

Local Biodiversity Offsets Policy

1 Purpose

This policy outlines Coffs Harbour City Council's approach to the use of biodiversity offsetting ('offsets') under the planning processes under Parts 3, 4 and 5 of the *Environment Planning and Assessment Act 1979 (EP&A Act)*, and the *Biodiversity Conservation Act 2016*.

The principles contained within this policy provide a useful framework for considering biodiversity impacts and the appropriate offset requirements for all development applications, activities and planning proposals proposed under the EP&A Act. Where appropriate, offsets are to be considered as a final act, where all other mechanisms have been utilised during the assessment components under the appropriate sections of the EP&A Act. Offsets cannot be considered in determining the degree (significance) of the effect on threatened species, populations or ecological communities.

Council shall implement this offset policy for proposals under Parts 3, 4 and 5 of the EP&A Act in accordance with its operational procedures.

2 Application of the *Biodiversity Conservation Act 2016*

Where offsetting under the *Biodiversity Conservation Act 2016* is required, offsetting under this policy may not be required. To account for local biodiversity impacts, offsets in the Coffs Local Government Area are encouraged for development determined by Coffs Harbour City Council. To facilitate this Council may consider discounting credits required under the Biodiversity Conservation Act 2016 if local offsets are proposed, or conversely increased credits if local offsets are not proposed. For clarity paying into the Biodiversity Conservation Trust is not considered a local offset. It should be noted that any reduction in credits will require concurrence from the Office of Environment and Heritage.

Any increase or decrease of credits will be determined having regard to the environmental, social and economic impacts of the proposed development, and will be considered on a case by case basis. Council will provide reasons for reducing or increasing the number of biodiversity offsets and will consider the impacts of the variation. Council will also consider if any variation in credits is consistent with the purposes of the *Biodiversity Conservation Act 2016*, i.e to conserve biodiversity at bioregional and state scale, and to support and guide prioritised and strategic investment in biodiversity conservation. Variations in credits for proposals requiring offsets under the *Biodiversity Conservation Act 2016* will be described via the Biodiversity Assessment terminology.

Council may assess the biodiversity impacts of a development against the biodiversity provisions within Council's Development Control Plan (DCP) if these matters have not been adequately addressed by the offsets scheme under the *Biodiversity Conservation Act 2016*. In these cases increases in credits will be calculated by the DCP.

3 Principles

Proposals for the use of Biodiversity Offsets must meet the following 13 principles that have been closely adapted from the NSW Office of Environment and Heritage's 'Principles for the Use of Biodiversity offsets in NSW':

3.1 Impacts must be avoided first by using prevention and mitigation measures.

Biodiversity Offsets may then be used to address the remaining impacts which cannot be avoided. This may include modifying the proposal to avoid an area of biodiversity value or putting in place measures to prevent impacts. Offsets cannot be used as justification in the assessment of whether a proposal is likely to have a significant effect on threatened species, populations or ecological communities or their habitats under s7.3 of the *Biodiversity Conservation Act 2016*.

3.2 All regulatory requirements must be met.

Biodiversity Offsets cannot be used to satisfy approvals or assessments under other legislation, such as assessment requirements for Aboriginal heritage sites, or for pollution or other environmental impacts (unless specifically provided for by legislation or additional approvals).

3.3 Biodiversity Offsets must never reward ongoing poor performance.

Biodiversity Offsets will not be endorsed by Council where landholders have deliberately degraded or mismanaged proposed biodiversity offset areas in order to increase the value from the biodiversity offset. i.e. unauthorised pre-clearing to be used for future revegetation as offsets.

3.4 Biodiversity Offsets will complement other government programs.

A range of tools are required to achieve conservation outcomes, including the establishment and management of reserves and conservation areas and incentives for private landholders. Biodiversity Offsets should wherever possible complement such programs (i.e. improved outcomes for an adjoining public reserve).

3.5 Biodiversity Offsets must be underpinned by sound ecological principles.

Biodiversity Offsets must:

- 3.5.1 include the conservation of structure, function and compositional elements of biodiversity, including threatened species;
- 3.5.2 enhance biodiversity at a range of scales;
- 3.5.3 consider the conservation status of ecological communities; and
- 3.5.4 ensure the long-term viability and functionality of biodiversity.

Biodiversity management actions, such as enhancement of existing habitat and securing and managing land of conservation value for biodiversity, can be suitable biodiversity offsets. Reconstruction of ecological communities involves high risks and uncertainties for biodiversity outcomes and is generally less preferable than other management strategies, such as enhancing existing habitat.

3.6 Biodiversity Offsets should aim to result in a net improvement in biodiversity over time.

Enhancement of biodiversity in biodiversity offset areas should be greater than the loss in biodiversity from the impact area.

Setting aside areas for biodiversity conservation without additional management or increased security is generally not sufficient to offset the loss of biodiversity. Factors to consider include protection of existing biodiversity (removal of threats), time-lag effects, and the uncertainties and risks associated with actions such as revegetation.

Biodiversity Offsets may include (without limitation):

- 3.6.1 enhancing or restoring habitat;
- 3.6.2 increasing buffer zones around areas of conservation value;
- 3.6.3 removing threats by conservation agreements or reservation, or
- 3.6.4 reconstructing habitat (particularly in strategic areas to link areas of conservation value).

3.7 Biodiversity Offsets must be enduring.

As impacts on biodiversity are likely to be permanent, the biodiversity offset should also be permanent and secured by a conservation agreement, or reservation and management for biodiversity. Where land is donated to a public authority or private conservation organisation and managed as a biodiversity offset, it should be accompanied by resources for its management. Offsetting should only proceed if an appropriate legal mechanism or instrument is used to secure the required actions, including long term maintenance requirements and funding. Council will only accept land for offsets if it meets the Coffs Harbour Dedication of Land Policy.

The Council will only consider the use of a voluntary planning agreement to secure biodiversity offsets if the offset is greater than the loss in biodiversity from the impact area; provides a material public benefit; and the offset proposed is the dedication of land to the Council (or another public authority), and the proposed voluntary planning agreement is consistent with the Council's Voluntary Planning Agreement Policy.

3.8 Biodiversity Offsets should be agreed prior to the impact occurring.

Biodiversity Offsets should minimise ecological risks from time-lags. The feasibility and in-principle agreements to the necessary biodiversity offset actions should be demonstrated prior to the approval of the impact. Legal commitments to the biodiversity offset actions should be entered into prior to the commencement of works that are the subject of the proposal.

3.9 Biodiversity Offsets must be quantifiable – the impacts and benefits must be reliably estimated.

Biodiversity Offsets should be based on quantitative assessment of the loss in biodiversity from the clearing or other development and the gain in biodiversity from the offset. The methodology must be reliable and used for calculating both the loss from the development and the gain from the biodiversity offset.

The methodology should include:

- 3.9.1 the area of impact;
- 3.9.2 the types of vegetation/ecological communities and habitat or species affected;
- 3.9.3 connectivity with other areas of habitat or corridors;
- 3.9.4 the condition of habitat;
- 3.9.5 the conservation status and/or scarcity or rarity of ecological communities;
- 3.9.6 management actions; and
- 3.9.7 level of security afforded to the offset site.

The best available information or data should be used when assessing impacts of biodiversity loss and gains from offsets. Biodiversity Offsets will be of greater value where:

- 3.9.8 they protect land with high conservation significance;
- 3.9.9 management actions have greater benefits for biodiversity;
- 3.9.10 the offset areas are not isolated or fragmented; and
- 3.9.11 the management for biodiversity is in perpetuity.

Management actions must be deliverable and enforceable.

Coffs Harbour Development Control Plan (DCP) 2015 details the minimum ratios for offsets that must be achieved. Where the impact occurs to a vegetation community, biodiversity offsets shall meet the required ratios by calculating the area (m², hectares etc.) impacted and the area that will be offset by using reconstruction or enhancement methods. Where the impact is for individual trees without a surrounding vegetation community the required DCP ratios shall be met by calculating the number of trees required as the biodiversity offset. Where offsetting under the *Biodiversity Conservation Act 2016* is required, offsetting under this policy may not be required. Biodiversity offset ratios for proposals under Part 5 of the EP&A Act will be offset in accordance with operational procedures.

3.10 Biodiversity Offsets must be targeted.

Biodiversity Offsets must offset impacts on the basis of like-for-like or better conservation outcomes. Biodiversity Offsets should be targeted according to biodiversity priorities in the area, based on the conservation status of the ecological community, the presence of threatened species or their habitat, connectivity and the potential to enhance condition by management actions and the removal of threats.

Only ecological communities that are equal or greater in conservation status to the type of ecological community lost can be used for Biodiversity Offsets. One type of environmental benefit cannot be traded for another: for example, biodiversity offsets may also result in improvements in water quality but these benefits do not reduce the biodiversity offset requirements.

3.11 Biodiversity Offsets must be located appropriately.

Biodiversity Offsets should be located in areas that have the same or similar ecological characteristics as the area affected by the proposal and be located on the same site as the impact (onsite offsets), unless the proposal accords with an adopted strategic plan. If there is no option but to provide for offsite offsets, the biodiversity offset area is required to be connected to the impact site or be within the immediate vicinity. Council will not consider offsite offsets where biodiversity impacts could be reasonably accommodated as onsite offsets or that are only being proposed in order to increase the commercial yield of a development. The effect of any surrounding infrastructure and development, and its maintenance must be considered.

3.12 Biodiversity Offsets must be supplementary.

Biodiversity Offsets must be beyond existing requirements and not already funded under another scheme. Areas that have received incentive funds cannot be used for biodiversity offsets. Existing protected areas on private land cannot be used for biodiversity offsets unless additional security or management actions are implemented. Areas already managed by the government, such as national parks, flora reserves and public open space, cannot be used as biodiversity offsets unless additional management actions are implemented.

Offsets on land owned or managed by Council will only be considered if there is no option but to provide for offsite offsets and where the offset actions meet the management needs of the council land proposed to be used and Coffs Harbour Dedication of Land Policy.

Biodiversity Offsets on Council land are to be negotiated through a Voluntary Planning Agreement.

If the Council has accepted a Biodiversity Offset as part of a planning proposal for a specific site under Part 3 of the EP&A Act, the Council may, but is not required to, consider that Biodiversity Offset in its assessment of a development application under Part 4 of the EP&A Act or an activity under Part 5 of the EP&A Act for that same site. In particular, if a proposed development or activity has impacts that were not anticipated, or if the cumulative impacts are not sufficiently addressed by the Biodiversity Offset that had originally been accepted, the Council may require additional measures.

3.13 Biodiversity Offsets and their actions must be enforceable through development consent conditions, licence conditions, covenants, conservation agreements or contracts.

Biodiversity Offsets must be audited to ensure that the actions have been carried out, and monitored to determine that the actions are leading to positive biodiversity outcomes.

4 Development Application Requirements

In order for there to be sufficient degree of certainty in relation to the location, manner and form of the proposed offsite offsets the following information, without limitation, is required to be submitted with any Development Application proposing offsite offsets.

- 4.1 the type of offsite offsets which are proposed (i.e. regeneration, dedication or other types);
- 4.2 the method by which the offsite offsets will be implemented and protected in perpetuity;
- 4.3 the proposed location of where the offsite offsets are to be undertaken;
- 4.4 evidence that the proposed offsite offsets are permissible and achievable at that location; and
- 4.5 evidence that there is a connection between the development proposed and the offsite offsets (both in terms of location and type of offsite offsets proposed).

5 Definitions

Biodiversity - encompasses all forms of life, including the different plants, animals and microorganisms, the genes they contain and the ecosystems they form.

Biodiversity Offsets - are measures (including but not limited to the dedication of environmental conservation land and/or the revegetation and/or ongoing maintenance of environmental conservation land) that compensate for the residual, unavoidable adverse impacts of an action (such as clearing for development) on the environment so as to ensure no net loss of biodiversity.

Biodiversity Values means the composition, structure and function of ecosystems, and includes (but is not limited to) threatened species, and ecological communities, and their habitats, as defined in the *Biodiversity Conservation Act 2016*. Biodiversity values do not include fish or marine vegetation within the meaning of Part 7A of the Fisheries Management Act 1994 unless that fish or marine vegetation has been the subject of an order under the *Biodiversity Conservation Act 2016*.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

Material Public Benefit means public benefit that is considerable, significant or substantial that would fairly and reasonably address the impacts of particular development on surrounding land or the wider community.

Proposal means a planning proposal under Part 3 of the EP&A Act, or a development application under Part 4 of the EP&A Act or an activity under Part 5 of the EP&A Act, which includes the use of Biodiversity Offsets.

Onsite Offsets - are measures that benefit biodiversity by compensating for the adverse impacts of an action on the same site as the action.

Offsite Offsets - are measures that benefit biodiversity by compensating for the adverse impacts of an action on a different site than the action.

6 Key Responsibilities

Position	Directorate	Responsibility
Mayor	Council	To Lead Councillors in their understanding of and compliance with, this policy.
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and associated documentation.
Directors	All Directorates	To communicate, implement and comply with this policy and associated documentation.
Council Leaders	All Directorates	To implement this policy and associated documentation.
All Council officials	Council	To comply with and implement this Policy and in association with the assessment of matters under Parts 3, 4 and 5 of the EP&A Act.

7 References

7.1 Related Legislation, Australian Standards, OLG Circulars or Guideline

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Environmental Protection and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Biodiversity Conservation Act 2016
- Coffs Harbour Local Environment Plan 2013
- OEH Principles for the Use of Biodiversity offsets in NSW (April 2016)

7.2 Related Council policy or procedure

- Coffs Harbour Development Control Plan 2015
- Coffs Harbour Biodiversity Action Strategy 2012-2030
- Coffs Harbour Dedication of Land Policy
- Coffs Harbour Voluntary Planning Agreement Policy
- Part 5 Biodiversity Offsets Procedure

8 Details of Approval and revision

- **Approval date: 28/06/2018**
- **Responsible Section: Local Planning**
- **Superseded policies/procedures: N/A**
- **Next review date: 28/06/2022**

Table of amendments

Amendment	Authoriser	Approval ref	Date