

Queensland

Sustainable Ports Development Act 2015

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Sustainable Ports Development Act 2015

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Sustainable Ports Development Act 2015

An Act to provide for the protection of the Great Barrier Reef World Heritage Area through managing port-related development in and adjacent to the area

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Sustainable Ports Development Act 2015*.

2 Purpose of Act

(1) The purpose of this Act is to provide for the protection of the Great Barrier Reef World Heritage Area through managing port-related development in and adjacent to the area.

(2) The purpose is achieved by—

(a) prohibiting particular future development in the Great Barrier Reef World Heritage Area; and

(b) providing for the development of master plans that establish a long-term vision for the future development of priority ports consistent with the principles of ecologically sustainable development; and

(c) implementing master plans through port overlays that regulate development in and surrounding priority ports.

(3) Also, the purpose is to be achieved in a way that includes the following—

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(a) long-term planning for priority ports to provide a strategic and coordinated approach to managing economic, environmental, cultural and social values in the Great Barrier Reef World Heritage Area;

(b) concentrating port development in priority ports;

(c) recognising the diverse functions of the port network, including trade, tourism and defence operations;

(d) efficiently using port and supply chain infrastructure;

(e) expanding port and supply chain capacity in a staged and incremental way to meet emerging demand for imports and exports;

(f) identifying and protecting land and infrastructure critical to the effective operation of the port network.

Division 2 Interpretation

3 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

Division 3 Application of Act

4 Act binds all persons

(1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

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Part 2 Planning for priority ports

Division 1 Preliminary

5 Priority ports

Each of the following ports is a ***priority port***—

(a) Port of Abbot Point;

(b) Port of Gladstone;

(c) the ports of Hay Point and Mackay;

(d) Port of Townsville.

6 Master planned areas

(1) The ***master planned area*** for a priority port is the area—

(a) identified in a master plan for the port as the master planned area for the port; and

(b) approved by regulation.

(2) To remove any doubt, it is declared that the master planned area for a priority port may include—

(a) land that is outside the port's strategic port land; and

(b) an area of land that is—

(i) outside the port's port limits under the Transport Infrastructure Act; and

(ii) covered, from time to time, by tidal water.

(3) However, the master planned area for a priority port can not include an area within a marine park, even if the area is within the port's port limits under the Transport Infrastructure Act.

(4) In this section—

marine park means—

(a) the Commonwealth marine park; or

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(b) the State marine park.

Division 2 Master planning for priority ports

Subdivision 1 Requirement for master plan

7 Master plan required

(1) The Minister must make an instrument under this division (a ***master plan***) for each priority port.

(2) The master plan for a priority port must—

(a) identify the master planned area for the port; and

(b) apply to all of the master planned area.

(3) The Minister must be satisfied the master plan for the priority port adequately considers the principles of ecologically sustainable development.

8 Content of master plan

(1) A master plan for a priority port must—

(a) state the strategic vision, objectives and desired outcomes for the master planned area; and

(b) identify the State interests affected, or likely to be affected, by—

(i) existing uses at the port; and

(ii) future development at, or for, the port; and

(c) include an environmental management framework that—

(i) identifies and maps environmental values in the master planned area and surrounding areas; and

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(ii) identifies any impacts development in the master planned area may have on the environmental values; and

(iii) states objectives, and measures (the ***priority management measures***), for managing the impacts identified under subparagraph (ii); and

(d) include any other matter prescribed by regulation.

(2) In this section—

State interest means an interest the Minister considers to be—

(a) an economic, community or environmental interest of the State or a part of the State; or

(b) the interest of ensuring this Act's purpose is achieved, having regard to the matters mentioned in section 2.

Subdivision 2 Making and amending master plans

9 Notice of proposal

(1) If the Minister proposes to make or amend a master plan for a priority port, the Minister must give notice of the proposal to the following entities—

(a) the port authority for the priority port;

(b) each local government whose local government area includes the priority port.

(2) The notice must state the following—

(a) that the Minister proposes to make or amend a master plan for the priority port;

(b) the name of the priority port to which the proposed master plan or amendment relates;

(c) that the entity may make a written submission to the Minister about the proposal within a stated period of at least 20 business days.

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10 Preparing and notifying draft instrument

(1) After giving notice of a proposed master plan or proposed amendment under section 9, the Minister must prepare a draft of the proposed master plan, or proposed amendment, (the ***draft instrument***).

(2) After preparing the draft instrument, the Minister must publish a public notice stating—

(a) where copies of the instrument may be inspected and purchased; and

(b) a phone number or email address to contact for information about the instrument; and

(c) that an entity may make a written submission to the Minister about any aspect of the instrument, including the proposed master planned area; and

(d) the requirements for properly making a submission; and

(e) the period (the ***consultation period***) within which a submission may be made, which must be at least—

(i) if the Minister proposes to make a master plan—30 business days after the public notice is published in the gazette; or

(ii) if the Minister proposes to amend a master plan—20 business days after the public notice is published in the gazette.

(3) The Minister must give a copy of the notice and the draft instrument to the following entities—

(a) the port authority for the priority port to which the draft instrument relates;

(b) each local government whose local government area is within, or includes, the master planned area or proposed master planned area;

(c) if a State development area is within, or includes, the master planned area or proposed master planned area—the Coordinator-General;

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(d) if a priority development area is within, or includes, the master planned area or proposed master planned area—MEDQ.

(4) For all of the consultation period, the Minister must keep a copy of the draft instrument available for inspection and purchase by members of the public at the department's head office.

(5) In this section—

proposed master planned area means—

(a) if the draft instrument is a proposed master plan—the area identified in the instrument as the proposed master planned area; or

(b) if the draft instrument is a proposed amendment of a master plan—the area that will be identified in the master plan as the master planned area if the amendment is made.

11 Making proposed master plan or amendment

(1) After the Minister considers all submissions made in accordance with the public notice, the Minister must decide—

(a) to make the proposed master plan or amendment; or

(b) to make the proposed master plan or amendment with the changes the Minister considers appropriate; or

(c) not to make the proposed master plan or amendment.

(2) If the Minister decides to make the proposed master plan or amendment (with or without changes), the Minister must—

(a) publish the decision in a public notice stating—

(i) the day the master plan or amendment was made; and

(ii) where a copy of the master plan or amendment is available for inspection and purchase; and

(b) give each entity mentioned in section 10(3) a copy of the public notice and the master plan or amendment.

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(3) The master plan or amendment has effect on—

(a) the day after the public notice mentioned in subsection (2) is published in the gazette; or

(b) a later day stated in the master plan or amendment.

(4) Within 14 sitting days after the master plan or amendment is made, the Minister must table in the Legislative Assembly a copy of the master plan or amendment.

(5) If the Minister decides not to make the proposed master plan or amendment, the Minister must—

(a) publish the decision in a public notice; and

(b) give each entity mentioned in section 10(3) a copy of the public notice.

12 Administrative amendments

(1) The Minister may make an administrative amendment of a master plan without complying with sections 9 to 11.

(2) Instead, the Minister may make an administrative amendment of a master plan by publishing a public notice that states—

(a) the day the amendment was made; and

(b) where a copy of the amended master plan may be inspected and purchased.

(3) The Minister must give each entity mentioned in section 10(3) a copy of the public notice and the amended master plan.

Subdivision 3 Repealing master plans

13 Process for repealing master plans

(1) The Minister may repeal a master plan for a priority port (the ***existing master plan***) by making another master plan for the port that specifically repeals the existing master plan.

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(2) The existing master plan is repealed on the day the other master plan has effect.

(3) If the Minister repeals a master plan for a priority port, the port overlay for the priority port's master planned area is also repealed.

(4) For subsection (3), the port overlay is repealed on the day the master plan replacing the repealed master plan has effect.

Subdivision 4 Reviewing master plans

14 Requirement to review master plans

(1) The Minister must complete a review of the master plan for each priority port at least every 10 years after the plan has effect.

(2) The review must include an assessment of the following matters—

(a) whether the boundaries of the master planned area identified in the master plan are still appropriate having regard to the strategic vision, objectives and desired outcomes for the master planned area;

(b) whether the implementation of the priority management measures stated in the master plan has been effective in managing the impacts of development on the environmental values identified in the plan;

(c) whether the priority management measures should be changed.

15 Notice of review

(1) Before reviewing a master plan for a priority port, the Minister must publish a public notice stating that—

(a) the Minister proposes to review the master plan; and

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(b) an entity may make a written submission to the Minister about the proposal within a stated period of at least 20 business days.

(2) The Minister must give a copy of the public notice to the following entities—

(a) the port authority for the priority port;

(b) each affected local government;

(c) if the master planned area is within, or includes, a priority development area—MEDQ;

(d) if the master planned area is within, or includes, a State development area—the Coordinator-General.

16 Requesting information for review

(1) The Minister may, at any time during the review of a master plan for a priority port, require 1 or both of the following entities—

(a) an affected local government;

(b) the port authority for the priority port;

to give the Minister information the Minister is satisfied is relevant to the review.

(2) The requirement must—

(a) be in writing; and

(b) state the reasonable period within which the information must be given.

(3) The entity must comply with the requirement.

17 Action Minister must take after review

(1) After reviewing a master plan for a priority port, including considering all submissions made in accordance with the public notice, the Minister must—

(a) prepare a new master plan; or

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(b) amend the master plan; or

(c) if the Minister is satisfied the master plan is suitable to continue without amendment—decide to take no further action.

(2) If the Minister decides to take no further action, the Minister must—

(a) table in the Legislative Assembly a report stating the reasons for the decision; and

(b) give notice of the decision to each entity mentioned in section 15(2).

Subdivision 5 Guidelines for master plans

18 Ministerial guidelines

(1) The Minister may make guidelines about matters that may be considered in preparing or reviewing a master plan for a priority port, including matters that may be considered in identifying the master planned area for the port.

(2) The Minister must publish the guidelines on the department's website.

Division 3 Port overlays for master planned areas

Subdivision 1 Requirement for port overlay

19 Port overlay required

(1) As soon as practicable after a master plan takes effect for a priority port, the Minister must make an instrument under this division (a ***port overlay***) for the priority port's master planned area.

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(2) The port overlay must—

(a) identify the master planned area to which it applies; and

(b) apply to all of the master planned area.

(3) The Minister must be satisfied the port overlay implements the master plan for the master planned area.

(4) However, a port overlay can not regulate development that is—

(a) PDA assessable development or PDA accepted development for a priority development area under the Economic Development Act; or

(b) regulated development for a State development area under the State Development Act.

20 Status of port overlay

(1) A port overlay is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

(2) A port overlay is not subordinate legislation.

21 Content of port overlay

(1) The port overlay for a priority port's master planned area must—

(a) state the purpose of the overlay; and

(b) state how the priority management measures in the master plan are to be achieved, including the entity responsible for the measures; and

(c) include any other matter prescribed by regulation.

(2) Also, the port overlay may—

(a) for the Planning Act—

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(i) state the matters an affected local government must consider in making or amending a local planning instrument under that Act; or

(ii) state that development in the master planned area is, under that Act, accepted development, assessable development requiring code or impact assessment, or prohibited development; or

(iii) state assessment benchmarks that assessable development under the port overlay must be assessed against; or

(iv) state the matters an assessment manager must have regard to in assessing assessable development under the port overlay; or

(b) for the Transport Infrastructure Act, state the matters a port authority must consider in making or amending a land use plan in relation to the priority port under chapter 8, part 4 of that Act; or

(c) otherwise regulate development in the master planned area by, for example—

(i) stating aspects of development that may not take place; or

(ii) including measures to reduce the risk of environmental harm, or serious adverse cultural, economic or social impacts, in the master planned area.

(3) Subsection (2)(a) and (c) is subject to section 19(4).

(4) In this section—

environmental harm see the Environmental Protection Act, section 14.

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Subdivision 2 Making, amending and repealing port overlays

22 Preparing and notifying draft instrument

(1) If the Minister proposes to make or amend a port overlay for a priority port's master planned area, the Minister must prepare a draft of the proposed port overlay or amendment (the draft instrument).

(2) After preparing the draft instrument, the Minister must publish a public notice stating—

(a) where copies of the instrument may be inspected and purchased; and

(b) a phone number or email address to contact for information about the instrument; and

(c) that an entity may make a written submission to the Minister about any aspect of the instrument; and

(d) the requirements for properly making a submission; and

(e) the period (the consultation period) within which a submission may be made, which must be at least 10 business days after the public notice is published in the gazette.

(3) The Minister must give a copy of the public notice and the draft instrument to the following entities—

(a) the port authority for the priority port to which the draft instrument relates;

(b) each affected local government;

(c) if the master planned area is within, or includes, a State development area—the Coordinator-General;

(d) if the master planned area is within, or includes, a priority development area—MEDQ.

(4) For all of the consultation period, the Minister must keep a copy of the draft instrument available for inspection and

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purchase by members of the public at the department's head office.

23 Making or amending port overlays

(1) After the Minister considers all submissions made in accordance with the public notice, the Minister must decide—

(a) to make the proposed port overlay or amendment; or

(b) to make the proposed port overlay or amendment with the changes the Minister considers appropriate; or

(c) not to make the proposed port overlay or amendment.

(2) If the Minister decides to make the proposed port overlay or amendment (with or without changes), the Minister must—

(a) publish the decision in a public notice stating—

(i) the day the port overlay, or amendment, (the instrument) was made; and

(ii) where a copy of the instrument is available for inspection and purchase; and

(iii) for an amendment of a port overlay—a brief description of the amendment; and

(b) give each entity mentioned in section 22(3) a copy of the public notice and the instrument.

(3) Subject to subsection (5), the instrument has effect on—

(a) the day after the public notice mentioned in subsection (2) is published in the gazette; or

(b) a later day stated in the instrument.

(4) Within 14 sitting days after the instrument is made, the Minister must table a copy of the instrument in the Legislative Assembly.

(5) The *Statutory Instruments Act 1992*, sections 49(2), 50 and 51 apply to the instrument as if—

(a) the instrument were subordinate legislation; and

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(b) a reference in section 49(2) of that Act to section 49(1) of that Act were a reference to subsection (4).

24 Administrative amendments

(1) The Minister may make an administrative amendment of a port overlay without complying with sections 22 and 23.

(2) Instead, the Minister may make an administrative amendment of a port overlay by publishing a public notice that states—

(a) the day the amendment was made; and

(b) where a copy of the amended port overlay may be inspected and purchased.

(3) The Minister must give each entity mentioned in section 22(3) a copy of the public notice and the amended port overlay.

25 Repealing port overlays

(1) The Minister may repeal a port overlay (the ***existing port overlay***) for a priority port's master planned area by making another port overlay for the master planned area that specifically repeals the existing port overlay.

(2) The existing port overlay is repealed on the day the other port overlay has effect.

Subdivision 3 Relationship with other instruments

26 Relationship with planning instruments under Planning Act

If there is an inconsistency between a port overlay and a planning instrument under the Planning Act, the port overlay prevails to the extent of the inconsistency.

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27 Relationship with land use plans under Transport Infrastructure Act

If there is an inconsistency between a port overlay and a land use plan made under the Transport Infrastructure Act, chapter 8, part 4, the port overlay prevails to the extent of the inconsistency.

Subdivision 4 Relationship with Economic Development Act

28 Requirement to review development schemes under Economic Development Act

(1) As soon as practicable after a port overlay takes effect for a priority port's master planned area, MEDQ must—

(a) consider whether a development scheme for a priority development area under the Economic Development Act is inconsistent with the port overlay; and

(b) if there is an inconsistency, decide whether to amend the development scheme to remove the inconsistency.

(2) However, subsection (1) applies only if the master planned area is within, or includes, the priority development area.

(3) If, under subsection (1)(b), MEDQ decides not to amend the development scheme, MEDQ must, within 14 sitting days after making the decision, table in the Legislative Assembly a report about the reasons for the decision.

29 Requirements for making or amending development schemes under Economic Development Act

(1) In making or amending a development scheme for a priority development area under the Economic Development Act, MEDQ must consider, but is not bound by, a requirement under a port overlay.

(2) Subsection (3) applies to MEDQ if—

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(a) under the Economic Development Act, MEDQ makes or amends a development scheme for a priority development area; and

(b) the priority development area is within, or includes, a priority port's master planned area; and

(c) the development scheme, or amendment, (the ***instrument***) is inconsistent with the port overlay for the master planned area.

(3) MEDQ must, within 14 sitting days after making the instrument, table in the Legislative Assembly a report stating the reasons for making the instrument despite the inconsistency.

Subdivision 5 Relationship with Planning Act

30 Application of Planning Act

(1) Subject to this section, the Planning Act applies for development on land in a priority port's master planned area.

(2) If there is an inconsistency between this section and the Planning Act, this section prevails to the extent of the inconsistency.

(3) Subject to section 19(4), if development is stated in the port overlay for a master planned area to be development of a particular type for the Planning Act, the development is taken to be development of that type under that Act.

(4) Subsections (5) and (6) apply to a development application or change application to the extent the application is in relation to development—

(a) in a priority port's master planned area; and

(b) stated in the port overlay for the master planned area to be assessable development.

(5) The decision-maker must, in assessing the application under the Planning Act—

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(a) if the port overlay states assessment benchmarks for the assessable development—assess the development against the assessment benchmarks; and

(b) if the port overlay states matters an assessment manager must have regard to in assessing the assessable development—have regard to the stated matters.

(6) The decision-maker's decision under the Planning Act about the application must not be inconsistent with the port overlay.

(7) Subsection (5) does not limit the Planning Act, section 60, 61, 81, 81A or 82.

(8) In this section—

decision-maker means—

(a) for a development application—the assessment manager for the application; or

(b) for a change application—the responsible entity for the application.

Subdivision 6 Relationship with State Development Act

31 Requirement to review approved development schemes under State Development Act

(1) As soon as practicable after a port overlay takes effect for a priority port's master planned area, the Coordinator-General must—

(a) consider whether an approved development scheme for a State development area under the State Development Act is inconsistent with the port overlay; and

(b) if there is an inconsistency, decide whether to amend the approved development scheme to remove the inconsistency.

(2) However, subsection (1) applies only if the master planned area is within, or includes, the State development area.

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(3) If, under subsection (1)(b), the Coordinator-General decides not to amend the approved development scheme—

(a) the Coordinator-General must give the State Development Minister a report about the reasons for the decision; and

(b) the State Development Minister must, within 14 sitting days after the decision is made, table the report in the Legislative Assembly.

32 Requirements for making or amending approved development schemes under State Development Act

(1) In making or amending an approved development scheme for a State development area under the State Development Act, the Coordinator-General must consider, but is not bound by, a requirement under a port overlay.

(2) Subsections (3) and (4) apply if—

(a) under the State Development Act, the Coordinator-General makes or amends an approved development scheme for a State development area; and

(b) the State development area is within, or includes, a priority port's master planned area; and

(c) the approved development scheme, or amendment, (the ***instrument***) is inconsistent with the port overlay for the master planned area.

(3) The Coordinator-General must give the State Development Minister a report stating the reasons for making the instrument despite the inconsistency.

(4) The State Development Minister must, within 14 sitting days after the instrument is made, table the report in the Legislative Assembly.

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Part 3 Provisions relating to Great Barrier Reef World Heritage Area

Division 1 Preliminary

33 Definition for pt 3

In this part—

restricted area means an area that is within the Great Barrier Reef World Heritage Area but outside the Commonwealth marine park.

Note—

See the Commonwealth Marine Park Act for prohibitions relating to the Commonwealth marine park and Great Barrier Reef Region under that Act.

Division 2 Particular applications for port facilities

34 Particular applications for port facilities must be refused

(1) An assessment manager must refuse a development application to the extent the application is for development for, or relating to, a port facility, if the development is—

(a) within the State marine park; or

(b) within a restricted area that is outside a port's existing port limits.

(2) However, subsection (1) does not apply to the following development—

(a) the carrying out of dredging;

(b) the disposing, or depositing, of material generated from dredging activities.

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(3) Also, subsection (1) does not apply to development for, or relating to, a port facility for the Port of Gladstone if the development is carried out on an island—

(a) that, on 12 October 2015, was included in the special industry zone under the planning scheme made under the Planning Act for the Gladstone local government area; or

(b) that is completely or partly within the port's strategic port land, or a State development area, and the strategic port land or State development area is within, or adjacent to, the existing port limits of the Port of Gladstone.

(4) This section applies despite the following—

(a) the Economic Development Act;

(b) the Planning Act;

(c) the State Development Act;

(d) the Transport Infrastructure Act, section 291.

(5) In this section—

assessment manager includes—

(a) for a PDA development application under the Economic Development Act—MEDQ; and

(b) for an SDA application under the State Development Act—the Coordinator-General; and

(c) for a change application—the responsible entity for the application.

development application includes—

(a) a PDA development application under the Economic Development Act; and

(b) an SDA application under the State Development Act; and

(c) a change application, other than a minor change application.

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existing port limits, for a port, means the port's port limits, immediately before the commencement, under the Transport Infrastructure Act.

Division 3 Capital dredging

35 No approvals for particular capital dredging

(1) An approving authority must not give an approval for development that is, or includes, capital dredging if the dredging will be carried out—

(a) within a restricted area; and

(b) for the purpose of establishing, constructing or improving a port facility.

(2) However, subsection (1) does not apply to an approval for development that is, or includes, capital dredging carried out for the purpose of establishing, constructing or improving a port facility—

(a) in a priority port's master planned area; or

(b) for the Port of Cairns, if—

(i) the dredging will be carried out in the port's inner harbour; and

(ii) the approval does not permit the extraction or excavation of more than 50,000m3 of material; and

(iii) the approval will not result in more than 150,000m3 of material being extracted from, or excavated in, the port's inner harbour in a 4-year period.

(3) In calculating whether an approval will result in more than 150,000m3 of material being extracted or excavated in a 4-year period, only the following amounts are relevant—

(a) the amount of material to be extracted or excavated under the approval;

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(b) the amount of material extracted or excavated, or to be extracted or excavated, under another approval for development that is, or includes, capital dredging unless the capital dredging was the subject of an EIS process started before the commencement.

36 Condition for approvals for particular capital dredging

(1) This section applies to an approval given by an approving authority for development that is, or relates to, capital dredging if the capital dredging is carried out—

(a) for the purpose of establishing, constructing or improving a port facility in a priority port's master planned area; or

(b) in the inner harbour of the Port of Cairns for the purpose of establishing, constructing or improving a port facility for the port.

(2) The approval is taken to include a condition that material generated from the capital dredging must not be deposited, or disposed of, in a restricted area unless the material is beneficially reused.

Examples of ways in which the material may be beneficially reused—

- for land reclamation
- for beach nourishment
- for environmental restoration purposes, such as creating or restoring wetlands or nesting islands

(3) To remove any doubt, it is declared that this section applies to an approval whether it was given before or after the commencement.

37 Relationship with particular Acts

This division applies despite the following Acts—

(a) the Coastal Act;

(b) the Economic Development Act;

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(c) the Environmental Protection Act;

(d) the Forestry Act;

(e) the Planning Act;

(f) the State Development Act.

38 Review of s 35 in relation to capital dredging for Port of Cairns

(1) The Minister must review the operation of section 35(2)(b) and (3) within 4 years after its commencement.

(2) The object of the review is to decide whether section 35(2)(b) and (3) is effectively achieving a balance between economic development and the protection of the Great Barrier Reef World Heritage Area.

(3) Before carrying out the review, the Minister must publish a public notice stating—

(a) that the Minister proposes to review the operation of section 35(2)(b) and (3); and

(b) a phone number or email address to contact for information about the review; and

(c) that an entity may make a written submission to the Minister about the review; and

(d) the requirements for properly making a submission; and

(e) the period within which a submission may be made, which must be at least 20 business days after the public notice is published in the gazette.

(4) In carrying out the review, the Minister must consider all submissions made in accordance with the public notice.

(5) The Minister must, as soon as practicable after finishing the review, table a report about the outcome of the review in the Legislative Assembly.

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Part 4 Miscellaneous

Division 1 Protection of particular uses and rights

39 Lawful uses of premises protected

(1) This section applies if, immediately before a port overlay or an amendment of a port overlay took effect, the use of premises was a lawful use of the premises in the master planned area to which the port overlay applies.

(2) Neither the port overlay nor the amendment can—

(a) stop the use from continuing; or

(b) further regulate the use; or

(c) require the use to be changed.

40 Lawfully constructed buildings and work protected

To the extent a building was lawfully constructed or work was lawfully carried out before a port overlay or an amendment of a port overlay took effect, neither the port overlay nor the amendment can require the building or work to be altered or removed.

41 Existing development approvals

(1) This section applies if—

(a) a development approval exists for premises; and

(b) after the development approval is given, a port overlay or an amendment of a port overlay has effect.

(2) To the extent the development approval has not lapsed, neither the port overlay nor the amendment can stop or further regulate the development to which the development approval relates, or otherwise affect the development approval.

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42 Existing development application or change application

(1) This section applies if, immediately before a port overlay for a priority port's master planned area has effect—

(a) a development application had been made for premises in the master planned area; and

(b) the application was a properly made application and had not lapsed under the Planning Act; and

(c) the application had not been decided.

(2) This section also applies if, immediately before a port overlay for a priority port's master planned area has effect—

(a) a change application had been made under the Planning Act to change a development approval—

(i) that already approves development in the master planned area; or

(ii) to approve development in the master planned area, if the approval does not already approve development in the master planned area; and

(b) the application had not lapsed under the Planning Act; and

(c) the application had not been decided.

(3) Despite the port overlay having effect, the application must be decided under the Planning Act, and that Act continues to apply, as if the port overlay were not in effect.

Division 2 Offences

43 Giving false or misleading information

(1) A person must not, in relation to the administration of this Act, give the Minister information the person knows is false or misleading in a material particular.

Maximum penalty—1,665 penalty units.

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(2) Subsection (1) does not apply to a person if the person, when giving information in a document—

(a) tells the Minister, to the best of the person's ability, how the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Division 3 Evidentiary and legal proceedings

44 Evidentiary aids

A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

(a) a decision or notice under this Act;

(b) that a stated document, or stated information, is a document or information included in a register kept under this Act;

(c) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);

(d) that on a stated day—

(i) a stated entity was given a stated decision or notice under this Act; or

(ii) a stated requirement under this Act was made of a stated entity.

Division 4 Other administrative matters

45 Registers

(1) The chief executive must keep a register of each of the following—

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(a) master plans, or amendments of master plans, made under part 2, division 2;

(b) proposed master plans, or proposed amendments of master plans, notified under section 10;

(c) port overlays, or amendments of port overlays, made under part 2, division 3;

(d) proposed port overlays, or proposed amendments of port overlays, notified under section 22;

(e) the matters raised in any submissions made to the Minister about—

(i) a proposed master plan, or proposed amendment of a master plan, notified under section 10; or

(ii) a proposed port overlay, or proposed amendment of a port overlay, notified under section 22; or

(iii) a review notified under section 38.

(2) The chief executive may also keep a register of other documents or information relating to this Act that the chief executive considers appropriate.

(3) The chief executive may keep a register in the way the chief executive considers appropriate.

(4) However, the documents included in the registers must also be published on—

(a) the department's website; and

(b) the website of the port authority for the priority port to which the document relates.

46 Access to registers

(1) The chief executive must—

(a) keep each register open for inspection by the public during office hours on business days at the department's head office; and

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(b) allow a person to search and take extracts from the register; and

(c) give a person who asks for it a copy of all or part of a document or information held in the register, on payment of the fee decided by the chief executive.

(2) The fee can not be more than the actual cost of giving the copy.

47 Approval of forms

The chief executive may approve forms for use under this Act.

48 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may—

(a) approve a master planned area identified in a master plan for a priority port; and

(b) prescribe matters that must be included in a master plan or port overlay; and

(c) provide for fees payable under this Act and the matters for which they are payable; and

(d) impose a penalty of no more than 20 penalty units for a contravention of a regulation.

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Part 5 Transitional provisions

Division 1 Transitional provision for Act No. 28 of 2015

49 Particular development exempted

(1) Section 34 does not apply to development mentioned in section 34(1) if the development is the subject of an EIS process started before the commencement.

(2) Section 35(1) does not apply to development that is, or includes, capital dredging if the capital dredging is the subject of an EIS process started before the commencement.

Division 2 Transitional provision for Planning (Consequential) and Other Legislation Amendment Act 2016

50 Existing development application

(1) Subsection (2) applies to an existing development application mentioned in former section 30(4).

(2) Former section 30(5) to (7) continues to apply in relation to the application, as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

(3) Subsection (4) applies to an existing development application—

(a) mentioned in former section 34(1); or

(b) for an approval mentioned in former section 35(1).

(4) This Act as in force immediately before the commencement continues to apply in relation to the application, as if the amending Act had not been enacted.

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(5) Subsection (6) applies if, immediately before a port overlay for a priority port's master planned area had effect—

(a) an existing development application had been made for premises in the master planned area; and

(b) the application was a properly made application under the repealed Planning Act and had not lapsed under that repealed Act; and

(c) the application had not been decided.

(6) Former section 42(2) continues to apply in relation to the application, as if the amending Act had not been enacted.

(7) In this section—

amending Act means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

existing development application means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

former, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

repealed Planning Act means the repealed *Sustainable Planning Act 2009*.

Division 3 Transitional provision for Transport and Other Legislation Amendment Act 2024

51 Transitional provision for particular master planned areas and proposed master planned areas

(1) From the commencement, the master planned area for each of the following priority ports includes a relevant tidal water area that had, before the commencement, been included in the master planned area despite former section 6(3)(a)—

(a) Port of Gladstone;

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(b) Port of Townsville.

(2) Subsection (3) applies in relation to a port overlay for a master planned area for a priority port mentioned in subsection (1).

(3) From the commencement, the master planned area identified in the port overlay under section 19(2)(a) is taken to include a relevant tidal water area.

(4) Subsection (5) applies in relation to—

(a) the proposed master planned area for a relevant priority port; or

(b) if a proposed master plan for a relevant priority port is made, under section 11, before the commencement—the master planned area for the relevant priority port.

(5) From the commencement, the proposed master planned area or master planned area for the relevant priority port includes a relevant tidal water area that had, before the commencement, been included in the proposed master planned area or master planned area despite former section 6(3)(a).

(6) In this section—

former section 6(3)(a) means section 6(3)(a) as in force immediately before the commencement.

proposed master planned area, for a priority port, means an area identified in a draft of a proposed master plan, prepared under section 10, as the proposed master planned area for the port.

relevant priority port means either of the following priority ports—

(a) Port of Abbot Point;

(b) the ports of Hay Point and Mackay.

relevant tidal water area, in relation to the master planned area or proposed master planned area for a priority port, means an area of land—

(a) outside the port's port limits under the Transport Infrastructure Act; and

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(b) covered, from time to time, by tidal water.

Schedule 1 Dictionary

section 3

administrative amendment, of a master plan or port overlay, means an amendment correcting or changing—

(a) an explanatory matter about the instrument; or

(b) the format or presentation of the instrument; or

(c) a spelling, grammatical or mapping error in the instrument; or

(d) a factual matter incorrectly stated in the instrument; or

(e) a redundant or outdated term in the instrument; or

(f) inconsistent numbering of provisions in the instrument; or

(g) a cross-reference in the instrument.

affected local government, for a priority port, means a local government whose local government area is within, or includes, the master planned area for the priority port.

allocation of quarry material means an allocation of quarry material in tidal water under the Coastal Act, chapter 2, part 5.

approval, for part 3, division 3, means—

(a) an allocation of quarry material; or

(b) an approval under the Planning Act of a change application, other than a minor change application; or

(c) a development approval; or

(d) an environmental authority under the Environmental Protection Act; or

(e) a Forestry Act approval; or

(f) a PDA development approval under the Economic Development Act; or

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(g) an SDA approval under the State Development Act.

approving authority, for part 3, division 3, means—

(a) for an allocation of quarry material—the chief executive under the Coastal Act; or

(b) for an approval under the Planning Act of a change application—the responsible entity for the change application; or

(c) for a development approval—the assessment manager for the development application to which the approval relates; or

(d) for an environmental authority under the Environmental Protection Act—the administering authority under that Act; or

(e) for a Forestry Act approval—the chief executive under the Forestry Act; or

(f) for a PDA development approval under the Economic Development Act—MEDQ; or

(g) for an SDA approval under the State Development Act—the Coordinator-General.

assessable development see the Planning Act, section 44(3).

assessment benchmarks see the Planning Act, section 43(1)(c).

assessment manager, for a development application, means the assessment manager under the Planning Act for the application.

capital dredging—

(a) means dredging carried out for the purpose of—

(i) creating or enlarging a channel, basin, port, berth or other similar thing; or

(ii) removing material that is unsuitable as a foundation for a port facility; or

(iii) creating a trench for a pipe, cable or tube; or

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(iv) an activity incidental to an activity mentioned in subparagraph (i) to (iii); but

(b) does not include dredging carried out for the purpose of—

(i) maintaining a channel, basin, port, berth or other similar thing for its intended use; or

(ii) protecting human life or property.

change application means a change application under the Planning Act.

Coastal Act means the *Coastal Protection and Management Act 1995.*

Commonwealth Environment Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Commonwealth marine park means the Great Barrier Reef Marine Park established under the Commonwealth Marine Park Act.

Commonwealth Marine Park Act means the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

Coordinator-General means the Coordinator-General under the State Development Act.

development see the Planning Act, schedule 2.

development application means a development application under the Planning Act.

development approval means a development approval under the Planning Act.

Economic Development Act means the *Economic Development Act 2012*.

EIS process means any of the following processes—

(a) an EIS process for development within the meaning of the repealed *Sustainable Planning Act 2009*;

(b) an EIS process for a project within the meaning of the Environmental Protection Act;

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(c) the process under the State Development Act, part 4, division 3, subdivision 1 for an environmental impact statement for a coordinated project under that Act;

(d) the process under the Commonwealth Environment Act, chapter 4, part 8, division 6 for an environmental impact statement for an action under that Act;

(e) the process under another Commonwealth Act for preparing an environmental impact statement for a project.

enlarging includes increasing the depth of.

Environmental Protection Act means the *Environmental Protection Act 1994*.

environmental value see the Environmental Protection Act, section 9.

Forestry Act means the *Forestry Act 1959*.

Forestry Act approval means an agreement, contract, permit, licence or authority relating to the removal of quarry material under the Forestry Act.

Great Barrier Reef World Heritage Area means the Great Barrier Reef World Heritage Area under the Commonwealth Marine Park Act.

inner harbour, for the Port of Cairns, means the area that is—

(a) south of latitude 16°55'0.7" south and within the port's port limits under the Transport Infrastructure Act; but

(b) outside the State marine park.

land means any land, whether above or below the ordinary high-water mark at spring tides.

master plan see section 7(1).

master planned area, for a priority port, see section 6.

MEDQ means MEDQ under the Economic Development Act.

minor change application means a change application for a minor change to a development approval, as defined in the Planning Act.

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notice means a written notice.

Planning Act means the *Planning Act 2016*.

port authority means a port authority under the Transport Infrastructure Act.

port facility—

1 *Port facility* means a facility or land used in the operation or strategic management of a port authority's port.

2 *Port facility* does not include a small-scale port facility to be used for a tourism or recreation purpose.

Examples of a small-scale port facility—

boat ramp, boat harbour, marina

port overlay see section 19(1).

premises means—

(a) a building or other structure; or

(b) land, whether or not a building or other structure is situated on the land.

principles of ecologically sustainable development see the Commonwealth Environment Act, section 3A.

priority development area means a priority development area under the Economic Development Act.

priority management measures, for part 2, see section 8(1)(c)(iii).

priority port see section 5.

public notice means a notice published—

(a) in the gazette; and

(b) in a newspaper circulating as follows—

(i) for a notice about a proposed master plan—circulating in the proposed master planned area;

(ii) for a notice about another instrument or the repeal of a master plan or port overlay—circulating in the

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master planned area to which the instrument, or repealed master plan or port overlay, relates;

(iii) for a notice about a proposed review under section 38—circulating in the Cairns local government area; and

(c) on the department's website.

quarry material see the Coastal Act, schedule.

responsible entity, for a change application, means the responsible entity under the Planning Act for the application.

restricted area, for part 3, see section 33.

State Development Act means the *State Development and Public Works Organisation Act 1971.*

State development area means a State development area under the State Development Act.

State Development Minister means the Minister responsible for administering the State Development Act.

State marine park means the Great Barrier Reef Coast Marine Park continued in existence under the *Marine Parks Act 2004.*

strategic port land see the Transport Infrastructure Act, section 286(5).

tidal water see the Coastal Act, schedule.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

use, for premises, includes any use incidental to and necessarily associated with the use of the premises.

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