

Gold Coast City Council



Local Law No. 17

(Maintenance of Works in Waterway Areas) 2013

It is hereby certified that this is a true and correct copy of
Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013 made
in accordance with the *Local Government Act 2009* by Gold Coast City Council by
resolution dated 11 June 2013

Dale Dickson
Chief Executive Officer

**Gold Coast City Council
Local Law No. 17 (Maintenance of Works in Waterway
Areas) 2013**

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Gold Coast City Council Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013*.

2 Objects

The object of this local law is to—

- (a) provide for the maintenance and repair of works in waterway areas in the local government area; and
- (b) regulate the maintenance and repair of works in waterway areas in the local government area; and
- (c) ensure that prescribed works are maintained by persons whose lands are subject to, or where the land is waterfront land or waterfront (separated) land, benefits from, those works at the cost of such persons and in accordance with all relevant laws; and
- (d) ensure that works in waterway areas in the local government area do not—
 - (i) fall into disrepair; or
 - (ii) result in—
 - (A) harm to human health or safety or personal injury; or
 - (B) property damage or a loss of amenity; or
 - (C) environmental harm or environmental nuisance; and
- (e) ensure that appropriate persons, at their cost, build required works in accordance with all relevant laws in the local government area to—
 - (i) protect waterway areas and other land;
 - (ii) protect persons who use waterway areas; and
 - (iii) avoid or minimise environmental harm or other damage to waterway areas; and
- (f) further to paragraphs (c) to (e), ensure that—
 - (i) a continuous seawall is built and maintained on or near the coastal beaches of the local government area; and
 - (ii) revetment walls are built and maintained in non-coastal waterway areas of the local government area; and
- (g) protect the interests of buyers of certain lots which receive the benefit of works that have not been maintained; and
- (h) provide for the protection, conservation, rehabilitation and management of

waterway areas in the local government area; and

- (i) protect public health and safety in waterway areas in the local government area; and
- (j) protect the environment, including riparian areas, and works in and near waterway areas in the local government area.

Part 2 Relationship to other laws

3 Relationship to other laws

- (1) The powers given by this local law must be exercised in a way that is not inconsistent with all Acts (including subordinate legislation) including the—
 - (a) *Environmental Protection Act 1994*; and
 - (b) *Sustainable Planning Act 2009*; and
 - (c) *Criminal Code Act 1899*; and
 - (d) *Mineral Resources Act 1989*; and
 - (e) *Nature Conservation Act 1992*; and
 - (f) *Recreation Areas Management Act 2006*; and
 - (g) *Marine Parks Act 2004*; and
 - (h) *Land Protection (Pest and Stock Route Management) Act 2002*; and
 - (i) *Health Act 1937*; and
 - (j) *Land Act 1994*; and
 - (k) *Building Act 1975*; and
 - (l) *Transport Infrastructure Act 1994*; and
 - (m) *Transport Operations (Road Use Management) Act 1995*; and
 - (n) *Transport Operations (Marine Safety) Act 1994*; and
 - (o) *Public Health Act 2005*; and
 - (p) *Coastal Protection and Management Act 1995*; and
 - (q) *Work Health and Safety Act 2011*; and
 - (r) *Integrated Resort Development Act 1987*; and
 - (s) *Sanctuary Cove Resort Act 1985*; and
 - (t) *Mixed Use Development Act 1993*; and
 - (u) *Body Corporate and Community Management Act 1997*; and
 - (v) *Water Act 2000*; and
 - (w) *Fisheries Act 1994*; and
 - (x) *Native Title Act 1993 (Cwlth)*; and
 - (y) *Native Title (Queensland) Act 1993*; and
 - (z) *Aboriginal Cultural Heritage Act 2003*; and

(aa) *Neighbourhood Disputes Resolution Act 2011.*

- (2) The local government must respect and take into account any Aboriginal or Torres Strait Islander native title and cultural heritage rights and interests under an Act of the Commonwealth, State or the local government or the common law when the local government exercises its powers under this local law.

Part 3 Interpretation

Division 1 Dictionary

4 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

Division 2 Other definitions

5 Waterway area

- (1) In this local law, a *waterway area*—
- (a) is all land and waters in the local government area in—
 - (i) a tidal waterway; and
 - (ii) a non-tidal waterway; and
 - (iii) a lake; and
 - (iv) an artificial waterway; and
 - (v) a coastal wetland; and
 - (vi) a drain, channel, structure or other work used to receive, store or transport stormwater that—
 - (A) is more than 1m deep; and
 - (B) has a cross sectional area more than 2.5m²; but
 - (b) does not include the following—
 - (i) a swimming pool; and
 - (ii) an ornamental pond of no more than 5000m² in area; and
 - (iii) a pond—
 - (A) for aquaculture; or
 - (B) for treating effluent; and
 - (iv) a freshwater storage reservoir for domestic water supply; and
 - (v) a water storage facility—
 - (A) situated on a watercourse; and
 - (B) used for irrigation or other agricultural purposes; and

- (vi) any of the following used for accessing port infrastructure if constructed in the area of a port for which a port authority or port operator under the *Transport Infrastructure Act 1994* is responsible—
 - (A) a navigation channel; or
 - (B) a harbour swing basin; or
 - (C) a berth pocket; or
 - (D) a berth approach or departure path; and
 - (vii) another area specified by a subordinate local law.
- (2) A **waterway area** includes any addition or alteration (in the local government area) to a waterway area.
- (3) Subsection (4) applies if—
- (a) subsection (1) identifies an area (a **principal waterway area**) as a waterway area; and
 - (b) land (**relevant land**) in the local government area is located between the principal waterway area and a boundary of—
 - (i) a lot in the leasehold land register under the *Land Act 1994*; or
 - (ii) a lot in the freehold land register under the *Land Title Act 1994*; and
 - (c) the relevant land is unallocated State land.
- (4) The waterway area includes the relevant land.
- (5) To remove any doubt, the relevant land may include unallocated State land that is in a bathing reserve under the local government's control.

6 Work that is a prescribed work

- (1) In this local law, a **prescribed work** is a work completely or partly in, on, above or below a waterway area.
- (2) Also, a prescribed work includes—
- (a) a work, wherever located, the construction of which is or was tidal works or prescribed tidal works; and
 - (b) a work, wherever located, designed to be exposed, in whole or in part, to water, whether tidal or non-tidal, of a waterway area because of a shoreline fluctuation or for any other reason (including flood, for example); and
 - (c) a work that is an integral part of a prescribed work, wherever located; and
 - (d) a revetment wall.
- (3) Despite anything else, a seawall may only be a prescribed work if it is specified to be a prescribed work by a subordinate local law.
- (4) To remove any doubt, a prescribed work must be located within the local government area.
- (5) A work may be a prescribed work even if it is built unlawfully.
- (6) In this local law, a reference to a prescribed work may include part of a prescribed work.

- (7) A prescribed work does not include a public marine facility under the *Transport Infrastructure Act 1994*.

7 Work that is a required work

- (1) In this local law, a **required work** is a work that is necessary to secure, protect, support or stabilise a part of land that is, or improvements on land that are, adjacent to a waterway area.
- (2) Also, a **required work** includes a revetment wall and a seawall.

8 A work

- (1) In this local law, a **work** includes—
- (a) a basin, boat ramp, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, powerline, step or stair, fence, wall, seawall, slip, small craft facility, training wall, revetment wall, boat lift, boardwalk, gazebo, pump, culvert, stormwater outlet, decking or wharf; and
 - (b) landscape works, hard surfacing, barriers, soil drainage and irrigation; and
 - (c) topsoil, grass, mulching, hydromulch, vegetation, plants and any associated irrigation; and
 - (d) another work specified by a subordinate local law; and
 - (e) a temporary work, including rock buttressing and water exclusion barriers, for example; and
 - (f) any part of a work.
- (2) Despite subsection (1), a work does not include—
- (a) a navigational aid or sign for maritime navigation erected under a direction made under an Act; and
 - (b) a work specified by a subordinate local law not to be a work for this local law.

9 Responsible person for a prescribed work and a required work

- (1) Each of the following is a responsible person for a prescribed work—
- (a) if the prescribed work is completely or partly on freehold land, other than trust land—a person who is an owner of the freehold land at the relevant time;
Example for paragraph (a)—
a person is a responsible person for a revetment wall if the wall is completely or partly on freehold land owned by that person
 - (b) if the prescribed work is completely or partly on land leased from the State under the *Land Act 1994*—a person who is a lessee of the land at the relevant time;
 - (c) if the prescribed work is completely or partly on trust land or non-freehold land (including a road), other than land under paragraph (b)—either or both

of—

- (i) a person who is an occupier of any part of an affected area of the trust land or non-freehold land (including a road) at the relevant time; and

Examples for subparagraph (i)—

- a person who is a trustee of a reserve under the *Land Act 1994* for recreation purposes that contains a boat ramp that is a tidal work is a responsible person for the boat ramp situated on the reserve
- a person who is a road licensee under the *Land Act 1994* in respect of a temporarily closed road where the licence land contains any part of an existing boardwalk is a responsible person for the part of the boardwalk situated on the licence land

- (ii) a person who, at the relevant time, is the owner of freehold land, a lessee of land leased from the State under the *Land Act 1994*, or an occupier of other non-freehold land (the ***other land***) which—

(A) is waterfront land or waterfront (separated) land; and

(B) receives the benefit of the prescribed work;

Examples for subparagraph (ii)—

- a person who owns freehold land that is waterfront land and which receives the benefit of a pontoon that is on a non-tidal reserve under the *Land Act 1994* for recreation purposes is a responsible person for the pontoon
- a person who is a permittee of permit land under the *Land Act 1994* that receives the benefit of a pump situated in a non-tidal watercourse is a responsible person for the pump
- a person who owns freehold land that is waterfront land on which a revetment wall is situated is a responsible person for the revetment wall (under paragraph (1)(a)) and is a responsible person for temporary rock buttressing constructed in a canal to benefit the freehold land by supporting the revetment wall
- a person who is the owner of freehold land that is waterfront (separated) land is a responsible person for a pontoon in a lake that is a recreation reserve under the *Land Act 1994* for which the local government is a trustee because the pontoon benefits the person's freehold land
- a person who is the owner of freehold land is a responsible person for a pontoon in a tidal river because—
 - (a) the person is an occupier of the affected area of the river that contains the pontoon as the person has a right to occupy that area under the *Coastal Protection and Management Act 1995*, section 123; and
 - (b) the pontoon benefits the person's freehold land

- (d) anyone else who is responsible—

- (i) under any law or agreement to ensure the prescribed work is—

(A) maintained in a safe condition; or

(B) in good working order, repair and condition;

Example for sub-subparagraph (A)—

Coastal Protection and Management Act 1995, section 124

- (ii) for any wrong arising out of a failure to ensure the prescribed work is—

(A) maintained in a safe condition; or

- (B) in good repair and condition;
- (e) the owner of the prescribed work.
- (2) To remove any doubt—
- (a) a person may be a responsible person for part of a prescribed work; and
- (b) for subsection (1)(a) and (b) a person is a responsible person for a prescribed work (a **relevant person**) only to the extent the prescribed work is on the land which the relevant person owns or leases; and
- (c) a relevant person may also be a responsible person for any other part of the prescribed work referred to in subsection (2)(b) that is on an affected area, other than the land which the relevant person owns or leases, under paragraph (1)(c).

Example—

where a revetment wall is a prescribed work, a person who owns freehold land is a responsible person for the revetment wall to the extent—

- a part of the revetment wall is on the person's freehold land (under subsection (1)(a)); and
 - any part of the revetment wall that is not on the person's freehold land is on non-freehold land (including a canal, for example) and benefits the person's freehold land
- (3) For subsection (1)(c), a person is only a responsible person for that part of a prescribed work that is situated on the affected area of the trust land or non-freehold land.
- (4) For subsection (1)(c)(ii), other land receives the benefit of the prescribed work only if—
- (a) for other land that is waterfront land or waterfront (separated) land and the prescribed work is a seawall—
- (i) the seawall secures, protects, supports or stabilises the other land (including any improvements on the other land); and
- (ii) for waterfront (separated public) land, the separating land does not contain any public infrastructure; or

Example for paragraph (a)—

a person's freehold land is waterfront (separated public) land because it is separated by an esplanade from a tidal waterway area that is partly contained in a coastal beach. Waterfront (separated public) land is a type of waterfront (separated) land. Despite the definition of waterfront (separated public) land in subsection (12), the esplanade, as separating land, must not contain any public infrastructure (including, a formed carriageway or pathway, for example). By definition, waterfront (separated non-public) land must not contain any public infrastructure. If the separating land does not contain any public infrastructure, the owner of the freehold land that is waterfront (separated) land is a responsible person for a seawall that is located on the seaward side of the esplanade because the seawall protects the person's freehold land by preventing the encroachment, by wave action, of the sea past the wall

- (b) for other land that is waterfront land or waterfront (separated non-public) land, the prescribed work (other than a seawall) secures, protects, supports or stabilises the other land (including any improvements on the other land); or

Example for paragraph (b)—

a revetment wall in a waterway area in a reserve that keeps in place materials that are on land landward of the waterway area

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- (c) for other land that is waterfront land or waterfront (separated) land, the owner, lessee or occupier (as the case may be) of the other land is taken to be in control of the prescribed work (other than a seawall) under subsection (5).
- (5) For subsection (4)(c), an owner, lessee or occupier of the other land (a **relevant person**) is taken to be in control of a prescribed work—
- (a) that is connected to the other land that is waterfront land, unless the relevant person proves to the contrary; or
- (b) in any other case—if the relevant person—
- (i) uses the prescribed work for a purpose that is directly connected with the normal enjoyment, and not mere convenience, of the other land; or
- (ii) uses the prescribed work, or any land on which the prescribed work is situated, on a regular or recurring basis, whether or not for the prescribed work's intended function (including for the storage of property, for example); or
- Example for sub-paragraph (b)(ii)—*
- mooring a boat to a pontoon or jetty when the boat is not otherwise being used in a waterway area
- (iii) regulates, or purports to regulate, access by other persons to the prescribed work (including by means of a locked gate, sign or direction, for example); or
- (iv) permanently attaches property to, or removes attached property from, the prescribed work; or
- (v) maintains the prescribed work (including by painting or cleaning, for example); or
- (vi) makes improvements to, or otherwise alters, the prescribed work.
- (6) For—
- (a) subsection (5)—
- (i) it does not matter that the—
- (A) relevant person only does, or has done, a thing mentioned in that subsection in respect of part only of the prescribed work; or
- (B) prescribed work is or was affixed to land, or is or was otherwise connected to land that the relevant person does not own, lease or occupy; or
- (C) relevant person does not, or did not, intend to control the prescribed work; and
- (ii) in establishing a matter, the fact that a relevant person has recently done a thing stated in subsection (5)(b) is evidence that the person is doing the thing; and
- (b) subsection (5)(a), a relevant person may not prove to the contrary if the person does, or, if relevant, has recently done, any of the things stated in subsection (5)(b).
- (7) Despite subsection (1)—
- (a) a responsible person for a prescribed work does not include the local

government or the State; and

- (b) a subordinate local law may state that another person, or a class of persons, is not a responsible person for a prescribed work for this local law.
- (8) Subsection (9) applies if—
- (a) a required work would, if it were built, be a prescribed work; and
- (b) a person would be a responsible person for that prescribed work under this section.
- (9) A person referred to in subsection (8)(b) is a responsible person for a required work.

Example—

a person who is an owner of freehold land and would be a responsible person for a seawall under this local law if the seawall had been constructed on the person's freehold land or on non-freehold land where the seawall is for the benefit of, the person's freehold land, is a responsible person for a seawall, or a part of a seawall, that is to be built on the person's freehold land and for a seawall, or a part of a seawall, that is to be built on non-freehold land where the seawall, or the part of the seawall benefits, the person's freehold land

- (10) For—
- (a) this section, if any land, including common property, in scheme land is waterfront land or waterfront (separated) land, all other land in the scheme land is taken to be waterfront land or waterfront (separated) land (as the case may be); and
- (b) subsection (4), any lot, including common property, in the scheme land may separately be treated as other land.
- (11) To remove any doubt, a person taken to be in control of a prescribed work under this local law is not, for that reason alone, presumed to have a right to occupy or use the affected area.

- (12) In this section—

affected area, of land, means an area on which any part of a prescribed work is situated.

class of persons means a class of persons described by reference to their relationship with land, including particular land, or a prescribed work, including a particular prescribed work.

Examples—

- permittees of permits over roads under the *Land Act 1994*, section 177
- public utility providers who hold authorities to install, maintain and operate their infrastructure on a road under a local law
- registered owners of freehold land whose lands are adjacent to a particular canal
- persons who would be responsible persons under this local law for a boat ramp located on the Nerang River

occupation right means a right of occupation of a place by an occupier.

public infrastructure means permanent infrastructure (other than a prescribed work) that—

- (a) is maintained or maintainable by the local government or the State; and
- (b) is for the benefit of, or is used by, the public; and

(c) has been designed for the benefit or use stated in paragraph (b).

Examples—

- formed walkway
- picnic tables
- public barbeque

public land means separating land which—

- (a) the public is entitled to use and uses; or
- (b) contains public infrastructure.

scheme land see *Body Corporate and Community Management Act 1997*, section 10.

separating land means any or all of the following (which is not part of a waterway area)—

- (a) a road, including a road subject to an occupation right; or
- (b) trust land, including trust land subject to an occupation right; or
- (c) unallocated State land, including unallocated State land subject to an occupation right.

waterfront land means land that is adjacent to a waterway area.

waterfront (separated) land means—

- (a) waterfront (separated non-public) land; or
- (b) waterfront (separated public) land.

waterfront (separated non-public) land means land that is separated from a waterway area only by separating land (that is not public land).

waterfront (separated public) land means land that is separated from a waterway area only by public land.

Part 4 Building of required works in waterway areas

Note—

Part 4 allows the local government to require a responsible person to build a required work in a waterway area. A responsible person may need to obtain—

- a development permit under the *Sustainable Planning Act 2009* or an approval under another Act; and
 - a right to occupy the waterway area,
- to be able to build the required work. Sections 19 and 20 explain what happens if the responsible person does not obtain the necessary permit, approval or right to occupy the waterway area.

10 Building of required work

- (1) The local government may give a responsible person for a required work a notice (a **waterway area required work notice**) if the local government reasonably believes that the person should build a required work in the local government area.
- (2) A waterway area required work notice must—
 - (a) be in writing; and

- (b) state the required work to be built, including its location in the local government area and any other relevant matter; and
 - (c) state—
 - (i) a period within which the required work must be built by the responsible person for the required work; and
 - (ii) if relevant, a day by which a development permit or compliance permit under the *Sustainable Planning Act 2009*, or an approval under another Act, must be applied for to build the required work (including to use or occupy any other land, for example); and
 - (d) outline the facts and circumstances forming the basis for the belief that the responsible person for a required work should build the required work; and
 - (e) state that representations may be made about the notice; and
 - (f) state how the representations may be made; and
 - (g) state where the representations may be made or sent; and
 - (h) state—
 - (i) a day and time for making the representations; and
 - (ii) a period within which the representations must be made.
- (3) For subsection (2)(d), the facts and circumstances must include that—
- (a) the required work is intended to, or, once built, will, secure, protect, support or stabilise land or improvements which the responsible person owns, occupies or controls; and
 - (b) a failure to build the required work in the location stated in the waterway area required work notice will, or is likely to—
 - (i) at any time, result in the escape of materials (of any nature) from the responsible person's land into a waterway area; or
 - (ii) adversely affect—
 - (A) the use of a waterway area by another person or the public generally; or
 - (B) a waterway area or coastal, tidal or any other natural processes (including the transportation of sediment, for example) associated with a waterway area.
- (4) If the required work is a revetment wall or a seawall, subsection (3)(a) and (b)(ii) may be satisfied if the wall is intended to, or will be, built to keep in place materials that are landward of the wall and contained in the land which the responsible person owns, occupies or controls (whether or not the responsible person's land is adjacent to the revetment wall or seawall).

Note—

under subsections 9(4) and (5), a person is a responsible person for a required work only if the required work, once built, would be a prescribed work for which the person would be a responsible person

- (5) For subsection 2(h), the day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.
- (6) To remove any doubt, a waterway area required work notice may require a person

to build a required work on land other than relevant land.

- (7) A person given a waterway area required work notice may make representations about the notice to the local government in the way stated in the notice.
- (8) After considering any representations made by the person, the local government may give the person a notice, in writing, stating the waterway area required work notice—
 - (a) continues in force, with or without stated changes; or
 - (b) is withdrawn.
- (9) Subsection (10) applies if, within 20 business days of receiving any representations from a responsible person, the local government—
 - (a) does not give the person a notice under subsection (8)(a); or
 - (b) gives the person a notice under subsection (8)(b).
- (10) The waterway area required work notice is taken not to have been given under subsection (1).
- (11) A responsible person for a required work must—
 - (a) if a local government gives a notice under subsection (8)(a)—comply with a waterway area required work notice subject to any stated changes contained in the notice given under subsection (8)(a); or
 - (b) otherwise—comply with a waterway area required work notice.

Note—

a waterway area required work notice may be a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2

Maximum penalty—800 penalty units.

- (12) Subject to subsection (13), if a responsible person for a required work does not comply with subsection (11), the local government may take all necessary steps to build the required work.
- (13) If the local government decides to take all necessary steps to build the required work, the local government must comply with that part of the waterway area required work notice that was stated in the notice in accordance with subsection (2), subject to any change stated in a notice given by the local government under subsection (8)(a).
- (14) Subsection (12) does not limit the action the local government may take if a responsible person for a required work does not comply with subsection (11).

Note—

if a waterway area required work notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, a local government worker may take action under the *Local Government Act 2009*, section 142

- (15) The local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the required work as a debt payable by the responsible person who failed to build the work.
- (16) Subsection (15) does not limit the ways in which the local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the required work.

Note—

if a waterway area required work notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, and the amount the local government properly and reasonably incurs in taking the action required under the waterway area required work notice is not paid by the person who failed to take the action, the local government may, if the debt is not paid within 30 days, recover the amount, as a debt, as if the debt were overdue rates under the *Local Government Act 2009*, section 142

Part 5 Maintenance of prescribed works in waterway areas

Note—

Part 5 requires a responsible person to maintain a prescribed work in a safe condition and in good working order, repair and condition. A responsible person may need to obtain—

- a development permit under the *Sustainable Planning Act 2009* or an approval under another Act; and
 - a right to occupy the waterway area,
- to be able to maintain the prescribed work. Sections 19 and 20 explain what happens if the responsible person does not obtain the necessary permit, approval or right to occupy the waterway area.

11 Good repair and safe condition requirement

(1) A responsible person for a prescribed work must maintain and keep the prescribed work in—

(a) a safe condition; and

Example for paragraph (a)—

repairing a pontoon so that it will not be a risk or danger to persons

(b) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

Examples for paragraph (b)—

- maintaining and keeping a seawall in good working order, repair and condition so that the seawall can continue to perform its intended function of—

(a) preventing encroachment, by wave action, of the sea past the wall; and

(b) keeping in place the materials that are landward of the wall

- maintaining and keeping a revetment wall in good working order, repair and condition so that the revetment wall can continue to perform its intended function of—

(a) preventing an embankment from erosion; and

(b) keeping in place the materials that are landward of the wall

(2) For subsection (1), maintain includes—

(a) undertaking regular inspections of a work to determine whether it is in a safe condition or good working order, repair and condition; and

(b) having regard to the nature and life expectancy of a work, obtaining a qualified expert's report, when reasonably prudent, to determine whether maintenance is required to ensure that the work is in a safe condition and in good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

Example for paragraph (b)—

obtaining a qualified expert's report to determine that preventive action is necessary for a seawall so that the seawall can continue to perform its intended function of preventing

encroachment, by wave action, of the sea past the wall

- (3) For deciding whether a responsible person is complying with subsection (1), the following matters may be taken into account—
- (a) the dimensions of the prescribed work, including the height of the prescribed work above the level of a foreshore; and
 - (b) the age of the prescribed work; and
 - (c) the structural integrity of the prescribed work; and
 - (d) the surcharge on the prescribed work from other structures; and
 - (e) the condition of any existing foreshore protection for the prescribed work; and
 - (f) the exposure of each exterior surface of the prescribed work to any wind and wave action; and
 - (g) drainage problems in the vicinity of the prescribed work which cause, or are likely to cause, erosion; and
 - (h) the geotechnical stability of the land on which the prescribed work is situated; and
 - (i) potential structural safety hazards associated with the state of repair of the prescribed work; and
 - (j) the hydraulic performance, including flood storage and flood flow path, of the prescribed work; and
 - (k) the environmental value of a waterway area in which the prescribed work is situated; and
 - (l) the amenity, including views, shadows, airflow and water flow, of a waterway area in which the prescribed work is situated; and
 - (m) the existing or intended function of the prescribed work; and
 - (n) whether, if preventive work was not taken in respect of the prescribed work, the prescribed work would be reasonably likely to fail; and
 - (o) the existing or intended function of a waterway area in which the prescribed work is situated; and
 - (p) if the prescribed work was built or constructed pursuant to an approval—whether the prescribed work complies with the requirements of the approval; and
 - (q) other criteria specified in a subordinate local law; and
 - (r) any other relevant matter.

12 Removal of a prescribed work which is abandoned

- (1) This section applies—
- (a) to a prescribed work, or part of a prescribed work, on trust land or non-freehold land (including a road); and
 - (b) if the local government—
 - (i) reasonably believes there is no responsible person for the prescribed

- work, or part of a prescribed work, under section 9(1)(c) or (d); and
- (ii) publishes a notice in a local newspaper circulating generally in the local government area stating that a person may, within a period stated in the notice (such period not being less than 10 business days from the publication of the notice), show cause, in writing, to the local government why the local government should not remove the prescribed work; and
 - (iii) attaches a notice stating the same information which the notice published in accordance with subsection (1)(b)(ii) states to the prescribed work; and
- (c) if no person shows cause why the local government should not remove the prescribed work within the period stated in the notices.
- (2) The prescribed work is abandoned under this local law.
- (3) A person may only show cause why the local government should not remove the prescribed work by showing that the person is a responsible person for the prescribed work.

13 Removal of abandoned prescribed work by local government

- (1) This section applies if a prescribed work is abandoned under section 12.
- (2) The local government may—
- (a) remove the prescribed work from the waterway area; and
 - (b) restore the waterway area, as nearly as practicable, to its former condition.
- (3) The local government may dispose of a removed prescribed work—
- (a) if the value of the removed prescribed work is less than \$5000—as the local government sees fit, including by private sale, destruction, restoring or giving away; or
 - (b) otherwise—by public auction.
- (4) If a prescribed work is to be sold at public auction, the local government must give public notice of the public auction at least 14 days before the date of the proposed public auction.
- (5) A person who buys a prescribed work, whether by public auction or otherwise, has clear title to the prescribed work freed and discharged from the interests, other than a registered interest, of any other person.
- (6) The local government must apply the proceeds of sale, by public auction or otherwise, received by the local government in the following manner—
- (a) first, in payment of all costs, charges and expenses properly incurred by the local government for the removal, storage and sale, or any attempted sale, of the prescribed work and restoration of the site of the prescribed work; and
 - (b) secondly, the balance (if any) (the *net proceeds of sale*) into a fund established for that purpose.
- (7) Subsection (8) applies if within 12 months after the date of sale of a prescribed work (the *claim period*), a former owner of the prescribed work, by written notice to the local government, claims the net proceeds of sale of the prescribed work.

- (8) The local government must pay the net proceeds of sale to the former owner.
- (9) If a former owner of a prescribed work does not claim the net proceeds of sale within the claim period, the local government may pay the net proceeds of sale into its general fund.
- (10) If the local government pays the net proceeds of sale to a former owner under subsection (8), the local government incurs no liability to any other person in relation to the prescribed work.
- (11) This section does not apply to the disposal of a prescribed work to the extent that there is an inconsistent provision in legislation, including a provision in a local law, that deals specifically with the disposal of goods of a particular class or type.
- (12) Except where expressly stated, the local government incurs no liability to a person, and no person has any claim for relief or compensation against the local government, in respect of any action taken by the local government under this section, if the local government has acted in good faith and without negligence.
- (13) In this section—

registered interest means an interest registered in a register under a law of the Commonwealth.

Part 6 Sale of lots and prescribed work reports

14 Definitions for pt 6

In this part—

lot means a lot under the *Land Act 1994* or *Land Title Act 1994*.

prescribed work report means a report about a specified prescribed work that complies with the requirements of a subordinate local law that is specified to apply for the purposes of this part.

relevant lot means a lot—

- (a) on which a specified prescribed work is completely or partly situated; or
- (b) that is waterfront land and which is connected to a specified prescribed work.

specified prescribed work means a prescribed work specified for this part in a subordinate local law.

15 Sale of lot subject to specified prescribed work

- (1) This section applies to a contract (the *contract*) for the sale of a relevant lot.
- (2) The seller under a contract must ensure that, when the buyer becomes bound by the contract, the contract includes a clause stating or specifying the following matters—
 - (a) the contract is a contract to which this section applies; and
 - (b) the actual specified prescribed work (the *actual specified work*) that is completely or partly situated on, or which is connected to, the relevant lot;

and

- (c) under this local law, a person who is a responsible person for the specified prescribed work is, at that person's cost, required to maintain and keep the specified prescribed work in—
 - (i) a safe condition; and
 - (ii) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function; and
- (d) whether or not there is an outstanding notice issued by the local government under this local law in relation to the actual specified work and, if so, the contents of that notice.

Maximum penalty—50 penalty units.

- (3) If the contract has not already been settled, the buyer may terminate the contract, by notice in writing to the seller, if—
 - (a) the seller has not complied with subsection (2); or
 - (b) there is an outstanding notice issued by the local government under this local law in relation to the actual specified work and that fact, or the contents of the notice, have not been specified in a clause in the contract.
- (4) If the buyer terminates the contract under subsection (3), the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the relevant lot the subject of the contract within 14 days after the termination.

16 Prescribed work report

- (1) The local government may give a responsible person for a prescribed work a notice (a ***prescribed work report notice***) requiring the person to obtain and give the local government a prescribed work report, or a copy, within a reasonable period stated in the notice.
- (2) The local government may not give a person a prescribed work report notice—
 - (a) if the person is a body corporate—more than once every 2 years after the commencement of this local law; or
 - (b) otherwise—more than once every 5 years after the commencement of this local law.

- (3) A person must comply with a prescribed work report notice.

Maximum penalty—50 penalty units.

- (4) If a responsible person does not comply with a prescribed work report notice, the local government may obtain a prescribed work report.
- (5) Subsections (6) and (7) apply if the local government decides to obtain a prescribed work report.
- (6) The local government may recover the amount that the local government properly and reasonably incurs in obtaining a prescribed work report as a debt payable by the responsible person who failed to comply with the prescribed work report notice.
- (7) The responsible person must provide the local government with all relevant and

reasonable assistance to enable the local government to obtain the report.

Maximum penalty—50 penalty units.

(8) In this section—

body corporate has the same meaning as in the *Body Corporate and Community Management Act 1997*.

Part 7 Enforcement

17 Compliance

- (1) This section applies if a person contravenes this local law, other than section 10, 15 or 16.
- (2) The local government may give a notice, in writing (a *compliance notice*), to—
 - (a) a person who contravenes this local law; or
 - (b) any person involved in the contravention of this local law under section 25.
- (3) A compliance notice may require a person to—
 - (a) stop a contravention, if the contravention is of a continuing or recurring nature; or
 - (b) perform work or otherwise take specified action to remedy the contravention, for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurring nature; or
 - (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure compliance with section 11.

Note—

a compliance notice may be a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2

- (4) Without limiting subsection (3), a compliance notice may specifically require a person to do any of the following—
 - (a) apply for a development permit, compliance permit or an approval;
 - (b) repair or rectify the prescribed work;
 - (c) carry out work to support, stabilise or protect the prescribed work or to ensure that the work performs, or is capable of performing, its intended function;

Example for paragraph (4)(c)—

rock buttressing of an existing revetment wall in a canal

- (d) secure the prescribed work (whether by a system of supports or in another way);
- (e) fence off the prescribed work to protect persons;
- (f) cleanse, purify and disinfect the prescribed work;
- (g) demolish, remove or replace the prescribed work;
- (h) comply with a prescribed work inspection program;

- (i) obtain a report, to be given to the local government, from a qualified expert about the safety or condition of, or any other matter relating to, the prescribed work;
 - (j) restore, as far as practicable, the prescribed work to the condition the prescribed work was in immediately after construction of the prescribed work was completed;
 - (k) if the contravention of this local law causes harm, including environmental harm or environmental nuisance in, or damage to, a waterway area—restore and rehabilitate the waterway area, as far as practicable, to the condition the waterway area was in immediately before the contravention.
- (5) A person who is given a compliance notice must comply with the notice.

Maximum penalty—800 penalty units.

18 Liability for consequential damage

- (1) A person who contravenes this local law, other than section 10, 15 or 16, is liable for any damage (***consequential damage***) caused directly or indirectly by the person's contravention, or involvement in the contravention, of this local law.
- (2) Subsection (1) only applies to any consequential damage caused to land or improvements that are owned or controlled by the local government.
- (3) The local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to make good the consequential damage as a debt payable by the responsible person whose contravention caused the consequential damage.
- (4) To remove any doubt, a person's liability under this section is in addition to any liability under another section of this local law.

19 Permission required to perform obligation

- (1) Subsection (2) applies if—
 - (a) this local law, except for this section or section 18, or a compliance notice requires a person (the ***liable person***) to perform an obligation (the ***original obligation***); and
 - (b) the person is not otherwise entitled to perform the original obligation unless there is a development permit or compliance permit under the *Sustainable Planning Act 2009* or an approval (the ***permission***), including a condition of a permit or approval, to perform the original obligation; and
 - (c) the liable person has taken all reasonable steps to obtain the permission (in the period required, if the liable person is required to perform the original obligation under a waterway area required work notice or compliance notice) but the permission has not been given by the relevant entity.
- (2) The liable person is not liable for an offence under this local law for failing to perform the original obligation.
- (3) Despite subsection (2)—
 - (a) the local government may give the liable person a notice requiring the

person to take other action in respect of the subject matter of the original obligation; and

- (b) the liable person must continue to perform any part of the original obligation that may be performed without the permission.
- (4) A notice under subsection (3)(a) is taken to be a compliance notice under section 17.
- (5) Subsections (6) and (7) apply if a liable person can only lawfully perform an original obligation if there is a change to an existing development permit or approval which would permit the original obligation to be performed (the **change permission**).
- (6) Subject to subsection (8), nothing in this local law requires a person to perform the original obligation.
- (7) However, the liable person must take all reasonable steps to obtain the change permission.

Maximum penalty for subsection (7)—100 penalty units.

- (8) If—
- (a) the liable person complies with subsection (7), but the change permission is not given by the relevant entity, nothing in this local law requires the liable person to perform the original obligation; or
 - (b) the change permission is given by the relevant entity, the liable person must perform the original obligation in accordance with the change permission (and any other lawful requirement).
- (9) To remove any doubt—
- (a) the local government may, at any time, apply for, and be given, a permission; and
 - (b) the liable person will, except where subsection (7) or (8)(a) applies but subject to subsection (2) and to the extent that the original obligation is not otherwise performed, be taken to have failed to perform the original obligation, including, if applicable, work required to be performed to fulfil that obligation for the purposes of this local law, including section 22; and
 - (c) a liable person is not required to perform an original obligation under this local law if performing the original obligation is prohibited under a law made by the State; and
 - (d) for section 12, if a person is, under this section, not liable for an offence for failing to perform the original obligation or, for any reason, is not required to perform an original obligation, that person is not entitled to—
 - (i) be a responsible person for the relevant prescribed work, or part of a prescribed work; and
 - (ii) show cause why the local government should not remove the prescribed work within the period stated in the notices under section 12.

Note—

under section 22, the local government may perform work that a person has failed to perform under a provision of this local law.

- (10) In this section—

existing development permit or approval means a development permit or compliance permit under the *Sustainable Planning Act 2009*, including any condition, or an approval, that existed immediately before the original obligation arose.

20 Occupation right required to perform obligation

- (1) Subsection (2) applies if—
 - (a) this local law, except for this section or section 18, or a compliance notice requires a person (the **liable person**) to perform an obligation (the **original obligation**); and
 - (b) the person is not otherwise entitled to perform the original obligation unless the person has a right to use or occupy land or waters (an **occupation right**) under an Act or granted by another person to perform the original obligation; and
 - (c) the occupation right does not exist when the original obligation first applies.
- (2) The liable person must—
 - (a) take all reasonable steps to apply for, or acquire, an occupation right; and
 - (b) comply with the terms and conditions of the occupation right, if granted.

Maximum penalty for subsection (2)(a)—50 penalty units.
- (3) Subject to subsection (1)(b), if, apart from this local law, the local government may grant an occupation right to a liable person, the local government must grant the liable person an occupation right.
- (4) Subject to subsection (5), if, after complying with subsection (2)(a), the liable person does not acquire an occupation right, the liable person is not liable for an offence under this local law for failing to perform the original obligation.
- (5) To remove any doubt—
 - (a) the liable person will, subject to subsection (4) and to the extent that the original obligation is not otherwise performed, be taken to have failed to perform the original obligation, including, if applicable, work required to be performed to fulfil that obligation for the purposes of this local law, including section 22; and
 - (b) for section 12, if a person is, under this section, not liable for an offence for failing to perform the original obligation that person is not entitled to—
 - (i) be a responsible person for the relevant prescribed work, or part of a prescribed work; and
 - (ii) show cause why the local government should not remove the prescribed work within the period stated in the notices under section 12.

Note—

under section 22, the local government may perform work that a person has failed to perform under a provision of this local law.

21 Inspection of places

- (1) This section applies to a place on which—
 - (a) a prescribed work is situated; or
 - (b) if a waterway area required work notice has been given under section 10, a required work is required to be built under that notice.
- (2) An authorised person may enter and inspect the place including any equipment or thing on the place, to establish whether there is compliance with the requirements of—
 - (a) this local law; or
 - (b) a compliance notice.
- (3) An authorised person may direct the owner or occupier of the place to produce for inspection—
 - (a) any records that are required to be kept as specified in a subordinate local law and may take copies of or extracts from those records; and
 - (b) any vehicle, equipment, plant or thing used on the place.
- (4) An authorised person may measure, weigh, sample, test, photograph, videotape or otherwise examine any thing that may be inspected pursuant to this section.
- (5) The owner or occupier of the place must comply with a direction of an authorised person under subsection (3)
Maximum penalty—50 penalty units.
- (6) To remove any doubt, the powers of an authorised person under this local law are in addition to, and do not limit, the powers of an authorised person under a law, including the local government Act.

22 Performance of work

- (1) The local government may perform work when a person has failed to perform work required to be performed by a compliance notice.

Note—

if a compliance notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, a local government worker may take action under the *Local Government Act 2009*, section 142

- (2) The local government may, in the course of performing work under subsection (1) on a place, remove from the place any structure, vehicle, equipment, animal, plant or thing if the local government is satisfied that there is a risk of—
 - (a) harm to human health or safety or personal injury; or
 - (b) property damage or a loss of amenity; or
 - (c) environmental harm or environmental nuisance.
- (3) Subsection (2) does not apply to a place that is a road under the *Transport Operations (Road Use Management) Act 1995*, other than a busway under the *Transport Infrastructure Act 1994*.

Note—

the local government has the power to remove things from roads under the *Transport Operations (Road Use Management) Act 1995*, section 100

- (4) The local government may dispose as it sees fit of, and in accordance with the laws of the State, any material of any nature removed by the local government under this section.
- (5) An authorised person may perform the work that the local government is empowered to undertake under this section.
- (6) The local government may recover the amount that the local government properly and reasonably incurs in performing the work as a debt payable by the person who has failed to perform the work.
- (7) Subsection (6) does not limit the ways in which the local government may recover the amount that the local government properly and reasonably incurs in taking all necessary steps to build the work.

Note—

if a compliance notice is a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2, and the amount the local government properly and reasonably incurs in taking the action required under the compliance notice is not paid by the person who failed to take the action, the local government may, if the debt is not paid within 30 days, recover the amount, as a debt, as if the debt were overdue rates under the *Local Government Act 2009*, section 142

- (8) The Court may order a person found guilty of an offence under this local law to—
 - (a) perform work required to be performed by—
 - (i) a compliance notice; or
 - (ii) a provision of this local law; or
 - (b) pay to the local government all costs incurred by the local government in performing the work pursuant to this section as a debt owing to the local government.
- (9) If an authorised person performs any work that the local government may perform under this local law, the local government is taken to have performed the work for the purposes of any provision that says that the local government may recover the costs or expenses of performing the work from another person.

Part 8 Release

23 Release

- (1) This section applies only to the extent it is not contrary to a law made by the State.
- (2) No action for damages or other right or remedy lies against the released party in relation to—
 - (a) the state or condition of any prescribed work; or
 - (b) any act or omission of the released party under this local law; or
 - (c) any disturbance of the right of support of any land situated on or adjacent to a waterway area or other damage whatsoever to the land or any improvement on the land, caused by or resulting from, the state or condition of any prescribed work situated on or adjacent to the land or the waterway

area.

- (3) Subsection (2) prevents a civil liability attaching to the released party in respect of an act or omission of the released party providing the act was done or the omission was made in good faith and without negligence.
- (4) In this section, *released party* means—
 - (a) the local government; and
 - (b) each officer, employee and agent of the local government, including an authorised person.

Part 9 Administrative provisions

24 Owners and occupiers must ensure compliance with the local law

- (1) This section does not apply to an occupier of a place where, under another provision of this local law, the occupier is not liable for an offence.
- (2) Except where the owner and occupier of a place is the local, State or Commonwealth government, the owner and occupier of the place must ensure that an offence is not committed in or on a place.
- (3) If an offence is committed in or on a place, the owner and occupier of the place also commit an offence, namely the offence of failing to ensure that an offence is not committed in or on the place.

Maximum penalty—the penalty for the commission of the offence in or on the place.

- (4) Evidence that an offence has been committed on a place is evidence that the owner and occupier of the place committed the offence of failing to ensure that the offence is not committed in or on the place.
- (5) However, it is a defence for an owner or occupier to prove that—
 - (a) the owner or occupier exercised reasonable diligence to ensure that an offence was not committed in or on the place; or
 - (b) the offence was committed in or on the place without that person's knowledge or consent.

25 Liability of third parties

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty—the penalty for which any person who committed the contravention would be liable.

- (2) For subsection (1), a person involved in a contravention of this local law is any person who—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

- (d) has conspired with another person to effect the contravention; or
- (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

26 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

27 Defences

It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a lawful excuse or defence.

Example—

it is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with the *Criminal Code*, chapter 5.

Part 10 Subordinate local laws

28 Subordinate local laws

The local government may, in a subordinate local law, specify—

- (a) a mall, square, court or other public place under the local government's control as a road under the schedule of this local law; and
- (b) a thing as a structure under the schedule of this local law; and
- (c) an area which is not a waterway area under section 5; and
- (d) that a seawall is a prescribed work under section 6; and
- (e) a thing that is a work under section 8; and
- (f) that a person is not a responsible person for a prescribed work under section 9; and
- (g) the doing of a thing by a relevant person in control of a prescribed work under section 9; and
- (h) criteria for determining whether a prescribed item is maintained in a safe condition and kept in good working order, repair and condition under section 11; and
- (i) that the subordinate local law applies for the purposes part 6; and
- (j) the requirements of a prescribed work report under part 6; and
- (k) a prescribed work for the purposes of part 6; and
- (l) records that are required to be kept under section 20; and

- (m) the terms of a periodic inspection, monitoring or management program which must be complied with under section 20; and
- (n) such other matters as are provided for in this local law.

Schedule Dictionary

Section 4

approval means a consent, permit, licence, authorisation, registration, membership or approval under an Act and includes all the conditions of a consent, permit, licence, authorisation, registration, membership or approval.

artificial waterway has the same meaning as in the *Coastal Protection and Management Act 1995*.

authorised person is an authorised person of the local government under the local government Act or the *Local Law No. 3 (Administration) 2008* to exercise the powers of an authorised person under this local law.

bathing reserve means a bathing reserve under the repealed *Local Government Act 1993* or the *Local Government (Operations) Regulation 2010*.

boat means any vessel or structure used, or intended to be used, in navigation by water or for any other purpose on water.

build—

- (a) includes construct, undertake, prepare, make and install; and
- (b) built has a corresponding meaning.

coastal wetland has the same meaning as in the *Coastal Protection and Management Act 1995*.

compliance notice see section 17(2).

corporation means a corporation under the *Corporations Act 2001* (Cwlth) and includes an association under the *Associations Incorporation Act 1981*.

Court means the court of law which has jurisdiction to deal with offences under this local law.

direction means a written or oral direction.

environmental harm has the same meaning as in the *Environmental Protection Act 1994*.

environmental nuisance has the same meaning as in the *Environmental Protection Act 1994*.

esplanade boundary means a boundary of land located under the *Survey and Mapping Infrastructure Act 2003*, section 90 or 91.

executive officer of a corporation means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

foreshore has the same meaning as in the *Coastal Protection and Management Act 1995*.

inundated land has the same meaning as in the *Land Act 1994*.

jetty means a pier or landing place of a similar nature and includes all structures on or supporting the jetty.

knowledge includes actual or constructive knowledge.

lake—

- (a) has the same meaning as in the *Water Act 2000*; and
- (b) if land has a non-tidal boundary (lake)—includes land that adjoins the boundary and is on the lake side of the boundary.

land—

- (a) has the same meaning as in the *Sustainable Planning Act 2009*; and
- (b) includes land occupied by water.

local government Act has the meaning given in the *Local Government Act 2009* and includes an approval given under a local government Act.

local government area means the local government area of the local government under the *Local Government Act 2009*, including an area taken to be part of a local government area under a local government Act.

Examples of areas taken to be part of a local government area—

bathing reserve, foreshore

local law includes any subordinate local laws made under this local law.

lot has the same meaning as in the *Sustainable Planning Act 2009*, section 10(1).

maintenance—

- (a) includes—
 - (i) repair and replacement; and
 - (ii) preventive action; and
- (b) maintain has a corresponding meaning.

non-freehold land means all land that is not recorded in the freehold land register under the *Land Title Act 1994*.

non-tidal boundary (lake) has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

non-tidal boundary (watercourse) has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

non-tidal waterway—

- (a) means a river, creek or other stream, including a stream in the form of an anabranch or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events—
 - (i) in a natural channel, whether artificially modified or not; or
 - (ii) in an artificial channel that has changed the course of the stream, but, in any case, only at every place upstream of the point to which the stream is a tidal waterway; and
- (b) includes—
 - (i) a watercourse under the *Water Act 2000*; and

- (ii) if land has a non-tidal boundary (watercourse)—land that adjoins the boundary and is on the watercourse side of the boundary.

occupier, of a place, means—

- (a) the person who occupies, or has the control or management of the place; and
- (b) includes a person who has a lease, licence, permission, right or authority to occupy the place, including under an Act.

Example of right of occupation under an Act—

a right of occupation under the *Coastal Protection and Management Act 1995*, section 123

owner, of a place, means the person for the time being entitled to receive the rent for the place or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

owner, of a prescribed work, means—

- (a) if the prescribed work is a structure within the meaning of the *Local Government Act 2009* in a canal under the *Coastal Protection and Management Act 1995*—an owner under the *Local Government (Operations) Regulation 2010*, section 24(2); or
- (b) otherwise—
 - (i) the holder of a development permit or compliance permit under the *Sustainable Planning Act 2009* to build the work; or
 - (ii) the holder of an approval under another Act to build the work; or
 - (iii) a person who is or was required by an Act under subparagraph (i) or (ii) to obtain a development permit, compliance permit or approval to build or undertake the work.

perform work includes seizing and removing a thing.

plant means any tree, bush, shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced of, by or from it.

place means any road, land, building, vehicle, boat or structure and includes any part of a place.

prescribed work see section 6.

prescribed tidal work has the same meaning as in the *Coastal Protection and Management Regulation 2003*.

repair, a prescribed work, means restore the damaged, worn or faulty prescribed work to a good condition.

required work see section 7.

reserve—

- (a) means land placed under the control of the local government under an Act; and
- (b) includes a reserve under the *Land Act 1994* for which the local government is a trustee.

responsible person for a prescribed work see section 9.

responsible person for a required work see section 9.

revetment wall means a wall, and all support materials (including rocks, for example), constructed in or near a waterway area and along or near the bottom of an embankment to—

- (a) protect the embankment from erosion; and
- (b) keep in place the materials that are landward of the wall.

right line tidal boundary has the same meaning as in the *Land Act 1994*, section 8.
road—

- (a) has the same meaning as in the *Transport Infrastructure Act 1994*, schedule 6; and
- (b) includes—
 - (i) an area of land between an esplanade boundary and a tidal boundary; and
 - (ii) a mall, square, court or other public place under the local government's control that is specified to be a road under a subordinate local law; and
- (c) for section 9—means a road (within the meaning of the *Local Government Act 2009*, section 59(2)) under the local government's control under the *Local Government Act 2009*, section 60(1).

seawall means a wall, and all support materials, constructed in or near a waterway area to—

- (a) prevent the encroachment, by wave action, of the sea past the wall; and
- (b) keep in place the materials that are landward of the wall.

seaward side, of a tidal boundary or right line tidal boundary, has the same meaning as in the *Land Act 1994*, schedule 6.

structure—

- (a) has the same meaning as in the *Local Government Act 2009*; and
- (b) includes a structure as defined in the *Building Act 1975*.

swimming pool has the same meaning as in the *Building Act 1975*.

the local government means the Gold Coast City Council.

tidal boundary has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

tidal water means any part of the sea or of a port, or of a watercourse, lagoon, swamp or other area where water may be found that is subject to tidal influence.

tidal waterway—

- (a) means land that contains, or may contain, or is subject to, or may be subject to, tidal water (including a foreshore or inundated land, for example); and
- (b) if land has a tidal boundary or right line tidal boundary—includes land that adjoins the boundary and is on the seaward side of the boundary.

tidal works has the same meaning as in the *Coastal Protection and Management Act 1995*, schedule.

trust land means—

- (a) land granted in trust under the *Land Act 1994* for which the local

government is a trustee; or

(b) a reserve.

unallocated State land has the same meaning as in the *Land Act 1994*, schedule 6.

vehicle has the same meaning as in the *Transport Operations (Road Use Management) Act 1995*.

waterfront land see section 9.

waterfront (separated) land see section 9.

waterway area see section 5.

work see section 8.