COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the amendment of the *Coastal Protection and Management Act 1995* and other legislation in order to:

- implement the integrated development assessment system (IDAS) created under the *Integrated Planning Act 1997* from development-related approval systems in the *Beach Protection Act 1968*, the *Canals Act 1958* and sections 233 and 236 of the *Transport Infrastructure Act 1994* (dealing with sanctions, approvals and permits saved from the repealed *Harbours Act 1955*);
- provide for the application of the *Coastal Protection and Management Act 1995* as the primary legislation governing the assessment of development activities in coastal management districts (previously called control districts);
- provide the necessary statutory authority to enable the achievement of sound coastal management outcomes;
- integrate remaining provisions from the *Beach Protection Act 1968*, the *Canals Act 1958* and sections of the *Harbours Act 1955* into the *Coastal Protection and Management Act 1995* and allow for the repeal of these statutes upon commencement of the provisions of the Bill.

Reasons for and Achievement of the Policy Objectives

The amendments in the Bill are a further step in the implementation of IDAS. The amendments also provide for the integration of previously

separate, stand alone approval and administrative processes under various pieces of coastal legislation into the single *Coastal Protection and Management Act 1995*. Subsequently, the older coastal legislation will be repealed upon commencement of this Bill.

The objectives of the Bill are to be achieved by:

- amending the *Coastal Protection and Management Act 1995* to integrate provisions relating to allocation of quarry material from State coastal land below high water mark in a coastal management district, by inserting criteria for assessment and conditioning of development approvals, and other matters;
- amending the *Integrated Planning Act 1997* to declare certain activities completely or partly within a coastal management district as assessable development under schedule 8 of that Act.

Alternatives to the Bill

There are no alternatives considered appropriate for achieving these policy objectives.

Estimated Cost of Implementation

The costs to Government of implementing the Bill will be administrative in nature and will not be significant.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles as defined in the *Legislative Standards Act 1992*.

Consultation

Consultation has been made on all provisions in the Bill with lead State Government agencies, the Local Government Association of Queensland, port authorities and other external stakeholder groups. Consultation included meetings and correspondence to explain the proposal, to discuss and review provisions within preliminary drafts of the Bill, and to resolve outstanding policy issues.

NOTES ON PROVISIONS

PART 1–PRELIMINARY

Short Title

Clause 1 describes the short title of the Act as being the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

Commencement

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

PART 2–AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT ACT 1995

Act amended in pt 2

Clause 3 declares that part 2 of the Bill amends the *Coastal Protection and Management Act 1995*. Other minor amendments to the *Coastal Protection and Management Act 1995* are included in the schedule to the Bill. Among these changes is the replacement of the term 'control district' with 'coastal management district' throughout the Act.

Insertion of new s 4A

Clause 4 inserts a new section 4A into the *Coastal Protection and Management Act 1995* that requires all entities who are given powers under the Act to use that power to advance the objects of the Act which include having regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development in the use of the coastal zone.

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

Clause 5 replaces the division title and inserts a new section 5 into the *Coastal Protection and Management Act 1995* that identifies that the dictionary in schedule 2 defines particular words in the Act.

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

Clause 6 replaces the division title with the heading 'Other definitions'.

Insertion of new ss 5A–5C

Clause 7 inserts new subsections 5A to 5C for access channel, artificial waterway, and canal.

'Access channel' has the definition given to it in the *Canals Act 1958*. The term has been retained specifically to ensure that any access channel is included in the assessment and approval of a new proposed artificial waterway. In the case of those artificial waterways that are also canals, the access channel must also be maintained and kept clean by a local government.

'Artificial waterway' as set out in section 5B, incorporates an artificial channel, lake or other body of water. Artificial waterways can be tidal, brackish or freshwater waterbodies. The term 'artificial waterway' is used in the Bill in relation to assessable development for the reconfiguring of a lot involving the construction of an artificial waterway and for certain operational works under schedule 8, part 1, item 3D of the *Integrated Planning Act 1997*. Subsection (2) sets out specific examples of artificial waterways in addition to the general definition in subsection (1). Subsection (3) sets out that artificial waterway does not include those types of waters listed in items (a) to (h). Item (f) specifically makes it clear that river or watercourse improvement works such as training walls, and works that straighten, divert or widen a natural watercourse are not considered to be an artificial waterway under the Act.

A canal is an artificial waterway that is connected or intended to be connected to tidal water and provides access to tidal water that is not hindered by a lock, weir or other structure. The significance of a canal as opposed to other artificial waterways is that a canal must be surrendered to the State and a local government is responsible for its maintenance. This is consistent with the existing provisions of the *Canals Act 1958*. Section

5C(3) provides that artificial waterways that are marinas, boat harbours and commercial mooring facilities are not canals within the meaning of the Act.

Insertion of new s 12A

Clause 8 inserts a new key definition into chapter 1, part 3, division 2 of the *Coastal Protection and Management Act 1995* for State coastal land. State coastal land replaces the concept of unoccupied Crown land under the *Beach Protection Act 1968*.

State coastal land relates to land that is not freehold land, land contracted to be granted in fee simple by the State or land subject to a lease or licence under the meaning of the *Land Act 1994*. A licence, permit or other authority issued under any Act related to mining is also excluded from State coastal land. However, State coastal land does include land to which a permit under the *Land Act 1994*, section 177(1) has been issued.

State coastal land is relevant to permissions to damage vegetation in a coastal management district (refer section 61A), for the removal of quarry material below high water mark (refer chapter 2, part 5), and for certain assessable development to be inserted into schedule 8, part 1, item 3D of the *Integrated Planning Act 1997*.

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

Clause 9 replaces section 24 of the *Coastal Protection and Management Act 1995* with a new subsection relating to the collection and recording of information by the chief executive about wave climate and storm tidal levels relating to erosion and tidal inundation of the coast. This provision has been inserted to save relevant legislative functions of the Beach Protection Authority (BPA) which will cease to have effect with the repeal of the *Beach Protection Act 1968* on commencement of this Bill.

The existing provisions in the Act about providing departmental services for the advisory council and regional consultative groups remain unchanged.

Amendment of s 26 (Content of State plan)

Clause 10 inserts a new subsection 1A into section 26 of the *Coastal Protection and Management Act 1995* which describes the content of the

State coastal management plan. The amendment is to highlight that in preparing the plan, the Minister must consider public access to the foreshore.

Amendment of s 44 (Amendment of coastal plans)

Clause 11 amends section 44 of the *Coastal Protection and Management Act 1995* in relation to amending coastal plans. The purpose of the amendment is to remove uncertainty in the section by removing the phrase, 'to make a minor amendment to a coastal plan". This will clarify the process for changing coastal plans where the change is correcting an error; making a change other than a change in substance to the plan; or where the plan provides for an amendment of a stated type. The wording in the provision is consistent with the approach and wording of the *Environmental Protection Act 1994* with respect to amending Environmental Protection Policies.

Replacement of s 46 (Planning schemes may be amended)

Clause 12 replaces section 46 of the *Coastal Protection and Management Act 1995* with a new subsection. The existing section 46 of the *Coastal Protection and Management Act 1995* applies to transitional planning schemes prepared under the *Local Government (Planning and Environment) Act 1990*. It is a requirement of the *Integrated Planning Act 1997* that all local governments have new planning schemes in place by March 2003.

The *Integrated Planning Act 1997* provides a process for the preparation and amendment of planning schemes. A planning scheme must now coordinate and integrate core matters (including those matters of a State dimension of the State interest). The Minister administering the *Integrated Planning Act 1997* must approve a planning scheme or planning scheme amendment prepared under the Act, whilst ensuring the State interest has not been adversely affected.

With the *Integrated Planning Act 1997* processes now in place and the fact that all transitional planning schemes have to be replaced by new schemes by 2003, there is no further need for the provision as currently stated in the *Coastal Protection and Management Act 1995*. However, new provisions have been inserted in this section to provide clarification that the compensation provisions of the *Coastal Protection and Management Act 1995* under section 86 apply where the Minister administering the

Integrated Planning Act 1997 directs the amendment of a transitional planning scheme, and the effect of the amendment prohibits the existing lawful use of land in a coastal management district.

Amendment of s 47 (Declaration of control districts)

Clause 13 removes section 47(6) of the *Coastal Protection and Management Act 1995*. The existing provision is contradictory as the boundaries of a coastal management district (which include all tidal waters) will change in those instances where tidal waters are created as a result of tidal works or the construction of a canal.

Replacement of s 59 (Coastal building line)

Clause 14 replaces section 59 of the *Coastal Protection and Management Act 1995* with a new section.

Section 59(2) and (3) of the *Coastal Protection and Management Act 1995* currently provide for a blanket prohibition on the giving of approvals under the *Integrated Planning Act 1997* for building works seaward of a coastal building line without the written permission of the Minister. This provision is seen as a 'Henry VIII' clause that allows the Minister to override the Act's prohibition.

These requirements have been removed and are to be replaced with provisions in the *Integrated Planning Regulation 1998* that provide for applications for assessable building works seaward of a coastal building line to be referred to the chief executive administering this Act for concurrence. This amendment will ensure that the appropriateness of the building or structure seaward of the line is assessed and decided as part of the IDAS process by local government and the chief executive administering the *Coastal Protection and Management Act 1995*. A coastal building line may be declared by regulation or notice within a coastal management district.

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

Clause 15 inserts a new section 61A in chapter 2, part 3, division 4 and new parts 4 (erosion prone areas), 5 (quarry materials) 6 (development approvals for development assessment), and 7 (miscellaneous) into chapter 2.

Damaging vegetation - section 61A

Section 61A relates to giving permission to damage vegetation on State coastal land in a coastal management district. These provisions have been carried over into the *Coastal Protection and Management Act 1995* from section 47(1A) of the *Beach Protection Act 1968*. State coastal land is explained in section 12A.

The inserted provision stipulates that a person must not damage vegetation on State coastal land without the permission in the form of a written approval from the entity responsible for the management and control of the land. The relevant entity will depend on the type of State coastal land but could include, for example, a local government as trustee for a reserve, the Department of Main Roads in relation to a road reserve, or the Department of Natural Resources over unallocated State land Subsection (1)(b) provides that the requirement to obtain written approval under subsection (1)(a) does not apply where the person holds another lawful authority such as an authorisation under the *Fisheries Act 1994* (in relation to marine plants) or the *Land Act 1994* (in relation to tree clearing). This subsection has been inserted to avoid duplication in permitting requirements under other legislation.

Part 4 - Erosion Prone Areas

Part 4 in chapter 2, relates to erosion prone areas. Erosion prone areas declared under the *Beach Protection Act 1968* will continue to exist under the *Coastal Protection and Management Act 1995*. Erosion prone areas are separate to coastal management districts in purpose and regulatory controls. Powers proposed in the Bill in relation to erosion prone areas are limited to:

- the area where a land surrender condition may be applied (refer part 6, division 3); and
- the area where development under schedule 8, part 1, item 3D(b)(ix) will be assessable (relating to the modification of dune systems in erosion prone areas over freehold and leasehold land).

Section 61B provides the criteria by which the chief executive can declare an erosion prone area under the Act. As was the case under the *Beach Protection Act 1968*, the chief executive must ensure each erosion prone area is shown on a document (which can be a map or plan); keep the document available for inspection; and give a copy to each local

government in whose area the erosion prone area or part of the erosion prone area applies.

Section 61C allows the chief executive to amend the erosion prone area and that any amendment must be shown on the document and sent to each local government holding erosion prone area documents for display.

Section 61D provides that a local government must keep the approved or amended erosion prone area document available for public inspection.

Part 5 - Quarry material

Part 5 in chapter 2 relates to the allocation of State-owned quarry material below high water mark contained within coastal management districts under the Act.

The allocation consent process is required where proposed development involves taking quarry material that is the property of the State. Specifically, it replaces the requirement to obtain a permit under the *Marine Land Dredging By-Law 1987* when a dredger wishes to remove material from marine land for sale or other purposes. The allocation process proposed in the Bill is modelled on a similar process inserted into the *Water Act 2000* about the removal of quarry material in freshwater watercourses and lakes.

An allocation under the Act will be required in addition to any IDAS permits or other authorities to undertake works to remove quarry material from State coastal land below high water mark in a coastal management district with two exceptions: (1) where the proposed removal occurs in a watercourse or lake defined under the *Water Act 2000* ; or (2) where the proposed removal occurs in a State forest or timber reserve under the *Forestry Act 1959*. Allocations for the removal of State-owned quarry material from these areas is specifically dealt with under those statutes.

Further explanation for each section of the part is provided below.

Division 1 - Allocation of quarry materials

Section 61E outlines application procedures for obtaining an allocation for quarry material on land below high water mark under the Act. This will involve an completing a application form approved by the chief executive and application fee. Quarry material is defined in the glossary.

Section 61F provides that the chief executive may request further information or documents about the application to undertake the assessment. The application lapses if a person fails to provide additional information or documents sought by the chief executive by the reasonable timeframe stated on the notice.

Section 61G provides the criteria for assessing and deciding the application for an allocation to remove quarry material. The section establishes that the chief executive must consider the State plan and regional plans in the assessment as well as general criteria about the removal of material and the placement of spoil. The section also provides for the assessment of impacts the removal or placement of spoil may have on other relevant areas of State interest in a coastal management district such as waters listed in the Environmental Protection (Water) Policy 1997, fish habitats under the Fisheries Act 1994, marine parks under the Marine Parks Act 1982 and protected areas on the coast under the Nature Conservation Act 1992. With respect to navigational safety and maritime management, the chief executive may seek the views of the regional harbour master established for the area and the relevant port authority respectively. The chief executive may also seek the views of a local government about the removal or placement of quarry material.

Section 61H provides that the chief executive must respond to the applicant with either an allocation notice or a notice refusing the application with reasons stated for the decision. The chief executive may decide the validity period for an allocation notice but cannot impose a period greater than six years. Current marine dredging permits under the Marine Land Dredging By-Law 1987 have a maximum term of 2 years.

Section 61I provides that the chief executive may sell by auction or tender an allocation of quarry material on State coastal land below high water mark in a coastal management district. In selling an allocation of quarry material, the chief executive will need to consider the matters in section 61G as well as other matters relevant to the sale. This could include, for instance, matters such as the relevant experience and track record of the prospective buyer. Where the chief executive decides to sell an allocation of quarry material, the chief executive must issue the buyer with an allocation notice. All other relevant sections of the division (conditions, monthly returns, variation, etc) apply as if the allocation were obtained under the application process.

Section 61J outlines the content of an allocation notice. All allocation notices will include terms about the quantity of quarry material that may be removed under the allocation, the area to which the allocation relates and the rate of royalty payable for removal of the quarry material (standard rates will be set by Regulation under the *Coastal Protection and Management Act 1995*).

Section 61K outlines those conditions that may be imposed on an allocation notice which include, for example, the maximum rate at which the material may be removed and the nature and extent of surveys and monitoring required to be supplied by the holder of the allocation in relation to the impact of the removal. This could include, for example, hydrographic or traverse surveys of the tidal land.

Section 61L provides that the holder of an allocation notice must submit a monthly return to the chief executive stating the quantity of quarry material removed by the holder in the preceding month within 20 business days after the end of each month. A monthly return is only required to be furnished from the time the holder commences removing the material. Thus, if the holder is in the process of obtaining further approvals for the removal and, as a result, has not started the work, the requirement to lodge a monthly return would not be applicable.

Section 61M establishes the relationship between the allocation notice, development approvals under the *Integrated Planning Act 1997*, and environmental authorities under the *Environmental Protection Act 1994* in relation to the removal of quarry material on State coastal land below high water mark in a coastal management district.

It is the requirement of the Bill that the allocation be obtained before applying for further approvals required under the *Integrated Planning Act 1997* and/or the *Environmental Protection Act 1994*. However, all relevant approvals and authorities, including the allocation notice, are required to commence operations. Subsection (3) provides that evidence of the allocation is required as part of the development application under IDAS or the *Environmental Protection Act 1994* to carry out the works. This coincides with requirements under section 3.2.1 of the *Integrated Planning Act 1997* that provide that where the development involves the removal of a resource of the State, the evidence of the allocation is part of the mandatory requirements for a properly made application under the Act.

Section 61N provides for the transfer of all or part of an allocation from the holder to another person. The chief executive may effect the

transfer if the chief executive is satisfied that the transfer would not alter the original decision to grant the allocation, for example, the overall benefit of the parts of the allocation do not exceed the benefit of the original allocation. In deciding the transfer, the chief executive may approve, amend or reject the transfer if it does not meet the criteria on which the original allocation was granted. Parts of the allocation that may be transferred include the quantity of material that can be removed, the rate at which the material can be removed, and the time over which the material can be removed.

Section 61O provides for the renewal of an allocation. Currently permits issued under the *Marine Land Dredging By-Law 1987* are limited to 2-year maximum terms and are not renewable, providing little security for operators. By increasing the maximum term to 6 years and allowing renewal of the allocation, operators will be able to better plan and manage their quarry operation. In return for increased dredging surety, the provision allows for stricter environmental controls in relation to renewal of allocations. In assessing the application to renew, the chief executive must consider the criteria on which the original allocation was granted.

Section 61P provides the grounds for amending conditions of an allocation notice. An amendment can occur with the agreement of the holder of the allocation or at the instigation of the chief executive where the chief executive considers such an amendment is necessary or desirable for coastal management. Subsection (2) provides that in the particular instance where the holder of the allocation removes material at a rate of less than 50% of the permitted extraction rate under the allocation notice, the chief executive can reduce the total quantity and/or rate of extraction under the allocation notice. This provision provides an incentive to the holder to use the material and deters monopolisation of the resource. Subsection (3) provides that any subsequent amendment must not increase the period for which the allocation has effect as set in the conditions of the allocation.

Section 61Q sets out the grounds for the chief executive to suspend or cancel an allocation of quarry material. Subsection (b)(iii) provides that the chief executive may suspend or cancel the allocation where the holder has not applied for any relevant development permits or environmental authorities to remove the material mentioned in section 61M within 12 months of the issue of the allocation notice.

Section 61R sets out the procedure for amendment, suspension or cancellation of an allocation notice involving the issuance of a written notice to the holder of the allocation. Subsection (3) provides that the notice must provide a minimum of 10 business days for the holder of the allocation to make representations about the proposed amendment, suspension or cancellation set out in the notice.

Section 61S states that if the chief executive amends, suspends or cancels an allocation notice, notice and particulars must be given to the holder of the allocation. The section also provides when the amendment, suspension or cancellation shall take effect. Subsection (7) clarifies that the suspension or cancellation does not give the holder a right to compensation.

Section 61T provides that the holder of an allocation may, at any time, surrender the holder's allocation to the chief executive by written notice.

Division 2 - Dredge Management Plans

Dredge management plans are an alternative mechanism under the Bill for approval to remove quarry material from State coastal land below high water mark in a coastal management district. A government entity, port authority or other person who has an approved dredge management plan for the removal of quarry material below high water mark from a coastal management district is not required to obtain an allocation pursuant to division 1.

Preparation of a dredge management plan is voluntary. The Bill provides criteria that a dredge management plan must include, but provides flexibility to the applicant in the extent and nature of the plan. The chief executive is the entity that approves a dredge management plan and can impose mandatory conditions about the maximum rate of quarry material that can be removed under the plan, the lodgement of monthly returns, the payment of royalties and similar matters.

A dredge management plan may deal with any aspect of an operation involving the removal of quarry material from State coastal land below high water mark in a coastal management district. This could include the placement of clean sand or other material back into the active coastal system, the disposal and treatment of contaminated spoil or the use of the dredge material for reclamation. Many of these activities constitute assessable development under schedule 8, part 1, item 3D of the *Integrated Planning Act 1997* and are referrable to the chief executive

under IDAS. An additional benefit of an approved dredge management plan is that any assessable development under item 3D in part 1 of schedule 8 (development that is relevant to the *Coastal Protection and Management Act 1995*), to the extent it is dealt with in the approved plan, does not require subsequent approval or referral to the chief executive under IDAS. However, other IDAS approvals may still apply under other statutes or a planning scheme. The relationship between the dredge management plan and approvals under the *Integrated Planning Act 1997* is discussed further in the explanation to section 61Z.

Further explanation for each section of the division is provided below.

Section 61U provides what a dredge management plan is, what it can deal with and that an approval may be obtained for a dredge management plan under this division.

Section 61V provides that in preparing a dredge management plan, a person must consider those matters relevant to the removal of quarry material that would be considered in relation to an allocation (section 61G). The person must also consider those matters under section 61ZJ(2) (criteria for assessment of IDAS development applications in coastal management districts) as the dredge management plan can also remove requirements to submit or refer an IDAS development application relevant to the removal or placement of quarry material. Subsection (2) states the minimum requirements that a dredge management plan must include.

Section 61W provides that a person may apply for a dredge management plan. While the decision to prepare a dredge management plan is voluntary, an application must be accompanied by a copy of the plan and an assessment fee that will be prescribed by Regulation under the *Coastal Protection and Management Act 1995*.

Section 61X provides that the chief executive may request further information from the applicant about the proposed dredge management plan and that an applicant with the chief executive's agreement may amend the plan before the chief executive has finished considering it.

Section 61Y provides the criteria for the chief executive to approve or refuse the plan. The considerations are closely linked with the matters the chief executive would have considered if the application for a dredge management plan were an application for an allocation. Under subsection (2), the chief executive may impose conditions on the dredge management plan about those matters listed in items (a) – (k). The chief executive must within 10 business days of making a decision, give the

applicant written notice of the decision. Like a resource allocation, a dredge management plan can have effect for up to six years.

Section 61Z provides the relationship between a dredge management plan and the *Integrated Planning Act 1997*. While an approved dredge management plan replaces the need to obtain a resource allocation under division 1, the approved plan can also replace requirements to obtain approvals or refer applications under IDAS.

The section provides that to the extent that the dredge management plan deals with assessable development under the *Integrated Planning Act 1997* schedule 8, part 1, item 3D, the holder of the approved plan is either: (1) not required to obtain approval (eg. no development application is required); or (2) is not required to refer a development application to the chief executive under IDAS for the development. Which of these two scenarios is relevant will depend on whether or not other entities such as local government or other State concurrence agencies are involved in the prospective IDAS application.

The provisions ensure that a dredge management plan can only replace requirements under the *Integrated Planning Act 1997* to the extent that the chief executive under the *Coastal Protection and Management Act 1995* is involved in the development application. As such, the holder of an approved plan would still be required to obtain other relevant approval requirements under the *Integrated Planning Act 1997* such as a planning scheme approval to place material on land in a local government area. Similarly, the dredge management plan does not replace the requirement to obtain approvals or authorities under other legislation in relation to the removal of quarry material or placement of spoil. This could be for instance, approvals under the *Environmental Protection Act 1994*, *Marine Parks Act 1982* or *Fisheries Act 1994*. These requirements may be currently operating within IDAS or are to be integrated under the IDAS umbrella in the future.

Section 61ZA provides for the transfer of an approved dredge management plan. This is similar to the process of transferring an allocation.

Section 61ZB provides for the renewal of a dredge management plan. This is similar to the process of renewing an allocation. Subsection (4) includes criteria for when the chief executive may refuse or impose an additional requirement on the approval of an application for renewal of a dredge management plan.

Section 61ZC provides the grounds by which the chief executive may amend a dredge management plan. This is similar to the grounds for amending an allocation. In deciding the amendment, the chief executive would consider those matters in section 61Y.

Section 61ZD provides the grounds by which the chief executive may suspend or cancel approval of a dredge management plan. This is similar to the grounds for suspending or cancelling an allocation notice.

Section 61ZE provides the procedure for amending, suspending or cancelling a dredge management plan. This is similar to the procedure for amending, suspending or cancelling an allocation.

Section 61ZF states that if the chief executive amends, suspends or cancels an approved dredge management plan, notice and particulars must be given to the holder of the approved plan. The section also provides for when the amendment, suspension or cancellation takes effect. Subsection (7) clarifies that the suspension or cancellation does not give the plan holder a right to compensation.

Division 3 – Offences

Section 61ZG makes it an offence to remove quarry material below high water mark without obtaining an allocation notice or holding an approved dredge management plan. The section also provides that it is an offence to contravene the conditions of an allocation notice or to remove material other than in accordance with an approved dredge management plan. Maximum penalties are commensurate with development offences under the *Integrated Planning Act 1997*.

The offence provisions do not apply to a person removing or collecting quarry material in emergency situations where such removal is necessary to remove threats to the life or health of a person or to remove a serious threat to the environment. An allocation is also not required for a person removing quarry material while fossicking under a licence granted under the *Fossicking Act 1994* if the person removes no more than $1m^3$ of material in a year.

Section 61ZH provides that a royalty for removal of State-owned material is payable at a rate to be set by Regulation. This is similar to the current situation under the *Marine Land Dredging By-Law 1987*. Subsection (3), in accordance with section 163(3) of the *Transport Infrastructure Act 1994*, provides that a port authority is generally not

liable to pay a royalty for quarry material removed from navigation channels or for reclamation of port lands.

Part 6 – Development approvals for assessable development

Part 6 in chapter 2 deals with the integration of coastal development approvals into IDAS.

Section 61ZI provides that part 6 applies where the chief executive is acting as a concurrence agency or assessment manager for development applications for assessable development. The types of assessable development and the role of the chief executive in the assessment of applications is established by schedule 8 of the *Integrated Planning Act 1997* and the schedules to the *Integrated Planning Regulation 1998.*

Part 6 largely deals with the assessment of applications for assessable development completely or partly within a coastal management district. Section 104 of the *Coastal Protection and Management Act 1995* establishes an existing coastal management district over the length of the coast. This coastal management district will be replaced as regional plans for areas of the coast are prepared under the Act. A Regulation associated with these regional plans will establish a new coastal management district or districts that replace the existing coastal management district established under section 104.

Part 6 is separated into three major divisions dealing with the assessment and conditioning of development applications (division 2); land surrender conditions (division 3) and matters about artificial waterways (division 4).

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

Section 61ZJ lists the matters that the chief executive must consider in assessing development applications. Subsection (2) contains general coastal management criteria that must be considered in the assessment of any IDAS applications where the chief executive is acting as the assessment manager or concurrence agency. Subsection (3) contains specific criteria in relation to applications for the reconfiguring of a lot in connection with the construction of an artificial waterway.

Section 61ZK declares that the State coastal management plan and regional coastal management plans (to the extent they are relevant to the

application) must be considered as part of the relevant laws and policies during assessment under the sections of the *Integrated Planning Act 1997* listed in the provision.

Section 61ZL provides that the chief executive may impose or direct conditions when acting as the assessment manager or concurrence agency under the *Integrated Planning Act 1997* that the chief executive considers are appropriate for coastal management. Coastal management is defined in section 7 of the *Coastal Protection and Management Act 1995*. The chief executive also must consider the *Integrated Planning Act 1997* section 3.5.30(2) in imposing or directing conditions such that all conditions are also reasonable and relevant. Subsection (2)(b) and (c) provides for specific conditioning powers in relation to applications for the reconfiguring of a lot in connection with the construction of an artificial waterway and a canal.

Section 61ZM provides that the chief executive may impose conditions about financial assurances. These arrangements have been inserted to meet the potential cost of any mitigation required as a result of development or works undertaken on the site and for rehabilitation of the site upon the conclusion of the development activity. Security may take the form of a deposit, surety, bond or other suitable arrangement such as an insurance policy.

Section 61ZN clarifies that in those instances where a relevant development application is partly within a coastal management district, the chief executive may only impose conditions on the approval in relation to the part of the development that is proposed within the boundaries of the district. This section does not apply to development applications for the reconfiguration of a lot in connection with the construction of a canal which can be located outside of a coastal management district but become tidal waters upon connection of the canal with the sea.

Division 3 - Land surrender

Division 3 (sections 61ZO to 61ZU) provides that the chief executive may, with the approval of the Governor in Council, impose a condition that land must be surrendered to the State for coastal management. This land surrender provision has been carried over from section 45 of the *Beach Protection Act 1968*.

The land surrender condition can only be imposed on those development applications where the applicant is seeking to increase development rights over the land through the reconfiguring of a lot. Further, only those lands in a coastal management district that are also within an erosion prone area or are within 40 m of the foreshore (eg. where the erosion prone area is nil) may be sought to be surrendered under this division.

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

As was the case under the *Beach Protection Act 1968*, a land surrender condition imposed under the *Coastal Protection and Management Act 1995* in relation to this division will be non-appealable and not subject to compensation. However, a person may seek judicial review of the conduct engaged for the purpose of making a decision to impose a land surrender condition or for similar purposes.

In terms of the relationship between the IDAS process and the process to seek Governor in Council approval for a land surrender condition, the normal IDAS assessment period is suspended whilst the Governor in Council considers the land surrender recommendation. The chief executive manages this process through the giving of a notice to the applicant that the chief executive intends to seek the approval of the Governor in Council for a land surrender (section 61ZQ). A subsequent notice is issued to the applicant by the chief executive when the Governor in Council makes a decision to accept or reject the proposed land surrender (section 61ZS). The IDAS process stops in between the time the applicant receives a notice of intent to seek surrender from the chief executive and the second notice to the applicant that reports the Governor in Council's decision about the proposed surrender. The effect of this amendment will ensure that a development application cannot be decided by the assessment manager (eg. the local government) before the Governor in Council has made a decision about the surrender.

Land surrender under this division cannot be sought on land where a surrender under this division or the relevant provisions of the *Beach Protection Act 1968* (sections 41C or 45) was previously obtained for the land or lot.

Division 4 - Matters about artificial waterways

Sections 61ZV to 61ZZ relate to matters about artificial waterways and canals.

Section 61ZV applies to development applications to reconfigure a lot in connection with the construction of a canal as defined in section 5C. A canal within the meaning of the Act associated with this type of development application must be surrendered to the State as a public waterway.

Section 61ZW provides that an application to reconfigure a lot in connection with the construction of an artificial waterway must relate also to operational work associated with the construction of the waterway. This provision does not restrict an applicant from making application for a development permit for both aspects of the development, preliminary approval for both aspects of development or a combination of the two. However, both aspects of development must be addressed in the single application. A development permit for the reconfiguration will be required before a person can undertake works to construct the canal.

Section 61ZX prohibits the approval of a canal where the canal is to be connected to inundated or leased land and the registered proprietor or lessee of the land may restrict or prohibit the use or movement of vessels in water on the land. This provision has been carried over from the existing s.3(1)(d) of *the Canals Act 1958*.

Section 61ZY provides the requirements for plans of subdivisions that involve artificial waterways. Subdivision (1) provides requirements to how an artificial waterway should be shown and described on a plan of subdivision and procedures for registering a plan of subdivision incorporating an artificial waterway with the Registrar of Titles. Subsection (2) provides that a local government must certify on the plan of subdivision that the waterway, and any access channel associated with the waterway has been constructed in accordance with the development approval for the waterway before registering the plan of subdivision. For artificial waterways that are not canals, a local government must state on the plan that it is satisfied arrangements have been made or will be made for the maintenance and management of the waterway before registering the plan. This process is not necessary for canals as they must be surrendered to the State under section 61ZV and local government must maintain and keep clean all canals under section 61ZZA.

Section 61ZZ provides that the Registrar of Titles must not register plans of subdivision involving artificial waterways until the plan of subdivision is registered under the *Land Title Act 1994*. If the plan of subdivision deals with a canal, the plan must be certified by a local government and the area of the canal surrendered to the State as a public waterway before registry. This provision mirrors existing provisions in the *Canals Act 1958*, which ensures that a canal is fully constructed, certified and surrendered to the State before a person may deal in the land.

Part 7– Miscellaneous

Section 61ZZA provides that a local government must maintain and keep clean each canal and access channel in its area. This is the current situation under the *Canals Act 1958*. This provision is to apply to canals approved and surrendered to the State under the *Canals Act 1958*; canals approved and surrendered to the State under the provisions of the Bill in part 6; and canals surrendered under a lease under the *Land Act 1994*. This provision does not apply to those canals, or parts of canal stipulated in the section, that are constructed under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

Section 61ZZB provides that upon connection with tidal water, the waters of a canal up to the tidal limit are taken to be part of the coastal management district for the area. This ensures that any future works or other development in such waters continue to be relevant assessable development for the purpose of schedule 8 of the *Integrated Planning Act 1997* and referrable to referral agencies listed in the *Integrated Planning Regulation 1998*.

Section 61ZZC provides that in the absence of a requirement to obtain tenure for tidal works on land under tidal water in the form of a lease or permit under the *Land Act 1994*, the development permit for the works is a right to use and occupy the land under tidal water for the purpose provided in the development approval.

Section 61ZZD applies to an owner of freehold land or the lessee of leasehold land above the high water mark where the land is connected to an approved structure in tidal waters or where the owner or lessee of land receives benefit from the structure in tidal waters associated, but not physically connected, with the land. The section provides that the freehold owner or lessee of the land has a duty of care to ensure the structure is

maintained in a safe condition. Structure includes jetty, pontoon or boat ramp.

Insertion of new s 62A

Clause 16 inserts a new section into chapter 3, part 1 of the *Coastal Protection and Management Act 1995* allowing an authorised person to utilise existing investigation and inspection powers under the Act to monitor and enforce compliance with this Act and in relation to development offences for assessable development under the *Integrated Planning Act 1997*.

Amendment of s 103 (Regulation making power)

Clause 17 inserts new provisions into the regulation-making powers of the Act. The provisions relate to requirements for the following:

- erecting or altering a building or other structure on land in an erosion prone area (as per existing requirements under regulations made under section 44A of the *Beach Protection Act 1968*);
- the setting of application and assessment fees in relation to the functions of the chief executive under the *Integrated Planning Act 1997*;
- the setting of royalties in relation to the removal of State-owned quarry material below high water mark within coastal management districts; and
- the waiver of a royalty and the refund or waiver of fees under the *Coastal Protection and Management Act 1995* in certain circumstances.

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

Clause 18 inserts a new section 103A relating to numbering and renumbering the Act, a new heading for chapter 6 (transitional provisions), and a new heading for chapter 6, part 1 in relation to transitional provisions for the original *Coastal Protection and Management Act 1995* (No. 41 of 1995).

Insertion of new ch 6, pt 2

Clause 19 inserts a new part 2 under chapter 6 in relation to transitional provisions that are the subject of this Bill.

Section 105 provides that each area that was a control district (as saved by section 104 of the *Coastal Protection and Management Act 1995*) is to be re-named as a coastal management district from commencement of the section.

Section 106 clarifies the relationship between the coastal management districts saved under section 104 of the *Coastal Protection and Management Act 1995* (which consist of the area currently overlain by erosion prone areas and coastal management control districts under the *Beach Protection Act 1968*) and coastal management districts declared under a regulation under section 47(1)(a) of the *Coastal Protection and Management Act 1995* in connection with a regional plan. This section provides that a new district declared in association with the regional plan, for the area to which the plan applies, replaces all or any part of the existing district saved under s.104 currently existing in that area.

Sections 107 -117 in division 2 of part 2 provide that existing authorities, permits, sanctions and approvals under the *Harbours Act 1955*, *Beach Protection Act 1968*, *Canals Act 1958* and *Marine Land Dredging By-Law 1987* are taken to be development approvals (in the form of either preliminary approvals or development permits) under the *Integrated Planning Act 1997* to the extent that the development or works could have been authorised under the repealed legislation.

Section 107 deems those sanctions and approvals for harbour works (section 86) and reclamation (section 91) given under the *Harbours Act 1955* to be development approvals under the *Integrated Planning Act 1997*. Subsection (3) provides that a deemed approval in relation to this section does not replace further development approval requirements under the *Integrated Planning Act 1997* or approvals required under other legislation. Thus, where a person has a sanction under section 86 of the *Harbours Act 1955* for a marine structure but has not obtained the required building approval under the *Integrated Planning Act 1997*, the commencement of the Bill will not remove or replace the requirement to obtain a development approval under the *Integrated Planning Act 1997* to carry out the assessable building works.

Section 108 provides that a right to use and occupy issued in relation to a sanction under section 86 of the *Harbours Act 1955* continues to apply when the sanction becomes a development approval under section 107.

Section 109 deems those permits given under section 44 of the *Beach Protection Act 1968*, dealing with the approval to build or erect a structure in a coastal management control district, to be development approvals under the *Integrated Planning Act 1997*. Subsection (3) provides that a deemed approval in relation to this section does not replace further development approval requirements under the *Integrated Planning Act 1997* or approvals required under other legislation.

Section 110 deems those consents to an application in relation to an approval to subdivide land or open a road under section 45 of the *Beach Protection Act 1968* to be development approvals under the *Integrated Planning Act 1997*. Subsection (3) provides that a deemed approval in relation to this section does not replace further development approval requirements under the *Integrated Planning Act 1997* or approvals required under other legislation and has effect only for the period the approval would have had effect if the *Beach Protection Act 1968* had not been repealed.

Section 111 deems those permits given under section 47(1A) of the *Beach Protection Act 1968*, dealing with interference with sand, stone, gravel, etc., to be development approvals under the *Integrated Planning Act 1997*. Subsection (3) provides that a deemed approval in relation to this section does not replace further development approval requirements under the *Integrated Planning Act 1997* or approvals required under other legislation and has effect only for the period the approval would have had effect if the *Beach Protection Act 1968* had not been repealed.

Section 112 deems those provisional and final approvals given under the *Canals Act 1958*, dealing with the subdivision of land involving the construction of a canal, to be preliminary approvals and/or development permits as stipulated in the section.

Section 113 provides that currency periods and other matters under chapter 3, part 5, division 5 of the *Integrated Planning Act 1997* will apply to 'deemed' development approvals under this part. This establishes default time limits for approvals, consistent with other planning and building approvals given under the *Integrated Planning Act 1997*. That Act establishes a currency period of 4 years for development approvals involving changes of use and 2 years for approval involving the reconfiguring of a lot, operational works and building works. If

development under the deemed approval has not happened (in the case of a material change of use) or substantially started (in the case of other development like operational works) within the time specified above, the deemed approval lapses. A subsequent development application under the *Integrated Planning Act 1997* would need to be made in order to carry out development where the currency period of the deemed approval has lapsed.

The currency period of a deemed development approval may be extended under section 3.5.22 of the *Integrated Planning Act 1997*. The process under the Act establishes that the person seeking to undertake the development must obtain the owner's consent to extend the currency period and must seek the views of the assessment manager and any concurrence agency that would have been involved in the original application for development. For development approvals deemed under this division, this will include the chief executive administering the *Coastal Protection and Management Act 1995*.

Subsections (3) and (4) of section 113 provide that if the deemed approval is for operational works involving a construction of a structure in tidal waters, the currency period is taken to be four years from the commencement of the section but provides that the construction must be substantially completed by the end of this period. If the construction has not been completed, the currency period lapses and the constructing authority would need to re-apply under the *Integrated Planning Act 1997* in order to complete the works.

Section 114 provides that a permit granted under the *Marine Land Dredging By-Law 1987* continues to have effect for the term of the permit (maximum period is 2 years). On the expiry of an existing permit, a person will need to re-apply for a resource allocation under chapter 2, part 5 to continue removing material from land under tidal water.

Section 115 provides for how applications in progress under the repealed legislation will be administered. The section provides that an application made before commencement of the Bill under any of the sections listed in the provision will be administered and decided under the repealed legislation.

Section 116 provides that certain applications lapse under the *Harbours Act 1955* and *Canals Act 1958* where the chief executive has requested documents or other information in order to process the application and such information has not been provided to the chief executive at the time of commencement. Subsection (2) provides that the applicant will have a further 12 months from commencement to respond to the original

information request. If the document or information is not supplied within 12 months, a new application for the development under the *Integrated Planning Act 1997* will be required.

This amendment is necessary to ensure that as many applications as possible are administered under the new integrated system and to ensure that the repealed approval processes are not promulgated and continued indefinitely in the future. This approach is consistent with the *Integrated Planning Act 1997* which allows a person up to 12 months to respond to an information request made by the assessment manager or a concurrence agency under that Act. Failure to respond to an information request within 12 months results in the application lapsing.

Section 117 provides for how an application is to be processed where a person has approval to reconfigure a lot in a coastal management district from a local authority but has not yet sought approval from the Governor in Council under section 45 of the *Beach Protection Act 1968*. In such instances, this section clarifies that a person would be required to apply for the reconfiguring of a lot under the *Integrated Planning Act 1997* with the chief executive as the assessment manager.

Section 118 provides for the dissolution of the Beach Protection Authority. Under the new integrated system, all development approval provisions relevant to activities that required approval or views of the Beach Protection Authority will be the responsibility of the chief executive administering the Act (with the exception of decisions about land surrender which will remain at the Governor in Council level). In addition, all development decisions will now be subject to the appeal provisions of the *Integrated Planning Act 1997*.

Section 119 provides that a reference to the Beach Protection Authority in an Act or other document is taken to be a reference to the department administering the *Coastal Protection and Management Act 1995* if the context permits.

Section 120 provides that erosion prone areas set out in erosion prone area plans under the *Beach Protection Act 1968* are taken to be erosion prone areas under this Act. Statutory provisions relevant to erosion prone areas are described in the explanation of chapter 2, part 4 of the Bill.

PART 3–AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 3

Clause 20 declares that part 3 of the Bill amends the *Integrated Planning Act 1997*.

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

Clause 21 amends schedule 8 of the *Integrated Planning Act 1997* in:

- part 1, by inserting new item 3D which lists the types of operational works that are assessable development in relation to carrying out tidal works or other works carried out completely or partly within a coastal management district;
- part 3, by inserting new item 21C which provides that operational work for the construction of a navigational aid or sign for maritime navigation is exempt development that cannot be made assessable or self assessable development by a planning scheme; and
- part 4, by inserting new definitions into the part for terms used in part 1 relevant to the *Coastal Protection and Management Act 1995*.

Integrated Planning Regulation 1998

Amendments to the *Integrated Planning Regulation 1998* (the Regulation) will be required to support the Bill. The Regulation will deal with instances where the chief executive administering the *Coastal Protection and Management Act 1995* will become the alternative assessment manager (schedule 1A), the type of assessment for applications where the chief executive is acting as alternative assessment manager (schedule 1), and instances where the chief executive will become a referral agency and the jurisdiction for referral agency powers (schedule 2).

Alternative assessment manager

Amendments to schedule 1A of the Regulation will provide that the chief executive administering the *Coastal Protection and Management Act*

1995 will become the alternative assessment manager for applications that are not assessable under a local government planning scheme; where there is no other assessable development for the application and where there are no other assessment managers nominated for the development. Generally for development wholly outside of a local government area such as land under tidal waters, the chief executive will become the assessment manager for the application.

Assessment process where the chief executive is the alternative assessment manager

Amendments to schedule 1 of the Regulation will provide that where the chief executive is the alternative assessment manager (determined by schedule 1A) the assessment of the applicant will be 'code assessment'. The 'code' the chief executive uses in the assessment of the application will be the criteria, laws and policies recognised under the *Coastal Protection and Management Act 1995* that are relevant to the application as provided for under section 3.5.4 of the *Integrated Planning Act 1997*.

Referral agencies and jurisdiction

Amendments to schedule 2 of the Regulation will set out the chief executive's role as a concurrence agency for assessable development under schedule 8, part 1, item 3D, and in relation to assessable development completely or partly within a coastal management district under a planning scheme. When acting as a concurrence agency for a development application, the chief executive will have a jurisdiction of "coastal management" as defined in section 7 of the *Coastal Protection and Management Act 1995*.

In accordance with the provisions of the *Harbours Act 1955*, Queensland Transport will also act as a concurrence agency for those development applications under IDAS involving tidal works and other works that would have required a sanction under section 86 of that Act. Queensland Port Authorities will also have referral agency powers in relation to development below high water mark within port limits in accordance with section 86 of the *Harbours Act 1955*.

PART 4–AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 4

Clause 22 declares that part 4 of the Bill amends the *Local Government Act 1993.*

Insertion of new s 934A

Clause 23 inserts a new section into the *Local Government Act 1993* which will allow a local government to regulate, by local law, the movement and use of vessels and the use of any structure in a canal within its area, to specify any obligations to maintain a structure in a canal, and matters relating to the local government's role to maintain and keep clean canals. The local law making power provided by this section is subject to requirements about marine safety under the *Transport Operations (Marine Safety) Act 1994*.

PART 5–MINOR AMENDMENTS AND REPEAL

Acts amended–schedule

Clause 24 provides that the schedule amends the Acts mentioned in the schedule. Primarily these amendments relate to minor changes to the *Coastal Protection and Management Act 1995*, including replacement of the term 'control district' with 'coastal management district'. Item 30 of the schedule provides for new terms introduced in the Bill to be inserted into the dictionary in schedule 2 of the *Coastal Protection and Management Act 1995*.

The amendments also include a minor amendment of section 1.1.2 of the *Integrated Planning Act 1997* to delay the commencement of the independent review provisions in chapter 2, part 2, division 2. The provisions will otherwise commence on 1 January 2002. The provisions allow a person to request an independent review of planning scheme provisions. The need for the provisions are being reviewed as part of the operational review of the IPA. Accordingly, it is proposed that the response to this review be dealt with as part of the response to the overall IPA operational review.

Legislation repealed

Clause 25 provides for the repeal of the *Beach Protection Act 1968, Canals Act 1958*, and section 233 and 236 of the *Transport Infrastructure Act 1994* upon commencement.