Queensland Government

Queensland Treasury

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Dear Ms Graham

Consultation Post Implementation Review – Koala habitat regulations

Thank you for your enquiry of 24 June 2022 seeking advice on the adequacy of the Consultation Post Implementation Review (PIR) 'Improving South East Queensland's Koala Habitat Regulations'.

Background

The Department of Environment and Science (the department) notes that the *Nature Conservation and Other Legislation (Koala Conservation) Amendment Regulation 2020* (the Regulation) was introduced to address a decline in koala populations in the South East Queensland region (SEQ) by increasing protection for koala habitat in the State's planning framework.

The Regulation replaced mapping of koala habitat generated by the twelve SEQ local governments using a range of methodologies, with a Koala Conservation Plan Map updated annually applying a consistent methodology across SEQ. This Koala Conservation Plan Map was used to identify 714,000 hectares of Koala Habitat Areas (KHA) where private sector development is now restricted; Koala Priority Areas (KPA) comprising 332,000 hectares of high-quality habitat within the KHA are given the greatest level of planning protection. These determinations are based on biophysical measures such as climate, vegetation, and koala sighting records, however, landholders can also request to make, amend, or revoke determinations affecting their land.

Development applications for projects affecting koala habitat in KHA (that is not KPA) are assessed by the State against the *State Development Assessment Provisions Code 25: Development in SEQ Koala Habitat Areas* to ensure maintenance of habitat connectivity, and that adverse impacts to koala habitat are avoided, mitigated, or offset under the *Environmental Offsets Act 2014*. In KPA, private sector development activities are prohibited from clearing habitat unless an exemption is available, such as those for single houses, the creation or maintenance of firebreaks, or for larger projects assessable under the *Environmental Protection and Biodiversity Conservation Act 1994*.

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Proposal

As a Regulatory Impact Statement was not prepared to inform the making of the Regulation, the department was required to complete a PIR within three years of the Regulation's commencement.

The department has undertaken targeted consultation with conservation groups, the urban development sector and SEQ Local Governments to estimate the impacts of the Regulation. The Consultation PIR presents the results of this consultation, including evidence that complex drafting has led to koala habitat being cleared in a manner beyond the Regulation's intent, plus ineffective monitoring, increased administrative costs, considerable delays for development assessments, and confusion for stakeholders.

The Consultation PIR presents three options:

1. the status quo
2. minor amendments to clarify existing assessment requirements, introduce a self-assessable code for infrastructure projects not subject to the *Planning Regulation 2017*, and online notifications for exempted development clearing
3. as per option 2, but with greater amendment to definitions and assessment triggers to establish clearer thresholds for exempted development.

Option 3 is presented as the preferred option. The department considers that this option has the potential to result in the retention of up to 400 hectares more koala habitat and the reduction of development assessment timeframes by up to 10,000 business days over 10 years relative to the other options, with any cost increases to industry or landholders being largely avoidable via changes to development proposals.

Assessment

The Office of Best Practice Regulation's (the OBPR) assessment of whether a PIR is adequate for the purposes of public consultation has regard to the adequacy criteria in *The Queensland Government Guide to Better Regulation* (the guidelines).

The OBPR considers that the Consultation PIR adequately depicts the department's assessment of the impacts, effectiveness, and continued relevance of the Regulation. The PIR presents the quantitative evidence regarding the effectiveness and efficiency of the Regulation to date, while transparently acknowledging the limitations of the evidence base. The department has proposed options that seek to improve the Regulation's effectiveness and efficiency, estimated the subsequent impacts on stakeholders, and proposed measures to ensure future evaluations of the Regulation will benefit from a more rigorous evidence base.

Given these points, the OBPR considers the Consultation PIR adequate for the purposes of public consultation. However, consultation with stakeholders should assist the department to further assess the policy, including in demonstrating that the recommended option is likely to generate the greatest net benefit to the community.

Please note that in accordance with Cabinet Handbook requirements, this letter of advice should be attached to relevant Cabinet submissions. Consistent with the guidelines, once a Consultation PIR has been approved for release it is published on the OBPR's website along with this letter. After public consultation a Decision PIR, incorporating the consideration of public comments, should be provided to the OBPR for assessment before the matter is referred to Cabinet for a decision.

Please contact Tim Elliott, Senior Economist, on (07) 3035 3488 if you require additional information or guidance concerning the above comments or the guidelines in general.

Yours sincerely



Dr Karen Hooper
Productivity Commissioner

8 July 2022