COASTAL PROTECTION AND MANAGEMENT BILL 1995

EXPLANATORY NOTES

The *Coastal Protection and Management Bill* has been drafted to be consistent with current legislative practice and in modern language. As a consequence particular sections, clauses and sub-clauses require little or no specific further explanation and in these Explanatory Notes those parts may be repeated or summarised in general terms only.

GENERAL OUTLINE

The Bill's Short Title

Coastal Protection and Management Act 1995.

Reasons for the Bill

The State Government's Coastal Protection Strategy Green Paper released in March 1991 focused attention on the need for management and protection of the coastal zone. The Green Paper proposed a strategy with the following key elements:

(a) reform of the existing legislation;

(b) determination of coastal management policy objectives and guidelines;

(c) preparation of a State-wide coastal management plan; and

(d) preparation and implementation of regional coastal management plans.

The proposed strategy was developed after considering coastal management systems throughout Australia, and related Queensland Government initiatives.

A *Coastal Protection Bill* was prepared and released as an exposure draft for public consultation and comment. The public consultative process identified a range of issues which arose from written submissions, matters raised at public meetings and comments made at meetings with key stakeholders.

As a consequence of this consultative process revised drafting instructions were prepared and considered by Cabinet in November 1994. These were subsequently referred to the Office of Parliamentary Counsel for the preparation of the final draft version of the Bill.

Objectives of the Legislation

The object of the legislation is to protect and manage Queensland's coastal zone while allowing for development that improves the total quality of life, now and in the future, in a way that maintains the ecological processes on which life depends.

This is to be achieved by an integrated approach to coastal planning and development control that is consistent with the above stated objective and with the principles of ecologically sustainable development. Other legislation and planning regimes (for example Integrated Catchment Management) will be used where practical.

The legislation will establish a Coastal Protection Advisory Council (CPAC) to promote the objectives of the Act and advise the Minister on its implementation.

The way in which the policy objectives are to be achieved in the Bill

This integrated approach to coastal planning and development is achieved through:

(a) Coastal Planning

(i) The preparation of a State coastal management plan.

The State plan may include: a statement on the principles of coastal management; policies of State significance; the identification of areas of State coastal conservation

significance and strategies for the protection of these areas; guidelines for the implementation of ecologically sustainable development of the coastal zone and its resources; and resource maps and information.

(ii) The preparation of regional coastal management plans.

Regional coastal management plans will cover the entire coastal zone. Above High Water Mark they will interact with and guide local government schemes. Below High Water Mark they will extend offshore to the limit of Queensland territorial waters (approximately five kilometres). In these marine areas they will provide the strategic framework to integrate planning across the High Water Mark boundary and will incorporate Marine Parks as a primary management tool.

Regional plans will implement the policies of the State plan at the regional/local level and can involve strategies and policies of particular relevance to that section of the coast which is important given the wide diversity in coastal geographic features and coastal processes throughout the State. In developing regional plans, local government planning schemes and State Government planning strategies will be integrated, thus ensuring complementary land uses between adjacent areas.

It is the intention of the State Government that the provisions of regional coastal management plans will be translated into appropriate provisions in local government planning schemes. Inconsistencies between a regional coastal management plan and a local government planning scheme should be resolved through consultation with local government. However, the State Government will have the power to amend planning schemes where this is necessary to meet its requirement of practical consistency of these schemes with regional coastal management plans. This amendment power is limited to the amendment of planning schemes prepared under the existing *Local Government (Planning and Environment) Act 1990* and will not apply to any schemes prepared under the proposed *Planning, Environment and Development Assessment Bill.*

Regional coastal management plans may also review and/or declare additions to control districts which define the area of the coast in which specific approval provisions for coastal management will apply.

Community participation in the regional planning process will be encouraged by the use of regional consultative groups to facilitate the direct participation of relevant community and interest groups during the preparation of the plans.

(iii) The administration of State and regional coastal management plans

In administering these provisions, State and regional coastal management plans will be prepared as documents that are legally binding in control districts. Outside control districts, coastal management plans will be prepared in such a way that they are policy documents. In local government areas outside control districts, they will operate in the same manner as State Planning Policies to which local governments must have regard when making planning decisions or assessing development applications.

A head of power will also be incorporated into the Planning, Environment and Development Assessment legislation to ensure coastal management plans outside control districts are treated the same way as State Planning Policies under that legislation.

(iv) Regional consultative groups.

Regional consultative groups will be established to help during the preparation of a regional coastal management plan and advise the Minister on issues and submissions on coastal management in the region. The regional consultative groups must include representatives from local government, tourism, conservation, industry, and Aboriginal and Torres Strait Islander interests. Representatives may also be sought from relevant regional State government agencies and from the commercial and recreational fisheries industry.

Wherever practicable, to facilitate the integration of planning initiatives carried out by State Government departments and agencies, regional consultative groups established under the Act would be linked to any existing Regional Planning Advisory Groups or forums established under the auspices of the Department of Housing, Local Government and Planning.

(b) Coastal Development Control

(i) Approval provisions

Existing separate approval provisions of the current *Beach Protection Act 1968, Canals Act 1958,* and those provisions of the *Harbours Act 1955* dealing with works in tidal water, will be consolidated into a single and integrated approval process under the proposed *Planning, Environment and Development Assessment Bill* in accordance with the Government's policy on the Integrated Development Assessment System (IDAS). Under the *Planning, Environment and Development Assessment Bill,* for a development in the coastal zone, the Department administering the *Coastal Protection and Management Bill* will be a concurrence agency or development manager depending on the circumstances of the particular development.

It is intended that the Department of Environment and Heritage will be development manager for development applications involving works below high water mark. The Department will be a concurrence agency for land based development within a control district.

Under the *Planning, Environment and Development Assessment Bill*, proposed developments will be assessed against planning criteria and the objectives of the proposed Act. As a development manager or concurrence agency the Department of Environment and Heritage will take account of the objects of the *Coastal Protection and Management Bill* in assessing the development application. This will involve taking account of all relevant coastal, social, environmental and any other relevant parameters to ensure

that development complies with the ecologically sustainable development of the coastal zone and its resources.

In the interim period between proclamation of the *Coastal Protection and Management Bill* and the proclamation of the *Planning, Environment and Development Assessment Bill*, it will be necessary that the *Beach Protection Act 1968*, *Canals Act 1958* and those provisions of the *Harbours Act 1955* dealing with works below high water mark continue as these Acts presently contain approval provisions relating to coastal development. These latter Acts will be repealed upon the proclamation of the *Planning, Environment and Development Assessment Bill*.

(ii) Land Surrender

To enable the Government's policy on coastal management to be implemented as soon as practicable, the *Coastal Protection and Management Bill* contains consequential amendments (refer Chapter 5, Part 4) to the *Beach Protection Act 1968*. One of these amendments will allow the Governor in Council to impose a land surrender condition on any development application involving the rezoning and/or the subdivision of land which is susceptible to coastal erosion (termed "erosion prone area" in the *Beach Protection Act 1968)*. This amendment is consistent with the Government's policy of maintaining public access to the coast, and protecting vulnerable coastal land from inappropriate development.

It is intended that all the land surrender provisions of the *Beach Protection Act 1968* (including the consequential amendments included in the *Coastal Protection and Management Bill*) will be incorporated into the *Coastal Protection and Management Act* upon the proclamation of the *Planning, Environment and Development Assessment Bill.* This intended future amendment to the *Coastal Protection and Management Act* will provide a concurrence power to the Department of Environment and Heritage enabling it to require a surrender of land to the State for land either wholly or partially within a control district. The land surrender condition will be non-appealable and not subject to

compensation. The land surrender condition will not apply to 'as of right' or exempt development but deals with those types of special development applications where the owner of land is seeking increased development rights over the land.

(iii) The declaration of control districts

Under the *Coastal Protection and Management Bill*, control districts will be declared over areas of the coast which require specific development controls and special protection and management to provide a mechanism for the regulation of coastal development.

Control districts will extend the criteria presently adopted in the *Beach Protection Act 1968* for the declaration of Coastal Management Control Districts. Criteria which can be utilised when assessing these new control districts can include; the erosion potential of the foreshore, the amenity and preservation of the coastal zone, public access rights, Aboriginal and Torres Strait Islander rights and interests, and planning and development management of the area in the control district.

The Bill also provides that a coastal building line may be established as part of a declared control district. To ensure that development along the coast is located in a consistent alignment and does not compromise future coastal management options for the area, no structure which would require a building approval from the local government for the area can be built seaward of the coastal building line.

As part of the administrative process, all landowners affected by a control district declared under this Bill will be notified in writing at the time of the declaration. After declaration of the control district it will be the responsibility of any subsequent owner to determine whether or not the land in question is affected by a control district.

(iv) Compensation

The compensation provisions of the *Coastal Protection and Management Bill* relate to a prohibition of an existing lawful

use by the declaration of a coastal management plan or a control district. Compensation is provided where such a declaration removes an existing lawful use applicable to 'as of right' development under a local government town planning scheme.

Alternatives to the Bill

The policy objectives can only be achieved by a new Act of Parliament.

Assessment of the administrative cost to Government

By comparison with the costs of administrating the existing legislation, there are expected to be some additional annual costs as a result of the implementation of the *Coastal Protection and Management Bill*. Items requiring additional funding include:

- administration of the Coastal Protection Advisory Council;
- the establishment of Regional Consultative Groups throughout the State;
- resource data collection for coastal management plans;
- additional planning officers in each of the four Departmental coastal regions for the preparation of regional coastal management plans;
- review and delineation of control districts; and
- State of the Coast reporting.

As part of the 1995/96 budget process the Government allocated an additional $2.5 m for coastal management to be used to fund the implementation of the Government's Coastal Protection Strategy. Of this, $1 m was allocated to the implementation of the *Coastal Protection and Management Bill* in the policy document: 'Reclaiming the Coast' and will be used to fund the above items.

Additional Commonwealth funding through the proposed Coastal Action Program initiative will also be available from 1995 for three years to assist in the implementation of the *Coastal Protection and Management Bill*. A draft Memorandum of Understanding between the Commonwealth, the State of Queensland, and the Local Government Association of Queensland

is being prepared so that the intergovernmental aspects of the Coastal Action Program can be implemented. One component of the Program is Coastcare which will provide opportunities for community groups to participate in coastal management ranging from an involvement in local area coastal plans to the implementation of projects on the coast. It is expected that the Commonwealth will provide $440,000 for Coastcare in 1995/96 and at least $1 m in each of the two subsequent years. Other components of the Coastal Action Program include initiatives to deal with local water quality management planning, strategic coastal planning and capacity building.

The other additional liability that may arise is that of compensation. However, the enacting of the *Coastal Protection and Management Bill* will not result in any immediate compensation liabilities for the State. Limited compensation provisions apply where owners of land have their existing rights changed or prohibited by the implementation of a coastal management plan or a control district (analogous to a down-zoning). Therefore, if applicable, compensation costs (which would be paid by the State) would be considered at the time of the approval of the plan or control district.

Consistency with Fundamental Legislative Principles

The *Coastal Protection and Management Bill* is consistent with fundamental legislative principles as defined in the *Legislative Standards Act 1992*. This consistency includes the provision in the Bill for an amendment to the *Beach Protection Act 1968* to provide for the surrender, without compensation, of land within a control district to the State. A land surrender condition may only be placed on a development approval where an application is for rezoning, subdivision or the consent of a Local Government under a Town planning Scheme, and relates to land either wholly of partly within a Coastal Management Control District or an erosion prone area. The land surrender condition is only applicable when a landowner seeks approval to increase their existing development rights. The provision for land surrender does not apply for an ‘as-of right’ activity and therefore the land surrender provision in the Bill is not considered to be a ‘compulsory acquisition of property’ in the context that this term is used in the *Legislative Standards Act 1992.*

Consultation

The draft version of the *Coastal Protection Bill* approved by Cabinet on 15 June 1993 for public consultation was extensively distributed throughout coastal areas of Queensland. Public meetings were held at major coastal regional centres throughout the State with additional meetings and workshops held for local government, regional officers of relevant State Government Departments and with those organisations with a direct interest in management issues relevant to the coastal zone.

Further consultation was carried out with key stakeholders which comprised the following:

- **Departments**
  - — Transport
  - — Primary Industries
  - — Lands
  - — Housing, Local Government and Planning
  - — Premier, Economic and Trade Development
  - — Business, Industry and Regional Development
  - — Tourism, Sport and Racing
- **Conservation Groups**
  - — Australian Littoral Society
  - — Wildlife Preservation Society
  - — Queensland Conservation Council
- **Industry/Local Government**
  - — Building Owners and Managers Association (BOMA)
  - — Ports Corporation
  - — Queensland Commercial Fishermen’s Organisation
  - — Coastal Management Committee of the Queensland Environmental Law Association
  - — Local Government Association of Queensland
  - — Urban Development Institute of Australia

In addition to discussions held during the three month public consultation phase with relevant organisations representing Aboriginal and Torres Strait Islander interests, a second round of consultation with relevant groups of the Aboriginal community was carried out during April/June 1994. During this period workshops were held in Brisbane and regional centres (including a two day North Queensland consultation workshop in Kuranda for all Aboriginal Communities on Cape York Peninsula).

A copy of the draft *Coastal Protection and Management Bill* was referred to the Litigation Reform Commission for comment. The Commission has advised that it does not wish to make any comment about the *Coastal Protection and Management Bill* as it relates to the Commission's functions set out in Section 75(1) of the *Supreme Court of Queensland Act 1991*. However, the Commission did note for further consideration the provisions in the *Coastal Protection and Management Bill* dealing with the forfeiture of property for non-compliance with a notice where the name of the relevant person is not known. Discussions with the Office of the Parliamentary Counsel indicated that there was no practicable alternative to the provision already contained in the *Coastal Protection and Management Bill* requiring advertising in the local newspaper or displaying the notice in a prominent position on the land. To provide additional safeguards to the person concerned, the *Coastal Protection and Management Bill* now provides a longer period for those cases where the name of the relevant person is not known before the State can legally proceed with forfeiture of the property. This provides a further period for the person concerned to become aware of the pending action.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Clause 1 states the short title of the Bill.

Clause 2 provides for the commencement date of the Bill.

PART 2—OBJECT OF BILL

Clause 3 outlines the object of the Bill. The Bill provides for the protection, conservation, rehabilitation and management of the coast and requires that any use of coastal resources is undertaken in an ecologically sustainable manner.

The object set out in Clause 3(b) of the Bill requires that use of the coastal zone has regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development. One of the guiding principles of the National Strategy is:

> "where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation"

The Intergovernmental Agreement on the Environment (May 1992) endorsed by the Heads of Government of the Commonwealth, State and Territories of Australia, and representatives of Local Government in Australia, defines this guiding principle as the ‘precautionary principle’.

For the purposes of the *Coastal Protection and Management Bill*, the precautionary principle is taken to have been applied when, wherever practicable, decisions are based on:

(a) careful evaluation to avoid serious or irreversible damage to the environment; and

(b) an assessment of the risk-weighted consequences of the various options.

Clause 4 outlines how coastal management is to be achieved. Coastal management requires that regard be had to: the preparation of coastal management plans; the declaration of control districts within the coastal zone for areas requiring special management and development controls; and other legislation which regulates development in the coastal zone.

Key areas requiring special management and development controls are selected using criteria based on the Coastal Protection Strategy Green Paper and may include areas of significant ecological, cultural, heritage or scenic values, and areas of importance for the maintenance of coastal processes.

PART 3—INTERPRETATION

Division 1—Standard definitions

Clause 5 provides that the terms and phrases used in the Bill are defined in the Dictionary which is a schedule of the Bill. All definitions must be interpreted in their context. Terms not defined have either the meaning given to them by the *Acts Interpretation Act 1954*, or by the Macquarie Dictionary.

Division 2—Key definitions

Clause 6 defines 'coast'.

Clause 7 defines 'coastal management'.

Clause 8 defines 'coastal resources' and should be read in conjunction with the definitions of 'cultural resources' and 'natural resources' in Schedule 2 (Dictionary).

Clause 9 provides the definition of 'coastal waters' which are Queensland waters to the limit of the highest astronomical tide. The *Acts Interpretation Act 1954* defines Queensland waters.

Clause 10 defines 'coastal wetlands'. A component of 'coastal wetlands' is 'tidal wetlands' which includes mangroves, saltmarshes, mudflats, sandflats and sandbars, seagrass beds and shallow channels.

Clause 11 defines 'coastal zone'.

Clause 12 defines 'ecologically sustainable development' as being that given by the National Strategy for Ecologically Sustainable Development as described by the IGAE.

General

The term 'coast' means many different things depending on the context in which it is used. It can be the beach, all areas east of the Great Dividing Range or locations associated with the sea. These examples demonstrate

that the coast is not just where the sea meets the land (this is the foreshore). Coastal management focuses on the coast; however activities which occur in areas outside the coast can affect the coast and therefore need to be considered in coastal management. This wider area is referred to in the Bill as the coastal zone.

The coast is defined in Clause 6 as 'all areas within or neighbouring the foreshore'. Neighbouring means near; therefore the definition of the coast is not prescriptive. Areas will be considered to be near the foreshore when there is a clear link with the foreshore. On the seaward side this includes all Queensland coastal waters. On the landward side this includes areas influenced by sea water or salt spray, the movement of sand or the drainage of waters into tidal areas.

Therefore the following areas are covered by the definition of 'coast' under the Bill:

- communities comprised of salt-tolerant vegetation eg mangroves, tidal marshes, coastal casuarinas, coastal banksia, coastal heath;
- dune systems;
- coastal wetlands;
- rivers and creeks subject to tidal influence up to the highest astronomical tide; and
- any other area clearly affected by a coastal process.

Areas of the coast that require specific controls over development or require special management will be more precisely defined by the boundaries of regional plans and control districts. A control district is the administrative area in which specific development controls can apply. Control district boundaries will be declared over areas within the coast through regional plans, by regulation, or by the Minister as a notice. Therefore the coast could extend further inland than control districts. Clause 48 of the Bill provides the areal limits to where control districts can be declared.

The coastal zone is defined in Clause 11 as 'coastal waters and all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast or coastal resource'. Coastal management can occur throughout the coastal zone therefore permitting the management of the

source of any impact on the coast. For example, a proposal to divert river water might:

- affect coastal wetlands and the composition of their species significantly;
- affect flushing of the river mouth; and
- interfere with the availability of sand for longshore drift.

This would alter the coast and therefore such impacts would need to be considered in decision making.

Division 3—General

Clause 13 explains the context of 'Aboriginal people and Torres Strait Islanders particularly concerned with land'.

PART 4—APPLICATION OF ACT

Clause 14 provides for the Bill to apply to all persons, the State, and where possible the Commonwealth and other States. This ensures that the Government has the same obligations as the rest of the community.

CHAPTER 2—COASTAL MANAGEMENT

PART 1—ADVISORY BODIES

Division 1—Coastal Protection Advisory Council

Clause 15 provides for the establishment of a Coastal Protection Advisory Council (CPAC).

Clause 16 lists the functions of the Coastal Protection Advisory Council. The Council provides advice to the Minister concerning a wide range of coastal management issues. Among other things the Advisory Council is to monitor the integration of coastal zone management in Queensland being carried out by a range of State Government departments, agencies and local government. The Council is also to liaise with and have regard to Aboriginal and Torres Strait Islander peoples as well as the interests of all other landowners.

Clause 17 lists the membership of the Coastal Protection Advisory Council, which will consist of the chief executive and eleven other members appointed by the Minister.

The composition of the Coastal Protection Advisory Council is intended to be:

- Chairperson, Director-General of Department of Environment and Heritage;
- 3 representatives from State Government Departments;
- 3 representatives from local government; and
- 5 community representatives which would be expected to cover the areas of Aboriginal and Torres Strait Islander Interests, conservation, fishing, industry and tourism interests.

Clause 18 provides for the chief executive of the Department administering the Bill to be the chairperson of the Coastal Protection Advisory Council.

Division 2—Regional consultative groups

Clause 19 provides that the Minister must establish a regional consultative group to assist during the preparation of a regional coastal management plan. The Minister considers the advice of these groups when reviewing submissions on regional coastal management plans. When the plan was finalised and approved by the Governor in Council, the regional consultative group will have a continuing role of monitoring the implementation of the plan. It would be expected that this role would be performed by having the regional consultative group undertake an annual review of the plan's achievements.

Regional consultative groups are local groups formed for the purpose of advising the Minister and making recommendations on issues, management strategies and areas requiring special coastal management for that area covered by the plan. Regional consultative groups are independent of CPAC which performs similar functions on a state wide basis.

Wherever practicable, to facilitate the integration of planning initiatives carried out by State Government departments and agencies, regional consultative groups established under the Bill would be linked to any existing Regional Planning Advisory Groups or forums established under the auspices of the Department of Housing, Local Government and Planning.

Clause 20 states the functions of a regional consultative group and includes a directive that community input is to be sought during the preparation of the plan.

Clause 21 provides that a regional consultative group must include representation from local government, tourism, conservation, industry and Aboriginal and Torres Strait Islander interests. Representatives may also be sought from relevant regional State government agencies and from the commercial and recreational fisheries industry. The representation from local government would consist of one representative from each local government affected by the plan.

Clause 22 states the Minister is to nominate the chairperson of a regional consultative group.

Division 3—General

Clause 23 provides for members of the Coastal Protection Advisory Council or a regional consultative group to be paid fees and allowances.

Clause 24 provides that the chief executive of the Department administering the Bill can provide Departmental services to the Coastal Protection Advisory Council or a regional consultative group to enable these bodies to perform their functions.

PART 2—COASTAL MANAGEMENT PLANS

Division 1—State coastal management plan

Clause 25 provides that a State coastal management plan (the 'State plan') must be prepared.

Clause 26 requires the State plan to show how the coastal zone will be protected and managed. The State plan can include principles, policies or maps and will include policies and assessment criteria for development approvals in control districts. The State plan can cover any matter for which regulations could be made under this Bill.

Clause 27 provides that the public must be given at least 40 business days to make submissions on the draft State plan.

Clause 28 requires the Minister to consider all submissions as well as the Coastal Protection Advisory Council's advice about all submissions properly made (the term 'properly made' means submissions received at the nominated place by the due date). The Council will report to the Minister stating the reasons why suggestions should or should not be incorporated when the final State plan is being prepared.

The person making a submission can request a response from the Minister on their submission. In responding to the request, the Minister must advise the person whether the submission was accepted or rejected, and, if rejected the reasons for the rejection.

Clause 29 provides that the final State plan must be approved by the Governor in Council. The approved State plan will be a legally binding regulation. The Department will provide explanation of the plan and include any maps referred to in the regulation.

This approach allows for a descriptive plan to be produced with reasons for its rules. However, the legal part can be separate and written in the style that allows the Court to interpret its intent clearly.

The State coastal management plan is a policy level plan that sets out the objectives, strategies and arrangements for the management of the coast. Regional coastal management plans will implement the policies of the State plan and will form part of the State plan.

Division 2—Regional coastal management plans

Clause 30 provides that regional coastal management plans must be prepared for particular parts of the State. These plans are intended to have a greater level of detail and be more site specific than the State coastal management plan.

Clause 31 requires the regional coastal management plan to show how the region covered by the plan is to be managed and show the control districts in the region. A regional plan can address any matter for which regulations can be made under the Bill, and can prescribe any offences relating to a contravention of the regional plan. A regional plan will take note of any other management plans and regulations made under other legislation that are relevant to the particular regional plan.

Clause 32 provides that the public must be given at least 40 business days to make submissions on the issues and content that should be covered in a draft regional coastal management plan.

Clause 33 requires the Minister to consider all submissions, as well as the advice of the Coastal Protection Advisory Council and the regional consultative group about all submissions properly made, concerning the issues and content to be covered in the preparation of a draft regional coastal management plan.

Clause 34 provides that the public must be given at least 40 business days to make submissions on the draft regional coastal management plan.

Clause 35 requires the Minister to consider all submissions, as well as the advice of the Coastal Protection Advisory Council and the regional consultative group about all submissions properly made, concerning the draft regional coastal management plan.

A person making a submission can request a response from the Minister on their submission. In responding to the request, the Minister must advise the person whether the submission was accepted or rejected, and, if rejected the reasons for the rejection.

In addition, the Minister must advise any landowner who makes a submission, the reason why the land was included in the control district in the final regional plan and, if applicable, the reason for fixing a coastal building line on the land.

Clause 36 provides that a regional coastal management plan must be approved by the Governor in Council. The approved plan will be a legally binding regulation. The Department will provide explanation of the plan and include any maps referred to in the regulation.

Division 3—Review of coastal plans

Clause 37 provides that the Minister must review the State coastal management plan and any regional coastal management plan within seven years after the commencement date of the plan.

Clause 38 provides that the public must be given at least 40 business days to make submissions on the issues and content that should be covered in a proposal to review a coastal plan.

Clause 39 provides that the Minister can decide to prepare a new draft coastal plan (State or regional) after considering the advice of the Coastal Protection Advisory Council about all submissions properly made on the review of a coastal plan. If, after the review, the Minister decides to prepare a new regional plan, a new regional consultative group must be appointed with membership in accordance with Clause 21.

Clause 40 provides that the public must be given at least 40 business days to make submissions on a new draft coastal plan after it has been prepared.

Clause 41 requires the Minister to consider:

- in the case of a final State plan; all submissions properly made on the plan, and the advice of the Coastal Protection Advisory Council about the submissions; and
- in the case of a final regional plan; all submissions properly made on the plan, the advice of the Coastal Protection Advisory Council about the submissions, and the advice of the regional consultative group about the submissions made on the plan.

A person making a submission under this clause can request a response from the Minister on their submission under the same provisions as outlined in Clause 35.

Clause 42 provides that a coastal plan resulting from the review must be approved by the Governor in Council. The approved plan will be a legally binding regulation. A document published by the Department will explain the plan in full and include any maps referred to in the regulation.

Division 4—Miscellaneous

Clause 43 provides that the chief executive of the Department administering the Bill must implement the State coastal management plan and any regional coastal management plan. In implementing a plan, the chief executive can arrange with a local government, port authority or other statutory authority to carry out or maintain works stipulated in a coastal management plan.

Clause 44 provides for amendment to a State or regional coastal management plan. This clause also applies for amendments to control district boundaries where the district is part of a regional coastal management plan.

*Clause 4*5 states where a member of the public may inspect and purchase a coastal management plan.

*Clause 4*6 provides that a local government planning scheme may be amended by the Governor in Council where there is an inconsistency between the planning scheme and an approved regional coastal management plan. This provision is limited to the amendment of planning schemes prepared under the existing *Local Government (Planning and Environment) Act 1990* and will not apply to any schemes to be prepared and approved under the proposed *Planning, Environment and Development Assessment Bill.*

Before this provision is evoked, the local government and any affected landowner are given an opportunity to make a submission to the Minister about the proposed amendment.

When this provision is evoked, any landowner affected by a change of zoning imposed under Clause 46(1) may apply for compensation in accordance with the provisions of Chapter 5, Part 1.

PART 3—CONTROL DISTRICTS

Division 1—Declaration, amendment, amalgamation and abolition of control districts

Clause 47 provides for an area of the coastal zone to be declared as a control district. Control districts represent areas of the coastal zone which could require specific development controls and special protection or management through the issue of notices under this Bill and the development approval process in the proposed *Planning, Environment and Development Assessment Bill.*

Control districts cover the land/sea interface and in doing so provide the mechanism for integrating the approval and planning processes for this unique area. Control districts will provide the link between local government jurisdiction which is limited by high water mark and the State which extends to state territorial waters.

A control district can be declared:

- as part of an approved regional coastal management plan;
- by regulation if the area is not covered by a regional coastal management plan and the Minister considers the area requires protection or management; and
- by the Minister if the Minister considers the area requires immediate protection or management.

Where the Minister declares a control district, the district must be declared within six months by regulation or by being incorporated as part of a regional coastal management plan. Otherwise it will cease to have any effect.

When the Minister uses this special power to declare a control district, Part 5 of the *Statutory Instruments Act 1992* requiring the preparation of a regulatory impact statement will not apply.

It is intended that, wherever practicable, the boundaries of a control district will be fixed in relation to property boundaries and will not be affected by any change in the location of the high water or low water mark of tidal water.

In addition, this clause provides that all landowners whose land lies wholly or partly within a control district declared under this clause will be notified in writing at the time of the declaration.

The rationale used to determine the area of the coast that is included in a control district is in Clause 49.

Clause 48 limits where control districts can be declared. Control districts can be declared over all tidal waters of the State up to the limit of highest astronomical tide, and can extend over adjoining land to the maximum stipulated limits.

Clause 49 lists issues to be considered in determining the area of the coastal zone to be incorporated in a control district.

Clause 50 provides for public notice to be given of the proposal for an area of the coastal zone to be incorporated in the control district before a control district is declared by regulation.

A person making a submission under this clause can request a response from the Minister on their submission under the same provisions as outlined in Clause 35.

Clause 51 provides that the Governor in Council can amend the boundaries of a control district, amalgamate two or more districts, or abolish a district. The public notification requirements of Clause 50 apply.

Division 2—Coastal protection and tidal works notices

Clause 52 provides for the chief executive to issue a notice to a person to:

- act to protect the land; or
- to stop, or not start, an activity which could have a detrimental effect on coastal management or which could lead to a wind erosion problem.

The notice can require the person to carry out specific actions or works and may only be issued for actions or activities in a control district. A person can appeal against the decision to give the notice.

The intent of a coastal protection notice is to stop actions that degrade the coast or require actions that prevent degradation of the coast where the landowner is responsible for the degradation. A notice will only be used

where there is fault but not necessarily illegality on the part of the landowner and before a notice is issued, negotiation with the landowner will be used as a first option in order to remedy the problem and avoid the issue of a notice. Notices will not be used to remove a landowner's lawful approval to undertake works.

Clause 53 provides that where works in tidal water (that is, below the level of mean high water spring tide) are abandoned or in need of repair, the chief executive can issue a notice to the person responsible for the works. The notice can direct the person to repair or remove the works and restore the site. A person can appeal against the decision to give the notice.

The intent of a tidal works notice is to ensure that works over the foreshore or over tidal land are maintained in a safe condition, or, if abandoned, are removed. A notice will only be used where there is fault but not necessarily illegality on the part of the owner of the works and before a notice is issued, negotiation with the owner will be used as a first option in order to remedy the problem and avoid the issue of a notice. Notices will not be used to remove a owner's lawful approval to undertake works.

Clause 54 provides that the chief executive can arrange for works or actions to be carried out if a person fails to comply with a notice issued under Clauses 52 or 53. The chief executive can recover all the costs incurred in carrying out the works from the person who fails to comply with the notice.

Clause 55 provides for the forfeiture of property if a person fails to comply with a notice issued under either Clause 52 or Clause 53 in relation to property that is on unallocated State land. This is to ensure that any works left abandoned in contravention of a notice can be sold or disposed of by the State.

Clause 56 provides for the Registrar of Titles to maintain a register of notices issued by the chief executive under Clauses 52 or 53 for those cases where the land concerned is held in freehold title or by way of a lease, licence or permit issued by the State.

Clause 57 provides that the owner (including the occupier) of the land and the person responsible for the works are jointly liable for requirements of the notice issued under Clauses 52 or 53.

Clause 58 provides that the seller of the land or works subject to the notice must advise the buyer of the notice.

Division 3—General

Clause 59 provides for a coastal building line to be established as part of a declared control district. No structure which would require a building approval under the *Building Act 1975* from the local government for the area can be built seaward of the coastal building line.

The intent of this provision is to ensure that development along the coast is located in a consistent alignment so that it does not compromise future coastal management options for the area.

The Minister can sanction an exemption to this requirement only where there would be no detrimental impact on coastal management. An example could be the construction of a demountable life guard tower which was required to be located on the frontal dune for public safety purposes, but which could be relocated landwards if beach erosion became a problem at the site.

Clause 60 allows the chief executive to place a sign on State land advising of certain requirements of a particular control district.

Clause 61 provides that the chief executive can occupy land in a control district temporarily for building, maintaining or repairing works. This could be needed to carry out emergency works along the coast during a cyclone. The land owner can claim compensation for such occupation.

CHAPTER 3—INVESTIGATION AND ENFORCEMENT

PART 1—ADMINISTRATION GENERALLY

Clause 62 provides for the chief executive to appoint officers of the public service, employees of the Department administering the Bill or other persons appointed under a regulation as authorised persons for the purposes set out in the Bill.

Clause 63 states the qualifications required for appointment as an authorised person.

Clause 64 sets out the conditions and term of an appointment as an authorised person including those terms under which a person ceases to be an authorised person.

Clause 65 states the powers granted to an authorised person.

Clause 66 requires the chief executive to issue an identity card to each authorised person and states the information that must be shown on that card.

Clause 67 provides that an authorised person must produce an identity card when exercising a power in relation to someone else.

Clause 68 requires a person who ceases to be an authorised person to return an identity card to the chief executive.

Clause 69 provides an authorised person or a person acting under the direction of an authorised person with protection from civil liability when acting under the Bill.

PART 2—INSPECTION AND OTHER POWERS

Division 1—Power of entry

Clause 70 provides for an authorised person to enter land at any reasonable time to inspect or survey the land or works on the land. The authorised person must obtain the agreement of the occupier or owner of the land or give seven days notice, unless entry is required under urgent circumstances to protect the coastal zone.

Clause 71 provides procedures whereby an authorised person must notify the owner in writing of particulars of damage to anything which has occurred in the exercise of a power under the Bill.

Clause 72 provides for a person who has incurred a loss or expense as a result of the exercise of a power under the Bill to claim compensation.

Division 2—General investigative powers

Clause 73 provides the right for an authorised person to require a person who has committed an offence against this Bill or has reasonable justification to suspect that person has committed an offence against this Bill to provide their name and address.

Clause 74 provides that a person must comply with the requirement of providing their name and address unless the person has a reasonable excuse for not complying.

Division 3—General

Clause 75 provides for penalties to apply if a person makes false or misleading statements to an authorised person.

Clause 76 states that a person must not give an authorised person a document which that person knows contains false or misleading information.

Clause 77 states that a person must not obstruct an authorised person in exercising a power under the Bill.

Clause 78 states that a person must not pretend to be an authorised person

CHAPTER 4—LEGAL PROCEEDINGS

PART 1—EVIDENCE

Clause 79 provides certain evidentiary provisions relating to legal proceedings under the Bill.

PART 2—PROCEEDINGS FOR OFFENCES

Clause 80 provides that, in this Bill, an indictable offence is one that is prescribed under a regulation. Any other offence is a summary offence.

Clause 81 states how proceedings for indictable offences against this Bill will be undertaken.

Clause 82 provides that proceedings for the summary conviction of an indictable offence and the examination of witnesses for an indictable offence must be before a Magistrate.

When proceedings for an indictable offence are brought before a justice other than a Magistrate, action is limited by the *Justices of the Peace and Commissioners for Declarations Act 1991.*

Clause 83 provides that summary proceedings for an offence against this Bill must be started within one year of the offence or within one year after the offence comes to the complainant's knowledge but within five years of the commission of the offence.

PART 3—RESTRAINT ORDERS

Clause 84 provides that an order can be sought from the Planning and Environment Court to stop an offence or a threatened offence against this Bill and ensure that appropriate remedies be applied. This clause provides that any person can go to Court to restrain or remedy an offence against the Bill, regardless of whether they have been affected directly. To ensure that the Court's time is not wasted and the alleged offender is justly treated, the Court must consider whether the application meets certain criteria. The criteria include:

- the evidence has been presented to the responsible authority and that authority has failed to act within a reasonable time;
- that harm to the coastal zone has occurred or is threatened and the application is likely to succeed;
- that the application has been adequately prepared and is in the public interest;

- the case would not be an abuse of process, such as a series of applications on the same matter, aimed at delaying a project; and
- any other matter that the Court considers relevant for maintaining justice and equity.

When uncertainty exists in whether the case should be heard or not, preference should be given to hearing the case, as this ensures that justice is 'seen to be done'.

To ensure that the applicant's actions are genuine, the Court can order costs if the case was brought for obstruction and delay.

Clause 85 empowers the Planning and Environment Court to prevent harm to the coastal zone pending the outcome of a proceeding.

CHAPTER 5—ADMINISTRATION

PART 1—COMPENSATION

Clause 86 provides that an owner of interest in land can apply for compensation if a coastal management plan imposes a restriction or prohibition on the owner's existing lawful rights of use of the land.

Clause 87 states the circumstances when compensation is not payable and, if compensation is payable under another Act, the claim for compensation must be made under the other Act.

Clause 88 sets out the time limits within which a claim for compensation must be made and specifies when the claim for compensation is taken to have been made.

Clause 89 specifies how the chief executive must decide the claim for compensation.

Clause 90 sets out the requirements that must be taken into account when the amount of compensation is being determined.

Clause 91 specifies the time limits within which the compensation must be paid.

Clause 92 sets out the conditions under which the owner may appeal to the Court against a decision of the chief executive.

Clause 93 provides that the Planning and Environment Court must have regard to any reduction in the market value of the land because of the change that has been made to the existing lawful use of the land.

Clause 94 provides that the payment of compensation must be recorded by the register of titles.

PART 2—APPEALS

Clause 95 provides that a person dissatisfied with a decision to give the person a coastal protection or tidal works notice (refer Clauses 52 and 53) can appeal against the decision to the Planning and Environment Court.

Clause 96 provides for the timing and content of an appeal to the Court.

Clause 97 provides that the appellant must provide the chief executive of notice of the appeal within seven days of filing the notice.

Clause 98 provides that a stay of the decision appealed against may be granted on such conditions as the Court considers appropriate. However, the original or review decision remains in place until the appeal is determined or a stay granted.

Clause 99 provides for an appeal to be heard in accord with the applicable rules of the Court. The appeal is by way of a re-hearing and the Court has complete discretion to make a decision in place of the administering authority.

Clause 100 lists the powers of the Court in deciding an appeal.

PART 3—MISCELLANEOUS

Clause 101 empowers the chief executive to delegate powers to an officer of the public service, a local government, port authority or other statutory authority.

Clause 102 provides that the chief executive must report at least every four years on the condition of Queensland's coast and identify significant trends in coastal values as well as review the efficacy of coastal management programs and strategies. The Minister will be required to table this Report in the House within 14 days of receiving it. This provision is similar to "State of the Environment" reporting provisions of the *Environmental Protection Act 1994.*

Clause 103 lists those matters for which the Governor in Council can make regulations.

Clause 104 provides for the saving of each Coastal Management Control District and erosion prone area under the *Beach Protection Act 1968* to be a control district. This clause also provides for the saving of building set-back requirements as specified in the plans listed in the Table in the *Coastal Management Control Districts (Requirements for Buildings and Other Structures) Regulation 1984* as a coastal building line.

Notwithstanding the provisions of this clause, Coastal Management Control Districts, erosion prone areas and the set-back requirements prescribed by regulation, under the *Beach Protection Act 1968* will remain in force until the *Beach Protection Act 1968* is repealed by the proclamation of the proposed *Planning, Environment and Development Assessment Bill.*

PART 4—CONSEQUENTIAL AMENDMENTS

Clause 105 sets out the amendments required to the *Beach Protection Act 1968* and the *Transport Infrastructure Act 1994*. The intent of the amendment to Section 41 of the *Beach Protection Act 1968* is to allow the Governor in Council to impose a land surrender condition as part of a rezoning approval. The land surrender provision would apply where a person applies to rezone land which is either wholly or partially within a Coastal Management Control District or an area to which an erosion prone area plan applies. Land surrender is applicable to the landward limit of the erosion prone area and will not be appealable or subject to compensation.

The amendment to Section 45 of the *Beach Protection Act 1968* allows the existing land surrender provision to apply to the subdivision of land within an area to which an erosion prone area plan applies.