

Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 9

made under the

Environmental Offsets Act 2014

Nature Conservation Act 1992

Planning Act 2016

Vegetation Management Act 1999

General Outline

Short title

Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020.

Authorising law

Section 93 of the *Environmental Offsets Act 2014*

Section 120H of the *Nature Conservation Act 1992*

Section 284 of the *Planning Act 2016*

Section 72 of the *Vegetation Management Act 1999*

Policy objectives and the reasons for them

The *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* (Amendment Regulation) amends four pieces of subordinate legislation associated with the regulation of koala habitat:

- *Environmental Offsets Regulation 2014* to modify the existing offset framework with consequential amendments as a result of the Amendment Regulation. These changes include the addition of koala habitat areas as an offset-able value, reflecting the new planning controls as activities that an offset can be required for and new arrangements for assessing and managing offsets with the State as administering agency;
- *Nature Conservation (Koala) Conservation Plan 2017* to establish a framework for amended and new definitions related to koala habitat areas and koala priority areas (KPAs); to create koala habitat area and KPA maps; and to establish a process for amending these maps;

- *Planning Regulation 2017* to replace existing planning controls relating to koala habitat and include new controls for koala habitat areas and KPAs. These controls include regulating where koala habitat may be impacted by development (including a prohibition on clearing in a KPA); assessment roles and criteria; and listing any exemptions that may apply; and
- *Vegetation Management Regulation 2012* to remake relevant accepted development vegetation clearing codes to align with the policy intent of the amendments to the *Nature Conservation (Koala) Conservation Plan 2017* and the *Planning Regulation 2017*. The amended codes will also correct administrative errors, introduce streamlining measures and address issues associated with vegetation clearing outside of the scope of the codes.

The overall objective of the Amendment Regulation is to provide increased protection to koala habitat areas in South East Queensland (SEQ).

Koala habitat areas and KPAs

Koala habitat areas were identified using improved mapping and modelling studies. Using the new habitat mapping, large, connected areas in SEQ, termed KPAs, were identified to strategically focus efforts for habitat protection, habitat restoration and threat abatement actions in areas that have the highest likelihood of achieving conservation outcomes for koalas.

Planning controls for koala habitat areas and KPAs

The objective of the new planning controls is to ensure there is a SEQ-wide and clearly understood approach to how koala habitat is managed. The amendments are designed so that within KPAs, koala habitat areas will have the strongest controls applied. Koala habitat outside of KPAs will also be protected and assessed under a new State code.

Offsets for clearing koala habitat areas

The amendments to the *Environmental Offsets Regulation 2014* are consequential amendments to ensure that the amendments to the *Nature Conservation (Koala) Conservation Plan 2017* and the *Planning Regulation 2017* are aligned.

Amended accepted development vegetation clearing codes

The objective of the amendments to the *Vegetation Management Regulation 2012* is to approve five updated accepted development vegetation clearing codes (ADVCC).

These ADVCCs have been updated to align with the policy intent of the amendments to the *Nature Conservation (Koala) Conservation Plan 2017* and the *Planning Regulation 2017*. The remade codes also correct minor errors, introduce a streamlining measure for small-scale clearing associated with telecommunication towers and clarifies the application of section 19Q of the *Vegetation Management Act 1999* by specifying circumstances in which vegetation clearing is within the scope of the codes.

Achievement of policy objectives

The following paragraphs outline how the Amendment Regulation intends to achieve the objectives described above.

Koala habitat areas and KPA mapping

To support the identification of koala habitat areas and KPAs, the Government has developed and adopted new koala habitat mapping using state-of-the-art, internationally-recognised modelling techniques. SEQ local governments have also provided information about locally refined koala habitat for inclusion in the koala habitat maps for a transitional period.

A landholder may apply to the chief executive of the *Nature Conservation Act 1992* to make, amend or revoke koala habitat area mapping on their land. The changes will take effect if the chief executive makes a determination that the map requires amendment. If the chief executive refuses the application, the landholder can seek an internal review in the first instance, or have that decision reviewed by the Queensland Civil and Administrative Tribunal.

Planning controls for koala habitat areas and KPAs

The Amendment Regulation introduces a new development assessment regime for development in koala habitat areas inside and outside of KPAs. The Amendment Regulation contains a prohibition on clearing koala habitat areas in a KPA. This means that a development application cannot be lodged for development that includes clearing of koala habitat areas in a KPA. The Amendment Regulation contains exemptions to the prohibition on clearing koala habitat in KPAs to balance the need to protect koala habitat with the need to allow some clearing to cater for growth and other essential services.

Development located inside a KPA but not involving clearing of koala habitat areas is to be assessed by the local government against new assessment benchmarks contained in the *Planning Regulation 2017*. This is necessary to ensure that development does not impact negatively upon koalas and koala habitat, by supporting safe koala movement opportunities and managing and minimising edge effects.

The new planning controls will also regulate koala habitat areas in SEQ outside a KPA. This will be done by ensuring that any proposal for clearing of koala habitat areas (outside a KPA) are assessed by the State for impacts on koala habitat. Development will have to demonstrate all reasonable steps have been taken to first avoid, minimise and mitigate any proposed clearing and for any unavoidable clearing to provide an environmental offset. Development will be assessed by the Chief Executive of the Department of State Development, Manufacturing, Infrastructure and Planning through the State Assessment and Referral Agency, either as a referral agency or assessment manager. Development applications will be assessed against a new state code for SEQ koala habitat areas contained within the State Development Assessment Provisions.

In KPAs the prohibition does not apply if the proposed development is accepted development because it complies with an ADVCC. Under the State Policy for Vegetation Management 2019, the ADVCC apply to low risk clearing activities, and specify the practices with which a

landholder must comply to ensure that the clearing achieves environmental outcomes, including koala conservation.

The proposed exemptions for clearing koala habitat in the Amendment Regulation include existing exemptions for koala habitat clearing for certain types of development and a once-off allowance of 500m² per premises. Additional exemptions cover clearing relating to necessary activities such as emergency situations, removal of dangerous trees and the creation and maintenance of firebreaks adjacent to infrastructure.

The Amendment Regulation includes transitional arrangements for development applications that were properly made or development applications that had been approved before the commencement of these provisions.

Offsets for clearing koala habitat

In addition to ensuring the *Environmental Offsets Regulation 2014* aligns with the amendments to the *Nature Conservation (Koala) Conservation Plan 2017* and the *Planning Regulation 2017*, the Amendment Regulation will enable impacts to koala habitat areas to be offset under the Environmental Offsets Framework. The amendments include transitional provisions for current koala habitat offsets being managed by local government authorities.

Amendment to the Vegetation Management Regulation 2012

Section 3 of the *Vegetation Management Regulation 2012* will be amended to revoke five ADVCCs made on 5 June 2019 and authorise the following five ADVCCs approved by the Minister for Natural Resources, Mines and Energy on 23 December 2019:

- Clearing for an extractive industry;
- Clearing for infrastructure;
- Managing regulated regrowth vegetation;
- Managing weeds; and
- Necessary environmental clearing.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the *Nature Conservation Act 1992*, which is the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. The Amendment Regulation is also consistent with how the object is to be achieved, including protecting native wildlife and their habitat by managing the wildlife in accordance with a conservation plan.

The Amendment Regulation is consistent with the purpose of the *Planning Act 2016* which is to establish an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning, development assessment and related matters that facilitates the achievement of ecological sustainability.

The Amendment Regulation is consistent with the purpose of the *Environmental Offsets Act 2014* which is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.

The Amendment Regulation is consistent with the purpose of the *Vegetation Management Act 1999* which includes regulating the clearing of vegetation in a way that prevents the loss of biodiversity.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation. Areas of koala habitat are already subject to varying levels of prohibition and regulation. The Amendment Regulation increases this level of protection, and focuses it to koala habitat areas that have been identified as having the highest likelihood of success for koala conservation.

Benefits and costs of implementation

Benefits

The amendments aim to ensure a sustainable koala population in the wild in SEQ is supported by a coordinated and strategic approach to habitat protection, restoration and threat reduction. Without the implementation of the Amendment Regulation, there is a risk that koala populations in SEQ will continue to decline.

Costs

There will be resource implications when the State takes on the role as the assessment manager as this work has previously been undertaken by local governments. Cost recovery fees will be charged for development applications.

As a result of the Amendment Regulation, koala habitat areas are now an offset value and any financial settlement offset payments will be received into the State's Offset Account, and acquitted in accordance with the Koala Habitat in SEQ Offsets Policy.

Consistency with fundamental legislative principles

The Amendment Regulation has been assessed for consistency with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

A potential breach of fundamental legislative principles has been identified (Clause 20) resulting from the map amendment process. As the maps will be updated annually, any determination by the Chief Executive between updates, may not be publicly available to interested parties. It is not a potential breach of the *Legislative Standards Act 1992*, rather it is the possibility that someone may be adversely affected by an administrative action undertaken pursuant to the Amendment Regulation. To address this issue, the Department of Environment and Science will have measures in place to inform relevant applicants via the department's website.

Consultation

The Government appointed the Koala Expert Panel (the Panel) to provide advice on the declining koala population and koala habitat. The Panel undertook extensive public consultation in 2016 and 2017 which involved an online survey, open written public submissions, face-to-face consultation and engagement with selected experts.

A key finding of the Panel was that habitat loss was one of the most prominent issues causing public concern closely followed by concerns with the planning and development framework leading to urban expansion. Of the written and oral submissions to the Panel's consultation process, 84 per cent of participants suggested a need for planning and development-related changes, such as revising specific regulatory instruments and applying a regional approach to habitat protection.

One of the recommendations of the Panel was to establish a Koala Advisory Council (the Council) to comprise key stakeholders across State and local government, non-government organisations, industry and community groups. The Government established the Council in 2018. The membership of the Council represents a diversity of views from all sectors including academia, conservation groups, the timber industry, the property development industry and local government and the Council through its members has conducted targeted consultation on the issues facing koala populations and koala habitat. Within the Council, exemptions are the most contentious issue across stakeholder groups especially the property development sector, conservation groups and affected State government departments and the exemptions proposed in the Amendment Regulation have been included to ensure that land is available for growth whilst still ensuring the best outcome of the long term survival of koalas in the wild.

Feedback from the Panel's and Council's consultation has informed the policy objectives of the Amendment Regulation.

SEQ local governments have been consulted on mapping, state and local government development assessment requirements and exemptions. Specific consultation with local governments has been coordinated by the Local Government Association of Queensland (LGAQ) in its role as a member of the Council, and supported by individual officer level discussions by the Department of Environment and Science with all SEQ local governments. Koala habitat area and KPA maps were refined as a result of this consultation. Additional transitional arrangements have also been adopted to map and protect locally refined koala habitat as koala habitat areas for a transition period of two years. Additional changes to improve development assessment provisions have also resulted from this consultation.

The public was also invited to validate the koala habitat area map in December 2019. This process elicited over 400 submissions which were assessed, and changes made where appropriate.

Regulatory Impact Statement

In accordance with *The Queensland Government Guide to Better Regulation*, an exemption was granted from preparing a Regulatory Impact Statement.

The Office of Best Practice Regulation was also consulted in relation to the regulatory proposal and recognised that a Consultation Regulatory Impact Statement undertaken prior to the commencement of the Amendment Regulation could cause significant pre-emptive clearing. The risk of pre-emptive clearing has the potential to defeat the objectives of the Amendment Regulation (namely protection of koala habitat).

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