loss of a protected matter or its habitat is considered to deliver a conservation gain where there is an immediate threat of destruction or degradation, and the risk of loss of that particular site is averted by securing its future for conservation purposes (for example through a conservation covenant on the title of the land). In the *Offsets assessment guide*, considering future risks to a specific site in order to quantify averted loss is undertaken over either a 20 year time-frame or for the duration of the offset, whichever is the shorter period.

4.2.2 Other compensatory measures

Other compensatory measures are those actions that do not directly offset the impacts on the protected matter, but are anticipated to lead to benefits for the impacted protected matter, for example funding for research or educational programs. Requirements for other compensatory measures are outlined at Appendix A.

Other compensatory measures should relate to the impacted aspect of the protected matter. For example, research into effective re-vegetation techniques for a particular ecological community may be an appropriate component of an offsets package for an action that involves clearing of that ecological community.

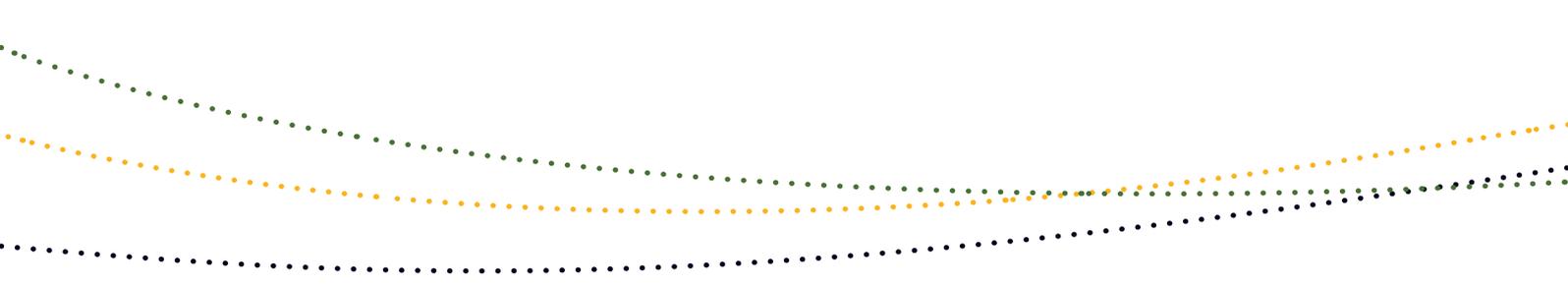
4.2.3 Advanced offsets

Advanced environmental offsets are a supply of offsets for potential future use, transfer or sale. An example of an advanced offset is protection or improvement of habitat for the conservation of a protected matter before an impact is undertaken. Advanced offsets are encouraged where practical, given that they provide a means to better manage the risks associated with the time delay in realising the conservation gain for a protected matter. The *Offsets assessment guide* places higher value on offsets that deliver a conservation gain in a shorter time period. This can reduce overall offset requirements.

Proponents or offset providers looking to establish advanced offsets should discuss these with the department at the earliest possible opportunity. Proponents should monitor and record baseline data associated with the establishment of the offset and improvements over time.

The department will consider advanced offsets that deliver a conservation gain after the commencement of the EPBC Act, on 16 July 2000.

Advanced offsets must satisfy all requirements in this policy, including those relating to offsets being additional to other legislation and schemes, as outlined in section 7.6. It is important to note that advanced offsets do not in any way prejudice the outcome of any future assessment of an action. That is, while planning advanced offsets may result in lower overall offset requirements, it does not influence whether or not an action referred under the EPBC Act will be determined as acceptable.



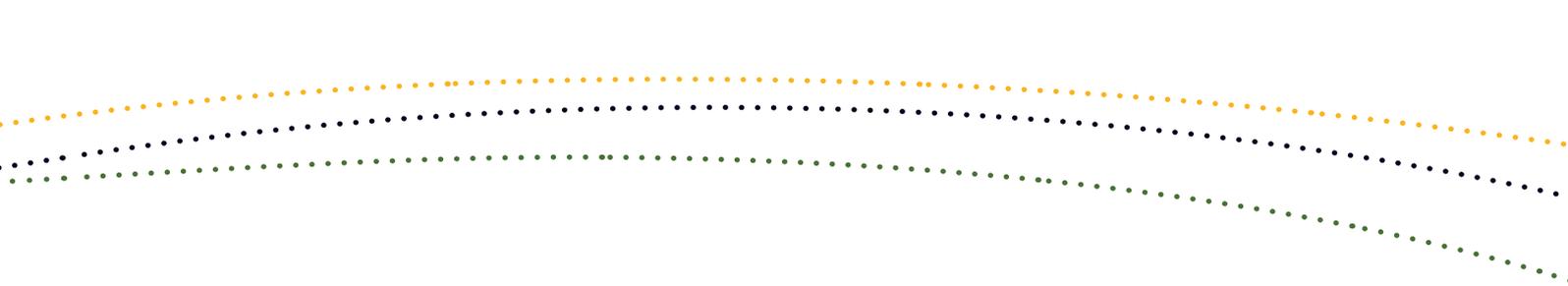
Box 2: Delivering social, economic and/or environmental co-benefits

While the primary consideration in determining suitable offsets is delivering a conservation gain for the impacted protected matter, the delivery of offsets that establish positive social or economic co-benefits is encouraged.

Social and economic or environmental co-benefits may be delivered where an offset aligns with broader strategic environmental objectives such as those outlined in the National Wildlife Corridors Plan, the Indigenous health strategy Closing the gap, or policies that enhance the environment of regional Australia.

For example:

- an offset contributing to an area recognised as important to increasing landscape connectivity, above and beyond what is required by the impacted protected matter
- an offset that employs local Indigenous rangers to undertake management actions
- an offset delivered by paying rural landholders to protect and manage land for conservation purposes.



5. THE ROLE OF OFFSETS IN ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE EPBC ACT

Figure 1 shows the role of offsets within the broader environmental impact assessment process under the EPBC Act.

5.1 Referral stage

The referral stage, under Part 7 of the EPBC Act, is the initial screening stage of the environmental impact assessment process. Referrals are used to determine whether significant adverse 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 the proposed action is a 'Controlled Action', it requires full assessment under Part 9 of the EPBC Act. If significant impacts on protected matters are determined to be unlikely then the action may be declared 'Not a Controlled Action' and can proceed. The offsets policy does not apply to actions that have been declared as 'Not a Controlled Action'.

The EPBC Act does not allow for any beneficial impacts, such as offsets, to be considered at the referral stage.

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 likely impacts on protected matters?** – which protected matters are likely to be impacted by the action? What is the scale and size of impacts? What are the risks to the viability of protected matters arising from the action? Will impacts on protected matters be permanent or temporary?
- **Can impacts on protected matters be avoided?** – can the proposed action be redesigned to avoid impacting protected matters? What alternatives have been considered? Have environmental considerations been factored into the project's design?
- **Can impacts on protected matters be mitigated?** – what actions can take place that will reduce the impacts arising from the proposed action? For example, developing environmental management plans, implementing erosion control measures, fencing off environmentally sensitive areas etc.

- **Are the residual impacts likely to be significant?** – what are the residual impacts on protected matters that are still likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account? E.g. 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?** – are offsets needed to help compensate for residual impacts on the protected matter and are they feasible?

It is important to note that offsets are not required for all approvals under the EPBC Act. Offsets are not required where the impacts of a proposed action are not thought to be significant or could reasonably be avoided or mitigated.

If an offset is appropriate, then the proponent should discuss offset options with the department and submit an offsets proposal. This proposal should describe the offset and demonstrate how it will provide an appropriate benefit to compensate for any residual impact on the protected matter. The department will then assess this proposal against the policy and – where the impacted protected matter is a threatened species or ecological community – the *Offsets assessment guide*. If the proposed offset is not considered to be suitable, the department will discuss this finding with the proponent and provide them with an opportunity to submit a revised proposal.

5.3 Decision stage

Following assessment, the decision maker considers the offset proposal in deciding whether the proposed action should be approved. In some cases, a suitable offset may not be proposed or available and a decision on the overall acceptability of the project will need to be made.

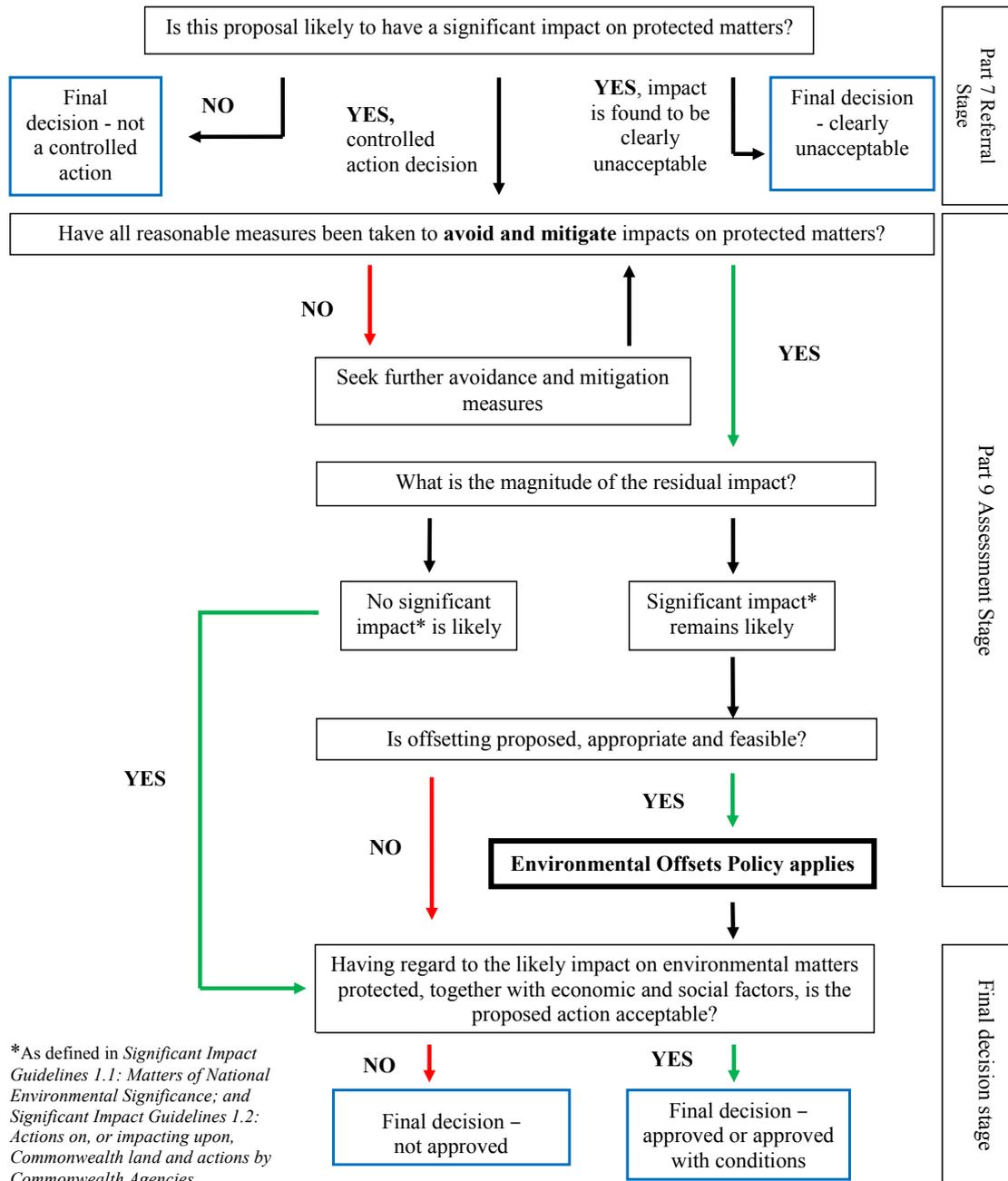
The offset proposal is one of many considerations that are weighed at the decision stage in determining the overall acceptability of the proposed action, including economic and social matters. These considerations are outlined in the EPBC Act in Sections 136–140A.

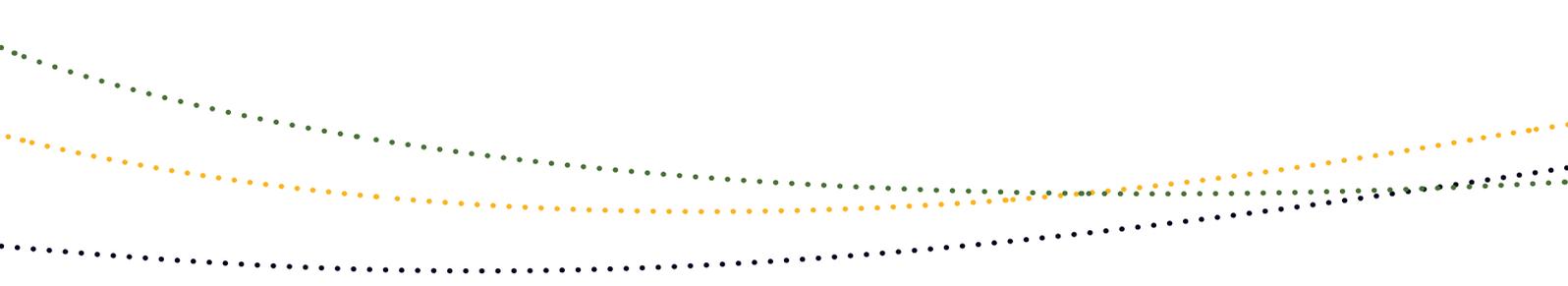
Offset requirements are included as a condition of approval under section 134 of the EPBC Act.

5.4 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 in accordance with the approved conditions. The department has an active monitoring and audit program to ensure that conditions of approval are implemented. Where a proponent becomes aware that they may not be able to fulfil a condition of approval, they should approach the department in the first instance to discuss the matter and see what options are available to remedy the situation. Breaches of approval conditions, including those relating to offsets, can incur significant penalties. Further information on the department's *EPBC Act Compliance and Enforcement Policy* is available at www.environment.gov.au/epbc/publications/index.html.

Figure 1 – The role of offsets within the broader environmental impact assessment process.



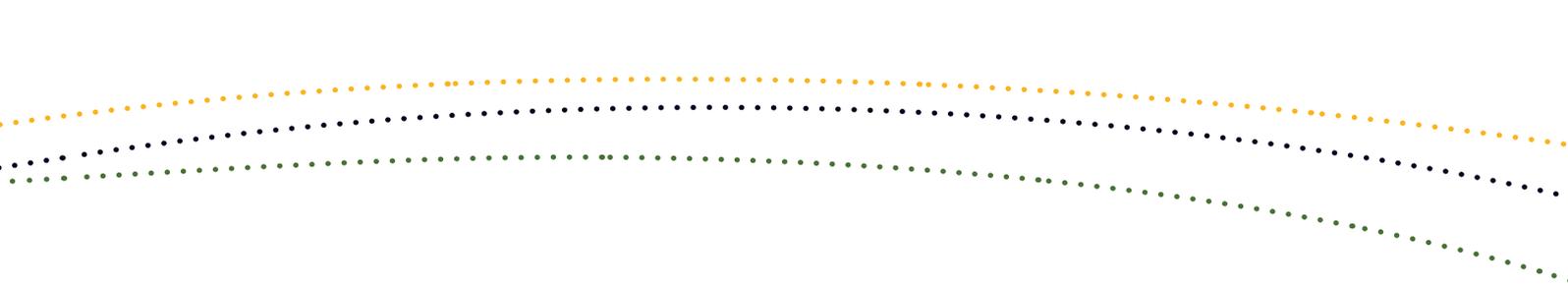


6. PLANNING AN OFFSET PROPOSAL

An appropriate offsets package should be developed by proponents in consultation with the department. There are two key types of information utilised in planning an offset proposal – determining what types of activities would be appropriate as offsets for a given impact, and determining the specific size and scope of an offsets package.

In determining the appropriateness of the offset activities proposed, the department will consult the relevant Commonwealth approved recovery plan, threat abatement plan, conservation advice, ecological character description, management plan and/or listing document. Where Commonwealth approved guidance documents are not available or are insufficient in detail, the department will review additional information sources such as state and territory management plans or peer-reviewed scientific literature to inform priority offset activities.

If the department is satisfied that the offset activities are suitable, the department will consider whether appropriateness of the magnitude and composition of the proposed offset package in detail on a case-by-case basis. There are a range of considerations taken into account at both the impact site and the proposed offset site as discussed in sections 7 and 8. Proponents should include detailed information pertaining to these considerations in their offsets proposal. The *Offsets assessment guide* will be used by the department at this stage if the impacted protected matter is a threatened species or ecological community.



Matters to be considered at the impact site include the:

- presence and conservation status of protected matters likely to be impacted by the proposed action
- specific attributes of the protected matter being impacted at a site, for example: the type of threatened species or ecological community habitat, the quality of habitat, population attributes such as recruitment or mortality, landscape attributes such as habitat connectivity, or heritage values
- scale and nature of the impacts of the proposed action – including direct and indirect impacts
- duration of the impact (not of the action).

Matters to be considered at the offset site include the:

- extent to which the proposed offset actions correlate to, and adequately compensate for, the impacts on the attributes for the protected matter
- conservation gain to be achieved by the offset. This may be through positive management activities that improve the viability of the protected matter or averting the future loss, degradation or damage of the protected matter

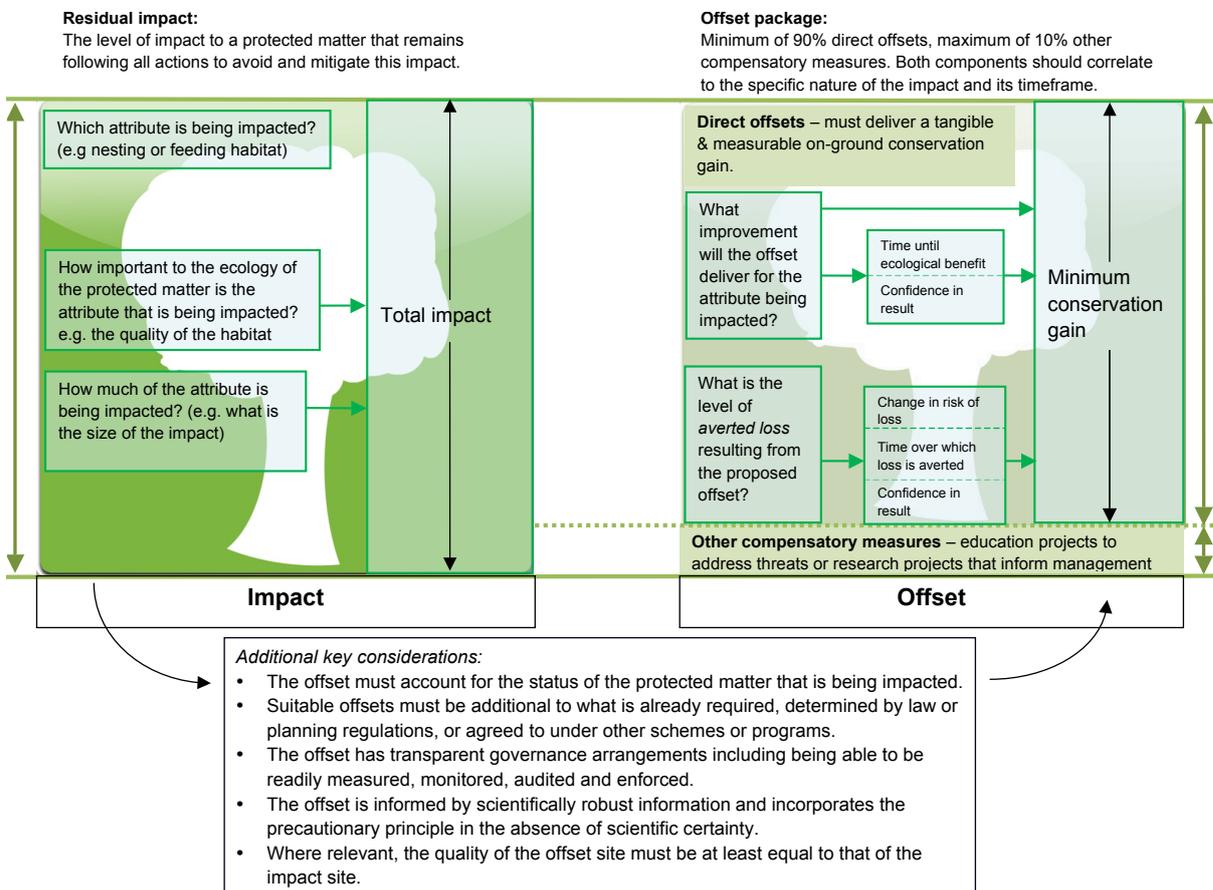
- current land tenure of the offset and the proposed method of securing and managing the offset for the life of the impact
- time it will take to achieve the proposed conservation gain
- level of certainty that the proposed offset will be successful. In the case of uncertainty, such as using a previously untested conservation technique, a greater variety and/or quantity of offsets may be required to minimise risk
- suitability of the location of the offset site. In most cases this will be as close to the impact site as possible. However, if it can be shown that a greater conservation benefit for the impacted protected matter can be achieved by providing an offset further away, then this will be considered.

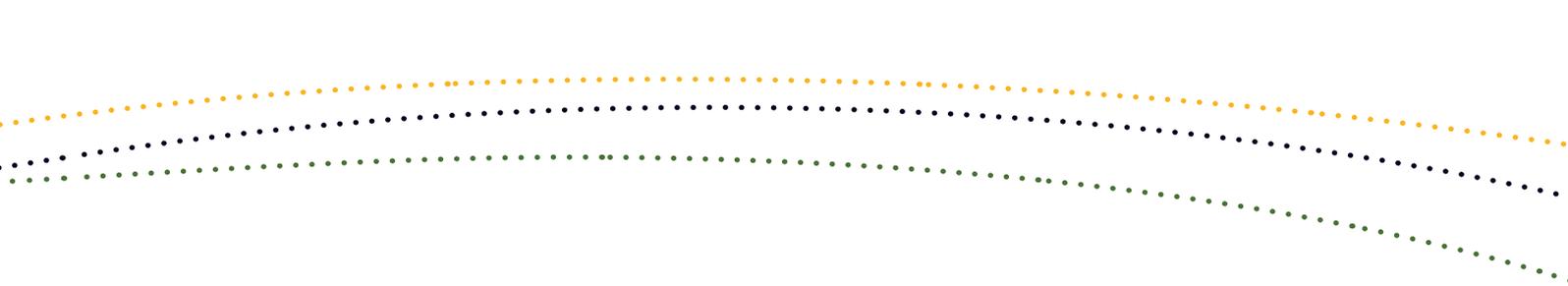
7. OFFSET REQUIREMENTS

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

The *Offsets assessment guide* gives effect to these requirements and provides a decision-making framework for the department to consider the appropriateness and adequacy of proposed offsets for listed threatened species and ecological communities.

Figure 2 – Determining suitable offsets under the EPBC Act





7.1 Suitable offsets must deliver an overall conservation outcome that improves or maintains the viability of the protected matter

Offsets must directly contribute to the ongoing viability of the protected matter impacted by the proposed action, and deliver an overall conservation outcome that *improves or maintains* the viability of the protected matter as compared to what is likely to have occurred under the status quo, that is if neither the action nor the offset had taken place.

Offsets should be tailored specifically to the attribute of the protected matter that is impacted in order to deliver a conservation gain. For example, if the impact is the removal of foraging habitat for a listed threatened bird species, then an appropriate offset would be creating new similar habitat through re-vegetation works, improving the quality of existing foraging habitat for the species, and/or protecting existing foraging habitat through putting a conservation covenant on the title of the land. If an impact decreases the nesting success of a listed threatened turtle species due to light pollution, then an appropriate offset may be increasing the birth rate of that same species in a nearby location through threat abatement activities such as reducing feral pig predation on turtle nests.

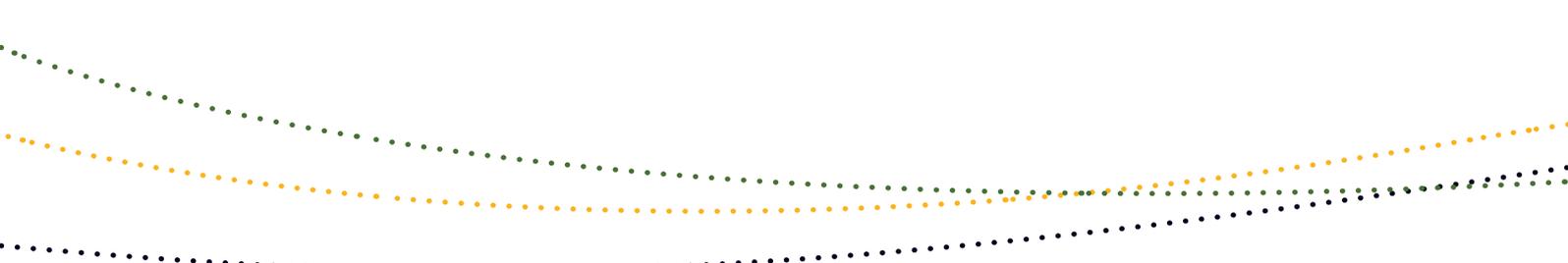
In some circumstances it may be possible to demonstrate that a better conservation outcome can be achieved for the protected matter by deviating from this rule. If this is the case then the decision-maker may consider this. For instance, in the first example above, if the limiting attribute to the viability of the protected matter in a particular area is not foraging habitat, but nesting habitat, then an offset that produces more nesting habitat may be considered satisfactory for an impact on foraging habitat.

For heritage values, offsetting for the same or similar values in the same property or adjacent to it may be suitable where it can be demonstrated that such an activity will improve the overall integrity and resilience of the property.

In no instances will trading offsets across different protected matters be considered as a suitable offset. That is, where an action impacts on a specific threatened or migratory species, ecological community, Ramsar wetland or heritage property, any offset must relate to that same specific matter which is impacted.

When the protected matter is the whole of the environment (nuclear actions, proposals involving the Commonwealth, actions that affect Commonwealth areas and the Great Barrier Reef Marine Park), offsets must be targeted to the aspect of the environment that is being impacted so as to directly compensate for the impact. For example, where an action has a residual impact that involves the clearing of native vegetation or the degradation of water quality, an offset proposal would need to adequately compensate for these specific residual impacts.

For impacts on habitat for threatened species, migratory species and threatened ecological communities, any direct offset must meet, as a minimum, the quality of the habitat at the impact site. Where a proposed offset site has a lower habitat quality than that of the impact site, the offset must be managed and resourced over a defined period of time so that its habitat quality is improved to meet the quality of habitat originally impacted. Supporting and/or recreating non-endemic vegetation or ecosystems would not be considered a suitable offset.



7.2 Suitable offsets must be built around direct offsets but may include other compensatory measures

Offsets must be built around direct offsets, which should form a minimum of 90 per cent of the total offset requirement. Most proponents will be able to provide a direct offset that will satisfy 100 per cent of the offset requirement. However, other compensatory measures may satisfy up to a maximum of 10 per cent of the total offset requirement.

The circumstances in which deviation from the 90 per cent direct offset requirement may be considered are outlined in section 4.2.1.

Where possible, an offset should address key priority actions outlined for the impacted protected matter in any approved recovery plans, threat abatement plan, conservation advice, ecological character description or approved Commonwealth management plan. Higher priority actions are preferred to lower priority actions. Appendix A outlines what other compensatory measures are considered suitable.

7.2.1 Tenure for direct offsets

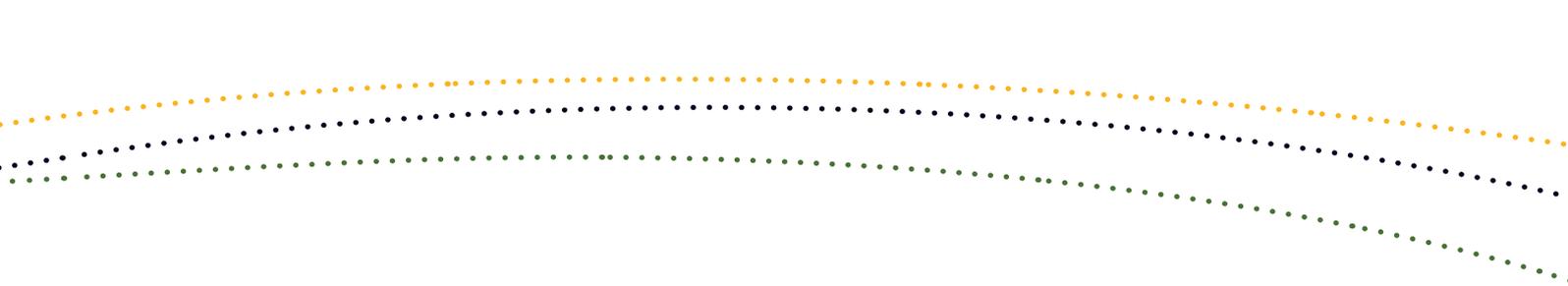
For direct offsets, the securing of existing unprotected habitat as an offset only provides a conservation gain if that habitat was under some level of threat of being destroyed or degraded, and as a result of offsetting will instead be protected in an enduring way and actively managed to maintain or improve the viability of the protected matter. In these cases, the tenure of the offset should be secured for at least the same duration as the impact on the protected matter arising from the action, not necessarily the action itself.

As a general guide, the best legal mechanisms for protecting land are intended to be permanent (lasting forever) and are secure (that is, they are difficult to change or alter). These two elements are important because they mean that land set aside as an offset will continue to provide a secure benefit to the impacted protected matter.

Legal mechanisms, such as conservation covenants, exist in each state and territory to enable the protection of land that is set aside for environmental purposes on a permanent or long-term basis. Suitable mechanisms for a particular offset must be built around the principles outlined in Box 3.

In addition to state and territory legal mechanisms for securing offsets, there is also provision under Part 14 of the EPBC Act for the Minister to enter into a conservation agreement with a third party for the conservation of a protected matter. An EPBC Act conservation agreement is a flexible instrument that can be used for implementing a range of management activities to benefit a protected matter, such as fencing off important habitat areas, undertaking weed and feral animal control or the establishment of compensatory habitat. They can also require a landholder to refrain from, control or refuse to permit, activities that may adversely affect the species, ecological communities, habitats or potential habitats covered by the agreement.

Marine areas are predominantly managed by state, territory and/or Commonwealth government agencies. In determining appropriate offset packages in marine environments, proponents should engage with the relevant governing jurisdiction to identify suitable areas of habitat that may be protected and/or improved to achieve a conservation gain. This could include removing pressures, such as dredging, on habitat for a protected matter.



Box 3: Suitable Offset Mechanisms

Offsets on public lands

- should be legally secured for conservation purposes for at least the duration of the impact
- should be statutorily defined and resourced
- any change in management status should require Ministerial or statutory approval.

Offsets on private lands

- should be legally secured for conservation purposes for at least the duration of the impact
- the securing scheme should actively monitor for compliance, with covenant requirements enforced
- any change in legal status should require Ministerial or statutory approval.

Offsets on Indigenous owned lands

- should have customary law protection with Traditional Owners holding a non-transferable interest in the land with a commitment to its long-term protective management
- should include a commitment from Traditional Owners to accept and manage the offset.

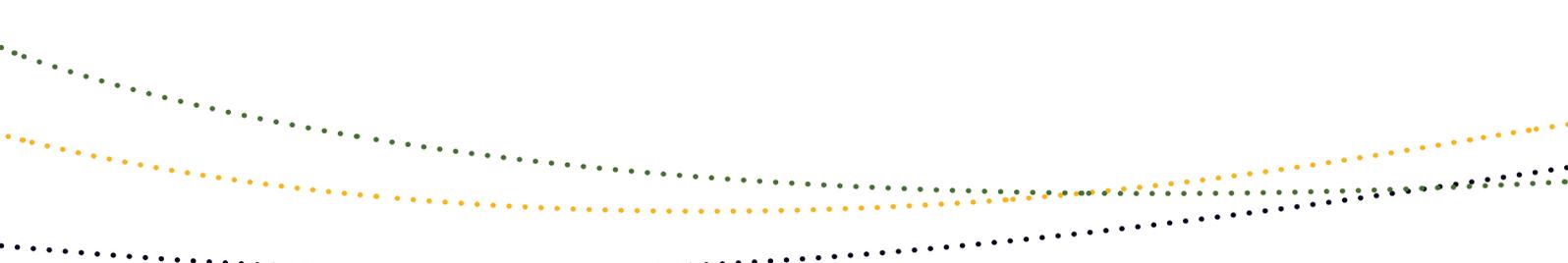
Offsets in the marine environment

- should be implemented for the duration of the impact
- should be developed in consultation with governing jurisdiction(s).

In some situations there may be difficulties in permanently securing a site for conservation purposes due to the existing tenure of the land. Such situations will be considered by the department on a case-by-case basis. However, where the security of an offset is diminished, the risk to any protected matters, and subsequently the magnitude of offsets required, will increase. Further discussion of the relationship between risk to the protected matter and the scale of a suitable offset is at section 7.5.

7.2.2 Impacting on existing EPBC Act offsets

Where a proposed action is likely to impact on an existing EPBC Act offset, the person proposing to take the action should refer it to the department to determine whether or not it will require further assessment under the EPBC Act. There is an increased likelihood of significant impacts arising from actions on an existing offset site due to the nature of such sites containing and/or supporting protected matters. Where such actions are determined to be controlled actions, irrespective of the ownership or tenure of the impacted offset, the person proposing to take the action must develop an offsets package to compensate for both the impact of the proposed action, as well as the original action for which the offset was a condition of approval. The subsequent offset conditions would not amount to a variation of the original conditions of approval or excuse non-compliance with those conditions.



7.3 Suitable offsets must be in proportion to the level of statutory protection that applies to the protected matter

Due to the higher risk involved with protected matters of greater conservation status, the offsets required for those protected matters with higher conservation status must be greater than those with a lower status. For listed threatened species and ecological communities, this is calculated in the *Offsets assessment guide* by using International Union for Conservation of Nature data on the probability of annual extinction for different categories of threatened species.

Information regarding the conservation status of threatened species and ecological communities is held in the department's Species Profile and Threats Database which can be found at www.environment.gov.au/cgi-bin/sprat/public/sprat.pl.

Further information on other matters protected by the EPBC Act can be found at www.environment.gov.au/epbc/protect/index.html.

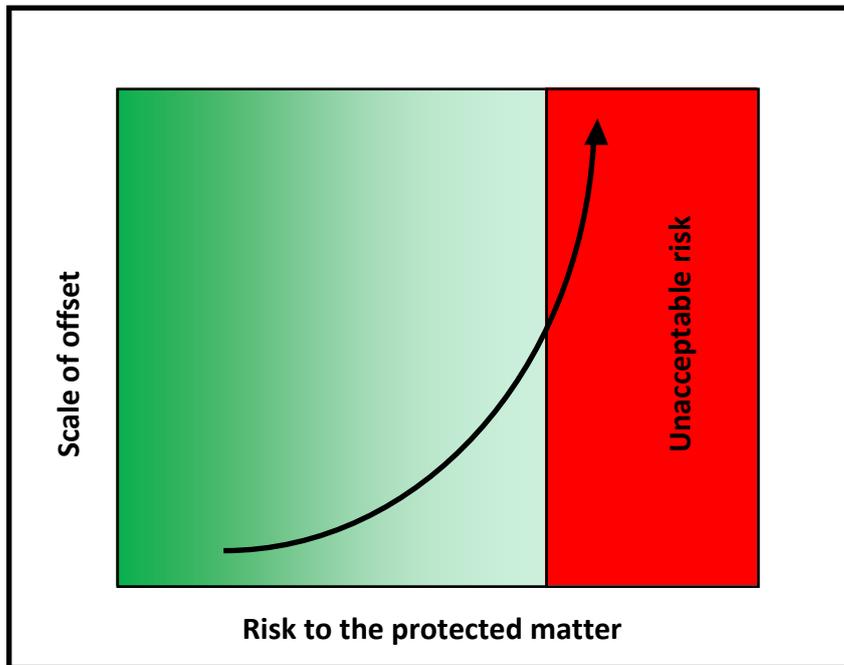
7.4 Suitable offsets must be of a size and scale proportionate to the residual impacts on the protected matter

Offsets must be proportionate to the size and scale of the residual impacts arising from the action so as to deliver a conservation gain that adequately compensates for the impacted matter. The size and scale of an offset required for each impact is determined by taking account of a number of different considerations that are discussed in this policy, including the:

- level of statutory protection that applies to the protected matter
- specific attributes of the protected matter, or its habitat, being impacted
- quality or importance of the attributes being impacted with regard to the protected matter's ongoing viability
- permanent or temporary nature of the residual impacts
- level of threat (risk of loss) that a proposed offset site is under
- time it will take an offset to yield a conservation gain for the protected matter
- risk of the conservation gain not being realised.

As the time it takes for an offset to deliver an ecological benefit increases, so do the risks to the protected matter. The relationship between risk and scale is represented in Figure 3.

Figure 3 – Relationship between scale of offset requirements and risk



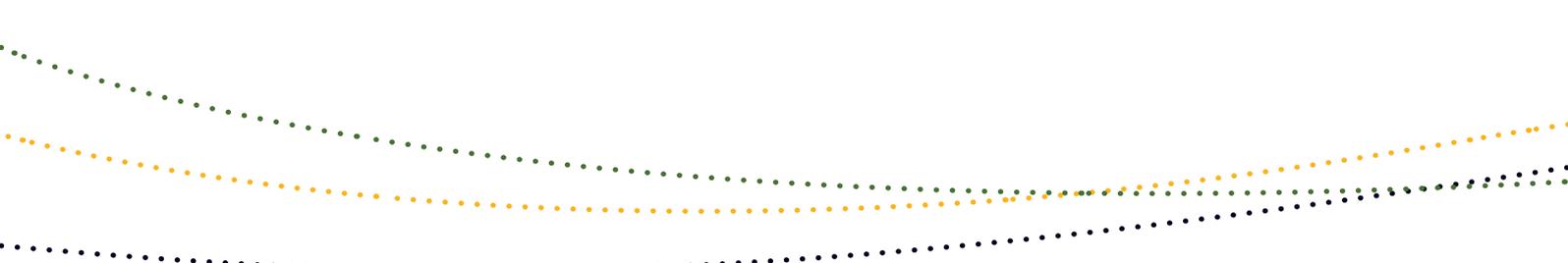
7.5 Suitable offsets must effectively account for and manage the risks of the offset not succeeding

The use of offsets as a compensatory measure through the assessment and approval process involves two levels of risk. The first, and highest, level of risk is that the impact on the protected matter will be too great and that an offset will not be able to compensate for the impact. This risk is addressed through the assessment process.

The second level of risk relates to whether individual offsets are likely to be successful in compensating for the residual impacts of a particular action over a period of time. It is this risk that is considered in determining a suitable offset and has direct

bearing on the scale of the offset required. The magnitude of a suitable offset will increase proportionately to the risk posed to the protected matter by the proposed action. The relationship between risk and the scale of offset required is demonstrated in Figure 3 above.

In general terms, direct offsets present a lower risk than other compensatory measures, as they are more likely to result in a conservation gain for a protected matter. The advanced delivery of offsets (that is, those that are in place before the proposed action takes place) also reduce the risk profile of an offset through providing a conservation gain at an earlier point in time (see section 4.2.3 relating to advanced offsets).



Because of these uncertainties, a risk based approach incorporating the precautionary principle is taken when determining whether offsets are a suitable option and whether they can compensate for the residual impacts on a case by case basis. Specifically, risk is taken into account when considering:

- What is the residual 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 these outcomes, analysis of the possible perverse outcomes will form part of the decision making process in deciding the suitability of an offset package.

7.6 Suitable offsets must be additional to what is already required, determined by law or planning regulations, or agreed to under other schemes or programs

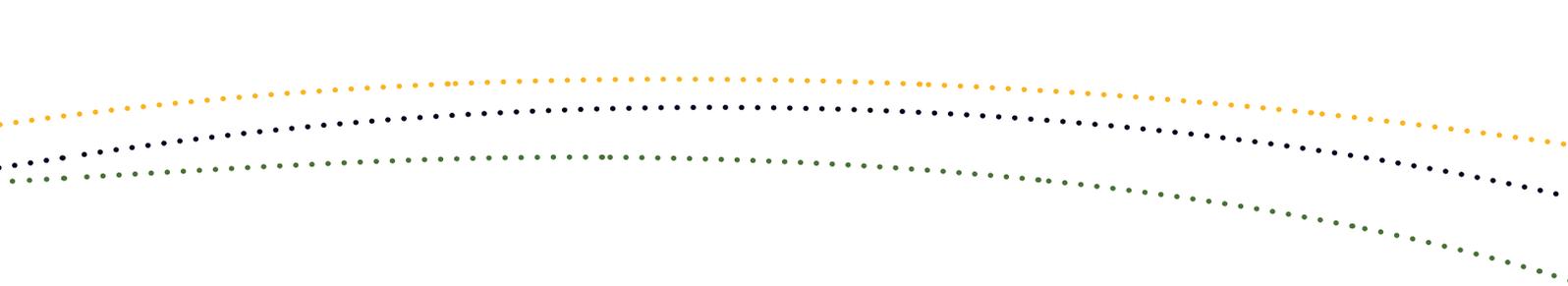
Offsets must deliver a conservation gain for the impacted protected matter, and that conservation gain must be new, or additional to what is already required by a duty of care or to any environmental planning laws at any level of government. It is important to note however that this does not preclude the recognition of state or territory offsets that may be suitable as offsets under the EPBC Act for the same action (see section 7.6.1).

This requirement would, however, generally prohibit using a piece of land already set aside in the conservation estate or using a site that is already unable to be built upon due to zoning laws (a foreshore reserve for instance) as an offset for a proposed action.

Environmental offsets must also be additional to what has been paid for under other schemes or programs on a *pro rata* basis. For instance, if a landholder is receiving stewardship funding from a program such as *Caring for our Country*, then the conservation gain achieved through fulfilling the program's contract is not eligible to be used as an offset. Similarly, the conservation gain achieved while participating in another scheme (such as the *Carbon Farming Initiative*), would also not be eligible for use as an offset.

However, if the proposed offset is for further activities that achieve additional conservation gain on the same piece of land, then those additional activities may be eligible for use as offsets. For example, if a piece of land is being used as an offset to preserve and manage that land for the protected matter, then it may be permissible to use that piece of land to offset another proposed action where:

- there are no perverse outcomes e.g. there is no conflict between the management of the two offsets, such as the need for conflicting fire regimes; and
- synergies are produced e.g. releasing and actively managing captive bred animals (offset 2) into an already protected and managed area for the same species (offset 1) may increase the survival rate of the released animals and increase the viability of the existing population.



Whether or not an offset is considered to be additional will be assessed on a case by case basis. Where a proponent or offset provider seeks to secure an advanced offset, it must sufficiently document the establishment of that offset, including relevant baseline data, to demonstrate to the department that it is additional.

7.6.1 Links with state and territory approval processes

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 the environment as a whole (for example air quality, noise pollution, water quality, biodiversity, and heritage values). These differing legislative objectives result in different assessment processes and can result in different offset requirements.

As a consequence, some proponents may need to provide offsets under both state or territory laws and the EPBC Act for the same action. 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.

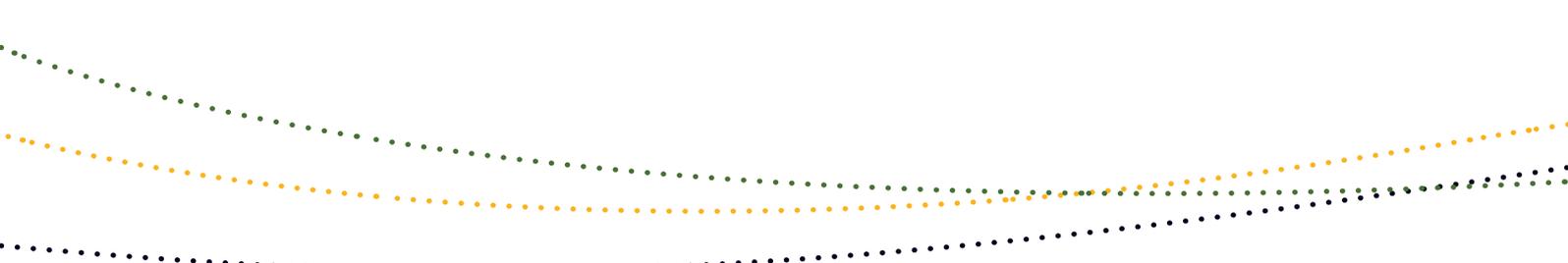
Making an early referral provides an opportunity to align the impact assessment processes of the relevant state or territory with the EPBC Act to the extent that this is possible.

7.7 Suitable offsets must be efficient, effective, timely, transparent, scientifically robust and reasonable

Efficient and effective offsets are those that maintain or improve the viability of a protected matter through the sound allocation of resources. For example, where it is possible under this policy, the Australian Government will work with states and territories to align offset requirements. This alignment will deliver efficient and streamlined assessment processes for project proponents and effective environmental outcomes.

Offsets must also be timely. That is, an offset should be implemented either before, or at the same point in time as, the impact arising from the action. This timing is distinct from the time it will take an offset to yield a conservation gain for the protected matter, which may be a point in the future.

Offsets must be based on both scientifically robust and transparent information that sufficiently analyses and documents the benefit to a protected matter's ecological function or values. This includes undertaking desktop modelling of offset benefits and conducting relevant field work as appropriate.



7.8 Suitable offsets must have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced

Offsets must be delivered 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.

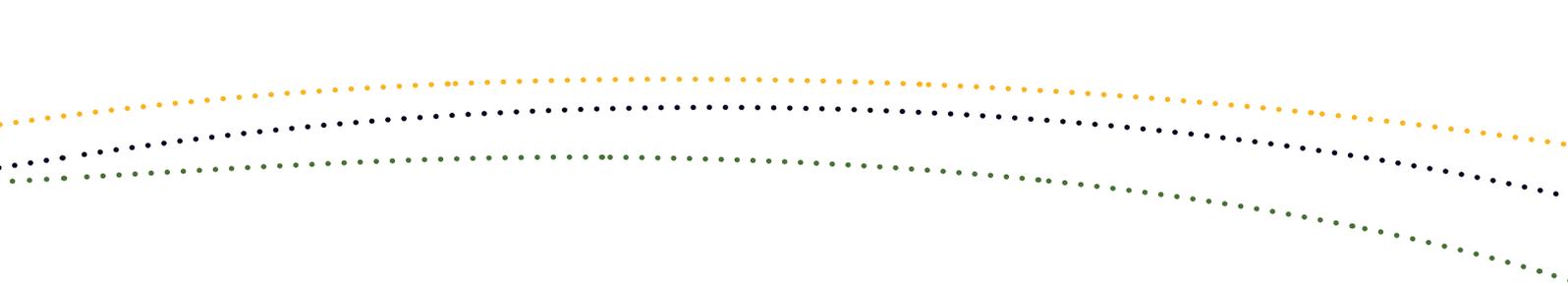
Offset proposals will need to include clearly articulated measures of success that are linked to the purpose of the offsets and provide clear benchmarks about their success or failure. Annual reports will be required by the department and, where possible, will be made publicly available.

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 registered and details, such as spatial information (for example GPS data), information on the relevant protected matters and the ongoing management actions required will be recorded. This information will be made publicly available on the department's website where it is appropriate to do so. This registration process will ensure that land that is proposed as an offset is available and suitable for use as an offset in each particular case, allow strategic planning, and streamline processes with state and territory requirements and schemes.

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. The department will not be responsible for the costs of establishing an offset, or any costs associated with the ongoing management of an offset.

Where a proponent elects to have a third party manage or establish an offset area or program, the proponent must make contractual arrangements with the third party to deliver the offset in accordance with their approval conditions.

In determining the success of an offset, proponents will be required to report data that allows 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.



8. GOVERNMENT DECISION-MAKING RELATING TO OFFSETS

8.1 Decisions will be informed by scientifically robust information

In keeping with the broader environmental impact assessment process under the EPBC Act, the determination of offsets is based on the best available scientific data and evidence. Key sources for determining offset priorities include the relevant Commonwealth approved recovery plan, threat abatement plan, conservation advice, ecological character description, management plan or listing document. Where Commonwealth approved guidance documents are not available or are insufficient in detail, the department will review additional information sources such as state and territory management plans or peer reviewed scientific literature to inform priority offset activities. Data that informs the specific nature and scale of a particular offsets package may include consulting scientists, scientific literature, and data collected by both the department and proponents.

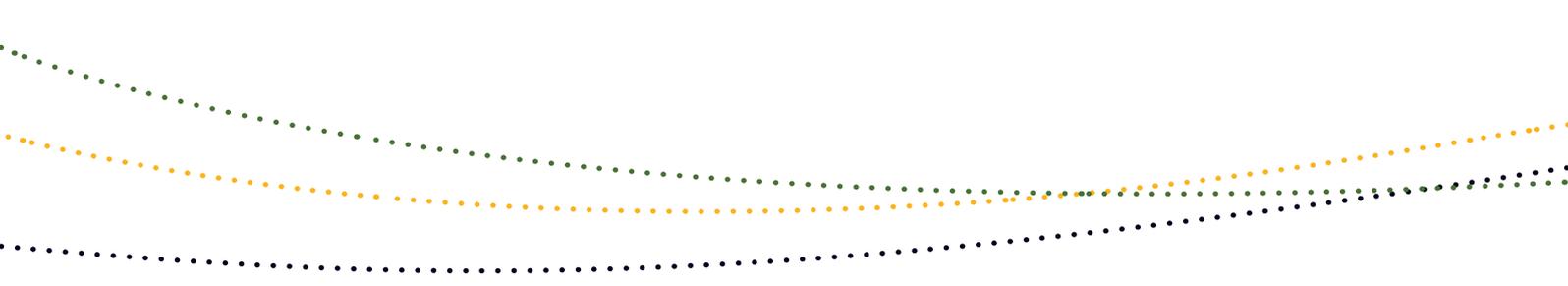
8.2 Conducted in a consistent and transparent manner

The *Offsets assessment guide* (the guide) was designed for the department's use to assist in the determination of suitable offsets for threatened species and ecological communities, based on the nature and extent of the impacts likely to occur at the

proposed impact site. The guide helps ensure that the process of determining suitable offsets is consistent across industries and geographical locations. It will increase the transparency of the process because the impacts and offsets are explicitly detailed and calculated.

Although specifically designed for the use of the department, the guide is a public document and as such can be used by proponents to consider offset requirements early in their project planning. It is at the decision maker's discretion to determine how a proposed action and offset proposal is evaluated and how the figures and scores are assigned. The guide provides flexibility to ensure that the most efficient offsets can be determined, while ensuring that offsets improve or maintain the viability of the impacted protected matter. Although informed by the policy, it is important to note that the guide is within the broader context of the policy. Potential offsets generated by the guide may be modified to better conform to the policy. Further, the policy sits beneath, and must conform to, the EPBC Act.

For protected matters not covered by the guide, the department will determine the suitability of any offset proposals based on the principles outlined within this policy and in consultation with project proponents.



9. OFFSET DELIVERY OPTIONS

Offsets can be delivered by a range of mechanisms, including market-based mechanisms and contracting third party providers. Regardless of the offset delivery mechanism, project proponents remain responsible for ensuring that their conditions of approval are met.

9.1 Use of market-based mechanisms to deliver offsets

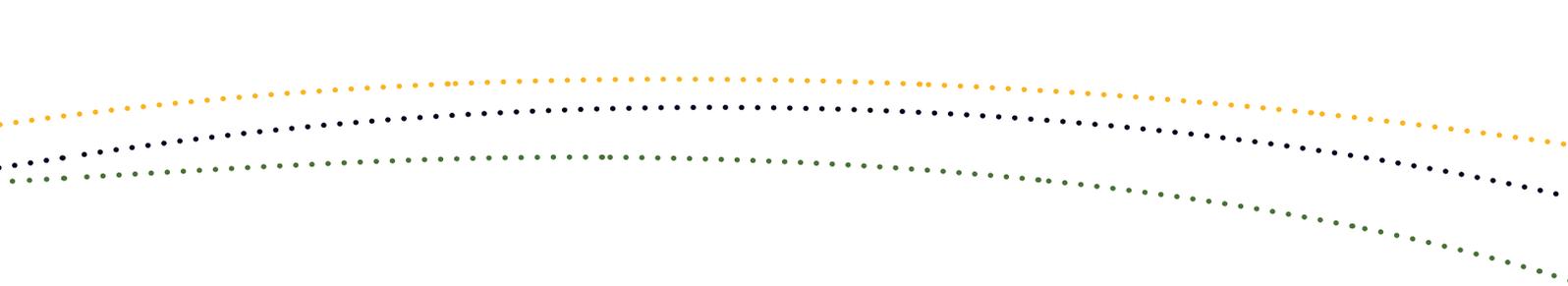
A well-functioning market for biodiversity offsets creates a clear system through which offsets can be traded by specifying the boundaries and conditions of the market and bringing together potential buyers and sellers. It is anticipated that the financial incentives that are subsequently attained will lead to a greater availability of offsets at any given time by encouraging private sector investment in the protection and restoration of biodiversity. For example, rural landholders may wish to diversify their income streams by investing in conservation activities that benefit specific threatened species with a view to providing these as offsets. Further discussion of the provision of offsets by third parties is at section 9.2.

There are various market-based tools that can be utilised for the delivery of offsets, from land brokering services through to biodiversity banking schemes, whereby credits are generated through conservation activities on a property and subsequently traded within a market framework.

Use of market-based mechanisms for delivering offsets is supported as a means of determining the conservation value of both the proposed action site and the proposed offset, where such mechanisms are based on reproducible and scientifically robust information.

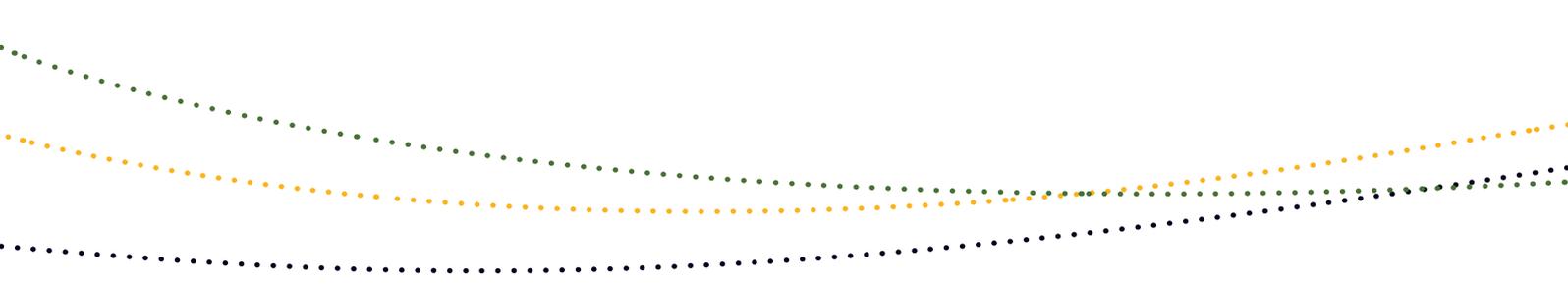
In utilising biodiversity banking schemes, proponents should discuss their plans with the department in order to ensure that the offset delivered through such a scheme will satisfy the requirements of this policy and, in the case of threatened species and ecological communities, the *Offsets assessment guide*.

Two state governments have developed biodiversity banking schemes, BushBroker in Victoria and BioBanking in NSW. Proponents should engage with the department early in the assessment process where they wish to utilise state and territory schemes to allow for streamlining of processes between the different jurisdictions.



9.2 Use of third parties to deliver offsets

Suitable third parties can be used to deliver offsets. In many cases, enhanced environmental, social and economic outcomes can be achieved through the use of third party offset providers such as rural landholders, private conservation organisations, and Indigenous corporations. Contracts with third parties to manage an offset may be through a biodiversity banking scheme, however the use of a third party to deliver an offset must be approved by the decision maker. In all cases, the decision maker must be satisfied that appropriate mechanisms are in place to ensure the successful delivery of the offset and that the offset will meet the compliance requirements of any conditions of approval.



10. FURTHER INFORMATION

EPBC Act policy statements are the department's public policy documents which provide guidance on the practical application of EPBC Act. The policy statements include:

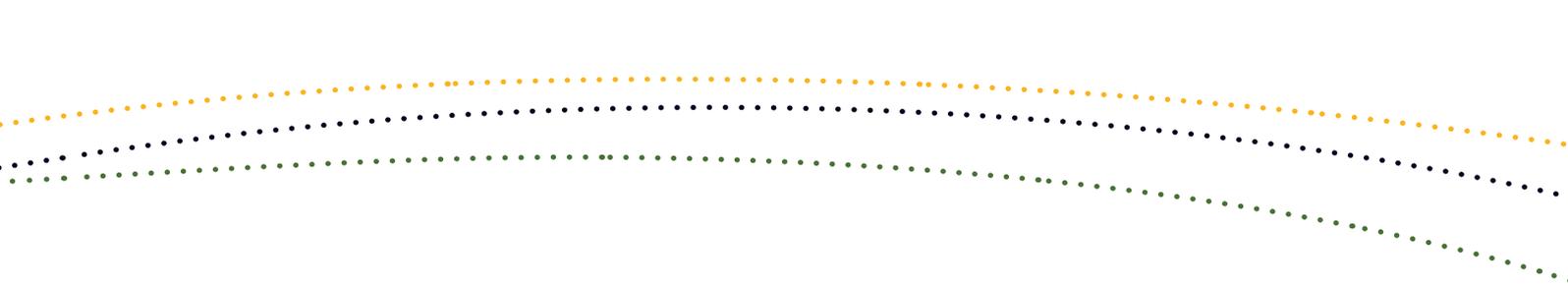
- significant impact guidelines
- EPBC Act practices and procedures
- industry guidelines
- information on listed ecological communities
- significant impact or referral guidelines for nationally listed species
- regional guidelines
- survey guidelines for nationally threatened species.

These are available on the department's website at: <http://www.environment.gov.au/epbc/guidelines-policies.html>

Conservation advices and recovery plans are available at:

<http://www.environment.gov.au/cgi-bin/sprat/public/conservationadvice.pl?proc=main>

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



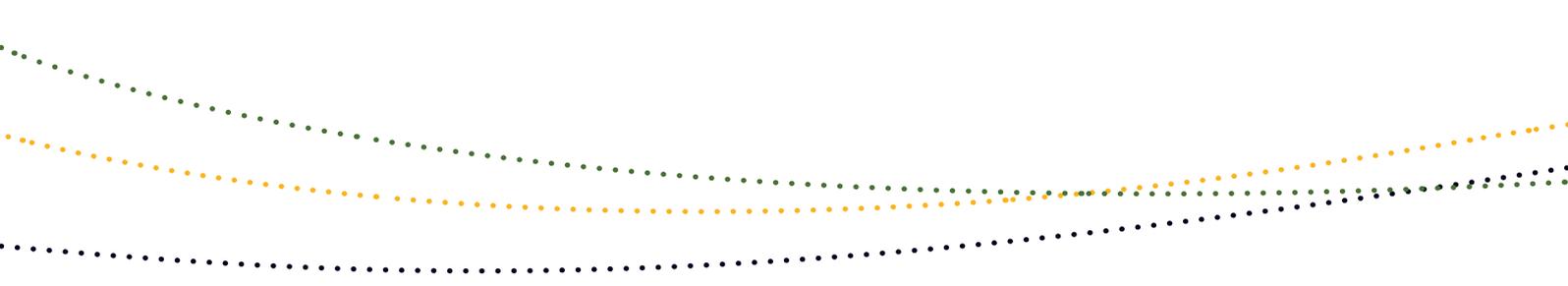
Appendix A: Criteria for research and educational programs

A suitable research or education program must:

1. endeavour to improve the viability of the impacted protected matter, for example
 - signage in key areas to educate the public regarding the risks to a threatened animal, or
 - research into effective re-vegetation techniques for a threatened ecological community
2. be targeted toward key research/ education activities as identified in the relevant Commonwealth approved recovery plan, threat abatement plan, conservation advice, ecological character description, management plan or listing document. Where Commonwealth approved guidance documents are not available or are insufficient in detail, the department will consider additional information sources such as state and territory management plans or peer reviewed scientific literature to inform priority offset activities
3. be undertaken in a transparent, scientifically robust and timely manner
4. be undertaken by a suitably qualified individual or organisation in a manner approved by the department
5. consider best practice research approaches.

The proponent is required to:

1. select an institutional or individual host (for the purpose of executing the program) through an internationally available open tender process or provide evidence that the program can be successfully undertaken in-house. The department will not be responsible for processing tenders. Where appropriate, the tender should complement an existing research institution's (e.g. National Environmental Research Program Hub) work program as it relates to the matter of national environmental significance. This will be the responsibility of the proponent; however, the department will require that proponents follow the department's guidelines
2. provide updates on progress and key findings to the department through periodic reporting
3. ensure that funds are managed appropriately and that auditable financial records are kept and maintained
4. apply a 'no-surprises' policy to the publication, whereby research publications and outputs are provided to the department at least 5 working days before release.



Research programs:

1. will be tailored to at least a postgraduate education level; however, there will be scope to engage other educational levels in educational programs (see below)
2. will present findings that can be peer-reviewed
3. will publish findings in an internationally recognised peer-reviewed scientific journal or be of a standard that would be acceptable for publication in such a journal. Publications should be submitted to free open access journals. Data and information collected should have creative commons licensing and be free and accessible
4. research outputs should inform future management decisions on the protected matter and, where possible, be readily applicable to other similar matters (species groupings etc).

Educational programs:

1. will be likely to vary in scope, mode of delivery and duration according to the target audience and the protected matter, (for instance, school or community programs, signage or printed materials)
2. should seek to attain measurable outcomes. Note that it may be difficult to ascertain the scope of influence of educational programs as it can be difficult to link education activities to behavioural change and subsequent improvement in the viability of the protected matter
3. should be targeted toward behavioural change and subsequent improvement in the viability of the protected matter.

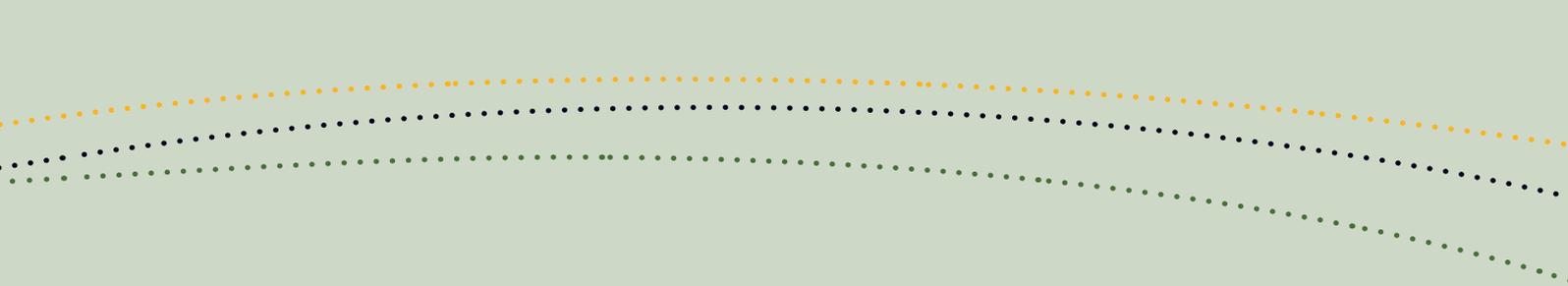


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