

Queensland



**COASTAL PROTECTION AND
MANAGEMENT AND OTHER
LEGISLATION AMENDMENT
ACT 2001**

Act No. 93 of 2001

Queensland



COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2001

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Queensland



Coastal Protection and Management and Other Legislation Amendment Act 2001

Act No. 93 of 2001

**An Act to amend legislation about coastal management, and for other
purposes**

[Assented to 10 December 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT ACT 1995

3 Act amended in pt 2

This part amends the *Coastal Protection and Management Act 1995*.

4 Insertion of new s 4A

Part 1, after section 4—

insert—

‘4A Advancing Act’s objects

‘If, under this Act, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the Act’s objects.’.

5 Replacement of ch 1, pt 3, div 1 (Standard definitions)

Chapter 1, part 3, division 1—

omit, insert—

‘Division 1—Dictionary

‘5 Definitions

‘The dictionary in schedule 2 defines particular words used in this Act.’.

6 Amendment of ch 1, pt 3, div 2 hdg (Key definitions)

Chapter 1, part 3, division 2, heading—

omit, insert—

‘Division 2—Other definitions’.

7 Insertion of new ss 5A–5C

Chapter 1, part 3, division 2, before section 6—

insert—

‘5A Meaning of “access channel”

‘(1) “**Access channel**” means an artificial channel constructed in tidal water and connected, or intended to be connected, to a canal.

‘(2) Without limiting subsection (1), “**access channel**” includes—

- (a) training walls or other works associated with the channel; and
- (b) additions or alterations to the channel, training walls or other works.

‘5B Meaning of “artificial waterway”

‘(1) “**Artificial waterway**” means an artificial channel, lake or other body of water.

‘(2) Without limiting subsection (1), “**artificial waterway**” includes—

- (a) an access channel; and
- (b) an artificial channel that—
 - (i) is formed because land has been reclaimed from tidal water; and

- (ii) is intended to allow boating access to allotments on subdivided land; and
 - (c) other artificial channels subject to the ebb and flow of the tide; and
 - (d) any additions or alterations to an artificial waterway.
- ‘(3) However, “**artificial waterway**” does not include the following—
- (a) a swimming pool;
 - (b) an ornamental pond of no more than 5 000 m² in area;
 - (c) a pond—
 - (i) for aquaculture; or
 - (ii) for treating effluent;
 - (d) a freshwater storage reservoir for domestic water supply;
 - (e) a water storage facility—
 - (i) situated on a natural watercourse; and
 - (ii) used for irrigation or other agricultural purposes;
 - (f) a part of a river, creek or stream in which water flows in a natural channel, whether artificially improved or not;
 - (g) a drain for carrying stormwater or other material;
 - (h) any of the following used for accessing port infrastructure if constructed in the area of a port for which a port authority is responsible—
 - (i) a navigation channel;
 - (ii) a harbour swing basin;
 - (iii) a berth pocket;
 - (iv) a berth approach or departure path.

‘5C Meaning of “canal”

‘(1) “**Canal**” means an artificial waterway—

- (a) connected, or intended to be connected, to tidal water; and

- (b) from which boating access to the tidal water is not hindered by a lock, weir or similar structure.

‘(2) **“Canal”** includes a canal surrendered to the State under the Canals Act, section 13(4).¹

‘(3) However, **“canal”** does not include a marina, boat harbour or commercial boat mooring facility.’.

8 Insertion of new s 12A

Chapter 1, part 3, division 2—

insert—

‘12A Meaning of “State coastal land”

‘(1) **“State coastal land”** means land in a coastal management district other than land that is—

- (a) freehold land, or land contracted to be granted in fee simple by the State; or
- (b) a State forest or timber reserve under the *Forestry Act 1959*; or
- (c) in a watercourse or lake as defined under the *Water Act 2000*; or
- (d) subject to a lease or licence issued by the State.

‘(2) In this section—

“licence” includes a permit or other authority issued under any Act relating to mining, but does not include a permit issued under the *Land Act 1994*, section 177(1).².

9 Replacement of s 24 (Chief executive may provide administrative assistance)

Section 24—

omit, insert—

1 Canals Act, section 13 (Existing canals)

2 *Land Act 1994*, section 177 (Chief executive may issue permit)

‘24 Chief executive to record information and provide administrative assistance

‘(1) The chief executive must—

- (a) take appropriate measures to record information about the wave climate and storm tide levels relating to erosion and tidal inundation of the coast; and
- (b) give the information to the advisory council for use in performing its functions.

‘(2) The chief executive may provide the advisory council or a regional consultative group with the administrative assistance necessary for it to perform its functions.’.

10 Amendment of s 26 (Content of State plan)

(1) Section 26—

insert—

‘(1A) In preparing the State plan, the Minister must consider public access to the foreshore.’.

(2) Section 26(1A) and (2)—

renumber as section 26(2) and (3).

11 Amendment of s 44 (Amendment of coastal plans)

(1) Section 44(3), ‘make a minor amendment to a coastal plan to’—

omit, insert—

‘do any of the following’.

(2) Section 44(3)(a) and (b), ‘or’—

omit.

12 Replacement of s 46 (Planning schemes may be amended)

Section 46—

omit, insert—

‘46 Transitional planning schemes may be amended

‘(1) This section applies if a transitional planning scheme is amended under the *Integrated Planning Act 1997*, section 2.3.2,³ because it is not consistent with a regional plan.

‘(2) If the amendment changes how land may be used under the transitional planning scheme, the owner of the land is taken to be an owner mentioned in section 86(1) and the remaining provisions of chapter 5, part 1, apply.’.

13 Amendment of s 47 (Declaration of control districts)

Section 47(6)—

omit.

14 Replacement of s 59 (Coastal building line)

Section 59—

omit, insert—

‘59 Coastal building line

‘(1) For assessment of a development application for building work under the *Integrated Planning Act 1997*, a regulation, or notice that declares a coastal management district, may fix a coastal building line for a coastal management district.

‘(2) However, a notice may fix a coastal building line only for the coastal management district declared under the notice.’.

15 Insertion of new ch 2, pt 3, div 4, and pts 4–7

After section 61—

insert—

³ *Integrated Planning Act 1997*, section 2.3.2 (Power of Minister to direct local government to take action about local planning instrument)

‘Division 4—Offence about damaging vegetation on State coastal land

‘61A Damaging vegetation

‘(1) A person must not damage vegetation on State coastal land without—

- (a) the written approval of the entity responsible for the management and control of the land; or
- (b) other lawful authority, justification or excuse.

Maximum penalty—400 penalty units.

‘(2) In this section—

“**damage**”, to vegetation, does not include minor damage to vegetation that happens in the course of the ordinary use of the land on which the vegetation is situated.

‘PART 4—EROSION PRONE AREAS

‘61B Declaration of erosion prone areas

‘(1) The chief executive may declare an area within the coastal zone to be an erosion prone area if satisfied the area may be subject to erosion or tidal inundation.

‘(2) If the chief executive declares an area under subsection (1), the chief executive must—

- (a) ensure the erosion prone area is shown on a document describing the area; and
- (b) keep the document available for inspection by members of the public at the department’s head office; and
- (c) give a copy of the document to each local government in whose area the erosion prone area or a part of the erosion prone area is situated.

Examples of a ‘document describing the area’—

A map or plan.

‘61C Amending erosion prone areas

‘(1) The chief executive may amend the area of an erosion prone area.

‘(2) If the chief executive amends the area, the chief executive must—

- (a) record the amendment on the document mentioned in section 61B(2)(b) on which the erosion prone area is shown; and
- (b) give a copy of the amended document to each local government in whose area the erosion prone area or a part of the erosion prone area is situated.

‘61D Local governments to keep copies of documents

‘The local government must keep available for inspection by members of the public any document given to it under section 61B(2)(c) or 61C(2)(b) at its head office.

‘PART 5—QUARRY MATERIALS***‘Division 1—Allocation of quarry materials******‘Subdivision 1—Obtaining allocations*****‘61E Applications for allocation of quarry material**

‘(1) A person may apply to the chief executive for an allocation of quarry material below high water mark.

‘(2) The application must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

‘61F Additional information for applications

‘(1) The chief executive may, by written notice, ask the applicant to give the chief executive further information or documents about the application by the reasonable date stated in the notice.

‘(2) Without limiting subsection (1), the chief executive may ask the applicant to give the chief executive information or documents about the potential impact the removal of the quarry material may have on coastal management.

‘(3) If the applicant does not give the chief executive the further information or documents by the stated day, the application lapses.

‘61G Criteria for deciding applications

‘(1) In deciding whether to grant the allocation or refuse the application, or what should be the conditions of the allocation, the chief executive must consider—

- (a) the State plan and regional plans; and
- (b) the impact the removal of the quarry material, including the proposed method of extraction, or the placement of spoil may have on coastal management including the following—
 - (i) the supply of sediments to estuaries and the sea;
 - (ii) the physical integrity of the land, including stability of beds and banks of watercourses;
 - (iii) the quarry material available on the land and any existing allocations for the land;
 - (iv) the ecologically sustainable development of the land and watercourses on the land; and
- (c) if the chief executive is satisfied the removal of the quarry material or the placement of spoil may impact on waters mentioned in the *Environmental Protection (Water) Policy 1997*, schedule 1, column 1—the impact the removal or placement may have on the environmental values and water quality objectives stated in a document mentioned in column 2 of that schedule for the waters; and
- (d) the impact the removal of the quarry material or placement of spoil may have on the management of—

- (i) fish habitats under the *Fisheries Act 1994*; or
- (ii) marine parks under the *Marine Parks Act 1982*; or
- (iii) protected areas under the *Nature Conservation Act 1992*.

‘(2) Also, in deciding an application that involves placement of quarry material in a coastal management district, the chief executive must consider—

- (a) the nature of the material including contaminants in the material; and
- (b) the characteristics of the material’s receiving environment.

‘(3) Subsections (1) and (2) do not stop the chief executive from considering other matters relevant to the application, including, for example—

- (a) fair and equitable access to State resources; and
- (b) economic and social implications of a decision to grant or refuse the application; and
- (c) the views of a local government about the removal of the quarry material or placement of spoil; and
- (d) if the removal or placement happens on land under tidal water—the views of a harbour master about the effect the removal or placement may have on marine safety in the tidal water; and
- (e) if the removal or placement happens on land under tidal water within the limits of a port—the views of the port authority for the land about the removal or placement.

‘61H Deciding applications

‘(1) If the chief executive is satisfied the application should be approved, the chief executive must grant the application.

‘(2) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.

‘(3) Within 30 business days after deciding the application, the chief executive must give the applicant—

- (a) notice of the decision; and

(b) if the chief executive grants the application—a notice (an “**allocation notice**”) in the approved form.

‘(4) The allocation notice—

- (a) has effect from the day stated in the notice; and
- (b) remains in force, unless sooner cancelled or suspended, for the period of not more than 6 years decided by the chief executive.

‘61I Selling allocation of quarry material by auction or tender

‘(1) The chief executive may sell by auction or tender an allocation of quarry material below high water mark.

‘(2) In selling the allocation, the chief executive must consider the impact the removal of the quarry material or placement of spoil may have on coastal management, including the matters mentioned in section 61G.

‘(3) If the chief executive sells an allocation, the chief executive must give the buyer an allocation notice under section 61H(3).

‘(4) Sections 61J to 61L apply to the allocation.

‘Subdivision 2—Content and conditions of allocation notices

‘61J Content of allocation notices

‘Without limiting what may be included in an allocation notice, the notice must state—

- (a) the quantity of quarry material that may be removed under the allocation; and
- (b) the area to which the allocation relates; and
- (c) the rate of royalty payable for removal of the quarry material.

‘61K Conditions of allocation notice

‘The chief executive may impose conditions on the allocation notice the chief executive considers appropriate for coastal management, including, for example, conditions about—

-
- (a) the maximum rate at which the quarry material may be removed; and
 - (b) monitoring the impact of the removal of the quarry material or placement of spoil on coastal management; and
 - (c) the nature and extent of surveys to be carried out in relation to the removal of the quarry material or placement of spoil.

‘61L Allocation holder to give information

‘(1) This section applies to an allocation holder from the day the holder first removes quarry material under the allocation.

‘(2) The holder must, within 20 business days after the end of each month, give to the chief executive a written notice stating the quantity of quarry material removed by the holder under the allocation in the month.

Maximum penalty—50 penalty units.

‘Subdivision 3—Removal of quarry materials may require other approval

‘61M Removal of quarry material is subject to other approvals

‘(1) An allocation notice authorises the allocation holder, during the period the allocation is in force, to access quarry material.

‘(2) However, the allocation holder is not authorised to remove any quarry material under the allocation notice until the holder has obtained—

- (a) if the holder must have a development permit for the removal—a development permit; and
- (b) if the holder must have an environmental authority for the removal—an environmental authority.

‘(3) The application for the development permit or environmental authority must be supported by evidence of the allocation.

‘Subdivision 4—Transferring or renewing allocations

‘61N Transferring allocations

‘(1) The allocation notice holder may apply to the chief executive to transfer all or part of the allocation to another person.

‘(2) The application must be—

- (a) in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application, including, for example, the consent of the transferee to the transfer; and
- (c) accompanied by the fee prescribed under a regulation.

‘(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the transfer as applied for, with or without conditions; or
- (b) approve the transfer, as varied by the chief executive, with or without conditions; or
- (c) refuse the transfer.

‘(4) In making a decision under subsection (3), the chief executive must consider the impact the transfer may have on coastal management, including the matters mentioned in section 61G.

‘(5) Within 30 business days after deciding the application, the chief executive must—

- (a) give the applicant and the other person written notice of the decision; and
- (b) if the transfer is approved—give the transferee a new allocation in accordance with the approval; and
- (c) if the application was not to transfer all of an allocation—give the applicant an amended allocation notice for the part not transferred.

‘(6) The transfer has effect from the day the notice is given.

‘61O Renewing allocations

‘(1) The allocation notice holder may apply to the chief executive to renew the allocation notice.

‘(2) The application must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

‘(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the renewal, as applied for, with or without conditions; or
- (b) approve the renewal, as varied by the chief executive, with or without conditions; or
- (c) refuse the application.

‘(4) In making a decision under subsection (3), the chief executive must consider the impact the renewal may have on coastal management, including the matters mentioned in section 61G.

‘(5) Within 30 business days after deciding the application, the chief executive must give the applicant—

- (a) a written notice stating the decision and the reasons for it; and
- (b) if the renewal is approved—a new allocation notice in accordance with the approval.

‘(6) This division applies, with all necessary changes, to the application as if it were an application for an allocation.

‘Subdivision 5—Amending, suspending or cancelling allocation notices

‘61P Amendment—grounds

‘(1) The chief executive may amend an allocation notice, including, for example, by adding a further condition to the notice—

- (a) with the written agreement of the holder of the notice; or
- (b) if the chief executive is satisfied, or reasonably believes, the amendment is necessary or desirable for coastal management.

‘(2) Without limiting subsection (1), if an allocation notice holder removes quarry material at a rate less than 50% of the maximum rate stated in the notice, the chief executive may amend—

- (a) the total quantity of material permitted to be removed under the notice; or
- (b) the maximum rate.

‘(3) However, an amendment under subsection (1) must not increase the period for which the notice has effect.

‘61Q Suspension or cancellation—grounds

‘The chief executive may suspend or cancel an allocation notice if the chief executive is satisfied, or reasonably believes—

- (a) the allocation notice was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the allocation notice holder—
 - (i) has committed, or is committing, an offence against this Act or another Act relating to protection of the environment; or
 - (ii) has not complied with a condition of the allocation notice; or
 - (iii) has not, within 1 year after the day the notice was issued, applied for—
 - (A) if the holder must have a development permit for the removal—a development permit; and
 - (B) if the holder must have an environmental authority for the removal—an environmental authority; or
- (c) the suspension or cancellation is necessary or desirable for coastal management.

‘61R Amendment, suspension or cancellation—procedure

‘(1) Before amending, suspending or cancelling an allocation notice, the chief executive must give the allocation notice holder a written notice inviting the holder to show why the allocation notice should not be amended, suspended or cancelled (the “**proposed action**”).

‘(2) The notice must state each of the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is to amend the allocation notice—the proposed amendment;
- (e) if the proposed action is suspension of the allocation notice—the proposed suspension period;
- (f) that representations may be made about the notice;
- (g) how the representations may be made;
- (h) where the representations may be made or sent;
- (i) a period within which the representations must be made.

‘(3) The stated period must end at least 10 business days after the notice is given.

‘(4) If, after considering all representations made within the stated period, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to amend the allocation notice—amend the allocation notice; and
- (b) if the proposed action is to suspend the allocation notice—suspend the allocation notice for no longer than the proposed suspension period; and
- (c) if the proposed action is to cancel the allocation notice—cancel the allocation notice or suspend it for a period.

‘(5) This section does not apply if the allocation is amended under section 61P(1)(a).

‘61S Notice and effect of amendment, suspension or cancellation of allocations

‘(1) If the chief executive amends, suspends or cancels an allocation notice, written notice and particulars of the amendment, suspension or cancellation must be given to the allocation holder.

‘(2) The notice must state the decision and the reasons for it.

‘(3) An amendment takes effect from the day the notice is given.

‘(4) If the chief executive suspends the allocation notice, it is ineffective during the period of suspension.

‘(5) The suspension—

(a) may be for the period the chief executive decides; and

(b) has effect from—

(i) the day the notice is given; or

(ii) if a later day is stated in the notice—the stated day.

‘(6) If the chief executive cancels the allocation notice, it ceases to have effect from—

(a) the day the notice is given; or

(b) if a later day is stated in the notice—the stated day.

‘(7) The amendment, suspension or cancellation does not give the holder a right to compensation for any loss or damage arising from the amendment, suspension or cancellation.

‘Subdivision 6—Surrender of allocation

‘61T Surrender

‘The holder of an allocation notice may surrender the holder’s allocation by giving the chief executive—

(a) written notice of the surrender; and

(b) the allocation notice.

‘Division 2—Dredge management plans

‘Subdivision 1—Preliminary

‘61U What is a dredge management plan

‘A dredge management plan is a plan—

- (a) prepared by a person proposing to remove quarry material below high water mark or place spoil derived from the removal (the “**proposed activity**”); and
- (b) used to manage the removal or the placement.

Example of ‘person’ for paragraph (a)—

A government entity or a port authority.

‘61V Preparation of plans

‘(1) In preparing a dredge management plan, a person must consider—

- (a) the matters mentioned in section 61G; and
- (b) the impact the proposed activity may have on coastal management, including the matters mentioned in section 61ZJ(2).

‘(2) The dredge management plan must include the following—

- (a) a description of the area to which the plan relates;
- (b) a description of the method to be used to remove or interfere with the quarry material;
- (c) details of the locations where spoil is to be placed or disposed of;
- (d) details of measures the person intends to take to minimise the proposed activity’s adverse impacts on coastal management.

‘Subdivision 2—Obtaining approval of dredge management plans

‘61W Applications for approval of plans

‘(1) A person may apply to the chief executive for approval of a dredge management plan.

‘(2) The application must be accompanied by—

- (a) a copy of the plan; and
- (b) the fee prescribed under a regulation.

‘61X Requesting additional information and documents

‘(1) The chief executive may, by written notice, ask the applicant to give the chief executive further reasonable information or documents about the plan by the reasonable date stated in the notice.

‘(2) The chief executive may refuse to approve the plan if the applicant does not give the chief executive the further information or documents by the stated day.

‘(3) If the chief executive agrees, the applicant may amend the plan before the chief executive has finished considering it.

‘61Y Approving or refusing to approve plans

‘(1) The chief executive may approve the plan if satisfied the removal of quarry material and the placement or disposal of spoil under the plan—

- (a) are consistent with the State plan and regional plans; and
- (b) do not adversely affect coastal management or navigational safety; and
- (c) do not adversely affect management of—
 - (i) fish habitats under the *Fisheries Act 1994*; or
 - (ii) marine parks under the *Marine Parks Act 1982*; or
 - (iii) protected areas under the *Nature Conservation Act 1992*;
and
- (d) do not adversely affect waters mentioned in the *Environmental Protection (Water) Policy 1997*, schedule 1, column 1, having regard to the environmental values and water quality objectives stated in a document mentioned in column 2 of that schedule for the waters; and
- (e) if the removal or placement happens on land below high water mark within the limits of a port—do not adversely affect the operation of the port.

‘(2) Before approving the plan, the chief executive may require the person to include in the plan details about the following—

- (a) the area to which the plan relates;

- (b) the quantity of quarry material that may be removed under the plan;
- (c) the maximum rate at which the quarry material may be removed;
- (d) monitoring the impact of the removal of the quarry material or placement of spoil on coastal management;
- (e) the nature and extent of surveys to be carried out in relation to the removal of the quarry material or placement of spoil;
- (f) giving the chief executive information about the quantity of quarry material removed by the holder of the plan;
- (g) the rate of royalty payable for removal of the quarry material;
- (h) the placement or disposal of spoil derived from the removal;
- (i) the release of contaminants, dust or particulate matter into the environment, or the emission of noise, because of the removal, placement or disposal of the quarry material;
- (j) monitoring, maintaining or rehabilitating the site at which the removal, placement or disposal happens;
- (k) any other matter the chief executive decides having regard to coastal management.

‘(3) Within 10 business days after deciding the application, the chief executive must give the applicant written notice of—

- (a) the decision; and
- (b) if the chief executive decides to refuse the application—the reasons for the refusal.

‘(4) An approved plan has effect, unless sooner cancelled or suspended, for the period, of not more than 6 years, decided by the chief executive.

‘61Z Relationship with IPA

‘(1) This section applies to a person who has an approved dredge management plan dealing with operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, item 3D.

‘(2) Despite the *Integrated Planning Act 1997*, section 3.1.4, the person is not required to have a development approval for the work if—

(a) the chief executive would be the assessment manager for the work under that Act; and

(b) there would be no referral agencies for the work under that Act.

‘(3) Also, despite the *Integrated Planning Act 1997*, section 3.3.3, the person is not required to refer a development application for the work to the chief executive if the chief executive is a referral agency for the work.⁴

‘(4) Subsections (2) and (3) apply only to the extent the operational works have been approved under the plan.

‘61ZA Transferring approved plan

‘(1) The holder of an approved plan may apply to the chief executive to transfer the plan to another person.

‘(2) The application must be—

(a) supported by sufficient information to enable the chief executive to decide the application, including, for example, the consent of the transferee to the transfer; and

(b) accompanied by the fee prescribed under a regulation.

‘(3) Within 30 business days after receiving the application, the chief executive must—

(a) approve the transfer as applied for, with or without conditions; or

(b) approve the transfer, as varied by the chief executive, with or without conditions; or

(c) refuse the transfer.

‘(4) Within 10 business days after deciding the application, the chief executive must give the applicant and the other person written notice of—

(a) the decision; and

(b) if the chief executive decides to refuse the transfer—the reasons for the refusal.

‘(5) The transfer has effect from the day the notice is given.

⁴ *Integrated Planning Act 1997*, sections 3.1.4 (When is a development permit necessary) and 3.3.3 (Applicant gives material to referral agency)

‘61ZB Renewing approvals

‘(1) The holder of an approved plan may apply to the chief executive for renewal of the approval.

‘(2) The application must be accompanied by—

- (a) a copy of the plan; and
- (b) the fee prescribed under a regulation.

‘(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the renewal, with or without a requirement that the holder include details in the plan of a matter mentioned in section 61Y(2); or
- (b) refuse the application.

‘(4) However, the chief executive may refuse the application or impose a requirement under subsection (3)(a) only if the chief executive is satisfied—

- (a) the holder has not complied with the plan or this Act; or
- (b) the holder proposes to change the way in which, or the place where, the activities under the plan are carried out; or
- (c) the plan is inconsistent with a coastal plan that has been amended or approved since the dredge management plan was approved; or
- (d) the risk of a detrimental impact on coastal management from an activity carried out under the plan has significantly increased since the plan was approved; or
- (e) a matter that was not considered in the preparation of the plan—
 - (i) is having, or may have, a detrimental impact on coastal management; and
 - (ii) needs to be addressed in the plan.

‘(5) Within 10 business days after deciding the application, the chief executive must give the applicant written notice of—

- (a) the decision; and
- (b) if the chief executive decides to refuse the application—the reasons for the refusal.

‘Subdivision 3—Amending plans and suspending or cancelling approvals

‘61ZC Amendment—grounds

‘(1) The chief executive may amend an approved plan—

- (a) with the written agreement of the plan holder; or
- (b) if the chief executive is satisfied, or reasonably believes, the amendment is necessary or desirable for coastal management.

‘(2) However, an amendment must not increase the period for which the plan has effect.

‘61ZD Suspension or cancellation—grounds

‘The chief executive may suspend or cancel approval of a plan if the chief executive is satisfied, or reasonably believes—

- (a) the approval was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the plan holder—
 - (i) has committed, or is committing, an offence against this Act or another Act relating to protection of the environment; or
 - (ii) has not complied with the plan; or
- (c) the suspension or cancellation is necessary or desirable for coastal management.

‘61ZE Amendment, suspension or cancellation—procedure

‘(1) Before amending an approved plan, or suspending or cancelling approval of a plan, the chief executive must give the plan holder a written notice inviting the holder to show why the plan should not be amended, or the approval should not be suspended or cancelled (the **“proposed action”**).

‘(2) The notice must state each of the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;

- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is to amend the plan—the proposed amendment;
- (e) if the proposed action is suspension of the approval—the proposed suspension period;
- (f) that representations may be made about the notice;
- (g) how the representations may be made;
- (h) where the representations may be made or sent;
- (i) a period within which the representations must be made.

‘(3) The stated period must end at least 10 business days after the notice is given.

‘(4) If, after considering all representations made within the stated period, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to amend the plan—amend the plan; and
- (b) if the proposed action is to suspend the approval—suspend the approval for no longer than the proposed suspension period; and
- (c) if the proposed action is to cancel the approval—cancel the approval or suspend it for a period.

‘(5) This section does not apply if the plan is amended under section 61ZC(1)(a).

‘61ZF Notice and effect of amendment, suspension or cancellation

‘(1) If the chief executive amends a plan, or suspends or cancels an approval, written notice and particulars of the amendment, suspension or cancellation must be given to the plan holder.

‘(2) The notice must state the decision and the reasons for it.

‘(3) An amendment takes effect from the day the notice is given.

‘(4) If the chief executive suspends approval of a plan, the approval is ineffective during the period of suspension.

‘(5) The suspension—

- (a) may be for the period the chief executive decides; and

- (b) has effect from—
 - (i) the day the notice is given; or
 - (ii) if a later day is stated in the notice—the stated day.

‘(6) If the chief executive cancels approval of a plan, the approval ceases to have effect from—

- (a) the day the notice is given; or
- (b) if a later day is stated in the notice—the stated day.

‘(7) The amendment, suspension or cancellation does not give the plan holder a right to compensation for any loss or damage arising from the amendment, suspension or cancellation.

‘Division 3—Offences

‘61ZG Removing quarry material

‘(1) A person must not, without reasonable excuse, remove quarry material below high water mark unless the person is the holder of an allocation notice or an approved dredge management plan for the material.

Maximum penalty—1 665 penalty units.

‘(2) A person must not, without a reasonable excuse—

- (a) contravene a condition of an allocation notice; or
- (b) remove quarry material under an approved dredge management plan other than in accordance with the plan.

Maximum penalty—1 665 penalty units.

‘(3) On a conviction for an offence under subsection (1), the court in addition to imposing a penalty may order the offender pay to the chief executive royalty at the rate prescribed under a regulation for section 61ZH(1) for the quarry material removed in contravention of subsection (1).

‘(4) Subsection (1) does not apply to a person who removes quarry material—

- (a) because of an emergency endangering the life or health of a person or involving a serious threat to the environment; or

- (b) while fossicking under a licence under the *Fossicking Act 1994* if the person does not remove more than 1 m³ of quarry material in a year.

‘(5) In this section—

“remove” includes collect.

‘Division 4—General

‘61ZH Royalty or price for quarry material

‘(1) For quarry material removed under an allocation notice or a dredge management plan, royalty at the rate prescribed under a regulation or the price set for the sale is payable to the State as prescribed under the regulation or the sale.

‘(2) The royalty, or the price payable and not paid, is a debt due to the State.

‘(3) Despite subsection (1), a port authority is not liable to pay a royalty for quarry material removed—

- (a) to maintain or improve navigational channels or navigation in its port if the material is disposed of—
- (i) in an area associated with port activities and approved by the Minister of the department through which the *Transport Infrastructure Act 1994* is administered; and
 - (ii) under relevant statutory environmental controls; or
- (b) to reclaim land that is, or is proposed to be, strategic port land under the *Transport Infrastructure Act 1994*.

‘PART 6—DEVELOPMENT APPROVALS FOR ASSESSABLE DEVELOPMENT

‘Division 1—Preliminary

‘61ZI Application of pt 6

‘This part applies if the chief executive is the assessment manager or a concurrence agency for a development application.

‘Division 2—Assessment and conditions of assessable development in the coastal zone

‘61ZJ Assessing applications

‘(1) In assessing the application the chief executive must consider the potential impact of the development on coastal management.

‘(2) Without limiting subsection (1), the chief executive must consider the following—

- (a) natural coastal, riverine and estuarine processes, including, for example, erosion and accretion, wave and tidal currents, littoral drift, tidal prism and tidal inundation;
- (b) natural topography and drainage of coastal land, including, for example, the integrity of dune systems and natural surface runoff;
- (c) coastal wetlands and other coastal ecological systems, including, for example, the wildlife, biological diversity and water quality of the wetlands or systems;
- (d) places or objects that have cultural heritage, landscape, historical, anthropological, archaeological or aesthetic significance or value, including, for example, significance or value under Aboriginal tradition or Torres Strait Islander custom;
- (e) public access to the foreshore.

‘(3) Also, if the application is for reconfiguration of a lot in connection with the construction of an artificial waterway, the chief executive must consider the following—

- (a) the proposed use and maintenance of the artificial waterway after it is constructed;
- (b) how the top water level in the waterway and the water supply, if any, to the waterway will be maintained;
- (c) how water, if any, is supplied to the waterway;
- (d) the capacity of the outlet structure, if any, from the waterway;
- (e) how pollution and siltation of the waterway will be minimised;
- (f) how the waterway’s water quality will be monitored and maintained.

‘(4) Subsections (1) to (3) do not limit section 3.3.15 or chapter 3, part 5, division 2, of the *Integrated Planning Act 1997*.

‘61ZK Declaration for Integrated Planning Act 1997, ss 3.3.15, 3.5.4 and 3.5.5

‘To remove any doubt, it is declared that for the *Integrated Planning Act 1997*, sections 3.3.15(1)(a), 3.5.4(3) and 3.5.5(2)(e) and (3)(e), the laws and policies mentioned in the sections include the State plan and regional plans.⁵

‘61ZL Development approvals—general conditions

‘(1) The chief executive may impose on the development approval the conditions the chief executive considers appropriate for coastal management.

‘(2) Without limiting subsection (1), the chief executive may impose conditions about—

- (a) the rate of progress of the development; and
- (b) if the approval is for development in connection with the construction of an artificial waterway—

⁵ *Integrated Planning Act 1997*, sections 3.3.15 (Referral agency assesses application), 3.5.4 (Code assessment) and 3.5.5 (Impact assessment)

- (i) the specifications for construction of training walls and other works, including, for example, sand bypassing systems, associated with the waterway; or
 - (ii) the use or disposal of spoil derived from the construction of the waterway, including, for example, restrictions about using the spoil to raise the level of any land; or
 - (iii) the profile of the waterway bed, and revetment on the bed or banks of the waterway; or
 - (iv) the size of riparian buffer zones along the waterway; or
 - (v) the management or disposal of acid sulphate soils; and
- (c) if the approval is for development that is reconfiguration of a lot on which a canal has been constructed—
- (i) the matters mentioned in paragraph (b); or
 - (ii) the maintenance and management of the waterway.

‘61ZM Development approvals—condition about financial assurance

‘(1) Without limiting section 61ZL, the chief executive may impose a condition on the development approval that the holder of the approval must give the chief executive financial assurance for the State in the form, and for the reasonable amount, decided by the chief executive.

‘(2) The financial assurance must continue in force until all the conditions of the development approval are complied with to the satisfaction of the chief executive.

‘61ZN Development approvals—conditions for development partly in a coastal management district

‘(1) This section applies to a development application for development partly within a coastal management district, other than an application to reconfigure a lot in connection with the construction of a canal.

‘(2) The chief executive may impose conditions on the development approval for the development only in relation to the part of the development in the district.

‘Division 3—Land surrender conditions

‘Subdivision 1—Preliminary

‘61ZO Application of div 3

‘This division applies to a development application for reconfiguration of a lot situated completely or partly within a coastal management district.

‘Subdivision 2—Land surrender

‘61ZP Governor in Council may approve inclusion of land surrender condition

‘(1) Subject to section 61ZT, the chief executive may include a condition (a “**land surrender condition**”) that a part of the lot (the “**land**”) in the coastal management district must be surrendered to the State for coastal management.

‘(2) However, the land may be required to be surrendered under subsection (1) only if—

- (a) the chief executive is satisfied the land should be surrendered for coastal management; and
- (b) the land is—
 - (i) in an erosion prone area; or
 - (ii) within 40 m of the foreshore; and
- (c) the Governor in Council approves the inclusion of the land surrender condition.

‘61ZQ Notice of condition about land surrender

‘(1) Before including a land surrender condition under section 61ZP(1), the chief executive must give a written notice to—

- (a) the applicant; and
- (b) if the chief executive is not the assessment manager for the application—the assessment manager.

‘(2) The notice must—

- (a) state the chief executive is considering including a land surrender condition; and
- (b) include details of the land to be surrendered.

‘(3) The IDAS process under the *Integrated Planning Act 1997* stops on the day the notice is received by the applicant and starts again on the day the chief executive gives the applicant a notice under section 61ZS(1).

‘61ZR Criteria for decision

‘In deciding whether to include a land surrender condition, and the land to be surrendered, the chief executive must consider how surrender of the land would avoid or minimise detrimental impacts on coastal management.

‘61ZS Notice of decision about land surrender

‘(1) After making a decision about whether or not to include a land surrender condition, the chief executive must give a written notice to—

- (a) the applicant; and
- (b) if the chief executive is not the assessment manager for the application—the assessment manager.

‘(2) The notice must—

- (a) state the decision and the date it was made; and
- (b) if the decision is to include a land surrender condition—
 - (i) state the day the Governor in Council approved the inclusion of the land surrender condition; and
 - (ii) include details of the land to be surrendered.

‘61ZT When land surrender condition may not be included

‘The chief executive must not include a land surrender condition on the development approval for the application if—

- (a) the lot relating to the application was part of another lot that has been the subject of—
 - (i) a development application; or

- (ii) an application to rezone land under the *Local Government (Planning and Environment) Act 1990*; and
- (b) a part of the other lot was surrendered to the State under a land surrender condition or the Beach Protection Act, section 41C(6) or 45(7).⁶

‘61ZU Other matters about land surrender condition

‘(1) No compensation is payable because of a land surrender condition.

‘(2) Despite the *Integrated Planning Act 1997*, section 4.1.27(1)(b), the applicant for the development approval may not appeal to the court against a land surrender condition.

‘(3) To remove any doubt, it is declared that a land surrender condition complies with the *Integrated Planning Act 1997*, section 3.5.30.⁷

‘Division 4—Matters about artificial waterways

‘Subdivision 1—Canals

‘61ZV Canals—surrender to the State

‘(1) This section applies to a development application to reconfigure a lot in connection with the construction of a canal.

‘(2) The area of the canal relating to the development must be surrendered to the State as a public waterway.

6 Beach Protection Act, sections 41C (Mandatory condition for rezoning approvals) or 45 (Opening of road or subdivision of land in coastal management control district)

7 *Integrated Planning Act 1997*, sections 4.1.27 (Appeals by applicants) and 3.5.30 (Conditions must be relevant or reasonable)

‘Subdivision 2—Development applications involving artificial waterways

‘61ZW Applications to include operational works

‘A development application for the reconfiguration of a lot in connection with the construction of an artificial waterway must relate also to operational work associated with the construction of the artificial waterway.

‘61ZX When assessment manager must refuse application

‘The assessment manager for a development application for the reconfiguration of a lot in connection with the construction of a canal must refuse the application if—

- (a) the canal is to intersect, or be connected to, inundated land or leased land; and
- (b) the registered proprietor of the inundated land or lessee of the leased land may restrict or prohibit the use or movement of vessels in water on the land.

‘Subdivision 3—Plans of subdivision

‘61ZY Requirements for plans of subdivision

‘(1) If a plan of subdivision shows an artificial waterway on the plan, the plan must—

- (a) show the area of the artificial waterway as a separate lot; and
- (b) include a metes and bounds description of the land on which the waterway is to be constructed; and
- (c) clearly indicate—
 - (i) if the waterway is a canal—that the land is to be a canal; and
 - (ii) if the waterway is not a canal—that the land is an artificial waterway; and
 - (iii) any access channel associated with the waterway.

‘(2) Also, the local government for the local government area in which the waterway is constructed must certify on the plan that—

- (a) the waterway, and any access channel associated with the waterway, is constructed in accordance with the development approval for the waterway; and
- (b) if the waterway is not a canal—the local government is satisfied arrangements have been made, or will be made, for the maintenance and management of the waterway.

‘(3) Subsections (1) and (2) apply in addition to the requirements for registration of a plan of subdivision under the *Land Title Act 1994*, section 50.⁸

‘61ZZ Registration of instruments—construction of artificial waterways

‘(1) The registrar of titles must not register an instrument dealing with land the subject of a reconfiguration of a lot in connection with the construction of an artificial waterway unless—

- (a) the plan of subdivision for the reconfiguration of the lot is registered under the *Land Title Act 1994*; and
- (b) if the artificial waterway is a canal—
 - (i) the plan of subdivision is certified by a local government under section 61ZY(2)(a); and
 - (ii) the area of the canal has been surrendered to the State as a public waterway.

‘(2) Subsection (1) does not apply to an instrument surrendering the area of a canal to the State if the plan of subdivision for the reconfiguration of a lot in connection with the construction of the canal is—

- (a) registered under the *Land Title Act 1994*; and
- (b) certified by a local government under section 61ZY(2)(a).

⁸ *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

‘PART 7—MISCELLANEOUS

‘61ZZA Maintenance of canals

‘(1) A local government must maintain and keep clean each—

- (a) canal in its area; and
- (b) access channel for a canal mentioned in paragraph (a), whether or not the access channel is in its area.

‘(2) Subsection (1) does not apply to—

- (a) a canal, other than an access channel for the canal, constructed under the *Integrated Resort Development Act 1987*; or
- (b) a canal constructed under the *Sanctuary Cove Resort Act 1985*.

‘(3) In this section—

“canal” means—

- (a) an artificial waterway surrendered to the State under this Act or the Canals Act; or
- (b) a canal surrendered under a lease under the *Land Act 1994*.

‘61ZZB Canal waters are part of coastal management district

‘(1) The waters of a canal constructed completely or partly within a coastal management district are taken to be part of the coastal management district when the canal is connected to tidal water.

‘(2) Subsection (1) applies to waters of the canal to the extent of the tidal limit.

‘61ZZC Development permits—right to use and occupy

‘(1) This section applies to a development permit for operational work that is tidal works on land under tidal water unless—

- (a) a lease is granted under the *Land Act 1994* for the land; or
- (b) a permit to occupy is issued under that Act for the land.

‘(2) The development permit is taken to include a right to use and occupy the land on which the tidal works are situated.

‘61ZZD Obligation to keep certain tidal works in safe condition

‘(1) This section applies to an owner of freehold land, and a lessee of land leased from the State, if the land is—

- (a) above high water mark; and
- (b) connected to, or receives the benefit of, a structure for which a development permit for operational work that is tidal works on land under tidal water has been given.

‘(2) The owner or lessee must ensure the structure is maintained in a safe condition.

Examples of a ‘structure’—

- a jetty
- a pontoon
- a boat ramp.

‘(3) In this section—

“lessee”, of land leased from the State, means a person registered in the land registry under the *Land Act 1994* as the holder of a lease from the State for the land.

“owner”, of freehold land, means a person recorded in the freehold land register under the *Land Title Act 1994* as a proprietor of the land.’.

16 Insertion of new s 62A

After section 62—

insert—

‘62A Investigative functions of authorised persons

‘An authorised person has the function of conducting investigations and inspections to monitor and enforce compliance with—

- (a) this Act; and
- (b) the *Integrated Planning Act 1997*, so far as it relates to assessable development completely or partly within a coastal management district.’.

17 Amendment of s 103 (Regulation making power)

(1) Section 103, heading—

omit, insert—

‘103 Regulation-making power’.

(2) Section 103(2)—

insert—

‘(ea)requirements for erecting or altering a building or other structure on land in an erosion prone area;’.

(3) Section 103—

insert—

‘(2A) Without limiting subsection (2)(f), a regulation may prescribe fees payable to the chief executive in relation to the chief executive’s functions under the *Integrated Planning Act 1997* as assessment manager or a concurrence agency.

‘(2B) A regulation may prescribe when the chief executive may waive a royalty, or waive or refund a fee, payable under this Act.’.

18 Insertion of new s 103A and ch 6, hdg and pt 1, hdg

After section 103—

insert—

‘103A Numbering and renumbering of Act

‘In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.⁹

⁹ *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions)

‘CHAPTER 6—TRANSITIONAL PROVISIONS

‘PART 1—TRANSITIONAL PROVISION FOR ORIGINAL ACT (No. 41 of 1995)’.

19 Insertion of new ch 6, pt 2

After section 104—

insert—

‘PART 2—TRANSITIONAL PROVISIONS FOR COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2001

‘Division 1—Coastal management districts

‘105 Control districts taken to be coastal management districts

‘From the commencement of this section, each area that was a control district under this Act immediately before the commencement of the section is taken to be a coastal management district.

‘106 Declaration about coastal management districts in areas covered by regional plans

‘(1) This section applies if—

- (a) a coastal management district is declared under section 47(1)(a) for an area covered by a regional plan; and
- (b) the area includes a coastal management district or part of a coastal management district (a **“former district”**) because of section 105.

‘(2) The former district that is within the area covered by the plan ceases to be a coastal management district under section 105.

***‘Division 2—Authorities, permits and approvals under Harbours Act,
Beach Protection Act and Canals Act***

‘107 Continuing effect of authorities under Harbours Act

‘(1) This section applies to a following authority in force immediately before the commencement of the section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91.

‘(2) From the commencement, the authority, and any conditions of the authority, have effect as if the authority were a development approval in the form of a development permit for operational work under the *Integrated Planning Act 1997*, schedule 8, part 1, item 3D.

‘(3) Subsection (2) applies only to the extent the carrying out of the operational work could have been sanctioned or authorised under the Harbours Act, section 86 or 91.

‘108 Continuing effect of right to use and occupy

‘(1) This section applies to a sanction to carry out works given under the Harbours Act, section 86, if, under that section, a right to use and occupy land relating to the sanction is in force immediately before the commencement of this section.

‘(2) From the commencement, the right to use and occupy the land continues to have effect.

‘(3) However, the right to use and occupy the land ceases to have effect if, under the *Land Act 1994*—

- (a) a lease is granted for the land; or
- (b) a permit to occupy is issued for the land; or
- (c) the land is dedicated as a reserve.

**‘109 Continuing effect of permits under Beach Protection
Act, section 44**

‘(1) This section applies to a permit given under the Beach Protection Act, section 44(3),¹⁰ and in force immediately before the commencement of the section.

‘(2) From the commencement, the permit, and any conditions of the permit, have effect as if the permit were a development approval in the form of a development permit for a material change of use of premises.

‘(3) Subsection (2) applies despite the repeal of the Beach Protection Act and only to the extent the carrying out of the material change of use of premises could have been authorised under the Beach Protection Act, section 44.

**‘110 Continuing effect of a consent under Beach Protection
Act, section 45**

‘(1) This section applies to a consent given under the Beach Protection Act, section 45(6), to an application relating to an approval to open a road or subdivide land in a coastal management district.

‘(2) From the commencement of this section, the consent and any conditions of the consent, have effect as if the consent were a development approval in the form of a development permit to reconfigure a lot.

‘(3) Subsection (2)—

- (a) applies despite the repeal of the Beach Protection Act; and
- (b) applies only to the extent the reconfiguring of a lot could have been authorised under the Beach Protection Act, section 45(6); and
- (c) has effect only for the period the approval would have had effect if the Beach Protection Act had not been repealed.

¹⁰ Beach Protection Act, section 44 (Control of building operations)

‘111 Continuing effect of permits under Beach Protection Act, section 47

‘(1) This section applies to a permit given under the Beach Protection Act, section 47(1A),¹¹ and in force immediately before the commencement of this section.

‘(2) From the commencement, the permit, and any conditions of the permit, have effect as if the permit were a development approval in the form of a development permit for operational work.

‘(3) Subsection (2)—

- (a) applies despite the repeal of the Beach Protection Act; and
- (b) applies only to the extent the work could have been authorised under the Beach Protection Act, section 47(1A); and
- (c) has effect only for the period the permit would have had effect if the Beach Protection Act had not been repealed.

‘112 Continuing effect of approvals under Canals Act

‘(1) This section applies to the following approvals in force immediately before the commencement of the section—

- (a) a provisional approval granted under the Canals Act, section 5(4)(b);
- (b) a final approval granted under the Canals Act, section 7(3).

‘(2) Despite the repeal of the Canals Act, from the commencement—

- (a) the provisional approval, and any conditions of the approval, have effect as if the approval were a preliminary approval to reconfigure a lot; and
- (b) the final approval, and any conditions of the approval, have effect as if the approval were a development approval in the form of a development permit for—
 - (i) reconfiguration of a lot to construct an artificial waterway; and
 - (ii) operational works to construct the waterway.

11 Beach Protection Act, section 47 (Certain acts prohibited without permit)

‘(3) Subsection (2) has effect only for the period the approval would have had effect if the Canals Act had not been repealed.

‘113 Relationship to Integrated Planning Act 1997, ch 3, pt 5, div 5

‘(1) This section applies to each of the following (a “**deemed approval**”)—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a permit under the Beach Protection Act, section 44;
- (d) a consent given under the Beach Protection Act, section 45(6), to an application relating to an approval to open a road or subdivide land in a coastal management district;
- (e) a permit under the Beach Protection Act, section 47(1A);
- (f) a provisional approval to construct a canal under the Canals Act, section 5;
- (g) a final approval to construct a canal under the Canals Act, section 7.

‘(2) The *Integrated Planning Act 1997*, chapter 3, part 5, division 5 applies to a deemed approval.

‘(3) However, if the deemed approval is for operational work that is tidal works associated with construction of a structure, the currency period for the deemed approval is—

- (a) the 4 years starting the day this section commences; or
- (b) if the deemed approval states or implies a time for the approval to lapse—the period from the day the approval had effect until the stated or implied time.

‘(4) If development under a deemed approval mentioned in subsection (3) is not substantially completed at the end of the currency period for the approval, the deemed approval lapses.

‘Division 3—Dredging permits

‘114 Continuing effect of dredging permits

‘(1) This section applies to a dredging permit granted under the *Marine Land Dredging By-law 1987*, section 7.

‘(2) Despite the repeal of the *Marine Land Dredging By-law 1987*, the permit, and any conditions of the permit continue to have effect for the term of the permit.

‘Division 4—Applications in progress

‘115 Effect of commencement on certain applications

‘(1) This section applies to an application for any of the following not finally decided before the commencement of this section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a permit under the Beach Protection Act, section 44;
- (d) a consent under the Beach Protection Act, section 45(6), relating to an approval to open a road or subdivide land in a coastal management district;
- (e) a permit under the Beach Protection Act, section 47(1A);
- (f) a provisional approval to construct a canal under the Canals Act, section 5;
- (g) a final approval to construct a canal under the Canals Act, section 7;
- (h) a dredging permit under the *Marine Land Dredging By-law 1987*, section 6.

‘(2) From the commencement—

- (a) processing of the application and all matters incidental to the processing must proceed as if the Act or by-law under which the application was made had not been repealed; and

- (b) any sanction, authorisation, permit, consent or approval issued is taken to be a preliminary approval or development permit, as the case may be.

‘116 When certain applications lapse

‘(1) This section applies to an application for any of the following made before the commencement of the section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a provisional approval to construct a canal under the Canals Act, section 5.

‘(2) If the chief executive has, by written notice given before the commencement of this section, asked the applicant to give the chief executive a stated document or information relevant to the application, the applicant must give the stated document or information to the chief executive within 1 year after the commencement.

‘(3) If the applicant does not give the chief executive the stated document or information within the period mentioned in subsection (2), the application lapses.

‘117 Applications to reconfigure a lot in a coastal management district

‘(1) This section applies if—

- (a) immediately before the commencement of the section, a person who holds an authority from a local government to reconfigure a lot in a coastal management district has not applied for the Governor in Council’s consent under the Beach Protection Act, section 45(4); and
- (b) after the commencement, the person intends to reconfigure the lot.

‘(2) The person must apply for a development approval for the reconfiguration under the *Integrated Planning Act 1997*.

‘(3) The chief executive is the assessment manager for the application.

‘Division 5—Dissolution of Beach Protection Authority

‘118 Dissolution of Beach Protection Authority

‘On the commencement of this section—

- (a) the Beach Protection Authority (the “**authority**”) is dissolved; and
- (b) each member of the authority goes out of office; and
- (c) the assets and liabilities of the authority—
 - (i) are transferred to the State and become assets and liabilities of the State; and
 - (ii) are to be administered by the Minister; and
- (d) the State is substituted as a party for the authority in all pending and existing proceedings to which the authority is a party.

‘119 References to Beach Protection Authority

‘(1) This section applies to a reference in an Act or document, immediately before the commencement of the section, to the Beach Protection Authority.

‘(2) From the commencement, the reference may, if the context permits, be taken to be a reference to the chief executive.

‘Division 6—Erosion prone areas

‘120 Transition of areas specified in erosion prone area plans

‘(1) This section applies to an area that, immediately before the commencement of the section, is specified in an erosion prone area plan under the Beach Protection Act as an area that may be subject to erosion or encroachment by tidal water.

‘(2) From the commencement, the area is taken to be an erosion prone area under this Act.

‘(3) This section applies despite the repeal of the Beach Protection Act.’.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

20 Act amended in pt 3

This part amends the *Integrated Planning Act 1997*.

21 Amendment of sch 8 (Assessable, self-assessable and exempt development)

(1) Schedule 8, part 1—

insert—

3D. Carrying out operational work that is—

- (a) tidal works; or
- (b) any of the following works carried out completely or partly within a coastal management district—
 - (i) interfering with quarry material on State coastal land above high water mark;
 - (ii) disposing of dredge spoil or other solid waste material in tidal water, other than under an allocation notice under the *Coastal Protection and Management Act 1995*;
 - (iii) draining or allowing drainage or flow of water or other matter across State coastal land above high water mark;
 - (iv) building a structure in a watercourse, other than in tidal water, if the structure interferes with the flow of water in the watercourse;
 - (v) reclaiming land under tidal water;
 - (vi) constructing an artificial waterway associated with the reconfiguration of a lot;
 - (vii) constructing an artificial waterway not associated with the reconfiguration of a lot on land, other than State coastal land, above high water mark if the maximum surface area of water in the waterway is at least 5 000 m²;

(viii) constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high water mark;

(ix) removing or interfering with coastal dunes on land, other than State coastal land, that is in an erosion prone area and above high water mark.’.

(2) Schedule 8, part 3—

insert—

‘21C. Operational work for the construction of a navigational aid or sign for maritime navigation.’.

(3) Schedule 8, part 4, item 22—

insert—

‘ **“artificial waterway”** means an artificial waterway as defined under the *Coastal Protection and Management Act 1995*, section 5B.

“coastal dune” means a ridge or hillock of sand or other material—

- (a) on the coast; and
- (b) built up by the wind.

“coastal management district” means a coastal management district under the *Coastal Protection and Management Act 1995*, other than an area declared as a coastal management district under section 47(2) of that Act.

“erosion prone area” means an erosion prone area as defined under the *Coastal Protection and Management Act 1995*.

“high water mark” means the ordinary high water mark at spring tides.

“ponded pasture” means a permanent or periodic pondage of water in which the dominant plant species are pasture species used for grazing or harvesting.

“quarry material”, for schedule 8, part 1, item 3D, means quarry material as defined under the *Coastal Protection and Management Act 1995*.

“State coastal land” means State coastal land as defined under the *Coastal Protection and Management Act 1995*, section 12A.

“tidal water” means the sea and any part of a harbour or watercourse ordinarily within the ebb and flow of the tide at spring tides.

“tidal works”—

1. “Tidal works” means work in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land.
2. “Tidal works” includes work mentioned in item 1 that is associated with construction of a basin, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, power line, seawall, slip, small craft facility, training wall or wharf.
3. “Tidal works” does not include work mentioned in item 1 that is—
 - (a) erecting a sign or other structure, including, for example, a navigational aid or sign for maritime navigation, under a direction made under another Act; or
 - (b) building a drain that—
 - (i) is less than 1 m deep; and
 - (ii) has a cross sectional area less than 2.5 m²; or
 - (c) assessable development under schedule 8, item 3D(b).

“watercourse”, for schedule 8, part 1, item 3D, means a river, creek or stream in which water flows permanently or intermittently—

- (a) in a natural channel, whether artificially improved or not; or
- (b) in an artificial channel that has changed the course of the watercourse.’.

PART 4—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

22 Act amended in pt 4

This part amends the *Local Government Act 1993*.

23 Insertion of new s 934A

After section 934—

insert—

‘934A Canals

‘(1) A local government may make local laws about each of the following matters for a canal in its area—

- (a) the movement and use of vessels, and the use of structures, in the canal;
- (b) the obligations of the owner of a structure in the canal, including, for example, obligations about maintaining the structure in a safe condition;
- (c) if, under the *Coastal Protection and Management Act 1995*, the local government must maintain the canal and keep it clean—the maintenance and cleaning of the canal.¹²

‘(2) Subsection (1) is subject to the *Transport Operations (Marine Safety) Act 1994*.

‘(3) In this section—

“**canal**” means a canal as defined under the *Coastal Protection and Management Act 1995*, section 5C.

“**owner**”, of a structure, means—

- (a) the holder of a development permit under the *Integrated Planning Act 1997* to build the structure; or
- (b) the owner of the land receiving the benefit of the structure or to which the structure is connected.’.

12 For the canals a local government must maintain and keep clean, see the *Coastal Protection and Management Act 1995*, section 61ZZA.

PART 5—MINOR AMENDMENTS AND REPEAL

24 Acts amended—schedule

The schedule amends the Acts it mentions.

25 Legislation repealed

The following legislation is repealed—

- (a) *Beach Protection Act 1968*;
- (b) *Canals Act 1958*;
- (c) *Transport Infrastructure Act 1994*, sections 233 and 236.

SCHEDULE**MINOR AMENDMENTS**

section 24

**COASTAL PROTECTION AND MANAGEMENT
ACT 1995****1 Chapter 1, part 2, heading—***omit, insert—***‘PART 2—OBJECTS AND ACHIEVEMENT OF
COASTAL MANAGEMENT’.****2 Section 3, heading—***omit, insert—***‘3 Main objects of Act’.****3 Section 3, words before paragraph (a)—***omit, insert—*

‘The main objects of this Act are to—’.

4 Section 4(b)—*omit, insert—***‘(b) Coastal management districts**

- Declaring coastal management districts in the coastal zone as areas requiring special development controls and management practices.’.

SCHEDULE (continued)

5 Section 6, heading—*omit, insert—***‘6 Meaning of “coast” ’.****6 Section 6, ‘is’—***omit, insert—*

‘means’.

7 Section 7, heading—*omit, insert—***‘7 Meaning of “coastal management” ’.****8 Section 8, heading—***omit, insert—***‘8 Meaning of “coastal resources” ’.****9 Section 9, heading—***omit, insert—***‘9 Meaning of “coastal waters” ’.****10 Section 9, ‘are’—***omit, insert—*

‘means’.

SCHEDULE (continued)

11 Section 10, heading—*omit, insert—***‘10 Meaning of “coastal wetlands” ’.****12 Section 11, heading—***omit, insert—***‘11 Meaning of “coastal zone” ’.****13 Section 11, ‘is—’—***omit, insert—***‘means—’.****14 Section 11(a), ‘and’—***omit, insert—***‘or’.****15 Section 12, heading—***omit, insert—***‘12 Meaning of “ecologically sustainable development” ’.****16 Section 16(2)(b), ‘encroachment by tidal water’—***omit, insert—***‘tidal inundation’.**

SCHEDULE (continued)

17 Sections 31(1), 35(2)(b), 41(3)(b), 47(1), (2), (5), (7) and (8), 48, 49, 50(1), (2)(a) and (5)(b), 51(1), 52(1) and (4)(b), 53(2)(a), 60(1), 61(1), 79(5)(b), 86(1) and 103(2)(a) to (e), ‘control’—

omit, insert—

‘coastal management’.

18 Chapter 2, part 3, heading—

omit, insert—

**‘PART 3—COASTAL MANAGEMENT DISTRICTS AND
EROSION PRONE AREAS’.**

19 Chapter 2, part 3, division 1, heading—

omit, insert—

***‘Division 1—Declaration, amendment, amalgamation and abolition of
coastal management districts’.***

20 Sections 47 to 51, headings, ‘control’—

omit, insert—

‘coastal management’.

21 Section 47(1), ‘coastal plan’—

omit, insert—

‘plan’.

22 Section 48(1)(c), ‘inland’—

omit.

SCHEDULE (continued)

23 Section 49(c), ‘the area’—*omit, insert—*

‘a foreshore in the area’.

24 Chapter 2, part 3, division 3, heading—*omit, insert—**‘Division 3—General provisions about coastal management districts’.***25 Section 80(1), ‘52, 53, 84 or 85’—***omit, insert—*

‘52(6), 53(5), 84(12) or 85(6)’.

26 Section 85(2), ‘ending’—*omit, insert—*

‘pending’.

27 Section 88(1), from ‘6 months—’—*omit, insert—*

‘6 months after—

(a) if section 86(2) applies—the refusal of the application; or

(b) if section 86(3) applies—the change of use.’.

28 Chapter 6, part 1, after section 104—*insert—**‘Note—**Under the Coastal Protection and Management and Other Legislation Amendment Act 2001, control districts were renamed as coastal management districts.’.*

SCHEDULE (continued)

29 Schedule 2, definitions, “coastal building line” and “control district”—

omit.

30 Schedule 2—

insert—

‘**“access channel”** see section 5A.

“allocation notice” see section 61H(3)(b).

“artificial waterway” see section 5B.

“assessable development” see *Integrated Planning Act 1997*, schedule 10.

“assessment manager” see *Integrated Planning Act 1997*, section 3.1.7.¹³

“Beach Protection Act” means the *Beach Protection Act 1968*.

“Beach Protection Authority” means the Beach Protection Authority constituted under the Beach Protection Act, section 5.

“building” means a fixed structure that is either completely or partly enclosed by walls and is roofed, and includes any part of a building.

“canal” see section 5C.

“Canals Act” means the *Canals Act 1958*.

“coastal building line” means a line declared as a coastal building line under this Act.

“coastal management district” means a part of the coastal zone declared under this Act as a coastal management district.

13 Under section 3.1.7 (Assessment manager) of the Integrated Planning Act, the **“assessment manager”**, for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act.

SCHEDULE (continued)

- “concurrence agency”**, for a development application, see the *Integrated Planning Act 1997*, schedule 10.¹⁴
- “deemed approval”** see section 113(1).
- “development”** see *Integrated Planning Act 1997*, section 1.3.2.¹⁵
- “development application”** means an application for a development approval.
- “development approval”** see *Integrated Planning Act 1997*, schedule 10.¹⁶
- “development permit”** see *Integrated Planning Act 1997*, schedule 10.
- “environmental authority”** see *Environmental Protection Act 1994*, schedule 3.
- “erosion prone area”** means an area declared to be an erosion prone area under section 61B(1).
- “former district”** see section 106(1)(b).
- “government entity”** means a government department or an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act for a public or official purpose, and includes part of a government entity.

14 Under the *Integrated Planning Act*, the concurrence agency for a development application is the entity prescribed under a regulation under that Act as a concurrence agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

15 *Integrated Planning Act 1997*, section 1.3.2 (Meaning of “development”)—

1.3.2. “Development” is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.

Chapter 1, part 3, division 3 of the *Integrated Planning Act* contains supporting definitions and explanations for the term “development”.

16 Under the *Integrated Planning Act 1997*, a development approval is required for certain development. A development approval may be in the form of a preliminary approval, a development permit or a combination of both of them.

SCHEDULE (continued)

“harbour master” means a person who is appointed under the *Transport Operations (Marine Safety) Act 1994* as a harbour master.

“Harbours Act” means the repealed *Harbours Act 1955* as continued to have effect under the *Transport Infrastructure Act 1994*, sections 233 and 236.

“inundated land” means freehold land that, through the excavation of the land or other land, has become inundated by water subject to tidal influence, but does not include a canal, or part of a canal.

“land surrender condition” see section 61ZP(1).

“leased land” means land held under a lease under the *Land Act 1994*.

“local government area” means the part of the State—

- (a) established as a local government area under the *Local Government Act 1993*; or
- (b) declared to be a council area under the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984*.

“plan of subdivision” see *Land Title Act 1994*, section 49.

“port” see *Transport Infrastructure Act 1994*, schedule 3.

“preliminary approval” see the *Integrated Planning Act 1997*, schedule 10.

“quarry material”—

1. “Quarry material” means material on State coastal land, other than a mineral within the meaning of any Act relating to mining.
2. For item 1, material includes, for example, stone, gravel, sand, rock, clay, mud, silt and soil, unless it is removed from a culvert, stormwater drain or other drainage infrastructure as waste material.

“reasonably believes” means believes on grounds that are reasonable in the circumstances.

“State coastal land” see section 12A.

SCHEDULE (continued)

“tidal works”—

1. “Tidal works” means work in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land.
2. “Tidal works” includes work mentioned in item 1 that is associated with construction of a basin, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, power line, seawall, slip, small craft facility, training wall or wharf.
3. “Tidal works” does not include work mentioned in item 1 that is—
 - (a) erecting a sign or other structure, including, for example, a navigational aid or sign for maritime navigation, under a direction made under another Act; or
 - (b) building a drain that—
 - (i) is less than 1 m deep; and
 - (ii) has a cross sectional area less than 2.5 m²; or
 - (c) assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, item 3D(b).

“transitional planning scheme” see *Integrated Planning Act 1997*, section 6.1.3.’.

INTEGRATED PLANNING ACT 1997

1 Section 1.1.2(2), ‘2002’—

omit, insert—

‘2004’.

SCHEDULE (continued)

LAND ACT 1994

- 1** Schedule 6, definition “inundated land”, ‘*Canals Act 1958*’—
omit, insert—
‘Coastal Protection and Management Act 1995’.