

Excluded work (Coastal)

Guideline for coastal development

This document provides guidance on what constitutes excluded work under the Planning Regulation 2017.

Overview

The Planning Regulation 2017 (Planning Regulation) makes certain operational works assessable coastal development (tidal works or operational works carried out completely or partly within a coastal management district)¹. The Planning Regulation also defines excluded work². If the work is considered to be excluded work, then it does not require development approval under the *Planning Act 2016* (Planning Act). If the proposed works do not fall into any of the excluded work categories below then a development approval under the Planning Act will be required.

Excluded work

The following table outlines excluded work for coastal development as described in the Planning Regulation.

Table 1: Excluded work for each type of coastal development

Planning Regulation definition	Type of coastal development	Excluded work	Assessing authority if not excluded work
1. Schedule 10, part 17, division 1, section 28 (3) 'excluded work' (a)	Operational work ³ that is tidal works (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 Infrastructure, Local Government and Planning (DILGP) (if tidal works).
2. Schedule 10, part 17, division 1, section 28 (3) 'excluded work' (b)	Operational work that is tidal works (including prescribed tidal works)	Works that alter a prescribed structure ⁴ , other than an alteration that— creates roofed structure, including a shed or a gazebo; or changes the footprint of the	Local government (if prescribed tidal works) or DILGP (if tidal works).

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

² See the Planning Regulation 2017 Schedule 10, part 17, division 1, section 28 for definition of 'excluded work'.

³ Under the *Coastal Protection and Management Act 1995* (Coastal Act) (Schedule), 'tidal works' do not include: erecting a sign/structure under another Act; building an open drain that is less than 1m deep and has a cross sectional area less than 2.5m²; assessable development under Schedule 10, of the Planning Regulation 2017; removing quarry material that has accumulated within the boundaries of, or in an area adjoining, a previously approved tidal work; removing quarry material from land under tidal water, if the removal is for sale of the material; or constructing buoy moorings.

⁴ 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)

Planning Regulation definition	Type of coastal development	Excluded work	Assessing authority if not excluded work
		<p>prescribed structure; or</p> <p>changes the dimensions or structural capacity of the prescribed structure; or</p> <p>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> <p>Refer to section 3 of this guideline for more details.</p>	
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 insignificant impact on coastal management and is reversible or expendable.</p> <p>Refer to section 4 of this guideline for more details.</p>	DILGP

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.
Reclaiming land under tidal water.
<p>Constructing an artificial waterway.</p> <p>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.</p>

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 Act⁵; 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 purpose⁶.

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; replacing or rebuilding greater than 20% of the approved structure 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 the approvals were originally assessed.

For lawful work below high-water mark (e.g. tidal works including prescribed tidal works) maintenance work includes:

- replacement or repair of deteriorated components of a lawful work (e.g. replacement piles supporting a jetty);
- 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.
- re-surfacing an existing structure (e.g. boat ramp, slipway), or
- repair of the toe of a structure (e.g. seawall, revetment or boat ramp).

For lawful work above high-water mark (i.e. item 3 in Table 1 above) maintenance work may include:

- replacement of deteriorated components involving excavation, or
- repair of a section of an existing lawful work (e.g. boardwalk or viewing platform).

Operational work that is maintenance work on a lawful work, either below or above the high water mark, may be carried out without notifying the DILGP, or local government for prescribed tidal works. The applicant is responsible for determining whether the work constitutes maintenance work using this guideline.

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

⁵ Work lawfully constructed under another Act includes work sanctioned by Governor in Council under s.86 of the *Harbours Act 1995* or as continued under s.236 of the *Transport Infrastructure Act 1994* prior to 20 October 2003.

⁶ '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.

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. The works would be assessed against the State Development Assessment Provisions (SDAP), State Code 8, available at <http://www.dilgp.qld.gov.au/planning/development-assessment/state-development-assessment-provisions.html>.

4. What minor work can be considered excluded work?

Minor works are those works above high water mark that do not have a significant impact on coastal management and that are reversible or expendable. These works can be easily removed if threatened by a storm event such as a cyclone, or are expendable. Protection works (e.g. seawalls) will not be approved to defend these works from impacts associated with 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. The exclusion of minor works from assessment means that local governments can generally maintain or improve community amenities and manage foreshore areas without requiring a development approval. Works of a minor nature that are not assessable under the Planning Act, are those required for public health and safety, environmental protection or short-term community benefit. These include:

- work undertaken on State coastal land outside the erosion prone area (erosion prone area plans are available at www.ehp.qld.gov.au/coastal/development/assessment/erosion_prone_areas)
- native vegetation maintenance and associated fencing, irrigation system or weed control consistent with maintaining frontal dune vegetation and dune stability
- fencing or bollards for vehicle and pedestrian control
- maintenance of existing board and chain structures and track surfacing, excluding concrete and bitumen
- reversible works or expendable structures with a footprint less than 5m² (e.g. benches/seats, showers, rubbish bins, signs, picnic shelters, playground equipment), which will not be protected from the threat of coastal erosion, and are consistent with the declared purpose of the tenure and coastal management intent for 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 or within 12 months
- pathway or track maintenance and re-profiling where the surface level has changed
- a 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 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 contaminated material, rubble 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 for investigative purposes where the volume of material removed is less than 2m³.

Minor works on coastal dunes located on freehold or leasehold land above the high-water mark include:

- 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
- clearing or damage to vegetation that is not any of the following:
- frontal dune vegetation,
- vegetation on areas vulnerable to wind erosion, or
- native coastal or wetland vegetation that triggers assessable development.

The local government or any other applicant is responsible for ensuring that the work is a minor work under the Planning Regulation. As a guide, an applicant is encouraged to review the above listed items 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 DILGP regional office (contact details available at <http://www.dilgp.qld.gov.au/contact-us-dilgp/regional-contacts.html>).

5. What evidence is required?

Compliance activities may be undertaken especially if complaints are made and evidence will assist when officers investigate. Persons undertaking excluded work should keep the following items as a record:

- Copies of the original development approval (required when undertaking maintenance work)
- Clear photos showing the extent of the site prior to commencement, and after completion, of the work (required when undertaking maintenance or minor 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 Act⁷ are not excluded work unless they are consistent with the above definition of excluded work. These works will need to be assessed 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:

- placing an erosion protection structure during a storm event or in anticipation of a forecast storm event
- beach nourishment
- 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
- demolishing or making safe a structure.

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 within 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). Proponents are advised to check with all relevant statutory authorities for such requirements.

Sample sediments

A development approval is not required for works undertaken below high water mark to sample sediments in preparation for making a later tidal works application where the volume of the sediment disturbed is less than 10m³.

⁷ 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).

The environmental benefit of assessing these geotechnical investigations (e.g. borehole drilling and grab sampling) or sampling (e.g. sampling for pollution or research purposes) is minimal and the work is still subject to the general environmental duty under the *Environmental Protection 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*, 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.

Owner's consent

Note that some proponents will need to gain consent to undertake works on land owned or managed by the State (e.g. for works on State coastal land). This requirement is not removed if the work is excluded work. The Department of Natural Resources and Mines (State Land Asset Management Group) should be contacted to resolve any 'owners consent' or tenure issues before carrying out an excluded work on State owned land.

8. When 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 considered assessable development, and a development approvals will be required under the Planning Act⁸. Development applications can be lodged through MyDAS at <http://www.dilgp.qld.gov.au/planning/development-assessment/electronic-lodgement.html>. Please note requests to DILGP for excluded work are not to be submitted through MyDAS.

⁸ With the exception of certain low risk tidal works to be carried out by the Department of Transport and Main Roads, Gold Coast Waterways Authority or a local government, which may be assessed against the *Code for self-assessable development – For tidal work, or works completely or partly within a coastal management district* available. This code is located on the EHP website at <http://www.ehp.qld.gov.au/coastal/development/self-assessable.html>.

Disclaimer

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