

Biodiversity Offset Policy

Policy, procedure, protocol	Policy
Document version	V 1.0
Date adopted by Council	19 July 2016
Minute number	14.071/16
File reference number	ECM 1738460
Due for review	July 2021
Documents superseded	
Related documents	Biodiversity DCP Biodiversity Information for Applicants
Author	Rodney Wright
Section / Department	Strategic & Economic Planning
Linkage to Our Community Plan	4 Our Environment
Objective	4.2 We will protect and enhance our natural environment
Strategy	4.2.3 Conserve our natural flora and fauna and their habitats

Table of contents

1.	INTRODUCTION	2
	1.1 BACKGROUND.....	2
2.	OFFSETS POLICY	3
	2.1 PRINCIPLES.....	3
3.	APPLICATION OF OFFSETS.....	4
	3.1 WHEN DOES THE OFFSETS POLICY APPLY?	4
	3.2 WHEN DOES THE OFFSETS POLICY NOT APPLY?.....	4
	3.3 OFFSETTING ACTIONS.....	4
4.	ASSESSMENT METHODOLOGIES	5
	4.1 TOOLS AND DATABASES USED IN OFFSETTING DETERMINATION.....	5
5.	OFFSETTING REQUIREMENTS	5
	5.1 SITE SELECTION	5
	5.2 ACCOUNTING FOR TIME LAG AND RISK.....	6
	5.3 THE CRITICAL FACTORS IN ESTABLISHING MULTIPLIER VALUES.....	6
	5.4 ACTIONS NOT INVOLVING CLEARING	6
6.	MANAGEMENT AND PERFORMANCE GUARANTEES	6
	6.1 PAYMENT OF BOND OR VOLUNTARY CONTRIBUTION	7
	6.2 OFFSET COMPENSATION	7
7.	SITE SECURITY	8
	7.1 VOLUNTARY CONSERVATION AGREEMENTS (VCA)	8
	7.2 PROPERTY AGREEMENTS	8
	7.3 TRANSFER OF LANDS TO NPWS ESTATE	8
	7.4 TRANSFER OF LANDS TO CLARENCE VALLEY COUNCIL	8
	7.5 REZONING FOR ENVIRONMENTAL PROTECTION.....	8
8.	PERFORMANCE CRITERIA.....	8
	8.1 GENERAL CRITERIA.....	8
	8.2 CRITERIA FOR PROTECTION	8
	8.3 CRITERIA FOR MANAGEMENT	9
	8.4 CRITERIA FOR RECONNECTION	9
9.	MONITORING, EVALUATION AND REPORTING.....	9
10.	REFERENCES	9

1. INTRODUCTION

Offsets are broadly understood to be a way to counterbalance the negative impacts of an activity, by taking a separate action with positive impacts.

An offset may include one or more appropriate actions that are put in place to counterbalance specific impacts on biodiversity. Appropriate actions are long-term management activities to improve biodiversity conservation. This can include legal protection of land to ensure security of management actions (NSW DECC 2006a).

1.1 BACKGROUND

Offsets are increasingly used as part of development approvals to compensate for impacts on biodiversity values. Offsets have international acceptance as a way of compensating for unavoidable impacts on biodiversity and are part of the legal framework in many countries including the USA, Europe, Brazil, Switzerland and Canada (ICMM 2005). For example, in Brazil, the Brazilian Forest Code of 1965, Law 4771 requires that landowners offset vegetation loss provided the offset is the same type of ecosystem within the same watershed or if not possible due to lack of natural vegetation, then the next closest watershed (ten Kate, Bishop & Bayon 2004).

In Australia, the Federal Government has prepared a draft policy statement on the use of environmental offsets under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The NSW Government has produced a concept paper on Green Offsets for Sustainable Development (NSW Government 2002) and the NSW Office of Environment and Heritage (OEH) has outlined principles for use in negotiating and developing biodiversity offsets to achieve conservation outcomes in situations where a loss of biodiversity is expected, but where there is no existing biodiversity offsets program and no legislation defining requirements for biodiversity offsets <http://www.environment.nsw.gov.au/biocertification/offsets.htm>. Offsets are used in the development of PVPs under the Native Vegetation Act and offset principles are applied, in BioBanking (TSC Act). The Western Australian Environmental Protection Agency has produced a position statement on Environmental Offsets (WA EPA 2006) and Queensland has produced a Policy for Vegetation Management Offsets (Qld EPA 2007), an Environmental Offset Policy (Qld EPA 2008) and a draft Biodiversity Offset Policy (Qld EPA 2009).

In NSW at local government level, provisions for biodiversity offsetting are in place in Hornsby Shire Council (Green Offset Code based on EcoLogical Offset Policy (EcoLogical 2007)) and Liverpool City Council (Offset Policy Framework developed by EcoLogical 2003) and under development in Great Lakes Shire.

Offsetting mechanisms can be used inconsistently, in a piece-meal fashion and with minimal, if any, measures in place to ensure offsets adequately compensate negative impacts. Overall net loss of native vegetation, including endangered ecological communities and threatened species habitat, has often resulted in the past. However, if offsetting is conducted for developments impacting vegetation of low conservation value and alternative means of avoiding clearing and other impacts have been explored and exhausted, offsetting can achieve acceptable and long-term conservation gains while allowing the development to proceed.

The aim of this policy is to ensure that offsets are only used where appropriate and under strict guidelines, including on-going monitoring and management to ensure that overall there is no net loss in extent and quality of native vegetation and threatened species habitats. The aim is to achieve an overall improvement in biodiversity values.

2. OFFSETS POLICY

2.1 PRINCIPLES

The following key principles underpin the Offsets Policy:

2.1.1 No other options

Offsetting can only be considered when all means of avoiding the impacts from a development proposal on a site's biodiversity values have been exhausted. This involves following the mitigation sequence of avoidance, minimisation, and mitigation (restoration and compensation).

2.1.2 Maintain and improve

Offsets must achieve a net vegetation gain; they must result in maintenance and preferably improvement of the biodiversity values being impacted by a development.

2.1.3 Like-for-like

Offsetting must be on a like-for-like basis; that is, the biodiversity values of the offset must closely approximate at regional, landscape and local scales the values being affected by a development.

2.1.4 Measurable process

Offsetting must be a measurable process, using established tools and information in the assessment of impacts and the design and implementation of offsets.

2.1.5 Improvement of offset

Offset implementation should result in an improvement in the condition and security of the offset.

2.1.6 Limitations

Where development impacts on biodiversity, there will be an inevitable loss of some values that are irreplaceable; this is the reason that all options for avoiding impacts and retaining biodiversity values onsite are required to be fully investigated and offsetting should always be considered as a last resort. In addition, in some cases there may be a short to medium-term loss of values during the time it takes for an offset to improve in condition and maturity; and there is also the chance of an offset failing.

2.1.7 Commitment and transparency

Offsetting is a commitment to a process that ensures biodiversity values are maintained in perpetuity, ie that offsets are enduring.

2.1.8 Offset Management Plan

Offsetting must be facilitated by an Offset Management Plan (Section 3A IFA) that incorporates monitoring, evaluation and reporting and allows for adaptive management.

3. APPLICATION OF OFFSETS

3.1 WHEN DOES THE OFFSETS POLICY APPLY?

Offsetting can only be considered when all means of avoiding the impacts from a development proposal on a site's biodiversity values have been exhausted.

The Offsets Policy applies when an amber flag is triggered in Clarence Valley Council's Biodiversity DCP biodiversity theme development control tables.

3.2 WHEN DOES THE OFFSETS POLICY NOT APPLY?

Clarence Valley Council cannot accept offsetting if an applicant has not demonstrated that all alternatives to a development proposal and all measures to mitigate impacts have been considered.

Similarly, offsetting cannot be accepted if the need for an offset has not been justified and the offset has not been shown to address and satisfy the principles of the Biodiversity Offsets Policy.

The Offsets Policy does not apply when a green or a red flag are triggered in Clarence Valley Council Biodiversity DCP biodiversity theme development control tables

Offsets are not appropriate where the impacts of a development are considered to be minor in nature (this would generally be considered a green flag area), or could reasonably be avoided or mitigated.

The Offsets Policy will not apply to proponents with building entitlement who have triggered full red flag and have received approval by Clarence Valley Council for minimal development having satisfied all minimal impact criteria, however any conditions of consent specified by CVC must still be met.

3.3 OFFSETTING ACTIONS

Three offsetting actions are recognised under the Offsets Policy, all potentially applying to offsets both on and off the development site. A combination of these offsetting actions may be required to meet the 'maintain and improve' principles. These comprise:

3.3.1 Restoration and Protection

Restoration and protection will involve the selection of a site which is currently poorly managed for environmental values and requires the proponent to secure through legal or other binding arrangements, together with appropriate management provisions (to enhance environmental values) set out in the accompanying Habitat Restoration Plan (HRP) and Threatened Species Management Plan (TSMP), as appropriate. With on-site offsets, specific temporary protection may be required during the construction phase. Restoration may involve but not limited to, the improvement in condition by removing or controlling degrading processes (such as weed control, control of introduced animals) and sometimes small-scale planting.

3.3.2 Revegetation and protection

Reconstruction involves the conversion of usually cleared land to its former vegetation and habitat, usually through planting, detailed in an accompanying Habitat Restoration Plan (HRP).

3.3.3 Contributions

Contributions to CVC Biodiversity Offset Trust Fund can deliver direct offsets through a consolidation of funds and investment in priority areas. If a proponent chooses to use this pathway to offset impacts on biodiversity the contribution shall be done so voluntary via a voluntary planning

agreement and the contribution based on the values shown in Section 2.6.2 IFA and these shall be adjusted in Councils fees and charges on annual basis on the consumer priced index used in adjusting Council's contributions. The figures outlined in Section 2.6.2 IFA shall be the 2015/16 financial year base figure for calculating the contribution.

4. ASSESSMENT METHODOLOGIES

4.1 TOOLS AND DATABASES USED IN OFFSETTING DETERMINATION

CVC will use the area of clearing as the basis for calculating offset requirements, then use a multiplier based on conservation value categories and time lag/risk factors.

Flora and fauna assessments along with elements of the Biometric tool will be used in the determination of what Biodiversity Threshold proponents fall into (please refer to Part X6 of the DCP) and depending on what 'Theme ' this is i.e. Bushland, Wildlife Corridor, Waterways will determine what offset multiplier is to be assigned.

Multipliers were selected for use in the Clarence Valley Council Local Government Area for assistance in calculating offset requirements as it is considered to be:

- Well trailed in NSW
- Based on ecological principles
- Relatively simple to use
- Transparent

5. OFFSETTING REQUIREMENTS

5.1 SITE SELECTION

Offsets for development actions in the Clarence Valley Council Local Government Area (LGA) must be located within the LGA.

Selection of land for an offset must achieve replication of biodiversity values being impacted in a development site as closely as possible at the regional, landscape and local scales to cater for representativeness, ecosystem function and context and site specific characteristics.

Because offsetting inevitably involves loss of some irreplaceable biodiversity values, it is preferable to locate offsets on-site but outside the development envelope. This is due to the likelihood of achieving a higher level of equivalence (like-for-like) of the impacted values.

However, if this is not possible, offsets must be located off-site on privately owned land. Proponents can not offset on public estate.

The offset area will be quantitatively related to the area impacted by the development, the condition of the impact site and the offset, modified by a multiplier/s.

Offset size will be determined from a multiplier ratio identified in table 1 predetermined based on the theme /s being affected by the development footprint, even if offset site proposed is considered to be of higher ecological significance, the offset will be required to meet predetermined area/value, ie offset with specified size or otherwise you pay the contribution.

Land proposed for an offset cannot previously have been used for offsetting.

5.2 ACCOUNTING FOR TIME LAG AND RISK

Use of multipliers to account for time lag and risk is well established e.g. EcoLogical 2003, 2007, Biometric). Ideally, values at the development site would remain intact until the offset develops the same values. In practice this is rarely possible, and a multiplier takes account of the negative effect of losing values as a result of development impact before they are regained at the offset site. In addition, varying levels of risk are associated with offset actions. Plantings may fail and natural disasters may damage vegetation and habitat.

Clarence Valley Council is taking the average of several offset multipliers used in the state to reduce complexity and losses in biodiversity. The identified values will be multiplied by the development footprint area to determine the offset area required. Please see below for defined offset ratios.

Table 1: Offset Multiplier Ratio

Biodiversity	Offset ratio
Endangered Species, Wildlife Corridor Flora/Fauna/EEC	10
All remaining areas	5

5.3 THE CRITICAL FACTORS IN ESTABLISHING MULTIPLIER VALUES

The offset multiplier serves the purpose of establishing an incentive to only impact on land with a low offset ratio.

The following steps are required to describe and quantify the offset:

- Step 1 Calculate the area of the development impact
- Step 2 Apply multiplier/s
- Step 3 Locate offset site(s) in appropriate location(s) as specified

5.4 ACTIONS NOT INVOLVING CLEARING

Degradation of other environmental values will be considered on a case by case basis.

6. MANAGEMENT AND PERFORMANCE GUARANTEES

A legally binding management agreement that contains performance measures for the offset and works must be entered into prior to commencement of works approved with consent. Management of the site must be undertaken for the duration of the Biodiversity Offset Management Plan, (a minimum of 5 years and up to 15 years, Section 3A IFA) although an applicant may opt to undertake management for a longer period.

The applicant must pay a fee payable to cover Clarence Valley Council's costs of undertaking inspections of the site and evaluation of performance measures in the management agreement.

6.1 PAYMENT OF BOND OR VOLUNTARY CONTRIBUTION

Clarence Valley Council will require payment of a bond to ensure all works are completed and maintained for the specified period as specified in the BOMP. The bond is to be paid prior to issue of any construction certificate works commencing

A bond for both biodiversity restoration and revegetation work will be required where offsetting impacts on biodiversity is required. This is to ensure that offset action works are commenced, completed, and managed to the required standard. To ensure that works are undertaken the bond must be set high enough to create an incentive for the proponent to comply with the agreed plan or be able to cover the costs should the proponent not be able to fulfil the BOMP requirements.

Once the proponent has notified Council of completed activities, the offset works will be assessed against the management plan and defined performance criteria. Activities that meet BOMP or performance requirements will result in return of bond to the proponent.

The bond will be paid into a Trust account overseen by Council.

The fee is based on an estimated cost council would have to spend if work specified in the BOMP is not completed. This service includes a costing for Council to administer the fund and manage the provision of off-setting works. The cost of providing this service is derived from the criteria below.

Value of Bond or Voluntary contribution for Offsetting Biodiversity and Habitat Loss

Restoration - \$5000 / ha

Project Management - 10% restoration cost

Trust Management – 1% of restoration cost

These figures are intended as a guide only and Council may impose a bond of a different value if so determined. \$50 000/Ha represents the maximum restoration cost.

The project management fee is to cover the cost of Council undertaking site inspections and auditing for compliance with the Offset Management Plan, Regeneration and Landscaping Plans. The management fee will also need to cover the annual costs required to maintain the works to the standard required. The restoration component of the bond will be returned to the developer/proponent when particular performance measures outlined in the approved biodiversity offset management plan have been met where the developer/proponent is undertaking the works.

The project management fee, if part of a bond, will be refunded with the restoration costs when all conditions of the approved plans have been met if council was not required to manage any part of the project. In the case of an offset contribution this is non refundable and included as part of the voluntary offset contribution and voluntary planning agreement.

The trust management component is non-refundable.

All monies remaining due to default of works or failure to collect bond will be used by the Biodiversity Trust fund for local conservation projects to ensure offset targets are met.

6.2 OFFSET COMPENSATION

As outlined in Section 2.2.3 IFA where the proponent provides Council with a contribution as part of a voluntary planning agreement to compensate for the loss in biodiversity it shall be calculated in the same manner as described above in Section 2.6.1 IFA. Similarly Council has established criteria and a costing for the delivery of its off-setting arrangements. The fee for this service includes a costing for Council to administer the fund and manage the provision of off-setting works.

7. SITE SECURITY

Biodiversity offsets must be secured in tenure, zoning or under legal protection such as a covenant attached to the land title, in a manner that ensures that the biodiversity offsets is conserved in perpetuity

Legal protection can be achieved through instruments such as Voluntary Conservation Agreements, Property Agreements, Rezoning for Environmental Protection or transfer of land to NPWS estate or Clarence Valley Council.

7.1 VOLUNTARY CONSERVATION AGREEMENTS (VCA)

A Voluntary Conservation Agreement is a negotiated contract between the landholder and the Minister for the Environment. A VCA aims to conserve natural, cultural and/or scientific values of the site and restricts land uses likely to compromise those values. Once signed by the Minister and landholder the VCA is registered on the land title, binding all “successors in title” (future landholders) to its terms. The VCA relies on active management of the lands by the landholder. OEH and the landholder jointly prepare a management plan for the site.

7.2 PROPERTY AGREEMENTS

A Property Agreement is a contract between the OEH and the applicant to protect the land in perpetuity under Section 44 of the Native Vegetation Conservation Act 1997. The Deed is registered on the title.

7.3 TRANSFER OF LANDS TO NPWS ESTATE

This may be an option where an offset site is adjacent to or bounds NPWS estate and management (including a management plan) and restoration costs are to be covered by the applicant.

7.4 TRANSFER OF LANDS TO CLARENCE VALLEY COUNCIL

As above, this may be an option where a site adjoins existing Clarence Valley Council lands or the land is identified in a priority corridor etc. Again, management and restoration costs are to be covered by the applicant.

7.5 REZONING FOR ENVIRONMENTAL PROTECTION

Spot re-zonings are not encouraged by the NSW State Government, and therefore would not be encouraged as a means of protection. Compelling evidence would be required for consideration. Also zonings are not necessarily in perpetuity.

8. PERFORMANCE CRITERIA

8.1 GENERAL CRITERIA

A Biodiversity Offsets Management Plan (BOMP) (see Section 3A IFA) meeting the requirements of the Offset Policy to be prepared.

8.2 CRITERIA FOR PROTECTION

Legal protection for the offset must be secured prior to any works being undertaken on the receiving site and this requirement must be included as a condition of any consent granted for the development proposal.

8.3 CRITERIA FOR MANAGEMENT

For offsets to be effective a number of stages for improvement in condition of vegetation will be required. A schedule of restoration/reconstruction activities linked to the maturity of the vegetation shall be outlined in the management plan.

8.4 CRITERIA FOR RECONNECTION

The receiving site must fall within an area identified as a Wildlife Corridor as mapped in Clarence Valley Council's GIS or, if Council wildlife corridor mapping is not available, the NPWS identified Wildlife Corridors (Scotts 2003). If the impact site falls within an area of Wildlife Corridor in low condition, the receiving site must achieve at least moderate Connectivity Value within the same Corridor.

9. MONITORING, EVALUATION AND REPORTING

A monitoring strategy set's out the intended monitoring methodology and performance indicators. These must specifically address the management aims and objectives of the BOMP.

The monitoring strategy should identify stages in the development of the offset process when an assessment of progress towards performance standards should be carried out.

Reporting on the progress of the BOMP is required to demonstrate to Clarence Valley Council that the offset project is achieving its aims and objectives. It may be appropriate for progress reporting on offset development to include results from habitat and threatened species management plans, if these are directly relevant to standards required for offsetting.

10. REFERENCES

EcoLogical Australia 2003 Habitat Offsets Policy Framework Liverpool City Council Biodiversity Strategy Part C

EcoLogical Australia, 2007. Biodiversity Planning Provisions Review (Project No. 90-02). Report prepared for Hornsby Council.

Gibbons, P., Ayers, D., Seddon, J., Doyle, S. and Briggs, S., 2005. Biometric, a Terrestrial Biodiversity Assessment Tool for the NSW Property Vegetation Plan Developer, Operational Manual, Version 1.8. NSW Department of Environment and Conservation, c/- CSIRO Sustainable Ecosystems, Canberra, ACT.

International Council on Mining and Metals 2005 Biodiversity Offsets – a briefing paper for the mining industry.

www.forest-trends.org/biodiversityoffsetprogram/.../BioDiv%20Offsets%20Proposition%20Paper.pdf

NSW Department of Environment and Conservation 2006a Decision Support Tools for Biodiversity Conservation Biodiversity Conservation: Biodiversity Forecasting Toolkit. Prepared for Comprehensive Coastal Assessment (DoP) by DEC, Armidale.

NSW Department of Environment and Conservation 2006b Draft Lower Hunter Regional Conservation Plan (draft), Department of Environment and Conservation NSW, Coffs Harbour NSW.

NSW Government 2002 Green Offsets for Sustainable Regional Development Concept Paper <http://www.environment.nsw.gov.au/greenoffsets/index.htm>

Queensland Government 2009 draft Biodiversity Offset Policy. Queensland Protection Agency.

Queensland Government 2008 Environmental Offset Policy. Queensland Environmental Protection Agency.

Queensland Government 2007 Policy for Vegetation Management Offsets. Queensland Environmental Protection Agency

Queensland Conservation Council 2007 Response to the Environmental Offsets Discussion Paper. A submission to the Environmental Protection Agency, Qld.

Rosenzweig 1995 Species Diversity in Space and Time. Cambridge University Press, Melbourne, Australia.

Scotts, D., 2003. Key Habitats and Corridors for Forest Fauna; a Landscape Framework for Conservation in North-east New South Wales. NSW NPWS Occasional Paper 32, NSW National Parks and Wildlife Service, Sydney.

Ten Kate, K, Bishop J. & Bayon R. 2004 Biodiversity Offsets: Views, Experience and the Business Case. IUCN & Insight Investment.

WA Environmental Protection Agency 2006 Environmental Offsets Policy Statement No. 9 Western Australian Environmental Protection Authority.