

Coastal Protection and Management Regulation 2017

Explanatory notes for SL 2017 No. 138

made under the

Coastal Protection and Management Act 1995
Planning Act 2016

General Outline

Short title

Coastal Protection and Management Regulation 2017

Authorising law

Section 167 of the *Coastal Protection and Management Act 1995*
Section 284 of the *Planning Act 2016*

Policy objectives and the reasons for them

The main objectives of the *Coastal Protection and Management Act 1995* (Coastal Act) include to provide for the protection, conservation, rehabilitation and management of the coast, while ensuring that decisions about land use and development safeguard life and property from the threat of coastal hazards.

The objectives of the *Coastal Protection and Management Regulation 2017* (Regulation 2017) are to enable key provisions in the Coastal Act which help achieve the main objectives of the Act. These include:

- supporting decision making for coastal management under the *Planning Act 2016* (Planning Act) by providing the tools and assessment codes for development assessment; and
- administering the allocation of quarry material from land under tidal waters.

Under section 54 of the *Statutory Instruments Act 1992*, the *Coastal Protection and Management Regulation 2003* (Regulation 2003) is Subordinate Legislation that is subject to automatic expiry and this will occur on 31 August 2017. The Regulation 2017 will replace and continue on the functions of the Regulation 2003.

Achievement of policy objectives

The Regulation 2017 achieves policy objectives by enabling provisions in the Coastal Act which:

1. support the development assessment system administered under the Planning Act as it relates to coastal management, with the following tools:

- a coastal zone map - to identify the coastal zone where the Coastal Act applies;
- a coastal management district map and coastal building lines which, through the *Planning Regulation 2017* (Planning Regulation), identify areas vulnerable to coastal erosion and where certain development is made assessable by the State;
- the 'Code for assessable development that is prescribed tidal works' as an assessment benchmarks for prescribed tidal works assessed by local government; and
- the 'Code for accepted development for tidal works, or works completely or partially within a coastal management district' which is a requirement that certain coastal development must meet to be considered as accepted development and therefore avoid formal development assessment.

The Regulation 2017 has effect through the development assessment system of the Planning Act, specifically for tidal works or works in a coastal management district made assessable under the Planning Regulation Schedule 10 Part 17 Division 1.

2. support the administration of quarry material allocation by:

- setting fees to cover costs of assessment of applications for the allocation of quarry material from land under tidal water (e.g. sand and other earth products); and
- setting royalties payable to the State for quarry material removed.

The removal and sale of quarry material (sand and other earth products) on State land under tidal water is administered under the Coastal Act. Such material is generally used in the construction industry. To meet the main objectives of the Coastal Act, assessment of such proposals are required to ensure coastal processes are not disrupted and so avoid erosion and other adverse impacts on beaches, dunes and coastal waterways. The fees provide cost recovery for this assessment service and administration of the allocations.

Royalties, which benefit the people of Queensland, are set in the Regulation 2017 for removal of quarry material under an allocation notice. It also provides an efficient means of recovering value from the resource compared to sale by auction or tender.

The Regulation 2017 continues virtually all of the existing provisions of the Regulation 2003 with amendments to:

- remove redundant provisions including fees for dredge management plans;
- amend terminology to be consistent with the Planning Act; and
- for the 'Code for assessable development that is prescribed tidal works', update technical requirements, simplify some provisions, remove redundant performance requirements and change the code structure to be consistent with current development assessment code making practice.

Consistency with policy objectives of authorising law

The Regulation 2017 is consistent with and helps achieve the main objectives of the Coastal Act which provides for the protection, conservation, rehabilitation and management of the coastal zone and to ensure decisions about land use and development safeguards life and property from the threat of coastal hazards.

Inconsistency with policy objectives of other legislation

The Regulation 2017 is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The Department of Environment and Heritage Protection (EHP) undertook a detailed review of the Regulation 2003 and concluded that it is still required, is fit for its intended purpose and does not impose unnecessary burden on business and the community. The Office of Best Practice Regulation (OBPR), Queensland Productivity Commission considered this review and has confirmed the review met the sunset review obligations under 'The Queensland Government Guide to Better Regulation'.

As part of that review EHP released a discussion paper for public consultation seeking comment on a range of options for remaking the Regulation 2003. Three options were canvassed for each part of the Regulation:

- retain the regulation;
- remove the regulation; and
- alternative mechanisms to the regulation.

In assessing these options the discussion paper considered that the Regulation 2003 is essential for the development assessment system to operate and for ensuring development achieves the coastal management objectives in an efficient way. The Regulation 2003 provisions cannot be removed without adversely impacting the development assessment system or undermining the objectives of the Coastal Act and there is no identifiable alternative mechanism.

Consultation confirmed that stakeholders generally were not opposed to EHP's recommendations to remake the Regulation 2003 with amendments and in many cases provided constructive comments, mainly related to the content and operation of the 'Code for assessable development that is prescribed tidal works' which have been included where appropriate.

Benefits and costs of implementation

The Regulation 2017 will have no additional impact or costs on stakeholders compared to the Regulation 2003 but removal of the Regulation in whole or part would have adverse consequences for State and local government and the community. These consequences may include:

- increased regulatory burden and uncertainty in the development assessment system if the development assessment codes and other coastal management tools are removed;
- delaying or stopping necessary works especially for marine access or coastal protection;
- increased exposure of communities to coastal hazards; and
- greater risk of environmental damage if coastal development is poorly regulated.

Fees set in the Regulation 2003 enable cost recovery and royalties on the sale of State owned quarry material providing a financial benefit to the community. Removal of these would have a negative impact on government finances, and for quarry material, force the

introduction of an administratively complex sale mechanisms to replace royalties that may adversely impact stakeholders.

Consistency with fundamental legislative principles

The Regulation 2017 is consistent with fundamental legislative principles.

However it is acknowledged that the 'Code for assessable development that is prescribed tidal works' (Code) in the Regulation 2017 in many cases has removed specific design requirements in the Regulation 2003 Code and in their place requires the development to comply with relevant Australian Standards published by Standards Australia. These standards are recognised and accepted industry standards compiled with industry and government consultation.

It is a decision by government to require the development to be consistent with specific Australian Standards and in a limited number of cases compliance is made mandatory for the safe operation or use of the works. The wording of the Acceptable Outcome in the Code does provide some flexibility for a design engineer in meeting the Australian Standard. The Regulation 2017 may also be amended in the future if the Australian Standard is deemed onerous or is changed in a way that is inconsistent with the purpose of the Code.

Costs are involved in accessing Australian Standards, but the users of the Code are most commonly design engineers or similar professionals who use such codes on a regular basis and therefore cost or access is not an issue.

Consultation

A discussion paper was released and key stakeholders and Queensland Government agencies were consulted about the proposed Regulation 2017. OBPR supported EHP's approach to the public consultation component of the review of the Regulation 2003. Main elements of the consultation are outlined.

Letters notifying of the proposed review of the Regulation 2003 and the discussion paper were sent to:

- all coastal local governments;
- Local Government Association of Queensland;
- Key industry participants including jetty builders;
- Port authorities;
- Consulting engineers (through Engineers Australia (Qld) as the peak body); and
- Environmental interest and community groups.

The Regulation 2017 was advertised on the Queensland Government's 'Get involved' website from Friday, 11 November 2016 to Wednesday, 21 December 2016.

Twenty submissions were received in response to the request for comments on the proposed Regulation 2017. All submissions have been considered and, where appropriate, changes have been made to incorporate the suggestions made. There are no unresolved issues and no stakeholder was opposed to the remake of the Regulation 2017.