This Legislation Bulletin was prepared to assist Members in their consideration of the Bill in the Queensland Legislative Assembly. It should not be considered as a complete guide to the legislation and does not constitute legal advice.

The Bulletin reflects the legislation as introduced. The *Queensland Legislation Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the *Bills Update*, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland Parliament.

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DATE OF INTRODUCTION: 19 October 1995
PORTFOLIO: Environment and Heritage
COMMENCEMENT: Upon proclamation

. BACKGROUND
Queensland’s coastline extends for over 7000 kilometres. Its beaches, dunes, islands, wetlands and coastal rivers and streams are essential to the state tourism industry. The coast is used for recreation, fishing and shipping and its mineral resources are used in construction and for export. More than 70 percent of Queenslanders live within 40 kilometres of the coast.¹

However, a growing population, greater economic activity and increased recreational use has meant increased pressure on coastal resources. Major state and regional issues directly relating to Queensland include:

- changes in catchment areas
- increase in sediment and nutrient run-off
- coastal development strip in the South East (urban, industrial, marinas, agriculture, grazing)
- competing uses of the coastal strip

• threats to Great Barrier Reef (water quality, effects of fishing, effects of trawling, tourism developments, crown-of-thorns starfish)
• loss of inshore habitat
• indigenous fishing rights and lack of involvement in management
• protection and preservation of indigenous sites of significance
• effects of ports (dredging, oil spills, possible introductions)
• shipping risks through Torres Strait and Great Barrier Reef inner route
• effects of tourism (especially Cairns, Whitsundays, Sunshine Coast and Gold Coast)
• destruction of cultural heritage sites
• effects of trawling
• overfishing of some stacks
• recreational fishing and catch sharing
• discharge of toxic liquid wastes
• die-back of seagrass (Hervey Bay).

The major setback in facing the above challenges is the complexity of coastal management and the existing “tyranny of small decisions” and short-term planning which has led to the coastal zone’s degradation. The Resource Assessment Commission in its 1993 Coastal Zone Inquiry, a major, comprehensive study commissioned by the Commonwealth Government, consistently refers to inadequate coordination and integration between a large number of sectoral institutions under a large number of Acts affecting coastal management.4

The Queensland Government’s Coastal Protection Strategy Green Paper likewise states:

It has become clear that, although statutory powers exist to manage coastal areas, the powers are spread over many agencies. No agency has a particular mandate for managing the resources as a whole. Each is generally responsible for achieving a single objective such as port development or fisheries protection. Because most

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2 Australia, Department of the Environment Sport and Territories, Our Sea, Our Future: Major Findings of the State of the Marine Environment Report for Australia, DEST, Canberra, 1995, p.72.


statutory powers apply above or below high water mark, management across this boundary is extremely difficult.\textsuperscript{5}

The existing legislation in Queensland relating to coastal zone protection has been described as “multitudinous, complex, overlapping and duplicitous.”\textsuperscript{6} The Green Paper lists 50 pieces of State and Commonwealth legislation which, in varying degrees, affect coastal management in Queensland.\textsuperscript{7}

**Recommendations to Manage the Coastal Zone**

There have been a large number of both state and federal inquiries into the coastal zone in recent years. **Appendix 1** lists previous inquiries which the Resource Assessment Commission examined during the course of its Coastal Zone Inquiry.\textsuperscript{8} Twenty-one of these have been published since 1990.

Stewart Smith\textsuperscript{9} alludes to the recurrent themes of the outcomes of these coastal inquiries by comparing the recommendations of the 1980 House of Representatives Standing Committee on Environment and Conservation:

\begin{itemize}
  \item that the Commonwealth government, in consultation with the States, develop and promulgate national policies and objectives for the conservation of the Australian coastline;
  \item the Commonwealth, with the States, establish an Australian Coastal Management Council, which would establish research priorities and programs, create a central register of information and establish criteria for funding of programs;\textsuperscript{10}
\end{itemize}

with recommendations of the Resource Assessment Commission in 1993:

\[\text{\begin{itemize}
  \item the Commonwealth government, in consultation with the States, develop and promulgate national policies and objectives for the conservation of the Australian coastline;
  \item the Commonwealth, with the States, establish an Australian Coastal Management Council, which would establish research priorities and programs, create a central register of information and establish criteria for funding of programs;\textsuperscript{10}
\end{itemize}\]

\textsuperscript{5} Queensland Government, 1991, p.4.


\textsuperscript{7} Queensland Government 1991, Table 1, p.38.

\textsuperscript{8} For further discussion of these previous inquiries, see: Marcus Haward, ‘Australian coastal management: A clear picture or a cluttered foreground?’, *Maritime Studies*, May-June 1994, pp.1-5; Marcus Haward, ‘Integrated coastal zone management in Australia’, *Maritime Studies*, May-June 1995, pp. 1-7.


– A national Coastal Management agency should be established, representing the interests of Commonwealth, state and local governments and Australia’s indigenous people;

– A national coastal action program be established with national coastal zone objectives.\textsuperscript{11}

The Resource Assessment Commission made 69 recommendations in 13 separate but interrelated areas regarding coastal zone management. Central to the recommendations was a call for a National Coastal Action Program with four key components:

• a set of nationally agreed coastal zone management objectives;

• arrangements for implementing and managing the Program;

• greater community and industry involvement; and

• innovative management mechanisms.

The two central themes of the proposals were stated by the Commission to be:

• integrated management; and

• strategic management.\textsuperscript{12}

Commonwealth Policy

In response to the Resource Assessment Commission’s inquiry, the Commonwealth Government in May 1995 released its Coastal Policy, \textit{Living on the Coast.} This was preceded by an announcement in the 1995-1996 Commonwealth Budget of a $53 million package to improve Australian coastal zone management. Some features of the Commonwealth policy include:

• the view that the establishment of a national agency is “unrealistic and unnecessary.” Instead, agencies and authorities are to “retain existing responsibilities while increasing coordination between them”\textsuperscript{13} through a Coastal Coordination Committee. The Committee will be advised by a National Coastal Advisory Committee, set up with industry, environment, government and indigenous group representatives; and


\textsuperscript{12} Resource Assessment Commission, \textit{Final Report Overview}, 1993, pp. 11-12.

\textsuperscript{13} \textit{Our Sea, Our Future}, 1995, p.15.
• a $23 million Coastcare program to get governments and communities involved in managing and protecting coastal regions;

• $8 million for training coastal managers and for setting up a national electronic network data bank called Coastnet.

A draft Memorandum of Understanding between the Commonwealth, Queensland and the Local Government Association of Queensland is being prepared to enable the implementation in Queensland of the intergovernmental aspects of the Commonwealth policy.14

The Commonwealth Policy also takes into account Australia’s endorsement of Agenda 21 at the United Nations Conference on Environment and Development held in Rio de Janeiro in June 1992. Through Chapter 17 of Agenda 21, supportive coastal nations committed themselves to the integrated management and sustainable development of coastal resources.15

Since the Resource Assessment Commission inquiry was released, the 1995 State of the Marine Environment Report for Australia (SOMER)16 was published. SOMER is the first comprehensive description of Australia’s marine environment, its uses and values and the issues and threats affecting it. The nation’s coastlines which are away from habitation are generally described as good or pristine, whilst those surrounding our cities, resorts and industrial areas “face an avalanche of insults.”17

Specific background to the Queensland Bill

Green Paper

As noted above, the Queensland Government’s 1991 Coastal Protection Strategy Green Paper18 identified increasing competition for the coast’s valuable resources, overlapping and duplicative legislation and a lack of coordination between the many agencies which affect coastal zone management. Its content will now be outlined.

14 Explanatory Notes to the current Bill.


The Green Paper proposed a **preferred coastal management strategy**, developed from a consideration of coastal management systems in other Australian jurisdictions and from responses to a 1989 Queensland Government Green Paper, *Review of Estuarine and Coastal Management Procedures in Queensland*. A possible management system based on central State Government control was considered too complex and not sufficiently sensitive to local issues. At the same time, the option of management at local level was considered to be unworkable and lacking a necessary state-wide perspective.\(^{19}\)

The 1991 Green Paper recommended a coastal management system which would provide for:

- State objectives for coastal management;
- guidelines for decision-making;
- delegated control to the local level, subject to broad State and Commonwealth Government requirements, policies and guidelines;
- community consultation;
- protection of key areas of the coast through a state-wide Coastal Protection Plan pending development of detailed regional coastal management plans; and
- use of existing legislation and organisations as much as possible.\(^{20}\)

The Green Paper proposed four **objectives** for coastal management in Queensland:

- to **conserve** and enhance the coast, its native flora and fauna, its heritage places, habitats and natural processes;
- to allow orderly and **environmentally responsible use** of the coast having regard for long-term community benefit and natural occurrences such as tropical cyclones, storm surges and floods;
- to maintain the public’s **right of access** to the coast and beaches and, where possible, obtain development-free areas adjacent to beaches and foreshores for public and coastal management purposes; and
- to ensure policies are in place to deal effectively with the coastal consequences of any ‘greenhouse effect’ (emphasis added).\(^{21}\)

Under the four objectives, the Green Paper listed 50 **coastal management guidelines**. These guidelines provide an indication of the implicit objectives of the current Bill. Examples include:

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Maximum areas of coastal land should be retained in a natural state, and all natural physical processes which have a significant impact on forming and maintaining the coast should be allowed to operate unhindered.

The principle of 'zero net loss' of habitat, biodiversity or process should be used in the assessment of coastal developments.

Residential development should be planned and preferably concentrated at existing settlements.

Only coastal-related industrial and commercial facilities such as ports, harbours, mariculture, marinas, tourist facilities, and appropriate service industries should be located on the coast.22

Russell Bowie has said of the coastal management guidelines contained in the Bill:

It is no exaggeration to say that each of the fifty guidelines is heavily weighted against coastal development, or restrictive of it ...

Most of the guidelines are vague, and even open to competing interpretations. For example, the fourth objective under the first guideline is as follows:

The unique value of off-shore islands and their vegetation should be recognised and conserved.

Does this mean that no off-shore island should be developed, or its vegetation cleared or altered in any way, or merely that its value should not be degraded?

... Finally, and most importantly, how could a local authority or State agency base a logical decision on such a guideline without leaving itself open to challenge from aggrieved parties? 23

Near the time of the release of the Green Paper, the former Minister the Honourable Pat Comben (in the context of discussing comparisons between Australian and United States compensations for restricting use of private land) said:

I, the Government, and the Queensland democratic system have effectively determined that the public good of protected coastal land outweighs a private loss of possible development rights. 24

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The Green Paper also discussed the development of impact assessment guidelines reflecting environmental sensitivity. The impact assessment guidelines would place the onus of proof on the developer to show that the development would be in accordance with the principle of ecological sustainability and in compliance with the guidelines. However, such assessment was not proposed to apply to an ‘as of right’ dwelling house on land zoned residential.25

Changes to existing legislation anticipated by the Green Paper included possible changes to:

- replace the Beach Protection Act with a broader Coastal Protection Act;
- complement the review of the Harbours Act (then) being undertaken by the Department of Transport. (The Harbours Act has now been repealed, however certain provisions relating to works approvals on coastal land currently continue under Section 236 of the Transport Infrastructure Act 1994);
- amend the Marine Parks Act using the Great Barrier Reef Marine Park Act as a model;
- clarify land tenure arrangements below high water mark; and
- amend the Canals Act in minor detail.26

The new Coastal Protection Act was contemplated to include provisions for establishing an authority to replace the Beach Protection Authority and provide coordination for coastal management. The new Act would:

...mirror many of the provisions of the Beach Protection Act but be extended to consider public access, visual amenity, and maintenance of biological and physical processes. The Act would cross the boundary between land and water and provide a capability not found in other legislation. It would cover tidal waters and extend onshore as far as required to manage the active coastal area.27

**Other Developments**

Since the Green Paper, the Regional Planning Advisory Group, as part of the SEQ2001 Project, released its policy paper, *Rivers and Coastal Management*.28 Amongst other things, the paper calls for:

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• coordinated protection and management of riverine and coastal resources through the management of all water bodies including the beds and banks of streams, lakes and adjacent lands;

• a Regional Water Resource Management Strategy; and

• preparation of a Regional Coastal Management Plan, which would guide land use planning and decision making and, in particular, should identify sensitive areas, including coastal buffer zones, which require protection.

In addition, Appendix 2 lists recommendations of the 1993 Resource Assessment Commission which are specifically relevant to the current Bill and its relationship (as pointed out in the next section) with the proposed Planning, Environment and Development Assessment legislation.

The Draft Bill

A Draft Coastal Protection Bill\(^{29}\) was released in July 1993 for public consultation. Consultation identified a wide range of issues which arose from submissions, public meetings and meetings with numerous departmental, local government and industry stakeholders and conservation groups.\(^{30}\) As a result revised drafting instructions were prepared and considered by Cabinet in November 1994.

The current Bill has been substantially redrafted since the original Draft. This would appear to be the result of both the consultation process and the decision to delete the approval process and the specific building, rezoning and subdivision requirements from the original Draft Bill and instead incorporate coastal development approvals in the proposed Planning, Environment and Development Assessment (PEDA) Bill.\(^{31}\)

The Explanatory Notes explain that the existing separate approval provisions of the current Beach Protection Act 1968, Canals Act 1958 and those provisions in the Harbours Act 1955\(^{32}\) dealing with works in tidal water (which the Green Paper had proposed to be incorporated in this Bill) are to be consolidated into a single and integrated approval process under the proposed PEDA Bill. This will be done in

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\(^{30}\) Explanatory Notes to the current Bill.


\(^{32}\) Now repealed, however, certain provisions of the Harbours Act relating to tidal water and the approval of works continue under the Transport Infrastructure Act 1994: Sections 234 and 236, *Transport Infrastructure Act 1994*, and see Sections 228, 255, 256 and 257.
accordance with the Government’s policy on the Integrated Development Assessment System (IDAS). The proposed approval system for coastal development under the PEDA legislation is discussed further in section 4.4 of this paper.

Appendix 3 includes various news articles reporting reactions to the current Bill and the original Draft Bill.

The Queensland Government’s 1995 Election Policy

Titled Reclaiming the Coast, the 1995 election policy of the Queensland Government regarding coastal management stated that its aim was to:

Provide for orderly development of Queensland’s coast in a way which preserves its natural beauty and protects the ecological processes upon which living things depend.\(^33\)

Examples of specific statements in the policy are:

- No new residential or commercial developments within erosion prone areas;
- Crown land adjacent to tidal waters will not be subject to new or upgraded leases, unless for a coastally dependent purpose such as a boat ramp or port;
- A revamped Environmental Impact Assessment (EIA) process, following public consultation; and
- A requirement of land surrender for new developments in proximity to the coastline which do not already have all the necessary approvals.\(^34\)

The proposed funding included a $12.5 million Coastal Acquisition Fund for the purchase of freehold and leasehold land in proximity to the coast so as to increase public access. $5 million was set aside for the development of State and regional plans under the Coastal Protection and Management Act. Reference is also made to the intention that proposals for development in “control districts” which are not the subject of existing approvals will need the consent of the Minister.

3. PURPOSE

Queensland’s Minister for Environment and Heritage, the Honourable Tom Barton, MLA, in his Second Reading Speech to the Coastal Protection and Management Bill 1995, spoke of:

\(^33\) Australian Labor Party (Queensland), Reclaiming the Coast: A Long-term Plan for Queensland Coastal Zone, Election Policy, 1995, p.10.

\(^34\) Reclaiming the Coast, p.11.
...Queensland’s first comprehensive legislation for protecting the coast.

It has been written to ensure that Queensland’s coast is preserved and managed in accordance with the wishes of the people of Queensland. It accommodates development in the coastal zone, which is environmentally sensitive, but prohibits environmental vandalism and the destruction of the natural beauty of the coast. The object of the legislation is to protect and manage Queensland’s coastal zone while allowing for development that improves the total quality of life, now and in the future, in a way that maintains the ecological processes on which life depends.\textsuperscript{35}

The objects of the Bill specified in \textbf{Clause 3}, are to:

\begin{enumerate}
  \item provide for the protection, conservation and management of the coast, including its resources and biological diversity;
  \item have regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development\textsuperscript{36} in the use of the coastal zone;
  \item provide, in conjunction with other legislation, a coordinated and integrated management and administrative framework for the ecologically sustainable development of the coastal zone; and
  \item encourage the enhancement of knowledge of coastal resources and the effect of human activities on the coastal zone.
\end{enumerate}

It is intended that in the future the current Bill will operate in close conjunction with the proposed Planning, Environment and Development Assessment (PEDA) Bill.\textsuperscript{37} The proposed long title of the PEDA Bill indicates its objectives:

\textit{An Act to provide a statutory framework for integrated planning and development so land use and development and their effects are managed in a way that is sustainable and promotes people’s economic, social and physical wellbeing and for related purposes.}

\textsuperscript{35} Coastal Protection and Management Bill 1995 (Qld), \textit{Queensland Parliamentary Debates}, Second Reading Speech, Hon. T. A. Barton MLA, 19 October 1995, pp.527-528.


\textsuperscript{37} Discussed further in Section 4.3.
4. MAIN PROVISIONS OF THE BILL

4.1 DEFINITIONS

Clause 7 of the Bill defines “coastal management” as including the “protection, conservation, rehabilitation, management and ecologically sustainable development of the coastal zone”.

“Coastal zone” is defined in Clause 11 as:

a) coastal waters (which extend to a distance of three nautical miles from the highest astronomical tide\(^{38}\)); and

b) all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast or coastal resources.

The “coast” is “all areas within or neighbouring the foreshore”: Clause 6. The Minister expanded on this definition as follows:

‘Neighbouring’ means near .. Areas will be considered to be near the foreshore when there is a link with the foreshore. On the seaward side this includes all Queensland coastal waters. On the landward side this includes areas influenced by sea water or salt spray, the movement of sand or the drainage of waters into tidal areas. Therefore, the following areas are covered by the definition of ‘coast’ under the Act:

- communities comprised of salt-tolerant vegetation such as mangroves, tidal marshes, coastal casuarinas, coastal banksias, coastal heath;
- dune systems;
- coastal wetlands;
- rivers and creeks subject to tidal influence up to the highest astronomical tide; and
- any other area clearly affected by a coastal process.\(^{39}\)

However, the limits of ‘control districts’, under Clause 48 (see Section 4.3), are not based on the above definition of the coast. More of an administrative, specifically-defined approach is taken in defining control district.

\(^{38}\) Pursuant to Section 5 of the Coastal Waters (State Powers) Act 1980 (Cth) in conjunction with Clause 9 of the current Bill.

4.2. **State Planning for Coastal Management**

**Coastal Protection Advisory Council**

Clause 15 establishes the Coastal Protection Advisory Council (CPAC). **Clause 16** sets out CPAC’s functions which are to inform the Minister about coastal management issues and to promote the objectives of the Act. The Advisory Council must monitor the integration of coastal zone management being carried out by Commonwealth agencies, Queensland agencies and local government. CPAC will be chaired by the Director-General of the Department of Environment and Heritage and consist of eleven others experienced in or knowledgeable of coastal management.

**Existing Legislation**

The existing Beach Protection Authority is constituted under Section 5 of the *Beach Protection Act 1968*. It is comprised of nine persons - four are public servants, four are elected members of coastal local authorities and one is a Ministerial nomination.

While, the Coastal Protection Advisory Council proposed under the current Bill is to have purely advisory functions, the Beach Protection Authority’s functions under Section 34 of the Act include:

*The planning of preventative and remedial measures with a view to preventing any matter or thing having an adverse effect upon the amenity of the coast and, subject thereto, with a view to minimizing damage to property from erosion or encroachment by tidal water.*

The role of the Beach Protection Authority with respect to “coastal management control districts” and “erosion prone areas” under the Act is dealt with further under Section 4.3 below.

Before the repeal of the Beach Protection Act, the Beach Protection Authority would co-exist with CPAC. **Schedule 1** of the current Bill proposes a new section 15 of the *Beach Protection Act* providing that the Beach Protection Authority may delegate its powers to an officer or employee of the Department of Environment and Heritage.

**Regional Consultative Groups**

The Minister must appoint a regional consultative group when a regional plan is to be prepared: **Clause 19**. Its functions are to advise the Minister on the preparation of the

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40 *Beach Protection Act 1968*, Section 34(c)
regional plan and to make recommendations regarding that region’s issues, management strategies and key areas: **Clause 20.** The group must include representatives of local government, tourism, conservation, industry and Aboriginal and Torres Strait Islander interests.

**The State Coastal Management Plan and Regional Coastal Management Plans**

The Minister must prepare a State coastal management plan for the coastal zone (**Clause 25**) which must describe how the coastal plan is to be managed: **Clause 26(1).** It may seek to map coastal resources: **Clause 26(2).** The State plan may include a statement of coastal management principles and policies **Clause 26(2).**

In reality, the State plan:

> ... will give general effect to many of the coastal policy prescriptions of the Government outlined in Reclaiming the Coast. It will also include the criteria for development assessment that will apply when the approvals process is provided by the proposed Planning, Environment and Development Assessment legislation.  

The Minister must prepare ‘regional coastal plans’ for parts of the coastal zone as soon as practicable: **Clause 30.** It is proposed that regional plans will cover the entire coastal zone.  

**Clause 31** provides that a regional plan:

- must describe how the region is to be managed;
- must show the control districts in the region;
- may describe the principles, policies and requirements of coastal management for the region;
- may describe coastal management works and maintenance by authorities;
- may describe identify key coastal sites requiring special management; and
- may include a map of resources.

Regional coastal management plans will provide the interface between State-wide policies in the State plans and local Government planning schemes. The Explanatory Notes state:

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42 Explanatory Notes.
In developing regional plans, local government planning schemes and State Government planning strategies will be integrated, thus ensuring complementary land uses between adjacent areas.

It is the intention of the State Government that the provisions of regional coastal management plans will be translated into appropriate provisions in local government planning schemes. Inconsistencies between a regional coastal management plan and a local government planning scheme should be resolved through consultation with local government. However, the State Government will have the power to amend planning schemes [under Clause 46] where this is necessary to meet its requirement of practical consistency of these schemes with regional coastal management plans. This amendment power is limited to the amendment of planning schemes prepared under the existing Local Government (Planning and Environment) Act 1990 and will not apply to any schemes prepared under the proposed Planning, Environment and Development Assessment Bill.

Either the State plan or regional plans may make provision about anything about which a regulation may be made: Clauses 26(3) and 31(4). Both plans must publicly invite submissions, which must be considered before the plan is finalised: Clauses 27 and 28, and Clauses 32-35. Both types of plans are deemed to be subordinate legislation, and neither comes into effect until approval by the Governor in Council: Clauses 29 and 36.

For minor changes to a plan, amendment may be possible through regulation clause 44(1). However, substantial amendment must go through the same public consultation process applied when finalising the original document: clause 44(2).

Provision is also made for mandatory reviews of the plans every seven years: Clauses 38-41.

4.2. THE PROTECTION OF LAND IN CONTROL DISTRICTS

Control districts
While regional plans are to guide local government planning schemes and prescribe how regional coastal areas are to be managed, control districts are to provide a mechanism for special management and development controls in key areas requiring special protection.

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43 When Clause 46 is invoked, any land owner affected by a change of zoning may apply for compensation under Chapter 5, Part 1.

44 Refer Clauses 44, 47, 51 and 103.
The Explanatory Notes explain:

Control districts cover the land/sea interface and in doing so provide the mechanism for integrating the approval and planning processes for this unique area. Control districts will provide the link between local government jurisdiction, which is limited by high water mark and the State which extends to state territorial waters.

The Minister’s Second Reading Speech to the Bill continues:

Control Districts will be used to delineate that part of the coastal zone over which the State Government wishes to exercise some control concerning the type of future development for these areas.  

Where control districts may be declared

Existing legislation

Section 36 (1)(a) of the Beach Protection Act 1968 allows for the Governor in Council to “declare any part of the coast to be a coastal management control district.”.

“Coast” is defined in Section 3 of the Beach Protection Act as:

All land, including the bed and banks of any river, stream, watercourse, lake or other body of water-

a) That is situated above mean high-water mark at spring tides of any tidal water and within 400 metres, measured by the shortest distance, of that mark;

b) that is situated below mean high-water mark at spring tides of any tidal water.

This definition applies with respect to every island forming part of the State of Queensland.

The proposed legislation

The current Bill provides:

48.(1) A control district may be declared-

– over coastal waters; or

– over a foreshore and over land up to 400m inland from the high water mark along the foreshore; or

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— at the river mouth or estuarine delta - over land up to 1000m inland from the high water mark at the river mouth or estuarine delta; or

— along tidal rivers, saltwater lakes and other bodies of internal tidal water - over land up to 100m from the high water mark along the river, lake or body of water; or

— over an island in coastal waters.

(2) Despite subsection (1), a control district may also include all or part of a coastal wetland, dune system or key coastal site and up to 100m from the wetland, system or site.46

The limits of control districts are not equivalent to the parameters of the ‘coast’, the definition of which is not meant to be prescriptive.

**Declaration of control districts**

**Existing legislation**

Section 36(1)(a) of the *Beach Protection Act* 1968 provides for the declaration of coastal management control districts by the Governor in Council by Order in Council upon the recommendation of the existing Beach Protection Authority. There are currently 25 such districts.47

The Authority may then prepare a coastal management plan for the district.48

Notice and inspection of the coastal management plan is provided for.49 Persons adversely affected by the plan may object to it50 (on grounds such as undue financial burden51) through what Macdonald describes as “limited processes”.52 Coastal

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46 For definitions of phrases used in clause 48, see the discussion in Section 4.1.


48 *Beach Protection Act* 1968, Section 37(1). A coastal management plan is defined in Section 3 of the Act as a plan that “states in general terms the future preferred coastal management for land situated in a Coastal Management Control District”.

49 *Beach Protection Act*, s37(2),(3).

50 *Beach Protection Act*, s37(4).

51 *Beach Protection Act*, s.37(7).

management plans and any objections to them are presented to the Minister for submission to the Governor in Council, who may approve, amend or reject the plan. The Authority may then arrange for work to be done to implement the coastal management plan.

Coastal management plans may be amended from time to time, in accordance with the procedures involved in its declaration, namely: notice of plan, inspection period, allowance for objections, presentation of plan and objections to the Minister for submission to the Governor in Council for approval.

In addition, Section 41A of the Beach Protection Act authorises the Authority, in respect of any part of the coast, to prepare an erosion prone area plan which, according to Section 3, specifies “areas of the coast that, in the opinion of the Authority, may be subject to erosion or encroachment by tidal water.” There are currently about 53 erosion prone area plans prepared for 33 coastal local government areas from the Gold Coast to the Cook Shire.

Following the preparation of an erosion prone area plan by the Authority, the Authority provides a copy to the relevant local authority which must keep it open for public inspection.

Unlike the declaration or amendment processes relating to coastal management plans, the Act is silent regarding Governor in Council approval for declaration or amendment of erosion prone area plans.

This might raise issues regarding procedural fairness since erosion prone areas previously declared under the existing Beach Protection Act are to become (pursuant to Clause 104 of the Bill) ‘control districts’ for the purposes of the Bill and hence subject to the more onerous Coastal Protection Notices in this Bill and increased penalties for non-compliance. These are discussed below.

The proposed legislation
One of the major objectives for creating regional plans is to identify key coastal sites requiring special coastal management and declaration as control districts.

53 Beach Protection Act, s.38(1).
54 Beach Protection Act, s.38(2).
55 Beach Protection Act, s.39.
56 Beach Protection Act, s.41A(2) and (3).
An area may be declared as a control district under:

1) a regional plan: **Clause 47(1)(a)**

2) a regulation - if the area is not covered by a regional plan and the Minister considers that the area requires protection or management

3) a written notice by the Minister declaring an area to be a control district, or part of an existing control district, “only if the Minister considers the area requires immediate protection or management”: **Clause 47(2).**

The Minister’s notice is deemed to be subordinate legislation and will lapse if the control district is not declared by a regional plan or by regulation: **Clause 47(3).** A regulatory impact statement under Part 5 of the *Statutory Instruments Act 1992* need not be prepared for the Minister’s notice.

Each owner of land in an area declared to be a control district must be given written advice that the land is in the district: **Clause 47(7).**

Control districts declared under a regulation may be amalgamated, abolished or have their boundaries changed by regulation: **Clause 51.**

Before a regulation is made declaring a control district or changing its boundaries. Public submissions must be invited and these submissions must be considered. This is provided for in **Clause 50** in a manner similar to the notification of draft regional plans in **Clauses 34 and 35.**

**Clause 49** provides parameters for establishing control districts. These parameters appear highly influenced by the objectives and coastal management principles outlined in the Coastal Protection Strategy Green Paper (discussed earlier). **Clause 49** provides that the following things must be considered before an area is declared a control district:

- **a)** the area’s vulnerability to erosion by the sea or to wind induced effects;
- **b)** whether the area should be kept in an undeveloped state to maintain or enhance the coast or coastal resources;
- **c)** public access to the area;
- **d)** foreseeable human impacts and natural hazards in the area;
- **e)** the existing tenure of, interests in, and rights to, land in the area;
- **f)** Aboriginal tradition and Island custom of Aboriginal and Torres Strait Islander people particularly concerned with land in the area;
- **g)** planning and development management of the area.

In terms of environmental objectives, this is a considerable upgrading of the provisions of the current *Beach Protection Act* which provides that the existing Beach Protection Authority is to plan preventative and remedial measures only:
...with a view to preventing any matter or thing having an adverse effect upon amenity of the coast and, subject there to, with a view to minimising damage to property from erosion or encroachment by tidal water.\textsuperscript{57}

The effect of these environmental objectives, however, remains to be seen with regards to properly located and environmentally appropriate new coastal developments. This is especially so since only one of the parameters in Clause 49 refers to tenure and existing interests in the land.

Clause 61 permits the temporary occupation of land to implement a “coastal plan”, defined in Schedule 2 to mean “the State plan or regional plan”, within which, a control district has been declared.

Clause 61 allows the Director-General in implementing a coastal plan, to temporarily occupy and use land in a control district for the purpose of building, maintaining or repairing works, and may:

a) take from it stone, gravel, sand, earth, and other material;

b) deposit materials on it;

c) form and use temporary works, such as roads; and

d) build temporary structures

At least seven days notice must be given (Clause 61(2)) unless there are urgent circumstances (61(3)). Compensation is payable for the occupation and use “if the land is not resumed”: Clause 61(6).

Section 39 of the existing Beach Protection Act allows for the doing of “works, steps and things necessary to implement” coastal management plans declared under the Act.

Clause 61, (1), (2), (3) and (6) largely replicate Section 50 of the existing Beach Protection Act. Section 50 allows temporary occupation of land for the doing of “works, steps and things necessary to implement” coastal management plans declared under that Act.\textsuperscript{58}

Coastal protection, preservation or improvement through coastal protection notices and tidal works notices

The Minister’s Second Reading Speech to the Bill stated:

\textsuperscript{57} Beach Protection Act, s.34(1)(c).

\textsuperscript{58} Beach Protection Act, s.39(1).
Notices will be issued to prevent the continuation of an activity which is having a significant effect on coastal management, or to remove works situated below high water mark that have been abandoned or are in need of urgent repair.

It should be stressed that notices shall only be issued as a “last resort” option. Where such activity is leading to a coastal management problem or where there is a need to remove or repair works located in tidal water then the Department will first seek to remedy the problem through consultation and discussions with the landholder or owner of the works. Notices will be issued where such discussion cannot resolve the dispute.\(^59\)

**Existing legislation**

Regarding land in a coastal management control district, Section 39(7) of the Beach Protection Act 1968 enables the Minister to give to a person who has done anything:

a) contrary to works or provisions in a coastal management plan;

b) likely to make the plan more difficult to implement; or

c) likely to increase the coast of implementation,

written notice directing that person to stop the activity and:

- restore the site; or
- carry out any works to which the Minister and the person may have agreed.

Failure to comply with such a notice incurs a penalty of $500 for each day the failure continues\(^60\), and will subject the person to any costs incurred by the Minister in fulfilling the requirements of the notice\(^61\).

Owners of land in a designated erosion prone area are required at all times to protect the land from wind erosion at their own cost.\(^62\) In view of this, a local authority may serve owners of land in erosion prone areas a notice under Section 43 of the Beach Protection Act\(^63\).

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\(^60\) *Beach Protection Act*, s.39(8).

\(^61\) *Beach Protection Act*, s.39(11).

\(^62\) *Beach Protection Act*, s.43(1).
The Coastal Management and Protection Bill 1995

63 The notice might require the person to:
   i) construct and maintain works;
   ii) plant and cultivate vegetation;
   iii) preserve and cultivate subsisting vegetation;
   iv) not alter the natural configuration of the land; or
   v) take any other step to protect the land from wind erosion.

64 Failure to comply with such a notice may cost the owner up to $500, an additional $100 for each day that non-compliance continues; and any costs incurred by the local authority in rectifying the non-compliance.

65 A local authority may also serve notices on owners of erosion prone areas prohibiting or regulating the damaging of any vegetation, depasturing of any stock or removal of any sand or other earth from the land.

66 Contravention of the notice attracts penalties of up to $2,500 and $250 for each day it is continued.

67 The Act also prohibits the damage of vegetation, depasture of stock or interference with coastal management plan works on unoccupied Crown land subject to an erosion prone area plan.

The proposed legislation

Clause 52 provides for the issuing of coastal protection notices - to apply to activity only in a control district. Clause 52(2) allows for the Director-General of the Department to give a notice to a person directing the person, within the time stated in the notice:

   a) to take the action stated in the notice to protect land; or

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63 Beach Protection Act, s.43(2)(a).
64 Beach Protection Act, s.43(2)(c).
65 Beach Protection Act, s.43(3).
66 Beach Protection Act, s.47(2).
67 Beach Protection Act, s.47(1).
b) to stop, or not start, an activity stated in the notice "if the Director-General is satisfied" the activity is likely to:

i) have a significant effect on coastal management; or

ii) cause wind erosion.

Clause 52(4) specifies that the coastal protection notice might require the person:

(a) to build or maintain works;

(b) to plant, cultivate or preserve, or not damage, vegetation native to the control district;

(c) not to alter the geographical features of land;

(d) to do anything else necessary to protect the land from wind erosion;

(e) to restore land; or

(f) to remove stock from land.

Clause 52 of the Bill, when compared to the notice provision in Section 43 of the Beach Protection Act (regarding owners of erosion prone areas):

− relates to any person, as opposed to the owner;

− has the objective of coastal management and protection from wind erosion, as opposed to just wind erosion;

− mirrors, in Clause 52(4)(a)-(d), the Beach Protection Act in what might be required to be done; and

− like the Beach Protection Act provision leaves “works” in Clause 52(4)(a) undefined.

The Minister, in his Second Reading Speech to the Bill, stated:

Coastal Protection Notices will not be used to modify existing conditions of development in a way which would constitute a withdrawal or modification of an approval. However, they may be used to control irresponsible construction practice being used to build approved works. As an example, unnecessary damage to vegetation or dune systems may attract a notice where the developer refuses to act in a responsible way.68

Clause 53 of the Bill provides for tidal works notices. If, in the Director-General's opinion, works on the foreshore or land under tidal water need repair, are abandoned or should be removed, the Director-General may give the person responsible for the works

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a notice. The notice may direct the person, within a reasonable period, to repair the works or have the works removed and the site restored.

Unlike the coastal protection notice provision in Clause 52, Clause 53 does not specify that its application is limited to a control district. However, it appears in the Bill under the heading “Part 3 - Control Districts” and is referred to in the Second Reading Speech in the following manner:

...for land within a control district, the Coastal Bill allows the chief executive to issue notices - termed “coastal protection notices” and “tidal works notices”.69

Both Clause 52 coastal protection notices and Clause 53 tidal works notices:

1) “Will only be used where there is fault but not necessarily illegality on the part of the owner of the works”;70

2) May attract:
   i) a maximum penalty for non-compliance of 3,000 penalty units, currently $180,000;71
   ii) as well as any costs reasonably incurred by the Director-General in taking out the action required by the notice: Clause 54;

3) Provide appeal provisions, where the person “feels aggrieved or believes the notice is unreasonable in the circumstances”.72 Appeals to the notices are dealt with in Clauses 95 - 100;

4) When served on builders and land owners, make them both liable for the requirements in the notice: Clause 57;73

5) Are to be recorded in the land registry: Clause 56; and

6) Are binding on subsequent purchasers: see the provisions of Clause 58.

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70 As per the Explanatory Notes to the Bill.

71 Penalties and Sentences Act 1992, s 5(1).


73 As they currently are under the Beach Protection Act, s 44(1c)(5).
Regarding Clauses 52 and 53, how notice is to be given to a person (when the name of the person is known) would be dictated by Part 10 (‘Service of Documents’) of the Acts Interpretation Act 1954. If the name of the person is not known, Clause 52(3) and 53(2) state that notice may be given in a newspaper circulating throughout the district or by displaying the notice in a prominent position on the land. In addition, Clause 55 allows for the forfeiture of any property which is the subject of a notice when that property is on unallocated State land. Regarding these provisions, the Explanatory Notes state that a draft of the Bill was referred to the Litigation Reform Commission for comment. The Litigation Reform Commission advised that it did not wish to comment on the Bill, but the Commission:

...did note for further consideration the provisions in the Coastal Protection and Management Bill dealing with the forfeiture of property for non-compliance with a notice where the name of the relevant person is not known. Discussions with the Office of the Parliamentary Counsel indicated that there was no practicable alternative to the provision already contained in the Coastal Protection and Management Bill requiring advertising in the local newspaper or displaying the notice in a prominent position on the land. To provide additional safeguards to the person concerned, the Coastal Protection and Management Bill now provides a longer period for those cases where the name of the relevant person is not known before the State can legally proceed with forfeiture of the property. This provides a further period for the person concerned to become aware of the pending action.

Coastal building lines

A regional plan, regulation or notice that declares a control district may also fix a coastal building line: Clause 59(1). No approval to build seaward of the coastal building line can be given (59(2)) unless the Minister is satisfied:

a) the structure is not contrary to the district’s coastal plan; and

b) building it is not likely to be detrimental to coastal management: 59(3).

Clause 104(b) states that each setback requirement as specified in the table in the Coastal Management Control Districts (Requirements for Buildings or Other Structures) Regulation 1984 is taken to be a coastal building line under the Bill.

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74 As is the case with Section 43 notices under the Beach Protection Act : s 43(4) of the Act.

75 Clause 96 (2)(a)(i) provides a 60 day period in which to lodge an appeal when the name of the person is not known.
4.4 APPROVAL PROCESSES

The approval process will amount to a consolidation, into a single process, of the approval provisions contained in the Beach Protection Act, Canals Act and those sections of the Harbours Act which deal with works below high water mark, including structures, reclamations and dredging. The process will require that applications to do works within the coastal zone are assessed with respect to ecologically sustainable development principles.

The Minister for Environment and Heritage would be responsible for all approvals. However, the Minister would have power to delegate assessment matters to an approving authority, such as a local authority or any officer of the Public Service. Assessments could then be received and processed at local level.

As noted in Section 2 of this paper, specific building, rezoning and subsubvision requirements were deleted from the 1993 Draft release of the Bill. Under the Integrated Development Assessment System (IDAS), it is intended that applications for the development of land affected by the State coastal management plans, regional coastal management plans and declarations of control districts under this Bill will be subjected to the provisions of the Planning, Environment and Development Assessment (PEDA) Bill.

The Explanatory Notes explain:

... State and regional coastal management plans will be prepared as documents that are legally binding in control districts. Outside control districts, coastal management plans will be prepared in such a way that they are policy documents. In local government areas outside control districts, they will operate in the same manner as State Planning Policies to which local governments must have regard when making planning decisions or assessing development applications.

A head of power will also be incorporated into the Planning, Environment and Development Assessment legislation to ensure coastal management plans outside control districts are treated the same way as State Planning Policies under that legislation.

The Explanatory Notes continue:

Under the Planning, Environment and Development Assessment Bill, for a development in the coastal zone, the Department administering the Coastal Protection and Management Bill will be a concurrence agency or development manager depending on the circumstances of the particular development.

It is intended that the Department of Environment and Heritage will be the development manager for development applications involving works below high water mark...
mark. The Department will be a concurrence agency for land based development within a control district.

Under the **Planning, Environment and Development Assessment Bill**, proposed developments will be assessed against planning criteria and the objectives of the proposed Act. As a development manager or concurrence agency the Department of Environment and Heritage will take account of the objects of the **Coastal Protection and Management Bill** in assessing the development application. This will involve taking account of all relevant coastal, social, environmental and any other relevant parameters to ensure that development complies with the ecologically sustainable development of the coastal zone and its resources.

**Land surrender**

Section 45 of the existing **Beach Protection Act 1968** states that an application for subvision of land in a ‘coastal management control district’ must obtain the consent of the Governor in Council, whom may give such consent subject to conditions: Section 45(6). If the land is in an ‘erosion prone area’ (deemed by Clause 104 of the current Bill to be a ‘control district’ for the purposes of the Bill), a condition might require the ‘surrender of all or any land’ to which the application relates: Section 45(7). Such a condition is not compensatable: Section 46(1).

**Clause 105** and **Schedule 1** of the Bill amends the **Beach Protection Act** by reaffirming and adding to the land surrender provisions of the Act. The proposed new Section 41C of the Act will apply if:

a) a person applies under the **Local Government (Planning and Environment Act) 1990** for approval to amend an existing planning scheme by the rezoning of land (the "relevant land"); and

b) all or part of the relevant land is in a coastal management control district or is included in an area to which an erosion prone area plan relates.

If the Beach Protection Authority is satisfied the relevant land should be protected by the surrender of part of the land, it must-

(a) advise the applicant and the local government that a condition of the approval should be that a specified part of the relevant land be surrendered; and

(b) give the local government written advice about the condition within 30 days of receiving the copy of the application from the applicant: Proposed Section 45C(5)

"Surrender", of land is defined as surrender of the land free of charge to the State for beach protection and coastal management.
No appeal lies against the surrender requirement and no compensation is payable for the surrender: 45C(8).

The amended section would mean that if a land owner wanted to apply for a subdivision, opening or closing of a road or change of use of land, such approval could be given with the condition that part of the land would have to be surrendered. The land surrender condition will not apply to ‘as of right’ development but deals with those types of special development applications where the owner of land is seeking increased development rights over the land. It would appear to not amount to a ‘resumption’ of land as such, but a condition which is triggered only by the application by the owner.76

The Explanatory Notes comment:

It is intended that all the land surrender provisions of the Beach Protection Act 1968 (including the consequential amendments included in the Coastal Protection and Management Bill) will be incorporated into the Coastal Protection and Management Act upon the proclamation of the Planning, Environment and Development Assessment Bill. This intended future amendment to the Coastal Protection and Management Act will provide a concurrence power to the Department of Environment and Heritage enabling it to require a surrender of land to the State for land either wholly or partially within a control district. The land surrender condition will be non-appealable and not subject to compensation. The land surrender condition will not apply to "as of right" or exempt development but deals with those types of special development applications where the owner of land is seeking increased development rights over the land.

4.5 COMPENSATION

Limited compensation provisions apply where owners of land have their existing rights changed or prohibited by the implementation of a coastal management plan or a control district (analogous to a down-zoning).

Clause 86(1) provides that the owner of an interest in land is entitled to be paid compensation if the existing use77 that may be made of the land is changed by a restriction or prohibition imposed by:

- the State coastal management plan;
- a regional coastal management plan; or

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77 ‘Existing use’ is defined in Clause 86 as including a lawful ‘as of right’ use that may have been made of the land immediately before the change.
The owner is entitled to compensation only if:

- the owner makes an application for the land (defined as including an application firstly, to build a structure, the proposed use of which was as of right under the existing the owner was the owner at the time of change;
- planning scheme and, secondly, for a subdivision that is consistent with the existing planning scheme);
- the application:
  - is made within two years of the change;
  - indicates that a claim for compensation may be made if the application is refused; and
- the application is refused pursuant to this Bill: Clause 86(2).

If the land is rural land ("used only by a primary producer for grazing stock or cultivating crops"), the owner is entitled to compensation only if the owner applies directly to the Director General of the Department of Environment and Heritage (Clause 86(3)) within six months of the change of use imposed by the coastal plan or control district declaration (Clause 88(1)(b)).

In his Second Reading Speech, the Minister discussed:

*These compensation provisions have been drafted based on the compensation provisions contained in the recently released public exposure draft of the PEDA Bill. The exposure draft of the PEDA Bill provides for down-zoning with limited compensation provisions for “as of right”, consent, preferred and discretionary developments. One of the main eligibility criteria for compensation is that owners must lodge an application with the local government within two years of the change of zoning.*

*However, the coastal Bill only provides compensation for existing development rights, not potential development rights such as consent developments. Consent development does not carry automatic rights in the same way as “as of right” developments. A consent land use category only represents a possible increased development right subject to the development application meeting all other social and environmental factors. Because a regional coastal management plan deals primarily with the environmental management of the coastal zone, it is considered that a consent development should not be entitled to compensation. The coastal Bill also includes compensation for loss of rights for rural activities. The prohibition of an “as of right” rural activity should attract the same right development. As no specific*
application is required for rural activities an alternate trigger for the consideration of compensation has been included, that is, application to the chief executive.\footnote{Coastal Protection and Management Bill 1995 (Qld), \textit{Queensland Parliamentary Debates}, Second Reading Speech, Hon. T. A. Barton MLA, 19 October 1995, pp.532-533.}

A claim for compensation must be lodged with the Director - General of the Department of Environment and Heritage, who may decide:

- the reasonable compensation payable (defined in Clause 90);
- to reject the claim; or
- \textbf{to acquire the interest} (emphasis added).

The decision is appealable: refer Clause 89(2). Compensation will not be payable if the change merely alters on which part of the land development may take place or for development “unlawfully carried out”: Clause 87(2).

No compensation would appear payable where approvals are granted but are subject to extremely onerous requirements that would not make development feasible.

4.6 \textbf{MISCELLANEOUS PROVISIONS}

\textbf{Restraint Orders}

Restraint orders may be sought against an offence under the Act: Clause 84. Orders may be sought by the Minister, the Director-General of the Department of Environment and Heritage, and any person “whose interests are affected by the subject matter of the proceeding”. However the court may also grant leave to any other person to seek a restraint order, providing the court is satisfied that certain conditions have been met. These include that harm may genuinely be caused to the coastal zone, that the proceeding will be in the public interest, that the person is able to represent the public interest, and that the person has already written to the Minister requesting a proceeding be brought, and the Minister has not acted on the request within a reasonable time: Clause 84(2). The person may be requires to give security against possible costs or to give an undertaking about damages: Clause 84(4).

The restraint order may require that an activity be stopped, or that an activity such as removal of an object or rehabilitation of an area be conducted. Contravention of an order may invoke a penalty of up to $180,000.
Investigation and Enforcement

Authorised persons who have been appointed by the Director-General may exercise a range of powers, including to enter land, take samples, and to require the name and address of a person committing and offence against the Act or reasonably suspected of having just committed an offence against the Act.

Similar provisions are contained in the Nature Conservation Act (see Sections 151, 154)

Legal Proceedings

Contravention of a coastal protection notice (Clause 52), a tidal works notice (Clause 53), or a restraint order (Clauses 84 or 85) in an indictable offence: Clause 80. any other offence against the Act is a summary offence.

4.7 INTERIM PROVISIONS

In the interim period between proclamation of current Bill and the proclamation of the Planning, Environment and Development Assessment Bill, the Beach Protection Act 1968, Canals Act 1958 and those provisions of the Harbours Act 1955 dealing with works below high water mark will continue as these Acts presently contain approval provisions relating to coastal development. These latter Acts will be repealed upon the proclamation of the Planning, Environment and Development Assessment Bill.

The amendment to the Transport Infrastructure Act 1994 made by Clause 105 and Schedule 1 of the current Bill has the effect of extending from two to four years the sunset clause affecting Section 236 of the Act which saves those provisions of the now repealed Harbours Act which affect coastal management.

5. CONCLUSION

While the operative effect of the Bill (particularly as it is to interrelate with the Planning, Environment and Development Assessment Bill) remains to be seen, the conclusion to the Green Paper appears appropriate:

A coordinated approach is needed immediately to provide clear direction to the community and government on how the coast is to be used and protected to ensure maximum long-term benefits for Queensland and Australia. We have an obligation to
future generations and the rest of the world to conserve the special features of Queensland’s coast.\textsuperscript{79}

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• Madigan, Michael and Franklin, Matthew, ‘Bill moves against environmental vandalism’, *Courier Mail*, 20 October 1995, p.10.


• Resource Assessment Commission, *Coastal Zone Inquiry: Recommendations from Previous Reports and Inquiries Relevant to the Coastal Zone*, Information Paper No.2, AGPS, Canberra, November 1993.


**APPENDIX 1**

**List of Previous Inquiries Examined by the Resource Assessment Commission in its 1993 Coastal Zone Inquiry.**

5. TASQUE, *The Role of Local Government in Environmental Management*, University of Tasmania.


APPENDIX 2

Recommendations of the Resource Assessment Commission in its 1993 Coastal Zone Inquiry\(^1\) of relevance to the Queensland’s Coastal Protection and Management Bill 1995 and its relationship with the proposed Planning, Environment and Development Bill.


- local authorities in the coastal zone review their administrative arrangements to ensure they are capable of developing and implementing coastal zone strategies;
- the provision of infrastructure and services within local authorities’ jurisdiction take place in accordance with agreed local coastal strategies and be subjected to the same assessment and approval processes as those required for other developments and conservation proposals. (R.33)
- regional coast zone strategies be developed, principal responsibility for their promotion and implementation resting with state governments;
- the regional strategies be developed by groups comprising representatives of regional communities and industries, local authorities, and relevant state and Commonwealth government agencies. (R.34)
- all states review existing regional boundaries, in consultation with local governments, to ensure that they provide a sound basis for implementing coastal resource management on a regional basis, incorporating both land and marine resources. (R.35)
- it is important that each state develop a single, unified assessment and approvals system to deal with all development and conservation proposals in the coastal zone, including proposals affecting marine resources. (R.38)
- state and Commonwealth governments adopt stringent guidelines for the conduct of environmental and other impact assessments of development proposals, including rigorous and transparent procedures for their evaluation and the setting of timetables for their compilation. (R.39)
- development approval processes include assessment of the ecological, economic, social and cultural effects of major proposals, including their effects on Australia’s indigenous communities. (R.40)
- the potential ecological, economic, social and cultural impacts of development proposals, including potential cumulative impacts, be evaluated on a broader scale than the immediate development site.
- the National Coastal Management Agency and state coastal coordinating committees evaluate the role that strategic environmental assessment procedures can play in assessing cumulative impacts of development proposals. (R.41)
APPENDIX 3

This Appendix contains the following articles relevant to the Bill or its original Draft:


- ‘Coastal work in jeopardy’, *Courier Mail*, 5 November 1993, p.17.


Title      Bill moves against `environmental vandalism'.
Author     Madigan, Michael
FRANKLIN, MATTHEW ( 5630 )
Source     Courier Mail ( 59 )
Date Issue 20/10/95
Pages      10

THE Queensland Government yesterday moved to outlaw inappropriate coastal developments such as Cardwell's Oyster Point.

Environment Minister Tom Barton introduced the Coastal Protection and Management Bill 1995 to State Parliament.

He said the bill would provide the State Government with unprecedented powers to prevent undesirable coastal projects.

Developers who took action either not consistent with good planning or dangerous to the coast could be stopped swiftly by a protection order.

"If a developer were to start to destroy a sand dune, putting the coast at risk or communities near by at risk, I can put a stop-work order on that development," he said.

Mr Barton said environmentally sensitive developments would be accommodated.

"But the bill prohibits environmental vandalism and the destruction of the natural beauty of the coast," he said.

The legislation would ensure the controversy which arose over developer Keith Williams' plans to build a resort at Oyster Point in Cardwell in north Queensland would never be repeated, he said.

"Under this legislation there certainly can't be any more Oyster Points, or Magnetic Quays (a failed development on Magnetic Island off Townsville)," Mr Barton said.

Meanwhile, new planning legislation has been attacked by the Opposition for increasing the price of land but praised by the Government for lowering the price of land.

Opposition planning spokesman Ray Connor said the Planning, Environment, Development Assessment Bill would create hardship for new home buyers by triggering a surge in administrative costs.

He said the legislation would add $10,000 to the cost of the average block of land.

Planning Minister Terry Mackenroth said Mr Connor did not know what he was talking about and the PEDA Bill would reduce the cost of land.

Mr Mackenroth said an independent consultant had calculated the new law would create savings of $60 million a year by slashing red tape and delays in development.

He said the Bill was the result of two years of consultation with interested groups and the community.

Mr Connor said there had been massive protest meetings about the Bill in recent weeks.
THE entire Queensland coastline will be environmentally protected by a new Coastal Protection and Management Bill to come into force early next year, State Environment Minister Mrs Robson said yesterday.

The Bill, already passed by State Cabinet, would amalgamate provisions in several different Acts that currently control Queensland's coastal lands and waters, she said.

"The Bill gives very strong environmental controls on coastal development and should overcome the sort of problems that have occurred at Oyster Point.

"We will be able to quickly process development applications with the environmental considerations up front."

The new legislation would give developers a clear idea, at the planning stage, of what was and was not allowed in project development at a given site.

The Act examined developments in three geographical ways: as a region, a district, and a zone.

Each region would be managed under a specific plan which could include World Heritage value if the region included such an area.

There would be standard minimum criteria in areas, like water quality and impact on coastal zones.

Regions would differ depending on their environmental sensitivity, with rainforest clearly more sensitive than scrubby bushland.

Within regions there would be specific management districts.

Each district would have differing controls and management plans depending on land usage, like tourism as opposed to agricultural or river content as opposed to mountains.
QUEENSLAND'S proposed Coastal Protection Bill could jeopardise development, stall economic growth and threaten jobs, Urban Development Institute of Australia's state president Cam Leagh-Murray said yesterday.

The draft Bill extends the definition of Queensland's coast beyond that previously recognised to within 1km of the high-waterline and within 400m of a river or estuary.

This covered most of the State's urban and city areas, including the Brisbane CBD and islands, Mr Leagh-Murray said.

He said the Bill posed a host of concerns foremost being the provision for unfettered powers to the Environment and Heritage Minister.

"The draft Bill gives full power to the Minister to designate control districts without recourse to Parliament.

Within these districts the Minister can forcibly resume land without appeal by the owner and without compensation," he said.

"This means that the right to use land within a control district depends upon the whim of a minister.

"Any legislation that can shut-down coastal development and in turn threaten jobs is totally unacceptable," Mr Leagh-Murray said.

He said the Bill also created another level of approvals and countered the Federal Government's Integrated Development Approval System aimed at streamlining the states' planning regulations and cutting red tape.

An Environment and Heritage Department spokesman refuted Mr Leagh-Murray's argument.

"To suggest that because the new Bill has an area of influence stretching 1km would somehow stop development is complete and utter garbage," the spokesman said.

"It simply means that developers have to consider the provision of the Coastal Protection Bill just like they have to consider the by-laws of the local city authority." The spokesman said in 98 percent of cases the Bill would have no effect on development applications.

"We are, in fact, simplifying and expediting the approval process by amalgamating the Beach Protection Act, the Canals Act and the Harbours Act into one," he said.

"This is merely a mechanism to define the coast.

Nothing different is going to occur than already exists in the Beach Protection legislation.

Under the current Act freehold land can be revoked without compensation if a developer does not proceed according to approval.

Mr Leagh-Murray conceded some past development methods needed improving.
but said a prescriptive set of rules was not the answer.

"Industry is mindful that they must do all they can to protect foreshores and create greater public access," he said.

"And I believe that is happening."
THE Queensland Government plans to introduce laws which would regulate development on the state's coast as far as a kilometre inland from the high water mark.

The draft Coastal Protection Bill, which has implications for future tourism development, is believed to have concerned officers in the Tourism, Sport and Racing Department.

Sections of the tourism industry also are alarmed over the potential effects the proposed legislation could have on coastal development projects.

Several industry groups, including the Building Owners and Managers Association, are preparing submissions critical of some sections of the draft Bill.

The Albert Shire Council has protested at sections of the Bill, saying it is contrary to agreed development approval principles.

Submissions on the draft Bill, which the Government sees as a way of encouraging environmentally responsible development, close on October 22.

An Environment and Heritage officer, Mr Paul Coughlan, said "control districts" could be declared along most open beach areas of the Queensland coast.

But he said the aim of the Bill was responsible development on the coast.

"We are not after one big land grab," he said.

He said much of the immediate strip of land next to the hightide mark in coastal areas would be buffered from development.

In some areas, such as Cape York, control districts could stretch as far as 1km inland - the Bill's working definition of a coastal area.

The districts would replace declared zones of coastal protection under the Beach Protection Act, which will be repealed along with five other Acts if the Bill is passed.

The Bill is the product of a green paper on beach protection issued by the Government two years ago.

It will also cover development on islands and on the banks of tidal rivers, including the Brisbane River.

Despite the tourism industry's concerns, a spokesman for Environment and Heritage Minister Molly Robson said the Bill's 1km definition of a coastal area was only a "starting point".

He said the Bill provided for each region of Queensland to have its own coastal management plan, in which coastal areas would be defined.

"People should not be panicked by that definition," he said.
QUEENSLAND'S draft Coastal Protection Bill could allow the State Government to require freehold coastal land for which a rezoning is being sought to be surrendered free of charge, a lawyer says.

The Bill, released for public comment by the Department of Environment and Heritage, yesterday drew comment from Environment and Planning Group Corrs Chambers Westgarth lawyer Henry Prokuda.

Mr Prokuda said, however, it would be unlikely a situation would arise where the surrender of freehold coastland would be necessary and that the amendment of approvals would normally be for minor changes.

The proposed legislation provides for three main initiatives including the establishment of a Coastal Protection Policy Advisory Council, the

preparation of State and regional coastal management and the consolidation, into a single approval process, of the approval provisions of the Beach Protection Act, the Canals Act and sections of the Harbours Act.

The approval process would be handled by the Environment and Heritage Department.

Mr Prokuda said the Bill contained pluses and minuses but that it would create another level of approval processes.

"The Bill proposes that a state management plan be initiated which would encompass regional management plans and identify 'control districts' within regions which would be subject to the provisions of the proposed legislation," he said.

"Any planned development within these control districts which requires the usual town planning approvals will also require an additional approval under the legislation prior to the commencement of any works."

Mr Prokuda said approval had to obtained before building or altering any building or structure in a control district as well as for canal works, extractive and reclamation works in tidal waters and any activity that damaged vegetation or interfered with Crown land in a control district.

Mr Prokuda said the Bill had been accompanied by a notice pointing out that the interests of those who might hold "Mabo-style" native title and associated rights were yet to be addressed by the Bill.

He said in addition, while an approval for development might be obtained, there was also a provision which stated the approval could be altered or revoked at any time by the approving authority.

Mr Prokuda said a provision concerning wind erosion stated that if the land was altered in such a way to cause wind erosion the approving authority had the right to issue a "Wind Erosion Notice".

He said the notice required the landowner to take steps to ensure the erosion was abated.

Urban Development Institute of Australia president Cam Leagh-Murray said yesterday that without actually seeing the
draft, the industry was concerned with simplicity and certainty.

Mr Leagh-Murray said the Bill sounded as if it was not making the process easier.

"If it is the intention of the Queensland Government, and I doubt that it is, to proceed with another layer of approvals this appears to be a significant departure from the already approved and stated government strategy," he said.

"The opportunity is there with all local governments throughout Queensland having to put in their strategic plans to make sure sensitive areas are protected and providing certainty for Queenslanders and developers.

"Our advice is that under the integrated development approvals system already approved by State Government that Queenslanders will not be confronted in the future by multi-layered development systems.

"We are all for, and I believe senior government officials have told us they support, a single system that is integrated into local government strategic plans throughout Queensland."

Mr Leagh-Murray said one level of approvals integrated into the plans and administered by the department and Housing, Local Government and Planning, would suffice.

"We like simplicity and the industry certainly supports the protection of sensitive areas but let's not have a multi-layered approval system," he said.

An Environment and Heritage Department spokesman said it was his understanding that land could already be revoked by the approving authority if the developer did not proceed according to approval.

"We don't intend there to be a situation where one department says the approval is fine and another later says no they're not happy with it," he said.

"We will be the lead agency."
Title      Coastal work 'in jeopardy'.

Source     Courier Mail ( 59 )

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PLANNED legislation by the Queensland Government will jeopardise development along the Queensland coast, according to business and development leaders.

The Urban Development Institute of Australia state president Cam Leagh-Murray said yesterday his industry was extremely worried about the proposed Coastal Protection Authority.

He said the draft Bill gave power to the Environment Minister to designate "control districts" - without recourse to the Cabinet.

Within these districts, the Minister could forcibly resume land without appeal by the owner and without compensation.

"This means the right to use land within a control district depends on the whim of a Minister," Mr Leagh-Murray said.

"It is difficult to believe the department is serious.

Our members tell us they have never seen such a poorly written and confused piece of draft legislation."

An Environment and Heritage Department spokesman said yesterday there were restraints to the power within the legislation.

The spokesman said environmental factors such as erosion, ecosystems, and public access had to be considered before an area was given control district status.

Senior partner of Brisbane legal firm Clarke and Kann, Eddie Kann, said yesterday there were serious concerns within the legal community as well as the development and business sectors.

"The draft Bill provides that the boundaries of a designated control district may be drawn or amended by the Minister without any public notice or reference to the Governor-in-Council," he said.

"It also vests the Minister with enormous powers to resume land without compensation.

Such power is clearly unacceptable.

"It is an enormous erosion of a land owner's right.

It means that in some circumstances property owners would no longer have secure title to their land."

The department spokesman said mechanisms including applications for subdivision or rezoning would have to be triggered before the resumption powers were effected.

He said the surrender conditions to subdivisions were almost identical to the existing Beach Protection Act.

The proposed legislations took the same concept and applied it equally to rezonings.

"It looks at a consistent approach to development which does not penalise one type of developer over another," he said.

Mr Kann said under the proposed legislation the Minister would also be empowered to withhold land in an undeveloped state for an endless period, or resume it without compensation.
He said land owners in a control district, would also have to pay to protect their land from wind erosion, caused by artificial means.

Mr Kann said the term “artificial means” had not been defined.

“We understand it to mean erosion deemed to be caused by building or development.

This piece of legislation would appear to apply retrospectively, and it would suggest that highrise apartment owners, for instance, will be expected to pay for coastal erosion where it is decided that their building has contributed.”.

Mr Kann said the proposed legislation also gave wide powers of entry on to land by the state for inspection or valuation.

“Any entry to land should be preceded by reasonable notice,” Mr Kann said.

The department expects to have finished examining about 130 submissions about the draft legislation by the end of November.

The final draft of the Bill is expected to go to first session of Parliament next year.