

Information Sheet – Planning Regulation 2017

Development in koala priority areas

This information sheet provides an overview of requirements that apply to development proposed within koala priority areas under the Planning Regulation 2017.

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1 Background

On 7 February 2020, new provisions were introduced into the Planning Regulation 2017 to improve koala habitat protection in South East Queensland. These new provisions apply to development that is proposed in koala priority areas, koala habitat areas and identified koala broad-hectare areas.

This information sheet has been developed to provide an overview of the new koala habitat protections that apply to development proposed in koala priority areas under the Planning Regulation 2017.

2 Development involving interfering with koala habitat in a koala habitat area within a koala priority area

2.1 Prohibited development

Development that involves “interfering with koala habitat¹” (defined below) in an area that is mapped as a koala habitat area that is in a koala priority area² is now prohibited development under the Planning Regulation 2017³. This means that a development application for this type of development cannot be made under the *Planning Act 2016* and therefore the development cannot be lawfully carried out.

Interfering with koala habitat means:

- (a) Removing, cutting down, ringbarking, pushing over, poisoning or destroying in any way, including by burning, flooding or draining native vegetation in a koala habitat area; but
- (b) Does not include destroying standing vegetation by stock or lopping a tree.

Figure 1 provides an example of in an area that is mapped as a koala habitat area that is in a koala priority area.

The term interfering with koala habitat applies to direct interfering with koala habitat (e.g. clearing native vegetation in a koala habitat area) and indirect interfering with koala habitat (e.g. a reconfiguration of a lot that would introduce new exempted development allowing native vegetation in a koala habitat area to be cleared).

This strict prohibition was introduced to prioritise the retention and protection of koala habitat that has been determined to be essential for the conservation of a viable koala population in the wild (i.e. koala habitat areas), in the areas that have been determined to have the highest likelihood of achieving conservation outcomes for koalas (i.e. koala priority areas).

If you are unsure whether a proposed development in an area that is mapped as a koala habitat area that is a koala priority area is prohibited development, it is advised that you seek pre-lodgement advice from the State Assessment Referral Agency (SARA). Contact details for the regional SARA offices can be found here: <https://planning.dsdmip.qld.gov.au/planning/resources/regional-contacts>.

¹ This definition is defined in Schedule 24 of the Planning Regulation 2017.

² More information on the koala habitat area and koala priority area mapping can be found in the *Information sheet – Koala mapping*.

³ See Schedule 10, Part 10, Division 2, Section 16A of the Planning Regulation 2017.



Figure 1: Example of an area that is mapped as a koala habitat area that is in a koala priority area

2.2 Exemptions to prohibition

There are a number of instances where development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development. These instances are detailed below.

Clearing requirements prescribed in the Nature Conservation (Koala) Conservation Plan 2017 still apply to clearing that is exempt. More information on these clearing requirements can be found in the *Information sheet – Koala Conservation Plan clearing requirements*.

2.2.1 Exempted development

Development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development under this particular provision of the Planning Regulation 2017 if the development is “exempted development” as defined in Schedule 24 of the Planning Regulation 2017.

The following series of information sheets have been developed to provide simplified explanations of items of the exempted development definition in Schedule 24 of the Planning Regulation 2017 that applies to all land tenures and to specific land tenures:

- *Exempted development in koala habitat areas - all land tenures;*
- *Exempted development in koala habitat areas - freehold land;*
- *Exempted development in koala habitat areas - indigenous land ;*
- *Exempted development in koala habitat areas - land leased under the Land Act 1994 for agriculture or grazing purposes ;*
- *Exempted development in koala habitat areas - land leased under the Land Act 1994, other than for agriculture or grazing purposes;*

- *Exempted development in koala habitat areas - trust land under the Land Act 1994, other than indigenous land;*
- *Exempted development in koala habitat areas - unallocated State land;*
- *Exempted development in koala habitat areas - land that is subject to a licence or permit under the Land Act 1994; and*
- *Exempted development in koala habitat areas - land dedicated as a road under the Land Act 1994.*

2.2.2 Interfering with koala habitat for extractive industries in a key resource area

Development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development under this particular provision of the Planning Regulation 2017 if the development is for extractive industries⁴ in a key resource area⁵. Instead of being prohibited development under the new koala habitat protections, this type of development is assessable development under the new koala habitat protections, which means a development approval is required before the development can be lawfully undertaken. More information on this type of development can be found in the *Information sheet – Extractive industries in koala habitat areas within key resource areas*.

2.2.3 Development in an identified koala broad-hectare area

Development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development under this particular provision of the Planning Regulation 2017 if the development is in an identified koala broad-hectare area and is:

- accepted development under a local categorising instrument (i.e. where the local government planning scheme or other local planning instrument provides that the development does not require development approval); or
- assessable development under a local categorising instrument (i.e. where the local government planning scheme or other local planning instrument provides that the development requires development approval before it can be lawfully undertaken); or
- reconfiguring a lot that is assessable development under Schedule 10, Part 14, Division 1, Section 21 of the Planning Regulation 2017 (i.e. reconfiguring a lot under the *Land Title Act 1994*).

Development in an identified koala broad-hectare area that is assessable development under the local government planning scheme or Schedule 10, Part 14, Division 1, Section 21 of the Planning Regulation 2017 would not be prohibited development under this particular provision of the Planning Regulation 2017. Instead, it would be assessable development and the assessment benchmarks prescribed in Schedule 11, Part 3 of the Planning Regulation 2017 would apply to the development application. More information on the assessment benchmarks in Schedule 11, Part 3 of the Planning Regulation 2017 can be found in the *Information sheet – Development in an identified koala broad-hectare area*.

However, development for an extractive industry is prohibited development⁶ if it is interfering with koala habitat in a

⁴ The Planning Regulation 2017, under Schedule 24 defines **Extractive industry** as the use of premises for:
(a) extracting or processing extractive resources; and
(b) any related activities, including, for example, transporting the resources to market.

⁵ The Planning Regulation 2017 refers to the State Planning Policy definition of '**key resource area**' which means an identified location that contains extractive resources of state or regional significance as shown on the State Planning Policy Interactive Mapping System (SPP IMS) (<https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking>). A KRA includes the resource/processing area, the separation area, the transport route and the transport route separation area.

⁶ See Schedule 10, Part 10, Division 2, Section 16A(2)(c)(i) of the Planning Regulation 2017.

koala habitat area within a Koala Priority Area, if it is also in an identified koala broad-hectare area but is not in a key resource area.

Development in an identified koala broad-hectare area that is accepted development under the local government planning scheme would not be prohibited development under the new koala habitat protections that apply under the Planning Regulation 2017.

2.2.4 Development applications properly made before the commencement of the new koala habitat protections and existing development approvals

Development applications that were properly made before the new habitat protections were introduced on 7 February 2020 will be assessed against the provisions of the Planning Regulation 2017 that applied to the development at the time the application was properly made.

Additionally, development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development under this particular provision of the Planning Regulation 2017 if the development is carried out under a development permit⁷ that was given for a development application that was properly made before 7 February 2020.

Further, development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is in a koala priority area is not prohibited development under this particular provision of the Planning Regulation 2017 to the extent the development:

- is carried out under a development permit given for an application that was properly made before 7 February 2020; or
- is consistent with a development approval⁸ (including a variation approval⁹):
 - in effect for the premises on which the proposed development is to be carried out; and
 - given for a development application that was properly made before 7 February 2020.¹⁰

These exemptions are to ensure that development approvals given under the *Planning Act 2016* prior to the commencement of the new koala habitat planning controls are not affected by the new koala habitat planning controls.

3 Assessment benchmarks – Development not involving interfering with koala habitat on premises with koala habitat area and koala priority area

⁷ **Development permit** is the part of a decision notice for a development application that authorises the carrying out of the assessable development to the extent stated in the decision notice.
(as defined under section 49(3) of the *Planning Act 2016*)

⁸ **Development approval** is a preliminary approval, a development permit or a combination of a preliminary approval and a development permit.
(as defined under section 49(1) of the *Planning Act 2016*)

⁹ **Variation approval** means the part of a preliminary approval for premises that varies the effect of any local planning instrument in effect for the premises.
(as defined under schedule 2 of the *Planning Act 2016*)

¹⁰ For preliminary approvals that require subsequent approvals, the assessment manager is responsible for determining whether the subsequent approvals are consistent with the preliminary approval. For example, if the preliminary approval was for a Material Change of Use (MCU), and a subsequent development application was lodged for Reconfiguring a Lot (RAL), the RAL would not be assessable development if it determined to be consistent with the original preliminary approval.

The assessment benchmarks prescribed in Schedule 11, Part 2 of the Planning Regulation 2017 now apply to development applications that are made for development that:

- the local government planning scheme makes assessable (i.e. where a local categorising instrument such as the local government planning scheme provides that the development requires development approval before it can be lawfully undertaken); and
- is building works, operational works, a material change of use of premises or reconfiguring a lot; and
- does not involve interfering with koala habitat (defined above); and
- is to be carried out on a premises that includes an area that is mapped as a koala habitat area that is in a koala priority area.¹¹

Figure 2 provides an example of a premises that includes an area that is mapped as a koala habitat area that is in a koala priority area.



Figure 2: Example of a premises that includes an area that is mapped as a koala habitat area that is in a koala priority area

A development application made for the above-mentioned development would be assessed and decided by the local government in accordance with the relevant provisions of the local government planning scheme and the assessment benchmarks prescribed in Schedule 11, Part 2 of the Planning Regulation 2017. These assessment benchmarks seek to ensure that the development provides for safe koala movement opportunities and does not have adverse impacts on koala habitat areas.

¹¹ See Schedule 10, Part 10, Division 5 of the Planning Regulation 2017.

The [Guideline - Assessment Benchmarks in relation to Koala Habitat in South East Queensland assessment benchmarks](#) outlines the assessment benchmarks prescribed in Schedule 11, Part 2 of the Planning Regulation 2017, the intent of these assessment benchmarks and advice on how proposed development may meet these assessment benchmarks.

As local government are responsible for assessing and deciding development applications that these assessment benchmarks apply to, it is advised that advice is sought from the local government to confirm whether these assessment benchmarks apply to a proposed development and if so, information that should be provided with the development application to address the assessment benchmarks.

3.1 Exemptions to assessment benchmarks

There are a number of instances where the assessment benchmarks prescribed in Schedule 11, Part 2 of the Planning Regulation 2017 would not apply including where:

- the chief executive of the *Planning Act 2016* is the prescribed assessment manager for the development application;
- the development is for a coordinated project declared under the *State Development and Public Works Organisation Act 1971*;
- the development is in a State development area declared under the *State Development and Public Works Organisation Act 1971*;
- the development is in a development control plan¹²;
- the development is for infrastructure stated in Schedule 5 of the Planning Regulation 2017 and is carried out by, or for, the State or a public sector entity;
- the development is priority development area (PDA) related development¹³;
- the development results in a development footprint of 500m² or less;
- the development application must be assessed against the assessment benchmarks prescribed in Schedule 11, Part 3 of the Planning Regulation 2017 (i.e. development in an identified koala-broad hectare area where the local government planning scheme makes the development assessable development – more information on this can be found in the *Information sheet – Development in identified koala broad-hectare areas*);
- the development is carried out under a development permit given for a development application that was properly made before 7 February 2020; and
- the development is consistent with a development approval:
 - in effect for the premises on which the development is to be carried out; and
 - given for a development application that was properly made before 7 February 2020.¹⁴

¹² **Development control plans** were a planning mechanism under the former *Integrated Planning Act 1997* that has since been repealed and replaced by the *Planning Act 2017*, which no longer includes development control plans. Please contact the State Assessment Referral Agency (SARA) for advice on whether a particular area of land is within a development control plan (<https://planning.dsdmip.qld.gov.au/planning/resources/regional-contacts>).

¹³ **PDA-related development** means:

- (a) development in a priority development area; or
- (b) PDA-associated development for a priority development area.

(as defined under the *Economic Development Act 2012*)

¹⁴ See section 2.2.4 of this information sheet for more information on exemptions for development applications that were properly made before the commencement of the new koala habitat protections and existing development approvals.

4 Development in koala priority area without koala habitat area

Koala habitat protections under the Planning Regulation 2017 do not apply to development proposed in an area that is mapped as a koala priority area but is not mapped as containing a koala habitat area. However, the clearing requirements prescribed in Section 10 of the Nature Conservation (Koala) Conservation Plan 2017 still apply if the development involves clearing koala habitat trees¹⁵. More information on these clearing requirements can be found in the *Information sheet – Koala Conservation Plan clearing requirements*.

Figure 3 provides an example of an area that is mapped as a koala priority area but is not mapped as containing a koala habitat area.



Figure 3: Example of an area that is mapped as a koala priority area but it not mapped as a koala habitat area

5 Further information

If you have any further queries about the new koala habitat protections introduced into the Planning Regulation 2017 on 7 February 2020, please contact the Koala Assessment and Compliance team at koala.assessment@des.qld.gov.au or 13 QGOV (13 74 68).

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

¹⁵ **Koala habitat tree** means:

- (a) a tree of the *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* genera that is edible by koalas; or
- (b) a tree of a type typically used by koalas for shelter, including, for example, a tree of the *Angophora* genus.

Approved:



Ben Klaassen
Deputy Director-General
QPWS & Partnerships
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Enquiries:

Koala Assessment and Compliance
Phone: 13 QGOV (13 74 68)
Email: koala.assessment@des.qld.gov.au

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