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| ***Requirement for certain tidal works to be deemed excluded work (Coastal) due to special circumstance*** |

*The Department of Environment, Science and Innovation (DESI) requests that this form is used to notify of the repair or replacement of a lawful tidal work damaged in the South East Queensland 2022 floods from 22 February to 7 March 2022. This form assists with understanding what is considered excluded work under the Planning Regulation 2017 and should be completed prior to any work commencing. DESI will check that the notification is properly made and provide confirmation in writing that the notification is accepted and the works can proceed.*

If works do not meet all the eligibility criteria for this special circumstance, then they are not excluded work and a development permit must be obtained before works commence, or any works may be considered a development offence.

*The special circumstance provision only applies to works submitted in this notification form prior to 1 May 2024. The works should be completed by 1 May 2026.*

**IMPORTANT UPDATE**

**This excluded work special circumstance provision has been extended by a further 6 months and the revised deadline for new notifications to be submitted to DESI is 1 May 2024.**

Tidal works that need to be replaced or repaired, where repairs are greater than 20% of the whole structure, require a development permit and may also require [owner’s consent](https://www.qld.gov.au/environment/land/state/owner-consent) for the State land on which it is to be built. Application fees apply when making a development application.

To reduce the administrative burden and cost on proponents where works are required due to damage or loss from a natural disaster, the Queensland Government may consider the works to be ‘excluded work’ due to special circumstances, as set out under the [Excluded Work (Coastal) Guideline](https://www.des.qld.gov.au/policies?a=272936:policy_registry/gl-cd-excluded-works.pdf). Excluded work may be undertaken without applying for a development permit or the payment of application fees. The Queensland Government has decided to apply the special circumstance provision to certain tidal works in natural waterways that are in, on or above land under tidal water and were damaged as a direct result of the South East Queensland floods from 22 February to 7 March 2022. This special circumstance only applies to excluded work under the Planning Regulation 2017 as it relates to tidal works, or work carried out completely or partly in a coastal management district. A development application will need to be made if the proposed works trigger other types of assessable development (e.g. operational work that is the removal, destruction or damage of a marine plant). If you are unsure, please contact your local [SARA regional office](https://planning.statedevelopment.qld.gov.au/contact-us). This does not negate the need for other State or Commonwealth approvals, such as a Marine Parks permit.

For the works to be deemed as excluded work they must meet specific eligibility criteria. If the works you propose to repair or replace (e.g. jetty or pontoon) meet the eligibility criteria in full, as set out below, you may be able to proceed with the works without a development permit. A key requirement is the replaced works are like-for-like. That is, the same type, size and footprint. Materials used can be modernised but the replacement cannot be considered an excluded work if it is extended, widened or the form is changed.

The proposed works will only be considered as excluded work if they meet certain existing standards set out under the Prescribed Tidal Works Code[[1]](#footnote-2) and also meet new requirements, which are expected to be included in that code in the near future. The new requirements are included as eligibility criteria in this form and address matters such as improved design of pontoons to prevent the release of the contained polystyrene to the coastal environment causing pollution and reduced damage to pontoons such that they may be returned to the owner intact if they break loose during a flood.

Owner’s consent from the State is not required for works that meet the eligibility criteria set out in this form.

If you wish to carry out repair or replacement of a tidal work due to damage from the South East Queensland 2022 floods you must submit this form to the Department of Environment, Science and Innovation (DESI). DESI will check the notification has been properly made and will advise you that the works can proceed.

# Name/s of the owner of the land containing, attached to or benefiting from the tidal works

# Note: If the land is State land (e.g. reserve, road, esplanade), advise who is the manager/trustee of the land.

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| --- | --- |
| land owner/s as per deed of title or lease      | Please indicate the type of ownership of the landPrivate ownership [ ] Ownership held by Trust [ ] Corporation or company [ ] Body Corporate [ ] State/Local Government [ ]  |
| Land owner/S POSTAL ADDRESS      | POSTCODE     |
| TELEPHONE (BUSINESS HOURS)      | MOBILE      |
| EMAIL ADDRESS      |

# Details of entity acting on behalf of the land owner/s (if applicable)

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| NAME/s OF entity (you must provide evidence of authorisation to act on behalf of the land owner/S)      |
| CONTACT PERSON       |
| ENTITY’s POSTAL ADDRESS      | POSTCODE     |
| TELEPHONE (BUSINESS HOURS)      | MOBILE      |
| EMAIL ADDRESS      |

# Location of the land containing, attached to or benefiting from the tidal works

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| --- | --- |
| Street address and lot/plan details relate to the land adjoining or adjacent to the proposed works.However, if a lot exists over tidal water then that lot must also be included here. | STREET ADDRESS      |
| LOT      | PLAN      |
| name of waterway in which works are proposed      |
| LOCAL GOVERNMENT AREA      |

# Description of proposed works (responses are mandatory)

The type of work that is applicable to this form is tidal work that provides a form of access to tidal water in a natural waterway, for example, jetties and pontoons. It also includes works such as decks and boardwalks that extend over tidal water but do not facilitate vessel access for people between land and a navigable waterway.

Please identify the relevant structure below that requires repair or replacement:

|  |  |  |
| --- | --- | --- |
| Jetty/pier [ ]  | Pontoon [ ]  | Boat ramp [ ]  |
| Mooring pile [ ]  | Deck [ ]  | Boardwalk [ ]  |
| Other type of marine access structure (please specify)       |
| Damaged marine access structure, or part thereof, to be removed prior to being replaced (please provide specific details of what requires removal and how this will occur)

|  |  |
| --- | --- |
| [ ]  | Include demolition works on the proposed plans (required) |

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# Eligibility criteria (responses are mandatory)

The proposed tidal works are ONLY deemed to meet the special circumstance for excluded work if all the relevant eligibility criteria listed below are ticked ‘YES’ or ‘not applicable’, or otherwise agreed to in writing by DESI.

If the proposed works are not eligible to be excluded work then the work is assessable development and a development permit is required. Note that [owner’s consent](https://www.qld.gov.au/environment/land/state/owner-consent) is required prior to lodging a development application.

|  |  |  |
| --- | --- | --- |
| 1 | Was the structure damaged/destroyed in the South East Queensland floods from 22 February to 7 March 2022 and in one of the following local government areas:* Brisbane, Bundaberg, Fraser Coast, Gladstone, Gold Coast, Gympie, Ipswich, Logan, Moreton Bay, Noosa, Redland, Sunshine Coast?
 | [ ]  YES [ ]  NO → Works cannot proceed under the special circumstance provisions. A new [development approval](https://planning.statedevelopment.qld.gov.au/planning-framework/development-assessment/development-assessment-process/exemption-certificates) must be obtained. |
| 2 | Is there a development approval for the damaged/destroyed structure? This approval may be under section 86 of the *Harbours Act 1955* or under the relevant provisions of either the *Integrated Planning Act 1997*, the *Sustainable Planning Act 2009* or the *Planning Act 2016*[[2]](#footnote-3).If you are unsure you can [search](https://www.qld.gov.au/environment/coasts-waterways/plans/development/tidal-works/approvals-search) for historical approvals or for works constructed post-2005 please contact your local Council. | [ ]  YES → Attach existing development approval and plans[ ]  NO → Works cannot proceed under the special circumstance provisions. A new [development approval](https://planning.statedevelopment.qld.gov.au/planning-framework/development-assessment/development-assessment-process/exemption-certificates) must be obtained. |
| 3 | Has the tidal work been destroyed and therefore require replacement, or is the damage to the structure greater than 20% (e.g. pontoon flotation unit)? | [ ]  YES → Attach proposed plansEstimated percentage of damage to the structure …………%[ ]  NO → Maintenance comprising <20% of the structure is excluded work (maintenance work on a lawful work) and can be undertaken without the need to notify DESI. See the [Excluded Work (Coastal) Guideline](https://www.des.qld.gov.au/policies?a=272936:policy_registry/gl-cd-excluded-works.pdf) for more information. |
| 4 | Do the proposed works comply with the relevant performance outcomes of the Prescribed Tidal Works Code relating to design, construction and safety?Note: The relevant performance outcomes are 12.1-12.8, 13.1, 13.2, 15.1-15.3, 16.1-16.2, 18.1-18.6, 20.1.For performance outcomes that would ordinarily require the acceptable outcome to be complied with[[3]](#footnote-4) and where a relevant planning scheme standard no longer supports a like-for-like replacement of the damaged structure, the alternative acceptable outcome must be met. | [ ]  YES → Provide a statement from a RPEQ confirming the works comply[ ]  NO → Works cannot proceed under the special circumstance provisions |
| 5 | Are the proposed works a like-for-like[[4]](#footnote-5) reconstruction of the pre-existing lawful structure? | [ ]  YES → Attach proposed plans to demonstrate the works are a like-for-like replacement of the pre-existing structure[ ]  NO → Works cannot proceed under the special circumstance provisions |
| 6 | For replacement or repair of pontoons, are the following requirements met?1. The pontoon flotation unit(s) are securely connected to each other and to the restraint piles or shore mounted anchor with a grade 316 stainless steel wire rope and shackle anchor system with sufficient retention strength if the flotation unit(s) separates from the principal restraint system;
2. The connection between the wire rope and the restraint piles shall include a system to prevent the wire rope rising above the top of the piles, where weighted chain is specified for this purpose it shall be grade 316 stainless steel; and
3. The anchor rope is coiled with cable ties so that it is concealed from view.
 | [ ]  YES → Include the anchor system on proposed plans[ ]  NO → Works cannot proceed under the special circumstance provisions[ ]  N/A → The structure is not a pontoon |
| 7 | For replacement or repair of pontoons, does the pontoon flotation unit(s) include an owner identification plate made from an engraved 3 mm grade 316 stainless steel plate, dimensions 50 x 100 mm, affixed using 316 stainless steel tamper proof fasteners to the deck of each module in a location where it is readily visible but will not be a trip or slip hazard?The identification plate must include the lot and plan details and the address of the land to which the pontoon attaches. | [ ]  YES → Provide a statement in writing from the pontoon manufacturer or design consultant that this will be achieved[ ]  NO → Works cannot proceed under the special circumstance provisions[ ]  N/A → The structure is not a pontoon |
| 8 | For pontoons containing polystyrene, are the following requirements met for the core protection liner (or membrane) used to protect the pontoon flotation unit?1. The materials used are rotomoulded tubs, welded high density polyethylene (HDPE) membranes or composites; and
2. The liner/membrane includes at least one layer on the sides, ends and base of minimum thickness 6 mm to protect the flotation chamber core from debris and sharp objects. Concrete shells used as core liners are permitted, provided concrete cover requirements are met in accordance with AS3600.
 | [ ]  YES → Include specific detail on the plans to demonstrate this requirement is met[ ]  NO → Works cannot proceed under the special circumstance provisions[ ]  N/A → The pontoon design does not contain polystyrene and does not require a core protection liner (e.g. welded aluminium pontoons) OR the structure is not a pontoon |
| 9 | For private marine development (jetty, pontoon, boat ramp) in natural waterways, are the proposed works located within a Water Allocation Area for the lot as per the [water allocation area guideline](https://www.des.qld.gov.au/policies?a=272936:policy_registry/preparing-water-allocation-area-tidal-works.pdf)? | [ ]  YES → Provide a water allocation area plan in accordance with the guideline[ ]  NO → A statement must be provided to justify why the works cannot be relocated within the extended side boundaries of the lot to comply with the water allocation area guidelineIf DESI does not accept the justification than the works cannot be considered excluded work for the purposes of this form.[ ]  N/A → The structure is not private marine development |

# Information required for the proposed work to be considered as excluded work

## Submit the following to DESI prior to construction works commencing:

[ ]  this form, completed in full and signed and include the following attachments:

1. [ ]  clear photos showing the remaining structure and current site condition of the proposed works
2. [ ]  existing development approval and plans
3. [ ]  proposed plans certified by a registered professional engineer of Queensland (RPEQ), including layout and cross section plans – anchor systems and core protection liner details must be clearly shown on pontoon plans
4. [ ]  a demolition plan (if relevant)
5. [ ]  a statement from a RPEQ, suitably qualified and experienced in such works, confirming the proposed works comply with the relevant performance outcomes of the Prescribed Tidal Works Code as required by Eligibility Criteria #4
6. [ ]  for pontoons, a statement from a pontoon manufacturer or design consultant confirming that an identification plate will be installed on the pontoon flotation unit
7. [ ]  a water allocation area plan[[5]](#footnote-6).

## Notification must be properly made

DESI will provide confirmation in writing, within 10 business days of receiving the notification form whether the notification is a properly made submission for the purpose of meeting the special circumstance provisions for excluded work or not. Works may only proceed once this confirmation has been provided.

## Confirmation that the works have been completed

Submit the following to DESI within 10 business days of the completion of works:

1. [ ]  date of completion of works (must be prior to 1 May 2026)
2. [ ]  confirmation that the works have been completed in accordance with the plans provided in section 6 of this form
3. [ ]  clear photos showing the extent of the site after completion of the work. The post-work photos are to be taken at the same orientation as the pre-work photos.

Submit the notification for excluded work and the post-work notification to Permit and Licence Management (ATTN: Coastal and Marine Assessment) via email to palm@des.qld.gov.au or mail to:

Permit and Licence Management

Department of Environment, Science and Innovation

GPO Box 2454

Brisbane Queensland 4001

**Note**: DESI will notify the relevant local government of works to be carried out under the special circumstance provisions.

# Other matters

**Work may be subject to other approvals**

Note that works eligible for a special circumstance as set out in this notification form are only excluded work under the Planning Regulation 2017 as it relates to tidal works, or work carried out completely or partly in a coastal management district. Proponents may need to obtain approvals under other State or Commonwealth legislation, including approval under the Planning Act (e.g. for disturbance to marine plants or disposal of dredged material in tidal waters) or *Marine Parks Act 2004*. Proponents are advised to check with all relevant statutory authorities for such requirements. Proponents should contact their local [SARA regional office](https://planning.statedevelopment.qld.gov.au/contact-us) for other development approval requirements.

**General Environmental Duty**

All works undertaken under this guideline are to be consistent with the General Environmental Duty as defined

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

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

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

# Declaration

I declare that:

[ ]  I am:

[ ]  the owner of the land containing, attached to or benefiting from the tidal works or I am acting on behalf of the land owner and I have provided a signed letter from the land owner authorising me to lodge this form and act on their behalf; or

[ ]  for State-owned land, a representative of the trustee or entity responsible for ensuring the proposed structure is in a safe condition

[ ]  For a body corporate, trust or company, I am lawfully authorised to make this notification for the entity and that entity has agreed to the submission of this form

[ ]  The structure was damaged or destroyed as a consequence of the South East Queensland floods from 22 February to 7 March 2022

[ ]  The replacement structure will be in the same location and occupy the same footprint as the previously approved damaged/destroyed structure, unless an alternative water allocation area has been approved in writing by the department

[ ]  The replacement structure will be constructed on a ‘like-for-like’ basis as the damaged/destroyed structure and will comply with current design standards

[ ]  The replacement structure will meet the design, construction and safety criteria of the current Prescribed Tidal Works Code as required by Eligibility Criteria #4

[ ]  The rebuilding of the structure will be finalised by 1 May 2026

[ ]  I will provide confirmation that the works have been completed as per section 6.3

[ ]  The information provided is true and correct to the best of my knowledge

[ ]  I understand that all information supplied on or with this notification form may be disclosed publicly in accordance with the *Right to Information Act 2009* and the *Evidence Act 1977.*

**Note:** If you have not told the truth in this notification you may be liable for prosecution under the relevant Acts or Regulations.

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| land owner/s or AUTHORISED PERSON/s FULL NAME      |
|  |
| SIGNATURE/s  |  | DATE      |

1. See Coastal Protection and Management Regulation 2017, schedule 3 [↑](#footnote-ref-2)
2. For tidal works constructed prior to 2005 please [request a search](https://www.qld.gov.au/environment/coasts-waterways/plans/development/tidal-works/approvals-search) for historical tidal work approvals. [↑](#footnote-ref-3)
3. Coastal Protection and Management Regulation 2017, schedule 3, part 2, s5(2) [↑](#footnote-ref-4)
4. ‘Like-for-like’ includes use of updated materials, or minor changes to the dimensions of items used in the reinstatement, however the structure must be substantially the same and serve essentially the same purpose as the original structure. Increased pile height, diameter or number to accommodate flood risk is considered to meet this requirement. [↑](#footnote-ref-5)
5. The DESI Guideline: *Preparing a water allocation area for tidal works in natural waterways* can be found on the Queensland government [website](https://www.qld.gov.au/environment/coasts-waterways/plans/resources). [↑](#footnote-ref-6)