

# Coastal Protection and Management

## 1. Summary

The *Coastal Protection and Management Act 1995* (“Coastal Act”) is the legislation which protects and manages the coastal zone, including its biodiversity, primarily through Coastal Management Plans. It is administered by the Department of Environment and Resource Management (“DERM”).

The State and Regional Coastal Management Plans sit under the Act and contain most of the detail and have chapters on conserving nature, which include broad “coastal management outcomes” and principles and policies for protecting coastal resources, values and managing pressures on those resources. In practice these documents have been applied to regulating coastal development rather than coastal management or rehabilitation.

*Reform package 2009*: the Draft Queensland Coastal Plan 2009 was released for public submissions in late 2009. It is not yet law.

## 2. Key elements of the Coastal Act

- Objects to coordinate and integrate planning and management of the coastal zone to achieve ecologically sustainable development
- Coastal planning processes at state and regional levels
- Special Coastal Management Districts on the coast where the State can regulate activities
- Development regulation done through the *Sustainable Planning Act 2009*.

*Reform package 2009*: the proposal is that there will no longer be statutory regional plans.

## 3. Key concepts

The **coastal zone** is defined in section 15 of the *Coastal Act* as:

- (a) coastal waters [see below]; or
- (b) all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast [areas within or neighbouring the foreshore] or coastal resources [natural and cultural resources of the coastal zone].

**Coastal waters** are defined in section 13 as Queensland waters (seaward 3 nautical miles) to the limit of the highest astronomical tide, which is the highest level that can be predicted to occur under average meteorological conditions and any combination of astronomical conditions – it is a level that will not be reached every year, but which is less than the extreme levels that storm tides can cause.



*Reform package 2009*: the proposal is for a narrower definition- that the definition of the coastal zone will be that the coastal zone includes coastal waters and land within 5 kilometres of the coast or below 10 metres Australian Height Datum, whichever is furthest inland.

#### 4. The State Coastal Management Plan

The *State Coastal Management Plan – Queensland’s Coastal Policy* (“State Plan”) was released in August 2001 and took effect on 27 February 2002. The State Plan is a statutory instrument that describes how the coastal zone is to be managed. It provides policy direction to government agencies.

The State Plan has three chapters:

**Chapter 1** outlines the vision for Queensland’s coast and outlines the values and threats to coastal resources.

**Chapter 2** describes how the coastal zone is to be managed and is organised into ten topics:

- a. Coastal use and development
- b. Physical coastal processes
- c. Public access
- d. Water quality
- e. Indigenous traditional owner cultural resources
- f. Cultural heritage
- g. Coastal landscapes
- h. Conserving nature
- i. Coordinated management
- j. Research and information.

Each topic contains a coastal management outcome, a set of principles for coastal management and specific policy statements, which “should” (not “must”) be considered.

*However, the Plan lacks prescriptive language and therefore fails to impose obligations on persons or agencies carrying out activities in the coastal zone. Moreover, there is no difference in weighting provided, so where conflicts occur between the topics (say, coastal use and development and conserving nature) there is nothing to say that pro-environment objects must prevail – and in EDOs experience, development interests generally win out.*

Some parts of the State Plan address climate change issues. Section 2.2.4 of the State Plan deals with storm tides, cyclone effects and related inundation and recognises these as ‘coastal hazards’. The State Plan requires that the associated risks of coastal hazards are minimised, including by carefully considering development in coastal risk areas and wherever possible retaining those areas undeveloped.

**Chapter 3** outlines implementation through a range of agencies and groups, including EPA under its law and policies, Council through planning schemes and development assessment, other State agencies in their decision making under other Acts that affect the coast, and users and land managers of the coast.

Some of the key policy initiatives in the State Plan include:

- Protection of coastal wetland and dune systems



- Conservation of coastal biodiversity and wildlife habitats
- No net loss of public access to the coast
- Stronger regulatory controls on canals, dry land marinas, reclamation, dredging and other coastal development
- Restrictions on further development in erosion prone and coastal hazard areas
- Targets for improving sewage treatment plant discharges into coastal waters.

*Reform Package 2009* includes:

- Draft maps for the Queensland Coast that indicate the coastal zone, coastal management districts, areas of high ecological significance, maritime development areas and cadastral information such as property boundaries;
- Draft State Policy Coastal Management aimed at coastal land managers, addressing activities that do not constitute development;
- Draft State Planning Policy Coastal Protection that is a statutory instrument under the *Sustainable Planning Act 2009*, which includes policy outcomes to be achieved when making or amending a planning instrument, assessing development applications or designating land for community infrastructure. It includes an assessment code and is accompanied by guidelines. It must be taken into account when considering applications for the use of State land within the coastal zone under the *Land Act 1994* and applications for an allocation of quarry materials from below high water mark under the Coastal Act.
- The package addresses planning for urban development near the coast, and incorporates actions on the risks that climate change impacts pose to citizens and coastal resources.

## 5. Regional Coastal Management Plans

Regional Coastal Management Plans (“Regional Plans”) are area-based, with policies and requirements for how the coastal zone is to be managed in a regional area. They must comply with but can give weight to the State Plan principles and policies, and can also contain additional policies to address region-specific issues.

The major purpose of Regional Plans is to identify Coastal Management Districts, through an associated Regulation – more below.

Each Regional Plan must also map the key areas of State significance identified in the State Plan, including:

- Social and economic areas of state significance, including ports, harbours, state development areas, etc
- Scenic coastal landscapes of state significance, including landscapes and seascapes
- Natural resources of state significance, including wetland, dune and biodiversity values
- Cultural heritage of state significance, including historical cultural heritage such as lighthouses
- Indigenous traditional owner cultural resources of state significance, including areas that display previous occupation of country or that have continuing importance for traditional owners.



There are currently four final Regional Coastal Management Plans - for the **Wet Tropical coast, Curtis Coast, Cardwell-Hinchinbrook and South-East Queensland**. Regional Coastal Management Plans for other areas either are not finalised or have not been started.

The **SEQ Regional Coastal Management Plan** maps areas of coastal biodiversity significance and requires local town planning schemes to identify these areas as valuable features and include measures for their conservation and management. Criteria for development assessment are listed, including that development does not occur where it will result in the loss, degradation or fragmentation of areas of coastal biodiversity.

*Reform Package 2009:* Regional Coastal Plans disappear. There is controversy about whether all protective details are captured in the State Coastal Plan, for example non-government environment group ASH (the Alliance to Save Hinchinbrook) identified ways the Cardwell-Hinchinbrook Regional Coastal Management Plan was not fully reflected in the mapping of the area under the new Draft State Planning Policy Coastal Protection. .

## 6. Are State and Regional Plans binding?

The State and Regional Coastal Plans are treated as State Planning Policies for the purposes of the *Sustainable Planning Act 2009* (“SPA”), meaning they must be taken into account by an assessment manager (usually the local Council) when assessing development applications. However, this means that Council must only “have regard to” the documents, and in practice they are frequently undermined. The State and Regional Coastal Management Plans must be given an elevated status under SPA so that its provisions must be *implemented*, if they are to truly protect the coast.

The State and Regional Plan are also considered a “State Interest” when developing local town planning schemes, meaning they must be reflected in local planning schemes. But where development is code assessable (see later), the assessment manager is not required to consider the Plans except insofar as a planning scheme contains applicable codes. In practice, the details of the State or Regional Plans are not clearly and thoroughly implemented in local planning schemes. EDO are concerned at the potential for Plans to be applied in an inconsistent manner across the coastal local government areas as a result of the broad and varying interpretations of the Plans (especially the more general State Plan) and the different manner of incorporating these interpretations into planning schemes. There is a need for a more prescriptive approach to ensure uniformity of application. This could occur through the development of Strategic Outcomes and codes within the State or Regional Plans which would then be fully imported into planning schemes.

**Until Councils are obliged to comply with the State and Regional Plans (rather than simply “have regard to” them), the Coastal Plans will remain toothless tigers.**

The State and Regional Plans must also be considered before community infrastructure designations are made by the Minister.

*Reform Package 2009:* There will be no regional plans. The State Planning Policy Coastal Protection as a planning policy would have effect when local planning instruments or regional plans were made or amended and its development outcomes would be considered by the Minister or local government when land was designated for community infrastructure. So it is the clearness of the wording and the breadth of the exceptions that determines if the Draft State Planning Policy Coastal Protection, once final is very binding.



Exceptions to protecting the coast include allowing urban development within the urban footprint, establishing extensive Maritime Development Areas where even areas of high ecological significance may be developed and allowing less rigorous assessment criteria for proposals that are “development commitments” or for which there is “overriding need in the public interest”.

## 7. Public Rights in the Preparation of State and Regional Plans

Both State and Regional Coastal Management Plans are developed with advice from groups appointed by the Queensland Minister for the Environment.

A *Coastal Protection Advisory Council* must be appointed under the Coastal Act to provide advice to the Minister on a range of issues relating to the coast, including the State coastal management plan.

A *regional consultative group* must be appointed for each regional coastal management plan.

For either type of plan, the draft plan is publicly advertised and made available for public inspection for a minimum of 40 business days during which time the public may make submissions that must be considered.

For regional plans only, the public has an extra opportunity to make submissions *before* the plan is drafted.

When the State or Regional Plans are reviewed after 7 years, the Minister must seek advice from those appointed groups and must also advertise the draft amendments for a minimum of 40 business days for public comment.

Reform Package 2009: as it is proposed not to have any regional coastal plans, the Coastal Protection Advisory Group will presumably remain but there might not be any regional consultative groups.

## 8. What are Coastal Management Districts?

Coastal Management Districts are declared by Regulation as part of a new or amended Regional Coastal Management Plan, or by special notice if the Minister considers the area requires immediate protection or management.

Coastal Management Districts can be declared over:

- Coastal waters
- Over a foreshore and over land up to 400m inland from the high water mark
- Over land up to 1000m inland from the high water mark at a river mouth or estuarine delta
- Over land up to 100m from the high water mark along tidal rivers, saltwater lakes or other bodies of internal tidal water
- Over land up to 100m from a coastal wetland, dune system or key coastal site
- Over an island in coastal waters



Relevant factors when deciding to declare Coastal Management Districts include:

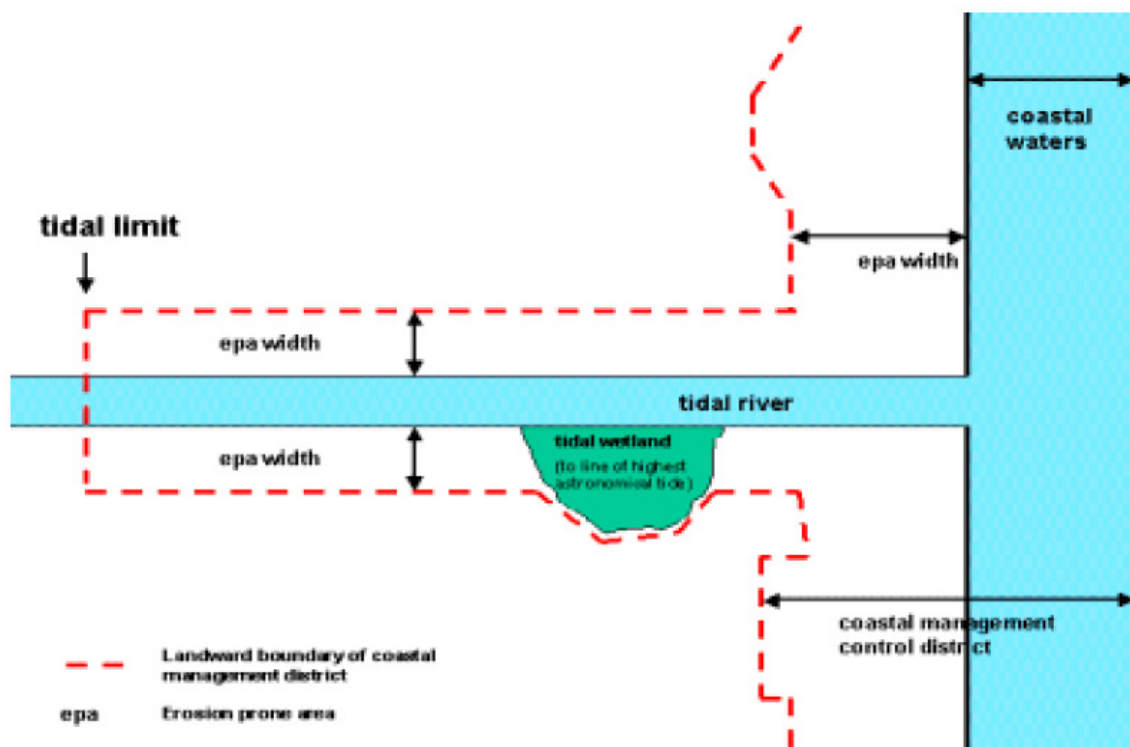
- Vulnerability to erosion
- Whether to keep the area in an undeveloped state to maintain or enhance the natural or cultural resources of the coast
- Public access to the area
- Forseeable human impacts and natural hazards in the area
- Existing tenure, interests and rights to land in the area
- The tradition and customs of indigenous people concerned with land and water in the area
- Existing planning and development management of the area.

Currently interim Coastal Management Districts occur along the Queensland coast in the former “erosion prone areas” and “coastal management control districts” under the now repealed *Beach Protection Act*.

Those interim Coastal Management Districts remain until a Regional Plan is declared for an area. The Regional Plan will include a Regulation that describes the new Coastal Management District for the region that replaces the interim Coastal Management District.

### Diagram showing Typical Coastal Management District

Source: DERM guideline Assessable Development under the Coastal Act



*Reform package 2009*: Coastal Management Districts continue to be an important part of the package. The reform package includes maps 1-8 in annexe 1 of the Draft State Planning Policy Coastal Protection that show Coastal Management Districts. There is a change proposed to the definition of Coastal Management Districts in the *Coastal Protection and Management Act 1995*, so that Coastal Management District will be the area shown on a map approved by the Chief executive.



## 9. What happens in Coastal Management Districts?

Coastal Management Districts are a trigger for the role of the Department of Environment and Resource Management (“DERM”) Chief Executive (Director General) to act as an assessment manager or concurrence agency for development applications under SPA for coastal development – see point 10 below.

The Chief Executive also has powers within Coastal Management Districts to issue enforceable notices (coastal protection or tidal works notices) directing a person to:

- Take action stated in the notice to protect land, including to build or maintain works, plant or not damage native coastal vegetation, protect the land from wind erosion, restore land or remove stock
- Stop or not start an activity stated in the notice, if it is likely to have a significant effect on coastal management or cause wind erosion
- To repair or remove tidal works including bridges, breakwaters, pontoons, jetties, seawalls, wharfs etc

Any person receiving a notice may appeal against the decision to issue it within the period stated in the notice. It is an indictable offence to not comply with either of these notices and the person is liable for a maximum penalty of 3,000 penalty units – currently \$300,000.

It is also an offence to damage vegetation on State coastal land (not freehold) within a Coastal Management District without a permit.

The Chief Executive can also declare coastal building lines (for example there is a coastal building area declared for a small area on Bribie Island) within the Coastal Management District, by Regulation, or declare an erosion prone area within a Coastal Management District. A development approval under SPA must not be given to build a structure completely or partly seaward of the coastal building line (although the Minister can make written exceptions in certain circumstances).

*Reform package 2009:* These provisions continue.

## 10. Regulating Coastal Development

### **(a) When is a permit required?**

There are specific restrictions on development in Coastal Management Districts. The activities which the DERM must assess and approve in Coastal Management Districts include:

- Tidal works such as seawalls, jetties, pontoons, bridges
- Construction of canals and artificial waterways
- Subdivision in erosion prone areas
- Making a material change of use of land on the coast, such as a change from agriculture to urban residential or heavy industry
- Dredging and extraction in tidal waters
- Reclaiming land from tidal water
- Works that remove or interfere with coastal dunes (except on State owned land) in an erosion prone area



- Bund walls to establish ponded pastures
- Disposal of dredge spoil or other solid waste in tidal water.

The *Coastal Act* also includes a separate regulatory regime for approval to remove State-owned quarry material from land under tidal water. An applicant must apply to the DERM to obtain a resource allocation or hold an approved dredge management plan, before they can submit an application for a development permit under SPA.

A person can apply to the Chief Executive of DERM for an “exemption certificate” to carry out operational work that would have an insignificant impact on coastal management.

There is a Guideline, Assessable Development under the Coastal Act.

<http://www.derm.qld.gov.au/register/p00960aa.pdf>. A regulation under the SPA sets out what is assessable development but it may be easier to read the Guideline.

### **(b) How is a permit applied for and to whom?**

An applicant will make a single application, usually to Council as the assessment manager, for all work relating to the project (building, planning and state coastal requirements). DERM will be a “concurrence agency”, meaning they can veto approval or require conditions to be imposed on the approval.

Where Council approval is not required, the Chief Executive (Director-General) of the DERM will be the assessment manager.

For maritime work on land below the high water mark, the DERM is the assessment manager and Queensland Department of Transport through the regional harbour master or port authority is a referral agency. The Department of Employment, Economic Development and Innovation (formerly Primary Industries) will also be a referral agency if those applications involve the removal of marine plants.

### **(c) What criteria is applied in assessing coastal development applications?**

Where the DERM is the assessment manager for tidal work or work in a Coastal Management District, they will assess coastal development against the objects and criteria in the *Coastal Act*, the State Coastal Plan and any relevant Regional Coastal Management Plan. Section 104 of the Act requires the Chief Executive to consider the potential impact of development on coastal management, specifically:

- Impacts on coastal, riverine and estuarine processes (eg erosion);
- Impacts on natural topography and drainage of coastal land (eg dune integrity);
- Impacts on coastal wetlands and other coastal ecosystems (including biodiversity);
- Impacts on places or objects that have landscape, historical, anthropological, archaeological or aesthetic significance or value; and
- Impacts on public access to the foreshore.

There are special criteria for canals, which are not permitted to restrict the use of land or movement of vessels.

In the case of tidal work solely in a local government tidal area, where Council is the assessment manager and DERM is a concurrence agency, DERM will assess applications against the Code set out in Schedule 4A of the *Coastal Protection and Management*



*Regulation 2003.* This Code regulates character and amenity (within and outside canals; height, size and scale; materials and colours), lighting, signage, earthwork and vegetation, availability and safety of public access, navigable access, infrastructure (including access, parking, sewerage and water services), and design, construction and safety (for all prescribed tidal work, boat ramps, bridges, boardwalks and decks, jetties and piers, pipelines and other underground services, pontoons, retaining walls and seawalls, wharves).

The DERM is prohibited from considering amenity or aesthetic issues when assessing applications as a concurrence agency – this is seen as Council’s role as the assessment manager.

Where a development is situated both within and outside a Coastal Management District, it cannot be conditioned by the DERM where it falls outside the district. Uniform restrictions on these developments are therefore difficult. While the DERM can provide advice to Councils outside the Coastal Management District, they cannot impose binding conditions in these areas.

**Example: House built to High Water Mark, Nudgee Beach**

Client complained that a friend had built a house with the solid fence right to the high water mark, which would interfere with natural coastal processes. We checked for a coastal building line, but for that stretch of Nudgee Beach there was none. So DERM had no jurisdiction and the house was signed off by a private certifier.

**Example: Curtis Island proposed Liquid Natural Gas Plant**

This island has ecological values. It is within the Gladstone State Development Area declared under Part 6 of the *State Development and Public Works Organisation Act 1974*. However the Coordinator General publicly notified and then adopted a scheme of development for the island that designated part for Environmental Management Precinct and part as Industry Precinct. A scheme of development is like a fresh planning scheme with the decision-maker for any development application made under that scheme the Coordinator-General.

*Reform package 2009:* The Draft State Planning Policy Coastal Protection includes outcomes to be achieved, and, as Annexe 3, a code for IDAS to be used when assessing applications made under the SPA.

## 11. Public rights to participate in coastal protection and management

In certain circumstances (where development is “impact assessable” not just “code assessable”), the public can make submissions on development applications in the coastal zone. Generally tidal work or work in a Coastal Management District is code assessable, so the public do not have the legal right to comment. However, some applications to rezone land (now called “material change of use”) in the coastal zone may be deemed to be impact assessable by the Council’s planning scheme, and in that case the public has a right to make comments on the application (a “submission”). If a submitter disagrees with Council’s decision on an impact assessable development application, the submitter can appeal the decision to the Planning and Environment Court for a fresh decision to be made.

The public can comment on draft Regional Coastal Management Plans or amendments to State or Regional Coastal Management Plans when they are released. A minimum of 40 business days is given for public comments and these comments must be considered in finalising the draft Plans.



In certain circumstances, a proceeding may be brought in the Planning and Environment Court for an order to remedy or restrain an actual or threatened offence against the Act by someone whose interests are affected by the subject matter of the proceeding or someone else *with the leave of the court*. In granting leave the court must be satisfied that:

- harm has been or is likely to be caused to the coastal zone
- the proceeding would not be an abuse of court process
- it is likely that the requirements for the making of a court order would be satisfied
- it is in the public interest that the proceeding should be brought
- the Minister has failed to act within a reasonable time to a written request from the person asking the Minister to bring a proceeding and
- the person is able to adequately represent the public interest in the conduct of the proceeding.

Offences against the Act for which a restraint order can be sought include non-compliance with coastal protection or tidal works notices, damaging native vegetation on State controlled land in the coastal management district, and some other offences.

Court action in the Planning and Environment Court could also be taken by any person under the *Sustainable Planning Act* if coastal development was carried out without a necessary permit or in breach of permit conditions. Seek legal advice before launching Court action.

*Reform Package 2009*: As mentioned, there will be no new regional coastal plans under SPA. The enforcement provisions will persist.

## 12. Further information

Environmental Defenders Office (Qld) Inc.  
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Department of Environment and Resource Management (Central Office)  
Ph: (07) 1300 130 372 then ask for coastal zone  
Website: <http://www.derm.qld.gov.au> see useful guidelines

