

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Stephen,

I provide the **attached** as either a late submission or merely a reference source on Queensland laws on koalas, relevant for term of reference h). It is a factsheet about current (and former) Queensland state laws regarding koalas, prepared by me in my former capacity as Solicitor at the Environmental Defenders Office (Qld).

I hope it is of use to the Committee in determining how poorly koalas are protected by state laws and thus the necessity for federal protection for these iconic creatures.

Kind regards,  
Larissa Waters



# Koala conservation laws in Queensland

## 1. Summary

Outside of South East Qld, koala habitat is not protected. Developers are obliged by nature conservation laws to use spotters and catchers to remove koalas before clearing trees for approved development.

Within South East Qld, koalas are vulnerable to extinction. Two key state laws (the SPP and the SPRP) give qualified protection to the best-of-the-best urban koala habitat, but in EDO's view those laws are too weak. You should lobby the Premier, Planning and Environment Ministers to strengthen the laws to better protect SEQ koala habitat.

The 2010 *Koala Conservation State Planning Policy* ('SPP') requires that when certain Council planning schemes are amended, plus when new structure plans and new community infrastructure designations are made, that they deliver a net gain in mature koala habitat by 2020. However this is mostly by requiring offsets for clearing (and koala-friendly design), rather than stopping clearing of important urban koala habitat. The SPP only applies in seven Council areas: Sunshine Coast, Moreton Bay, Brisbane, Ipswich, Logan, Redland and the Gold Coast.

The 2010 *SEQ Koala Conservation State Planning Regulatory Provisions* ('SPRP') are applied in certain mapped areas by those seven Councils when assessing development applications, which must comply with the SPRP. The SPRP protects a small proportion of mapped areas from certain clearing, but otherwise only requires koala-friendly design and offsets to be imposed. Many exemptions apply.

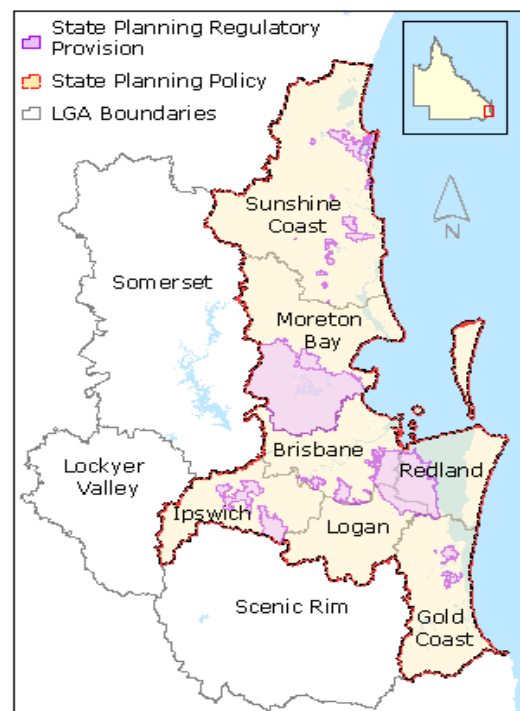
The Koala Offsets Policy requires mature koala trees removed are replanted with similar juvenile species at a 5:1 ratio in the same Council area, in areas mapped as appropriate for rehabilitation. EDO fears that it will be too late for SEQ koalas by the time koala habitat offsets mature.

Koalas are not protected under federal laws but a nomination for listing as a threatened species is under consideration at the time of writing.



*Photo from EPA 2006 Koala Plans, page 13.*

*Below: where the SPP and SPRP apply.*



## 2. Introduction

Koalas are an iconic species and generate over \$1 billion in tourist revenue. Yet the number of koalas in Queensland, once millions, is now estimated at just 25,000-30,000 in the South East bioregion, with possibly fewer than 500 koalas in the Koala Coast region of the Redlands<sup>1</sup>.

Koalas are at risk of regional extinction from habitat loss, fragmentation and degradation, disease, cars, dogs and climate change. Every disruption of urban koala populations has become critical to the long term survival of koalas in South East Queensland.

Queensland's laws about koalas have changed frequently in the last six years. The current legal framework for protection of koalas has applied since 31 May 2010, based on two main instruments: the *2/10 Koala Conservation State Planning Policy* and the *SEQ Koala Conservation State Planning Regulatory Provisions*.

## 3. Recent changes to koala laws in Queensland

The last six years has seen a multitude of koala law reforms in Queensland. **Appendix 1** outlines in detail the 12 separate koala legal instruments which applied between March 2004 and May 2010.

In summary, the *1997 Koala State Planning Policy* had not stopped a drastic decline in South East Queensland koalas, so in March 2004 koalas in that bioregion were classified as “vulnerable” under state Nature Conservation laws.

A *temporary State Planning Policy for Koala Conservation* along with a draft *Koala Conservation Plan and Management Program* was released in January 2005.

*Interim Guidelines: Koalas and Development* under the newly released South East Queensland Regional Plan applied from June 2005, until in October 2006 the final version of the *Koala Conservation Plan and Management Program* (“Koala Plans”) took effect.

Two years after the Koala Plan koala numbers continued to decline, prompting the state government to announce a Koala Response Strategy in December 2008 with the aim of increasing koala habitat by 2020, which included development restrictions and management components. As part of that Koala Response Strategy, over the next 18 months four different versions of *Koala State Planning Regulatory Provisions* under the SEQ Regional Plan applied, regulating development in koala habitat both inside and outside the urban footprint designated by that Regional Plan. During that time two additional drafts were also released for public comment, along with a draft of a new State Planning Policy.

Finally in May 2010, the state government released what is now the current suite of koala conservation laws in South East Queensland: the *2/10 Koala Conservation State Planning Policy* and the *SEQ Koala Conservation State Planning Regulatory Provisions*, supported by an Offsets Policy and a Policy for Government Supported Infrastructure.

These new instruments replace the planning and development assessment aspects of the 2006 *Koala Plans*<sup>2</sup> (which is due to be amended to reflect the roles of the new SPRP and SPP), but the management elements of the Koala Plans<sup>3</sup> remain in force.

## 4. Current Queensland koala laws

### 4.1 Laws protecting koalas outside South East Queensland

Koalas outside of SEQ receive much less protection. Outside of SEQ, koalas are listed under the *Nature Conservation Act 1992* as “least concern”. This makes it unlawful to “take” - including kill, injure or harm - koalas without a permit to do so.<sup>4</sup> People must reasonably avoid “taking” koalas when undertaking lawful activities, for example by employing spotters



and catchers to relocate koalas when clearing trees for approved development<sup>5</sup>. If they do not, they commit an offence against section 88 of the *Nature Conservation Act* which any member of the public can seek to restrain in the Planning and Environment Court<sup>6</sup>.

However these laws do not protect koala habitat or food trees, except where a tree is being used to rear or incubate a koala joey<sup>7</sup>. Areas of koala habitat may be protected for another reason such as being a national park, a federally listed threatened ecological community, or a state listed threatened regional ecosystem, but there is no dedicated protection for koala habitat outside South East Queensland. This is a major shortcoming of nature conservation laws which could lead to koalas becoming threatened across the whole state.

#### 4.2 Laws protecting koalas inside South East Queensland

Koalas have been listed as vulnerable in the South East Queensland bioregion under the *Nature Conservation Act 1992* since 2004, and a nomination for listing as endangered is being considered.

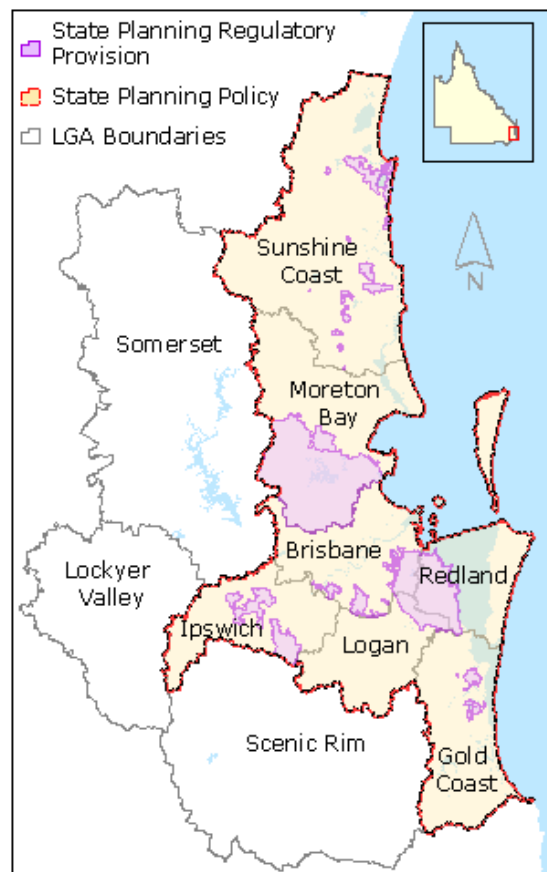
As a result, special laws have been developed in an attempt to conserve koalas in SEQ. These laws apply in the seven eastern Council areas of Sunshine Coast, Moreton Bay, Brisbane, Ipswich, Logan, Redland and the Gold Coast, together called the **South East Qld Koala Protection Area** (SEQKPA). The current legal framework for protection of koalas in SEQ has applied since 31 May 2010<sup>8</sup>, and comprises:

1. South East Queensland Koala Conservation State Planning Regulatory Provisions (“SPRP”) (May 2010);
2. State Planning Policy 2/10 – Koala Conservation in South East Queensland (“SPP”) (May 2010), supported by Statutory Guideline 01/10: Biodiversity development offset area - koala conservation;
3. Offsets for Net Gain of Koala Habitat in South East Queensland Policy (May 2010); and
4. State Government Supported Community Infrastructure – Koala Conservation Policy (May 2010).

These four instruments are outlined below.

A Koala Safety Fencing and Measures Guideline which supports the SPRP and SPP requirements regarding safe koala movement is soon to be released.

*Map of where the SPP and SPRP apply from DERM site at [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/state\\_planning\\_policy.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/state_planning_policy.html)*



##### 4.2.1 State Planning Regulatory Provisions (SPRP)

###### Summary

The SPRP only applies to three areas within the SEQKPA: a mapped priority koala assessable development area (PKADA), a mapped koala assessable development area (KADA) or an identified koala broad-hectare area (IKBHA), with development assessment criteria to be applied - except where one of many exemptions apply. Koala habitat trees are only fully



protected from clearing in three specific scenarios and in all other circumstances the SPRP allows offsets (which meet the Offsets Policy) and/or requires site design and construction measures to permit koala movement.

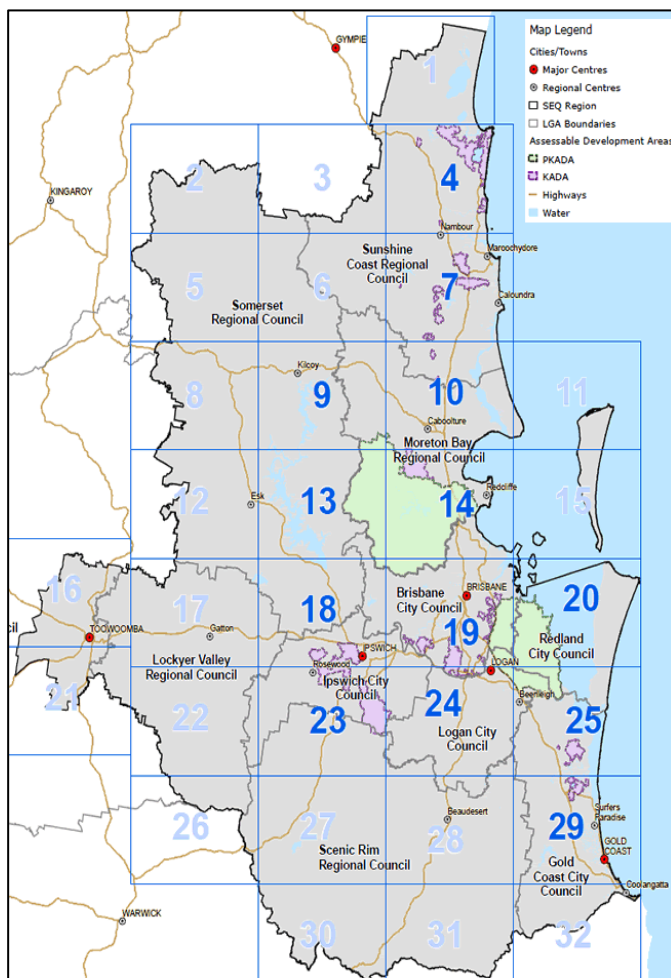
### How do the SPRP fit into the development assessment process?

The assessment manager (usually Council<sup>9</sup>) must assess both code assessable and impact assessable development applications against the Koala SPRP<sup>10</sup>. The assessment manager's decision **must not be inconsistent with the Koala SPRP**<sup>11</sup>. The Koala SPRP prevails if there is any inconsistency between them and any other planning instrument (such as the local planning scheme or a state planning policy) or plan/policy/code under an Act<sup>12</sup>.

Any member of the public who made a properly made submission on an impact assessable development application may appeal a Council decision or seek a declaration regarding a decision which is inconsistent with the Koala SPRP (see EDO's Planning Law Factsheets).

The Koala SPRP are deemed to be a "state interest"<sup>13</sup> meaning the Planning Minister may 'call-in' a development application involving the Koala SPRP and make a final decision instead of Council (or instead of the Court, if called-in within 15 business days of the start of the appeal<sup>14</sup>), which is not challengeable<sup>15</sup>.

### Where do the SPRP apply?



The SPRP apply for development assessment in three areas within the SEQKPA:

- mapped Priority Koala Assessable Development Areas (PKADA), covering priority areas of the Pine Rivers and Koala Coast,
- mapped Koala Assessable Development Areas (KADA), which the 2006 Koala Plans or the February 2010 SPRP applied to; and
- Identified Koala Broad-hectare Areas (IKBHA) (areas mapped or gazetted by the Minister for greenfield land development under the Housing Affordability Strategy, or covered by a structure plan). Current IKBHA are shown on seven maps<sup>16</sup> available from: [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/consultation\\_map\\_s.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/consultation_map_s.html). Local planning scheme maps available on Council websites show structure planned areas.

The master SPRP trigger map is shown **above**, depicting PKADA in green and KADA in pink. The numbered quadrants linked to 13 more detailed maps for that area, available here: [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/sprptrigger.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/sprptrigger.html).





Within PKADA and KADA there are three categories of koala habitat types, which are further categorised as high, medium or low value:

1. 'Bushland Habitat'<sup>17</sup>, mapped as high value, medium value or low value;
2. 'Suitable for Rehabilitation'<sup>18</sup>, mapped as high value, medium value or low value; and
3. 'Other Areas of Value'<sup>19</sup>, mapped as high value, medium value or low value.

Areas where koalas are generally not present (such as major urban centres, major transport corridors and industrial development) are mapped as 'generally not suitable'<sup>20</sup>.

Maps which show those three tiers of koala habitat values within the PKADA and KADA are here: [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/sprp-values.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/sprp-values.html). These categories of values determine the level of protection from development set out in the SPRP (although offsets are permissible for most clearing).

An applicant for development may apply to have the mapped koala habitat type changed by supplying a report by a relevant professional, demonstrating to the assessment manager's satisfaction that the land is mapped incorrectly<sup>21</sup>.

#### What developments do the SPRP apply to?

All development applications within a PKADA, KADA or IKBHA will need to comply with the SPRP, unless one of the following **exemptions** apply<sup>22</sup>:

#### **Activities exemption from the SPRP**

- Development that is self-assessable or requires compliance assessment (the SPRP only apply to code and impact assessable development);
- A development application made before 31 May 2010 (in which case the 2006 Koala Plans or a relevant earlier version of the SPRP apply);
- Development for community infrastructure that is conducted by or on behalf of the state government or a state government public sector entity (including departments and government owned corporations, such as Energex – see Schedule 3 SPA);
- Development declared to be a significant project for which an EIS is required, or in a state development area, under the *State Development and Public Works Organisation Act 1971*;
- Development in an area covered by a pre-1997 development control plan preserved by an IPA planning scheme;
- Development for a domestic activity (construction of a single residence on a lot and any reasonably associated structure such as a granny flat);
- Reconfiguration (subdivision) of a lot that does not create any additional lots;
- Development that clears less than 500m<sup>2</sup> of native vegetation;
- A new building/extension and any associated infrastructure with a total development footprint (the total area of land developed including existing and extended: landscaping, fencing, associated facilities, driveways and carparks) of less than 500m<sup>2</sup>;
- Extracting gravel, rock or sand from an area less than 5000m<sup>2</sup>; or
- Excavating or filling an area less than 5000m<sup>2</sup>.

Different development assessment criteria apply depending on what the development is for. There are six categories of development with their own assessment criteria: development for



'committed development' in a PKADA or KADA; development in an IKBHA; development for (non-exempt) community infrastructure or linear development; development for extractive industries; other development in a PKADA; or other development in a KADA. These are outlined below.

(i) *Development assessment criteria for committed development in a PKADA or KADA*

**Summary - Committed development can proceed with some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, and retention or rehabilitation of trees to maximise safe koala movement.**

Committed development is development with a preliminary approval, or operational work associated with a development approval for a material change of use or reconfiguration of a lot<sup>23</sup>.

Any material change of use, reconfiguration of a lot, or operational work to give effect to committed development in a PKADA or KADA must comply with Division 2 of the SPRP (unless it is exempt, see list above).

Division 2 of the SPRP requires that:

- “wherever practicable” within the scope of the relevant approval, structure plan or master plan, site design (the configuration of the development) provides safe koala movement opportunities<sup>24</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>25</sup>;
- Tree clearing of non-juvenile<sup>26</sup> koala habitat trees<sup>27</sup> is undertaken sequentially<sup>28</sup> under the guidance of a koala spotter; and
- During construction, measures are taken to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated.

(ii) *Development assessment criteria for development in an IKBHA*<sup>29</sup>

**Summary – Development in an IKBHA under a structure plan or for affordable housing can proceed with some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, retention or rehabilitation of trees to maximise safe koala movement and landscaping to provide koala food and shelter.**

Any material change of use, reconfiguration of a lot, or operational work in an IKBHA must comply with Division 3 of the SPRP (unless it is exempt, see list above).

Division 3 of the SPRP requires that:

- Site design (the configuration of the development) provides safe koala movement opportunities<sup>30</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>31</sup>;
- Tree clearing of non-juvenile<sup>32</sup> koala habitat trees<sup>33</sup> is undertaken sequentially<sup>34</sup> under the guidance of a koala spotter;
- During construction, measures are “incorporated” to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated; and
- Landscaping activities provide food, shelter and movement opportunities consistent with site design.



(iii) *Development assessment criteria for (private) community infrastructure or linear development in a PKADA or KADA*<sup>35</sup>

**Summary – most community infrastructure and linear development is exempt from the koala rules, but for the very rare developments that must comply, they can proceed in a PKADA or KADA as long as mature koala habitat trees cleared are offset 5:1 or a cash payment made, as well as some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, retention or rehabilitation of trees to maximise safe koala movement and landscaping to provide koala food and shelter.**

Community infrastructure includes transport infrastructure (public transport, roads, rail and marine), aged-care facilities, cemeteries, correctional facilities, hospitals, parks, oil and gas pipelines, sporting facilities, waste and water management facilities and electrical works<sup>36</sup>. Linear development is defined in the SPRP as a road, rail line, electricity distribution or transmission line or pipeline.

However it is only *private* community infrastructure or linear development in a PKADA or KADA that must comply with the SPRP<sup>37</sup>, and only in the *very* rare cases when a material change of use, reconfiguration of a lot, or operational work application is required to be made<sup>38</sup>. In those rare cases, the development will have to comply with Division 4 of the SPRP which requires that:

- Site design must avoid clearing non-juvenile<sup>39</sup> koala habitat trees<sup>40</sup> in areas of bushland habitat, and high and medium value rehabilitation habitat, with any “unavoidable” clearing minimised and offset in accordance with the Offsets Policy (outlined below) at a ratio of five new koala habitat trees for every one non-juvenile koala habitat tree removed *or an equivalent cash contribution*;
- Site design provides safe koala movement opportunities<sup>41</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>42</sup>;
- Tree clearing of non-juvenile<sup>43</sup> koala habitat trees<sup>44</sup> is undertaken sequentially<sup>45</sup> under the guidance of a koala spotter;
- During construction, measures are taken to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated; and
- Landscaping activities provide food, shelter and movement opportunities consistent with site design.

(iv) *Development assessment criteria for extractive industries in a PKADA or KADA*

**Summary – non-committed extractive industries can proceed in a PKADA or KADA as long as clearing of mature koala habitat trees is limited to the extent necessary to the extractive operations, which are staged in line with operational need, trees are progressively restored, and mature koala habitat trees cleared are offset 5:1 or a cash payment made, as well as some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, retention or rehabilitation of trees to maximise safe koala movement and landscaping to provide koala food and shelter.**

Extractive industry is as defined as the extraction and processing of extractive resources (sand, gravel, quarry rock, clay and soil for construction, not including clay for ceramics,





foundry sand, limestone, silica sand, or rock mined in block or slab form) and associated activities, including their transportation to markets<sup>46</sup>.

Non-committed extractive industry activities which require an application for a material change of use, reconfiguration of a lot, or operational work application will have to comply with Division 5 of the SPRP which requires that:

- Clearing of koala habitat trees must be restricted to the extent that is necessary for the extractive work<sup>47</sup>;
- Site design must avoid clearing non-juvenile<sup>48</sup> koala habitat trees<sup>49</sup> in areas of bushland habitat, and high and medium value rehabilitation habitat, with any “unavoidable” clearing minimised and offset in accordance with the Offsets Policy (outlined below) at a ratio of five new koala habitat trees for every one non-juvenile koala habitat tree removed *or an equivalent cash contribution*;
- Site design provides safe koala movement opportunities<sup>50</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>51</sup>;
- Tree clearing of non-juvenile<sup>52</sup> koala habitat trees<sup>53</sup> is undertaken sequentially<sup>54</sup> under the guidance of a koala spotter;
- During construction *and for the life of the operational activities*, measures are taken to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated;
- Landscaping activities provide food, shelter and movement opportunities consistent with site design;
- Native vegetation is progressively restored and rehabilitated once extractive operations have ceased on that part of the premises; and
- Operational activities are staged in line with operational need.

(v) *Development assessment criteria for other development in a PKADA*

**Summary – Development which is a material change of use for an urban (not rural residential) activity in a PKADA which is zoned in a planning scheme as open space/ conservation/ rural /rural residential is prohibited. Development in a PKADA which doesn’t fall into any of the other categories of development can proceed as long as mature bushland habitat koala habitat trees are preserved, mature high and medium rehabilitation value koala habitat trees cleared are offset 5:1 or a cash payment made, as well as some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, retention or rehabilitation of trees to maximise safe koala movement and landscaping to provide koala food and shelter.**

Development which is a material change of use for an urban activity (a residential, industrial, retail or commercial activity but not a rural residential activity<sup>55</sup>) in a PKADA zoned in a planning scheme as open space/ conservation/ rural /rural residential cannot proceed.

Development in a PKADA which is not committed development, in an IKBHA, for community infrastructure or linear development, or for an extractive industry, and for which an application for a material change of use, reconfiguration of a lot, or operational work is required must comply with Division 6 of the SPRP which requires that:

- Mature bushland habitat koala habitat trees are preserved;



- Site design must avoid clearing non-juvenile<sup>56</sup> koala habitat trees<sup>57</sup> in areas of high and medium value rehabilitation habitat, with any “unavoidable” clearing minimised and offset in accordance with the Offsets Policy (outlined below) at a ratio of five new koala habitat trees for every one non-juvenile koala habitat tree removed *or an equivalent cash contribution*;
- Site design provides safe koala movement opportunities<sup>58</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>59</sup>;
- Tree clearing of non-juvenile<sup>60</sup> koala habitat trees<sup>61</sup> is undertaken sequentially<sup>62</sup> under the guidance of a koala spotter;
- During construction, measures are taken to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated; and
- Landscaping activities provide food, shelter and movement opportunities consistent with site design.

(vi) *Development assessment criteria for other development in a KADA*<sup>63</sup>

**Summary – Development in a KADA which doesn’t fall into any of the other categories of development (above) can proceed as long as mature bushland habitat koala habitat trees outside the urban footprint and not in an urban area are preserved, those inside the urban footprint along with mature high and medium rehabilitation value koala habitat trees cleared are offset 5:1 or a cash payment made, as well as some minor site design and construction measures to minimise harm to koalas, such as sequential mature tree clearing using koala spotters, retention or rehabilitation of trees to maximise safe koala movement and landscaping to provide koala food and shelter.**

Development in a KADA which is not committed development, in an IKBHA, for community infrastructure or linear development, or for an extractive industry, and for which an application for a material change of use, reconfiguration of a lot, or operational work is required must comply with Division 7 of the SPRP which requires that:

- Non-juvenile bushland habitat koala habitat trees outside the urban footprint and not in an urban area under the local planning scheme are preserved;
- Site design must avoid clearing non-juvenile<sup>64</sup> koala habitat trees<sup>65</sup> in bushland habitat inside the urban footprint or in areas of high and medium value rehabilitation habitat, with any “unavoidable” clearing minimised and offset in accordance with the Offsets Policy (outlined below) at a ratio of five new koala habitat trees for every one non-juvenile koala habitat tree removed *or an equivalent cash contribution*;
- Site design provides safe koala movement opportunities<sup>66</sup> appropriate for the site’s habitat connectivity values, which values are determined through considering the factors listed in Schedule 2 of the SPRP<sup>67</sup>;
- Tree clearing of non-juvenile<sup>68</sup> koala habitat trees<sup>69</sup> is undertaken sequentially<sup>70</sup> under the guidance of a koala spotter;
- During construction, measures are taken to reduce the risk to koalas, and trees cleared in an area which will be future koala movement area are progressively rehabilitated; and
- Landscaping activities provide food, shelter and movement opportunities consistent with site design.



### So what does the SPRP actually protect?

There are only three instances in which koala habitat must not be cleared (cannot be offset), except where the clearing fits into one of the exemptions listed below:

1. Koala habitat trees in areas of native vegetation larger than 500m<sup>2</sup> are protected from clearing for non-committed, non-IKBHA, non-extractive, non-community/linear infrastructure if they are non-juvenile, in one of the three sub-categories of mapped Bushland Habitat, within a PKADA.
2. Koala habitat trees in areas of native vegetation larger than 500m<sup>2</sup> are protected from clearing for non-committed, non-IKBHA, non-extractive, non-community/linear infrastructure if they are non-juvenile, in one of the three sub-categories of mapped Bushland Habitat, within a KADA that is outside the urban footprint and not zoned as an urban area under a local planning scheme.
3. Development is prohibited outright if it is a material change of use for an urban activity (not including a rural residential use) in a PKADA which is zoned in a local planning scheme as open space/ conservation/ rural /rural residential.

However, in all three cases clearing may still occur if it is exempt from the SPRP (see box on page 5) - a development which is self-assessable or compliance-assessable, applied for before 31 May 2010, for community infrastructure by or for state government, for a state significant project or within a state development area, covered by a pre-1997 development control plan preserved by an IPA planning scheme, or for a single residence on a lot an associated infrastructure, or a new building with a footprint of less than 500m<sup>2</sup>, or clearing of less than 500m<sup>2</sup>, or extraction/excavation/filling activities on an area less than 5000m<sup>2</sup>.

#### *4.2.2 Koala Conservation State Planning Policy (SPP)*

##### Summary and where SPP applies

The SPP is designed to ensure koala habitat conservation is taken into account in the planning process, contributing to a net increase in SEQ koala habitat and long term koala population viability<sup>71</sup>.

The SPP applies to the local government areas of the Sunshine Coast, Moreton Bay, Brisbane, Ipswich, Logan, Redlands and the Gold Coast<sup>72</sup> (together the SEQ Koala Protection Area or SEQKPA) when local government instrument<sup>73</sup> amendments, new structure plans and new community infrastructure designations are being made<sup>74</sup>. The SPP requires these planning documents to contribute to achieving a net increase in koala habitat by 2020, either through conserving “significant areas” of mapped koala habitat or requiring offsets for cleared mature koala habitat.

Arguably the SPP also applies to development assessment before it is reflected in one of those planning instruments<sup>75</sup>.

##### How does the SPP fit into the planning and development assessment process?

SPPs are designed to be incorporated into local planning schemes, and until they are, they prevail over any inconsistent local planning instruments<sup>76</sup>. When a Council is amending its planning scheme, the SPP must be reflected in the terms of the planning scheme. The Koala SPP is a statutory instrument with the force of law<sup>77</sup>, but where the Koala SPP conflicts with another SPP, it does not override the other SPP<sup>78</sup> – instead Councils must seek an outcome which best achieves the purposes of both SPPs<sup>79</sup>.



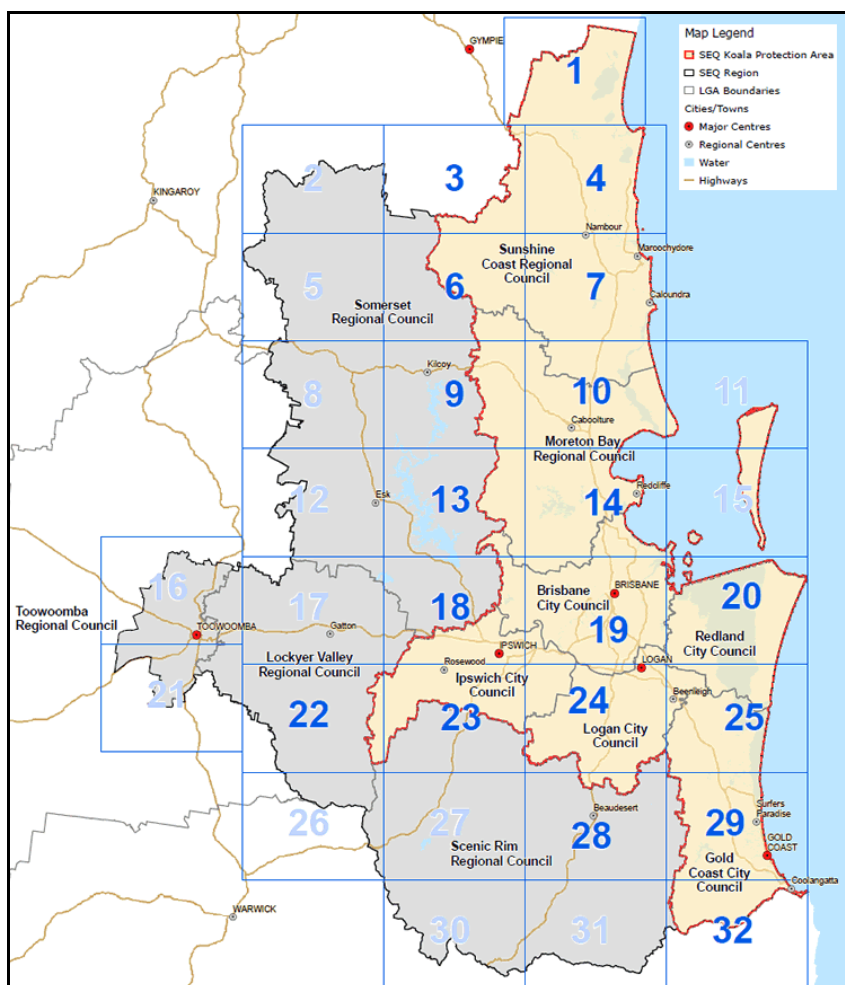
Despite the wording of the SPP which states that it applies for land use planning only, the planning legislation requires the assessment manager (in koala cases, usually Council<sup>80</sup>) to assess both code assessable and impact assessable development applications against the Koala SPP, unless it is already reflected in the planning scheme<sup>81</sup>.

However, development assessment decisions may conflict with (override) the SPP – and the relevant planning scheme provisions once the SPP has been incorporated into the scheme - if there are sufficient grounds (matters of public interest) to justify the decision despite the conflict, so there is not strong protection for koalas from this instrument<sup>82</sup>. So the SPP is much weaker than the SPRP (which decisions must be consistent with).

### SPP maps

The SPP has its own set of maps, separate to the SPRP maps, although it identifies and defines the same three categories of koala habitat types as the SPRP in its maps (Bushland Habitat, Suitable for Rehabilitation, Other Areas of Value, each categorised as high, medium or low value; plus Areas where koalas are generally not present)<sup>83</sup>.

The **SPP Koala Habitat Values master map**, available from [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/spp-values.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/spp-values.html) and pasted **below**, contains numbered quadrants which link to 19 more detailed maps showing the three tiers of koala habitat types within that quadrant. These maps are to be used in the planning process to identify and protect koala habitat or locate areas appropriate for planting offsets, outlined further below.



Above: the SPP Koala Habitat Values master map from [www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/spp-values.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/spp-values.html)



### Role of the SPP when making or amending a planning instrument

A local planning instrument, structure plan or an amendment to a planning scheme must include planning strategies and measures aimed at minimising the impacts of new development on koalas and koala habitat, after considering the long term conservation and management of koala habitat in the planning area<sup>84</sup>. To satisfy the SPP, Council must ensure the plans<sup>85</sup>:

- (a) identify koala habitat values (using the SEQ Koala Habitat Values Map described above); and
- (b) protect “significant areas” (not defined) of koala habitat value plus retain and enhance habitat connectivity to maintain koala population viability; and
- (c) maximise koala safety and movement through design and layout of development; and
- (d) achieve a net gain in Bushland Habitat<sup>86</sup> through offsets and other mechanisms in compliance with the Offsets for Net Gain of Koala Habitat in SEQ Policy (Koala Offset Policy); and
- (e) ensure preferred dominant land uses are consistent with achieving the outcomes of the SPP (net gain in SEQ koala habitat and long term retention of viable koala populations); and
- (f) make development assessable within all three tiers of koala habitat (Bushland Habitat, Rehabilitation Habitat or Other Areas of Value<sup>87</sup>) “where required to achieve compatibility with” the desired outcomes of the SPP; and
- (g) include koala conservation assessment criteria consistent with the following principles<sup>88</sup> in all relevant development assessment codes or in a priority species overlay code:
  - achieving net gain in mature and actively regenerating koala habitat, such as through restricting clearing with priority on mature koala habitat trees in bushland habitat and high and medium value rehabilitation habitat, and requiring offsetting for clearing mature koala habitat trees;
  - reducing threats from construction or ongoing heavy-vehicle or machinery activities such as through requirements for sequential clearing and use of spotters, on-site habitat rehabilitation, limiting dogs and hours of operation (6am-6pm), and use of koala safety fencing; and
  - reducing development threats such as through requirements for removing or mitigating impacts from koala movement barriers, using wildlife infrastructure to increase landscape connectivity and using koala safety fencing.
- (h) require Councils to provide a koala conservation strategy (including complementary non-statutory management strategies) to demonstrate how the SPP outcomes are to be achieved.

### Role of the SPP when designating land for community infrastructure

When designating land for community infrastructure, a Minister or local government must *consider* (much weaker than *achieve*) the desired outcomes of the SPP<sup>89</sup>, being net gain in SEQ koala habitat and long term retention of viable koala populations. The SPP states that designating land for community infrastructure *achieves* those desired outcomes (although



only *consideration* and not *achievement* is technically required, though community should lobby for designations to *achieve*) if:

- koala habitat values within the area to be designated are identified (using the SEQ Koala Habitat Values Map, described above); and
- “significant areas” (not defined) of koala habitat value are protected and habitat connectivity is retained and enhanced to maintain koala population viability; and
- koala safety and movement are maximised through design and layout of development;
- a net gain in bushland habitat is achieved through offsets, with a minimum of 5 juvenile koala habitat trees to replace every 1 mature tree or an equivalent cash contribution in accordance with the Koala Offsets Policy;
- design and layout of the community infrastructure land use is consistent with achieving the outcomes of the policy; and
- the community infrastructure provider develops a koala conservation strategy to demonstrate how the policy outcomes are to be achieved, including complimentary, non-statutory management strategies.

### Evaluating the effectiveness of the SPP

Since the SPP places primary responsibility for conserving local koala populations on Councils through their local planning instruments, Councils will have to monitor and report on their progress towards implementing the SPP, achieving the koala habitat net gain outcome the SPP seeks, and other koala protection measures adopted within the Council area. DERM will compile and release that information annually on its website, [www.derm.qld.gov.au](http://www.derm.qld.gov.au).

### Biodiversity development offset areas under the SPP

The SPP also allows the Planning Minister to declare (by gazette notice published on the DIP website<sup>1</sup> and given to adjoining owners<sup>2</sup>) an area to be a biodiversity development offset area (BDOA) for the purposes of the SEQ Regional Plan 2009-2031<sup>3</sup>. This means that areas outside the urban footprint, and hence subject to the stricter rules about material changes of use and reconfiguration of lots in the SEQ Plan Regulatory Provisions (different from the Koala SPRP), can be deemed exempt from those restrictions, in exchange for protecting koala habitat within (or, less often, outside) the urban footprint. The concept is essentially land zoning swaps to build strategic koala habitat corridors – development is transferred from one site (the ‘send’ site, which gets protected) to another (the ‘receive’ site, which may be developed) in the interests of koala conservation.

However declaration as a BDOA does not guarantee, direct or imply development approval on the site, as all other Council, state and federal requirements - bar the SEQ Plan Regulatory Provisions - must still be met for development to proceed<sup>4</sup>. The gazette notice must also stipulate a timeframe within which a development application must be made for the BDOA site, and the declaration is of no effect if that timeframe is missed<sup>5</sup>.

<sup>1</sup> [www.dip.qld.gov.au](http://www.dip.qld.gov.au) per s 5.3 SPP.

<sup>2</sup> Section 5.4 SPP: the Council, owners and adjoining owners of the BDOA land must be notified, but failure to do so does not invalidate the declaration: section 5.5 SPP.

<sup>3</sup> Section 5.1. Section 5.2 SPP provides that this is done in accordance with s 1.5(1)(b) of the SEQ Regional Plan 2009-2031 Regulatory Provisions, and provides that sections 2.1 and 3.1 of those Regulatory Provisions do not apply to development in the Regional Landscape and Rural Production Area or Rural Living Area on premises in a BDOA.

<sup>4</sup> Stated in the Statutory Guideline 01/10: Biodiversity development offset area - koala conservation, available from [www.dip.qld.gov.au/resources/guideline/statutory-guideline-01-10.pdf](http://www.dip.qld.gov.au/resources/guideline/statutory-guideline-01-10.pdf).

<sup>5</sup> Page 7 Statutory Guideline 01/10.





A Statutory Guideline outlining the matters the Minister will take into consideration in declaring a BDOA is available from [www.dip.qld.gov.au/resources/guideline/statutory-guideline-01-10.pdf](http://www.dip.qld.gov.au/resources/guideline/statutory-guideline-01-10.pdf). A person seeking the declaration of a BDOA must submit a written request to the Planning Minister prior to a development application in the BDOA being made, providing details of the send and receive sites and demonstrating a net benefit to koala conservation<sup>6</sup>.

In determining the extent of a BDOA, the Planning Minister must consider the size of the send and receive sites and their koala habitat type under the SPP maps. The higher the habitat values in the send site, the greater the area that may be considered suitable for the receive site. For example, if a 1 hectare site of high value Bushland Habitat within the urban footprint was 'sent' (protected), a 2.25 hectare area of low value Rehabilitation Habitat outside the urban footprint could be made exempt from the limitations on material change of use and reconfiguration of a lot in the SEQ Regional Plan Regulatory Provisions. Table 1 on page 4 of the Statutory Guideline gives these ratios for all possible combinations of koala habitat, noting that for swaps where both the send and receive sites are outside the urban footprint, the size of the receive site is half the stated ratio. Some combinations are considered unsuitable<sup>7</sup>:

- all cases where the receive site (to be developed) contains high or medium value Bushland Habitat unless it is of minor extent or it is to be dedicated for koala conservation; and
- all cases where the overall value of the send site (to be protected) is not higher than the receive site, i.e. not likely to result in a net gain for koala habitat conservation.

The Minister may only declare a BDOA if a net benefit to koala conservation is achieved<sup>8</sup>. In determining whether there would be a net benefit the Minister may consider:

- *For the send site (to be protected)*: is it Bushland Habitat over 2 hectares; could it legally be developed (zoned for urban uses, has a development approval or as-of-right use) in a way that would impact on koala values; would its protection contribute to connectivity of Bushland or Rehabilitation Habitat; not strategically important for state infrastructure; can be protected from future development through an agreement/covenant/transfer to public ownership or management.
- *For the receive site (to be developed)*: would development adversely impact on state interests or on land identified for conservation or rural purposes (eg with significant biodiversity values, a PKADA or Bushland Habitat or Rehabilitation Habitat in a corridor; or fragmentation of productive rural land); is the site under unacceptable risk of natural hazards or climate change; is there access to essential services and infrastructure including transport linkages; is the site close to the urban footprint.

#### 4.2.3 Koala Offsets Policy

The Offsets for Net Gain of Koala Habitat in South East Queensland Policy May 2010 ("Koala Offsets Policy") is designed to ensure that environmental offsets for unavoidable clearing of higher quality koala habitat contribute to a net gain in Bushland Koala Habitat in SEQ by 2020<sup>90</sup>.

EDO Qld believes there is no evidence that offsetting delivers tangible environmental benefits and fear that SEQ koalas will be extinct before any koala habitat offset matures.

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<sup>6</sup> Page 2 Statutory Guideline 01/10.

<sup>7</sup> Set out in Attachment 1 to the Statutory Guideline 01/10.

<sup>8</sup> Page 7 Statutory Guideline 01/10.



The Koala Offsets Policy states that it applies only once all applicable regulatory requirements are met and is not a means for koala habitat trees to be cleared where otherwise not permitted<sup>91</sup>. The Koala Offsets Policy is applied by<sup>92</sup>:

- Assessment managers (usually Council) for development assessment decisions under the SPRP;
- The relevant (usually Planning) Minister for community infrastructure designations under the SPP;
- Qld public sector entities when self-assessing impacts on koala habitat under the State Government Supported Community Infrastructure Koala Conservation Policy; and
- Local Councils within the SEQKPA when establishing offset frameworks within their local planning instruments (including planning schemes, Structure Plans, Master Plans, Neighbourhood and other Local Area Plans) as required by the SPP.

The Koala Offsets Policy object of net gain of Bushland Habitat can only be met through the rehabilitation, establishment and protection of new koala habitat<sup>93</sup>, at a ratio of five new koala habitat trees for every non-juvenile koala habitat tree removed<sup>94</sup>. Species re-planted as offsets must reflect the pre-clearing and the existing regional ecosystem on the offset site<sup>95</sup>.

The koala offset site must be in an area identified as high value or medium value rehabilitation habitat<sup>96</sup> on the SPP Koala Habitat Values Maps<sup>97</sup> within the same local government area as the development (or for the Koala Coast, within that area; and for Pine Rivers, within that area or adjacent localities within the broader Moreton Bay Regional Council area)<sup>98</sup>. If high or medium value rehabilitation habitat is not available, low value rehabilitation habitat may be used, or, where appropriate, Bushland Habitat may be enhanced<sup>99</sup>. Offset plantings of the same species cleared<sup>100</sup> may also occur on the development site as part of enhancement of biodiversity corridors, if they are permanently protected from future clearing<sup>101</sup>.

Additional considerations in offset site selection are the needs and status of local koala populations, the proximity and significance of the clearing being offset<sup>102</sup>, and contributions to strategic koala habitat networks<sup>103</sup>.

All offset areas must be permanently protected for conservation purposes, through a covenant on title under the Land Act or Land Title Act, a conservation agreement under the Nature Conservation Act, a declaration of high conservation value under the Vegetation Management Act, or by gifting the land to Council or the State to include in the protected area or parkland estate for permanent conservation purposes<sup>104</sup>.

A Koala Offset Site Management Plan must be prepared<sup>105</sup> including proposed weed management regimes and data collection to monitor the success of site maintenance<sup>106</sup>. Ongoing monitoring and annual reporting is required until the site becomes mature koala Bushland Habitat, with progress monitoring reports to be supplied to the assessment manager, Minister or state agency by an agreed timeline<sup>107</sup>. Management Plans must be approved by the assessment manager, Council, Minister or State agency<sup>108</sup> and *may* be made available to the public or DERM if requested<sup>109</sup>.

Offsets must be delivered within 12 months of the development approval/designation (and preferably before clearing occurs) which must be included as a condition of approval and enforced by the approving authorities<sup>110</sup>.

Offsets may be self-delivered<sup>111</sup>, delivered via an offsets broker (such as Ecofund)<sup>112</sup> or by financial contribution of \$920 per mature tree removed<sup>113</sup> made to the relevant decision maker (either Council or DERM<sup>114</sup>) who will use it to secure an offset<sup>115</sup>. The offset policy is considered met once the applicant has paid the full amount<sup>116</sup>.



#### 4.2.4 State Government Supported Community Infrastructure Koala Conservation Policy

The land-clearing freeze between December 2008 and May 2010 for SEQ state government owned land with koala habitat values has now been replaced with the State Government Supported Community Infrastructure Koala Conservation Policy (“State Infrastructure Koala Policy”)<sup>117</sup>. [The state land freeze on land disposal is being replaced by amended Qld Government land management policies.<sup>118</sup>]

The State Infrastructure Koala Policy is not legislation but is supported by a whole-of-government decision made on 10 May 2010<sup>119</sup>. The State Infrastructure Koala Policy requires state infrastructure activities in the SEQKPA which commence after 10 May 2010<sup>120</sup> and which are not regulated through the SPP or SPRP to meet the requirements of the SPP and SPRP, so that state and non-state community infrastructure projects are subject to the same standards<sup>121</sup>.

Community infrastructure includes transport infrastructure (public transport, roads, rail and marine), aged-care facilities, cemeteries, correctional facilities, hospitals, parks, oil and gas pipelines, sporting facilities, waste and water management facilities and electrical works<sup>122</sup>.

Government supported community infrastructure is community infrastructure undertaken by, on behalf of or under contract with the Qld Govt including a public sector entity (a department, agency/authority/commission/office/instrumentality established under an Act for a public or state purpose, including a government owned corporation) and an entity under contract with or authorised on behalf of a public sector entity<sup>123</sup>.

The State Infrastructure Koala Policy applies to the planning and delivery of all Qld Government supported community infrastructure within the SEQKPA that is not already regulated or exempted<sup>124</sup> by the SPP or SPRP, requiring that such infrastructure must:<sup>125</sup>

- Through self-assessment, comply with the community and linear infrastructure development outcomes of the SPRP (in essence offsets, site design, sequential clearing and rehabilitation required in PKADAs and KADAs), OR
- Through self-assessment, comply with an approved memorandum of understanding (MOU) endorsed by the Director-General of DERM, when compliance with the SPRP would “significantly impact on the State’s ability to deliver important community infrastructure”<sup>126</sup>; AND
- For community infrastructure designations within the SEQKPA – comply with the SPP<sup>127</sup> (SEQ community infrastructure designations outside the SEQKPA “*may* comply with SPP and/or this policy as best practice”); AND
- Contribute to a net gain in bushland koala habitat in SEQ, reduce adverse impacts to koalas and koala habitat and deliver offsets in accordance with the Offsets Policy<sup>128</sup>.

DERM advises infrastructure providers about development solutions which would comply with the SPRP, and conducts an annual audit of projects within the SEQKPA to assess compliance with the State Infrastructure Koala Policy. DERM must provide updates on how financial contributions under the Offsets Policy are used to preserve koala populations in SEQ. Infrastructure providers must self-assess their obligations under the State Infrastructure Koala Policy, comply with the Offsets Policy and give self-assessment records to DERM for annual auditing of compliance with the State Infrastructure Koala Policy.<sup>129</sup>

#### 4.3 Local Council laws protecting koalas

Local government planning schemes are required by the State Planning Policy (discussed above) to include stated measures for koala habitat protection when amended or adopted. However, Councils are allowed to give greater protection for koalas than required by the SPP,



and can do this through planning scheme zoning (such as designating urban koala habitat as conservation areas rather than new housing) and other local planning instruments.

Council local laws (by-laws) can also influence koala survival. The state government has released a model animal management local law<sup>130</sup> which Councils may adopt, that includes provisions to help reduce dog attacks on koalas, such as dog-free developments and keeping dogs in kennels/inside/on a lead after dusk. Councils can adopt the model local law using a fast-track process, and can make its provisions apply to local koala habitat not picked up in state government koala habitat mapping.

Council local laws on vegetation could also protect individual koala habitat trees and you should lobby your Council for this to occur.

#### 4.4 Federal laws protecting koalas

##### *4.4.1 Listing as threatened under the EPBC Act*

Species are only protected by our federal environment laws, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), if they are listed as nationally threatened or migratory. Koalas are not currently listed as threatened under the EPBC Act and so are not protected federally.

A nomination to list the koala as nationally threatened was unsuccessful in 2006, but a fresh nomination is currently under consideration and the federal Environment Minister was due to announce his decision by 29 December 2010, though no decision had been made by the time of writing. It is possible to list populations of the species even if the nation-wide population is not universally threatened, and the South East Queensland koala population has been separately nominated.

If the nomination for listing is accepted, actions which are likely to have a ‘significant impact’ on threatened koalas must be assessed by the federal Environment Minister, who has the power to refuse or add conditions to a development to protect koalas. For more information about this process, see EDO Qld’s factsheet on the EPBC Act on our website.

##### *4.4.2 Koala policies*

The 1998 *National Koala Conservation Strategy* identified key threats to koalas and actions to address those threats, but did not specify a process to implement the actions. It was replaced in December 2009 with the 2009-2014 *National Koala Conservation and Management Strategy*<sup>131</sup>, intended to provide a national framework for the conservation of koalas by retaining viable populations in the wild throughout their natural range. The Strategy comprises four long-term (0-50 year) goals measurable by five short-term (0-10 year) outcomes, which are to be achieved by delivering five ‘outputs’ (major products and tools) by 2014 by undertaking the actions set out in the implementation plan of the Strategy, summarised in **Appendix 2**.

The Strategy is a policy document providing priorities and directions for actions and does not provide any legislative powers, but is authoritative in that all federal, state and territory governments signed up. States are to implement the actions identified in the strategy relevant to them, and implement state plans in a way that is consistent with the Strategy.

##### *4.4.3 Senate Inquiry*

In November 2010 the issue of threats to and management of koalas across the country was referred to a federal Senate Inquiry to investigate and report by 1 June 2011. The terms of reference for the Inquiry require the Senate Committee to ascertain the status, health and sustainability of Australia’s koala population considering estimates of koala populations, the adequacy of the National Koala Conservation and Management Strategy, the listing of the



koala under the EPBC Act, and threats such as land clearing, poor management, animal attacks, disease, roads and urban development. A Senate Committee report does not legally compel a response but can be persuasive.

## 5. Further information

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Department of Environment and Resource Management

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DERM Annual Report March 2009-June 2010

<http://www.derm.qld.gov.au/about/corporatedocs/annualreports.html>



## Appendix 1

### Detail of changes to koala laws in Queensland 2004-2010

Prior to 2004 the pace of koala law reform was slow, with a 1994 five-year Koala Coast protection plan and a koala state planning policy enacted and subsequently revised in 1997. However the last six years has seen a multitude of koala law reforms in Queensland.

Koalas in the South East Queensland bioregion were classified as “**vulnerable**” under state Nature Conservation laws in March 2004, reflecting the lowered population levels and various threats to that species. A *draft Koala Conservation Plan and Management Program* was released for public comment in January 2005, accompanied by the introduction of a *temporary State Planning Policy for Koala Conservation* (repealing the 1997 *Koala State Planning Policy*). That temporary State Planning Policy was then superseded by the release on 30 June 2005 of the South East Queensland Regional Plan containing *Interim Guidelines: Koalas and Development*, used as short-term development assessment measure until the finalisation of the Koala Conservation Plan.

In October 2006, those *Interim Guidelines* were superseded by the commencement of the finalised *Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006–2016* (“**the Koala Plans**”). The Management Program detailed 10 management approaches designed to give effect to the 20 page Conservation Plan. The Koala Plans divided the state into three Districts, with only District A (the area covered by the SEQ Regional Plan) required to apply Koala Conservation Criteria in the assessment of certain developments<sup>132</sup> and proposed community infrastructure designations. Koala District A contained three classes of Koala Habitat Areas: Koala Conservation Areas<sup>133</sup>, Koala Sustainability Areas<sup>134</sup> and Urban Koala Areas<sup>135</sup>, of which the latter received lowest protection. The strongest protection for koalas was from ‘general uncommitted development’<sup>136</sup>, in the Koala Conservation and Koala Sustainability Areas, with exemptions for uncommitted extractive industries in a key resource area and uncommitted community infrastructure, which were only required to deliver a net benefit to koala habitat (ie offsets). The Environmental Protection Agency (EPA) was made a concurrence agency under IPA for certain material change of use (MCU), reconfiguration of a lot (ROL) and operation works in the Koala Conservation and Koala Sustainability Areas with a referral jurisdiction of the purposes of the *Nature Conservation Act* (and hence the Koala Plans). The Koala Conservation Plan prevailed over local government planning schemes and Councils could not give approvals for land uses inconsistent with the Plan, which was due for review in 2106. Councils were also able to apply for funds to map previously unmapped koala habitat within South East Queensland, to be incorporated into local government planning schemes and the State Koala Habitat Map<sup>137</sup> “so additional protective measures can be put in place where needed.”<sup>138</sup>

But koala population data released almost two years after the commencement of the Koala Plan showed continued reduction in koala numbers, prompting the state government to announce<sup>139</sup> in December 2008 a ‘**Koala Response Strategy**’, which committed to:

- improve mapping of existing koala habitat, and identify potential koala habitat, in South East Queensland by mid-2009, to be incorporated into the final SEQ Regional Plan once complete;
- enact a temporary planning policy (the interim *Draft SEQ Koala State Planning Regulatory Provisions*, outlined below) to protect trees until that improved mapping is complete, with a permanent planning policy to be included in the SEQ Regional Plan by mid-2009;





- freeze the sale of government-owned land (except for “urgent community infrastructure”) until an assessment of koala habitat values on each site is completed, as part of the improved mapping process;
- require offsets for approved developments in koala-mapped areas;
- develop a habitat acquisition and rehabilitation strategy, including new acquisition powers for potential koala habitat outside the urban footprint;
- require all new main roads and upgrades in koala-mapped habitats to be koala-friendly (ie safe crossing points and fencing);
- assist Councils to introduce a standard koala law to deal with dogs in koala habitat area; and
- expand koala habitat by 2020.

As part of that Response Strategy, on 12 December 2008 interim *Draft SEQ Koala State Planning Regulatory Provisions* commenced (to apply until 1 July 2009), with associated planning law amendments making the then Department of Infrastructure and Planning a concurrence agency for certain development in an “interim koala habitat protection area” (areas *within the urban footprint* shown on maps accompanying the Draft SPRP, mirroring areas mapped as urban koala areas under the Koala Plans and hence supplementing the existing development assessment criteria) with the referral jurisdiction of those draft Interim Regulatory Provisions<sup>140</sup>. However, not all development in an interim koala habitat protection area required referral to DIP. Exemptions applied for development for a domestic activity (construction or use of a single residence on a lot and any reasonably associated building or structure), for a building or structure of less than 500m<sup>2</sup> of gross floor area, or which would result in clearing less than 2,500m<sup>2</sup> of native vegetation and no loss of mature koala habitat trees. All other development in the interim koala habitat protection area was required to be consistent with the planning intent of the planning instruments (SPPs, Regional Plans, SPRPs, and Council’s planning scheme and components; *overriding* ss 3.5.13 and 3.5.14 of IPA allowing a development to be approved which conflicts with a code or scheme) and, where there “is an unavoidable need for development of certain types” which would impact on koala habitat, that development was required by Schedule 3 of the draft SPRPs to provide **offsets** to provide net benefit for koala conservation in the interim koala habitat protection area<sup>141</sup>.

The December 2008 *Draft SEQ Koala State Planning Regulatory Provisions* were replaced on 1 July 2009 with the *SEQ Koala State Planning Regulatory Provisions*, following public consultation. Key changes were new exemptions for state significant projects or state development areas under the *State Development and Public Works Organisation Act 1971*, for development consistent with a preliminary approval application made before December 2008 and introduction of Koala Habitat Management Plans requiring greater detail about proposed offsets.<sup>142</sup>

On 2 November 2009 the 1 July 2009 SPRPs were again replaced with *Draft SEQ Koala State Planning Regulatory Provisions*, which introduced a moratorium (with some exemptions<sup>143</sup>) on clearing mature koala habitat trees in a new category of “protected koala bushland habitat area” mapped inside and outside the urban footprint. Within the pre-existing mapped “interim koala habitat protection areas”, development must either not adversely affect movement of koalas through a koala movement corridor or meet three requirements: consistency with biodiversity outcomes in the Council planning scheme, design and layout to maximise koala movement opportunities and an offset (detailed in a Koala Habitat Management Plan) for the loss of mature koala habitat trees at a rate of one tree for every one metre height lost (onsite or offsite).



Also released on 2 November 2009 was an exposure draft of *Proposed SEQ Koala Conservation State Planning Regulatory Provisions* for public comment (intended once finalised to replace the November 2009 Draft SPRPs), which applied to future development inside the SEQ Koala Protection Area (seven Council areas) which was categorised into three categories: KPA1, KPA2 and KPA 3. Material change of use, reconfiguration and operational work for the purposes of an urban activity (residential, industrial, retail or commercial; not including rural residential activities) may not occur in KPA1 (with some exemptions), while development in KPA2 and KPA3 must comply with a code or provide for an overriding need in the public interest (considering overall benefits and no other suitable location). The exposure draft also included a proposed *Biodiversity Development Offset Area Policy*, which enabled development proposed on high koala conservation value areas inside the urban footprint could instead proceed in low or no koala conservation value areas *outside* the urban footprint without needing to comply with the regulatory provisions of the SEQ Regional Plan.

In December 2009 a further draft of the *SEQ Koala Conservation State Planning Regulatory Provisions* (which replaced the November 2009 exposure draft) was released for public comment, along with a *draft State Planning Policy* for public comment.

In February 2010, new *SEQ Koala State Planning Regulatory Provisions* and associated maps replaced the November 2009 *Draft SEQ Koala State Planning Regulatory Provisions* which had expired on 28 February 2010, with little content change but for some clarification about exemptions for further development permits needed to facilitate development under an (exempt) existing approval.

On 15 May 2010 the state government released final versions of the *Koala Conservation State Planning Policy* and *SEQ Koala Conservation State Planning Regulatory Provisions*, to take effect from May 31 2010. Two supporting policies were also released, an Offsets Policy and a Policy for Government Supported Infrastructure. These instruments replaced the February 2010 SPRPs and also the development assessment provisions<sup>144</sup> of the 2006 Koala Plans (which is due to be amended to reflect the roles of the new SPRP and SPP).



## Appendix 2

### Key features of the National Koala Conservation and Management Strategy 2009-2014<sup>145</sup>

#### **Desired outcomes—long term (0–50 years)**

1. Koala populations in identified priority areas are stabilised or increasing
2. Overabundant koala populations are stabilised or reducing wherever they occur or arise (in 2009: Vic and SA)
3. Threatened status of the koala at state and regional levels is reduced
4. Koala remains nationally abundant and widespread, and is not nationally threatened

#### **Desired outcomes—short term (0–10 years)**

5. Increased consideration of koala habitat demonstrated in development planning
6. Greater area of high quality koala habitat conserved through legislation, covenants or agreements
7. Greater activity by land and resource managers to effectively protect and manage koala populations
8. Increased community capacity to drive koala conservation and care
9. Productive and integrated partnerships that foster the conservation and welfare of koalas

#### **Outputs (major products and tools to be delivered, 0–5 years)**

- A. Provide policy advice to ensure koala habitat is prioritised in land conservation and management initiatives.
- B. Provide policy advice to guide the consideration of koala habitat in statutory planning strategies and applications.
- C. Develop a better understanding of koala population requirements and management responses, and maintain an information network to guide and assist planning, natural resource management processes, and other community and stakeholder activities.
- D. Facilitate high welfare standards for koalas kept in captivity or while under care and management.
- E. Recognise, motivate and commemorate koala conservation efforts.
- F. Develop and maintain productive, integrated partnerships to influence and achieve greater funding for outcomes.

#### **Appendix 1 Implementation Plan (key actions<sup>146</sup>)**

##### *Category 1 Habitat identification and protection*

Action 1.01 Incorporate koala habitat conservation into existing multi-species or landscape scale conservation programs.

Action 1.02 Assess, develop and implement options for protecting priority koala habitat on public lands using legislation, covenants or agreements, or by new acquisition of koala habitat.

Action 1.03 Assess, develop and implement options for protecting koala habitat on private lands.

Action 1.04 Prioritise conservation of populations under immediate pressure.

Action 1.05 Revegetate habitat to facilitate natural dispersal and reduce fragmentation effects.

Action 1.06 Develop standard monitoring/habitat assessment protocols.

Action 1.07 Establish a national database of koala population distribution and density and habitat mapping data.

Action 1.08 Establish or continue surveying and monitoring programs.

Action 1.09 Incorporate causes of habitat loss or degradation, other than land clearing, into planning for koala habitat conservation.

##### *Category 2 Over-browsed habitats – relevant for SA and Vic only*



### *Category 3 Direct mortality of individual koalas*

Action 3.01 Develop appropriate national guidelines for road design in koala habitat.

Action 3.02 Implement strategies which minimise the impacts of dogs on koala populations.

Action 3.03 Assess and develop appropriate methods to reduce vulnerability

### *Category 4 Community involvement*

Action 4.01 Provide extension and advisory services to encourage retention and restoration of koala habitat and to encourage management practices on private land which are not harmful to koalas or koala habitat.

Action 4.02 Develop and distribute educational material.

Action 4.03 Extend community involvement in koala conservation and engagement with government.

### *Category 5 Caring for koalas in captivity*

Action 5.01 Develop national guidelines with states for all aspects of care, handling and management of captive, sick, injured or orphaned koalas.

Action 5.02 Review as necessary conditions and agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (Part 13A) for export of koalas.

### *Category 6 Research*

Action 6.01 Develop techniques for, and undertake, broad-scale remote sensing to identify areas for further analysis of koala habitat and distribution.

Action 6.02 Identify and prioritise knowledge gaps in koala research.

Action 6.03 Identify directions for research on effects of climate change on koalas.

Action 6.04 Facilitate development of a network to support koala research.

Action 6.05 Develop methods for enabling comparison of disparate data on koala distribution and abundance.

Action 6.06 Develop mechanisms to support access to funding, or conduct and disseminate dedicated research.

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<sup>1</sup> See DERM April 2009 report 'Decline of the Koala Coast Koala Population: Population Status in 2008', finding that in 2008 there were 2279 koalas and with the current pace of habitat destruction less than 500 would remain by 2010.

<sup>2</sup> Per page 1 Koala SPP 2010.

<sup>3</sup> Per page 2 Koala SPP 2010. Such as policies regarding treatment of injured koalas and translocation (for population replenishment – not as a result of land development). These non-development/planning related initiatives will not be examined in this factsheet.

<sup>4</sup> Section 88 and Dictionary *Nature Conservation Act 1992* (Qld). "Taking" does not include any harm done to koalas by destruction of their habitat.

<sup>5</sup> However, there is doubt about the success of relocation strategies and the decline of koala numbers outside South East Queensland should be closely monitored so that laws protecting valuable koala habitat can be enacted to prevent koalas becoming vulnerable throughout the state.

<sup>6</sup> As Dr Carol Booth successfully did in a series of cases to protect flying-foxes from electric grids over fruit crops.

<sup>7</sup> Section 332 *Nature Conservation (Wildlife Management) Regulation 2006* (Qld) makes it an offence for a person to tamper with an animal breeding place unless in the course of an otherwise lawful activity and the tampering could not have been reasonably avoided.

<sup>8</sup> For development applications made prior to 31 May 2010, the 2006 Koala Conservation Plan and relevant versions of the State Planning Regulatory Provisions apply – see Appendix 1 for details of those earlier instruments.

<sup>9</sup> Prior to May 2010 the Department of Infrastructure and Planning administered the Koala SPRP, but post-May 2010 it is the 'assessment manager' for a development application who applies the Koala SPRP (per SPA s 16, 313, 314 and 316) – which will mostly be the local Council. DERM plays no role and confirmed that as at 10 January 2011 they had not been approached by any Councils to provide advice or comment pursuant to s 256 SPA.

<sup>10</sup> SPA s 313, 314.



<sup>11</sup> SPA s 324(3). The usual rule that conflict with a planning instrument is permissible if there are “sufficient grounds” (matters of public interest) does not apply to the Koala SPRP: s 326(2).

<sup>12</sup> SPA s 19. The Koala SPRP is also a statutory instrument as has the force of law: s 17.

<sup>13</sup> SPA s 18.

<sup>14</sup> SPA s 424(b)(i).

<sup>15</sup> SPA Chapter 6 Part 11 Division 2 on Ministerial call-ins and Dictionary definition of “Minister”.

<sup>16</sup> The areas currently mapped are: Oxley Wedge (Brisbane City Council - BCC), Rochedale (BCC), Coomera (Gold Coast City Council), Ripley Valley (Ipswich City Council), Kinross Rd (Redland City Council - RCC), South East Thornlands (RCC) and Palmview (Sunshine Coast Regional Council): Schedule 3 SPRP. Those areas will become IKBHAs when an ‘approved land use plan’ has taken effect, which is an amendment to a local planning scheme approved by the Planning Minister to facilitate greenfield land development under the Queensland Housing Affordability Strategy: Dictionary SPRP.

<sup>17</sup> Defined by the SPRP (Schedule 4 Dictionary) as: an area mapped as Bushland Habitat; OR (an unmapped area) that is either **greater than 2 hectares or less but within 50m of surrounding Bushland Habitat**, with intact contiguous native vegetation, predominantly forest (closed canopy to open woodland, but not including plantations), with an assortment of eucalypt species used by koalas for food, shelter, movement and dispersal.

<sup>18</sup> Defined by the SPRP (Schedule 4 Dictionary) as: an area mapped as Suitable for Rehabilitation; OR (an unmapped area; other than intact contiguous native vegetation) **of at least 0.5 hectare** with a land cover composition of a mix of forest, scattered trees, grass and bare surfaces, and which provides koala populations with food and shelter trees while allowing for day-to-day movement, dispersal and genetic exchange.

<sup>19</sup> Defined by the SPRP (Schedule 4 Dictionary) as: an area mapped as Other Area of Value; OR (an unmapped area; other than intact contiguous native vegetation) **smaller than 0.5ha** with a land cover composition of a mix of forest, scattered trees, grass and bare surfaces, and which provides koala populations with food and shelter trees while allowing for day-to-day movement, dispersal and genetic exchange.

<sup>20</sup> Defined by the SPRP (Schedule 4 Dictionary) as: an area mapped as Generally Not Suitable; OR (an unmapped area) and area dominated by bare and impervious surfaces which is unsuitable for koalas due to the alienation of suitable habitat and high threat levels and which generally does not have any koalas present at the scale of tens of thousands of hectares.

<sup>21</sup> Pursuant to Division 9 SPRP.

<sup>22</sup> Section 1.4 SPRP and Column 1 of Tables 2-7 SPRP.

<sup>23</sup> SPRP Schedule 4.

<sup>24</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.

<sup>25</sup> This requires consideration of the site’s location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.

<sup>26</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>27</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>28</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared at a time (or 3% of an area above 6ha) and leaving 12 hours overnight between clearing stages: Schedule 4 SPRP.

<sup>29</sup> Which is not committed development or for extractive industries. It must comply with Division 3 of the SPRP.

<sup>30</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.

<sup>31</sup> This requires consideration of the site’s location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.

<sup>32</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>33</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>34</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared



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at a time (or 3% of an area above 6ha) and leaving 12 hours overnight between clearing stages: Schedule 4 SPRP.

<sup>35</sup> Which is not committed development, in an IKBHA or for extractive industries. It must comply with Division 4 of the SPRP.

<sup>36</sup> See the full list in Schedule 2 of the *Sustainable Planning Regulation 2009* (Qld).

<sup>37</sup> Since it is exempt from assessment against the SPRP when carried out by or for the state.

<sup>38</sup> This will not happen often given that such development is usually exempt from assessment against a planning scheme (per Schedule 4 of the *Sustainable Planning Regulation*) and is generally not made otherwise assessable by Schedule 3 of *Sustainable Planning Regulation* unless it affects certain areas (eg contaminated land). It is possible that the SEQ Regional Plan's Regulatory Provisions may make these activities assessable, for example if proposed outside the Urban Footprint, and therefore the Koala SPRP rules would apply.

<sup>39</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>40</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>41</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.

<sup>42</sup> This requires consideration of the site's location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.

<sup>43</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>44</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>45</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared at a time (or 3% of an area above 6ha) and leaving 12 hrs overnight between clearing stages: Schedule 4 SPRP.

<sup>46</sup> Schedule 4 SPRP referring to s 10(1) *State Planning Policy 2/07 Protection of Extractive Resources*.

<sup>47</sup> Dredging, extracting material from a pit or quarry, screening/washing/separating extracted material and work that is the natural and ordinary consequence of extractive work: Division 5, Table 5, Column 2, Item 1 SPRP.

<sup>48</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>49</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>50</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.

<sup>51</sup> This requires consideration of the site's location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.

<sup>52</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>53</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>54</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared at a time (or 3% of an area above 6ha) and leaving 12 hrs overnight between clearing stages: Schedule 4 SPRP.

<sup>55</sup> Per Schedule 4 SPRP referring to the Regional Plan definition.

<sup>56</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>57</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.

<sup>58</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.

<sup>59</sup> This requires consideration of the site's location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.

<sup>60</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.

<sup>61</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.





- <sup>62</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared at a time (or 3% of an area above 6ha) and leaving 12 hrs overnight between clearing stages: Schedule 4 SPRP.
- <sup>63</sup> Which is not committed development, in an IKBHA, for non-exempt community infrastructure or linear development, or for an extractive industry. It must comply with Division 7 of the SPRP.
- <sup>64</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.
- <sup>65</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.
- <sup>66</sup> Defined as a measure to minimise threats to resident or transient koalas, or to achieve permeability to provide for the safe movement of koalas within and across a site, or to provide food or refuge sources for koalas: SPRP Schedule 4.
- <sup>67</sup> This requires consideration of the site's location with regards to koala habitat type, its attributes (its condition; the presence of koalas; any waterways, ecological corridors or remnant/regulated regrowth vegetation) and any factors which diminish its connectivity value (roads or other barriers; edge effects): Schedule 2 SPRP.
- <sup>68</sup> Those taller than 4m or with a girth of more than 31.5cm at 1.3m off the ground: Schedule 4 SPRP.
- <sup>69</sup> A food tree of the genera *Corymbia*, *Melaleuca*, *Lophostemon* or *Eucalyptus* or a preferred shelter species such as *Angophora*: Schedule 4 SPRP.
- <sup>70</sup> Sequential clearing is defined as giving enough time for koalas to move out of the site without human intervention, is carried out in a way that ensures habitat links are maintained to allow koalas to move on, and which does not fell any tree with a koala or with a crown overlapping a tree with a koala. For sites over 3 hectares, additional rules apply requiring clearing to be done in stages with no more than 3 hectares to be cleared at a time (or 3% of an area above 6ha) and leaving 12 hrs overnight between clearing stages: Schedule 4 SPRP.
- <sup>71</sup> Section 1.1 SPP.
- <sup>72</sup> Section 2.4 SPP.
- <sup>73</sup> A planning scheme, temporary local planning instrument or planning scheme policy: per s 77 SPA.
- <sup>74</sup> Section 2.7 SPP also states that the SPP may be used to assist land use and infrastructure planning in areas outside the SEQKPA to achieve koala conservation outcomes – but this is not obligatory.
- <sup>75</sup> Sections 313 and 314 SPA require Councils to consider SPPs when assessing code or impact assessable development, despite the wording of the SPP itself which says it only applies for land use planning decisions.
- <sup>76</sup> SPA s 43.
- <sup>77</sup> SPA s 41.
- <sup>78</sup> SPP s 2.8.
- <sup>79</sup> SPP s 2.10 and SPA section 326(1)(c)(i).
- <sup>80</sup> Prior to May 2010 the Department of Infrastructure and Planning administered the Koala SPRP, but post-May 2010 it is the 'assessment manager' for a development application who applies the Koala SPRP (per SPA s 16, 313, 314 and 316) – which will mostly be the local Council. DERM plays no role and confirmed that as at 10 January 2011 they had not been approached by any Councils to provide advice or comment pursuant to s 256 SPA.
- <sup>81</sup> SPA s 313, 314.
- <sup>82</sup> SPA s 326.
- <sup>83</sup> See endnotes 17-20 for the SPRP definitions which are adopted by the SPP.
- <sup>84</sup> SPP s 3.3-3.4.
- <sup>85</sup> SPP s 3.5(a)-(g).
- <sup>86</sup> Defined the same as in the SPRP.
- <sup>87</sup> Defined the same as in the SPRP.
- <sup>88</sup> Set out in Schedule 2 SPP.
- <sup>89</sup> SPP s 4.1 and s 207(2)(d) SPA.
- <sup>90</sup> Section 1 Koala Offsets Policy. Non-habitat impacts from development such as increased cars, dogs or diseases are not required to be offset: Section 2.4 Koala Offsets Policy.
- <sup>91</sup> Section 2.8 Koala Offsets Policy.
- <sup>92</sup> Sections 1 and 2.1 Koala Offsets Policy.
- <sup>93</sup> Section 2.9 Koala Offsets Policy.
- <sup>94</sup> Section 2.10 Koala Offsets Policy.
- <sup>95</sup> Section 5.17 Koala Offsets Policy.
- <sup>96</sup> Section 5.1 Koala Offsets Policy.
- <sup>97</sup> Section 5.2 Koala Offsets Policy.
- <sup>98</sup> Section 5.5 Koala Offsets Policy.
- <sup>99</sup> Section 5.3 Koala Offsets Policy.
- <sup>100</sup> Section 5.17 Koala Offsets Policy.



- <sup>101</sup> Section 5.4 Koala Offsets Policy.
- <sup>102</sup> Section 5.7 Koala Offsets Policy.
- <sup>103</sup> Section 5.8 Koala Offsets Policy.
- <sup>104</sup> Section 5.10 Koala Offsets Policy.
- <sup>105</sup> Section 5.12 Koala Offsets Policy.
- <sup>106</sup> Section 5.13 Koala Offsets Policy.
- <sup>107</sup> Section 5.13.3 Koala Offsets Policy.
- <sup>108</sup> Section 5.14 Koala Offsets Policy.
- <sup>109</sup> Section 5.15 Koala Offsets Policy.
- <sup>110</sup> Section 6.4 Koala Offsets Policy.
- <sup>111</sup> Section 6.5-6.6 Koala Offsets Policy
- <sup>112</sup> Section 6.7-6.11 Koala Offsets Policy. Use of a broker to secure an offset does not transfer legal responsibility for compliance with conditions of approval or this policy – that responsibility remains with the applicant: section 6.9. Brokers must demonstrate to the relevant approval authority that they have the capacity to deliver offsets in accordance with the Offsets Policy: section 6.11.
- <sup>113</sup> Section 6.13 Koala Offsets Policy. The amount is based on the cost to secure offset land outside the urban footprint and maintain new plantings, and may be periodically updated: section 6.14.
- <sup>114</sup> Section 6.15 Koala Offsets Policy.
- <sup>115</sup> Section 6.1 Koala Offsets Policy.
- <sup>116</sup> Section 6.16 Koala Offsets Policy.
- <sup>117</sup> Part 9 of State Infrastructure Koala Policy 2010. Note that community infrastructure activities that were assessed against the land freeze and decided do not need to be re-assessed under the 2010 Policy. Projects submitted but not yet endorsed under the land freeze will be assessed against the 2010 Policy: Part 9.
- <sup>118</sup> Part 9, Table 1 of the State Infrastructure Koala Policy 2010. The table states that within the SEQKPA, state land sales will be governed by “property management committee policies for land disposal for properties with koala habitat values”. Within SEQ but outside of the SEQKPA, state land sales will be governed by “general property management committee policies for land disposal”. EDO has not been able to source these policies.
- <sup>119</sup> Part 3 of State Infrastructure Koala Policy 2010.
- <sup>120</sup> Part 8 of State Infrastructure Koala Policy 2010.
- <sup>121</sup> Part 2 of State Infrastructure Koala Policy 2010.
- <sup>122</sup> See the full list in Schedule 2 of the *Sustainable Planning Regulation 2009* (Qld), which applies due to Part 11 of the State Infrastructure Koala Policy 2010.
- <sup>123</sup> Part 11 of State Infrastructure Koala Policy 2010.
- <sup>124</sup> Annex 1 of State Infrastructure Koala Policy 2010, but which states that even where exempt “State public sector entities should undertake a risk assessment of the potential implications of activities below the thresholds and comply with requirements of this policy where the risk to koala populations or habitat is increased by the proposed activity.”
- <sup>125</sup> Part 4 of State Infrastructure Koala Policy 2010.
- <sup>126</sup> Part 5 of State Infrastructure Koala Policy 2010.
- <sup>127</sup> Part 9, Table 1 of State Infrastructure Koala Policy 2010.
- <sup>128</sup> Part 6 of State Infrastructure Koala Policy 2010, which also requires that project costings include costs of compliance with the SPRP or MOU.
- <sup>129</sup> Part 7 of State Infrastructure Koala Policy 2010.
- <sup>130</sup> See *Model Local Law No. 2 (Animal Management) 2010* at [www.dip.qld.gov.au/resources/laws/local-laws/ml1/ml12.pdf](http://www.dip.qld.gov.au/resources/laws/local-laws/ml1/ml12.pdf).
- <sup>131</sup> Available from [www.environment.gov.au/biodiversity/publications/koala-strategy/index.html](http://www.environment.gov.au/biodiversity/publications/koala-strategy/index.html).
- <sup>132</sup> The Koala Conservation Criteria apply to certain types of development that are made assessable under schedule 8 of IPA, a planning scheme or the SEQ Plan Regulatory Provisions.
- <sup>133</sup> Within the Regional Landscape and Rural Production Area of the SEQ Plan.
- <sup>134</sup> Within the Urban Footprint or Rural Living with a non-urban purpose planning intent
- <sup>135</sup> Within the Urban Footprint with an urban purpose planning intent
- <sup>136</sup> “Committed development” is broadly defined and includes currently approved development as well as certain material changes of use, reconfiguration of lots and building and operational work which are consistent with the SEQ Regional Plan and relevant planning scheme.
- <sup>137</sup> Ministerial media release by then Environment Minister Lindy Nelson-Carr, 8 September 2007.
- <sup>138</sup> Ministerial media release by then Environment Minister Lindy Nelson-Carr, 7 June 2007.
- <sup>139</sup> Ministerial media release by then Environment Minister Andrew McNamara, 6 December 2008.
- <sup>140</sup> The EPA remained a concurrence agency for certain material change of use (MCU), reconfiguration of a lot (ROL) and operation works in Koala Conservation Areas or Koala Sustainability Areas *outside* the urban footprint with a referral jurisdiction of the Koala Plans, not the draft Interim Regulatory Provisions.



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<sup>141</sup> Schedule 3 of the December 2008 Draft SPRPs provides a formula for calculating residual habitat impact and the value of proposed offset packages, which must all include a component of “high quality habitat measures” on the land or adjoining it (or in a contiguous cluster), protecting unprotected koala habitat or rehabilitating cleared areas.

<sup>142</sup> Subsequently, the revised version of the SEQ Plan (updated to a 2009-2031 Plan) released on 28 July 2009 included a commitment to introduce a State Planning Policy by the end of 2009 as well as updated koala habitat values maps (“to assist with koala friendly main road upgrades and influence dog control laws to further protect koala populations throughout the region”).

<sup>143</sup> Such as for already approved development; development on a private residence on an existing lot; development for community infrastructure on state government land; reconfiguration not creating additional lots; or development with GFA <500m<sup>2</sup> clearing <2500m<sup>2</sup> vegetation (no mature koala habitat trees) and excavating or filling <500m<sup>2</sup>.

<sup>144</sup> The management elements of the Koala Plans remain in force, such as policies regarding treatment of injured koalas and translocation (for population replenishment – not as a result of land development).

<sup>145</sup> Available in full from [www.environment.gov.au/biodiversity/publications/koala-strategy/index.html](http://www.environment.gov.au/biodiversity/publications/koala-strategy/index.html).

<sup>146</sup> The Implementation Plan includes measures, stakeholders, priorities and timelines which are not shown here.

