



Queensland

*Environmental Offsets Act 2014*

# **Environmental Offsets Regulation 2014**

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Queensland

# Environmental Offsets Regulation 2014

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# Environmental Offsets Regulation 2014

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Environmental Offsets Regulation 2014*.

### 2 Commencement

This regulation commences on 1 July 2014.

### 3 Definitions

The dictionary in schedule 3 defines particular words used in this regulation.

## Part 2 Interpretation

### 4 Prescribed activities—Act, s 9

Each activity mentioned in schedule 1 is prescribed for section 9(c) of the Act.

### 5 Prescribed environmental matters—Act, s 10

- (1) For section 10(1)(a) of the Act, each of the following matters of national environmental significance is a prescribed environmental matter—
- (a) a declared World Heritage property within the meaning of the Commonwealth Environment Act, section 13(1);
  - (b) a National Heritage place within the meaning of the Commonwealth Environment Act, section 324C(3);

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- (c) a declared Ramsar wetland within the meaning of the Commonwealth Environment Act, section 17;
  - (d) a threatened species within the meaning of the Commonwealth Environment Act in a list established under section 178 of that Act;
  - (e) a threatened ecological community within the meaning of the Commonwealth Environment Act in a list established under section 181 of that Act;
  - (f) a migratory species within the meaning of the Commonwealth Environment Act in a list established under section 209 of that Act;
  - (g) a Commonwealth marine area within the meaning of the Commonwealth Environment Act, section 24;
  - (h) the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth);
  - (i) a water resource, within the meaning of the *Water Act 2007* (Cwlth), to the extent the taking of action mentioned in section 24D or 24E of the Commonwealth Environment Act in relation to the water resource is prohibited under either of those sections.
- (2) For section 10(1)(b) of the Act, each matter of State environmental significance mentioned in schedule 2 is a prescribed environmental matter.
- (3) However, each of the following matters of State environmental significance is not a prescribed environmental matter to the extent the matter of State environmental significance is in an urban area—
- (a) a prescribed regional ecosystem mentioned in schedule 2, section 2(2) to (5) or 3(2);
  - (b) a designated precinct mentioned in schedule 2, section 5(1);
  - (c) a marine plant mentioned in schedule 2, section 11;
  - (d) any part of a waterway mentioned in schedule 2, section 10(1).



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- (4) For section 10(1)(c) of the Act, a matter of local environmental significance is a prescribed environmental matter if—
- (a) an environmental offset for the matter is required under a local planning instrument; and
  - (b) the matter is not the same, or substantially the same, as—
    - (i) a matter of national environmental significance mentioned in subsection (1); or
    - (ii) a matter of State environmental significance that is prescribed to be a prescribed environmental matter under subsection (2); or
    - (iii) a matter of State environmental significance mentioned in subsection (3)(a) to (d).
- (5) In this section—

*Commonwealth Environment Act* means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

*urban area* see the *Planning Regulation 2017*, schedule 24.

## **6 Environmental offsets policy—Act, s 12**

For section 12(1) of the Act, the document called the Queensland Environmental Offsets Policy (version 1.7) published on the department's website is prescribed to be an environmental offsets policy.

## **7 Legally secured offset areas—Act, s 29**

- (1) Each of the following areas of land is prescribed for section 29(1)(a)(iii) of the Act—
- (a) an area the subject of a covenant under the *Land Act 1994*, section 373A or the *Land Title Act 1994*, section 97A;
  - (b) a declared fish habitat area under the *Fisheries Act 1994*, section 120;

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- (c) a highly protected area under the *Marine Parks Act 2004*, schedule.
- (2) For section 29(3)(b) of the Act, each area mentioned in section 29(1) or (2) of the Act is prescribed as legally secured for the purposes of the other Act.

## **Part 3 Requirements about offset conditions**

### **8 Requirements for offset delivery plans—Act, s 18(4)(d)**

- (1) For the Act, section 18(4)(d), this section prescribes other requirements that an offset delivery plan must satisfy.
- (2) The offset delivery plan must—
  - (a) describe the prescribed environmental matter to which the offset condition relates; and
  - (b) state whether the offset condition will be delivered, wholly or partly, on the land on which the environmental offset will be undertaken; and
  - (c) include particulars of, or a description sufficient to identify, the land on which the environmental offset will be undertaken; and
  - (d) identify, and contain details of, any person with an interest in the land on which the environmental offset will be undertaken; and
  - (e) describe the existing land use of the land on which the environmental offset will be undertaken and any impact that land use may have on the delivery of the offset; and
  - (f) state—
    - (i) the measures the authority holder will take to secure the land on which the environmental offset will be undertaken as a legally secured offset area; and

- (ii) why the authority holder considers the stated measures are reasonable and practicable; and
- (iii) the period during which the authority holder will take the measures; and
- (iv) why the authority holder considers the stated period is reasonable for the purpose of securing the land.

## **9 Matters administering agency to consider—Act, s 19**

- (1) For the Act, section 19(1)(b), this section prescribes matters to which the administering agency must consider.
- (2) For an offset delivery plan given to the administering agency, the agency must consider the following matters—
  - (a) whether the plan satisfies the requirements of the Act, section 18(4);
  - (b) whether an activity proposed to be taken under the plan is restricted or prohibited, or requires permission, under any law;
  - (c) the impact undertaking the environmental offset under the plan will, or is likely to, have on other prescribed environmental matters on the land on which the environmental offset will be undertaken.

## **Part 4 Financial settlement offsets**

### **10 Requirements for financial settlement offsets—Act, s 24(2)(b)**

- (1) The matter of State environmental significance prescribed under section 5(2) to be a prescribed environmental matter, that is a non-juvenile koala habitat tree, is prescribed as relevant for section 24 of the Act.

- (2) However, subsection (1) applies only if the local government that is the administering agency imposed the offset condition relating to the matter under—
- (a) the *Planning Regulation 2017*, schedule 11; or
  - (b) the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions.

## Part 5 **Amending or revoking declaration of environmental offset protection area**

### **11 Amending declaration of environmental offset protection area—Act, s 33**

- (1) This section applies if—
- (a) a declaration of an environmental offset protection area was made under section 30 of the Act; and
  - (b) the environmental offset agreement entered into under section 26 of the Act is varied by another environmental offset agreement (the *later agreement*) under section 28 of the Act; and
  - (c) the variation had the effect of increasing the area of land covered by the environmental offset agreement.
- (2) The chief executive may, by written notice given to an owner of the area of land, amend the declaration of the environmental offset protection area related to the environmental offset agreement to show the new area covered by the later agreement.
- (3) However, the chief executive must not amend the declaration of an environmental offset protection area unless the chief executive reasonably believes—
- (a) the additional area by which the environmental offset protection area is to be increased may be used to deliver an environmental offset; and

- (b) the later agreement and its offset delivery plan are designed to achieve a conservation outcome; and
- (c) each person with an interest in the land within the additional area has consented to the declaration.

## **12 Revoking declaration of environmental offset protection area—Act, s 33**

- (1) This section applies if a declaration of an environmental offset protection area was made under section 30 of the Act.
- (2) The chief executive may, by written notice given to an owner of the area of land, revoke the declaration if the chief executive reasonably considers—
  - (a) the declaration is not in the interests of the State having regard to the public interest; or
  - (b) the requirements of the environmental offset agreement and any relevant offset delivery plan for the environmental offset have been achieved; or
  - (c) both of the following apply to the area—
    - (i) there is a prescribed activity approved to be carried out in the area for which there is an environmental offset condition;
    - (ii) the holder of the authority for the activity has entered into an agreed delivery arrangement in relation to providing an environmental offset for significant residual impacts to the area.

## **Part 6 Advanced offsets**

### **13 Definition for part**

In this part—

*decision-maker* means—

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- (a) for an area of land to be identified as an advanced offset for a matter of environmental significance for which an environmental offset may be required under the *Planning Regulation 2017*, schedule 11, the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions or a local planning instrument—the relevant local government; or
- (b) for an area of land to be identified as an advanced offset for a matter of State or national environmental significance for which an environmental offset may be required by the State—the chief executive.

**14 Identification and registration of advanced offsets—Act, ss 90(1)(b) and 93(2)(b)**

- (1) An owner of land may apply to the decision-maker in the approved form for an area of land to be identified as an advanced offset.
- (2) In deciding the application, the decision-maker must have regard to any relevant environmental offsets policy.
- (3) The decision-maker may—
  - (a) approve the identification of an area of land as an advanced offset; or
  - (b) approve the identification of part of an area of land as an advanced offset; or
  - (c) refuse the identification of an area of land as an advanced offset.
- (4) As soon as practicable after the decision to approve the identification of an area of land as an advanced offset is made, the decision-maker must register the area as an advanced offset in the register kept under section 90 of the Act.
- (5) If the decision-maker decides to refuse the application, the decision-maker must, as soon as practicable after making the decision, give the applicant an information notice about the decision.

- (6) An owner of land may, at any time, apply to the decision-maker in the approved form for an area of land registered as an advanced offset to no longer be identified as an advanced offset and to be removed from the register.
- (7) As soon as practicable after an application under subsection (6) is made, the decision-maker must ensure that the record for the advanced offset in the register kept under section 90 of the Act is removed.

## **15 Amendment of registration of advanced offsets**

- (1) An owner of land that has been registered under section 14 may, at any time, apply to the decision-maker in the approved form for a boundary of an area of land identified as an advanced offset to be amended.
- (2) In deciding the application, the decision-maker must have regard to the environmental offsets policy.
- (3) The decision-maker may, by written notice given to the owner—
  - (a) approve the application; or
  - (b) refuse the application.
- (4) As soon as practicable after the decision to approve the application is made, the decision-maker must ensure that the record for the area of land identified as an advanced offset in the register kept under section 90 of the Act is amended.
- (5) If the decision-maker decides to refuse the application, the decision-maker must, as soon as practicable after making the decision, give the applicant an information notice about the decision.

## Part 7                      Review of decisions and    appeals

### Division 1                Preliminary

#### 16        Definitions for pt 7

In this part—

***appellable decision*** means an internal review decision in relation to a reviewable decision that is—

- (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act; or
- (b) a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election, in relation to an offset condition imposed under a relevant Act; or
- (c) a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act, in relation to an offset condition imposed under a relevant Act; or
- (d) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act in relation to an offset condition imposed under a relevant Act.

***internal review decision*** means a decision made after an internal review of a reviewable decision to—

- (a) confirm the reviewable decision; or
- (b) amend the reviewable decision; or
- (c) substitute another decision for the reviewable decision.

***relevant Act*** means the *Environmental Protection Act 1994* or the *Planning Act*.

***relevant entity*** means—



- (a) for a reviewable decision that is a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act—the administering agency that made the decision; or
- (b) for a reviewable decision that is a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election—the administering agency that failed to give the notice; or
- (c) for a reviewable decision that is a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act—the administering agency that failed to enter into an agreed delivery arrangement within that period; or
- (d) for a reviewable decision that is a decision by a decision-maker under section 14 or 15 to refuse an application—the decision-maker that made the decision; or
- (e) for a reviewable decision that is a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act—the administering agency that made the decision.

***reviewable decision*** means—

- (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act; or
- (b) a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election; or
- (c) a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act; or
- (d) a decision under section 14 or 15 to refuse an application; or

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- (e) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act.

### **16A Agreed delivery arrangement not entered into is taken to be reviewable decision**

For section 19(8)(c) of the Act, the fact that the entity and administering agency do not enter into an agreed delivery arrangement within the stated reasonable period is taken to be a reviewable decision.

## **Division 2 Internal review**

### **17 Internal review process is first step**

Every review of a reviewable decision must be, in the first instance, by way of an application for internal review.

### **18 Requirements for making application**

- (1) An application for internal review must—
  - (a) be in the approved form; and
  - (b) be made to the relevant entity within 20 business days after—
    - (i) for a reviewable decision for which an information notice is given—the day the applicant is given the information notice; or
    - (ii) for a reviewable decision that is a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election—the day by which the notice should have been given; or
    - (iii) for a reviewable decision that is a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable

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- period under 19(3)(b) of the Act—the end of the period; or
- (iv) for another reviewable decision—the day the applicant is notified of the decision; and
- (c) be supported by enough information to enable the relevant entity to decide the application.
- (2) The relevant entity may extend the time for applying for the internal review.

## **19 Internal review**

- (1) If the relevant entity is satisfied the applicant has complied with section 18, the relevant entity must, within 28 days after receiving the application—
- (a) review the reviewable decision; and
- (b) make an internal review decision.
- (2) Within 14 days after making the internal review decision, the relevant entity must give the applicant—
- (a) if the decision is an appellable decision—a notice stating—
- (i) the applicant may appeal against the decision; and
- (ii) the period or time allowed for starting an appeal; and
- (iii) how to start an appeal; or
- (b) otherwise—a notice complying with the QCAT Act, section 157(2) about external review of the decision.
- (3) If the relevant entity does not comply with subsection (1) or (2), the relevant entity is taken to have made a decision confirming the reviewable decision.
- (4) The application must not be dealt with by—
- (a) the person who made the reviewable decision; or
- (b) a person in a less senior office than the person who made the reviewable decision.

- (5) Subsection (4)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to a reviewable decision made by a chief executive.
- (6) For the purpose of an application for external review—
  - (a) if the internal review decision confirms the reviewable decision—the reviewable decision is taken to be the internal review decision; or
  - (b) if the internal review decision amends the reviewable decision—the reviewable decision as amended is taken to be the internal review decision.

## **20 Stay of operation of particular reviewable decisions**

- (1) If an application is made for an internal review of any of the following reviewable decisions, the applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the reviewable decision—
  - (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under—
    - (i) the *Marine Parks Act 2004*; or
    - (ii) the *Nature Conservation Act 1992*; or
  - (b) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act in relation to an offset condition imposed under an Act mentioned in paragraph (a); or
  - (c) a decision made under section 14 or 15 to refuse an application.
- (2) The application affects the reviewable decision, or carrying out of the decision, only if the decision is stayed.
- (3) QCAT may stay the reviewable decision to secure the effectiveness of the internal review and any later application for external review.

- (4) The stay—
  - (a) may be given on conditions the relevant entity considers appropriate; and
  - (b) operates for the period fixed by the relevant entity; and
  - (c) may be revoked or amended by the relevant entity.
- (5) The period of the stay must not extend past the time when the relevant entity makes an internal review decision about the reviewable decision and any later period the relevant entity allows the applicant to enable the applicant to apply for an external review of the decision.

## **Division 3 External reviews**

### **21 Applications for external review**

A person who is given, or is entitled to be given, a notice under section 19(2)(b) about a decision may apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

## **Division 4 Appeals to Land Court**

### **23 Who may appeal**

A person who is given, or is entitled to be given, a notice under section 19(2)(a) about an appellable decision in relation to an offset condition imposed under the *Environmental Protection Act 1994* for a resource activity within the meaning of that Act may appeal the decision to the Land Court.

### **24 How to start appeal**

- (1) An appeal mentioned in section 23 is started by—
  - (a) filing written notice of appeal with the registrar of the Land Court; and

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- (b) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must state fully the grounds of the appeal and the facts relied on.
- (3) Within 8 business days after filing the notice of appeal, the appellant must serve a copy of the notice on the administering agency.

## **25 Appeal period**

- (1) The notice of appeal must be filed within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.
- (2) However, the Land Court may at any time extend the time for starting the appeal.

## **26 Hearing procedures**

- (1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.
- (2) An appeal is by way of rehearing.

## **27 Land Court's powers for appeal**

In deciding the appeal, the Land Court has the same powers as the administering agency.

## **28 Decision for appeals**

- (1) In deciding the appeal, the Land Court may—
  - (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the administering agency who made the decision, with directions the Land Court considers appropriate.

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- (2) In setting aside or substituting the decision, the Land Court has the same powers as the administering agency unless otherwise expressly stated.
  - (3) However, this subdivision does not apply to a power exercised under subsection (2).
  - (4) If the Land Court substitutes another decision, the substituted decision is taken to be that of the administering agency that made the relevant reviewable decision.

## **Division 5                      Appeals to Planning and Environment Court**

### **29            Who may appeal**

A person who is given, or is entitled to be given, a notice under section 19(2)(a) about an appellable decision in relation to an offset condition imposed under the Planning Act, or under the *Environmental Protection Act 1994* for a prescribed environmentally relevant activity within the meaning of that Act, may appeal the decision to the Planning and Environment Court.

### **30            How to start appeal**

- (1) An appeal mentioned in section 29 is started by—
  - (a) filing written notice of appeal with the registrar of the Planning and Environment Court; and
  - (b) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must state fully the grounds of the appeal and the facts relied on.
- (3) Within 8 business days after filing the notice of appeal, the appellant must serve a copy of the notice on the administering agency.

### **31 Appeal period**

- (1) The notice of appeal must be filed within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.
- (2) However, the Planning and Environment Court may at any time extend the time for starting the appeal.

### **32 Stay of operation of decisions**

- (1) The Planning and Environment Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay may be granted on conditions the Planning and Environment Court considers appropriate and has effect for the period stated by the Planning and Environment Court.
- (3) The period of a stay must not extend past the time when the Planning and Environment Court decides the appeal.
- (4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

### **33 Hearing procedures**

- (1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.
- (2) An appeal is by way of rehearing.

### **34 Powers of Planning and Environment Court on appeal**

- (1) In deciding an appeal, the Planning and Environment Court may—
  - (a) confirm the decision appealed against; or
  - (b) vary the decision appealed against; or



- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside.
- (2) If on appeal the Planning and Environment Court acts under subsection (1)(b) or (c), the decision is taken to be that of the administering agency that made the relevant reviewable decision.

## **Part 8                      Miscellaneous**

### **35      Register to be kept by each administering agency—Act, s 90**

For the Act, section 90(1)(b), the following matters are prescribed as other matters an administering agency must keep a register about—

- (a) information about each area of land identified as an advanced offset, including—
  - (i) particulars sufficient to identify the area; and
  - (ii) a description of each matter of environmental significance relevant to the area; and
  - (iii) the administering agency’s reference number for the area;
- (b) information about each legally secured offset area, including—
  - (i) particulars sufficient to identify the area; and
  - (ii) a description of each matter of environmental significance relevant to the area; and
  - (iii) the administering agency’s reference number for the area;
- (c) the date of any declaration of an environmental offset protection area made under the Act, section 30;

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- (d) for each notice given under the Act, section 18(2)(a)—whether the authority holder has elected to deliver an offset condition by—
  - (i) a proponent-driven offset; or
  - (ii) a financial settlement offset; or
  - (iii) a combination of a proponent-driven offset and a financial settlement offset;
- (e) for each financial settlement offset—the amount paid by the proponent.

### **36 Administering agency to apply to for removal of particular duplicate offset condition**

- (1) Each of the following is prescribed for section 25A(3)(b)(i) of the Act—
  - (a) if the offset condition the authority holder is seeking to remove relates to a protected plant that is endangered wildlife or vulnerable wildlife under the *Nature Conservation Act 1992*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition under a protected plant clearing permit granted under the *Nature Conservation (Administration) Regulation 2006*;
  - (b) if the offset condition the authority holder is seeking to remove relates to a protected area under the *Nature Conservation Act 1992*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition for an authority mentioned in schedule 1, item 4;
  - (c) if the offset condition the authority holder is seeking to remove relates to a marine park under the *Marine Parks Act 2004*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition on a permission granted under the *Marine Parks Regulation 2017*;

- (d) if the offset condition the authority holder is seeking to remove relates to koala habitat or a non-juvenile koala habitat tree in the SEQ region—the administering agency that imposed the offset condition, other than a local government that imposed the offset condition under—
- (i) the *Planning Regulation 2017*, schedule 11; or
  - (ii) the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions.
- (2) In this section—

*SEQ region* means the area, including the area of any Queensland waters, that comprised the SEQ region under the repealed *Integrated Planning Act 1997*, section 2.5A.2 immediately before 11 September 2007.

**37 Non-juvenile koala habitat tree prescribed as relevant for Act, s 15(4)**

The matter of State environmental significance prescribed under section 5(2) to be a prescribed environmental matter, that is a non-juvenile koala habitat tree mentioned in schedule 2, section 6(3) or (4), is prescribed as relevant for section 15(4) of the Act.

## **Schedule 1            Activities prescribed for                                  section 9(c) of the Act**

section 4

- 1 a resource activity carried out under an environmental authority under the *Environmental Protection Act 1994* for which an amendment application, a site-specific application or a variation application was made under that Act
- 2 a prescribed ERA under the *Environmental Protection Act 1994*
- 3 the carrying out of works authorised under the *Marine Parks Act 2004* in a marine park within the meaning of that Act
- 4 an activity conducted under an authority granted, made, issued or given under the *Nature Conservation Act 1992*, section 34, 35, 38, 42AD, 42AE, 43F, 43G or 43H in a protected area
- 5 taking a protected plant within the meaning of the *Nature Conservation Act 1992* under a protected plant clearing permit granted under the *Nature Conservation (Administration) Regulation 2017*, section 15 in an area outside a protected area
- 6 development for which an environmental offset may be required under any of the following modules of the repealed State development assessment provisions made under the repealed *Sustainable Planning Regulation 2009*—
  - (a) module 4 (environmentally relevant activities);
  - (b) module 5 (fisheries resources);
  - (c) module 8 (native vegetation clearing);
  - (d) module 10 (coastal protection);
  - (e) module 11 (wetland protection area)
- 7 development for which an environmental offset may be required under any of the following State codes of the State development assessment provisions—

- (a) State code 8 (Coastal development and tidal works);
  - (b) State code 9 (Great Barrier Reef wetland protection areas);
  - (c) State code 11 (Removal, destruction or damage of marine plants);
  - (d) State code 12 (Development in a declared fish habitat);
  - (e) State code 16 (Native vegetation clearing);
  - (f) State code 18 (Constructing or raising waterway barrier works in fish habitats);
  - (g) State code 22 (Environmentally relevant activities)
- 8 development for which an environmental offset may be required under any of the following—
- (a) a local planning instrument;
  - (b) the *Planning Regulation 2017*, schedule 11;
  - (c) the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions

## Schedule 2 Prescribed environmental matters—matters of State environmental significance

section 5(2)

### 1 Definitions for sch 2

In this schedule—

***animal that is endangered wildlife or vulnerable wildlife*** means an animal that is endangered wildlife, or vulnerable wildlife, under the *Nature Conservation Act 1992*.

*Notes—*

- See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 2, part 1 for animals that are endangered wildlife.
- See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 3, part 1 for animals that are vulnerable wildlife.

***category B area*** means a category B area within the meaning of the *Vegetation Management Act 1999*, section 20AM.

***essential habitat***, for protected wildlife, see the *Vegetation Management Act 1999*, section 20AC(2).

***essential habitat map*** see the *Vegetation Management Act 1999*, section 20AC(1).

***plant that is endangered wildlife or vulnerable wildlife*** means a plant that is endangered wildlife, or vulnerable wildlife, under the *Nature Conservation Act 1992*.

*Notes—*

- See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 2, part 2 for plants that are endangered wildlife.
- See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 3, part 2 for plants that are vulnerable wildlife.

***prescribed regional ecosystem*** means a regional ecosystem, other than a regional ecosystem mentioned in the *Vegetation Management Regulation 2012*, schedule 5, located in a

category B area on the regulated vegetation management map, to the extent the ecosystem contains remnant vegetation.

**regional ecosystem** see the *Vegetation Management Act 1999*, schedule.

*Editor's note—*

The Queensland Herbarium publishes a map of the regional ecosystems in Queensland and the map is available on the website of the department in which the *Vegetation Management Act 1999* is administered.

**regulated vegetation management map** see the *Vegetation Management Act 1999*, section 20A.

**remnant vegetation** means vegetation forming the predominant canopy of the vegetation—

- (a) covering more than 50% of the undisturbed predominant canopy; and
- (b) averaging more than 70% of the vegetation's undisturbed height; and
- (c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

**undisturbed height**, for vegetation, means the height to which the vegetation normally grows.

**undisturbed predominant canopy**, for vegetation, means the predominant canopy the vegetation normally has.

## 2 Regulated vegetation

- (1) The prescribed regional ecosystems that are endangered regional ecosystems comprise a matter of State environmental significance.
- (2) The prescribed regional ecosystems that are of concern regional ecosystems comprise a matter of State environmental significance.
- (3) A prescribed regional ecosystem is a matter of State environmental significance if it is—

- (a) a regional ecosystem that intersects with an area shown as a wetland on the vegetation management wetlands map (to the extent of the intersection); or
  - (b) an area of essential habitat on the essential habitat map for an animal that is endangered wildlife or vulnerable wildlife or a plant that is endangered wildlife or vulnerable wildlife.
- (4) A prescribed regional ecosystem is a matter of State environmental significance, for a prescribed activity mentioned in schedule 1, item 7(e), if the ecosystem is an area of essential habitat on the essential habitat map for an animal that is near threatened wildlife or a plant that is near threatened wildlife.
- (5) A prescribed regional ecosystem is a matter of State environmental significance to the extent the ecosystem is located within a defined distance from the defining banks of a relevant watercourse or relevant drainage feature.

- (6) In this section—

***animal that is near threatened wildlife*** means an animal that is near threatened wildlife under the *Nature Conservation Act 1992*.

*Note—*

See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 5, part 1 for animals that are near threatened wildlife.

***defined distance***, for a regional ecosystem, means a distance identified in the environmental offsets policy as the relevant distance from the defining banks of a relevant watercourse or relevant drainage feature.

***endangered regional ecosystem*** means a regional ecosystem declared to be an endangered regional ecosystem under the *Vegetation Management Act 1999*, section 22LA.

***of concern regional ecosystem*** means a regional ecosystem declared to be an of concern regional ecosystem under the *Vegetation Management Act 1999*, section 22LB.



***plant that is near threatened wildlife*** means a plant that is near threatened wildlife under the *Nature Conservation Act 1992*.

*Note—*

See the *Nature Conservation (Wildlife) Regulation 2006*, schedule 5, part 2 for plants that are near threatened wildlife.

***relevant drainage feature*** means a drainage feature under the *Water Act 2000*, schedule 4 that is identified on the vegetation management watercourse and drainage feature map.

***relevant watercourse*** means a watercourse identified on the vegetation management watercourse and drainage feature map.

***vegetation management watercourse and drainage feature map*** see the *Vegetation Management Act 1999*, section 20AB.

***vegetation management wetlands map*** see the *Vegetation Management Act 1999*, section 20AA.

### 3 Connectivity areas

- (1) This section applies to a prescribed regional ecosystem—
  - (a) to the extent the ecosystem contains remnant vegetation; and
  - (b) if the ecosystem contains an area of land that is required for ecosystem functioning (a ***connectivity area***).
- (2) The prescribed regional ecosystem is a matter of State environmental significance if the administering agency is satisfied, having had regard to criteria in the environmental offsets policy about connectivity areas, that—
  - (a) the connectivity area is of sufficient size or configured in a way that maintains ecosystem functioning; and
  - (b) the prescribed regional ecosystem will remain despite a threatening process within the meaning of the *Nature Conservation Act 1992*.

#### **4 Wetlands and watercourses**

- (1) Each of the following matters is a matter of State environmental significance—
  - (a) a wetland—
    - (i) in a wetland protection area; or
    - (ii) of high ecological significance shown on the map of Queensland wetland environmental values;
  - (b) a wetland or watercourse in high ecological value waters.
- (2) In this section—

*high ecological value waters* see the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*, schedule 2.

*map of Great Barrier Reef wetland protection areas* see the *Environmental Protection Regulation 2019*, schedule 19, part 2.

*map of Queensland wetland environmental values* see the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*, schedule 2.

*watercourse* see the *Environmental Protection Regulation 2019*, schedule 19, part 1, section 10.

*wetland* means an area shown as a wetland on the map of Queensland wetland environmental values.

*wetland protection area* means an area shown as a wetland protection area on the map of Great Barrier Reef wetland protection areas.

#### **5 Designated precinct in a strategic environmental area**

- (1) A designated precinct in a strategic environmental area is a matter of State environmental significance.
- (2) In this section—

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*designated precinct*, in a strategic environmental area, see the *Regional Planning Interests Regulation 2014*, schedule 2, section 15(3).

## 6 Protected wildlife habitat

- (1) An area that is shown as a high risk area on the flora survey trigger map and that contains plants that are endangered wildlife or vulnerable wildlife is a matter of State environmental significance.
- (2) An area that is not shown as a high risk area on the flora survey trigger map, to the extent the area contains plants that are endangered wildlife or vulnerable wildlife, is a matter of State environmental significance.
- (3) A non-juvenile koala habitat tree located in an area shown as bushland habitat, high value rehabilitation habitat or medium value rehabilitation habitat on the map called ‘Map of Assessable Development Area Koala Habitat Values’ that applies under the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions is a matter of State environmental significance.
- (4) A non-juvenile koala habitat tree is a matter of State environmental significance if it is in—
  - (a) a bushland habitat area under the *Planning Regulation 2017*; or
  - (b) a high value rehabilitation habitat area under the *Planning Regulation 2017*; or
  - (c) a medium value rehabilitation habitat area under the *Planning Regulation 2017*.
- (5) A habitat for an animal that is endangered wildlife or vulnerable wildlife or a special least concern animal is a matter of State environmental significance.

*Examples of habitat—*

an area of land used by an animal for foraging, roosting, nesting or breeding

- (6) In this section—

***flora survey trigger map*** means the map held by the department under the *Nature Conservation (Wildlife Management) Regulation 2006*, section 247.

***koala habitat tree*** means a tree of any of the following genera—

- (a) *Angophora*;
- (b) *Corymbia*;
- (c) *Eucalyptus*;
- (d) *Lophostemon*;
- (e) *Melaleuca*.

***non-juvenile koala habitat tree*** means a koala habitat tree that—

- (a) is more than 4m high; or
- (b) has a trunk with a circumference of more than 31.5cm at 1.3m above the ground.

***special least concern animal*** means the following animals that are least concern wildlife under the *Nature Conservation Act 1992*—

- (a) an echidna (*Tachyglossus aculeatus*);
- (b) a platypus (*Ornithorhynchus anatinus*).

## **7 Protected areas**

A protected area is a matter of State environmental significance.

*Note—*

A coordinated conservation area under the *Nature Conservation Act 1992* is excluded by the Act, definition *protected area*.

## **8 Highly protected zones of State marine parks**

- (1) A highly protected area of a relevant Queensland marine park is a matter of State environmental significance.
- (2) In this section—

**highly protected area** means—

- (a) a zone classified, under the *Marine Parks Act 2004*, as a conservation park zone, marine national park zone or preservation zone; or
- (b) another area prescribed under a regulation or zoning plan, under the *Marine Parks Act 2004*, as a highly protected area.

**relevant Queensland marine park** means any of the following marine parks declared under the *Marine Parks Act 2004*—

- (a) the Great Barrier Reef Coast Marine Park;
- (b) the Moreton Bay Marine Park;
- (c) the Great Sandy Marine Park.

**zone**, for a marine park, see the *Marine Parks Act 2004*, schedule.

## 9 Fish habitat areas

An area declared under the *Fisheries Act 1994* to be a fish habitat area is a matter of State environmental significance.

## 10 Waterway providing for fish passage

- (1) Any part of a waterway providing for passage of fish is a matter of State environmental significance only if the construction, installation or modification of waterway barrier works carried out under an authority will limit the passage of fish along the waterway.
- (2) In this section—

**fish** means fish regulated under the *Fisheries Act 1994*.

**passage**, for fish, means the natural movement patterns of fish species required to maintain the biological integrity of the species.

**waterway** includes a river, creek, stream, watercourse or inlet of the sea.

*waterway barrier works* means a dam, weir or other barrier across a waterway.

**11 Marine plants**

A marine plant within the meaning of the *Fisheries Act 1994* is a matter of State environmental significance.

**12 Legally secured offset areas**

A legally secured offset area is a matter of State environmental significance.

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## Schedule 3 Dictionary

## section 3

*animal that is endangered wildlife or vulnerable wildlife*, for schedule 2, see schedule 2, section 1.

*appellable decision*, for part 7, see section 16.

*approved form* means a form approved by the chief executive under the Act, section 92.

*category B area*, for schedule 2, see schedule 2, section 1.

*decision-maker*, for part 6, see section 13.

*essential habitat*, for protected wildlife, for schedule 2, see schedule 2, section 1.

*essential habitat map*, for schedule 2, see schedule 2, section 1.

*geothermal tenure* see the *Geothermal Energy Act 2010*, schedule 2.

*GHG authority* see the *Greenhouse Gas Storage Act 2009*, schedule 2.

*information notice*, for a decision, means a notice stating the following—

- (a) the decision;
- (b) reasons for the decision;
- (c) all rights of internal review under this regulation;
- (d) the period in which any internal review under this regulation must be started;
- (e) how rights of internal review under this regulation are to be exercised;
- (f) if applicable, that a person may apply, as provided under the QCAT Act, to QCAT for a stay of a decision the subject of an internal review.

***internal review decision***, for part 7, see section 16.

***koala habitat*** means—

- (a) essential habitat mentioned in schedule 2, section 2(3)(b); or
- (b) habitat for an animal mentioned in schedule 2, section 6(5).

***local planning instrument*** means a local planning instrument under the Planning Act.

***mining interest*** means—

- (a) a mining claim, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a petroleum lease granted under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

***non-juvenile koala habitat tree*** see schedule 2, section 6(6).

***person with an interest in the land*** means—

- (a) a person with a registered interest, under the *Land Act 1994* or the *Land Title Act 1994*, in the land; or
- (b) if the land is subject to a lease, mining interest, geothermal tenure or GHG authority—the relevant lessee, interest holder, tenure holder or authority holder; or
- (c) if the land is a forest entitlement area, State forest or timber reserve under the *Forestry Act 1959*—the chief executive of the department in which the *Forestry Act 1959* is administered.

***plant that is endangered wildlife or vulnerable wildlife***, for schedule 2, see schedule 2, section 1.

***prescribed regional ecosystem***, for schedule 2, see schedule 2, section 1.

***regional ecosystem***, for schedule 2, see schedule 2, section 1.

***regulated vegetation management map***, for schedule 2, see schedule 2, section 1.



***relevant entity***, for part 7, see section 16.

***remnant vegetation***, for schedule 2, see schedule 2, section 1.

***repealed South East Queensland Koala Conservation State Planning Regulatory Provisions*** means the document called the ‘South East Queensland Koala Conversation State Planning Regulatory Provisions’, made under the repealed *Sustainable Planning Act 2009* in May 2010.

***reviewable decision***, for part 7, see section 16.

***State development assessment provisions*** see the *Planning Regulation 2017*, schedule 24.

***undisturbed height***, for vegetation, for schedule 2, see schedule 2, section 1.

***undisturbed predominant canopy***, for vegetation, for schedule 2, see schedule 2, section 1.