



## **Maintenance of Works in Waterway Areas Local Law 2023**

# Moreton Bay Regional Council

## Maintenance of Works in Waterway Areas Local Law 2023

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# Moreton Bay Regional Council

## Maintenance of Works in Waterway Areas Local Law 2023

### Part 1 Preliminary

#### 1 Short title

This local law may be cited as the *Maintenance of Works in Waterway Areas Local Law 2023*.

#### 2 Objects

The object of this local law is to—

- (a) provide for the maintenance and repair of works in waterway areas in the local government area; and
- (b) regulate the maintenance and repair of works in waterway areas in the local government area; and
- (c) ensure that prescribed works are maintained by persons whose lands are subject to, or where the land is waterfront land or waterfront (separated) land, benefits from, those works at the cost of such persons and in accordance with all relevant laws; and
- (d) ensure that works in waterway areas in the local government area do not—
  - (i) fall into disrepair; or
  - (ii) result in—
    - (A) harm to human health or safety or personal injury; or
    - (B) property damage or a loss of amenity; or
    - (C) environmental harm or environmental nuisance; and
- (e) ensure that appropriate persons, at their cost, build required works in accordance with all relevant laws in the local government area to—
  - (i) protect waterway areas and other land; and
  - (ii) protect persons who use waterway areas; and
  - (iii) avoid or minimise environmental harm or other damage to waterway areas; and
- (f) further to paragraphs (c) to (e), ensure that—
  - (i) seawalls are built and maintained on or near the coastal beaches of the local government area; and
  - (ii) revetment walls are built and maintained in canals and non-coastal waterway areas of the local government area; and
- (g) protect the interests of buyers of certain lots by ensuring sellers notify buyers about works which may be subject to this local law; and
- (h) provide for the protection, conservation, rehabilitation and management of waterway areas in the local government area; and

- (i) protect public health and safety in waterway areas in the local government area; and
- (j) protect the environment, including riparian areas, and works in and near waterway areas in the local government area.

## **Part 2 Relationship with other laws**

### **3 Relationship with other laws**

The powers given by this local law must be exercised in a way that is not inconsistent with all Acts (including subordinate legislation) including the—

- (a) *Environmental Protection Act 1994*; and
- (b) *Planning Act 2016*; and
- (c) *Marine Parks Act 2004*; and
- (d) *Land Act 1994*; and
- (e) *Building Act 1975*; and
- (f) *Coastal Protection and Management Act 1995*; and
- (g) *Integrated Resort Development Act 1987*; and
- (h) *Mixed Use Development Act 1993*; and
- (i) *Body Corporate and Community Management Act 1997*; and
- (j) *Water Act 2000*; and
- (k) *Fisheries Act 1994*; and
- (l) *Native Title Act 1993 (Cth)*; and
- (m) *Native Title (Queensland) Act 1993*; and
- (n) *Aboriginal Cultural Heritage Act 2003*; and
- (o) *Neighbourhood Disputes (Dividing Fences and Trees) Resolution Act 2011*.

## **Part 3 Interpretation**

### **Division 1 Dictionary**

#### **4 Definitions—the dictionary**

The dictionary in the schedule defines particular words used in this local law.

## Division 2 Other definitions

### 5 Waterway area

- (1) In this local law, a **waterway area**—
  - (a) is all land and waters in the local government area in each of—
    - (i) a tidal waterway; and
    - (ii) a non-tidal waterway; and
    - (iii) a lake; and
    - (iv) an artificial waterway; and
    - (v) a coastal wetland; and
    - (vi) a drain, channel, structure or other work used to receive, store or transport stormwater that—
      - (A) is more than 1m deep; and
      - (B) has a cross sectional area more than 2.5m<sup>2</sup>; but
  - (b) does not include the following—
    - (i) a swimming pool; and
    - (ii) an ornamental pond of no more than 5000m<sup>2</sup> in area; and
    - (iii) a pond—
      - (A) for aquaculture; or
      - (B) for treating effluent; and
    - (iv) a freshwater storage reservoir for domestic water supply; and
    - (v) a water storage facility used for irrigation or other agricultural purposes; and
    - (vi) any of the following used for accessing port infrastructure if constructed in the area of a port for which a port authority or port operator under the *Transport Infrastructure Act 1994* is responsible—
      - (A) a navigation channel; or
      - (B) a harbour swing basin; or
      - (C) a berth pocket; or
      - (D) a berth approach or departure path; and
    - (vii) another area specified by a subordinate local law.
- (2) A **waterway area** includes any addition or alteration (in the local government area) to a waterway area.
- (3) Subsection (4) applies if—
  - (a) subsection (1) identifies an area (a **principal waterway area**) as a waterway area; and
  - (b) land (**relevant land**) in the local government area is located between the

principal waterway area and a boundary of—

- (i) a lot in a register kept by the registrar of titles under the *Land Act 1994*; or
  - (ii) a lot in the freehold land register under the *Land Title Act 1994*; and
  - (c) the relevant land is unallocated State land.
- (4) The waterway area includes the relevant land.
- (5) To remove any doubt, the relevant land may include unallocated State land that is in a bathing reserve under the local government's control.

## 6 Work that is a prescribed work

- (1) In this local law, a **prescribed work** is a work completely or partly in, on, above or below a waterway area.
- (2) Also, a prescribed work includes—
  - (a) a work, wherever located, the construction of which is or was tidal works or prescribed tidal works; and
  - (b) a work, wherever located, designed to be exposed, in whole or in part, to water, whether tidal or non-tidal, of a waterway area because of a shoreline fluctuation or for any other reason (including flood, for example); and
  - (c) a work that is an integral part of a prescribed work, wherever located; and
  - (d) a revetment wall; and
  - (e) a seawall.
- (3) To remove any doubt, a prescribed work must be located within the local government area.
- (4) A work may be a prescribed work even if it is built unlawfully.
- (5) In this local law, a reference to a prescribed work may include part of a prescribed work.
- (6) A prescribed work does not include a public marine facility under the *Transport Infrastructure Act 1994*.

## 7 Work that is a required work

- (1) In this local law, a **required work** is a work that is necessary to secure, protect, support or stabilise a part of land that is, or improvements on land that is, adjacent to a waterway area.
- (2) Also, a **required work** includes—
  - (a) a revetment wall; and
  - (b) a seawall; and
  - (c) a work specified to be a required work by a subordinate local law.

## 8 A work

- (1) In this local law, a **work** includes—
- (a) a basin, boat ramp, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, powerline, step or stair, fence, wall, seawall, slip, small craft facility, training wall, revetment wall, boat lift, boardwalk, gazebo, pump, culvert, stormwater outlet, decking, wharf, post, support, building or structure; and
  - (b) landscape works, hard surfacing, barriers, soil drainage and irrigation; and
  - (c) topsoil, grass, mulching, hydromulch, vegetation, plants and any associated irrigation; and
  - (d) another work specified by a subordinate local law; and
  - (e) a temporary work, including rock buttressing and water exclusion barriers, for example; and
  - (f) any part of a work.
- (2) Despite subsection (1), a work does not include—
- (a) a navigational aid or sign for maritime navigation erected under a direction made under an Act; and
  - (b) a work specified by a subordinate local law not to be a work for this local law.

## 9 Responsible person for a prescribed work and a required work

- (1) Each of the following is a responsible person for a prescribed work—
- (a) if the prescribed work is completely or partly on freehold land, other than trust land—a person who is an owner of the freehold land at the relevant time; and  
*Example for paragraph (a)—*  
a person is a responsible person for a revetment wall if the wall is completely or partly on freehold land owned by that person
  - (b) if the prescribed work is completely or partly on land leased from the State under the *Land Act 1994*—a person who is a lessee of the land at the relevant time; and
  - (c) if the prescribed work is completely or partly on trust land or non-freehold land (including a road), other than land under paragraph (b)—either or both of—
    - (i) a person who is an occupier of any part of an affected area of the trust land or non-freehold land (including a road) at the relevant time; and  
*Examples for subparagraph (i)—*
      - a person who is a trustee of a reserve under the *Land Act 1994* for recreation purposes that contains a boat ramp that is a tidal work is a responsible person for the boat ramp situated on the reserve
      - a person who is a road licensee under the *Land Act 1994* in respect of a temporarily closed road where the licence land contains any part of an



existing boardwalk is a responsible person for the part of the boardwalk situated on the licence land

- (ii) a person who, at the relevant time, is the owner of freehold land, a lessee of land leased from the State under the *Land Act 1994*, or an occupier of other non-freehold land (the ***other land***) which—

- (A) is waterfront land or waterfront (separated) land; and  
(B) receives the benefit of the prescribed work; and

*Examples for subparagraph (ii)—*

- a person who owns freehold land that is waterfront land and which receives the benefit of a pontoon that is on a non-tidal reserve under the *Land Act 1994* for recreation purposes is a responsible person for the pontoon
- a person who is a permittee of permit land under the *Land Act 1994* that receives the benefit of a pump situated in a non-tidal watercourse is a responsible person for the pump
- a person who owns freehold land that is waterfront land on which a revetment wall is situated is a responsible person for the revetment wall (under paragraph (1)(a)) and is a responsible person for rock buttressing constructed in a canal to benefit the freehold land by supporting the revetment wall
- a person who is the owner of freehold land that is waterfront (separated) land is a responsible person for a pontoon in a lake that is a recreation reserve under the *Land Act 1994* for which the local government is a trustee because the pontoon benefits the person's freehold land
- a person who is the owner of freehold land is a responsible person for a pontoon in a tidal river because—
  - (a) the person is an occupier of the affected area of the river that contains the pontoon as the person has a right to occupy that area under the *Coastal Protection and Management Act 1995*, section 123; and
  - (b) the pontoon benefits the person's freehold land

- (d) anyone else who is responsible—

- (i) under any law or agreement to ensure the prescribed work is—

- (A) maintained in a safe condition; or  
(B) in good working order, repair or condition; and

*Example for sub-subparagraph (A)—*

*Coastal Protection and Management Act 1995*, section 124

- (ii) for any wrong arising out of a failure to ensure the prescribed work is—

- (A) maintained in a safe condition; or  
(B) in good working order, repair or condition; and

- (e) the owner of the prescribed work.

- (2) To remove any doubt—

- (a) a person may be a responsible person for part of a prescribed work; and  
(b) for subsection (1)(a) and (b) a person is a responsible person for a prescribed work (a ***relevant person***) only to the extent the prescribed work is on the land which the relevant person owns or leases; and

- (c) a relevant person may also be a responsible person for any other part of the prescribed work referred to in subsection (2)(b) that is on an affected area, other than the land which the relevant person owns or leases, under paragraph (1)(c).

*Example—*

where a revetment wall is a prescribed work, a person who owns freehold land is a responsible person for the revetment wall to the extent—

- a part of the revetment wall is on the person's freehold land (under subsection (1)(a)); and
- any part of the revetment wall that is not on the person's freehold land is on non-freehold land (including a canal, for example) and benefits the person's freehold land

- (3) For subsection (1)(c), a person is only a responsible person for that part of a prescribed work that is situated on the affected area of the trust land or non-freehold land.
- (4) For subsection (1)(c)(ii), other land receives the benefit of the prescribed work only if—
- (a) for other land that is waterfront land or waterfront (separated) land and the prescribed work is a seawall—
- (i) the seawall secures, protects, supports or stabilises the other land (including any improvements on the other land); and
- (ii) for waterfront (separated public) land, the separating land does not contain any public infrastructure; or

*Example for paragraph (a)—*

a person's freehold land is waterfront (separated public) land because it is separated by an esplanade from a tidal waterway area that is partly contained in a coastal beach. Waterfront (separated public) land is a type of waterfront (separated) land. Despite the definition of waterfront (separated public) land in subsection (12), the esplanade, as separating land, must not contain any public infrastructure (including, a formed carriageway or pathway, for example). By definition, waterfront (separated non-public) land must not contain any public infrastructure. If the separating land does not contain any public infrastructure, the owner of the freehold land that is waterfront (separated) land is a responsible person for a seawall that is located on the seaward side of the esplanade because the seawall protects the person's freehold land by preventing the encroachment, by wave action, of the sea past the wall

- (b) for other land that is waterfront land or waterfront (separated non-public) land, the prescribed work (other than a seawall) secures, protects, supports or stabilises the other land (including any improvements on the other land); or

*Example for paragraph (b)—*

a revetment wall in a waterway area in a reserve that keeps in place materials that are on land landward of the waterway area

- (c) for other land that is waterfront land or waterfront (separated) land, the owner, lessee or occupier (as the case may be) of the other land is taken to be in control of the prescribed work (other than a seawall) under subsection (5).
- (5) For subsection (4)(c), an owner, lessee or occupier of the other land (a **relevant person**) is taken to be in control of a prescribed work—

- (a) that is connected to the other land that is waterfront land, unless the relevant person proves to the contrary; or
- (b) in any other case—if the relevant person—
  - (i) uses the prescribed work for a purpose that is directly connected with the normal enjoyment, and not mere convenience, of the other land; or
  - (ii) uses the prescribed work, or any land on which the prescribed work is situated, on a regular or recurring basis, whether or not for the prescribed work's intended function (including for the storage of property, for example); or

*Example for sub-paragraph (b)(ii)—*

mooring a boat to a pontoon or jetty when the boat is not otherwise being used in a waterway area

- (iii) regulates, or purports to regulate, access by other persons to the prescribed work (including by means of a locked gate, sign or direction, for example); or
- (iv) permanently attaches property to, or removes attached property from, the prescribed work; or
- (v) maintains the prescribed work (including by painting or cleaning, for example); or
- (vi) makes improvements to, or otherwise alters, the prescribed work.

(6) For—

- (a) subsection (5)—
  - (i) it does not matter that the—
    - (A) relevant person only does, or has done, a thing mentioned in that subsection in respect of part only of the prescribed work; or
    - (B) prescribed work is or was affixed to land, or is or was otherwise connected to land that the relevant person does not own, lease or occupy; or
    - (C) relevant person does not, or did not, intend to control the prescribed work; and
  - (ii) in establishing a matter, the fact that a relevant person has recently done a thing stated in subsection (5)(b) is evidence that the person is doing the thing; and
- (b) subsection (5)(a), a relevant person may not prove to the contrary if the person does, or, if relevant, has recently done, any of the things stated in subsection (5)(b).

(7) Despite subsection (1)—

- (a) a responsible person for a prescribed work does not include the local government or the State; and
- (b) a subordinate local law may state that another person, or a class of persons, is not a responsible person for a prescribed work for this local law.

(8) Subsection (9) applies if—

- (a) a required work would, if it were built, be a prescribed work; and

- (b) a person would be a responsible person for that prescribed work under this section.
- (9) A person referred to in subsection (8)(b) is a responsible person for a required work.

*Example—*

a person who is an owner of freehold land and would be a responsible person for a seawall under this local law if the seawall had been constructed on the person's freehold land or on non-freehold land where the seawall is for the benefit of, the person's freehold land, is a responsible person for a seawall, or a part of a seawall, that is to be built on the person's freehold land and for a seawall, or a part of a seawall, that is to be built on non-freehold land where the seawall, or the part of the seawall benefits, the person's freehold land

- (10) Subject to subsection (11), for—
- (a) this section, if any land, including common property, in scheme land is waterfront land or waterfront (separated) land, all other land in the scheme land is taken to be waterfront land or waterfront (separated) land (as the case may be); and
- (b) subsection (4), any lot, including common property, in the scheme land may separately be treated as other land.
- (11) However, for subsection (5)(a), the other land to which a prescribed work is connected does not include land in scheme land to which the prescribed work is not physically connected, joined or attached by any means.
- (12) To remove any doubt, a person taken to be in control of a prescribed work under this local law is not, for that reason alone, presumed to have a right to occupy or use the affected area.
- (13) In this section—

***affected area***, of land, means an area on which any part of a prescribed work is situated.

***class of persons*** means a class of persons described by reference to their relationship with land, including particular land, or a prescribed work, including a particular prescribed work.

*Examples—*

- permittees of permits over roads under the *Land Act 1994*, section 177
- public utility providers who hold authorities to install, maintain and operate their infrastructure on a road under a local law
- registered owners of freehold land whose lands are adjacent to a particular canal
- persons who would be responsible persons under this local law for a boat ramp located in a canal estate

***occupation right*** means a right of occupation of a place by an occupier.

***public infrastructure*** means permanent infrastructure (other than a prescribed work) that—

- (a) is maintained or maintainable by the local government or the State; and
- (b) is for the benefit of, or is used by, the public; and
- (c) has been designed for the benefit or use stated in paragraph (b).

*Examples—*

- formed walkway
- picnic tables
- public barbeque

**public land** means separating land which—

- (a) the public is entitled to use and uses; or
- (b) contains public infrastructure.

**separating land** means any or all of the following (which is not part of a waterway area)—

- (a) a road, including a road subject to an occupation right; or
- (b) trust land, including trust land subject to an occupation right; or
- (c) unallocated State land, including unallocated State land subject to an occupation right.

**waterfront land** means land that is adjacent to a waterway area.

**waterfront (separated) land** means—

- (a) waterfront (separated non-public) land; or
- (b) waterfront (separated public) land.

**waterfront (separated non-public) land** means land that is separated from a waterway area only by separating land (that is not public land).

**waterfront (separated public) land** means land that is separated from a waterway area only by public land.

## Part 4 Building of required works in waterway areas

*Note—*

Part 4 allows the local government to require a responsible person to build a required work in a waterway area. A responsible person may need to obtain—

- a development permit under the *Planning Act 2016* or an approval under another Act; and
  - a right to occupy the waterway area,
- to be able to build the required work and to carry out incidental and consequential work. Sections 25 and 26 explain what happens if the responsible person does not obtain the necessary permit, approval or right. However, under part 6, a responsible person for a required work that is a seawall or revetment wall may enter adjacent land in certain circumstances to carry out authorised activities.

### 10 Building of required work

- (1) The local government may give a responsible person for a required work a notice (a **waterway area required work notice**) if the local government reasonably believes that the person should build a required work in the local government area.
- (2) A waterway area required work notice must—
  - (a) be in writing; and
  - (b) state the required work the responsible person for the required work must build, including the work's location in the local government area and any

other relevant matter (including any standard to which the required work must be built); and

(c) state—

- (i) a period within which the required work must be built by the responsible person for the required work; and
- (ii) if relevant, a day by which a development permit under the *Planning Act 2016*, or an approval under another Act, must be applied for to build the required work and to carry out any incidental and consequential work (including to use or occupy any other land, for example); and

*Note—*

See subsection (5) and section 25

- (d) outline the facts and circumstances forming the basis for the belief that the responsible person for a required work should build the required work; and
  - (e) state that representations may be made about the notice; and
  - (f) state how the representations may be made; and
  - (g) state where the representations may be made or sent; and
  - (h) state—
    - (i) a day and time for making the representations; and
    - (ii) a period within which the representations must be made.
- (3) For subsection (2)(d), the facts and circumstances must include that—
- (a) the required work is intended to, or, once built, will, secure, protect, support or stabilise land or improvements which the responsible person owns, occupies or controls (***relevant land***); and
  - (b) a failure to build the required work in the location stated in the waterway area required work notice—
    - (i) results in, or will, or is likely to, at any time, result in, the escape of materials (of any nature) from the relevant land into a waterway area; or
    - (ii) adversely affects or will, or is likely to, adversely affect—
      - (A) the use of a waterway area by another person or the public generally; or
      - (B) the use, stability or function of, or support for, land or improvements owned, occupied or controlled by another person or a prescribed work for which another person is a responsible person; or
- Example of a prescribed work—*
- an existing seawall that is intended to protect neighbouring land but which may be exposed to deterioration or failure because there is no adjoining seawall in place
- (C) a waterway area or coastal, tidal or any other natural processes (including the transportation of sediment, for example) associated with a waterway area.

- (4) A waterway required work notice may also state—
- (a) if the local government reasonably believes undertaking particular incidental and consequential work is necessary to build a required work—particular incidental and consequential work that must be carried out to build a required work; and

*Examples of incidental and consequential work—*

- the removal of an existing seawall and works that are reasonably connected with, or incidental to, the removal where the required work to be built is a replacement seawall
- undertaking work to an existing seawall on adjacent land so that it physically aligns with or joins a seawall that is a required work

- (b) any other matter which a subordinate local law specifies may be stated in the notice.
- (5) Subsection (6) applies if—
- (a) the required work stated in a waterway area required work notice is a revetment wall or a seawall (a **wall**); and
- (b) any of the following applies when the notice is given and is stated in the notice—
- (i) the wall is intended to, or will, be built to keep in place materials that are landward of the wall and contained in the relevant land (whether or not the relevant land is adjacent to the location of the revetment wall or seawall);
- (ii) there is no existing wall but there is a development permit to build the wall (an **existing development permit**) and that (new) wall otherwise satisfies subparagraph (b)(i);
- (iii) the wall (a **replacement wall**)—
- (A) is intended to replace, in whole or in part, an existing wall and—
- (1) there is no approval as required by law for the existing wall; and
- (2) a development permit can not be obtained for the existing wall; or
- (3) there is a development permit to build the replacement wall (an **existing development permit**); and
- (B) otherwise satisfies subparagraph (b)(i).

- (6) The—
- (a) local government may be taken to reasonably believe that a person should build a required work in the local government area for subsection (1); and
- (b) facts and circumstances that must be included in the waterway area required work notice under subsection (3) may be taken to those stated in the notice.

*Note—*

Under subsections 9(4) and (5), a person is a responsible person for a required work only if the required work, once built, would be a prescribed work for which the person would be a responsible person

- (7) To remove any doubt, if the required work is a revetment wall or a seawall—

- (a) subsection (3) may be satisfied otherwise than by satisfying subsection (6)(b); and
- (b) subject to paragraph (c), a replacement wall may be required to be built in a different location to an existing wall; and
- (c) if subsection (5)(b)(ii) or (iii)(A)(3) applies—
  - (i) a waterway area required work notice may not require a responsible person for a required work to build the wall contrary to the existing development permit; and
  - (ii) section 25 will not apply to the extent the responsible person for a required work may perform an obligation under this section in accordance with the existing development permit.
- (8) For subsection 2(h), the day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.
- (9) To remove any doubt, a waterway area required work notice may require a person to build a required work on relevant land or other land.
- (10) A person given a waterway area required work notice may make representations about the notice to the local government in the way stated in the notice.
- (11) After considering any representations made by the person, the local government may give the person a notice, in writing, stating the waterway area required work notice—
  - (a) continues in force, with or without stated changes; or
  - (b) is withdrawn.
- (12) Subsection (13) applies if, within 20 business days of receiving any representations from a responsible person, the local government—
  - (a) does not give the person a notice under subsection (11)(a); or
  - (b) gives the person a notice under subsection (11)(b).
- (13) The waterway area required work notice is taken not to have been given under subsection (1).
- (14) A notice given to a person under subsection (11)(a) must include, or be accompanied by, a decision notice.
- (15) A responsible person for a required work must—
  - (a) if a local government gives a notice under subsection (11)(a)—comply with a waterway area required work notice subject to any stated changes contained in the notice given under subsection (11)(a); or
  - (b) otherwise—comply with a waterway area required work notice.

*Note—*

A waterway area required work notice may be a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2

Maximum penalty—800 penalty units.

- (16) To remove any doubt, to comply with subsection (15) a responsible person for a required work must carry out all incidental and consequential work that is—
  - (a) stated in a waterway area required work notice (subject to any stated changes



contained in a notice under subsection (11)(a)); and

- (b) reasonably necessary to comply with a waterway area required work notice, whether or not stated in the notice (or in a notice under subsection (11)(a)).

*Note—*

See part 6 in relation to carrying out incidental and consequential work for a seawall or a revetment wall on adjacent land

- (17) Subject to subsection (18), if a responsible person for a required work does not comply with subsection (15), the local government may take all necessary steps to build the required work and carry out any incidental and consequential work.
- (18) If the local government decides to take all necessary steps to build the required work, the local government must comply with that part of the waterway area required work notice that was stated in the notice in accordance with subsection (2), subject to any change stated in a notice given by the local government under subsection (11)(a).
- (19) Subsection (17) does not limit the action the local government may take if a responsible person for a required work does not comply with subsection (15).

*Note—*

If a waterway area required work notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, a local government worker may take action under the *Local Government Act 2009*, section 142

- (20) The local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the required work (including carrying out any incidental and consequential work) as a debt payable by the responsible person who failed to build the work.
- (21) Subsection (20) does not limit the ways in which the local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the required work (and carrying out any incidental and consequential work).

*Note—*

If a waterway area required work notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, and the amount the local government properly and reasonably incurs in taking the action required under the waterway area required work notice is not paid by the person who failed to take the action, the local government may, if the debt is not paid within 30 days, recover the amount, as a debt, as if the debt were overdue rates under the *Local Government Act 2009*, section 142

- (22) Any requirement or belief of the local government under this section may not be construed as or involving an assessment or process for assessment of, or approval for, the building of a required work or the carrying out of incidental and consequential work, including for the purpose of another law.

*Note—*

A requirement to build a required work or to carry out incidental and consequential work may require assessment and approval under another law

- (23) In this section—

***comply with***, in relation to a waterway required work notice, includes doing all things reasonably necessary to comply with the notice, including carrying out all reasonably necessary incidental and consequential work not otherwise stated in a waterway area required work notice.

**existing wall** means a seawall or revetment wall that—

- (a) exists when the waterway area required work notice is given; and
- (b) is a prescribed work for which the responsible person for the replacement wall (as a required work) is a responsible person for a prescribed work.

**incidental and consequential work**, in relation to complying with a waterway required work notice or building a required work, includes—

- (a) repairing any damage to, and restoring any, land or a work owned, leased or controlled by the local government or the State, as far as is practicable; and
- (b) interfering with, or undertaking any activity (including building) on or in respect of—
  - (i) land owned, leased or controlled by, or a work the property of, someone other than the local government or the State; or
  - (ii) a prescribed work for which another person is a responsible person under this local law; and

*Example for subparagraph (b)(ii)—*

interfering with an existing seawall for which another person is a responsible person under this local law so that a seawall to be built as a required work physically aligns with, and connects to, the existing seawall

- (c) repairing any damage to, and restoring any, land or work referred to in paragraph (b), as far as is practicable.

*Examples for paragraph (c)—*

- restoring an existing seawall for which another person is a responsible person so that the wall can continue to perform its intended function
- reinstating a fence

## Part 5 Maintenance of prescribed works in waterway areas

*Note—*

Part 5 requires a responsible person to maintain a prescribed work in a safe condition and in good working order, repair and condition. A responsible person may need to obtain—

- a development permit under the *Planning Act 2016* or an approval under another Act; and
  - a right to occupy the waterway area,
- to be able to maintain the prescribed work. Sections 25 and 26 explain what happens if the responsible person does not obtain the necessary permit, approval or right. However, under part 6, a responsible person for a prescribed work that is a seawall or revetment wall may enter adjacent land in certain circumstances to carry out authorised activities.

### 11 Good repair and safe condition requirement

- (1) A responsible person for a prescribed work must maintain and keep the prescribed work in—
  - (a) a safe condition; and

*Example for paragraph (a)—*

repairing a pontoon so that it will not be a risk or danger to persons

- (b) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

*Examples for paragraph (b)—*

- maintaining and keeping a seawall in good working order, repair and condition so that the seawall can continue to perform its intended function of—
  - (a) preventing encroachment, by wave action, of the sea past the wall; and
  - (b) keeping in place the materials that are landward of the wall
- maintaining and keeping a revetment wall in good working order, repair and condition so that the revetment wall can continue to perform its intended function of—
  - (a) preventing an embankment from erosion; and
  - (b) keeping in place the materials that are landward of the wall

- (2) For subsection (1), maintain includes—

- (a) undertaking regular inspections of a work to determine whether it is in a safe condition or good working order, repair and condition; and
- (b) having regard to the nature and life expectancy of a work, obtaining a prescribed work report, when reasonably prudent, to determine whether maintenance is required to ensure that the work is in a safe condition and in good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

*Example for paragraph (b)—*

obtaining a prescribed work report to determine that preventive action is necessary for a seawall so that the seawall can continue to perform its intended function of preventing encroachment, by wave action, of the sea past the wall

- (3) For deciding whether a responsible person is complying with subsection (1), the following matters may be taken into account—

- (a) the dimensions of the prescribed work, including the height of the prescribed work above the level of a foreshore; and
- (b) the age of the prescribed work; and
- (c) the structural integrity of the prescribed work; and
- (d) the surcharge on the prescribed work from other structures; and
- (e) the condition of any existing foreshore protection for the prescribed work; and
- (f) the exposure of each exterior surface of the prescribed work to any wind and wave action; and
- (g) drainage problems in the vicinity of the prescribed work which cause, or are likely to cause, erosion; and
- (h) the geotechnical stability of the land on which the prescribed work is situated; and
- (i) potential structural safety hazards associated with the state of repair of the prescribed work; and
- (j) the hydraulic performance, including flood storage and flood flow path, of the prescribed work; and
- (k) the environmental value of a waterway area in which the prescribed work is

- situated; and
- (l) the amenity, including views, shadows, airflow and water flow, of a waterway area in which the prescribed work is situated; and
  - (m) the existing or intended function of the prescribed work; and
  - (n) whether, if preventive work was not taken in respect of the prescribed work, the prescribed work would be reasonably likely to fail; and
  - (o) the existing or intended function of a waterway area in which the prescribed work is situated; and
  - (p) if the prescribed work was built or constructed pursuant to an approval—whether the prescribed work complies with the requirements of the approval; and
  - (q) other criteria specified in a subordinate local law; and
  - (r) any other relevant matter.
- (4) Subsection (5) applies if—
- (a) a person is liable under a local government Act to pay a special rate or charge to the local government; and
  - (b) the special rate or charge is for a service, facility or activity that is for, or includes, the maintenance (to any standard) by or on behalf of the local government of the prescribed work or part of the prescribed work (the **local government maintenance service**); and
  - (c) the person mentioned in paragraph (a) (the **relevant responsible person**) is a responsible person for a prescribed work for any part of the prescribed work (or of the part of the prescribed work) that is subject to the local government maintenance service.
- (5) The relevant responsible person does not contravene subsection (1) in respect of the prescribed work or the part of the prescribed work (an **affected part**) that is subject to the local government maintenance service.
- (6) Subsection (7) applies if the relevant responsible person—
- (a) must comply with subsection (1) in respect of part of a prescribed work to which subsection (5) does not apply (the **unaffected part**); and
  - (b) would, but for subsection (5), be liable to comply with subsection (1) in respect of the affected part.
- (7) If the relevant responsible person contravenes subsection (1) in respect of the unaffected part, the local government may give the relevant responsible person a compliance notice requiring the relevant responsible person to do a thing in relation to the whole or part of the prescribed work (including to replace the whole of the unaffected part and the affected part, for example).

*Example—*

a person may be a responsible person for a prescribed work that is a revetment wall in respect of that part of the wall that is on the responsible person's freehold lot under section 9(1)(a). That person may also be responsible for maintaining a part of the same wall that is in an adjoining canal (for example, rock buttressing supporting the wall on the responsible person's lot) under section 9(1)(c), (d) or (e). The responsible person must maintain each of the different parts of the revetment wall under section 11. However, the local government may, when maintaining the canal as a whole, decide to also maintain the part of the revetment wall

that is within the canal. If the responsible person for the revetment wall is liable to pay the local government a special rate or charge for the local government providing a service of maintaining the part of the wall that is in the canal, the responsible person is a relevant responsible person and cannot be liable for not maintaining that part of the wall under subsection (1). However, because the relevant responsible person will be responsible for maintaining the part of the revetment wall on the responsible person's lot, the local government can, under section 23, give that person a compliance notice for failing to comply with subsection (1) in respect of that part. The compliance notice may, however, require the relevant responsible person, for example, to repair or replace the whole of the revetment wall, including that part that is subject to the local government's maintenance service. This is because repairing or replacing the whole wall may be the only or the best way to address the relevant responsible person's non-compliance with subsection (1) in respect of the part of the wall that is on the responsible person's lot.

- (8) Subsection (5) does not apply if, in the local government's opinion, maintenance of the prescribed work or an affected part that is subject to the local government maintenance service is necessary because of the default of the relevant responsible person.
- (9) If subsection (8) applies, the obligation of the relevant responsible person under subsection (1) in respect of the prescribed work or an affected part that is subject to the local government maintenance service is, despite anything else, to be construed as an obligation to maintain the prescribed work or the affected part to the same standard to which the local government would, at the relevant time, otherwise maintain the prescribed work or affected part under the local government maintenance service.
- (10) The local government may give a notice to the relevant responsible person under subsection (8) stating its opinion and the reasons therefor.
- (11) A notice under subsection (9) is evidence of the matters stated in it.
- (12) Nothing in subsection (5) affects—
  - (a) the liability of a prescribed person for a prescribed work who is not a relevant responsible person to comply with subsection (1) in respect of a prescribed work; or
  - (b) section 10.
- (13) In this section—

***prescribed work report*** means a report that complies with the minimum requirements of a subordinate local law that is specified to apply for the purposes of this part.

## 12 Removal of a prescribed work which is abandoned

- (1) This section applies—
  - (a) to a prescribed work, or part of a prescribed work, on trust land, a reserve or non-freehold land (including a road); and
  - (b) if the local government—
    - (i) reasonably believes there is no responsible person for the prescribed work, or part of a prescribed work, under section 9(1)(c) or (d); and
    - (ii) publishes a notice in a local newspaper circulating generally in the local government area stating that a person may, within a period stated

- in the notice (such period not being less than 10 business days from the publication of the notice), show cause, in writing, to the local government why the local government should not remove the prescribed work; and
- (iii) attaches a notice stating the same information which the notice published in accordance with subsection (1)(b)(ii) states to the prescribed work; and
  - (c) if no person shows cause why the local government should not remove the prescribed work within the period stated in the notices.
- (2) The prescribed work is abandoned under this local law.
  - (3) A person may only show cause why the local government should not remove the prescribed work by showing that the person is a responsible person for the prescribed work.

### 13 Removal of abandoned prescribed work by local government

- (1) This section applies if a prescribed work is abandoned under section 12.
- (2) The local government may—
  - (a) remove the prescribed work from the land referred to in section 12(1)(a) (*relevant land*); and
  - (b) restore the relevant land, as nearly as practicable, to its former condition.
- (3) The local government may dispose of a removed prescribed work—
  - (a) if the value of the removed prescribed work is less than \$5000—as the local government sees fit, including by private sale, destruction, restoring or giving away; or
  - (b) otherwise—by public auction.
- (4) If a prescribed work is to be sold at public auction, the local government must give public notice of the public auction at least 14 days before the date of the proposed public auction.
- (5) Subsection (6) applies if the local government attempts to dispose of a removed prescribed work under subsection (3)(b) but the work is not disposed of.
- (6) The local government may dispose of the removed prescribed work as the local government sees fit, including by private sale, destruction, restoring or giving away.
- (7) The local government must apply the proceeds of sale or disposal of a removed prescribed work in way required by the *Local Government Act 2009*, section 38A(2).
- (8) To remove any doubt, the *Local Government Act 2009*, section 38A(3), applies to a secured party.
- (9) Except where expressly stated, the local government incurs no liability to a person, and no person has any claim for relief or compensation against the local government, in respect of any action taken by the local government under this section, if the local government has acted in good faith and without negligence.

(10) In this section—

**secured party** has the same meaning as in the *Local Government Act 2009*, section 38A(4).

## Part 6                      Entry to adjacent land for authorised activities relating to a seawall or revetment wall

### 14 Definitions for pt 6

In this part—

**adjacent land** means land—

- (a) other than land owned, leased or controlled by the State or the local government, that is adjacent to—
  - (i) land on which a prescribed work is located and for which there is a relevant person under the definition of relevant person, paragraph (b); or
  - (ii) land on which a required work is required to be built to comply with a waterway area required work notice by a relevant person under the definition of relevant person, paragraph (a); or
- (b) for which a relevant person—
  - (i) under the definition of relevant person, paragraph (a), reasonably requires entry to carry out an authorised activity; or
  - (i) under the definition of relevant person, paragraph (b), reasonably requires entry to carry out an authorised activity.

**authorised activity** means—

- (a) for a required work—any incidental and consequential work a responsible person for the required work must carry out to comply with section 10(14); or
- (b) for a prescribed work—any activity a responsible person for the prescribed work must do to comply with section 11(1).

**damage**, to land or a thing (including a prescribed work defined in section 6), does not include damage that is reasonably necessary to carry out an authorised activity.

**existing prescribed work** means a prescribed work—

- (a) existing immediately before a notice is required to be given under section 15(1); and
- (b) which is, or is to be, interfered with by the carrying out of an authorised activity.

**occupier**, of land includes a person, other than a relevant person, who is a responsible person for an existing prescribed work on adjacent land, but does not include the State or the local government.

**prescribed work** means a prescribed work that is a seawall or a revetment wall.

**relevant person** means—

- (a) a responsible person for a required work who is required to carry out an authorised activity; and
- (b) a responsible person for a prescribed work who is required to carry out an authorised activity; and
- (c) for sections 16, 17, 18 and 19—includes a person engaged or authorised by a person in paragraph (a) or (b) to carry out an authorised activity.

**required work** means a required work that is a seawall or a revetment wall.

## 15 Notice of entry

- (1) A relevant person who intends to enter adjacent land under this part must give the occupier of the land written notice of the entry.

*Note—*

For land for which the State or the local government is an occupier see section 26

- (2) The written notice must state the following matters—
  - (a) a relevant person is permitted, under this local law, to enter the adjacent land without consent or a warrant to carry out authorised activities on relevant land; and
  - (b) the period during which the entry will be made; and
  - (c) the authorised activities that will be carried out on the relevant land; and
  - (d) the period during which the authorised activities mentioned in paragraph (c) will be carried out; and
  - (e) the number and names of persons engaged or authorised by the relevant person, and things the relevant person or engaged or authorised person intends to take onto or over the adjacent land, to carry out the authorised activities mentioned in paragraph (c).
- (3) However, before the relevant person gives the written notice under subsection (1), the relevant person must make a reasonable attempt to contact the occupier of the adjacent land and obtain the occupier's consent to the entry.
- (4) In this section, **entry** includes entry by a person mentioned in subsection (2)(e).

## 16 Entering adjacent land for authorised activities

- (1) A relevant person may, without consent or a warrant, enter adjacent land if—
  - (a) the entry is for the purpose of carrying out an authorised activity; and
  - (b) a relevant person has given written notice (the **notice**) of the entry under section 15; and
  - (c) the entry—
    - (i) happens during the period stated in the notice but after the notice period has ended; and
    - (ii) is for the purpose of carrying out an authorised activity stated in the notice.



- (2) The relevant person may, when entering the adjacent land, take onto or over the adjacent land any person or thing the relevant person reasonably requires for carrying out an authorised activity stated in the notice.

*Examples of things the relevant person may reasonably require for carrying out an authorised activity—*

vehicles, tools, building or landscaping supplies

- (3) However, subsections (1) and (2) do not authorise—
- (a) entry of, or a part of, a structure (except a relevant prescribed work), without the consent of each occupier of the structure or part; or
- (b) entry of adjacent land between 6pm and 7am unless the entry is reasonably necessary to carry out an authorised activity stated in the notice during that period.
- (4) In this section—

**enter** includes re-enter.

**notice period** means a period of 10 business days starting on the day when the occupier of the adjacent land has been given the notice.

## 17 Duty to avoid inconvenience and minimise damage

A relevant person who enters adjacent land under this part, or with the consent of an occupier of the land, must take all reasonable steps to avoid—

- (a) causing inconvenience to an occupier; and
- (b) damaging the land or anything on the land (other than is reasonably necessary to carry out an authorised activity).

## 18 Relevant person must give notice of damage

- (1) This section applies if—
- (a) a relevant person enters adjacent land under this part, or with the consent of the occupier of the land, to carry out an authorised activity; and
- (b) the relevant person causes or contributes to damage to the land or something on the land.
- (2) However, this section does not apply if—
- (a) the relevant person reasonably considers the damage is trivial; or
- (b) for damage to a thing—the relevant person reasonably believes there is no one in possession of the thing.
- (3) The relevant person must give notice of the damage to the occupier of the adjacent land.

Maximum penalty—50 penalty units

- (4) For subsection (3), if the damage is caused or contributed to by a relevant person mentioned in section 14, definition of relevant person, paragraph (c) (***the authorised relevant person***), a relevant person also includes the relevant person

mentioned in section 14, definition of relevant person, paragraph (a) or (b), if—

- (a) that relevant person has knowledge of or ought to have knowledge of the damage; and
  - (b) the authorised relevant person does not give the notice to the occupier.
- (5) However, if it is not practicable to comply with subsection (3), the relevant person must—
- (a) leave the notice at the place where the damage happened; and
  - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.
- (6) The notice must state—
- (a) particulars of the damage; and
  - (b) that the owner of the land or thing may seek remediation of the damage under this part.

*Note—*

Remediation of the damage may occur under a remediation agreement between the owner and the local government under section 20. An owner must, however, first give the local government a notice under section 19.

- (7) If the relevant person believes the damage was caused by a latent defect, or other circumstances beyond the relevant person's control, the relevant person may state the belief in the notice.

## 19 Interested person may give notice of damage to the local government

- (1) This section applies if—
- (a) a relevant person enters adjacent land under this part, or with the consent of an occupier of the land, to carry out an authorised activity; and
  - (b) a person (the *interested person*) reasonably believes the relevant person has caused or contributed to damage to the land or something on the land; and
  - (c) the interested person owns the land or thing.
- (2) The interested person may give the local government written notice of the damage.
- (3) The notice must include the following information—
- (a) details of the damage; and
  - (b) details of the entry during which the interested person believes the damage was caused or contributed to; and
  - (c) whether the interested person believes the land or thing can be returned to the condition it was in before the damage; and
  - (d) the remedial action the interested person considers—
    - (i) if the interested person maintains the belief mentioned in paragraph (c)—reasonably necessary to return the land or thing to the condition it was in before the damage; or
    - (ii) otherwise—appropriate having regard to the consequences of the damage to use of the land or thing.

- (4) A notice must be given no later than 90 days after the interested person first became aware of the damage.
- (5) Within 30 days of receiving the notice, the local government must notify the interested person and the relevant person of whether the local government will enter into a remediation agreement under section 20.

## 20 Remediation agreement

- (1) This section applies if—
  - (a) an interested person gives the local government a notice under section 19 within the notice period; or
  - (b) if an interested person gives a notice under section 19 after the notice period has ended—the local government is satisfied the person has a reasonable excuse for not giving the notice within the notice period.
- (2) The local government may enter into an agreement (**a remediation agreement**) with the interested person to take remedial action in relation to the land or thing stated in the notice.
- (3) A remediation agreement has no effect unless it is—
  - (a) in writing; and
  - (b) signed by or for the parties to the agreement.
- (4) A remediation agreement is binding on the parties to the agreement and the parties' personal representatives, successors and assigns.
- (5) The local government may recover the amount that the local government properly and reasonably incurs in taking any remedial action under a remediation agreement as a debt payable by the relevant person who caused or contributed to the damage.
- (6) For subsection (5), a relevant person is the responsible person under section 14, definition of relevant person, paragraph (a) or (b) who—
  - (a) caused or contributed to the damage; or
  - (b) engaged or authorised the person who caused or contributed to the damage.
- (7) In this section—

**notice period** means the period stated in section 19(4).

## Part 7 Sale of lots

### 21 Sale of lot subject to specified prescribed work

- (1) This section applies to a contract (the **contract**) for the sale of a relevant lot.
- (2) The seller under a contract must ensure that, when the buyer becomes bound by the contract, the contract includes a clause stating or specifying the following matters—

- (a) the contract is a contract to which this section applies; and
- (b) the actual specified prescribed work (the **actual specified work**) that is completely or partly situated on, or which is connected to, the relevant lot; and
- (c) under this local law, a person who is a responsible person for the specified prescribed work is, at that person's cost, required to maintain and keep the specified prescribed work in—
  - (i) a safe condition; and
  - (ii) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function; and
- (d) whether or not there is an outstanding notice issued by the local government under this local law in relation to the actual specified work and, if so, the contents of that notice.

Maximum penalty—50 penalty units.

- (3) In this section—

**lot** means a lot under the *Land Act 1994* or *Land Title Act 1994*.

**relevant lot** means a lot—

- (a) on which a specified prescribed work is completely or partly situated; or
- (b) that is waterfront land and which is connected to a specified prescribed work.

*Note for paragraph (b)—*

A lot in scheme land that is waterfront land and which may separately be treated as other land for section 9(4) may not necessarily be a relevant lot because the lot is not connected to a specified prescribed work

**specified prescribed work** means a prescribed work specified for this section in a subordinate local law.

## Part 8 Prescribed work reports

### 22 Prescribed work report

- (1) The local government may give a responsible person for a prescribed work a notice (a **prescribed work report notice**) requiring the person to obtain and give the local government a prescribed work report, or a copy, within a reasonable period stated in the notice.
- (2) The local government may not give a person a prescribed work report notice—
  - (a) if the person is a body corporate—more than once every 2 years after the commencement of this local law; or
  - (b) otherwise—more than once every 5 years after the commencement of this local law.
- (3) A person must comply with a prescribed work report notice.

Maximum penalty—50 penalty units.

- (4) If a responsible person does not comply with a prescribed work report notice, the local government may obtain a prescribed work report.
- (5) Subsections (6) and (7) apply if the local government decides to obtain a prescribed work report.
- (6) The local government may recover the amount that the local government properly and reasonably incurs in obtaining a prescribed work report as a debt payable by the responsible person who failed to comply with the prescribed work report notice.
- (7) The responsible person must provide the local government with all relevant and reasonable assistance to enable the local government to obtain the report.

Maximum penalty—50 penalty units.

- (8) In this section—

**body corporate** has the same meaning as in the *Body Corporate and Community Management Act 1997*.

**prescribed work report** means a report about a specified prescribed work that complies with the requirements of a subordinate local law that is specified to apply for the purposes of this part.

**specified prescribed work** means a prescribed work specified for this section in a subordinate local law.

## Part 9 Enforcement

### 23 Compliance

- (1) This section applies if a person contravenes this local law, other than section 10, 21 or 22.
- (2) The local government may give a notice, in writing (a **compliance notice**), to—
  - (a) a person who contravenes this local law; or
  - (b) any person involved in the contravention of this local law under section 32.
- (3) A compliance notice may require a person to—
  - (a) stop a contravention, if the contravention is of a continuing or recurring nature; or
  - (b) perform work or otherwise take specified action to remedy the contravention, for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurring nature; or
  - (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure compliance with section 11.

*Note—*

A compliance notice may be a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2

- (4) Without limiting subsection (3), a compliance notice may specifically require a person to do any of the following—

- (a) apply for a development permit or an approval; and
- (b) repair or rectify the prescribed work; and
- (c) carry out work to support, stabilise or protect the prescribed work or to ensure that the work performs, or is capable of performing, its intended function; and

*Example for paragraph (c)—*

rock buttressing of an existing revetment wall in a canal

- (d) secure the prescribed work (whether by a system of supports or in another way); and
  - (e) fence off the prescribed work to protect persons; and
  - (f) cleanse, purify and disinfect the prescribed work; and
  - (g) demolish, remove or replace the prescribed work; and
  - (h) comply with a prescribed work inspection program; and
  - (i) obtain a prescribed work report, to be given to the local government, about the safety or condition of, or any other matter relating to, the prescribed work; and
  - (j) restore, as far as practicable, the prescribed work to the condition the prescribed work was in immediately after completion of the construction of the prescribed work; and
  - (k) if the contravention of this local law causes harm, including environmental harm or environmental nuisance in, or damage to, a waterway area—restore and rehabilitate the waterway area, as far as practicable, to the condition the waterway area was in immediately before the contravention.
- (5) The compliance notice must include, or be accompanied by, a decision notice.
- (6) A person who is given a compliance notice must comply with the notice.

Maximum penalty—800 penalty units.

- (7) To remove any doubt, a compliance notice may require a person to do a thing in relation to the whole or part of a prescribed work.
- (8) In this section, **prescribed work report** means a report prepared by a person who is qualified to provide the report about the prescribed work as if the prescribed work were a specified prescribed work under section 22.

## 24 Liability for consequential damage

- (1) A person who contravenes this local law, other than section 10, 21 or 22, is liable for any loss or damage, including the incurring of any cost or expense (**consequential damage**), caused directly or indirectly by the person's contravention, or involvement in the contravention, of this local law.
- (2) Subsection (1) only applies to any consequential damage caused to or incurred in respect of—
- (a) land that is owned, leased or controlled by the local government; or
  - (b) a work that is the property of the local government or is on land in paragraph (a).

Example for paragraph (b)—

removing a seawall that has not been maintained by a responsible person as required by this local law from a foreshore controlled by the local government

- (3) The local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to make good the consequential damage as a debt payable by the person whose contravention caused the consequential damage.
- (4) To remove any doubt, a person's liability under this section is in addition to any liability under another section of this local law.

## 25 Permission required to perform obligation

- (1) Subsection (2) applies if—
  - (a) this local law, except for this section or section 24, or a compliance notice requires a person (the **liable person**) to perform an obligation (the **original obligation**); and
  - (b) performing the original obligation would be a development offence under the *Planning Act 2016* or a contravention under another law unless the liable person obtained an approval or permission (the **permission**) to perform the original obligation; and
  - (c) the liable person has taken all reasonable steps to obtain the permission (in the period required, if the liable person is required to perform the original obligation under a waterway area required work notice or compliance notice) but the permission has not been given by the relevant entity.
- (2) The liable person is not liable for an offence under this local law for failing to perform the original obligation.
- (3) Despite subsection (2)—
  - (a) the local government may give the liable person a notice requiring the person to take other action in respect of the subject matter of the original obligation; and
  - (b) the liable person must continue to perform any part of the original obligation that may be performed without the permission.
- (4) A notice under subsection (3)(a) is taken to be a compliance notice under section 23.
- (5) Subsections (6) and (7) apply if a liable person can only lawfully perform an original obligation if there is a change to an existing permission which would permit the original obligation to be performed (the **change permission**).
- (6) Subject to subsection (8), nothing in this local law requires a person to perform the original obligation.
- (7) However, the liable person must take all reasonable steps to obtain the change permission.

Maximum penalty for subsection (7)—100 penalty units.

- (8) If—
  - (a) the liable person complies with subsection (7), but the change permission is

- not given by the relevant entity, the liable person is not liable for an offence under this local law for failing to perform the original obligation; or
- (b) the change permission is given by the relevant entity, the liable person must perform the original obligation in accordance with the change permission (and any other lawful requirement).
- (9) To remove any doubt—
- (a) the local government may, at any time, apply for, and be given, a permission; and
- (b) the liable person will, except where subsection (7) or (8)(a) applies but subject to subsection (2) and to the extent that the original obligation is not otherwise performed, be taken to have failed to perform the original obligation, including, if applicable, work required to be performed to fulfil that obligation for the purposes of this local law; and
- (c) a liable person is not required to perform an original obligation under this local law if performing the original obligation is prohibited under a law made by the State; and
- (d) nothing in this local law is intended to establish an alternative development process and any obligation or requirement imposed by or under this local law, or belief of the local government, relating to a required work or a prescribed work is not, and does not involve, an assessment of development; and
- (e) for section 12, if a person is, under this section, not liable for an offence for failing to perform the original obligation or, for any reason, is not required to perform an original obligation, that person is not entitled to—
- (i) be a responsible person for the relevant prescribed work, or part of a prescribed work; and
- (ii) show cause why the local government should not remove the prescribed work within the period stated in the notices under section 12.

*Note—*

Under section 28, the local government may perform work that a person has failed to perform under a provision of this local law.

- (10) In this section—

***alternative development process*** has the same meaning as in the *Local Government Act 2009*, section 37.

***development*** has the same meaning as in the *Planning Act 2016*, schedule 2.

***existing permission*** means a permission that existed immediately before the original obligation arose.

*Example—*

a sanction to carry out works under the *Harbours Act 1955* (repealed), section 86

## 26 Occupation right required to perform obligation

- (1) Subsection (3) applies if—



- (a) this local law, except for this section or section 25, or a compliance notice requires a person (the **liable person**) to perform an obligation (the **original obligation**); and
  - (b) the person is not otherwise entitled to perform the original obligation unless the person has a right or permission to use or occupy land or waters (an **occupation right**) under an Act or given or consented to by another person to perform the original obligation; and
  - (c) the occupation right does not exist when the original obligation first applies.
- (2) However, this section does not apply to the carrying out of an authorised activity under part 6.
- (3) The liable person must—
- (a) take all reasonable steps to apply for, or acquire, an occupation right; and
  - (b) comply with the terms and conditions of the occupation right, if given.

Maximum penalty for subsection (2)(a)—50 penalty units.

- (4) Subject to subsection (1)(b), if, apart from this local law, the local government may give an occupation right to a liable person, the local government must give the liable person an occupation right.
- (5) Subject to subsection (6), if, after complying with subsection (3)(a), the liable person does not acquire an occupation right, the liable person is not liable for an offence under this local law for failing to perform the original obligation.
- (6) To remove any doubt—
  - (a) the liable person will, subject to subsection (5) and to the extent that the original obligation is not otherwise performed, be taken to have failed to perform the original obligation, including, if applicable, work required to be performed to fulfil that obligation for the purposes of this local law, including section 28; and
  - (b) for section 12, if a person is, under this section, not liable for an offence for failing to perform the original obligation that person is not entitled to—
    - (i) be a responsible person for the relevant prescribed work, or part of a prescribed work; and
    - (ii) show cause why the local government should not remove the prescribed work within the period stated in the notices under section 12.

*Note—*

Under section 28, the local government may perform work that a person has failed to perform under a provision of this local law.

## 27 Inspection of places

- (1) This section applies to a place on which—
  - (a) a prescribed work is situated; or
  - (b) if a waterway area required work notice has been given under section 10, a required work is required to be built under that notice.

- (2) An authorised person may enter and inspect the place including any equipment or thing on the place, to establish whether there is compliance with the requirements of—
  - (a) this local law; or
  - (b) a compliance notice.
- (3) An authorised person may direct the owner or occupier of the place to produce for inspection—
  - (a) any records that are required to be kept as specified in a subordinate local law and may take copies of or extracts from those records; and
  - (b) any vehicle, equipment, plant or thing used on the place.
- (4) An authorised person may measure, weigh, sample, test, photograph, videotape or otherwise examine any thing that may be inspected pursuant to this section.
- (5) The owner or occupier of the place must comply with a direction of an authorised person under subsection (3)

Maximum penalty—50 penalty units.

- (6) To remove any doubt, the powers of an authorised person under this local law are in addition to, and do not limit, the powers of an authorised person under a law, including the local government Act.

## 28 Performance of work

- (1) The local government may perform work when a person has failed to perform work required to be performed by a compliance notice.

*Note—*

If a compliance notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, a local government worker may take action under the *Local Government Act 2009*, section 142

- (2) The local government may, in the course of performing work under subsection (1) on a place, remove from the place any structure, vehicle, equipment, animal, plant or thing if the local government is satisfied that there is a risk of—
  - (a) harm to human health or safety or personal injury; or
  - (b) property damage or a loss of amenity; or
  - (c) environmental harm or environmental nuisance.
- (3) Subsection (2) does not apply to a place that is a road under the *Transport Operations (Road Use Management) Act 1995*, other than a busway under the *Transport Infrastructure Act 1994*.

*Note—*

The local government has the power to remove things from roads under the *Transport Operations (Road Use Management) Act 1995*, section 100

- (4) The local government may dispose as it sees fit of, and in accordance with the laws of the State, any material of any nature removed by the local government under this section.
- (5) An authorised person may perform the work that the local government is

empowered to undertake under this section.

- (6) The local government may recover the amount that the local government properly and reasonably incurs in performing the work as a debt payable by the person who has failed to perform the work.
- (7) Subsection (6) does not limit the ways in which the local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the work.

*Note—*

If a compliance notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, and the amount the local government properly and reasonably incurs in taking the action required under the compliance notice is not paid by the person who failed to take the action, the local government may, if the debt is not paid within 30 days, recover the amount, as a debt, as if the debt were overdue rates under the *Local Government Act 2009*, section 142

- (8) The Court may order a person found guilty of an offence under this local law to—
  - (a) perform work required to be performed by—
    - (i) a compliance notice; or
    - (ii) a provision of this local law; or
  - (b) pay to the local government all costs incurred by the local government in performing the work pursuant to this section as a debt owing to the local government.
- (9) If an authorised person performs any work that the local government may perform under this local law, the local government is taken to have performed the work for the purposes of any provision that says that the local government may recover the costs or expenses of performing the work from another person.

## Part 10 Release

### 29 Release

- (1) This section applies only to the extent it is not contrary to a law made by the State.
- (2) No action for damages or other right or remedy lies against the released party in relation to—
  - (a) the design, state or condition of any prescribed work or required work; or
  - (b) the construction, maintenance or non-maintenance of a prescribed work or required work; or
  - (c) any act or omission of the released party under this local law; or
  - (d) any disturbance of the right of support of any land situated on or adjacent to a waterway area or other damage whatsoever to the land or any improvement on the land, caused by or resulting from, the state or condition of any prescribed work situated on or adjacent to the land or the waterway area.
- (3) Subsection (2) prevents a civil liability attaching to the released party in respect of an act or omission of the released party providing the act was done or the omission

was made in good faith and without negligence.

- (4) In this section, ***released party*** means—
- (a) the local government; and
  - (b) each officer, employee and agent of the local government, including an authorised person.

## **Part 11 Administrative provisions**

### **30 Owners and occupiers must ensure compliance with the local law**

- (1) This section does not apply to an occupier of a place where, under another provision of this local law, the occupier is not liable for an offence.
- (2) Except where the owner and occupier of a place is the local, State or Commonwealth government, the owner and occupier of the place must ensure that an offence is not committed in or on a place.
- (3) If an offence is committed in or on a place by another person, the owner and occupier of the place also commit an offence, namely the offence of failing to ensure that an offence is not committed in or on the place.

Maximum penalty—the penalty for the commission of the offence in or on the place.

- (4) Evidence that an offence has been committed on a place is evidence that the owner and occupier of the place committed the offence of failing to ensure that the offence is not committed in or on the place.
- (5) However, it is a defence for an owner or occupier to prove that—
  - (a) the owner or occupier exercised reasonable diligence to ensure that an offence was not committed in or on the place; or
  - (b) the offence was committed in or on the place without that person's knowledge or consent.

### **31 Joint and several liability**

- (1) Where this local law imposes a liability on an owner or occupier of a place, or a person engaged in a particular activity, and 2 or more persons are the owners or occupiers of the relevant place, or are jointly engaged in the relevant activity, the liability is joint and several.
- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

### **32 Liability of third parties**

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty—the penalty for which any person who committed the contravention would be liable.

- (2) For subsection (1), a person involved in a contravention of this local law is any person who—
- (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) has conspired with another person to effect the contravention; or
  - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

### 33 Providing false or misleading information

A person must not give information for this local law, either orally or in a document, that the person knows is false or misleading.

Maximum penalty —20 penalty units

### 34 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.
- Maximum penalty for subsection (1)— half the maximum penalty for committing the offence.
- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

### 35 Defences

It is a defence to any breach of or non-compliance with any provision contained in this local law if a person has a lawful excuse or defence.

*Example—*

it is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with the *Criminal Code*, chapter 5.

### 36 Proceedings for offences

Proceedings for an offence against this local law must (*offence proceedings*)—

- (a) be taken in a summary way; and
- (b) start—
  - (i) within 1 year after the offence is committed; or
  - (ii) within 1 year after the offence comes to the complainant's knowledge but within 2 years after the offence is committed.

### 37 Enforcement orders

- (1) After hearing offence proceedings, and without limiting another provision of this local law, a Court may make an order (an **enforcement order**) for the defendant to take stated action within a stated period.
- (2) The enforcement order may be in terms the Court considers appropriate to secure compliance with this local law.
- (3) An enforcement order must state the period within which the defendant must comply with the order.
- (4) An enforcement order may be made under this section in addition to the imposition of a penalty.

### 38 Extrinsic material

- (1) The local government may make an explanatory note to assist in the interpretation of this local law.
- (2) The local government makes an explanatory note by—
  - (a) passing a resolution to make the explanatory note; and
  - (b) publishing the explanatory note on the local government's website.
- (3) An explanatory note made in accordance with this section is declared to be a relevant document for the purposes of the *Acts Interpretation Act 1954*, section 14B (as modified by section 15 of the *Statutory Instruments Act 1992*, section 15).

*Note—*

Pursuant to the *Statutory Instruments Act 1992*, part 4, division 1, the *Acts Interpretation Act 1954* is modified so that a document declared by a local law to be a relevant document for the purposes of the *Acts Interpretation Act 1954*, section 14B, is extrinsic material which may assist in the interpretation of a provision of the local law.

## Part 12 Reviewing decisions

### 39 Application for review

- (1) A person who is given, or is entitled to be given, a decision notice may apply to the local government for a review of the relevant decision (a **review application**).
- (2) The review application must be made within 15 business days of—
  - (a) if the person is given a decision notice—the day the person receives the notice; or
  - (b) if subparagraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (3) The review application must be in writing and accompanied by a statement of the grounds on which the applicant seeks the review of the decision.

## 40 Review decision

- (1) The local government must review the original decision within 20 business days of receiving a review application and make a decision (the **review decision**) to—
  - (a) confirm the original decision; or
  - (b) amend the original decision; or
  - (c) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision unless that person was the chief executive officer.
- (3) The local government must, within 5 business days of the review decision being made, give the applicant notice of the decision (the **review notice**).
- (4) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (5) If the local government does not make the review decision within 20 business days of receiving a review application or does not give the review notice within 5 business days of making the review decision, the review decision is taken to confirm the original decision.

## 41 Stay of operation of original decision

A review application does not stay the original decision that is the subject of the application.

# Part 13 Authorised persons

## 42 Appointment of authorised persons

- (1) The local government may appoint a person as an authorised person under this local law if that person possesses appropriate expertise or qualifications in respect of the powers to be exercised by an authorised person under this local law.
- (2) An authorised person's instrument of appointment must state that the appointment is made under subsection (1).
- (3) An appointment made by the local government under subsection (1) may be general or subject to limitations stated in the appointment.
- (4) An authorised person is authorised by the local government to exercise the powers attaching to that position under this local law unless otherwise stated in the instrument of appointment.

### **43 Threatening an authorised person**

A person must not threaten, insult or use abusive language towards an authorised person.

Maximum penalty—20 penalty units.

## **Part 14 Subordinate local laws**

### **44 Subordinate local laws**

The local government may, in a subordinate local law, specify—

- (a) a mall, square, court or other public place under the local government's control as a road under the schedule of this local law; and
- (b) a thing as a structure under the schedule of this local law; and
- (c) an area which is not a waterway area under section 5; and
- (d) a work that is a required work under section 7; and
- (e) a thing that is a work under section 8; and
- (f) that a person is not a responsible person for a prescribed work under section 9; and
- (g) the doing of a thing by a relevant person in control of a prescribed work under section 9; and
- (h) any other matter that may be stated in a waterway area required work notice under section 10; and
- (i) criteria for determining whether a prescribed item is maintained in a safe condition and kept in good working order, repair and condition under section 11; and
- (j) that the subordinate local law applies for the purposes of parts 5 and 8; and
- (k) the requirements of a prescribed work report under parts 5 and 8; and
- (l) a specified prescribed work for the purposes of sections 21 and 22; and
- (m) records that are required to be kept under section 27; and
- (n) the terms of a periodic inspection, monitoring or management program which must be complied with under section 27; and
- (o) such other matters as are provided for in this local law.



## Schedule Dictionary

**adjacent to**, in relation to land, means immediately adjoining or touching other land or another area (including a waterway area).

**approval** means a consent, permit, licence, authorisation, registration, membership or approval under an Act and includes all the conditions of a consent, permit, licence, authorisation, registration, membership or approval.

*Example of approval—*

a permission under the *Marine Parks Regulation 2017*

**artificial waterway** means—

- (a) an artificial waterway within the meaning of the *Coastal Protection and Management Act 1995*, section 8(1) and (2), except to the extent that meaning includes a canal under that Act; and
- (b) an area shown as an artificial waterway (that is not a canal under the *Coastal Protection and Management Act 1995*) in a plan of subdivision registered in the land registry; and
- (c) a canal.

**authorised person** is an authorised person of the local government under the local government Act to exercise the powers of an authorised person under this local law.

**bathing reserve** means a bathing reserve under the repealed *Local Government Act 1993* or the *Local Government Regulation 2012*.

**boat** means any vessel or structure used, or intended to be used, in navigation by water or for any other purpose on water.

**build—**

- (a) includes install, construct, undertake, prepare, make, plant, lay, secure, alter, move, remove, excavate, fill; and
- (b) built has a corresponding meaning.

**building** has the same meaning as in the *Building Act 1975*.

**canal** means—

- (a) a canal within the meaning of the *Coastal Protection and Management Act 1995*, section 9(1) and (2); and
- (b) an area shown as a canal in a plan of subdivision registered in the land registry.

**coastal wetland** has the same meaning as in the *Coastal Protection and Management Act 1995*.

**common property—**

- (a) has the same meaning as in the *Land Title Act 1994*, section 115B(2)(b); and
- (b) includes common property to which the *Building Units and Group Titles Act 1980* continues to apply.

**compliance notice** see section 23(2).

**connected to**, in relation to a work that is connected to land, means physically connected, joined or attached to land by any means.

**corporation** means a corporation under the *Corporations Act 2001* (Cth) and includes an association under the *Associations Incorporation Act 1981*.

**Court** means the court of law which has jurisdiction to deal with offences under this local law.

**decision** means a decision by the local government to—

- (a) give a notice under section 10(1); or
- (b) give a compliance notice under section 23(2).

**decision notice**, for a decision, means a written notice stating the following—

- (a) the decision; and
- (b) any relevant details about the decision; and

*Example for paragraph (b)—*

the date on which the decision takes effect or actions required under the notice must be taken

- (c) the reasons for the decision; and
- (d) that the person to whom the notice is given may apply for a review of the decision within 15 business days after the notice is given; and
- (e) how to apply for a review.

**direction** means a written or oral direction.

**environmental harm** has the same meaning as in the *Environmental Protection Act 1994*.

**environmental nuisance** has the same meaning as in the *Environmental Protection Act 1994*.

**esplanade boundary** means a boundary of land located under the *Survey and Mapping Infrastructure Act 2003*, section 90 or 91.

**executive officer** of a corporation means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**foreshore** has the same meaning as in the *Coastal Protection and Management Act 1995*.

**incidental and consequential work**, in relation to a required work, see section 10.

**inundated land** has the same meaning as in the *Land Act 1994*.

**jetty** means a pier or landing place of a similar nature and includes all structures on or supporting the jetty.

**knowledge** includes actual or constructive knowledge.

**lake**—

- (a) has the same meaning as in the *Water Act 2000*; and
- (b) if land has a non-tidal boundary (lake)—includes land that adjoins the boundary and is on the lake side of the boundary.

**land—**

- (a) has the same meaning as in the *Planning Act 2016*, schedule 2; and
- (b) includes land occupied by water.

**local government Act** has the meaning given in the *Local Government Act 2009* and includes an approval given under a local government Act.

**local government area** means the local government area of the local government under the *Local Government Act 2009*, including an area taken to be part of a local government area under a local government Act.

*Examples of areas taken to be part of a local government area—*

bathing reserve, foreshore

**local law** includes any subordinate local laws made under this local law.

**lot** has the same meaning as in the *Planning Act 2016*, schedule 2.

**maintenance—**

- (a) includes—
  - (i) repair and replacement; and
  - (ii) preventive action; and
- (b) maintain has a corresponding meaning.

**non-freehold land** means—

- (a) all land that is not recorded in the freehold land register under the *Land Title Act 1994*; and
- (b) land granted in trust by the State (but excluding trust land).

*Note—*

Trust land under this local law that is land granted in trust by the State only refers to that land where the local government is the trustee.

**non-tidal boundary (lake)** has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

**non-tidal boundary (watercourse)** has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

**non-tidal waterway—**

- (a) means a river, creek or other stream, including a stream in the form of an anabranch or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events—
  - (i) in a natural channel, whether artificially modified or not; or
  - (ii) in an artificial channel that has changed the course of the stream,but, in any case, only at every place upstream of the point to which the stream is a tidal waterway; and
- (b) includes—
  - (i) a watercourse under the *Water Act 2000*; and
  - (ii) if land has a non-tidal boundary (watercourse)—land that adjoins the boundary and is on the watercourse side of the boundary.

**occupier**, of a place, means—

- (a) the person who occupies, or has the control or management of, the place; and
- (b) includes a person who has a lease, licence, permission, right or authority to occupy the place, including under an Act.

*Example of right of occupation under an Act—*

a right of occupation under the *Coastal Protection and Management Act 1995*, section 123

**original decision** means a decision the subject of a review application under section 39.

**owner**, of a place, means the person for the time being entitled to receive the rent for the place or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

**owner**, of a prescribed work, means—

- (a) if the prescribed work is a structure within the meaning of the *Local Government Act 2009* in a canal under the *Coastal Protection and Management Act 1995*—an owner under the *Local Government Regulation 2012*, section 60(2); or
- (b) otherwise—
  - (i) the holder of a development permit under the *Planning Act 2016* to build the work; or
  - (ii) the holder of an approval under another Act (including a statutory instrument) to build or use the work; or
  - (iii) a person who is or was required by an Act under subparagraph (i) or (ii) to obtain, or who is or was only lawfully able to build or use the work if there is or was, a development permit or approval to build or use the work.

**perform work** includes seizing and removing a thing.

**place** means any road, land, building, vehicle, boat or structure and includes any part of a place.

**plant** means any tree, bush, shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced of, by or from it.

**pontoon** means a floating landing structure (including a platform) and includes all other structures or things supporting the floating landing structure (including piles or cables attached to a revetment wall, for example) or which provide access to the floating landing structure from land or another structure (including a bridge, gangway or walkway, for example).

**prescribed tidal work** means a work that is a prescribed tidal work under the *Coastal Protection and Management Regulation 2017*, section 15.

**prescribed work**—

- (a) generally—see section 6; or
- (b) for part 6—see section 14.

**prescribed work report**—

- (a) for part 5—see section 11; or
- (b) for part 7—see section 22; or
- (c) for part 9—see section 23.

**repair**, a prescribed work, means restore the damaged, worn or faulty prescribed work to a good condition.

**required work**—

- (a) generally—see section 7; or
- (b) for part 6—see section 14.

**reserve**—

- (a) means land placed under the control of the local government under an Act; and
- (b) includes a reserve under the *Land Act 1994* for which the local government is a trustee.

**responsible person**, for a prescribed work, see section 9.

**responsible person**, for a required work, see section 9.

**revetment wall** means a wall, and all support materials (including rocks, for example), constructed in or near a waterway area and along or near the bottom of an embankment to—

- (a) protect the embankment from erosion; and
- (b) keep in place the materials that are landward of the wall.

**right line tidal boundary** has the same meaning as in the *Land Act 1994*, section 8.

**road**—

- (a) has the same meaning as in the *Transport Infrastructure Act 1994*, schedule 6; and
- (b) includes—
  - (i) an area of land between an esplanade boundary and a tidal boundary; and
  - (ii) a mall, square, court or other public place under the local government's control that is specified to be a road under a subordinate local law; and
- (c) for section 9—means a road (within the meaning of the *Local Government Act 2009*, section 59(2)) under the local government's control under the *Local Government Act 2009*, section 60(1).

**seawall** means a wall, and all support materials, constructed in or near a waterway area to—

- (a) prevent the encroachment, by wave action, of the sea past the wall; and
- (b) keep in place the materials that are landward of the wall.

**seaward side**, of a tidal boundary or right line tidal boundary, has the same meaning as in the *Land Act 1994*, schedule 6.

**scheme land**—

- (a) has the same meaning as in the *Land Title Act 1994*, section 115B(1)(a); and

- (b) includes a site under the—
  - (i) *Integrated Resort Development Act 1987*; and
  - (ii) *Mixed Use Development Act 1993*.

***specified prescribed work—***

- (a) for part 5—see section 11; or
- (b) for part 7—see section 22.

***structure—***

- (a) has the same meaning as in the *Local Government Act 2009*; and
- (b) includes a structure as defined in the *Building Act 1975*.

***swimming pool*** has the same meaning as in the *Building Act 1975*.

***the local government*** means the Moreton Bay Regional Council.

***tidal boundary*** has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

***tidal water*** means any part of the sea or of a port, or of a watercourse, lagoon, swamp or other area where water may be found that is subject to tidal influence under any circumstances.

***tidal waterway—***

- (a) means land that contains, or may contain, or is subject to, or may be subject to, tidal water (including a foreshore or inundated land, for example); and
- (b) if land has a tidal boundary or right line tidal boundary—includes land that adjoins the boundary and is on the seaward side of the boundary.

***tidal works*** has the same meaning as in the *Coastal Protection and Management Act 1995*, schedule.

***trust land*** means—

- (a) land granted in trust under the *Land Act 1994* for which the local government is a trustee; or
- (b) a reserve.

***unallocated State land*** has the same meaning as in the *Land Act 1994*, schedule 6.

***vehicle*** has the same meaning as in the *Transport Operations (Road Use Management) Act 1995*.

***waterfront land*** see section 9.

***waterfront (separated) land*** see section 9.

***waterway area*** see section 5.

***waterway area required work notice*** see section 10.

***work*** see section 8.