

Sustainable Ports Development Bill 2015

Explanatory Notes

For

Amendments to be moved during consideration in detail by The Honourable Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines

Title of the Bill

Sustainable Ports Development Bill 2015

Policy objectives of the amendments

The objective of the amendments is to address recommendations by the Infrastructure, Planning and Natural Resources Committee (the Committee) in its report No. 6 - Sustainable Ports Development Bill 2015 (Committee Report) tabled in the Legislative Assembly on 1 September 2015.

The amendments also address some of the issues raised in submissions made to the Committee during the Committee's consideration of the Sustainable Ports Development Bill 2015 (the Bill) and other minor administrative or technical issues.

Achievement of policy objectives

Additional consultation/notification requirements

The Committee Report recommends several amendments to the Bill to include additional consultation and notification requirements in relation to master planning and port overlays.

To improve access to information and involvement and participation in the process by stakeholders, amendments will be made to require:

- the Minister to provide the relevant port authority and local government with a copy of the final or amended master plan;

- public consultation during the review of a master plan;
- table in Parliament a copy of a master plan, or an amended master plan;
- a copy of a public notice be given to the relevant port authority and local government when a decision is made to not make or amend a master plan or to take no further action in relation to a review of a master plan;
- public consultation on a port overlay; and
- a summary of outcomes of consultation be prepared, kept on the register to be maintained under section 56, and published on the Department of State Development's website.

Islands (Port of Gladstone)

As drafted, section 32 of the Bill implements the government's commitment in the *Reef 2050 Long-Term Sustainability Plan* (Reef 2050) to protect greenfield areas by restricting new port development in and adjoining the Great Barrier Reef World Heritage Area (GBRWHA) to within current port limits. These limits, long-established and fixed in the *Transport Infrastructure (Ports) Regulation 2005*, relate to 'tidal waters and sea' and generally extend to the high water mark. Islands in the GBRWHA above high water mark can never be within port limits so the consequential effect of the Bill is that no new port development can be approved on an island in the GBRWHA.

Almost all islands in the GBRWHA are already 'off limits' to development because they are included in national park. However, a small number in or adjacent to the Port of Gladstone are either currently being used for port development or have been flagged for future port development.

These islands are:

- Balaclava and the north end of Curtis Island in the Port of Rockhampton (the Fitzroy Delta); and
- Curtis, South Trees, Boyne and other islands in the Port of Gladstone (a priority port).

The government has committed to prohibiting any development in the Greater Fitzroy Delta and ensuring any increase in port capacity is confined to within the existing port limits of the Port of Gladstone.

However, the intention was not to prohibit development on islands at the Port of Gladstone (though they are within the GBRWHA). The amendments will ensure the Port of Gladstone can undertake development on the islands within the port area where that development is on or adjacent to the port's strategic port land, a State development area or on land zoned special industry under the Gladstone Regional Council Planning Scheme 2015.

Port of Cairns

Recommendation 12 of the Committee's Report requests the Minister consider declaring the Port of Cairns as a priority port following a considered assessment of the environmental impacts on the Great Barrier Reef, the economic benefits to the Cairns region and the government's commitments made to the United Nations Educational, Scientific and Cultural Organization World Heritage Committee and under the Reef 2050. The Committee's recommendation is based on its concern that the future growth of the port could be 'stilted' if it is not designated a priority port.

The Bill proposes amendments to the Bill to ensure future growth at the Port of Cairns while ensuring the protection of the GBRWHA. Amendment 19 will allow an approving authority to approve capital dredging for the purpose of establishing, constructing or improving a port facility at the Port of Cairns with constraints that:

- limit capital dredging to within the Port of Cairns inner harbour (as defined in schedule 1 (Dictionary));
- provide that a dredging approval must be for 50,000 cubic metres or less (consistent with the National Assessment Guidelines for Dredging for small projects);
- provide that the approval will not result in more than 150,000 cubic metres of material being extracted from, or excavated in, the port's inner harbour in a four year period; and
- prohibit at-sea disposal of resulting capital dredge material.

These constraints will ensure the Port of Cairns can expand without presenting a threat to the Great Barrier Reef.

The Port of Cairns provisions will be reviewed by government within four years of commencement.

Clarification and strengthening of prohibition on sea-based disposal provision

Amendments to the Bill are proposed in light of the Committee's concern that section 34, as drafted, does not adequately reflect the policy intent, to prohibit the sea-based disposal of material generated by port-related capital dredging into the GBRWHA, and its recommendation that the section be amended to strengthen and clarify this intent.

Compensation provisions

There is no express requirement for legislation regulating the use of land to provide for compensation, although the *Sustainable Planning Act 2009* (SP Act) and the *State Development and Public Works Organisation Act 1971* (SDPWO Act), which both regulate land use, contain compensation provisions.

During the Committee's consultation on the Bill, stakeholders queried the need for compensation provisions as the Bill does not contain any development application processes. Accordingly, amendment 22 will omit compensation provisions from the Bill and rely instead on existing compensation processes under the legislation which contains the application process.

Alternative ways of achieving policy objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated cost for government implementation

There are no additional anticipated costs for government arising from the amendments.

Consistency with fundamental legislative principles

The amendments are generally consistent with fundamental legislative principles (FLPs). Potential breaches of the principles are set out below.

Does the legislation have sufficient regard to the rights and liberties of individuals—Legislative Standards Act 1992, section 4(2)(a)

Amendment 20 replaces section 34 (Condition for approvals for particular capital dredging). New section 34 provides that particular approvals for capital dredging will be taken to include a condition that prohibits the disposal of port-related capital dredged material in the restricted area unless the material is beneficially reused. The clause will apply to both existing approvals and new approvals granted after commencement of the Bill.

This means an existing approval allowing the disposal of port-related capital dredged material in the restricted area will no longer apply. The removal of this right may be considered a breach of FLPs but is necessary to implement the government's commitment to ban the sea-based disposal of port-related capital dredged material in the GBRWHA. From the commencement of the Bill, and with the Australian Government's ban on the disposal of capital dredged material in the Great Barrier Reef Marine Park, no sea-based disposal of port-related capital dredged material will be allowed in any part of the GBRWHA.

Amendment 22 removes the compensation provisions from the Bill (part 4, division 2). There is no express requirement for compensation in legislation regulating the use of land. The potential breach of the FLP is considered justified as the Bill does not contain any development application processes, and therefore, it is appropriate to allow the legislation containing those processes (for example, the SP Act and the SDWPO Act) to deal with compensation if those Acts give a right to compensation.

Consultation

The majority of amendments result from recommendations made in the Committee Report. Consultation occurred through the Committee's inquiry process. The Committee received 52 submissions, which included a form email submission from 1,515 individuals. On 13 July 2015, the Committee held a public hearing in Brisbane. On 29 and 30 July 2015, the Committee held public hearings in Cairns and Mackay.

Further detailed consultation has also occurred with Ports North; Advance Cairns; WWF Australia; Environmental Defenders Office Queensland; Cairns and Far North Environment Centre; and the Australian Marine Conservation Society regarding possible options to protect future development opportunities requiring capital dredging at the Port of Cairns.

The Department of State Development has also consulted with Gladstone Ports Corporation in relation to the proposed amendments to ensure the Port of Gladstone can undertake development on the islands within its port area.

Notes on provisions

Amendment 1 is a consequential amendment to section 6 to remove the definition of *strategic port land*. Amendment 37 inserts the definition in schedule 1 (Dictionary).

Amendment 2 removes section 9 which provides that the process for making or amending master plans set out in part 2, subdivision 2 must be used. The process for making or amending a master plan has been expanded, particularly in relation to stakeholder consultation requirements and administrative amendments and section 9 is now redundant.

Amendment 3 amends section 12 to provide that as well as providing a copy of the public notice advising of the decision to make or amend a master plan to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant), the Minister must provide a copy of the master plan or amendment.

Amendment 4 amends section 12 to provide that if the Minister makes a master plan or an amendment to a master plan, the Minister must, within 14 sitting days, table a copy of the master plan or amendment.

Section 12 is also amended to provide that in the event a Minister decides not to make a proposed master plan or amendment, the Minister must give a copy of the public notice currently required under the section to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Amendment 5 inserts new section 12A to provide that the Minister may make an administrative amendment to a master plan. An administrative amendment is defined in schedule 1 (see amendment 26).

In making an administrative amendment the Minister is not bound by the notification requirements in sections 10 to 12. Instead, the Minister must publish a public notice about the amendment, stating the day the amendment was made and where a copy of the master plan, as amended, may be inspected and purchased.

The Minister must give a copy of the public notice to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Amendment 6 amends section 15 to expand the consultation requirements. Currently section 15 provides that the Minister must notify a port entity and a local government of the Minister's intent to review a master plan. The port authority or local government then has at least 20 business days to make a submission to the Minister about the proposal.

The amendment will require the Minister to instead provide public notice of intent to review a master plan and give a copy of the public notice to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Consistent with the current timeframe under the section, an entity will have at least 20 business days to make a submission to the Minister about the proposal.

Amendment 7 adds to section 17 a requirement for the Minister to consider all submissions properly made in deciding the action to take after reviewing a master plan.

Amendment 8 amends section 17 to provide that if the Minister decides to take no further action after reviewing a master plan, the Minister must give notice of the decision to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Amendment 9 inserts new section 21A which sets out the process the Minister must follow in preparing and notifying a proposed port overlay, or proposed amendment of an overlay. The section provides that after preparing a draft port overlay or amendment, the Minister must publish a public notice that includes details of where the overlay or amendment can be inspected, contact information, how to make a submission and a consultation period of at least 10 business days.

The Minister must give a copy of the public notice and the draft overlay or proposed amendment of an overlay to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

A copy of the draft overlay or proposed amendment to an overlay must be available for inspection and purchase for the whole of the consultation period.

Amendment 10 amends section 22 (making or amending port overlays) to include additional consultation and notification requirements. As amended, section 22 will require the Minister to consider all properly made submissions in deciding whether to make a port overlay or amendment and, if a decision is made to make or amend a port overlay, to give public notice.

The Minister will also be required to give a copy of the public notice and port overlay, or amendment to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Amendment 11 makes a consequential amendment to section 22 to update a cross-reference.

Amendment 12 inserts new section 22A to provide that the Minister may make an administrative amendment to a port overlay. An administrative amendment is defined in schedule 1 (see amendment 26).

In making an administrative amendment the Minister is not bound by the notification requirements in sections 21A and 22. Instead, the Minister must publish a public notice about the amendment, stating the day the amendment was made and where a copy of the port overlay, as amended, may be inspected and purchased.

The Minister must give a copy of the public notice to a relevant port authority and local government, and the Coordinator-General and MEDQ (if relevant).

Amendment 13 amends section 29 (requirement to review approved development schemes under State Development Act) to provide that if the Coordinator-General decides an approved development scheme should remain inconsistent with a port overlay, the Coordinator-General must give the State Development Minister a report stating the reasons for making that decision.

Within 14 sitting days of the making of the decision by the Coordinator-General, the Minister for State Development must table the report provided by the Coordinator-General in the Legislative Assembly.

Amendment 14 makes a consequential amendment to section 30 to update a cross-reference made necessary by amendment 15.

Amendment 15 amends section 30 (requirements for making or amending approved development schemes under State Development Act) to provide that if the Coordinator-General decides to make, or amend, an approved development scheme in a way that is inconsistent with a port overlay, the Coordinator-General must give the State Development Minister a report stating the reasons for making or amending the scheme despite the inconsistency.

Within 14 sitting days of the approved development scheme, or amendment of the approved development scheme, being made the Minister for State Development must table the report provided by the Coordinator-General in the Legislative Assembly.

Amendment 16 amends section 32 to provide that the Port of Gladstone can undertake development on the islands within the port area where that development is on or adjacent to the port's strategic port land, a State development area or on land zoned special industry under the Gladstone Regional Council Planning Scheme 2015.

Amendment 17 makes a consequential amendment to update a cross-reference.

Amendment 18 makes a consequential amendment to the part 3, division 3 heading to reflect the amendments made to the provisions in the division.

Amendment 19 amends section 33 to allow an approving authority to approve capital dredging for the purpose of establishing, constructing or improving a port facility at the Port of Cairns. However, an approving authority may only give approval for capital dredging at the Port of Cairns if the approval is for dredging:

- within the Port of Cairns inner harbour;
- of not more than 50,000 cubic metres;
- that will not result in the extraction of a total of more than 150,000 cubic metres of capital dredge material in a four year period.

The *inner harbour*, for the Port of Cairns, will be defined in schedule 1 (see amendment 32) to mean the area—

- south of latitude 16° 55' 0.7" south; and
- within the port's port limits under the *Transport Infrastructure Act 1994*; but
- outside the State marine park (as defined under the Bill).

Sea-based disposal of any resulting capital dredge material will be prohibited (see amendment 20).

Section 33, as amended will ensure the Port of Cairns can expand without presenting a threat to the Great Barrier Reef.

Amendment 20 amends section 34. In the Committee Report, recommendations 8 and 9, the Committee recommended the section be amended to strengthen and clarify the policy intent and to provide a definition of ‘beneficial reuse’.

The amendment replaces section 34 to make clear the government’s policy to prohibit the sea-based disposal of material generated by port-related capital dredging into the GBRWHA from the commencement of the Bill, regardless of whether a project has an existing approval.

Together with the Australian Government’s ban on the disposal of capital dredged material in the GBRMP, no sea-based disposal of port-related capital dredged material will be allowed in any part of the GBRWHA.

The section, as amended, includes examples of how capital dredged material may be beneficially reused in a restricted area and ensures that any port-related capital dredged material resulting from dredging in the Port of Cairns inner harbour must also be beneficially reused if disposed of or deposited in the area.

Amendment 21 inserts new section 35A to provide that the Minister must review the operation of section 33(2)(b) and (3) (capital dredging in the Port of Cairns inner harbour) within four years after the commencement of the section to decide if a balance between economic development and the protection of the GBRWHA is being achieved.

Before carrying out the review, the Minister must publish public notice and provide at least 20 business days for the making of submissions. In carrying out the review, the Minister must then consider all properly made submissions. As soon as practicable after finishing the review, the Minister must table a report about the outcome in the Legislative Assembly.

Amendment 22 omits part 4, division 2 (Compensation for port overlays). There is no express requirement for compensation in legislation regulating the use of land, although the SP Act and the SDPWO Act, which both which regulate land use, contain compensation provisions.

During the Committee’s consultation on the Bill, stakeholders queried the need for compensation provisions in the Bill as it does not contain any development application processes. Accordingly, this amendment will omit compensation provisions from the Bill and rely instead on existing compensation processes under the legislation which deals with the application process.

Amendment 23 amends section 56 (registers) to require that, as well as keeping a register of the items required under the section, the chief executive must also keep a register of a proposed port overlay or an amendment of a port overlay and matters raised in submissions to the Minister about:

- a proposed master plan, or proposed amendment to a master plan (under section 11);
- a proposed port overlay or proposed amendment to a port overlay (under section 21A); and
- a review notified under section 35A.

Amendment 24 makes a consequential amendment to section 60 to update a cross-reference.

Amendment 25 is a consequential amendment to remove from section 60 the definition of ***EIS process***. Amendment 31 inserts the definition into schedule 1 (Dictionary).

Amendment 26 inserts in schedule 1 (Dictionary) a definition of **administrative amendment** for the purpose of new sections 12A and 22A. These sections provide for the Minister to make an administrative amendment to a master plan (section 12A) or a port overlay (section 22A) to correct or change:

- an explanatory matter; or
- the format or presentation; or
- a spelling, grammatical or mapping error; or
- a factual matter incorrectly stated; or
- a redundant or outdated term; or
- inconsistent numbering of provisions; or
- a cross-reference.

Amendment 27 is a consequential amendment to remove from schedule 1 (Dictionary) the definition of **appeal period** which is redundant with the removal of part 4, division 2 (see amendment 22).

Amendment 28 amends the definition of **capital dredging** in schedule 1 (Dictionary) to remove existing paragraph (b) and replace it with new paragraphs (b) and (c). The inclusion of the new paragraphs makes the exemptions to capital dredging consistent with the *Great Barrier Reef Marine Park Regulations 1983* (Commonwealth).

Amendment 29 is a consequential amendment to remove from schedule 1 (Dictionary) the definition of **compensation claim** which is redundant with the removal of part 4, division 2 (see amendment 22).

Amendment 30 is a consequential amendment to remove from schedule 1 (Dictionary) the definition of **court** which is redundant with the removal of part 4, division 2 (see amendment 22).

Amendment 31 is a consequential amendment to insert in schedule 1 (Dictionary) a definition of **EIS process**. The definition was previously included in section 60.

Amendment 32 is a consequential amendment to insert in schedule 1 (Dictionary) a definition of **inner harbour** for the purposes of section 33 (see amendment 19).

Amendment 33 is a consequential amendment to remove from schedule 1 (Dictionary) the definition of **material change of use** which is redundant with the removal of part 4, division 2 (see amendment 22).

Amendment 34 is a consequential amendment to remove from schedule 1 (Dictionary) the definition of **owner** which is redundant with the removal of part 4, division 2 (see amendment 22).

Amendment 35 is a consequential amendment to schedule 1 (Dictionary) to amend the definition of **public notice** to take into account new notification and consultation requirements.

Amendment 36 is a consequential amendment to insert in schedule 1 (Dictionary) a definition of **State Development Minister** for the purposes of sections 6 and 32 (as amended).

Amendment 37 is a consequential amendment to insert in schedule 1 (Dictionary) a definition of *strategic port land* for the purposes of sections 6 and 32 (as amended).

Amendment 38 inserts in schedule 2 an amendment to section 255E of the SP Act to provide that chapter 6, part 1, division 4, subdivision 2A of the SP Act does not apply to the Bill. This will mean that under subdivision 2A, in considering a development application, the chief executive must ensure it is consistent with a port overlay.