

Implementation of The Spit Master Plan Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Implementation of The Spit Master Plan Bill 2019 (the Bill).

Policy objectives and the reasons for them

Implementation of The Spit Master Plan

The primary objective of the Bill is to facilitate implementation of The Spit Master Plan (the master plan), which was released in May 2019 by the State Government.

The master planning process was led by the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) in collaboration with the Gold Coast City Council and the Gold Coast Waterways Authority (GCWA). Preparation of the master plan involved a highly consultative planning process on the future of The Spit to ensure the community was at the forefront of the master planning process.

Guided by a vision set through the consultation process that The Spit will be improved as an important community asset for future generations, the master plan provides for a low-rise future for The Spit in accordance with the current Gold Coast City Plan and aims to:

- enhance the public realm of The Spit to create a community space for local residents;
- improve connections to the surrounding marine environment, including The Broadwater;
- generate opportunities for job creation through tourism, entertainment and recreation; and
- find the right balance between protecting environmental and community values and facilitating appropriate development opportunities.

The State has committed \$60 million to commence implementation of the master plan, which includes the following programs:

- a capital works program to oversee the funding and delivery of a series of capital work projects, such as public realm improvements on The Spit; and
- a site release program to manage the release of development sites identified in the master plan.

The Bill seeks to:

- streamline the processes for the granting of particular interests in land and road closures in the master plan area to accelerate the site release program; and
- expand the GCWA's roles, scope and capabilities to enable it to deliver the capital works program.

Amendments to the *Planning Act 2016*

The Bill also seeks to:

- clarify the intended scope of compensation rights under the *Planning Act 2016* (Planning Act) in relation to an “adverse planning change”, in particular that compensation is available in relation to development that is assessable development, both before **and** after the adverse planning change; and
- include transitional arrangements to ensure that any ‘affected owner’ who may have been unable to claim compensation as a result of the current provisions may do so within six months of the commencement.

Achievement of policy objectives

Implementation of The Spit Master Plan

To achieve its objective of facilitating the implementation of the master plan, the Bill seeks to:

- streamline the processes for the granting of particular interests in land and road closures in the master plan area to accelerate the site release program; and
- expand the GCWA’s roles, scope and capabilities to enable it to deliver the capital works program.

Dealing with road closures and granting of unallocated State land outside the processes under Land Act 1994

All of the land in the master plan area is currently non-freehold State-owned land held under various forms of tenure under the *Land Act 1994* (Land Act). The Department of Natural Resources, Mines and Energy (DNRME) has identified that the most appropriate tenure pathway to facilitate the release of the development sites identified in the master plan is to grant the development sites in freehold to the State, with long-term leases to be issued to the market. Some areas may also be leased to the State either as perpetual or term leases.

To accelerate the site release program, the Bill seeks to establish streamlined and dedicated processes in relation to the grant of interests in land and road closures in the master plan area outside the Land Act. The Bill proposes to:

- permit the granting of freehold title of unallocated State land in the master plan area to the State without competition; and
- enable the Spit Development Minister (currently the Minister for State Development, Manufacturing, Infrastructure and Planning) to perform functions and exercise powers in relation to roads in the master plan area.

Provisions under the Bill will only apply to the master plan area and do not otherwise affect the operation of the Land Act.

Amendments to the Gold Coast Waterways Authority Act 2012

The current function of the GCWA under the *Gold Coast Waterways Authority Act 2012* (GCWA Act) relates to management of the Gold Coast waterways and associated activities. The Bill seeks to expand the GCWA’s functions to enable it to undertake the broader capital works program for the implementation of the master plan. The GCWA

will report directly to the Spit Development Minister with respect to its expanded role in the delivery of capital works in support of the master plan.

In addition, the existing GCWA Act does not include provisions that allow the GCWA to recover from liable persons costs reasonably incurred in dealing with contravening properties or abandoned properties that are subsequently claimed by their owners. The Bill also seeks to address this limitation under the existing legislation, which has cost implications for the State and the GCWA.

Amendments to the *Planning Act 2016*

The Bill will amend section 31(3) of the Planning Act to omit the word ‘becomes’ and insert ‘is or becomes’ to correct the minor error which implied that compensation is only available if development was not assessable before the adverse planning change and becomes assessable because of the change. This was not the intention of the compensation provisions.

In addition, transitional arrangements will provide for an ‘affected owner’ who may not have been able to claim compensation in relation to development that was assessable development both before and after an adverse planning change to do so within six months of the commencement.

Alternative ways of achieving policy objectives

Implementation of The Spit Master Plan

Dealing with road closures and granting of unallocated State land outside the processes under the Land Act 1994

There are existing provisions under the Land Act that deal with granting land to the State in freehold as well as road opening and closures. However, these provisions are restrictive. For example, Chapter 4, part 1, division 2 of the Land Act restricts when the deeds of grant of unallocated State land issued to the State can be made without competition. Given the extensive community consultation that has been undertaken during the planning process for the master plan and community expectation that the master plan will be implemented expediently and efficiently, the dedicated processes proposed under the Bill are considered most appropriate.

Amendments to the Gold Coast Waterways Authority Act 2012

Several governance options were considered in relation to the implementation of the master plan, including delivery of the capital works programs. Special purpose legislation was the only viable option to achieve the intended policy objective.

As a trusted statutory authority with a strong local presence and established role in managing and enhancing the Gold Coast waterways and land parcels associated with and under its control, the GCWA is considered the most appropriate entity to lead the capital works program for the implementation of the master plan. Legislative amendments to the GCWA Act are the only way to enable the GCWA to undertake these additional responsibilities.

Additional legislative amendments to the GCWA Act are the only way to address the limitations within the GCWA's powers to recover costs associated with managing and disposing of contravening property.

Amendments to the *Planning Act 2016*

Legislative amendment is the only way to achieve the intended policy objective.

Estimated cost for government implementation

Implementation of The Spit Master Plan

As a result of its expanded role, the GCWA will be required to undertake additional activities and resultantly incur additional capital and operation costs. These costs will be met within the \$60 million funding committed to implement the master plan.

No additional costs are anticipated in relation to granting interest in lands and road closures due to efficiencies to be gained via the implementation of the Bill. However, if there are any, these will be met from within the approved funding for the implementation of the master plan.

Amendments to the *Planning Act 2016*

It is not expected that any additional costs will be incurred in implementing the Planning Act amendments. Local governments are responsible for funding the cost of successful compensation claims, however local governments also have control over the scope of potential claims through the planning decisions they make, and the ability to approve "superseded planning scheme applications" as an alternative to monetary compensation. As the proposed amendment merely establishes that the compensation arrangements under the Planning Act are the same as those under longstanding arrangements under previous legislation, no additional cost burden on local government is envisaged.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Matters in the Bill which potentially raise fundamental legislative principles issues are discussed below.

Consistency with natural justice – Section 4(3)(b), Legislative Standards Act 1992

- Absence of public objection rights to road closures

Clause 7 of the Bill potentially breaches the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker.

This Bill inserts Clause 7 to enable the Minister to permanently or temporarily close roads in the master plan area to facilitate the implementation of the master plan. The intention of Clause 7 is to allow the Minister to use a fast-tracked process to close roads

so the development site release program can be completed in a timely way. Accordingly, the application of road closure provisions under the Land Act allowing for public objection to the permanent or temporary closure of roads will not apply to road closures within The Spit master plan area.

The public will still be notified of intended road closures, as the Minister is required to publish notice of the closure in a newspaper circulating in the Gold Coast local government area (although failure to do so does not invalidate the closure). As part of the extensive consultation process undertaken during the drafting of the master plan, the public were provided the opportunity to consider the master plan and the proposed implementation projects. This consultation process enabled the public to become aware of the potential developments within the master plan area.

Clause 7 is substantially similar to the road closure provisions contained in the *Economic Development Act 2012* and *State Development and Public Works Organisation Act 1971*. Like the corresponding sections of these Acts, Clause 7 is intended to facilitate planning and development for specific purposes within a prescribed area in a timely way.

The *Judicial Review Act 1991* is also not excluded.

Consultation

Implementation of The Spit Master Plan

Government

Consultation with State Government agencies and the GCWA has occurred and there is broad support for the amendments.

Community

Extensive consultation was undertaken during the planning phase for the master plan. During consultation, over 23,000 pieces of survey feedback were received. Consultation involved subscriber email alerts, pop-up consultation sessions, stakeholder workshops, media releases, fly-through videos, online surveys, social media releases and newspaper advertisements. Over the course of the project, 38 pop-up consultation sessions were held at locations across the Gold Coast.

No further community consultation has been undertaken for the purpose of the Bill as its primary purpose is to facilitate the implementation of the master plan.

Amendments to the *Planning Act 2016*

Inconsistencies with the current drafting were raised by several external stakeholders and informal discussions were held to address the issue. Formal consultation was not undertaken on the proposed amendments to the Planning Act, on the basis that the amendments do not add any regulatory burden and have a positive outcome for Queensland land owners.

Consistency with legislation of other jurisdictions

Implementation of The Spit Master Plan

The provisions of the Bill related to facilitating implementation of the master plan are specific to the State of Queensland and are not uniform with or complementary to the legislation of the Commonwealth or another State.

Amendments to the *Planning Act 2016*

The provisions of the Bill related to the Planning Act are specific to the State of Queensland and are not uniform with or complementary to legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that, if enacted, the Bill may be cited as the *Implementation of The Spit Master Plan Act 2019*.

Clause 2 Purpose of Act

Clause 2 provides that the purpose of the Bill is to facilitate the implementation of the master plan.

Clause 3 Act binds all persons

Clause 3 states that the Bill, if enacted, binds all persons, including the State.

Part 2 Interpretation

Clause 4 Definitions

Clause 4 states that, Schedule 2 defines particular words used in the Bill.

Clause 5 Meaning of *master plan area*

Clause 5 states that the master plan area is the area shown as the Spit master plan area on the map in Schedule 1.

Clause 6 Meaning of *Spit master plan*

Clause 6 defines The Spit master plan as the document dated May 2019 and published by the department.

Part 3 Provisions relating to implementation of Spit master plan

Clause 7 Roads and road closures

Clause 7 enables the Minister to perform functions or exercise powers for roads that the Minister considers necessary or desirable to facilitate the implementation of the master plan, including that the Minister may permanently or temporarily close all or part of a road in the master plan area, whether or not the road is a State-controlled road, under the *Transport Infrastructure Act 1994* or the *Land Act 1994* (the Land Act). The Minister may do everything necessary to stop traffic using a road or part of a road closed under this section.

Before the closure takes effect, the Minister must publish notice of the closure in a newspaper circulating in the Gold Coast local government area (however, a failure to do so does not invalidate the closure). A road or part of a road that is permanently closed under section 7 may be dealt with under an Act as unallocated State land.

The *Local Government Act 2009*, section 75 and the *Transport Infrastructure Act 1994*, section 33 do not apply in relation to the performance of a function, or the exercise of a power, under section 7.

Clause 7 allows the Minister to use a different process to that required under the Land Act.

Clause 8 Granting of deeds of grant under the Land Act 1994 for land in the master plan area

Clause 8 enables unallocated State land in the master plan area to be granted under the Land Act to the State as freehold without competition. Section 16 of the Land Act, which requires evaluation of the relevant land to assess the most appropriate tenure and use for the land, will not apply to land to be granted to the State as freehold pursuant to this clause. Despite the Land Act, no fee or amount is payable by the State in relation to a freehold grant, including a purchase price for the land, or an amount for the value of improvements on the land or a fee for the registration of the grant.

The provision only applies to land in the master plan area and does not otherwise limit the Land Act, chapter 4, part 1, division 2.

This clause does not intend to grant land in freehold to an entity other than the State.

Clause 9 Granting of leases under the Land Act 1994 for land in the master plan area

Clause 9 removes the requirement to apply section 16 of the Land Act (which ordinarily requires evaluation of the relevant land to assess the most appropriate tenure and use for the land) to the granting of a lease of unallocated State land in the master plan area if the grant is to the State.

Part 4 Miscellaneous

Clause 10 Delegations

Clause 10 states the Minister may delegate the Minister's functions or powers under this Act to the chief executive.

Clause 11 Regulation-making power

Clause 11 states that the Governor in Council may make regulations under this Act.

Part 5 Amendment of Acts

Division 1 Amendment of this Act

Clause 12 Act amended

Clause 12 states that Division 1 of the Bill amends this Act (once enacted).

Clause 13 Amendment of long title

Clause 13 amends the long title to remove ', and to amend'.

Division 2 Amendment of Gold Coast Waterways Authority Act 2012

Clause 14 Act amended

Clause 14 states that Division 2 of the Bill amends the *Gold Coast Waterways Authority Act 2012* (GCWA Act).

Clause 15 Amendment of s 3 (Purposes of Act and their achievement)

Clause 15 inserts new sections 3(2)(e) and 3(3)(a) and (b) to expand the purposes of the GCWA Act and how they are achieved. An additional purpose of the GCWA Act is to facilitate the implementation of the master plan through the development and delivery of a program of community infrastructure and public realm works. This purpose is achieved by empowering the Gold Coast Waterways Authority (GCWA) to develop and deliver a program about community infrastructure and public realm works for the master plan area (Spit works program).

Clause 16 Amendment of s 10 (Main function and its achievement)

Clause 16 inserts new section 10(3), which states that to give effect to the new purpose set out in section 3(2)(e), the GCWA's main function is performed primarily by developing a Spit works program and ensuring the effective and efficient delivery of the Spit works program.

Clause 17 Amendment of s 14 (Delegations by Gold Coast Waterways Authority)

Clause 17 states section 14(2) is amended to include newly inserted Part 4A. The intention of this amendment is to prohibit the GCWA from delegating its functions set out in new Part 4A in relation to the Spit works program.

Clause 18 Insertion of new pt 4A

Clause 18 inserts new Part 4A Spit works program after section 20 of the GCWA Act.

Section 20A of Part 4A states that, before the start of each financial year, the GCWA must develop, for the Spit Development Minister's approval, a Spit works program for the financial year and the following 3 financial years. Section 20A prescribes matters that must be included in a Spit works program. In developing a Spit works program, the GCWA must take reasonable steps to consult with the Gold Coast City Council, the community of Gold Coast City local government area and any other entity the Spit Development Minister considers may be affected by, or have an interest in, the Spit works program. The Spit Development Minister may approve a Spit works program or direct the GCWA to amend the Spit works program. However, the Spit Development Minister must not approve a Spit works program unless satisfied the program is consistent with the master plan.

Section 20B of Part 4A states that the Spit Development Minister may direct the GCWA to amend its approved Spit works program to implement the master plan. However, the direction must not require the GCWA to amend its approved Spit works program in a way that is inconsistent with the master plan.

Clause 19 Insertion of new s 32A

Clause 19 inserts new section 32A regarding the recovery of expenses incurred in dealing with property, which enables the GCWA to recover expenses reasonably

incurred in dealing with contravening property and/or abandoned property as a debt to the State, unless the property is sold by the GCWA under section 31. The amendments are required to address the limitation under the existing GCWA Act, which allow the GCWA to recover costs only from proceeds of sale of abandoned property.

Clause 20 Amendment of s 36 (Ministerial directions or guidelines to Gold Coast Waterways Authority)

Clause 20 amends section 36 by inserting a definition for Minister for the purposes of section 36.

The effect of the definition is that the Spit Development Minister may issue directions or guidelines to the GCWA about the performance of GCWA's functions in relation to the development or delivery of a Spit works program and the Minister responsible for the GCWA Act may issue directions or guidelines to the GCWA about the performance of GCWA's functions in relation to the Gold Coast waterways.

Clause 21 Amendment of s 37 (Ministerial access to information)

Clause 21 amends section 37 by inserting a definition for Minister for the purposes of section 37.

The effect of the definition is that the Spit Development Minister may access information or a document relating to the development or delivery of a Spit works program and the Minister responsible for the GCWA Act may access information or a document relating to the Gold Coast waterways.

Clause 22 Amendment of s 38 (Quarterly performance reports)

Clause 22 amends section 38(2) to prescribe additional information that must be included in the GCWA's quarterly performance report, including the progress of projects under the approved Spit works program.

It is intended that the GCWA will prepare a single quarterly report each quarter, covering matters in relation to both the Gold Coast waterways and the approved Spit works program.

Clause 23 Amendment of s 39 (Annual report)

Clause 23 amends section 39 to require the GCWA to include in its annual report a statement about how the authority performed its functions during the year compared with the expected performance for the year under an approved Spit works program and details about projects in relation to the delivery of the approved Spit works program.

It is intended that the GCWA will prepare a single annual report, covering matters in relation to both the Gold Coast waterways and the Spit works program.

Clause 24 Amendment of s 44 (Membership)

Clause 24 amends section 44(c) to provide that the GCWA Board consists of the chairperson and the mayor of the Gold Coast City Council and at least 5, but no more than 8, other persons.

This amendment is required to allow up to three additional persons to be appointed to the GCWA Board to ensure the GCWA has the necessary skills and expertise to develop and deliver the Spit works program.

Clause 25 Amendment of s 45 (Appointed members)

Clause 25 amends section 45(2) to expand the areas of knowledge and expertise that would qualify a person to be appointed to the GCWA Board, being knowledge of and experience in one or more of the following relevant to development and delivery of a Spit works program – major projects, project management and planning and development.

Clause 26 Amendment of sch 2 (Dictionary)

Clause 26 inserts the definitions of *Spit Development Minister*, *Spit master plan* and *Spit master plan area*, *Spit works program* and *approved Spit works program* in the GCWA Act.

The clause also amends the definition of ‘*disqualified person*’ under the GCWA Act to prohibit a party to a contract with the GCWA relating to the master plan area from being appointed to the GCWA Board.

Division 3 Amendment of Land Act 1994

Clause 27 Act amended

Clause 27 states that Division 3 amends the *Land Act 1994*.

Clause 28 Amendment of s 122 (Deeds of grant of unallocated State land)

Clause 28 inserts a note in s 122 of the Land Act which draws attention to the granting, without competition, of a deed of grant of unallocated State land in the master plan area under the *Implementation of The Spit Master Plan Act 2019*.

Division 4 Amendment of Planning Act 2016

Clause 29 Act amended

Clause 29 states that Division 4 amends the *Planning Act 2016*.

Clause 30 Amendment of s 31 (Claiming compensation)

Clause 30 amends section 31(3) to omit the word ‘becomes’ and insert the words ‘is or becomes’ to clarify that an affected owner may claim compensation for an “adverse planning change” in relation to assessable development, whether or not the development was assessable before the change.

The current wording implies that compensation is claimable only in relation to development that was not assessable before the adverse planning change but that became assessable because of the change. However, an adverse planning change may also affect development that was assessable both before and after the change. For example, the planning change may have affected assessment benchmarks or other requirements in relation to development that is already assessable.

The amendment corrects an unintended outcome of the current wording and reflects the scope of compensation rights that were available under the repealed *Sustainable Planning Act 2009*.

Clause 31 Insertion of new ch 8, pt 7

Clause 31 inserts a new Part 7 ‘Transitional provision for Implementation of The Spit Master Plan Act 2019’ into Chapter 8 Repeal, transitional and validation provisions.

Section 351 provides that, despite section 31(6) (which establishes timeframes for claiming compensation under section 31) an ‘affected owner’ who was unable to claim compensation under section 31 before the commencement in relation to development that was assessable development both before and after an adverse planning change, may claim compensation under section 31(3) within 6 months after the commencement.

Schedule 1 Master plan area

Schedule 1 provides the map as described under section 5 of the Bill defining the Spit master plan area.

Schedule 2 Dictionary

Schedule 2 is the dictionary which defines particular words used in the Bill to aid interpretation of the legislation.

The *master plan area* is defined in section 5 as the area shown as the Spit master plan area on the map in schedule 1.

The *Spit master plan* is defined in section 6 as the document called “The Spit master plan”, dated May 2019 and published by the department.

Unallocated State land is defined under schedule 6 of the Land Act.