

# Information sheet

Planning Regulation 2017

## Exempted development in koala habitat areas on indigenous land

*This information sheet is part of a series of information sheets that outline development, activities and clearing that can be carried out in a koala habitat area as exempted development. This particular information sheet provides types of exempted development that apply to indigenous land.*

### 1 Background

On 7 February 2020, the Queensland Government introduced new planning controls to the Planning Regulation 2017 (Planning Regulation) to strengthen the protection of koala habitat in South East Queensland. More information on these planning controls can be found in the following information sheets:

- *Information sheet - Development in koala priority areas*
- *Information sheet - Development in koala habitat areas outside koala priority areas*
- *Information sheet - Extractive industries in koala habitat areas within key resource areas*
- *Information sheet - Development in identified koala broad-hectare areas.*

As a high-level summary, the new planning controls make:

- development that involves interfering with koala habitat<sup>1</sup> in an area that is a koala habitat area within a koala priority area, prohibited development (i.e. development for which a development application cannot be made)
- development that involves interfering with koala habitat in an area that is a koala habitat area outside a koala priority area, assessable development (i.e. development for which development approval is required)
- development for extractive industries in a key resource area that involves interfering with koala habitat in an area that is a koala habitat area, assessable development (i.e. development for which development approval is required).

However, these planning controls do not apply if the development is exempted development as defined in Schedule 24 of the Planning Regulation.

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<sup>1</sup> Interfering with koala habitat:

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

## 2 Purpose

The purpose of this information sheet is to provide simplified explanations of the items of the exempted development definition in Schedule 24 of the Planning Regulation that apply to indigenous land. There are additional items of the exempted development definition in Schedule 24 of the Planning Regulation that apply to all land tenures and other specific land tenures. These are explained in the following information sheets:

- *Exempted development in koala habitat areas – all land tenures*
- *Exempted development in koala habitat areas - freehold land*
- *Exempted development in koala habitat areas - land leased under the Land Act 1994 for agriculture or grazing purposes*
- *Exempted development in koala habitat areas - land leased under the Land Act 1994, other than for agriculture or grazing purposes*
- *Exempted development in koala habitat areas - trust land under the Land Act 1994*
- *Exempted development in koala habitat areas - land that is subject to a licence or permit under the Land Act 1994*
- *Exempted development in koala habitat areas - land dedicated as a road under the Land Act 1994.*

Landholders and project proponents can use this series of exempted development information sheets to assist in determining whether proposed development, activities and/or clearing in koala habitat areas are exempted development and therefore can be undertaken legally and without State Government approval under Schedule 10, Part 10 of the Planning Regulation (i.e. development that involves interfering with koala habitat in koala habitat areas both inside or outside of koala priority areas).

For the entirety of the proposed activity to be considered exempted development, all aspects of the proposed activity must be exempted development (either as a single activity or purpose that includes the entire proposed activity or multiple activities and/or purposes that include the entire proposed activity). If part of the proposed activity is not considered exempted development, the planning controls in Schedule 10, Part 10 of the Planning Regulation (as summarised above) will be applicable to that component of the development. If the proposed activity is not considered exempted development, the planning controls in Schedule 10, Part 10 of the Planning Regulation (as summarised above) will be applicable to the development.

**IMPORTANT:**

Development that is considered to be exempted development may be prohibited or assessable development under another part of the Planning Regulation or a local government planning scheme, or may require approval under another Act or a local law. For this reason, landholders and project proponents are encouraged to familiarise themselves with the Acts and regulations relevant to their operations.

It is advised that advice is sought from local government and the State Assessment Referral Agency (SARA). Contact details for the regional SARA offices can be found here:

<https://planning.dsdmip.qld.gov.au/planning/resources/regional-contacts>.

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

### 3 Exempted development in koala habitat areas on indigenous land

Development mentioned in the table below are the items of the exempted development definition in Schedule 24 of the Planning Regulation that are applicable to indigenous land. You do not need permission from the Department of Environment, Science and Innovation's Koala Assessment and Compliance Team to carry out exempted development. You may however require approval/permission from another State agency or local government.

| Item of exempted development definition | Exempted development  | Plain English explanation  |
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| (n)(ii)                                 | Development that is or involves operational work that is the clearing of native vegetation in a koala habitat area if the clearing is on indigenous land, other than land on which the State owns the trees, and is for a forest practice | <p><b>Native forest practice</b></p> <p>Clearing of native vegetation is exempted development if the clearing is on indigenous land (other than land on which the State owns the trees) and is for a forest practice.</p> <p>A forest practice means planting trees, or managing, felling and removing standing trees, on freehold land or indigenous land on which the State does not own the trees, for an ongoing forestry business in a:</p> <ul style="list-style-type: none"> <li>• plantation</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• native forest if, in the native forest, all the activities are conducted in a way that meets all the below criteria: <ul style="list-style-type: none"> <li>– ensures restoration of a similar type, and to the extent, of the removed trees</li> <li>– ensures trees are only felled for the purpose of being sawn into timber or processed into another value-added product (other than woodchips for an export market)</li> <li>– does not cause land degradation</li> <li>– is consistent with the <a href="#">accepted development vegetation clearing code for native forest</a></li> </ul> </li> </ul> |

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|          |   | <p>practice.</p> <p>This includes carrying out limited associated work, including, for example, drainage, construction and maintenance of roads or vehicular tracks, and other necessary engineering works.</p> <p>This does not include clearing vegetation for the initial establishment of a plantation.</p>   |
| (n)(iii) | <p>Development that is or involves operational work that is the clearing of native vegetation in a koala habitat area if the clearing is on indigenous land and is gathering, digging or removing forest products for use under the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i>, section 62</p> | <p><b>Gathering, digging and removing forest products</b></p> <p>Clearing native vegetation is exempted development if the clearing is on indigenous land and is gathering, digging or removing forest products for use under section 62 of the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i>.</p> <p>Section 62 of the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i> states that if there are no reservation to the Crown of forest products or quarry material above, on or below the surface of Aboriginal or Torres Strait Islander land, the community government or indigenous regional council (IRC) for the community government or IRC area in which the land is situated may authorise the gathering or digging and removal of forest products and quarry material in use in the community government or IRC area. However, the community government or IRC must not give an authority unless:</p> <ul style="list-style-type: none"> <li>• the authority is given under an agreement between the community government or indigenous regional council and the grantees of the land</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• failing agreement, the community government or indigenous regional council pays the grantees of the land compensation as is determined by the land court.</li> </ul> |
| (n)(vii) | <p>Development that is or involves operational work that is the clearing of native vegetation</p>   | <p><b>Essential management - firebreaks</b></p> <p>Clearing native vegetation on indigenous land is exempted development if the clearing is for</p>   |

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|  | <p>in a koala habitat area if the clearing is necessary for essential management and is qualifying clearing</p> | <p>establishing or maintaining a necessary firebreak to protect a building or other structure (other than a fence, road or vehicular track) and the maximum width of the firebreak is 20m or 1.5 times the height of the tallest vegetation next to the infrastructure, whichever is the wider.</p> <p>Firebreaks are low-fuel areas located immediately adjacent to existing infrastructure (including a building, or other structure, built or used for any purpose) that are cleared and maintained to slow or stop the progress of a fire, or to perform back-burning.</p> <p>Please note this only applies to a <b>necessary</b> firebreak (i.e. this exemption only applies if a suitably qualified person such as a Fire Warden of bushfire specialist has advised a firebreak is necessary to protect the infrastructure from fire risks). These are the maximum limits. If the suitably qualified person advises that a smaller firebreak is necessary to protect the infrastructure from fire risks, the width provided by the suitably qualified person should be implemented.</p> |
|  |   | <p><b>Essential management - fire management lines</b></p> <p>Clearing native vegetation on indigenous land is exempted development if the clearing is for a necessary fire management line and the maximum width of the clearing for the fire management line is no more than 10m.</p> <p>Fire management lines are roads, fence line clearings or tracks (including existing property tracks) used to access water for firefighting or divide the property for fuel reduction burning or back-burning.</p> <p>Please note this only applies to a <b>necessary</b> fire management line (i.e. this exemption only applies if a suitably qualified person such as a Fire Warden of bushfire specialist has advised a fire management line is necessary to water for firefighting or divide the property for fuel reduction/back burning). These are the maximum limits. If the suitably qualified person advises that a smaller fire management line is necessary, the width provided by the suitably qualified person should be implemented.</p>   |
|  |   | <p><b>Essential management – safety</b></p>   |

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|  |  | <p>Clearing native vegetation on indigenous land is exempted development if the clearing is necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure.</p>   |
|  |  | <p><b>Essential management – reducing hazardous fuel loads by fire</b></p> <p>Clearing native vegetation on indigenous land is exempted development if the clearing is by fire to reduce hazardous fuel load under the <i>Fire and Emergency Services Act 1990</i>.</p> <p>To undertake a fuel reduction burn, you will need to acquire a permit issued by your local fire warden. Please contact your local fire warden for more information.</p>              |
|  |  | <p><b>Essential management – maintaining a garden or orchard</b></p> <p>Clearing native vegetation on indigenous land is exempted development if the clearing is for maintaining a garden or orchard (other than clearing predominant canopy trees to maintain under plantings established within remnant vegetation).</p>  |
|  |  | <p><b>Essential management – maintaining infrastructure</b></p> <p>Clearing native vegetation on indigenous land is exempted development if the clearing is necessary to maintain a building or other structure (including core airport infrastructure, buildings, fences, helipads, roads, stockyards, vehicular tracks, watering facilities and constructed drains, other than contour banks), unless the clearing is for sourcing construction material.</p> |

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| <p>(o)</p> | <p>Development on a lot that is or involves operational work that is the clearing of native vegetation in a koala habitat area if—</p> <ul style="list-style-type: none"><li>(i) the clearing is necessary to establish a necessary fence, road or vehicular track on an existing lot; and</li><li>(ii) the clearing is qualifying clearing; and</li><li>(iii) the vegetation is regulated regrowth vegetation or a least concern regional ecosystem in a category B area; and</li><li>(iv) the maximum width of the clearing for the fence, road or track is—<ul style="list-style-type: none"><li>(A) for a lot that is 5ha or less—5m; or</li><li>(B) for a lot that is more than 5ha—10m</li></ul></li></ul> | <p><b>Clearing to establish a necessary fence, road or vehicular track</b></p> <p>Clearing native vegetation on indigenous land is exempted development if it meets all the below criteria:</p> <ul style="list-style-type: none"><li>• the clearing is necessary to establish a necessary fence, road or vehicular track on an existing lot</li><li>• the vegetation being cleared is regulated regrowth vegetation or a least concern regional ecosystem in a category B area</li><li>• the maximum width of the clearing for the fence, road or track is:<ul style="list-style-type: none"><li>– 5m for a lot that is 5ha or less</li></ul>or<ul style="list-style-type: none"><li>– 10m for a lot that is more than 5ha.</li></ul></li></ul> <p>The category of the vegetation (i.e. A, B, C, R or X) and the status of a regional ecosystem (i.e. endangered, of concern or least concern) can be viewed spatially here: <a href="https://dams.dsdip.esriaustraliaonline.com.au/damappingsystem/?accordions=SARA%20DA%20Mapping">https://dams.dsdip.esriaustraliaonline.com.au/damappingsystem/?accordions=SARA%20DA%20Mapping</a> (under Native Vegetation Clearing) or by requesting a vegetation management property report here: <a href="https://www.dnrme.qld.gov.au/qld/environment/land/vegetation/vegetation-map-request-form">https://www.dnrme.qld.gov.au/qld/environment/land/vegetation/vegetation-map-request-form</a>.</p> |
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| <p>(p)</p> | <p>Development that is or involves operational work that is the clearing of native vegetation in an area shown on a Property Map of Assessable Vegetation (PMAV) as a category X area if—</p> <ul style="list-style-type: none"> <li>(i) an application for the PMAV under the <i>Vegetation Management Act 1999</i>, section 20C was made before 7 February 2020; and</li> <li>(ii) the clearing—             <ul style="list-style-type: none"> <li>(A) is qualifying clearing; or</li> <li>(B) is on land dedicated as a road under the <i>Land Act 1994</i> and is carried out by a local government, or by or for the chief executive (transport).</li> </ul> </li> </ul> | <p><b>Category X PMAV</b></p> <p>Clearing native vegetation on indigenous land is exempted development if:</p> <ul style="list-style-type: none"> <li>• the clearing is in an area shown on a PMAV as a category X area</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• the application for the PMAV was made before 7 February 2020.</li> </ul> |
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## Exempted development in koala habitat areas on indigenous land

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### **Human Rights Act 2019 compatibility**

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

### **Disclaimer**

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

### **Approved By**

Ben Klaassen

Signature

30/11/2023

Date

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