

Information sheet

Planning Regulation 2017

Development in koala habitat areas outside koala priority areas

This information sheet provides an overview of requirements that apply to development in areas that are mapped as koala habitat areas that are outside of 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 (Planning Regulation) 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 areas that are mapped as koala habitat areas that are outside of koala priority areas under the Planning Regulation.

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

2.1 Assessable development

Development that involves “interfering with koala habitat¹” (defined below) in an area that is mapped as a koala habitat area that is outside of a koala priority area² is now assessable development under the Planning Regulation³. This means that a development application for the development would need to be submitted and approved under the *Planning Act 2016* before the development can 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 an area that is mapped as a koala habitat area that is outside of a koala priority area.

The term interfering with koala habitat also applies to 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).

A development application made for this type of development would be assessed by the State Government’s State Assessment Referral Agency (SARA) in accordance with the assessment benchmarks prescribed in the *State Development Assessment Provisions (SDAP) – State Code 25: Development in South East Queensland koala habitat areas*. These assessment benchmarks are prescribed to ensure development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is outside of a koala priority area will not result in a net loss of koala habitat, will not fragment koala habitat, will provide for safe koala movement and will not increase the risk of koala death or injury during construction⁴.

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

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

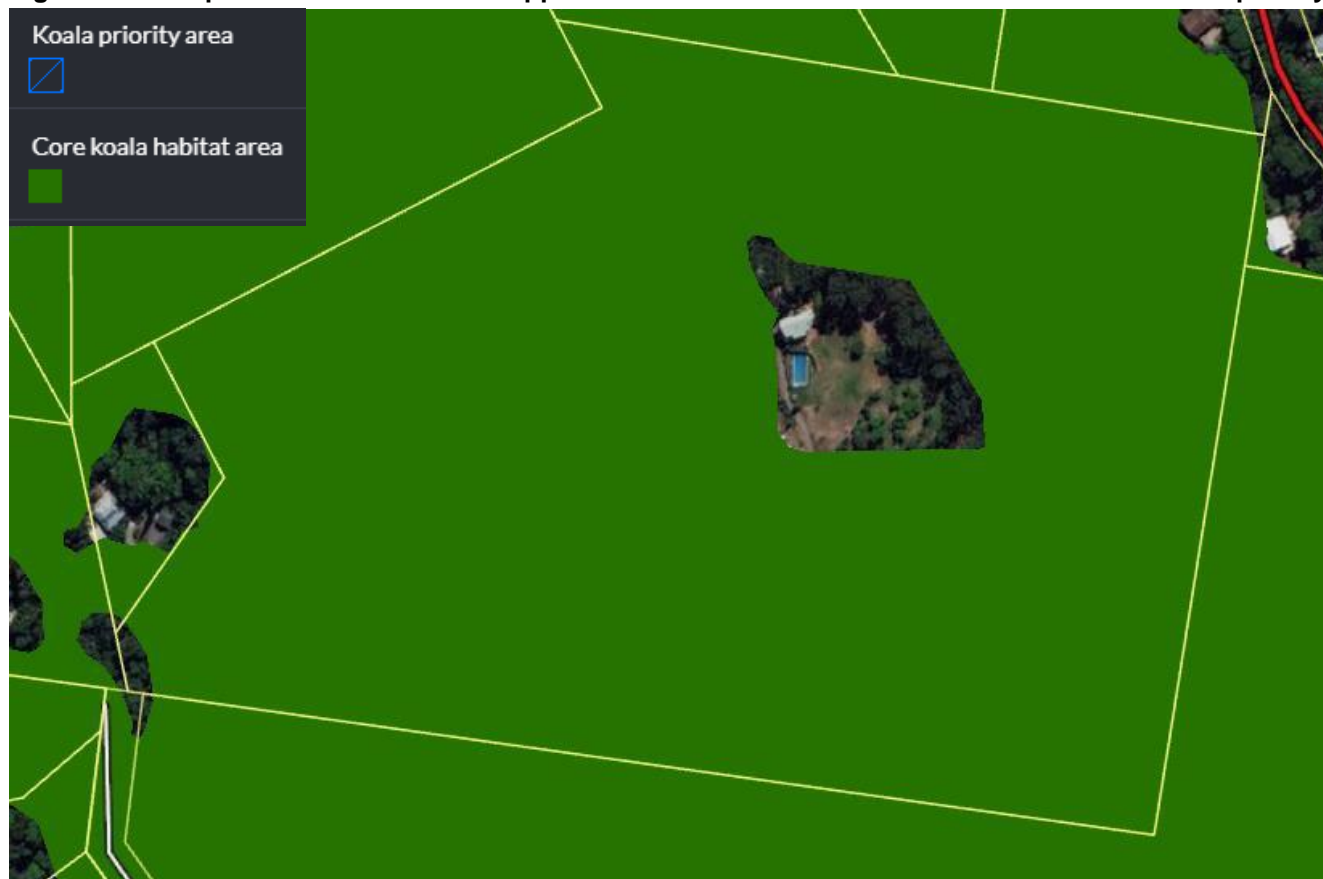
³ See Schedule 10, Part 10, Division 3, Section 16B of the Planning Regulation.

⁴ The full purpose statements and assessment benchmarks are provided in State Code 25. See the State Code 25 Guideline here: <https://environment.des.qld.gov.au/wildlife/animals/living-with/koalas/mapping/legislation-policy>

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When preparing a response to State Code 25 for a development application, it is advised that you refer to the [Koala Sensitive Design Guideline](#). This guideline provides useful information on the intent of each assessment benchmark as well as information that will need to be provided with the development application to address State Code 25.

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



area

If you are unsure whether a development proposed in an area that is mapped as a koala habitat area that is outside of a koala priority area is assessable development, it is advised you seek pre-lodgement advice from SARA who are responsible for assessing and deciding development applications for this type of development. SARA can also provide advice on the information you should provide in your development application if it is determined that the development proposed is assessable development under this particular provision of the Planning Regulation. Contact details for the regional SARA offices can be found here: <https://planning.dsdmip.qld.gov.au/planning/resources/regional-contacts>.

2.2 Exemptions to assessable development

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 outside of a koala priority area is not assessable development. An 'exemption' may be specifically defined as exempted development or it may be a situation where an application would not be assessable under the Planning Regulation. These instances are detailed below.

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

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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 outside of a koala priority area is not assessable development under this particular provision of the Planning Regulation if the development is “exempted development” as defined in Schedule 24 of the Planning Regulation.

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 that apply 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*
- *Exempted development in koala habitat areas - land that is subject to a licence or permit under the Land Act 1994*
- *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 outside of a koala priority area is not assessable development under this particular provision of the Planning Regulation if the development is for extractive industries⁵ in a key resource area⁶. Instead, this type of development is assessable development under a different provision of the Planning Regulation (specifically Schedule 10, Part 10, Division 4, Section 16C). More information on this type of assessable development can be found in the *Information sheet – Extractive industries in koala habitat areas within key resource areas*.

⁵ The Planning Regulation, 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.

⁶ The Planning Regulation refers to the State Planning Policy definition of ‘key resource area (KRA)’ 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.dsdi.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.

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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 outside of a koala priority area is not assessable development under this particular provision of the Planning Regulation if the development is in an identified koala broad-hectare area and is one or more of the following:

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

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

However, development for an extractive industry is **prohibited development**⁷ if it is interfering with koala habitat in a 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.

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 that applied to the development at the time the application was properly made; however, an assessment manager or referral agency may give the weight it considers appropriate, in the circumstances, to the provisions commencing on 7 February 2020.

Additionally, development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is outside of a koala priority area is not assessable development under this particular provision of the Planning Regulation if the development is carried out under a development permit⁸ that was given for a development application that was properly made before 7 February 2020.

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Further, development that involves interfering with koala habitat in an area that is mapped as a koala habitat area that is outside of a koala priority area is not assessable development under this particular provision of the Planning Regulation if the development is consistent with a development approval⁷ (including a variation approval⁸):

- that is 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 2020.⁹

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 Development not involving interfering with koala habitat in a koala habitat area outside a koala priority area

No koala habitat protections under the Planning Regulation apply to development that meets all the below criteria:

- is within an area that is mapped as a koala habitat area
- is not within a koala priority area
- does not involve interfering with koala habitat (defined above).

4 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 or 13 QGOV (13 74 68).

⁷ **Development approval** means 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*)

⁸ **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*)

⁹ 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.

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Human Rights Act 2019 compatibility

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this information sheet, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

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, Science and Innovation should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

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Signature

30/11/2023

Date

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