



Summary Impact Analysis Statement

Details

Lead department	Department of Environment and Science
Name of the proposal	Decision Post Implementation IAS: Improving South East Queensland's Koala Habitat Regulations
Submission type <i>(Summary IAS / Consultation IAS / Decision IAS)</i>	Decision Post Implementation IAS
Title of related legislative or regulatory instrument	Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020 Planning Regulation 2017
Date	29 January 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

New koala habitat regulations took effect on 7 February 2020 under the Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020 (the 2020 koala regulations). The 2020 koala regulations were exempted from consultation due to the significant risk of pre-emptive habitat clearing. The Department of Environment and Science (the department) is now undertaking a review to evaluate whether the 2020 koala regulations will provide strong and effective protection for SEQ's koala habitat in the long term.

The previous koala protection framework (including planning regulations) were ineffective in halting the decline of koala habitat from development such as clearing. Data from the department's satellite monitoring of woody vegetation clearing showed that under the previous regulations, habitat loss was increasing. To reduce further habitat loss, a prohibition on development in koala habitat in priority areas was introduced in 2020 as a cost-effective measure. Non-regulatory solutions like self-regulation were dismissed because they required private environmental planning experts to evaluate development impacts and implement mitigation strategies.

The Post Implementation IAS found the 2020 koala regulations have been successful at increasing protection for koala habitat compared to the previous regulations. The improvements to the methodology for mapping koala habitat have delivered a substantial increase in the extent of protected koala habitat, and improvements to planning controls have delivered stronger outcomes.

However, the IAS also found several elements of the framework have not been working as intended, diminishing the success of the 2020 koala regulations. This includes excessive development impacts to koala habitat under exemptions, lack of data on interference with koala habitat, and unnecessary time delays and costs for stakeholders in preparing development applications.

Problem 1: Unintended clearing of koala habitat areas and less than effective monitoring

The impact assessment and stakeholder consultation identified several problem areas where the 2020 koala regulations have unintentionally enabled development in of koala habitat areas, for example clearing, as exempted development that is beyond what would be considered reasonable. This is referred to throughout this review as 'unintended clearing', as the actual clearing which has occurred does not align to the original policy intent when the 2020 koala regulations were passed.

Specifically, the problem of unintended clearing of koala habitat areas and less than effective monitoring is evidenced by:

- case studies of areas up to 10,000 square meters of koala habitat being impacted due to stacking of exempted development provisions. This is an unintended consequence of the exemptions, which were designed to limit exempt development to reasonable thresholds.
- unclear wording of the exempted development definition has led to partial assessment, which reduces the area of development that can be assessed and subsequently offset. However, the development exemptions under the new regulations were only intended to apply to wholly exempt development."
- there is no ability to encourage landholders and developers to avoid or minimise impacts of development that meets the requirements of exempted development, resulting in poor outcomes for koalas and koala habitat including within koala priority areas
- no ability to monitor development that is either approved or undertaken as exempted development, which has limited the ability of government agencies to perform effective compliance.

Stakeholders have identified that the above issues are allowing for continued, unreasonable koala habitat losses across the SEQ region, which by nature of being exempted development are unmonitored, unregulated, and uncompensated by means of environmental offsets or rehabilitation conditions. There is also concern among stakeholders that these development activities pose unacceptable threats to koalas as there is no consideration given to ensuring safe koala movement and retaining connectivity where possible. This is a particular concern for developments occurring within koala priority areas.

Problem 2: Unnecessary complexity, costs, and limited certainty for users

The regulations have resulted in unnecessary complexity, costs, confusion and limited certainty for assessment managers, technical advice agencies and end users. In response, the working group reviewed whether the regulations have effectively delivered on the Koala Expert Panel's recommendation to reduce complexity of exemptions.

Specifically, the problem of unnecessary complexity, costs and limited certainty is evidenced by:

- the exempted development definition which is complex and lengthy with 46 separate limbs, and which cross references other legislation and schedules of the Planning Regulation 2017
- some limbs of exempted development are overly complex with similar purposes, and there may be opportunity to consolidate to improve clarity and consistency
- reliance on the Vegetation Management framework has led to some confusion and inconsistencies, for example the exhaustible 500 square metre development allowance (k) for any purpose such as for a building envelope, and allowable widths for constructing a necessary fence, road or track differ between the 2020 koala regulations and ADVCCs
- it is unnecessarily difficult to determine whether a development is assessable, prohibited, or exempted as a whole, due to some exempted development provisions resulting in a project becoming partially exempted
- it is unclear how the policy should be applied to different aspects of development, and how the exhaustible 500 square metre allowance under exempted development (k) can be relied upon for different purposes over time and as subdivisions occur creating new Child Lots from Parent Lots.

The complexity of the exempted development definition impacts the effectiveness and efficiency of the 2020 koala regulations, resulting in unnecessary time and cost imposts on stakeholders, as well as resourcing implications for assessment managers, technical advice agencies and SEQ local governments alike. Stakeholders have reported financial and resource implications in the form of increased staffing requirements, and delays associated with development assessment timeframes (up to 29 business days compared with other state matters), delays in responding to enquiries, and a small number of instances where fees for incorrect referral were incurred.

The Queensland Government working group, which consisted of representatives from the Department of Resources and the Department of State Development, Infrastructure, Local Government and Planning, considered the findings of the impact assessment and concluded that overall, the complexity of the 2020

koala regulations and in particular the exempted development definition had resulted in protracted delays and unnecessary costs for users. Regulatory amendment is necessary to clarify the assessable development provisions and exempted development definition under the Planning Regulation 2017, to better achieve the Koala Expert Panel's recommendation of a more simplified planning framework.

What options were considered?

Option 1 Status quo

Retaining the 2020 koala regulations without any changes of a regulatory or non-regulatory nature.

Option 2 Clarification of regulatory requirements

This option involved minor regulatory amendment to:

- clarify the intended application of the prohibition, development assessment and exempted development provisions
- develop a process for notification to the department of koala habitat clearing
- establish a new self-assessment pathway which supports small scale rural and residential development to minimise impacts on koalas.

Option 3 Regulatory improvement to provide a stronger, more simplified framework for koala conservation

This option involved regulatory review and amendment to:

- reduce complexity of exemptions and remove ambiguity of partial exemptions and interaction with other legislation
- establish clear thresholds above which development assessment or prohibition is required
- clarify the intended application of the prohibition, development assessment and exempted development provisions (same as option 2)
- develop a process for notification to the department of koala habitat clearing (same as option 2)
- establish a new self-assessment pathway which supports small scale rural and residential development to minimise impacts on koalas (same as option 2).

What are the impacts?

Impacts of 2020 koala regulations:

The Post IAS identified the prohibition has altered development patterns and site selection practices of landowners and the urban development industry. A survey conducted among members of the Urban Development Institute of Australia revealed that over 90 percent of members acknowledged that the restrictions imposed by the 2020 koala regulations, particularly those pertaining to prohibited and assessable developments, have led to a deliberate avoidance of sites containing mapped koala habitat areas.

Local governments reported a noticeable decline in planning inquiries and development applications for interference with koala habitat areas within Koala Priority Areas, underscoring the effectiveness of the prohibition as a deterrent.

While the objective of the 2020 koala regulations was stronger protection for koala habitat areas, there was a concern from the urban development industry that this might affect dwelling supply. However, modelling conducted by DSDILGP indicates that the impacts on dwelling supply is relatively low. The prohibition affects approximately 750 dwellings, and assessable developments impact around 7,725 dwellings. Considering the dwelling supply targets in the context of SEQ, these numbers are minimal. It is also important to recognise that properties subject to assessable development are not precluded from future development.

The prohibition is especially cost-effective in comparison to offsetting as a result of assessable development under the avoid mitigate, offset framework.

The CPIR reports 624 exempted development queries, 316 hours of processing, \$17,400 in staff hours, and shows that the volume of enquiries has significantly reduced over time. Departmental administrative records show the volume of exempted development enquiries has declined to less than five a week in Jan 2022. This is a sign that the regulatory framework is maturing and stakeholder confidence applying the provisions has increased over time, resulting in cost efficiencies.

Predicted impacts of Recommended Option 3 (see Full IAS for costs and benefits of other options)

Costs

The exact costs and other impacts of prohibited development were difficult for all stakeholders to determine. Costs were primarily administrative (e.g. additional time to liaise with administering agencies) with the possibility of some reduced developable land area potential, however, adverse economic impacts to stakeholders were minimised as far as practically possible by the availability and uptake of exempted development provisions. There was some concern that these provisions were resulting in adverse scenarios where a development might be partially prohibited, which weakened the effectiveness of the prohibition overall and increased administrative costs.

Landholders and industry

- Establishing clear thresholds for development that is not prohibited or assessed (500 square metres in urban areas and 800 square metres in non-urban areas) would reduce exempted development. Based on case studies reviewed this may result in up to ten additional developments per year being referred for assessment, though this may vary with development demand over the 10-year forecast period.
- Impacted projects that are referred for assessment, will be required to pay application fees, ecological assessment costs and if required, an environmental offset.
- Clear thresholds will also increase the number of projects which are prohibited development. Up to five additional developments per year are expected to be impacted by this change, which is primarily anticipated to effect individual landholders.
- The above cost impacts are likely to be reduced overall by behaviours to avoid or minimise impacts to koala habitat through changes to the siting and design of developments (e.g., by consolidating development / impacts to reduce the development footprint).

Government

- Once-off cost for the department to prepare regulatory amendments and associated guidance material, retrain staff in state agencies and SEQ local governments on the simplified framework.
- A once-off cost for the department to develop operational policies to support the self-assessable pathway and update web materials.
- Once off cost for the department to develop a user-friendly web notification tool, with ongoing maintenance costs anticipated over a 10-year period.
- Notification that provides for the collection of spatial data could be slightly more costly, however existing government systems could potentially be replicated.
- Ongoing effort on behalf of state agencies and SEQ local governments to ensure landholders are aware of requirements, which may initially increase because of regulatory amendment.
- Some minimal administrative effort would be required to monitor compliance with the simplified framework.

Benefits

Koala conservation

- Resolves unintended losses of SEQ koala habitat that were intended to be assessed and counterbalanced. Clear thresholds for assessment will ensure consistent consideration of impacts, calculation of offsets and application of development conditions.

- Based on estimates from extrapolating case studies provided from five local government areas to across the SEQ region, this could mean retaining up to 180 hectares in koala priority areas over 10 years.
- Outside of priority areas, up to a further 216 hectares of unregulated losses would require assessment and possibly offsets over 10 years.

Landholders and industry

- Clear thresholds will reduce time delays associated with development assessment, which may be up to 10,000 business days over 10 years.
- The thresholds for assessment will ensure that landholders are not unjustly impacted by the assessment or prohibition requirements. Small scale development, such as for establishing a single house and reasonably associated infrastructure, will continue to be allowable.
- In the event of a change of ownership of a property, new owners will still not be eligible for exhausted infrastructure allowances. Their development may be able to proceed if outside of a koala priority area.

Government

- Significant cost savings are anticipated for state and local governments – through reductions to enquiries and response time due to the significantly improved clarity, certainty, and guidance to stakeholders.
- Improvements to the assessment efficiency could result in cost savings for the Department of State Development, Infrastructure, Local Government and Planning of up to \$550,000 over 10 years.

Benefits of the prohibition overall were comparable to the koala conservation outcomes that could have been delivered via a nature refuge funding model. This was estimated to be in the order of \$1.65 billion, which was assumed to outweigh the reported administrative costs to stakeholders.

Overall, it was determined that Option 3 would deliver the greatest net benefit compared to other options considered and balance the need to conserve koala habitat with the need to allow some clearing for liveability, essential urban growth, and industry.

Who was consulted?

- The Consultation PIR was released for public consultation for six weeks from 20 April to 5 June 2023.
- Over 250 responses were received from local government, urban development, environment organisation and community stakeholders. Most respondents to the online survey identified as living in or near a koala habitat area. Submitters were represented across all twelve South East Queensland local government areas (where the 2020 koala regulations apply), and beyond.
- Public feedback and local governments were overwhelmingly supportive of Option 3, with strong support to reduce complexity of exemptions and strengthen protection for koala habitat.
- The Queensland Government working group including members of the Department of State Development, Local Government, Infrastructure and Planning, the Department of Premier and Cabinet; the Department of Resources and the Department of Environment and Science were engaged to support the development of the Decision Post IAS recommendations.

What is the recommended option and why?

Option 3 is most appropriate to fully address the two problem areas of this review and therefore is the Recommended Option.

The impacts of Option 3 were determined to be minor overall and will largely depend upon the willingness and ability of landholders and developers to avoid and mitigate impacts to SEQ koala habitat. While there may be some increased administrative effort associated with self-assessment and notification of development that interferes with koala habitat areas, these requirements are not onerous or costly for stakeholders to implement, should be easier to navigate than the current uncertainty, and would be

commensurate to what is required under the Vegetation Management framework. They are not likely to be overly burdensome for government to administer and have potential to result in significant cost and time savings compared with the status quo.

All cost impacts associated with the recommended option are considered proportionate to the level of risk to koalas and koala habitat, and commensurate with the wider communities' expectations for the conservation of the koala as a now Endangered species.

Due to strong stakeholder support, minimal changes were made between the preferred option outlined in the consultation IAS and the final proposals outlined in the decision report.

Upon approval of option 3, DES will continue to work with the intergovernmental working group on details for implementation of the recommended option, including implementation, compliance, and evaluation strategies.

Impact assessment

	First full year	First 10 years**
Direct costs – <i>Compliance costs*</i>	\$424,440	\$2,101,982
Direct costs – <i>Government costs</i>	0	0

* The *regulatory burden estimate tool* [link] should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. **Agency to note where a longer or different timeframe may be more appropriate.

	First full year	First 10 years
Total costs***	\$424,440	\$2,101,982
Total benefits***	See Full IAS for approach to cost benefit analysis.	See Full IAS for approach to cost benefit analysis.
Net present value***	See section 5 of Full IAS for approach to cost benefit analysis.	

*** Detail and assumptions should be recorded in the Full IAS.



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Date: 29 January 2024



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Date: 30 January 2024