



Implementation of The Spit Master Plan Bill 2019

Report No. 45, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
February 2020

State Development, Natural Resources and Agricultural Industry Development Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Pat Weir MP, Member for Condamine
Members	Mr David Batt MP, Member for Bundaberg
	Mr James (Jim) Madden MP, Member for Ipswich West
	Mr Brent Mickelberg MP, Member for Buderim
	Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney

Committee Secretariat

Telephone	+61 7 3553 6623
Fax	+61 7 3553 6699
Email	sdnraidc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/SDNRAIDC

Acknowledgements

The committee acknowledges the assistance provided by the Department of State Development, Manufacturing, Infrastructure and Planning, the Gold Coast Waterways Authority, and the Queensland Parliamentary Service.

Contents

Abbreviations	ii
Chair's foreword	iii
Recommendations	iv
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Bill	1
1.4 Government consultation on the Bill	2
1.5 Should the Bill be passed?	2
2 Background to the Bill	3
2.1 The Spit Master Plan	3
2.2 The Gold Coast Waterways Authority	5
3 Examination of the Bill	7
3.1 Granting of unallocated state land outside the processes under the <i>Land Act 1994</i>	7
3.1.1 Land tenure	8
3.1.2 Continuing arrangements for land tenure	9
3.2 Roads and road closures	10
3.3 Amendment of the <i>Gold Coast Waterways Authority Act 2012</i>	11
3.3.1 Spit works program	12
3.3.2 Publication of annual and quarterly reports	13
3.3.3 Gold Coast Waterways Authority board membership	14
3.3.4 Clarification of roles and the overall management of The Spit	16
3.4 Other matters associated with implementation of The Spit Master Plan	18
3.4.1 Legislative protection of aspects of the master plan	18
3.4.2 Land status of Curlew Island	19
3.4.3 Ongoing impacts of helicopter operations on the implementation of the master plan	22
3.4.4 Impact of superyacht facility on public parkland	23
3.5 Amendment of the <i>Planning Act 2016</i>	24
4 Compliance with the <i>Legislative Standards Act 1992</i>	26
4.1 Fundamental legislative principles	26
4.1.1 Rights and liberties of individuals	26
4.2 Explanatory notes	27
Appendix A – Submitters	28
Appendix B – Officials at public briefing	29
Appendix C – Witnesses at public hearing	30

Abbreviations

Bill	Implementation of The Spit Master Plan Bill 2019
CoGC / GCCC	City of Gold Coast / Gold Coast City Council
committee	State Development, Natural Resources and Agricultural Industry Development Committee
Destination Gold Coast	Gold Coast Tourism Corporation Ltd
DNRME	Department of Natural Resources, Mines and Energy
DSDMIP	Department of State Development, Manufacturing, Infrastructure and Planning
GCWA	Gold Coast Waterways Authority
GCWA Act	<i>Gold Coast Waterways Authority Act 2012</i>
Land Act	<i>Land Act 1994</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
master plan	The Spit Master Plan
Planning Act	<i>Planning Act 2016</i>
QUDAPP	Queensland Urban Design and Places Panel
SOSA	Save Our Spit Alliance Inc
Spit Development Minister	Minister for State Development, Manufacturing, Infrastructure and Planning
USL	unallocated state land
VRTP	Village Roadshow Theme Parks Pty Ltd

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Implementation of The Spit Master Plan Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

This Bill is part of a process to establish a shared vision for the long term future of The Spit. The Bill will facilitate the delivery of The Spit Master Plan which will guide development on The Spit for the decades to come.

The committee visited The Spit and met with the Gold Coast Waterways Authority. This opportunity provided a valuable insight into both the master plan itself and how this Bill is critical in the delivery of that master plan. The committee were genuinely impressed with the vision, effort and commitment of all stakeholders in developing and now delivering an exciting future for The Spit.

On behalf of the committee, I thank those individuals and organisations who participated in the process to examine the Bill. I also thank committee members for their work during this inquiry. Thank you to the Department of State Development, Manufacturing, Infrastructure and Planning and our Parliamentary Service staff.

I commend this report to the House.



Chris Whiting MP
Chair

Recommendations

Recommendation 1 **2**

The committee recommends the Implementation of The Spit Master Plan Bill 2019 be passed.

Recommendation 2 **15**

The committee recommends that clause 25 of the Implementation of The Spit Master Plan Bill 2019 be amended to include the following in proposed section 45(2)(aa), 'design and aesthetics of public open spaces, parks and natural environments, and built forms'.

Recommendation 3 **22**

The committee recommends that, as a matter of priority, the Department of Natural Resources, Mines and Energy survey and register the land mass of Curlew Island as an environmental reserve, to enable the ongoing protection and management of Curlew Island.

Recommendation 4 **23**

The committee recommends that all stakeholders collaborate to expeditiously resolve the issues regarding helicopter operations within The Spit Master Plan area.

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The Implementation of The Spit Master Plan Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 26 November 2019. The committee was required to report to the Legislative Assembly by 7 February 2020.

On 28 November 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Eighteen submissions were received (see Appendix A for a list of submitters).

The committee received a public briefing on the Bill from the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) on 18 December 2019 (see Appendix B for a list of officials).

The committee was greatly assisted by the written advice provided by DSDMIP in response to matters raised in submissions.

The committee held a public hearing on 18 December 2019 with witnesses from the Gold Coast Waterways Authority (see Appendix C for a list of witnesses).

The submissions, correspondence from DSDMIP, and transcripts of the briefing and hearing are available on the committee's webpage.²

1.3 Policy objectives of the Bill

The primary objective of the Bill is to facilitate the implementation of The Spit Master Plan (master plan) by:

- streamlining processes for the granting of particular interests in land and road closures in the master plan area to accelerate the site release program

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC/inquiries/current-inquiries/TSMPB2019>

- expanding the roles, scope and capabilities of the GCWA to enable it to deliver the capital works program.³

The Bill also seeks to amend the *Planning Act 2016* (Planning Act) in order to:

- clarify the intended scope of compensation rights in relation to an ‘adverse planning change’, in particular that compensation is available in relation to development that is assessable development, both before and after the adverse planning change, and
- include transitional arrangements to ensure that any ‘affected owner’ who may have been unable to claim compensation as a result of the current provisions of the Planning Act may do so within six months of the commencement.⁴

1.4 Government consultation on the Bill

The explanatory notes describe consultation which occurred in the planning phase for the development of the master plan released in May 2019. Given the extensive nature of this consultation the explanatory notes state that ‘no further community consultation has been undertaken for the purpose of the Bill as its primary purpose is to facilitate the implementation of the master plan’. According to the explanatory notes there is ‘broad support’ for the Bill from state government agencies and the GCWA.⁵

DSDMIP advised that formal consultation was not undertaken on the proposed amendments to the Planning Act as these amendments did not add any regulatory burden and were expected to have a positive outcome for Queensland landowners.⁶

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives and consideration of the information provided by DSDMIP and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Implementation of The Spit Master Plan Bill 2019 be passed.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 5.

⁶ Mr Gerard Coggan, Department of State Development, Manufacturing, Infrastructure and Planning, public briefing transcript, Brisbane, 18 December 2019, p 3.

2 Background to the Bill

2.1 The Spit Master Plan

The Spit is a permanent sand structure of approximately 201 hectares that separates the Gold Coast Broadwater from the Pacific Ocean. It is an area of both cultural and social significance, and is a unique, green coastal stretch which is used by thousands of people every day.⁷

Figure 1: The Spit, Gold Coast, Queensland



Source: Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 6.

However, The Spit has not had a clear direction for the future until the development of The Spit Master Plan. The Hon Cameron Dick MP, Minister for State Development, Manufacturing, Infrastructure and Planning noted:

*This is a plan by the people, for the people. The vision, strategies and precincts together create a cohesive framework for the future of The Spit, and it brings consensus to a part of the Gold Coast that for too long has been contested.*⁸

⁷ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 5.

⁸ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 5.

The master plan vision for The Spit is that it:

- is renowned as a destination that exemplifies a harmonious balance between tourism, recreation, leisure experiences and the environment
- connects the community and visitors with the landscape and marine environment
- protects and enhances its natural assets and coastal parkland.⁹

To achieve this vision the master plan aims to:

- enhance the public realm of The Spit to create a community space for local residents
- improve connections to the surrounding marine environment, including The Broadwater
- generate opportunities for job creation through tourism, entertainment and recreation
- get the balance right between protecting environmental and community values and facilitating appropriate development opportunities.¹⁰

Figure 2: The Spit Master Plan area



The master plan area is comprised of seven precincts:

1. The Top of The Spit - a parkland of regional significance.
2. Wave Break and Curlew Islands - a natural retreat in the heart of The Broadwater as a contrast to the developed coastlines of Runaway Bay, Labrador and Southport.
3. Federation Walk Coastal Reserve - a representative coastal environment that exhibits an array of the habitats, landscape settings and species endemic to the Gold Coast.
4. Muriel Henchman Park – safe and efficient vessel launching facilities, related parking areas, a small waterside park and a series of buildings accommodating community organisations and those who oversee the safe use of the Gold Coast's beaches and waterways and, therefore, require direct water access.
5. The Village Centre - provides a range of retail, entertainment, cultural, residential, short term accommodation, and commercial activities. The Village Centre precinct comprises three distinct sections that extend over the 2.2 kilometre length of the precinct. The three sections are Village Centre Sea World, Village Centre North and Village Centre South.

Source: Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 47.

⁹ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 19.

¹⁰ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 9.

6. Philip Park - this precinct envisages two alternative outcomes. The first outcome maintains the role of Philip Park as an open space. The second includes a potential cruise ship terminal being located in the northern part of Philip Park, with the balance of the park providing recreation facilities and open space areas.
7. The Southern Gateway - provides for an entry to The Spit. The parkland areas in the Southern Gateway offer a range of recreation opportunities and facilities for visitors and nearby residents. The marina caters for ongoing high demand for vessel mooring and storage.¹¹

The southern portion of South Stradbroke Island, part of the Main Beach residential area adjacent to The Spit, and The Broadwater, were included in the study area for the development of The Spit Master Plan 'for contextual purposes'.¹²

2.2 The Gold Coast Waterways Authority

Gold Coast Waterways Authority (GCWA) was established as a statutory authority in December 2012 under the *Gold Coast Waterways Authority Act 2012* (GCWA Act). The authority is led by a decision-making board of seven members and chief executive officer. GCWA has 30 full-time equivalent employees and also engages contractors, as required, to enable the delivery of the authority's objectives.¹³

GCWA is tasked with planning, managing and protecting the Gold Coast's waterways.

Other purposes under the GCWA Act include:

- plan for and facilitate the development and management of the Gold Coast waterways over the long term in a way that is sustainable and considers the impact of development on the environment
- improve and maintain navigational access to the Gold Coast waterways
- develop and improve public marine facilities relating to the Gold Coast waterways
- promote and manage the sustainable use of the Gold Coast waterways for marine industries, tourism and recreation.¹⁴

GCWA responsibilities include the management of:

- five rivers
- 260 kilometres of navigable waterways
- more than 750 hectares of lakes and dams as well as interests in the associated Crown reserves of Doug Jennings Park, Wave Break Island and the southern tip of South Stradbroke Island
- the Gold Coast's Sand Bypass System, which plays a critical role in coastal management and maintaining safe navigational access to the Seaway, The Broadwater and waterways beyond.¹⁵

The location of the GCWA's areas of responsibility are shown in Figure 3.

¹¹ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, pp 47 – 96.

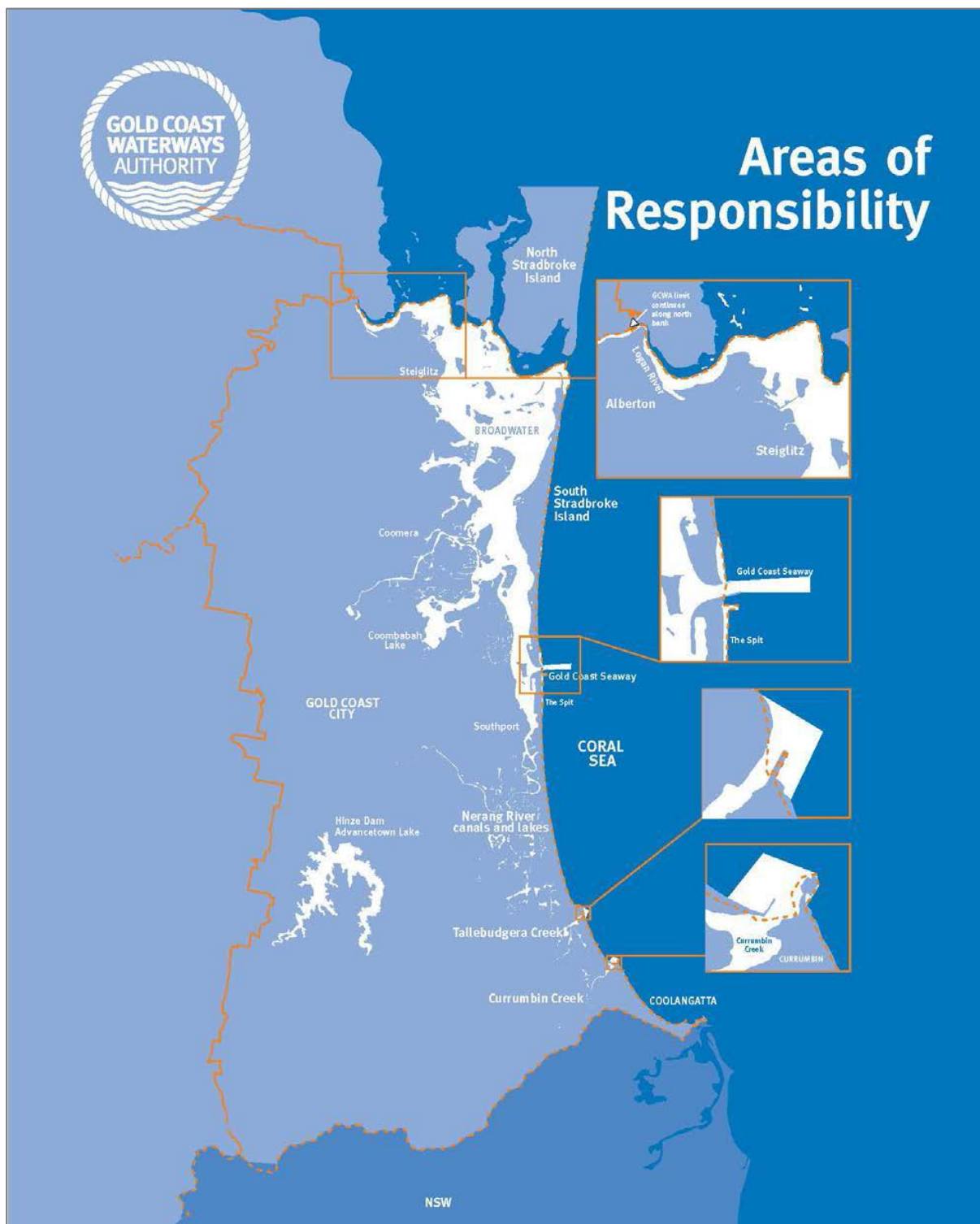
¹² Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 10.

¹³ Gold Coast Waterways Authority, *Annual report 2018-19*, Notes to and Forming Part of the Financial Statements, 2018-19, p 13.

¹⁴ Gold Coast Waterways Authority, *Our Organisation*, <https://gcwa.qld.gov.au/our-organisation/>

¹⁵ Gold Coast Waterways Authority, *Annual report 2018-19*, p 6.

Figure 3: Gold Coast Waterways Authority – Areas of responsibility



Source: Gold Coast Waterways Authority, *Annual Report 2018-19*, p 7.

3 Examination of the Bill

The primary objective of the Bill is to facilitate the implementation of The Spit Master Plan, which was released in May 2019 by the state government. The explanatory notes state that:

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

- *a capital works program to oversee the funding and delivery of a series of capital work projects, such as public realm improvements on The Spit; and*
- *a site release program to manage the release of development sites identified in the master plan.*¹⁶

To achieve its objective the Bill seeks to:

- streamline the processes for the granting of particular interests in land and road closures in the master plan area to accelerate the site release program; and
- expand the GCWA's roles, scope and capabilities to enable it to deliver the capital works program.¹⁷

Mr Gerard Coggan, Acting Deputy Director-General, Investment Facilitation and Partnerships, DSDMIP outlined:

The primary objective of the bill is to facilitate the implementation of the master plan for the Southport Spit. To achieve this objective, the bill will enable unallocated state land in the master plan area to be granted to the state in freehold without competition and streamline the process for road closures in the master plan area, and amend the Gold Coast Waterways Authority Act 2012 to empower the Gold Coast Waterways Authority to deliver a series of capital works projects such as public realm improvements to the Spit. The bill also includes additional amendments to the Gold Coast Waterways Authority Act and the Planning Act 2016 for particular purposes.

*In relation to the implementation of the master plan, certain provisions in the bill deal with road closures and granting of unallocated state land outside the processes under the Land Act 1994.*¹⁸

3.1 Granting of unallocated state land outside the processes under the Land Act 1994

The Bill enables unallocated state land in the master plan area to be granted under the Land Act 1994 (Land Act) to the state as freehold. The explanatory notes state that:

*All of the land in the master plan area is non-freehold state-owned land held under various forms of tenure under the Land Act. The Department of Natural Resources, Mines and Energy (DNRME) has identified that the most appropriate tenure pathway to facilitate the release of the development sites identified in the master plan is to grant the development sites in freehold to the State, with long-term leases to be issued to the market. Some areas may also be leased to the State either as perpetual or term leases.*¹⁹

Mr Coggan from DSDMIP advised:

The master plan ... identifies several sites that can be released to the market for commercial development. These sites are currently state owned land under a range of tenures. These tenure arrangements restrict commercial development opportunities and financial returns to the state.

¹⁶ Explanatory notes, p 1.

¹⁷ Explanatory notes, p 2.

¹⁸ Public briefing transcript, Brisbane, 18 December 2019, p 2.

¹⁹ Explanatory notes, p 2.

*The most appropriate tenure pathway to facilitate the release of the development sites is to grant the land in freehold to the state, with long-term commercial leases to be granted over freehold titles as required. No freehold title to land in the master plan area will be granted to private interests. It is intended that some areas would be leased to the state under the Land Act 1994 as either perpetual or term leases if required to meet the objectives of the master plan.*²⁰

The Bill removes the requirement to apply s 16 of the Land Act (which ordinarily requires an evaluation of the relevant land to assess the most appropriate tenure and use for the land) to the granting of a lease of unallocated state land in the master plan area if the grant is to the state.²¹ Despite the Land Act, no fee or amount is payable by the state in relation to a freehold grant, including a purchase price for the land, or an amount for the value of improvements on the land or a fee for the registration of the grant.²²

The Bill also amends s 122 of the Land Act to allow for the granting, without competition, of a deed of grant of unallocated state land in the master plan area under the proposed Implementation of The Spit Master Plan Act 2019.²³ The committee was informed that:

*Currently the Land Act restricts the granting of unallocated state land to the state as freehold without competition other than to the Minister for Economic Development Queensland or a constructing authority if it is needed for a public purpose. The bill seeks to enable state owned land to be granted to a state entity—in this case the department—as freehold without competition. This will only apply to the master plan area. The bill further specifies that section 16 of the Land Act is not applicable in relation to the grant of unallocated state land in the master plan area to the state as freehold and clarifies that no fee or amount is payable by the state in relation to the freehold grant on the Spit.*²⁴

The grant of interests in land will facilitate essential commercial developments such as marina, retail, commercial, residential, new resorts and short term accommodation.²⁵

3.1.1 Land tenure

Mr John Hicks raised concerns that the final master plan seems to allow the sale of leasehold land on the GCWA site for private, long-term residential dwellings and that there are significant areas of unallocated state land on The Spit that need to be urgently designated to an alternative tenure to avoid inappropriate development.²⁶ Similarly, Mr Philip Follent sought reassurance that:

*... no Crown lands on the Spit are to be offered for development as any tenure other than leasehold. In addition, no perpetual leases should be offered... [and] that no additional long-term residential accommodation is permitted on the Spit other than caretaker and ranger accommodation.*²⁷

Mr Richard Holliday noted:

²⁰ Public briefing transcript, Brisbane, 18 December 2019, p 2.

²¹ Explanatory notes, p 8.

²² Explanatory notes, p 8.

²³ Bill, cl 28.

²⁴ Mr Gerard Coggan, Department of State Development, Manufacturing, Infrastructure and Planning, public briefing transcript, Brisbane, 18 December 2019, p 2.

²⁵ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, pp 47 – 96.

²⁶ Submission 9, p 1.

²⁷ Submission 10, p 1.

... the Implementation of The Spit Masterplan Bill 2019 is a welcomed achievement, however it does not address the long-term protection of The Spit and leaves the entire area vulnerable to further easy legislative amendments by government's into the future.²⁸

Mr John Hicks proposed the urgent need to develop and legislate a new land tenure map for The Spit planning area to reflect the intent of the master plan and to protect against the risk of inappropriate development of unallocated state land.²⁹ Mr Holliday suggested:

I would be very heartened to see government introduce further legislation as an example, it could be something similar to the creation of The Spit as a location of 'significant importance' ie the Unesco Noosa Biosphere, The Spit National Park, The Spit Gold Coast Ocean Park (a new name that we see as a result of the Spit Masterplan consultation process) or a strengthened extension in terms of environmental protection to the Moreton Bay Marine Park Act or a new mechanism specifically drafted for The Spit that enshrines the protection of The Spit in new legislation.³⁰

In response to the proposal for a new land tenure map for The Spit planning area to reflect the intent of the master plan, DSDMIP argued:

It is considered a current land tenure map reflecting a point in time will be of limited benefit, as the Bill specifically makes provision for land tenures to be amended. In addition, some of the purposes for reserve land held in trust by different entities will also have to be amended to make provision for the implementation of specific master plan outcomes.³¹

With respect to concerns regarding the potential for future land tenure changes for commercial development, Mr Coggan from DSDMIP stated:

The master plan has identified a series of sites available for commercial release. It is only those sites that will be freeholded to the department. The department is still going through a process of taking commercial advice around the term of those leases. The term is likely to be 99 years or more, but it really needs to be commensurate with the investment that is proposed on those sites, so it is not the intent to issue perpetual leases to private sector interests on the Spit.³²

The committee was informed that currently there are two commercial businesses in The Spit master plan area operating under perpetual leases. There is a small section of freehold land at the very southern tip of the master plan area but there is no freehold land in any of the development parcels or precincts identified in the master plan.³³

DSDMIP senior officers confirmed that 'the government has made it very clear that freehold will not be granted'.³⁴

3.1.2 Continuing arrangements for land tenure

Village Roadshow Theme Parks (VRTP) is the owner and operator of Sea World and Sea World Resort under lease from the state government on land that forms part of The Spit. Under the master plan VRTP will develop:

²⁸ Submission 12, p 1.

²⁹ Submission 9, p 1.

³⁰ Submission 12, pp 1-2.

³¹ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 11.

³² Public briefing transcript, Brisbane, 18 December 2019, p 3.

³³ Mr Michael Carey, Department of State Development, Manufacturing, Infrastructure and Planning, public briefing transcript, Brisbane, 18 December 2019, p 8.

³⁴ Public briefing transcript, Brisbane, 18 December 2019, p 5.

- a new resort to the south of Sea World which will provide additional short term accommodation facilities³⁵
- the Sea World theme park's car parking capacity is maintained ... Over time, a redeveloped car park accommodates vehicles in a multi-level structure.³⁶

VRTP noted that:

*... where the Bill allows the State Government to grant long term tenure arrangements, VRTP would welcome its existing arrangements with the State being extended to reflect those long-term arrangements. VRTP also expects that any land allocation will be consistent with the existing rights of all current landholders.*³⁷

DSDMIP noted the importance of certainty for businesses looking to invest in The Spit:

*With this in mind, DSDMIP is working towards releasing the 9,858 sqm site adjacent to Sunland's Mariner's Cove in early 2020. A successful proponent will be selected at the conclusion of this competitive market process... DSDMIP is also conducting due diligence for the release of other development sites in the master plan area. These sites are more complicated as they involve interests of existing tenure holders amongst other interests. These interests will be carefully considered when formulating a strategy to release those sites.*³⁸

However, DSDMIP noted that the extension of lease terms of current leasehold interests under the Land Act is outside the scope of the Bill.³⁹

3.2 Roads and road closures

The Bill allows the Minister to perform functions or exercise powers considered necessary or desirable to facilitate the implementation of the master plan. The explanatory notes highlight that this may include the Minister permanently or temporarily closing all or part of a road in the master plan area, whether or not the road is a state-controlled road, under the *Transport Infrastructure Act 1994* or the Land Act. The Minister may also do everything necessary to stop traffic using a road or part of a road closed under this clause. The Minister must publish notice of the closure in a newspaper circulating in the Gold Coast local government area.

Clause 7 of the Bill sets out that s 75 of the *Local Government Act 2009* and s 33 of the *Transport Infrastructure Act 1994* do not apply in relation to the performance of a function, or the exercise of a power.⁴⁰

Gecko Environment Council suggested that an explanation should be provided about the reason for the Bill's provision to remove the ability for public objection to closure of roads in the master plan area.⁴¹ Destination Gold Coast and the Urban Development Institute of Australia Queensland

³⁵ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, Outcome 5.10, p 68.

³⁶ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, Outcome 5.11, p 68.

³⁷ Submission 1, p 2.

³⁸ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 8.

³⁹ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 8.

⁴⁰ Explanatory notes, p 7.

⁴¹ Submission 8, p 2.

supported streamlining processes such as road closures in the master plan area to ‘accelerate the site release programs’.⁴²

DSDMIP provided the following explanation for the process for road closures proposed in the Bill:

The provision is not expected to have wide-ranging or significant negative impact on the community given:

- *the extensive consultation process undertaken during the drafting of the master plan, which enabled the public to be aware of the potential developments with the master plan area*
- *the community is supportive of the master plan*
- *potential road closure in accordance with the master plan will only affect a single, to date unformed road*
- *the provision applies to a specific area and is for a specific purpose, similar to the road closure provisions contained in the Economic Development Act 2012 and State Development and Public Works Organisation Act 1971*
- *the provision does not exclude the Judicial Review Act 1991.*⁴³

3.3 Amendment of the Gold Coast Waterways Authority Act 2012

The Bill expands the purposes of the GCWA Act beyond the management of the Gold Coast waterways and associated activities to facilitate the implementation of the master plan through the development and delivery of a program of community infrastructure and public realm works. Mr Coggan from DSDMIP outlined that:

*Currently, the authority’s function and expertise relates to the management of the waterways on the Gold Coast. The bill expands the authority’s functions and capabilities to enable it to undertake the broader capital works program for the implementation of the master plan.*⁴⁴

The explanatory notes state that:

*As a trusted statutory authority with a strong local presence and established role in managing and enhancing the Gold Coast waterways and land parcels associated with and under its control, the GCWA is considered the most appropriate entity to lead the capital works program for the implementation of the master plan. Legislative amendments to the GCWA Act are the only way to enable the GCWA to undertake these additional responsibilities.*⁴⁵

Several submitters highlighted that GCWA has an excellent reputation within the Gold Coast community and among those who visit the location. Mr Richard Holliday stated:

*Their service and infrastructure delivery is first class and their management of the matters within their legislative arrangements is commendable.*⁴⁶

⁴² Destination Gold Coast, submission 2, p 1; Urban Development Institute of Australia Queensland, submission 14, p 1.

⁴³ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 3.

⁴⁴ Public briefing transcript, Brisbane, 18 December 2019, p 2.

⁴⁵ Explanatory notes, p 3.

⁴⁶ Submission 12, p 1.

3.3.1 Spit works program

Clause 18 of the Bill inserts s 20A in the GCWA Act which sets out the development of a Spit works program for annual approval by the Minister. Given the complexity and potentially multiple projects to manage, GCWA sought a clarification of the Bill:

The separate program of works requested in section 20A (2)(b) requires clarification. GCWA recommends amending 20A (2)(b) to read 'a separate project schedule for each item of community infrastructure and public realm works to be delivered'.⁴⁷

In response to this matter DSDMIP stated that:

The GCWA will lead community consultation and engagement activities for implementation projects. These consultation and engagement activities are likely to be on a case-by-case basis and with stakeholders directly impacted by a project.

DSDMIP does not support the GCWA's suggested amendments to clause 20A(2)(b), as the Bill consistently refers to the 'works program'.⁴⁸

3.3.1.1 Funding of the Spit works program

Submitters raised concerns that the Bill 'does not outline a guaranteed ongoing minimum source of funding (beyond the initial \$60 million)' for GCWA to carry out its ongoing community infrastructure and public realm works and associated duties.⁴⁹ Save Our Spit Alliance (SOSA) noted:

... there is no guarantee the GCWA will have annual funding or suitable budgets to ensure the continued implementation of the Master Plan in a timely way or have the ongoing funds to appropriately govern the commercial, tourism and recreational activities that have been determined as being the duties and responsibilities of the GCWA by The Bill and as a consequence in accordance with The Spit Master Plan.⁵⁰

Submitters proposed that income generated on The Spit could be quarantined to guarantee future and appropriate funding of GCWA.⁵¹ Mr Philip Follent proposed that:

Income from rental leasing of crown land and from other Spit related businesses/ventures should, in the main, be quarantined to fund projects and maintain the improvements to The Spit.⁵²

SOSA suggested that the Bill be amended to allow:

... the GCWA to be the recipients of fees paid by users of the Spit for temporary or single events in each financial year; for instance, from the rental monies paid for the use of Doug Jennings Park for commercially based music events such as "Splendour in the Grass" (or similar), Polo Matches and the "Magic Millions Launch"... [Additionally] rather than all the lease monies collected from current (and future) commercial leases on The Spit - including (but not exclusively) the hotel, theme park and other enterprises - going into the State's 'consolidated revenue', SOSA requests that The Bill prescribes a proportion/percentage of these lease monies to be dedicated as a basic long-term financial foundation for the GCWA's community infrastructure and public realm works program and the GCWA's expanded ongoing day-to-day duties and realm works program and

⁴⁷ Submission 13, p 1.

⁴⁸ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 5.

⁴⁹ Save Our Spit Alliance, submission 5, p 6, Gecko Environment Council, submission 8, p 3.

⁵⁰ Submission 5, p 6.

⁵¹ Gecko Environment Council, submission 8, p 3; Mr Philip Follent, submission 10, p 1; Mr Richard Holliday, submission 12, p 3.

⁵² Submission 10, p 1.

*the GCWA's expanded ongoing day-to-day duties and obligations, once the initial \$60 million for these purposes has been utilised.*⁵³

Mr Richard Holliday proposed that GCWA be enlarged to 'The Spit Gold Coast Ocean Park Authority' to allow for funding to be found by:

*...allocating all revenues from The Spit currently directed to Queensland Treasury into a specific purpose accounts for the management and on going contributions to infrastructure as identified within The Spit Masterplan.*⁵⁴

In relation to the longer term funding of the Spit works program Mr Michael Carey, Executive Director, Investment Facilitation and Partnerships, DSDMIP informed the committee:

*...the intention is to reinvest the proceeds of the long-term lease sale back into the public realm works and the capital works program being carried out on the Spit. I do not think at this stage, without proponents and without developments under consideration, any consideration about the long-term income associated with those sites has been considered, but the government has quite clearly announced its intention to reinvest the proceeds from the sale of the commercial development sites into the capital works and public realm program that is going to support the vision of the master plan.*⁵⁵

3.3.1.2 Consultation

In developing a Spit works program, the Bill states that the GCWA must take reasonable steps to consult with—

- (a) the Gold Coast City Council; and
- (b) the community of the Gold Coast City local government area; and
- (c) another entity the Spit Development Minister considers may be affected by, or have an interest in, the Spit works program.⁵⁶

While submitters supported the need for consultation, Gecko Environment Council sought clarification regarding the level and form of public consultation and the rights of objection to such programs of works.⁵⁷ The Bill is unclear as to what is acceptable as 'reasonable steps to consult'.

Gecko Environment Council supported the development of a yearly plan of works within a three year plan of works and noted that in the development of these works programs that GCWA must undertake to consult with the community as well as the City of Gold Coast and other relevant entities affected.⁵⁸

3.3.2 **Publication of annual and quarterly reports**

Clauses 22 and 23 set out that the GCWA must produce quarterly performance reports and an annual report on the dual roles of implementing the master plan and managing the waterways of the Gold Coast. Gecko Environment Council argued the need to make public the quarterly reports to maintain high standards of governance:

*It is not stated in the Bill whether these reports will be made public, including but not limited to, publication on the GCWA website, and we recommend that this is the practice to ensure transparency and accountability.*⁵⁹

⁵³ Submission 5, p 7.

⁵⁴ Submission 12, p 3.

⁵⁵ Public briefing transcript, Brisbane, 18 December 2019, p 4.

⁵⁶ Bill, cl 18.

⁵⁷ Submission 8, p 3.

⁵⁸ Submission 8, p 3.

⁵⁹ Submission 8, p 3.

In response DSDMIP noted that the annual report will continue to be publically available:

*The GCWA currently delivers quarterly reports and an Annual Report to the Minister for Transport and Main Roads on its waterways management activities. The Annual Report is tabled in Parliament and published on the GCWA's website. This practice is expected to continue and include information on The Spit works program.*⁶⁰

3.3.3 Gold Coast Waterways Authority board membership

3.3.3.1 Composition of Gold Coast Waterways Authority board

The Bill allows the appointment if necessary of three additional board members. Clause 24 amends s 44(c) to provide that the GCWA board consists of the chairperson, the mayor of the Gold Coast City Council and 'at least 5, but no more than 8, other persons'.⁶¹ Additionally the Bill expands the areas of knowledge and expertise that would qualify a person to be appointed to the GCWA board, to include knowledge of and experience relevant to development and delivery of a Spit works program – major projects, project management and planning and development.⁶²

Submitters were supportive of the increase in the number of board appointments but noted that the current description of board appointments was too narrow.⁶³ A number of submitters proposed that the Bill should specify the skills, qualifications and experiences of new GCWA board members.

Destination Gold Coast argued that as the Gold Coast's peak destination marketing agency and given the direct impact that the implementation of master plan will have on the local visitor economy, an executive team member from Destination Gold Coast should be appointed to the GCWA board.⁶⁴

SOSA suggested the Bill be amended to allow for the addition of knowledge of and experience in 'architectural design and aesthetics of public open spaces, parks and natural environments, and built forms'.⁶⁵

Gecko Environment Council stated that:

*It is essential that any development on The Spit is of high quality that will capture the public imagination and appreciation now and into the future as a place made with world class standards of sustainable design and construction. This cannot be achieved without personnel on the Board with the requisite skills, knowledge and experience not always found in project managers, developers or planners*⁶⁶

and that any

*... proposed new members have demonstrated experience and qualifications and skills in architecture, sustainable design and aesthetics to ensure the preservation of the Spit and its landscape and aesthetics (e.g. an experienced architect with sound planning knowledge and skills). This will ensure a consistent high quality of development of both community infrastructure, public realm works and commercial development.*⁶⁷

Additionally, Mr Philip Follent suggested:

⁶⁰ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 6.

⁶¹ Bill, cl 24.

⁶² Explanatory notes, p 11.

⁶³ Save Our Spit Alliance, submission 5, p 4.

⁶⁴ Submission 2, p 1.

⁶⁵ Submission 5, p 4.

⁶⁶ Submission 8, p 4.

⁶⁷ Submission 8, p 3.

It is strongly suggested that the Board appoint an architect with experience and appropriate credentials to:

- *advise the Board about the varied and appropriate procurement practices that (a) capitalise on great designers and (b) can deliver exemplary design (public and private);*
- *critique the various design briefs for proposed works/projects*
- *advocate the involvement of the university schools of architecture*
- *liaise with a design review entity such as the QUDAPP (Queensland Urban Design and Places Panel) or a specially appointed design review panel.*⁶⁸

In response to proposals to include skills and expertise in architectural design and aesthetics of public open spaces, parks and natural environments, and built forms on the GCWA board, DSDMIP noted its support for ensuring that the GCWA board has the necessary skills and expertise to develop and deliver the Spit works program.⁶⁹

Given the unique and iconic nature of The Spit and vision for development under the master plan the committee considers that it is essential that the GCWA board has capacity and expertise in design and aesthetics of public open spaces, parks and natural environments, and built forms.

Recommendation 2

The committee recommends that clause 25 of the Implementation of The Spit Master Plan Bill 2019 be amended to include the following in proposed section 45(2)(aa), 'design and aesthetics of public open spaces, parks and natural environments, and built forms'.

3.3.3.2 Design review panel

Submitters proposed the appointment of a 'design review panel' to advise the GCWA board be included as a part of the Bill. It was noted that a design review panel was used in similar development models to ensure the promotion and execution of 'exemplary design outcomes and the protection of public interests'.⁷⁰ Gecko Environment Council recommended that:

*... the appointment of a Design Review Panel (or as a minimum, a standing sub-committee of the Qld Urban Design and Places Panel) to assist the Board decisions in this regard and strongly recommends that such a panel is included in this Bill.*⁷¹

DSDMIP informed the committee that the Department of Transport and Main Roads, the GCWA and DSDMIP did not support the suggestion to establish a separate design review panel to advise the GCWA board on design matters as:

*the Implementation Group is leading the development of a set of guidelines for project works on The Spit, including Public Realm Guidelines. Further, design aspects of projects can be addressed through community consultation to be undertaken by The GCWA. It is also intended that major development works will be subject to a design review process by the Queensland Urban Design and Places Panel.*⁷²

⁶⁸ Submission 10, p 2.

⁶⁹ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 4.

⁷⁰ Save Our Spit Alliance, submission 5, p 4.

⁷¹ Submission 8, p 4.

⁷² Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 6.

3.3.3.3 *Appointment process*

Submitters noted that the Bill does not clearly state what process or conditions will be undertaken in applying for the GCWA board positions or the qualifications and requirements of those who will then assess the applicants. Community member input into identification or appointment of GCWA board members was seen as beneficial.⁷³

DSDMIP noted that standard government process applies in selecting a member for the GCWA board.⁷⁴ Mr Hal Morris from GCWA clarified that:

*...like many other boards, the expectation for members on the board of the Gold Coast Waterways Authority is that when they are on the board they work in the best interests of the waterways and of the organisation. They are not there as representatives of segments of the community or segments of the market. I guess that is an important thing to note when you think about who might usefully be there to join the board.*⁷⁵

3.3.4 Clarification of roles and the overall management of The Spit

Submitters noted the complexity and management challenges of the various land tenures on The Spit with the current arrangements of responsibility not working effectively or with a single unified outcome. Save Our Broadwater stated that the community:

*... would also like to see a stronger and more holistic management regime than currently exists. There are many management issues that are currently contested about the uses of Spit land of which the Waterways Authority has no jurisdiction.*⁷⁶

Mr Philip Follent noted that GCWA will be required to work with City of Gold Coast, since most of the land on The Spit comes under the trusteeship of City of Gold Coast and that the Bill is silent on how a unified outcome is to be achieved:

The Master Plan calls for Place Management as an essential to deliver ongoing success to the Spit yet there is NO suggestion how this will be done. It is unlikely that this can be done with 2 entities doing their "own thing" unless there is an overriding control in the Act or a publicly accessible MoU [memorandum of understanding].

The risk now is that GCCC and GCWA have their own ideas about:

- *how to procure projects (public and private)*
- *how to assess them*
- *how to get quality*

*They are both focused on budget and maintenance and fulfilling (perhaps reluctantly) election deadlines.*⁷⁷

Submitters recognised that the master plan is not only about capital improvements to the public amenity, but sets out a long-term future for The Spit and as such, consideration should be given to the long-term holistic management of the master plan area. Save Our Broadwater submitted:

The Master Plan is a visionary document and its implementation is going to create community debate and require a holistic management approach for many years. While the legislation at

⁷³ Gecko Environment Council, submission 8, p 3.

⁷⁴ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 6.

⁷⁵ Public hearing transcript, Gold Coast, 18 December 2019, p 6.

⁷⁶ Submission 18, p 1.

⁷⁷ Submission 10, p 2.

*hand offers a short-term solution to deliver capital works, it does not provide a mechanism to deliver the shared vision for the long-term future of The Spit. Who will be responsible for finding the right balance between protecting environmental and community values and facilitating appropriate development opportunities?*⁷⁸

Mr Philip Follent proposed that a solution could be a memorandum of understanding between appropriate parties (DSDMIP, GCWA and City of Gold Coast) that clearly articulates the governance parameters that determine:

- *place making responsibilities: joint and singular; authority; accountability; expenditure; compliance and community engagement etc.*
- *place management: structure, authority, operation, accountability and community engagement etc.*⁷⁹

Submitters noted that ‘the Bill must give the GCWA the capacity to competently administer The Spit in a “place-making” and “place management” manner’.⁸⁰ Mr Richard Holliday stated that:

*I would like to see GCWA’s roles and responsibilities broadened and significantly strengthened to include an overarching management role for the entire areas defined within The Spit Masterplan on both land and water (the Broadwater).*⁸¹

In response to an expanded GCWA management role of the Spit, DSDMIP stated:

Suggestions that GCWA assume a management role over the whole of The Spit raise a policy matter for government to consider at the appropriate time. Much of the land on The Spit are reserves, held in trust by the CoGC, with associated management and maintenance obligations. The intent of the Bill is to broaden the GCWA’s powers only to the extent required to deliver the capital works program, as expansion of the GCWA management role over the entire Spit is likely to have significant resourcing and budget implications.

The Bill supports the governance framework established for the implementation of the master plan. Under the governance framework:

- *DSDMIP will be responsible for the site release program, with assistance from the Department of Natural Resources, Mines and Energy (DNRME) on land tenure matters*
- *GCWA will lead the capital works program funded by the State Government*
- *CoGC will lead the capital works program on land under their trusteeship and planning and development approval works, in collaboration with DSDMIP*
- *an Implementation Group, with representation from all parties mentioned above, as well as the Department of Transport and Main Roads, has been established to coordinate the work streams and ensure implementation activities achieve the vision, strategies and outcomes of the master plan.*⁸²

⁷⁸ Submission 18, p 2.

⁷⁹ Submission 10, p 2.

⁸⁰ Save Our Spit Alliance, submission 5, p 4.

⁸¹ Submission 12, p 3.

⁸² Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2018, p 4.

3.4 Other matters associated with implementation of The Spit Master Plan

3.4.1 Legislative protection of aspects of the master plan

Although complementary of the consultation process and consensus reached in the final master plan for The Spit, submitters requested that critical elements of the master plan be incorporated in the Implementation of The Spit Master Plan Bill 2019. Specifically, submitters requested that the Bill:

- state the Vision for The Spit which is articulated in the master plan,⁸³ to guide the implementation of master plan⁸⁴
- identify the master plan precincts and their designated use and functions,⁸⁵ to provide clarity about the purpose of land use activities and to support interpretation of the master plan
- establish the three storey height limit to be applied to all future development along The Spit by specifying the limit in the legislation to implement the master plan rather than in the Planning Regulation 2017,⁸⁶ as submitters were concerned that regulations are easily changed and that this characteristic of future buildings and structures in the master plan area should be preserved.

In response to these suggestions, DSDMIP advised that:

... the Bill purports to deal with specific issues to facilitate the site release program and a capital works program, rather than all matters pertinent to the implementation of the master plan. For this reason, it is considered more appropriate to include the vision and aims of the master plan in the Explanatory Notes as background for the Bill, rather than in the Bill itself. ... The intention is to formalise the vision, strategies and outcomes of the master plan, including the precinct and the height limit for new developments, in the Gold Coast City Plan.⁸⁷

In addition, Mr Carey from DSDMIP advised:

...there are a range of already established legislative and planning processes that are available to the state and the council to ensure that those elements of the plan are enshrined in the longer term. We are certainly working closely with the council and our colleagues to ensure that is the case, but it would be unusual to provide detailed planning outcomes in a piece of legislation like this when there are a number of mechanisms available to the state and the council to deliver those outcomes.⁸⁸

With respect to any change to the three storey height limit for development in master plan area, DSDMIP explained that amendment of the building height limit, as a policy change, ‘would likely require assessment’ of the impacts of such a change on community, business and government by the Office of Best Practice Regulation.⁸⁹

⁸³ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 19.

⁸⁴ Ms Leslie Shirreffs, submission 7, pp 1 - 2; Gecko Environment Council, submission 8, p 2; Mr Arnold Wolthers, submission 15, p 1; Save Our Broadwater, submission 18, p 1.

⁸⁵ Ms Leslie Shirreffs, submission 7, p 2; Mr Richard Holliday, submission 12, p 2.

⁸⁶ Ms Leslie Shirreffs, submission 7, p 2; Gecko Environment Council, submission 8, p 1; Mr Richard Holliday, submission 12, p 2.

⁸⁷ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 2.

⁸⁸ Public briefing transcript, Brisbane, 18 December 2019, p 4.

⁸⁹ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 12.

3.4.2 Land status of Curlew Island

Submitters identified the need to address the land status of Curlew Island to enable legislative protection for Curlew Island as a conservation area and to reflect the intention of the master plan.⁹⁰

With regard to the land use and protection of Curlew Island the master plan states:

- *To ensure The Spit's natural areas are protected and enhanced, the master plan:*
— *enhances the natural areas of The Spit, including the Federation Walk Coastal Reserve and Wave Break and Curlew Islands, and provides for the enhancement of biodiversity values to support threatened species in these areas*⁹¹
- *Precinct 2 – Wave Break and Curlew Islands – Intent:*
— *Curlew Island is protected and managed to ensure the island's significant environmental values are retained and enhanced*⁹²
- *Precinct 2 – Wave Break and Curlew Islands – Outcomes:*
— *2.9 Curlew Island is appropriately zoned and managed to protect and enhance its environmental values*⁹³
- *The land use of Curlew Island is conservation.*⁹⁴
- *No structures are included on Curlew Island except for information signage.*⁹⁵

Submitters requested that the area of Curlew Island be defined on the map of the master plan area⁹⁶ in Schedule 1 of the Bill to enable specification of the area in legislation to provide for continued protection of the island.

While Curlew Island is shown on the maps of the master plan area in The Spit Master Plan⁹⁷ and Curlew Island is part of *Precinct 2 – Wave Break and Curlew Islands* in the master plan (see Figure 2), the map of the master plan area in proposed Schedule 1 of the Bill does not show the existence of Curlew Island (see Figure 4 below),⁹⁸ as Curlew Island is not presently recognised as a land parcel.

Gold Coast Shorebirds Group explained that Curlew Island is a significant environmental site, as it is a confirmed 'critical roost site' and feeding area for very large numbers of international migratory birds, and Australian shorebirds and seabirds, and other species.⁹⁹ As the island is not currently designated

⁹⁰ Gold Coast Shorebirds Group, submission 4; Friends of Federation Walk, submission 6; Ms Leslie Shirreffs, submission 7; Gecko Environment Council, submission 8; Save Our Broadwater, submission 18.

⁹¹ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 17.

⁹² Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 54.

⁹³ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 54.

⁹⁴ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 55.

⁹⁵ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, p 55.

⁹⁶ Ms Leslie Shirreffs, submission 7, p 2, Save Our Broadwater, submission 18, p 1.

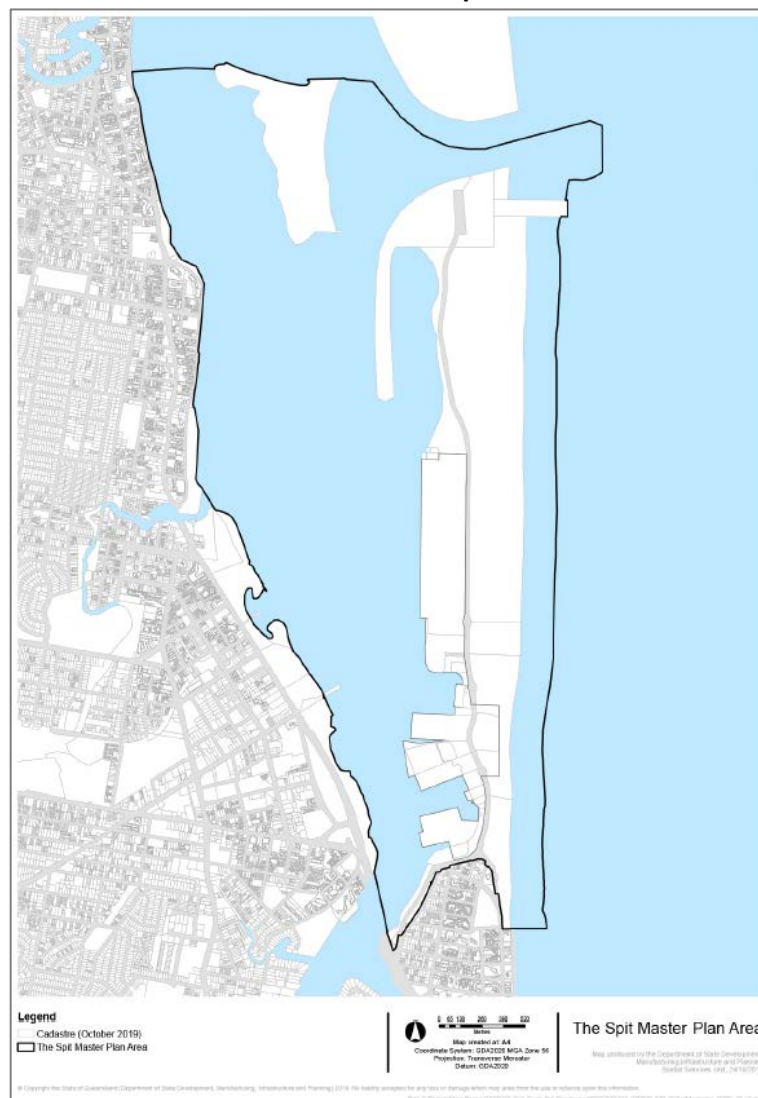
⁹⁷ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, pp 11, 16, 23, 27, 31, 37, 41, 45, 47, 54, 55.

⁹⁸ Bill, Schedule 1.

⁹⁹ Submission 4, p 1.

as land, management and protection of the site is not provided by government, which means that ‘the current harassment of its wildlife is very high’.¹⁰⁰

**Figure 4: Implementation of The Spit Master Plan Bill 2019
– Schedule 1 Master plan area**



Source: Bill, Schedule 1.

Gold Coast Shorebirds Group submitted that the Bill be amended to ‘address the land status of Curlew Island and facilitate the implementation of The Spit Master Plan recommendation for this island’,¹⁰¹ suggesting the following:

Curlew Island is not currently designated as land and it must be designated as land and registered as a land parcel for the Spit Master Plan recommendation to be implemented. This will require that it be surveyed for environmental purposes. Under the Lands Act 1994 protected areas are allowed more flexible surveys to reflect their environmental use. This allows temporary inundated areas and permanently inundated areas to be included in the land parcel. A marine boundary is suitable for Curlew Island but a boundary based on the average Neap High Tide rather than the average Spring High Tide is more appropriate as it would allow sandbank areas

¹⁰⁰ Gold Coast Shorebirds Group, submission 4, p 1.

¹⁰¹ Submission 4, p 2.

where the wildlife gathers to be fully protected. Registration of the area as a land parcel may follow this survey providing all legislative requirements are met.

... There [are] a number of appropriate zonings which could be applied to Curlew Island. These could include:

- Add Curlew Island to the existing 'Southern Moreton Bay Islands National Park'.*
- Designate Curlew Island as 'National Park (Aboriginal)' under the Qld Nature Conservation Act.*
- Designate Curlew Island as a Conservation Park under the Qld Nature Conservation Act. Administration could be carried out by the Qld Government, Gold Coast City Council or an appropriate trustee.*
- Designate Curlew Island as an Environmental Reserve under the Lands Act 1994. Administration could be carried out by the Gold Coast City Council or an appropriate trustee.¹⁰²*

Many submitters suggested that the Land Act be amended¹⁰³ to 'allocate the status and use of Curlew Island'¹⁰⁴ and deliver the stated master plan outcome for Curlew Island that 'Curlew Island is appropriately zoned and managed to protect and enhance its environmental values'.¹⁰⁵

Ms Jessica Bournier, Manager, Planning and Innovation, GCWA agreed that 'one of the important parts about Curlew Island is for roosting shorebirds, and it is the foraging area that is particularly valuable. ... The first step ... would be to actually declare it land, which is not a function of the Gold Coast Waterways Authority; it would go over to DNRME'.¹⁰⁶

DSDMIP confirmed that Curlew Island would be registered under the Land Act and amendment of legislation is not required for this to be achieved:

Curlew Island is not presently surveyed and recognised as a land parcel. Outcome 2.9 of the master plan intends to fully recognise the land mass as a parcel and to protect and enhance its environmental values. The anticipated method of protection is to survey and register the land which comprises Curlew Island from the Gold Coast Broadwater as unallocated State Land (USL). This area of USL, being Curlew Island, can be dealt with by existing Land Act 1994 powers to dedicate the USL as a Reserve for Environmental Purposes, with an appropriate trustee appointed to manage the land in accordance with this dedicated purpose. This process will be undertaken by DNRME, in cooperation with DSDMIP. Therefore, it is considered legislative mechanisms are already in place to adequately protect the environmental values of Curlew Island into the future. No further legislative amendments or inclusion in the Bill are required.¹⁰⁷

Given the strong community desire for land status of Curlew Island to be resolved, the committee recommends that, as a matter of priority, Curlew Island be surveyed and registered as an environmental reserve, to enable the ongoing protection and management of Curlew Island to ensure

¹⁰² Submission 4, pp 1-2.

¹⁰³ Friends of Federation Walk, submission 6, p 1; Ms Leslie Shirreffs, submission 7, p 2; Gecko Environment Council, submission 8, p 1; Save Our Broadwater, submission 18, p 1.

¹⁰⁴ Friends of Federation Walk, submission 6, p 1.

¹⁰⁵ Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, Outcome 2.9, p 54.

¹⁰⁶ Public hearing transcript, Gold Coast, 18 December 2019, p 6.

¹⁰⁷ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 9.

the island's significant environmental values are retained and enhanced, as is intended by The Spit Master Plan.

Recommendation 3

The committee recommends that, as a matter of priority, the Department of Natural Resources, Mines and Energy survey and register the land mass of Curlew Island as an environmental reserve, to enable the ongoing protection and management of Curlew Island.

The committee anticipates that as a result of the recognition of Curlew Island, Schedule 1 of the proposed Implementation of The Spit Master Plan Act would be amended subsequently to reflect the inclusion of Curlew Island in the master plan area.

3.4.3 Ongoing impacts of helicopter operations on the implementation of the master plan

Concerns were raised by submitters about the negative impact of helicopter tourism operations conducting 'joy flights' from The Spit on the implementation of the master plan. These concerns included:

- recent construction of a heliport in the leased Sea World car park area where the master plan does not provide for this land use, interrupting the connectivity of the Broadwater pathway and the interface between the Village Centre North and Sea World as described in the master plan¹⁰⁸
- the impact on potential investment in master plan *Precinct 5 – The Village Centre*¹⁰⁹
- the potentially negative impacts of helicopter operations on the Aboriginal cultural centre in the master plan¹¹⁰
- absence of planning in relation to helicopter operations in master plan generally.¹¹¹

Submitters cited significant noise pollution affecting businesses and visitors to The Spit and nearby residents,¹¹² risks to migratory birds,¹¹³ ongoing pollution and safety concerns for yacht owners,¹¹⁴ and loss of amenity in the master plan area as a result of helicopter operations.

Some submitters concerned about helicopter tourism operations stated that there was little or no monitoring or enforcement of noise impacts by government¹¹⁵ and suggested greater management and control of helicopter operations by local government and authorities. Additionally, submitters recommended removal of helipads and heliports in the master plan area altogether and relocation to more suitable and compliant sites outside The Spit.¹¹⁶

Mr Hal Morris, Chief Executive Officer of the GCWA advised the committee that the GCWA has no powers or responsibility in relation to helicopter operations, noting:

¹⁰⁸ Save Our Spit Alliance, submission 5, p 8; Gecko Environment Council, submission 8, p 4; Save Our Broadwater, submission 18, p 1; see Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, Outcome 5.9 and Outcome 5.10, p 68.

¹⁰⁹ Gecko Environment Council, submission 8, p 4; Mr Philip Follent, submission 10, p 2.

¹¹⁰ Save Our Spit Alliance, submission 5, p 8.

¹¹¹ Mr Arnold Wolthers, submission 15, p 2; Save Our Broadwater, submission 18, p 1.

¹¹² Save Our Spit Alliance, submission 5, pp 8 – 9; Gecko Environment Council, submission 8, p 4; Mr Philip Follent, submission 10, p 2; Save Our Broadwater, submission 18, p 1.

¹¹³ Wildlife Queensland Gold Coast Branch, submission 16.

¹¹⁴ Mr Arnold Wolthers, submission 15, p 7.

¹¹⁵ Mr Philip Follent, submission 10, p 2.

¹¹⁶ Save Our Spit Alliance, submission 5, p 9; Mr Arnold Wolthers, submission 15, p 3.

*...It is one of these areas where there are many people who have some responsibility. Unfortunately, no-one has overall coordinating responsibility. It is the case that members of the public, frustrated or perhaps annoyed by the noise and the frequency of the helicopters, have difficulty finding somewhere to go. We have looked into it and certainly there is nothing that we can do at this stage.*¹¹⁷

DSDMIP advised the committee that the Gold Coast City Council, as the planning authority for the Gold Coast local government area, is responsible for the regulation of development, including land used for 'air services' such as a helipad, through the City Plan, and that this arrangement would not be altered by the Bill.¹¹⁸

Save Our Broadwater submitted that contested use of the land and waterways within the master plan area, such as conflict over helicopter operations, will 'increase in the future as more people use the new and improved facilities that are going to be created'¹¹⁹ with the implementation of the master plan. Save Our Broadwater suggested 'a much better management authority' for the master plan area would be required for the future beyond the delivery of capital works.¹²⁰

Given the significant community concern, the matter of helicopter operations within the master plan area has the potential to affect the implementation of the master plan over time and undermine the vision for The Spit as articulated in the master plan. Submissions highlighted that attention to the management of this matter would advance the outcomes of the master plan. The committee believes that without resolution, this issue will continue to cause ongoing loss of amenity on The Spit and diminish the outcomes of the master plan. Consequently, the committee recommends that all stakeholders work to resolve this matter.

Recommendation 4

The committee recommends that all stakeholders collaborate to expeditiously resolve the issues regarding helicopter operations within The Spit Master Plan area.

3.4.4 Impact of superyacht facility on public parkland

Submitters were concerned that the development of the proposed superyacht facility should occur as described in the master plan,¹²¹ and that the public use of the Jack Gordon Park, and access for smaller boating, be maintained according to the master plan.¹²² Concerns were also raised that any grant of funding to facilitate this development occur in a public and transparent manner.¹²³

In response to these concerns, DSDMIP advised:

The master plan indicated provision of several future super yacht berths and facilities across the master plan area, including one along Jack Gordon Park. The issue of the SYC's [Southport Yacht Club's] application for a new lease to accommodate a super yacht facility is outside the scope of the Bill and being managed by DNRME under the Land Act 1994.

¹¹⁷ Public hearing transcript, Gold Coast, 18 December 2019, p 5.

¹¹⁸ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, response to question taken on notice at public briefing on 18 December 2019, p 1. DSDMIP noted that 'under the City Plan, a helipad and any associated aviation related facilities a used for servicing, refuelling, maintenance and repair of aircraft, fall within the land use definition of 'air services'.

¹¹⁹ Submission 8, p 2.

¹²⁰ Submission 8, p 2.

¹²¹ See Department of State Development, Manufacturing, Infrastructure and Planning, *The Spit Master Plan*, May 2019, Outcome 7.9, p 92.

¹²² Gecko Environment Council, submission 8, p 5; Wildlife Queensland Gold Coast Branch, submission 16, p 1.

¹²³ Gecko Environment Council, submission 8, p 5.

On 9 January 2020, the Minister for State Development, Manufacturing, Infrastructure and Planning announced a State funding contribution of \$2 million towards the development of the SYC's proposed \$7.7 million super yacht facility.¹²⁴

3.5 Amendment of the Planning Act 2016

The explanatory notes state that:

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

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

The amendment corrects an unintended outcome of the current wording and reflects the scope of compensation rights that were available under the repealed Sustainable Planning Act 2009.¹²⁵

Mr Coggan from DSDMIP informed the committee that 'inconsistencies with the current drafting were raised by several external stakeholders including the Property Council of Australia, the Queensland Environmental Law Association and the Queensland Law Society'.¹²⁶

The Urban Development Institute of Australia Queensland noted its support for the Bill stating:

The Institute in particular supports the inclusion of the measure in the bill to amend section 31(3) of the Planning Act... The Institute notes that there was no commentary to indicate the legislators intended to exclude assessable development from compensation in this way when it was proposed.

The Institute also supports that the transitional arrangements will provide for an affected owner who may not have been able to claim compensation in relation to development that was assessable development both before and after an adverse planning change to do so within six months of the commencement.¹²⁷

The Local Government Association of Queensland (LGAQ) supported the policy intent of the proposed amendments to the Planning Act, however

... based on confidential legal advice obtained by the LGAQ in preparing this submission, it is recommended that further amendments be made if the transitional provisions are retained, to more equitably achieve the intended policy outcome.¹²⁸

The LGAQ highlighted concerns in regard to where a council has relied on:

...the strict interpretation of existing section 31 of the Planning Act 2016, in the belief that no compensation will be payable, and the council:

¹²⁴ Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2020, p 9.

¹²⁵ Explanatory notes, p 11.

¹²⁶ Public briefing transcript, Brisbane, 18 December 2019, p 3.

¹²⁷ Submission 14, p 1.

¹²⁸ Submission 11, p 1.

- (a) makes an adverse planning change;*
- (b) refuses a superseded planning scheme request; and*
- (c) assesses and decides a development application under the new planning scheme.*¹²⁹

The LGAQ argued that where this has occurred, a council may find itself in a position where compensation will be payable despite the council relying on a strict interpretation of s 31 at the time. Additionally, it is argued that the proposed amendments do not provide an affected council with an opportunity to reconsider the adverse planning change, superseded planning scheme request or any subsequent development application made under the new planning scheme.¹³⁰

The LGAQ proposed that:

*... provisions be made within the scope of the proposed transitional provisions to also allow a council to reconsider any decisions made in reliance on the strict interpretation of section 31 of the Planning Act 2016 at the time (i.e. that compensation was not payable).*¹³¹

DSDMIP informed the committee that the potential for compensation only applies when a change to a local planning instrument is an adverse planning change:

An adverse planning change is one that local government makes and adopts. The adverse planning change reduces the value of an interest in premises. The affected owner is only entitled to compensation for the loss of a development right for development the affected owner genuinely intended to pursue.

Several steps occur before any compensation may be payable and certain criteria must be met. In summary,

- the local government must decide whether to agree to a request to apply a superseded planning scheme in the assessment of a development application*
- if the local government agrees to this request, no compensation is payable*
- compensation is only payable if the local government refuses this request and then the development application (made and assessed under the new planning scheme as normal) is also refused, or approved in part, or approved subject to conditions.*

*The above prerequisites would also need to be satisfied in order for a compensation claim to be considered. Therefore, DSDMIP does not consider it necessary or appropriate to introduce a broadening of the transitional provisions to make allowance for local governments or landholders to re-visit decisions made since commencement of the Planning Act 2016.*¹³²

¹²⁹ Submission 11, p 2.

¹³⁰ Submission 11, p 2.

¹³¹ Submission 11, p 2.

¹³² Department of State Development, Manufacturing, Infrastructure and Planning, correspondence dated 14 January 2018, p 13.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.1.1 *Natural justice*

Clause 7 of the Bill raises an issue of fundamental legislative principle, in relation to Section 4(3)(b) of the LSA, which requires that legislation be consistent with the principles of natural justice.

Under cl 7(1), regarding roads in the master plan area, the Minister may do what is considered necessary or desirable to facilitate the implementation of the master plan. Under cl 7(2), this includes permanently or temporarily closing roads in the master plan area, by a gazette notice. The Minister must publish notice of any closure in a newspaper circulating in the Gold Coast local government area, but failure to do so does not invalidate the closure.¹³³

The application of road closure provisions under the Land Act allowing for public objection to the permanent or temporary closure of roads will not apply to road closures within master plan area. There are no provisions for an affected person to be heard by the Minister nor for appealing any decision to close a road.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.¹³⁴ These principles have been developed by the common law and include:

- Nothing should be done to deprive a person of a right, interest, or legitimate expectation of a benefit without the person first being given an adequate opportunity to present their case to the decision maker.
- A decision maker must be unbiased.
- Procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.¹³⁵

The closure of any road in the master plan area could affect a person by depriving them of a right of use or to access an area or property, without an opportunity to be heard by the Minister, who is the decision maker, and with no appeal rights. There will be no opportunity for public objection to a closure proposal (as would apply under the road closure provisions in the Land Act).

The explanatory notes provide the following justification:

¹³³ Bill, cl 7(4) and 7(5).

¹³⁴ *Legislative Standards Act 1992*, s 4(3)(b).

¹³⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

The intention of clause 7 is to allow the Minister to use a fast-tracked process to close roads so the development site release program can be completed in a timely way ...

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

Clause 7 is intended to facilitate planning and development for specific purposes within a prescribed area in a timely way.¹³⁶

While a review under the *Judicial Review Act 1991* might be available, a judicial review process is largely limited to examining questions of law rather than the merits of a decision.

Committee comment

Having regard to the policy intent and the justifications provided in the explanatory notes and by DSDMIP,¹³⁷ the committee is satisfied that the provisions are appropriate in the circumstances.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

¹³⁶ Explanatory notes, p 5.

¹³⁷ See section 3.2 of this report.

Appendix A – Submitters

Sub #	Submitter
001	Village Roadshow Theme Parks Pty Ltd
002	Destination Gold Coast
003	Yugambeh Museum, Language and Heritage Research Centre
004	Gold Coast Shorebirds Group
005	Save Our Spit Alliance Inc
006	Friends of Federation Walk
007	Leslie Shirreffs
008	Gecko Environment Council Association Inc
009	John Hicks
010	Philip Follent
011	Local Government Association of Queensland
012	Richard Holliday
013	Gold Coast Waterways Authority
014	Urban Development Institute of Australia Queensland
015	Arnold Wolthers
016	Wildlife Queensland, Gold Coast Branch
017	Property Council of Australia
018	Save Our Broadwater

Appendix B – Officials at public briefing

Department of State Development, Manufacturing, Infrastructure and Planning

- Mr Gerard Coggan, Acting Deputy Director-General, Investment Facilitation and Partnerships
- Mr Michael Carey, Executive Director, Investment Facilitation and Partnerships
- Ms Maggi Van Rensburg, Director, Investment Facilitation and Partnerships
- Mr Kerry Doss, Deputy Director-General, Planning Group
- Ms Rebecca Kenny, Acting Regional Director, Southern Region, Planning Group
- Mr Mark Roberts, Acting Director, Policy and Statutory Planning, Planning Group

Appendix C – Witnesses at public hearing

Gold Coast Waterways Authority

- Mr Hal Morris, Chief Executive Officer
- Mr Daniel Dray, Principal Project Manager, The Spit Master Plan Implementation
- Ms Jessica Bournier, Manager, Planning and Innovation

