

POLICY NAME: Biodiversity - Compensatory Habitat and Offsets
POLICY REF: XXX
MEETING ADOPTED: Resolution No.
POLICY HISTORY:



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1. OBJECTIVE

The objectives of this policy are:

- a) To identify compensatory habitat offsetting ratios for proposals that impact biodiversity values and are subject to approval under either Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*;
- b) To support the identification and assessment of biodiversity impacts associated with development in Ballina Shire and the mitigation of identified impacts;
- c) To encourage development that contributes to the maintenance, enhancement and/or rehabilitation of environmental values and ecologically sensitive areas;
- d) To promote the protection and restoration of biodiversity assets in Ballina Shire.

2. POLICY

Application and Requirements

The Ballina Shire Biodiversity Compensatory Habitat and Offsets Policy applies to proposals subject to Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*. More specifically, the policy applies in the following circumstances:

- The proposal does not trigger the Biodiversity Offsets Scheme (BOS), and;
- Ballina Shire Council or the Northern Regional Planning Panel is the consent or approval authority, and;
- The proposal directly or indirectly impacts biodiversity values associated with native vegetation in Ballina Shire (see conservation categories in Table 1).

This policy is to be applied in association with the provisions of the Ballina Local Environmental Plan 1987, Ballina Local Environmental Plan 2012 and the Ballina Shire Development Control Plan 2012 (where provisions of these plans are applicable).

Where an offset is determined to be appropriate, after consideration of the principles of avoid¹, minimise and mitigate, the offset ratios set out in this policy are to be applied.

Applications for development that propose a compensatory habitat offset must include the following information:

- Analysis of the proposed development with respect to the principles of avoid, minimise and mitigate. This must include reasoning as to why an offset is sought over avoidance of the identified impacts.

¹ *Avoid*

- i. Avoid means not directly or indirectly modifying or significantly impacting biodiversity attributes.
- ii. As part of the consideration of avoidance, the analysis of the proposed development must demonstrate that alternative layouts or design options have been considered and that the impacts cannot reasonably be avoided where offsets are proposed.

- Identification and quantification of direct and indirect impacts (including area and/or number of trees impacted).
- Mapping showing the location of impacted biodiversity assets including details of vegetation communities, threatened species (flora and fauna) and important habitat features present.
- Demonstration that there is a net gain in the area of native vegetation and fauna habitat and that the proposal improves or maintains biodiversity values.
- Calculation of proposed offsets based on the offset ratios set out in this policy.
- Details of proposed offset vegetation (including planting composition).
- Identification of proposed offset location(s), the suitability of the site(s) for the offset works and tenure arrangements.
- Details of timing for offset planting, ongoing management and maintenance, reporting, cost of works and criteria for assessment of outcomes in the form of an offset management plan. As a minimum plans are to be based on operation for a minimum establishment and maintenance period of five years and achievement of key performance criteria.
- Identification of the timing for offset works relative to the commencement, progression and completion of the proposed development.

Compensatory Habitat Offset Ratios

Ballina Shire biodiversity values categories and associated offset ratios for the purposes of this policy are set out in Table 1.

The compensatory habitat offset ratios in Table 1 apply to all proposals that are subject to this policy.

The compensatory habitat offset ratios are to be applied having regard for the following:

- A compensatory habitat offset is a replacement of habitat² removed as a result of development or works.
- The offset ratios set a defined replacement rate and are expressed as number/area replaced to number/area removed (e.g. 5:1 means an offset must be provided at a rate of 5ha or trees for every 1ha or tree removed).
- Calculation of offsets is based on the number of trees or area of habitat lost or both. The extent to which area and/or individual trees is to be used as the basis for calculating an offset is to be determined as part of the assessment of a development proposal. As an example for calculation purposes, if the offset ratio is 5:1, five trees must be replanted for every one lost. Or in the case of habitat, habitat restoration³ must be undertaken on an area five times the area of habitat lost – that is 5ha of habitat should be reinstated for every hectare cleared.

² *Habitat*

- i. an area periodically or occasionally occupied by a species or ecological community, and
- ii. the biotic and abiotic components of an area.
- iii. as defined in the BC Act (2016).

³ *Habitat restoration*

- i. undertaking a range of management actions to reinstate a fully structured vegetation community.

8.4 Policy (New) - Biodiversity Compensatory Habitat and Offsets

- Area based calculations are to be rounded to the nearest square metre.
- Where an area of habitat to be offset is comprised of a mixture of conservation categories, the higher offset ratio will be applied (e.g. an area of mixed non EEC native vegetation and koala habitat will have a 15:1 offset ratio applied).
- Offsets should be located on the same property where the impact occurs. If an offset is to be provided on an alternate site, the proponent must demonstrate why:
 - it is not practical to achieve this; or
 - a suitable biodiversity outcome cannot be achieved on the site; or
 - a better outcome can be achieved on a different site.
- Proposals for off-site offsets must demonstrate security of tenure or other appropriate mechanism suitable to enable the required offset works, and associated monitoring and management works, to be undertaken as well as long term retention of the offset works. This is best achieved through legal mechanisms that are permanent and secure.
- As a first principle offsets are to be provided for on a like for like basis (i.e. loss of one vegetation type should be compensated for by the same vegetation type). Where this can be demonstrated to Council's satisfaction that this cannot be reasonably achieved, an offset based on a different vegetation type, but of the same biodiversity values category, can be applied.
- Required offsets must be provided for within Ballina Shire.
- Offsets relating to koala habitat must be undertaken in accordance with the Ballina Shire Koala Management Strategy (including the Koala Habitat Compensation Policy contained within the strategy).
- Public works undertaken by or on behalf of Council and development primarily for the purpose of affordable housing are subject to a reduced offset rate as outlined below.

Table 1: Compensatory Habitat Offset Ratios

Conservation Category	Offset Ratio	Application Notes
Very High Biodiversity Value Vegetation <ul style="list-style-type: none"> - Threatened ecological communities (TECs) including EECs - Wetlands, waterways and riparian areas - Wildlife corridors - Old growth forest - Vegetation on over-cleared Mitchell Landscapes 	10:1	
High Biodiversity Value Vegetation <ul style="list-style-type: none"> - Native Vegetation (other than that listed under the very high biodiversity value vegetation category). 	5:1	This applies for all native vegetation that is not classed as very high conservation value vegetation or koala habitat. Includes individual remnant trees (e.g. paddock trees).

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Koala Habitat ¹	15:1	To be applied in accordance with the Ballina Shire Koala Management Strategy.
Threatened Flora	10:1	To be applied on a per plant basis with the threatened species to be offset on a like for like basis. This is applied additional to other offset requirements. For example, if a 2ha area of high conservation value vegetation that includes two threatened plants to be offset, the total offset requirement will be 10ha plus 20 additional threatened plants.
Important Habitat Features ²	3:1	To be applied on a per habitat feature basis. For example, for each individual habitat feature that is to be removed, 3 nesting boxes shall be installed or where 1 raptor nest is to be removed, 3 artificial nest poles shall be installed. This is applied additional to other offset requirements. For example, if a 2ha area of high conservation value vegetation that includes one raptor nest is to be offset, the total offset requirement will be 10ha plus 3 artificial nest poles.

¹ Koala Habitat as identified under the Ballina Shire Koala Management Strategy as Primary, Secondary (Class A – C)

² Including but not limited to: Tree hollows (counted individually), Very large native trees (80cm+ DBH) and Raptor Nests

Indirect Impacts⁴

Indirect impacts are to be considered as part of any proposal. The assessment of indirect impacts in relation to compensatory habitat offsets must:

- describe the nature, extent and duration of short-term and long-term indirect impacts.
- identify the conservation category likely to be affected and the type of indirect impact that is likely to occur.

Where a proposal is expected to, or will create a long-term adverse indirect impact on habitat, compensatory habitat offset ratios are to be applied at 50% of rates set out in Table 1 (or 50% of the rates set out in Table 2 for public works).

⁴ Indirect impacts may include but are not limited to; reduced suitability of adjacent habitat or fauna disturbance due to noise, dust or light spill, transport of weeds and pathogens, sediment runoff, loss of breeding habitat and trampling of threatened flora species.

Public Works

Reductions to compensatory habitat offset ratios under this policy set out in Table 1 apply to public works carried out by or on behalf of Council and for development that is primarily for the purpose of affordable housing (delivered by Government or a community housing provider).

Public works and development for the purpose of affordable housing are typically associated with substantial public benefits. These can include social benefits (such as alleviating traffic congestion, meeting basic needs, providing for meeting places or providing infrastructure for exercise and outdoor activity) and environmental benefits (such as better energy or water use by replacing inefficient or old infrastructure).

Public works do not include development undertaken by or on behalf of Council primarily for commercial purposes.

It is also recognised that public works are typically funded by the public and this involves balancing a range of considerations to achieve outcomes in the public interest within the available funding.

Table 2 sets out the rates at which the offset ratio are to be applied to public works and development primarily for the purpose of affordable housing:

Table 2: Compensatory Habitat Offset Ratio Rates for Public Works and Affordable Housing

Conservation Category	Offset Ratio Rate Public works undertaken by or on behalf of Council	Offset Ratio Rate Development primarily for affordable housing by Government or community housing provider	Offset Ratio Rate Maintenance works associated with public assets undertaken by or on behalf of Council
Very High Biodiversity Value	<i>8:1</i>	<i>8:1</i>	<i>5:1</i>
High Biodiversity Value	<i>4:1</i>	<i>4:1</i>	<i>2.5:1</i>
Koala Habitat	15:1	15:1	15:1
Threatened Flora	<i>8:1</i>	<i>8:1</i>	<i>5:1</i>
Important Habitat Features	3:1	3:1	<i>2:1</i>

Note: Italics denotes reduced ratio rate.

Reduced compensatory habitat offset rates do not apply to:

- koala habitat; or
- important habitat features (aside from in relation to maintenance works)

For koala habitat the requirements of the Ballina Shire Koala Management Strategy apply.

3. BACKGROUND

This policy intends to capture proposals which do not trigger other offset policies developed by State and Commonwealth governments, yet cause adverse impacts to local biodiversity. Furthermore, this policy will allow Ballina Shire Council to apply standard compensatory offset ratios to all proposals which trigger the policy, therefore creating an effective, efficient, and transparent framework.

Many councils (Byron, Coffs Harbour City, Clarence Valley, Hornsby, Mid-Coast) have introduced offset policies and/or provisions which aim to avert the loss of biodiversity on a local level. These policies and provisions often capture projects and activities which may not otherwise trigger State and Commonwealth offsetting schemes (i.e. NSW Biodiversity Offset Scheme (BOS)). Table 3 identifies the ratios applied by other NSW local government's as a guide to the approach taken elsewhere.

Table 3. Compensatory Habitat Ratios Applied by Other Councils in New South Wales

LGA		Compensatory Habitat Offset Ratio Applied (replaced: removed)	
Byron Shire Council	10:1	Trees of high ecological value	
	5:1	Trees of medium ecological value	
	1:1	Trees of low ecological value	
Coffs Harbour City Council	20:1	Old growth, hollow-bearing or ecologically significant tree	
	10:1	EEC, Riparian Zones, High Value Habitat	
	5:1	Koala Habitat	
Clarence Valley Council	10:1	EEC	
	5:1	Non - EEC	
Mid-Coast Council	4:1	EEC	
	2:1	Non - EEC	
Hornsby Shire Council	8:1	Regional significant habitat	
	6:1	Locally significant habitat	
	4:1	Remnant EEC trees	
	5:1	Supporting habitat	
	2:1	Remnant Trees and other native vegetation.	

In Ballina Shire, the offset ratios are based on a recognition that relative to total land area, a large percentage of the native vegetation cover in the shire has been cleared and that Ballina Shire contains a variety of significant biodiversity assets including endangered ecological communities and various threatened flora and fauna species that are listed under State and Federal conservation instruments.

The policy also recognises that Council has an established Koala Management Strategy that reflects the presence of a nationally significant koala population in the shire and has regard for the suite of public interest outcomes that are associated with public works.

4. DEFINITIONS

Council	Ballina Shire Council
BOS	Biodiversity Offsets Scheme as applied by NSW Department of Planning, Industry and Environment (DPIE) under the Biodiversity Conservation Act 2016 (BC Act) commenced on 25 August 2017.
BC Act	Biodiversity Conservation Act 2016
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
EP&A Act	Environmental Planning and Assessment Act 1979
Part 4	Part 4 (Development Assessment) refers to the development assessment pathway for proposals which require approval under Part 4 of the EP&A Act (1979).
Part 5	Part 5 (Environmental Assessment) refers to the development assessment pathway for activities which require approval under Part 5 of the EP&A Act (1979).
TEC	Threatened Ecological Community is a collective term which recognises ecological communities' under threat, but refrains from ranking the communities by the status at which they are threatened.
EEC	Endangered Ecological Community refers to one of the categories which exist for listing threatened ecological communities (TECs) under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and the Biodiversity Conservation Act 2016 (BC Act).

5. SCOPE OF POLICY

This policy applies to:

- Council employees
- Councillors
- Community members
- Consultants/Contractors

6. RELATED DOCUMENTATION

Related documents, policies and legislation:

- Biodiversity Conservation Act 2016
- Environment Protection and Biodiversity Conservation Act 1999
- Environmental Planning and Assessment Act 1979
- Ballina Local Environmental Plan 1987
- Ballina Local Environmental Plan 2012
- Ballina Shire Development Control Plan 2012
- Ballina Shire Koala Management Strategy 2017

8.4 Policy (New) - Biodiversity Compensatory Habitat and Offsets

7. REVIEW

The Ballina Shire Biodiversity Offset Policy is to be reviewed every four years.

Submissions summary; Biodiversity Compensatory Habitat and Offsets Policy.

Submission 1



SUBMISSION ON

BIODIVERSITY COMPENSATORY HABITAT AND OFFSETS POLICY

While Ballina Environment Society congratulates Ballina Shire Councils attempt to create *an effective, efficient, and transparent framework* (p.5 para 6), BES agrees with peak conservation groups and environmental scientists, that offsets too often provide a loophole for development of ecologically and culturally significant land and as such should not be considered or enacted without great care.

As such, BES has significant concerns regarding some aspects of the Policy.

The Policy should state explicitly that the policy **does not over-ride** the provisions of BLEP12 including the overlay of Environmental Zones from BLEP87, rather than 'to be applied is (sic) association with the provisions of the Ballina Local Environmental Plan 1987.' The wording should clearly state there is no provision to provide an offset for, or on, existing Environmental Zoned land.

This policy is to be applied in association with the provisions of the Ballina Local Environmental Plan 1987, Ballina Local Environmental Plan 2012 and the Ballina Shire Development Control Plan 2012 (where provisions of these plans are applicable).

Where an offset is determined to be appropriate, after consideration of the principles of avoid, minimise and mitigate, the offset ratios set out in this policy are to be applied.

p.2 Para:10

BES does not agree that there should be any triggers to reduce the required Biodiversity Offset ratios for Public Works, especially for economic benefits (such as improved transit times from road network upgrades) P5 Para 2, should read: Sustainable development requires social, cultural, environmental and economic factors to all be considered. Environmental outcomes should not be watered down by perceived economic benefits. If BSC considers the offsets prescribed in Table 1 are necessary to maintain Biodiversity, then these offsets should apply across the board – no exceptions.

BES questions the need for the policy to prescribe an exemption to the reduced ratios for important habitat features and asks what future decisions could determine to be 'in relation to maintenance works'. BES requests this phrase be removed if reduced habitat offsets are retained and that no reduction should be applicable for Very High Biodiversity Value habitat as it is for Koala habitat.

Reduced compensatory habitat offset rates do not apply to:

- koala habitat; or
- important habitat features (aside from in relation to maintenance works)

p.5 Para 5

BES congratulates BSC for proposing higher ratios than surrounding councils, but BES questions where the rehabilitation ratios originated given that CSIRO research has found:

Major species include koalas, the red-tailed black-cockatoo, and the green and golden bell frog which required 19 times more habitat to achieve no net loss.

https://en.wikipedia.org/wiki/Biodiversity_offsetting#cite_note:14

The NSW Government Biodiversity Offset Scheme recognises as a red flag the effect of a serious and irreversible impact.

The concept of serious and irreversible impacts is fundamentally about protecting threatened entities that are most at risk of extinction from potential development. The Biodiversity Offsets Scheme recognises that there are some types of serious and irreversible impacts.

Effect of a serious and irreversible impact

The following table sets out the effect of a serious and irreversible impact for different types of development and activities (if they require assessment under the Biodiversity Offsets Scheme):

Type of development or activity	Effect of serious and irreversible impacts
<ul style="list-style-type: none"> ■ Clearing proposals ■ Part 4 development (that is not State Significant Development or State Significant Infrastructure) 	The approval authority must not grant approval if they determine the proposal is likely to have a serious and irreversible impact on biodiversity values.

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/local-government-and-other-decision-makers/serious-and-irreversible-impacts-of-development>

If the Policy is progressed, BES would hope Council would:

- Prohibit offsets for Very High Biodiversity Vegetation areas
- 19:1 for High Biodiversity Vegetation
- Set limits on % of area and the total area that can be offset
- Include the Coffs Harbour quota noted in Table 3, of 20:1 for old growth, hollow-bearing or ecologically significant trees.

The principle a preventing serious and irreversible impact should be the first and primary objective of the Policy.

BES also stresses that, if the Policy is progressed, appropriate security of tenure terms for offsets proposed outside the Development Application area should be prescribed, e.g. land purchased by Council or covenant on land title.

Also, a schedule for review of the progress of works should be prescribed, along with requirements to notify any change to the Management Plan or contractors involved in the works, and prescribe

penalties for failure to comply with the offset management plan. Compliance and enforcement are recognised as key design and implementation features in the OECD Biodiversity Offsets Effective Design and Implementation report, 2014, *Table 2. Key design and implementation features of biodiversity offset programmes*,

https://www.oecd.org/environment/resources/Biodiversity%20Offsets_Highlights_for%20COP12%20FINAL.pdf

BES agrees with Greenpeace in its submission to the Senate Environmental Offset Inquiry 2014, that Biodiversity Offset Policies:

should move to a model whereby offsets are established prior to approval of destructive activities.

<https://www.aph.gov.au/DocumentStore/ashx?id=a310b27a-371b-4f5b-9ea4-12345d0795de&subId=206901> p.12 para.3 Recommendation 4.

This submission also notes:

Given the current state of the science, it at best misleading and at worst incorrect to claim that the BOP can deliver a 'robust' environmental outcome: in general, the approval decisions using offsets are based on a science that is either non-existent or insufficient to the task.

In 2009 The Society for Conservation Biology concluded:

Delivery of no net loss or net gain through biodiversity trading is thus administratively improbable and technically unrealistic. Their proliferation without credible solutions suggests biodiversity offset programs are successful "symbolic policies," potentially obscuring biodiversity loss and dissipating impetus for action.

<https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/j.1755-263X.2009.00061.x>

In 2016 The Nature Conservation Council published a report on the operation of NSW's biodiversity offset schemes, [Paradise Lost: The Weakening and Widening of NSW Biodiversity Offsetting Schemes, 2005-16](#).

It was demonstrated that biodiversity offsetting is failing to deliver the environmental outcomes promised. No case studies resulted in outcomes deemed 'good' and the outcomes were either

- 'disastrous' in one study (Boggabri/Maules Creek)
- 'poor' in five studies (Warkworth, Mount Owen, Huntlee, Albury, Kellyville).
- 'adequate' in two studies (Namoi, Wagga Wagga)

In September, 2020, a report card on Biodiversity found that globally Governments didn't reach any of the targets in full to slow biodiversity loss.

Biodiversity – the diversity within species, between species and of ecosystems – is declining faster than at any time in human history.

https://ipbes.net/sites/default/files/2020-02/ipbes-global-assessment-report-summary-for-policymakers_en.pdf

We must do better. In summary, if BSC proceeds with a Biodiversity Offset Policy, the draft needs to be modified to include:

- The principle a preventing serious and irreversible impact should be the first and primary objective of the Policy.
- No possibility of offsets for, or in, Environmental Zones defined in the Ballina Environmental Plan
- No reductions or exemptions
- Prohibit offsets for Very High Biodiversity Vegetation areas
- 19:1 for High Biodiversity Vegetation
- Limits on the total % of area and the total area a development can offset
- Quota of 20:1 for old growth, hollow-bearing or ecologically significant trees
- Prescribed compliance and enforcement measures
- Prescribed terms for security of tenure
- Inclusion of cultural heritage and appropriate liaison with First Nation Representatives in management plans
- Offsets established prior to approval of destructive activities

*Prepared by Fiona Folan MSc(Arch)
1 August, 2021*

Submission 2

Submitted At

2021-08-11 20:26:22

Name of exhibited document you want to make comment on.

Biodiversity Compensatory Habitat and Offsets Policy

Your Name

Joanna Osborn

Phone Number

+61438409914

Your email?

joanna.e.osborn@gmail.com

Having read the document, is it easy to read and understand?

Yes

Please provide any suggestions for improvement.

I think we should set aside as much intact habitat along the coast at Lennox/Ballina as possible. Fragmentation is happening as far as the eye can see and I think trying to retain small patches on development sites is noble but ineffective. We need to retain large tracts of intact land and there are some stunning parcels of land in lennox and Ballina that I think should be made in to a national park.

Do you support the overall objectives and content of the document?

No

Please provide further comments if you wish.

We need to premanently protect intact large tracts of land where possible. Small parcels of fragmented habitat are not as important.

I agree to Ballina Shire Council collecting my Name, Email, and Phone Number

I agree

Submission ID

6113a5ce421fe93d85196399

8.4 Policy (New) - Biodiversity Compensatory Habitat and Offsets

Submission 3

Submitted At

2021-09-01 20:39:25

Name of exhibited document you want to make comment on.

Biodiversity Compensatory Habitat and Offsets Policy

Your Name

Claudia Greenhalgh

Your email?

claudia.greenhalgh@gmail.com

Having read the document, is it easy to read and understand?

Yes

Please provide any suggestions for improvement.

I support the changes proposed by the Ballina Environment Society. I thi k that there should be more explicit wording to prevent the degradation of land and ecosystems for financial gain by developers

Do you support the overall objectives and content of the document?

Yes

I agree to Ballina Shire Council collecting my Name, Email, and Phone Number

I agree

Submission ID

612f585de800201e2d3c66db