

Excluded work (Coastal)

Guideline for coastal development

This document provides guidance on what coastal development is considered to be ‘excluded work’ under the Planning Regulation 2017 (Planning Regulation).

Overview

The Planning Regulation makes operational works that are tidal works or work carried out completely or partly in a coastal management district (coastal development) ‘assessable development’¹. Assessable development requires a development approval under the *Planning Act 2016* (Planning Act). However, this does not apply to coastal development that meets the definition of excluded work² in the Planning Regulation. This guideline identifies coastal development that meet the definition of excluded work and therefore may be undertaken without a development approval.

Please note that if the proposed works are deemed to be assessable development under any other Part in Schedule 10 of the Planning Regulation or in a local government planning scheme, then a development approval will be required before the works can commence. However, in this case, the application will not require assessment for coastal development.

Excluded work

The following table sets out coastal development that is considered to be excluded work.

Table 1: Excluded work for each type of coastal development

| Planning Regulation definition | Type of coastal development | Excluded work | Assessment manager if not excluded work |
|---|--|--|--|
| 1. Schedule 10, part 17, division 1, section 28 (3) ‘excluded work’ (a) | Operational work that is tidal works ³ (including prescribed tidal works) | Maintenance work on a lawful work Refer to sections 1 and 2 of this guideline for more details. | Local government (if prescribed tidal works) or the Department of State Development, Infrastructure, Local Government and Planning’s State Assessment and Referral Agency (SARA ⁴) (if tidal works). |

¹ Assessable under Schedule 10, part 17, division 1, section 28(1) of the Planning Regulation 2017.

² Assessable under Schedule 10, part 17, division 1, section 28(2) and (3) of the Planning Regulation 2017.

³ See the *Coastal Protection and Management Act 1995* (Coastal Act) (Schedule), for definition of ‘tidal works’.

⁴ The State assesses development applications that may affect a State interest. SARA carries out the State’s assessment functions on behalf of the chief executive administering the Planning Act (i.e. the Director-General of the Department of State Development, Infrastructure, Local Government and Planning).

| | | | |
|--|---|--|--|
| 2. Schedule 10, part 17, division 1, section 28 (3) 'excluded work' (b) | Operational work that is tidal works (including prescribed tidal works) | <p>Works that alter a prescribed structure⁵, other than an alteration that—</p> <ul style="list-style-type: none"> creates a roofed structure, including a shed or a gazebo; or changes the footprint of the prescribed structure; or changes the dimensions or structural capacity of the prescribed structure; or may affect safe navigable access to, or from, tidal water or to, or from, properties next to tidal water, including alterations to clearance heights or lighting. <p>Refer to section 3 of this guideline for more details.</p> | Local government (if prescribed tidal works) or SARA (if tidal works). |
| 3. Schedule 10, part 17, division 1, section 28 (3) 'excluded work', (c) | <p>Interfering with quarry material on State coastal land above the high-water mark.</p> <p>Removing or interfering with coastal dunes on land, other than State coastal land, that is in an erosion prone area.</p> <p>(Note: generally involves local or state government undertaking works on reserves or esplanade)</p> | <p>Minor work that has an insignificant impact on coastal management and is reversible or expendable.</p> <p>Refer to section 4 of this guideline for more details.</p> | SARA |

The following table lists the operational work that cannot be considered excluded work due to the increased level of risk associated with the work.

Table 2: Types of coastal development that cannot be considered excluded work

| Type of assessable coastal development |
|--|
| Disposing of dredge spoil or other solid waste material in tidal water. ⁶ |
| Reclaiming land under tidal water. |
| Constructing an artificial waterway. |

However, maintenance work and alterations on lawful works associated with an artificial waterway is permitted as per tidal work Item 1 in Table 1 above.

⁵ A prescribed structure is defined under the Planning Regulation 2017 and means a lawful structure that is a boat ramp, or a bridge, or a jetty, or a pontoon, or a slipway, or a wharf (Planning Regulation 2017, Schedule 10).

⁶ Dredge spoil is a type of dredged material that is disposed as a by-product and is not used in a tidal work. For example, sand dredged for beach nourishment is not dredge spoil because the sand is used as a resource to construct a tidal work.

1. What is lawful work for maintenance purposes?

Lawful work means:

- development that has an approval for operational work that is tidal works, or work lawfully constructed under another Act⁷; or
- development that:
 - is owned or managed by the State or local government; and
 - was constructed prior to January 1974 as demonstrated by dated design drawings, survey plans or aerial photography (excluding stormwater infrastructure); and
 - is fit for purpose⁸.

2. What is maintenance work on a lawful work?

Maintenance work means maintaining a lawful work in accordance with the development approval or original construction details.

Maintenance work does not include replacing or rebuilding greater than 20% of the approved structure within a 12-month period. Replacing or rebuilding greater than 20% of the approved structure within a 12-month period will require a new development approval unless special circumstances exist. This requirement accounts for changes in design standards or environmental criteria that may not have been considered when an approval was originally assessed.

The definition of tidal works in the *Coastal Protection and Management Act 1995* (Coastal Act) includes works that are an integral part of the tidal works and works that are carried out directly adjacent to the principal works (structure), such as the re-profiling of the bed of a waterway.

For lawful work in tidal water (e.g. tidal works, including prescribed tidal works) maintenance work includes:

1. replacement or repair of deteriorated components of a lawful work (e.g. replacement piles supporting a jetty);
2. repair of seawalls and revetments, including:
 - replacement of armour units displaced or damaged during storm events, or
 - reconstruction of small sections of a seawall or revetment damaged during storm events.
3. re-surfacing an existing structure (e.g. boat ramp, slipway).
4. reinstatement of the bed profile of a natural waterway adjacent to the tidal works to maintain water depth for a marine access structure (jetty, pontoon):
 - in accordance with the approved design if identifiable; or if not
 - directly adjacent to the structure, which is deemed to be within 6 metres of the structure but not extending beyond the water allocation area extended side boundaries⁹ for the lot.
5. reinstatement of the bed profile of a natural waterway to maintain the stability of a tidal work (e.g. revetment or boat ramp) from erosion. The material placement (see Attachment 1 for concept diagram) must:
 - be in accordance with the approved design if identifiable; or if not
 - be directly adjacent to the lawful structure it is intended to maintain;
 - not extend higher than the level of the mean high water springs tidal plane unless this is necessary for functioning of the structure (e.g. edge of boat ramp must be level with bank for safety);
 - not extend beyond the water allocation area extended side boundaries for the lot;
 - have a stable slope;
 - not alter the bed levels of adjacent lot frontages;
 - have written consent from the owner of the works (generally the owner of the lot to which the structure is connected) to undertake the material placement;

⁷ Work lawfully constructed under another Act includes work sanctioned by Governor in Council under s.86 of the *Harbours Act 1955* or as continued under s.236 of the *Transport Infrastructure Act 1994* prior to 20 October 2003.

⁸ 'Fit for purpose' means that the development is in a safe condition, complies with relevant current standards (e.g. Australian standards and prescribed tidal works code) and is of a design intended to achieve its purpose.

⁹ A water allocation area (WAA) is generally defined as the area between the lot boundary and the seaward boundary (navigation corridor or quay line) and the extended side boundaries of the lot. Refer to the following guideline for determining a WAA for tidal works in natural waterways – https://www.qld.gov.au/_data/assets/pdf_file/0018/107244/preparing-water-allocation-area-tidal-works.pdf.

- not adversely impact adjacent properties including through the effects of sediment transport (e.g. no sediment build-up or erosion issues for adjacent areas); and
- not create an artificial beach or an unnaturally wide or shallow intertidal zone.

The material for bed reinstatement must be:

- sourced from maintenance dredging from around marine access structures; or
- sourced from material that has slumped down the profile within the water allocation area for the lot; or
- sourced from a commercial supplier or from an approved location; and
 - comprise clean sediment that is free of contaminants and does not contain any building or other waste material; and
 - be of a grading that is not readily moved from the site by water flows (e.g. sand).

In all cases, the work must comply with any other legislative requirements – see section 7 of this guideline.

Maintenance works does not include the placement of material to raise land above the high-water mark (reclamation) or to create an artificial beach, as these works are assessable development and undertaking such works without a development approval is an offence.

This section does not apply to the reinstatement of the bed and bank of a canal. Councils are responsible for the maintenance of canals.

Maintenance work on a lawful work may be carried out without notifying SARA, or local government for prescribed tidal works. The proponent is responsible for determining whether the work constitutes maintenance work using this guideline.

Where proponents are unsure whether operational work constitutes maintenance work on a lawful work, or wish to undertake maintenance beyond that described above, proponents must contact the assessment manager (local government or SARA) to see if they need the proponent to submit a development application for the work.

3. What alterations to lawful work are considered excluded work?

Alterations to existing lawful boat ramps, bridges, pontoons, slipways, wharves and jetties may be considered excluded work. Examples of alterations that can be considered excluded work include:

- installation or transfer of handrails, bollards or other safety items on the existing structure
- installation or modification of port infrastructure (e.g. loading infrastructure) on an existing wharf
- attachment of a pipeline to the superstructure of an existing bridge, which does not reduce the navigable access under the bridge.

Examples of alterations that are not considered excluded work include, alterations that:

- create a roofed structure, including sheds and gazebos
- change the footprint of the existing structure (e.g. a larger pontoon unit)
- change the dimensions or structural capacity of the existing structure; or
- may affect safe navigable access (e.g. lighting, reduction in navigable access under a bridge).

The above alterations are considered tidal works and would require development approval under the Planning Act. Where SARA is the assessment manager or referral agency, the works are assessed against the State Development Assessment Provisions (SDAP), State Code 8, available at <https://planning.statedevelopment.qld.gov.au/planning-framework/state-assessment-and-referral-agency/state-development-assessment-provisions-sdap>

4. What minor work can be considered excluded work?

Minor works are those works above high-water mark that have an insignificant impact on coastal management and are reversible or expendable. These works can be easily removed if threatened by coastal erosion, are no longer required or the loss to erosion from the minor work can be accepted. Protection works such as seawalls will not be supported to defend these works from loss due to coastal erosion or storm tide inundation.

Works considered to be minor works

Minor works on State coastal land above high-water mark are carried out mostly by local governments and include those required for public health and safety, access to the coast, environmental protection, or community enjoyment of the coast. The exclusion of minor works from development assessment means that local governments or land managers can more quickly and easily place, maintain or improve community amenities and manage foreshore areas.

These include:

- work undertaken on State coastal land outside the erosion prone area and which would have no effect on land within an erosion prone area. Erosion prone area plans are available at <https://www.qld.gov.au/environment/coasts-waterways/plans/hazards/erosion-prone-areas>
- native vegetation management (including maintenance and planting) and associated fencing, irrigation system or weed control consistent with leading practice in maintaining frontal dune vegetation and dune stability
- signage, fencing or bollards for vehicle and pedestrian control
- ground surface works or treatments to improve vehicle or pedestrian access including board and chain or pallet type surfacing but excluding concrete and bitumen construction material
- reversible works or expendable structures with a footprint less than 10m² (e.g. benches/seats, showers, rubbish bins, signs, picnic shelters, playground equipment), and are consistent with the dedication or purpose of the land
- temporary tracks involving earthworks less than 100m³ of material where the natural land levels and native vegetation cover is reinstated after the use has ceased and within 6 months
- pathway or track re-profiling where the surface level has changed
- localised sand pushing for the temporary protection of structures or trees, to ensure public safety and reinstate a public amenity, but not exceeding 50m³ per erosion event
- dune scarp slope reduction following storm events for public safety
- locally relocating accumulated sand from around approved structures (stormwater infrastructure, boat ramps)
- excavation (and replacement) of material for repair or maintenance of existing approved development, where the quantity of material moved is less than 50m³
- installing power and water connections for existing approved development such as toilet blocks, jetties and picnic shelters
- installing electrical network infrastructure that does not involve locating infrastructure further seaward of existing permanent development (e.g. formed roads or houses), which would be protected if threatened by coastal erosion
- removal of rubble, contaminated material, or obsolete or damaged structures (e.g. storm-damaged fence or picnic shelter)
- burial of putrescent or hazardous natural marine materials such as animal carcasses or blooms of Lyngbya washed onto beaches
- sediment sampling including by drilling for investigative purposes where the volume of material removed is less than 2m³.

Minor works for the development assessment trigger ‘removing or interfering with coastal dunes on land, other than State coastal land, that is in an erosion prone area’

The works are considered minor works, for the purpose of this development assessment trigger, if any of the following criteria are met:

- interfering with coastal dunes where the lot size is less than 2000m²
- excavation or filling of less than 100m³ in total and the average dune crest height is not reduced
- excavation or filling of less than 300m³ in total where the excavation or filling is:
 - required by a compliance notice (including a Tidal Works or Coastal Protection Notice) issued by the Department of Environment and Science (DES); or
 - a recovery action for a declared disaster supported in writing by DES
- clearing or damage to vegetation that is not any of the following:
 - frontal dune vegetation,
 - vegetation on areas vulnerable to wind erosion, or
 - vegetation that protects other landward vegetation from wind and salt spray.

5. What evidence is required to support a minor work determination?

The owner or manager of the land or tidal works is responsible for ensuring that the work meets the definition of a minor work under the Planning Regulation. A proponent should consider the guidance material listed above, alongside Schedule 10, part 17, division 1, section 28 (3) ‘excluded work’ (c) of the Planning Regulation, to determine what may be minor works. If there is any doubt as to whether a work would be considered minor (i.e. consistent with the above examples), proponents are encouraged to contact their local SARA regional office (contact details available at <https://planning.statedevelopment.qld.gov.au/contact-us>).

If a work is later determined to not meet the definition of a minor work it will be assessable development and a development approval will be required.

Compliance activities may be undertaken especially if complaints are made. Persons undertaking excluded work should obtain and keep the following items as a record and this evidence will assist if the matter is investigated:

- copies of the original development approval (required when undertaking maintenance work)
- clear photos showing the extent of works at the site prior to commencement, and after completion, of the work
- date of the work and any subcontractors engaged for the works.

6. Emergency development or use

Operational works which are carried out in a coastal emergency (impacts by storm tide, sea erosion or flood) and provided for under s.166 of the Planning Act¹⁰ are not excluded work unless they are consistent with the above guidance. Emergency works will require a development application to be lodged as soon as possible (post construction) under the Planning Act if they are assessable development under Schedule 10 of the Planning Regulation. Examples of emergency works (in the coastal development context) that are assessable include:

- constructing an erosion protection structure or undertaking beach nourishment during a storm event or in anticipation of a forecast storm event
- relocating clean sand from one section of the beach to another or localised sand pushing for protection of infrastructure and property that is not expendable or to make an area safe
- demolishing or making a structure safe for its intended purpose.

7. Other matters

Work may be subject to other approvals

Note that this guideline only applies to the definitions of excluded work under the Planning Regulation as it relates to tidal works, or work carried out completely or partly in a coastal management district. Proponents may need to obtain approvals under other State or Commonwealth legislation, including approval under the Planning Act (e.g. for disturbance to marine plants or disposal of dredged material in tidal waters) or *Marine Parks Act 2004*.

Proponents are advised to check with all relevant statutory authorities for such requirements. Proponents should contact their local [SARA regional office](#) for other development approval requirements.

Sampling sediments (coring, boring, grab samples etc) in tidal areas

Small scale sediment sampling of less than 5m³ for geotechnical or geomorphic investigations is not considered to be a tidal work. Therefore, assessment as an excluded work is not required.

Sediment sampling may require permission under other legislation such as the *Marine Parks Act 2004* or the *Land Act 1994*.

General Environmental Duty

All works undertaken under this guideline are to be consistent with the General Environmental Duty as defined under the *Environmental Protection Act 1994* (EP Act), whereby all reasonable and practicable measures must be undertaken to prevent or minimise the environmental harm that may occur as a result of the work. For example, measures are taken to reinstate any disturbed land to avoid or minimise any impacts on existing coastal vegetation.

Other provisions under the EP Act that must be complied with include, but are not limited to, the following:

- general environmental duty (section 319)
- duty to notify environmental harm (section 320-320G)
- offence of causing serious or material environmental harm (sections 437-439)
- offence of causing environmental nuisance (section 440)
- offence of depositing prescribed water contaminants in waters and related matters (section 440ZG)
- offence to place contaminant where environmental harm or nuisance may be caused (section 443)

¹⁰ Section 166 of the Planning Act deals with development or use carried out in a coastal emergency and exempts a person from penalty associated with carrying out assessable development without permit, non-compliance with development approval/conditions of an approval, non-compliance with identified codes about use of premises, and offences about the use of premises (unless required to stop by an enforcement notice or order).

Landowner's permission required to undertake excluded work

Any person proposing to undertake excluded work must ensure that they have the permission of the landowner to enter the land and carry out the excluded work, or for maintenance on tidal works, the owner of the tidal works. This guideline does not provide that permission. If the land is a reserve, road, esplanade or park, the local government generally has responsibility for the land, and they should be contacted. Where the land is unallocated State land, which includes foreshores and land under tidal water, this land is owned by the State government and, in this case, please contact the Department of Resources (State Land Asset Management) at SLAMlodgement@resources.qld.gov.au.

For excluded work there is no need for the owner of the land or the tidal work to seek formal 'Owner's Consent' from the Department of Resources. 'Owner's Consent' (<https://www.qld.gov.au/environment/land/state/owner-consent>) is only required for a development application for assessable development, which does not include excluded work.

8. Will I have to lodge a development application?

If the proposed works do not fall into any of the excluded work categories listed above, then the works are assessable development, and a development approval may be required under the Planning Act. Development applications can be lodged through [MyDAS2](#) or contact the [SARA regional office for more information](#).

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved by

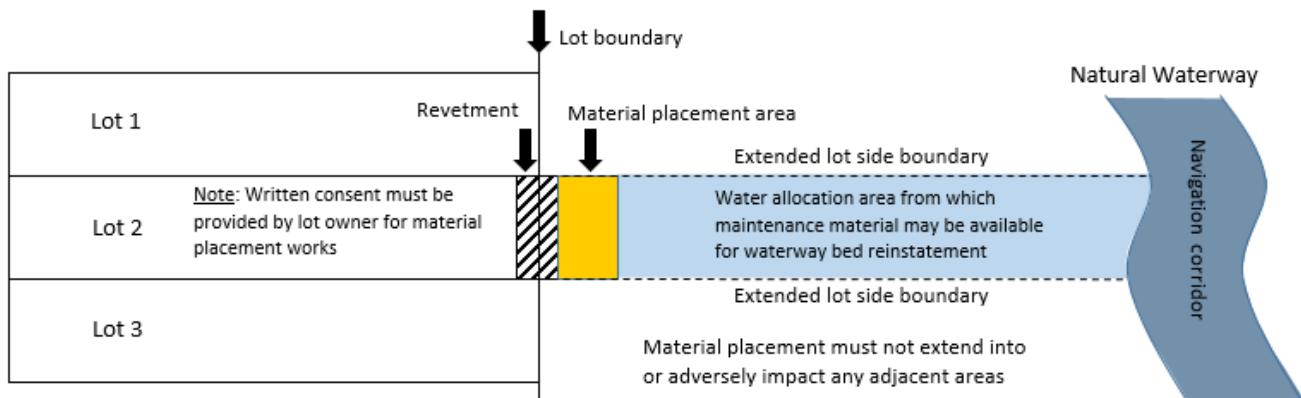
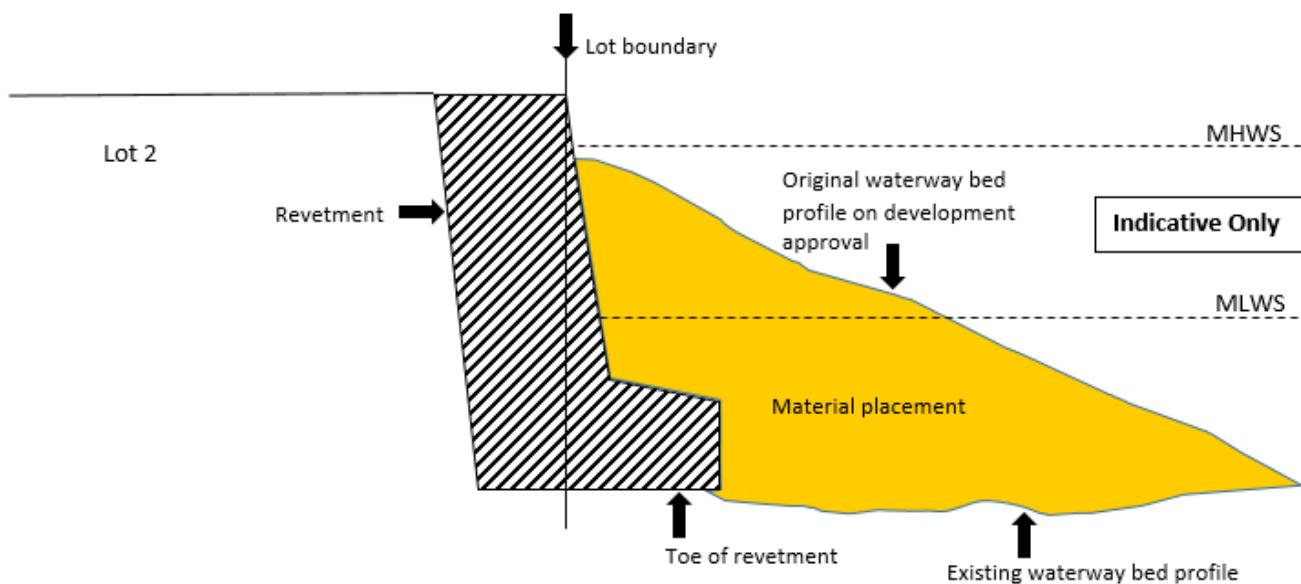
Stephen Potts

A/Director
Strategic Environmental Planning
Department of Environment and Science

Date: 8 June 2023

Enquiries:
Department of State Development,
Infrastructure, Local Government and
Planning
Ph: 13 QGOV (13 74 68)
Contact your local [SARA regional office](#)
Department of Environment and Science
Permit and Licence Management
Ph: 13 QGOV (13 74 68)
Email: palm@des.qld.gov.au

Attachment 1 – Reinstatement of the bed profile of a natural waterway adjacent to a tidal work

PLAN VIEW**Figure 1** Typical plan view of material placement for waterway bed reinstatement and source area from maintenance works.CROSS SECTION**Figure 2** Typical before and after material placement cross-section for waterway bed reinstatement.

Note: Under s124 of the Coastal Act the adjoining landowner is responsible for maintaining all parts of the revetment where the land is connected to, or receives the benefit of, the structure. This includes any part of the revetment that may be on State land.