Queensland

Explanatory Notes for SL 2003 No. 203

Coastal Protection and Management Act 1995

COASTAL PROTECTION AND MANAGEMENT REGULATION 2003

Short title

Coastal Protection and Management Regulation 2003.

Authorising law

Section 103(1) of the *Coastal Protection and Management Act 1995* (**"the Act"**), as amended by section 17 of the *Coastal Protection and Management and Other Legislation Amendment Act 2001*, enables the Governor in Council to make regulations under the Act.

Regulations may be made, amongst other things, about erecting or altering structures within the erosion prone area, matters relating to fees and charges payable under the Act, and waivers of royalties and fees payable under the Act.

Policy objectives of the Regulation

The objective of the *Coastal Protection and Management Act 1995* is to provide for the protection, conservation, rehabilitation and management of the coast, having regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development. The objective of the Act is to be achieved through, amongst other things, the declaration of coastal management districts, where certain development controls apply.

The objective of the Regulation is to set fees, royalties and other provisions to be used in regulating prescribed activities in tidal waters and coastal management districts in accordance with the objective of the Act.

Achieving the policy objectives of the Regulation

The policy objectives to be met by the Regulation include—

- Setting fees for the assessment of development applications under the Integrated Development Assessment System (IDAS);
- Setting fees for applications for the allocation of quarry material;
- Setting fees for applications for the approval of dredge management plans;
- Setting royalties for the removal of quarry material from tidal waters;
- Providing for applications for the waiver of royalties;
- Setting criteria for deciding applications for the waiver of royalties;
- Establishing coastal building lines within coastal management districts; and
- Setting conditions in the *Standard Building Regulation 1993* for certain building work in erosion prone areas relating to roof drainage and the placement of excavated material.

Consistency with the policy objectives of other legislation.

Authorising Act—The provisions of the Regulation are consistent with the objective of the *Coastal Protection and Management Act 1995* to provide for the protection, conservation, rehabilitation and management of the coast, having regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development. Making regulations about the matters for which fees are payable and requirements for erecting or altering structures in erosion prone areas is consistent with the objective of the Act.

Other Queensland legislation—The provisions are not inconsistent with the policy objectives of other legislation in Queensland. A Regulatory Impact Statement (RIS) for the Regulation has been prepared in accordance with the requirements of the *Statutory Instruments Act 1992*.

National Competition Policy reviews were undertaken in 1998/99 for the *Canals Act 1958*, the *Beach Protection Act 1968* and the *Coastal Protection and Management Act 1995*. Following Public Benefit Test Reports, the provisions of the *Canals Act 1958*, the *Beach Protection Act 1968* and the *Coastal Protection and Management Act 1995* were retained in the public interest.

The *Harbours Act 1955* was not the subject of a National Competition Policy Review as it was repealed in 1994. However, some provisions of the *Harbours Act 1955* and its regulations continued to have effect under the *Transport Infrastructure Act 1994*; these will expire on commencement of the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

The *Coastal Protection and Management Regulation 2003* replaces the following subordinate legislation under the *Harbours Act 1955*, the *Canals Act 1958* and the *Beach Protection Act 1968*, which will expire when the *Coastal Protection and Management and Other Legislation Amendment Act 2001* is proclaimed—

- *Marine Land Dredging By-Law 1987*;
- *Harbours (Reclamation of Land) Regulation 1979*;
- *Construction of Harbour Works (Fees) Regulation 1992*;
- *Canals Regulation 1992*; and
- *Coastal Management Control Districts (Requirements for Buildings or Other Structures) Regulations 1984*.

Interstate legislation—The provisions are not inconsistent with the policy objectives of Interstate legislation.

Alternative methods of achieving the policy objectives

The RIS includes an analysis of alternatives to achieve the policy objectives, including options based on previous regulations under the *Harbours Act 1955*. Three options were identified for assessment.

Option A - Continue Current Situation.

This option involves making a single regulation under the amended *Coastal Protection and Management Act 1995* to reflect the provisions of the expiring regulations. Certain changes would be necessary to reflect amendments to the Act, such as the change from dredging permits to

resource allocations and the integration of the approvals within IDAS. Fees would be maintained at the existing level.

Option B - Introduce New Provisions with Updated Fees.

This option involves making a regulation based on the expiring regulations but with fees modified to take account of consumer price index (CPI) changes. Some fees would be discontinued. Other changes would be made to reflect the amended *Coastal Protection and Management Act 1995* and to improve administration of the legislation. New fees are proposed for planning applications which were previously assessed free of charge.

Option C - No New Provisions.

This option makes no provision to replace the regulations that will expire with the proclamation of the *Coastal Protection and Management and Other Legislation Amendment Act 2001*. This would result in no fees being payable for applications for a range of approvals and no royalties being recoverable for quarry material extracted under the Act.

Statement of costs and benefits

By introducing new provisions with updated fees, it would be necessary for Government to incur a one-off cost for training business and the community in the use of the new system and the proposed fees. Whilst a minor increase in revenue associated with the increased fees would be realised, this would generally be offset by assessments requiring wider coastal management consideration. The primary benefit to Government would be to recover costs parallel to increasing costs. Local government also benefits in reduced costs for sourcing dredge material.

If the current situation is continued, the costs will still be incurred in educating business and training staff in the operation of the new system. In addition, the loss of revenue due to fees remaining at the same rate for many years despite inflation over the period will occur. This loss amounts to just under $500,000 per annum. No new fees imposed under the new system would marginally reduce the required administrative changes.

If no new provisions are introduced, when the amendments to the *Coastal Protection and Management Act 1995* commence, existing fees would no longer apply and the current cost of assessing applications of about $1,350,000 per annum would have to be funded as a public service.

Business would benefit from not having any application, royalty or monthly fees, but it is unlikely that these savings would be passed onto the community. However, the lack of fees may lead to reduced funding of resources to assess applications, which could result in delays and subsequent costs to business.

Business would benefit overall from a more streamlined assessment procedure with the introduction of new provisions. The process for applications for dredging has changed significantly, and any increase in fees would be countered by the extended validity period and flexibility of approvals that would reduce ongoing fees for business. Applications for development permits would be subject to new fees based on the recovery of the cost of assessing the applications. Other applications involve modest fee increases in line with the CPI.

If fees were maintained at existing levels, there would be no change to the cost to business from the fees, apart from the change in the calculation of fees for reclamations. Reclamations and other associated works could be included in the same application and the fee would be calculated once on the total value of the works. This may result in a reduction of the overall fee in many cases. Business would benefit in real terms from fees being maintained at their previous levels over a period of inflation. The extended validity period and flexibility for dredging allocations and dredge management plans would provide business with greater certainty and reduce the number of applications required to be lodged.

It is expected that many of the costs associated with the introduction of new provisions would be passed onto the community in terms of increased prices for land, construction of works such as pontoons or jetties, and the cost of building materials sourced by dredging. This cost increase is not expected to be significant in relation to existing costs. In addition, the need for public subsidy of assessment costs due to inflationary trends would be reduced and the achievement of better coastal management outcomes through the new assessment system benefits the entire community.

There would be an increased cost to the community due to inflation in subsidising the assessment of applications from private applicants and business if fees were maintained at existing levels. The community would effectively be covering the opportunity cost through the public purse in not increasing fees for applications in line with inflation. The capping of fees while other costs are generally rising may be perceived as an indication that IDAS can deliver desired outcomes without requiring additional funding.

A full statement of costs and benefits is included in the RIS.

Consistency with fundamental legislative principles

The regulatory provisions have sufficient regard to the rights and liberties of individuals and the institution of Parliament, and are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Consultation on the Regulation

Government departments, local government and key stakeholders were consulted on the *Coastal Protection and Management Regulation 2003*. All comments made during the consultation process have been considered and, where appropriate, changes have been made to incorporate the suggestions made.

In addition to the above groups, the community was also consulted on the RIS for the *Coastal Protection and Management Regulation 2003*. The RIS was not revised following consideration of the submissions received.

General

Throughout this explanatory note a reference to—

"the Act" means the *Coastal Protection and Management Act 1995*;

"the Amendment Act" means the *Coastal Protection and Management and Other Legislation Amendment Act 2001*; and

"the Regulation" means the *Coastal Protection and Management Regulation 2003*.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Section 1 sets out the short title of the Regulation.

Commencement

Section 2 provides that the Regulation commences on 20 October 2003.

Definitions

Section 3 provides that the Dictionary in Schedule 5 defines particular words for the Regulation.

PART 2—COASTAL BUILDING LINES

Fixing coastal building lines—Act, s 59

Section 4 sets out the details of erosion set-backs previously declared under the *Beach Protection Act 1968* that are now coastal building lines under section 104 of the Act.

Subsection 1 fixes the existing set-back lines established under the *Beach Protection Act 1968* as coastal building lines under the Act. Schedule 1 contains a list of the coastal building line plans and their associated coastal management districts.

Subsection 2 requires the chief executive to ensure that coastal building line plans are freely accessible to the public. The plans are to be available for inspection and extracts of plans may be taken at no cost.

Subsection 3 identifies that the 'relevant coastal management district' for each coastal building line plan is as listed in Schedule 1.

PART 3—FEES AND ROYALTIES

Division 1—Fees

Fees for assessment of development application

Section 5 sets out the requirements for fees for the assessment of development applications.

Subsection 1 provides that the fees payable under the Act in relation to the assessment of a development application are set out in Schedule 2 of the Regulation. These fees are based on existing application fees adjusted in accordance with the consumer price index, together with additional fees for services that were previously provided at no cost.

Subsection 2 provides that no further fee is payable if an applicant already holds the relevant preliminary approval for a development under the application. It also provides for a discounted fee in relation to partially completed applications for reconfiguration of a lot and operational works.

Fees for allocations and dredge management plans

Section 6 provides that the fees payable under the Act in relation to an allocation notice or a dredge management plan are set out in Schedule 3 of the Regulation.

Division 2—Royalties

Subdivision 1—Rate of royalty and when it is payable

Rate of royalty—Act, s 61ZH

Section 7 provides that the rate of royalty payable under the Act is given in Schedule 4 of the Regulation. Royalties are based on existing dredging fees adjusted in accordance with the consumer price index, but have been held to a level compatible with royalties under the *Water Regulation 2002* for the removal of quarry material in non-tidal waterways.

Presently, material removed from tidal water for use in reclamations attracts a royalty based on the volume of material removed, or a flat monthly fee approximately equivalent to the removal of 320 cubic metres of material. The determination of which royalty is payable is at the discretion of the dredger. No fees are payable for reclamation activities associated with access channels for canal estates.

In the past, this has led to the removal of large quantities of clean sand for use in reclamations at nominal cost. This anomaly has been addressed by the Regulation, which removes the alternate payment option of a monthly fee.

When royalty payable—Act, s 61ZH

Section 8 sets out the situations for which royalty is payable under the Amendment Act. The royalty payable for applications approved prior to commencement of the Amendment Act will remain valid until the expiry of the approval. This will result in two different royalties payable for a period of up to two years after commencement.

The section provides for royalties to be payable with the notice given for an allocation each month pursuant to the Amendment Act, or with information given under a dredge management plan about the quantity of material removed.

Subdivision 2—Exemption from payment of royalty

Exemption from payment of royalty

Section 9 allows for an exemption from the payment of royalties on the removal of quarry material under certain circumstances.

Subsection 1 provides that Queensland Transport (when administering the *Transport Infrastructure Act 1994*) or the manager of a public marine facility is exempt from the payment of royalties when the removal of quarry material is in accordance with the conditions stipulated in Subsection 2.

Subsection 2 provides the circumstance in which an exemption from paying royalties may be given. This circumstance relates to the situation when the removal of quarry material is undertaken for navigation purposes, and that material is not sold, exchanged or disposed of for any commercial benefit.

Subdivision 3—Waiver of payment of royalty

Application for waiver of royalty

Section 10 relates to applications for the waiver of royalties.

Subsection 1 provides for applications for part or entire royalty waivers to be made to the chief executive. An application may only be made if the material to be removed is to be used in beach nourishment projects or contains a high proportion of mud, silt, clay or is contaminated material.

Subsection 2 requires supporting evidence to be submitted with the application.

When waiver application must be made

Section 11 establishes the circumstances under which royalty waiver applications can be made.

Subsection 1 establishes that waiver applications may only accompany applications for allocations or dredge management plans, or information provided by approved allocation or dredge management plan holders on the quantity of quarry material removed.

Subsection 2 provides that royalty waiver applications cannot be made when the applicant owes outstanding royalties.

When royalty must be waived

Section 12 provides that royalties can only be waived if the chief executive is satisfied that the quarry material is to be used in beach nourishment projects or contains a high proportion of mud, silt, clay or is contaminated material.

Refund of royalty waived

Section 13 provides that if the chief executive decides to waive part or all of the payment of royalty, but payment has already occurred, then the amount waived must be repaid within 20 business days of lodgement of the application.

PART 4—AMENDMENT OF STANDARD BUILDING REGULATION 1993

Regulation amended

Section 14 specifies that this part of the Regulation amends the *Standard Building Regulation 1993*. The provisions in this part are transferred from the *Coastal Management Control Districts (Requirements for Buildings or Other Structures) Regulations 1984*. As these provisions relate to

conditions placed on building work, they are considered to be more appropriately located within the *Standard Building Regulation 1993*.

Amendment of s 5 (Definitions)

Section 15 inserts the definition of 'erosion prone area' into section 5 of the *Standard Building Regulation 1993*.

Insertion of new s 30A

Section 16 provides for a new section 30A in the *Standard Building Regulation 1993* in order to impose conditions for regulating building work in erosion prone areas.

Subsection 1 establishes that the section only applies to development applications for the erection or alteration of buildings or other structures within the designated erosion prone area. Erosion prone areas are defined in the Amendment Act and are areas considered by the chief executive to be subject to erosion or tidal inundation.

Subsection 2 requires the assessment manager to impose conditions on any approval to erect or alter a building or other structure within the designated erosion prone area. Quarry material removed from the site, especially clean sand, may be suitable for beach nourishment purposes. In addition, drainage systems associated with the structure must not increase the likelihood of erosion within the area.

Subsection 3 allows the assessment manager to approve the application without imposing the conditions in Subsection 2 if the assessment manager considers that the condition is unnecessary for coastal management. This situation may occur in areas subject to tidal inundation where the material excavated is mostly silt, which may be unsuitable for reuse within the erosion prone area.

Subsection 4 identifies that for the purposes of applications for the erection or alteration of buildings or other structures within the designated erosion prone area, the 'assessment manager' includes private certifiers.

SCHEDULES

Schedule 1 - Coastal Building Lines

Schedule 1 lists the coastal building line plans for each relevant coastal management district within relevant local government areas.

Schedule 2—Fees for Assessment of Development Applications

Schedule 2 details the fees payable for the assessment of development applications completely or partially within coastal management districts. Fees should only be charged for those lots that are to be made into the artificial waterway or those lots in a coastal management district. Where lots in a coastal management district overlap with those associated with an artificial waterway, only one fee should apply.

Part 1 details the fees for applications that include the construction of an artificial waterway. The fees relate to applications for a material change of use, and the combined reconfiguration of a lot with operational works. The fees are based on the existing fees in the *Canals Regulation 1992* adjusted in accordance with the consumer price index.

Part 2 details the fees for applications that do not include the construction of an artificial waterway. The fees relate to applications for a material change of use, operational works, or for reconfiguration of a lot.

The fees for applications for operational works are based on the fees in the *Construction of Harbour Works (Fees) Regulation 1992*, adjusted in accordance with the consumer price index. Coastal management works involving beach nourishment, dune fencing, endemic native dune revegetation, stinger nets or purposes directly related to the provision of life saving or rescue services by volunteer community organisations are assessed at no cost. Various fees apply to other operational works, dependent on the nature and value of the works.

Private purpose applications relate to applications for operational works associated with the use of a boat for recreational purposes, and/or the use of residential land. Item 2(c)(i) provides for the situation where an application relating to a single residence can contain an unlimited number of items of work for private purposes for the flat application fee, for example, a structure used to berth a vessel (such as a pontoon) and a revetment wall will attract an application fee of $200. Two structures used to berth a vessel

relating to the same single residence will also attract an application fee of $200.

Items 2(c)(ii) and (iii) provide for applications relating to multiple residences. If no structures used to berth a vessel are contained in the application, then the application fee will be $200 no matter how many other items of work for private purposes are included. If the application involves a structure used to berth a vessel, then the application fee is determined based on the number of structures used to berth a vessel, no matter how many other items of work for private purposes are in the application.

New fees are introduced for applications for a material change of use of premises and for reconfiguration of a lot. These applications were previously assessed free of charge.

Schedule 3 - Fees for Allocations and Dredge Management Plans

Schedule 3 details the fees for applications, transfers and renewals relating to the removal of quarry material under allocations, allocation notices and dredge management plans. The value of the fee is dependent on the quantity of quarry material to be extracted.

Schedule 4 – Royalty Payable for Removal of Quarry Material

Schedule 4 details the royalties payable per cubic metre for the removal of quarry material under allocation notices or dredge management plans.

Schedule 5 - Dictionary

Schedule 5 provides definitions for terms used in the Regulation.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Environmental Protection Agency.