
ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

#1 Draft Maintenance of Works in Waterway Areas Local Law



Maintenance of Works in Waterway Areas Local Law 2023

Consultation Copy Only

Moreton Bay Regional Council Maintenance of Works in Waterway Areas Local Law 2023

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Moreton Bay Regional Council Maintenance of Works in Waterway Areas Local Law 2023

Part 1 Preliminary

1 Short title

This local law may be cited as the *Maintenance of Works in Waterway Areas Local Law 2023*.

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; and
 - (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) seawalls are built and maintained on or near the coastal beaches of the local government area; and
 - (ii) revetment walls are built and maintained in canals and non-coastal waterway areas of the local government area; and
- (g) protect the interests of buyers of certain lots by ensuring sellers notify buyers about works which may be subject to this local law; 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 with other laws

3 Relationship with other laws

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) *Planning Act 2016*; and
- (c) *Marine Parks Act 2004*; and
- (d) *Land Act 1994*; and
- (e) *Building Act 1975*; and
- (f) *Coastal Protection and Management Act 1995*; and
- (g) *Integrated Resort Development Act 1987*; and
- (h) *Mixed Use Development Act 1993*; and
- (i) *Body Corporate and Community Management Act 1997*; and
- (j) *Water Act 2000*; and
- (k) *Fisheries Act 1994*; and
- (l) *Native Title Act 1993 (Cth)*; and
- (m) *Native Title (Queensland) Act 1993*; and
- (n) *Aboriginal Cultural Heritage Act 2003*; and
- (o) *Neighbourhood Disputes (Dividing Fences and Trees) Resolution Act 2011*.

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 each of—
 - (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 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 a register kept by the registrar of titles 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; and
 - (e) a seawall.
- (3) To remove any doubt, a prescribed work must be located within the local government area.
- (4) A work may be a prescribed work even if it is built unlawfully.
- (5) In this local law, a reference to a prescribed work may include part of a prescribed work.
- (6) 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 is, adjacent to a waterway area.
- (2) Also, a **required work** includes—
- (a) a revetment wall; and
 - (b) a seawall; and
 - (c) a work specified to be a required work by a subordinate local law.

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, wharf, post, support, building or structure; 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; and
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; and
 - (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

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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; and

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 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 or condition; and

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 working order, repair or condition; and

- (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

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- (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

- (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—

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- (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

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- (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) Subject to subsection (11), 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) However, for subsection (5)(a), the other land to which a prescribed work is connected does not include land in scheme land to which the prescribed work is not physically connected, joined or attached by any means.
- (12) 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.
- (13) 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 in a canal estate

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.

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 *Planning Act 2016* or an approval under another Act; and
 - a right to occupy the waterway area,
- to be able to build the required work and to carry out incidental and consequential work. Sections 25 and 26 explain what happens if the responsible person does not obtain the necessary permit, approval or right. However, under part 6, a responsible person for a required work that is a seawall or revetment wall may enter adjacent land in certain circumstances to carry out authorised activities.

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 the responsible person for the required work must build, including the work's location in the local government area and any

other relevant matter (including any standard to which the required work must be built); 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 under the *Planning Act 2016*, or an approval under another Act, must be applied for to build the required work and to carry out any incidental and consequential work (including to use or occupy any other land, for example); and
- Note—*
- See subsection (5) and section 25
- (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 (***relevant land***); and
 - (b) a failure to build the required work in the location stated in the waterway area required work notice—
 - (i) results in, or will, or is likely to, at any time, result in, the escape of materials (of any nature) from the relevant land into a waterway area; or
 - (ii) adversely affects or will, or is likely to, adversely affect—
 - (A) the use of a waterway area by another person or the public generally; or
 - (B) the use, stability or function of, or support for, land or improvements owned, occupied or controlled by another person or a prescribed work for which another person is a responsible person; or
- Example of a prescribed work—*
- (C) a waterway area or coastal, tidal or any other natural processes (including the transportation of sediment, for example) associated with a waterway area.

- (4) A waterway required work notice may also state—
- (a) if the local government reasonably believes undertaking particular incidental and consequential work is necessary to build a required work—particular incidental and consequential work that must be carried out to build a required work; and
- Examples of incidental and consequential work—*
- the removal of an existing seawall and works that are reasonably connected with, or incidental to, the removal where the required work to be built is a replacement seawall
 - undertaking work to an existing seawall on adjacent land so that it physically aligns with or joins a seawall that is a required work
- (b) any other matter which a subordinate local law specifies may be stated in the notice.
- (5) Subsection (6) applies if—
- (a) the required work stated in a waterway area required work notice is a revetment wall or a seawall (a *wall*); and
- (b) any of the following applies when the notice is given and is stated in the notice—
- (i) the wall is intended to, or will, be built to keep in place materials that are landward of the wall and contained in the relevant land (whether or not the relevant land is adjacent to the location of the revetment wall or seawall);
- (ii) there is no existing wall but there is a development permit to build the wall (an *existing development permit*) and that (new) wall otherwise satisfies subparagraph (b)(i);
- (iii) the wall (a *replacement wall*)—
- (A) is intended to replace, in whole or in part, an existing wall and—
- (1) there is no approval as required by law for the existing wall; and
 - (2) a development permit can not be obtained for the existing wall; or
 - (3) there is a development permit to build the replacement wall (an *existing development permit*); and
- (B) otherwise satisfies subparagraph (b)(i).
- (6) The—
- (a) local government may be taken to reasonably believe that a person should build a required work in the local government area for subsection (1); and
- (b) facts and circumstances that must be included in the waterway area required work notice under subsection (3) may be taken to those stated in the notice.

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

- (7) To remove any doubt, if the required work is a revetment wall or a seawall—

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- (a) subsection (3) may be satisfied otherwise than by satisfying subsection (6)(b); and
- (b) subject to paragraph (c), a replacement wall may be required to be built in a different location to an existing wall; and
- (c) if subsection (5)(b)(ii) or (iii)(A)(3) applies—
 - (i) a waterway area required work notice may not require a responsible person for a required work to build the wall contrary to the existing development permit; and
 - (ii) section 25 will not apply to the extent the responsible person for a required work may perform an obligation under this section in accordance with the existing development permit.
- (8) 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.
- (9) To remove any doubt, a waterway area required work notice may require a person to build a required work on relevant land or other land.
- (10) 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.
- (11) 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.
- (12) Subsection (13) 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 (11)(a); or
 - (b) gives the person a notice under subsection (11)(b).
- (13) The waterway area required work notice is taken not to have been given under subsection (1).
- (14) A notice given to a person under subsection (11)(a) must include, or be accompanied by, a decision notice.
- (15) A responsible person for a required work must—
 - (a) if a local government gives a notice under subsection (11)(a)—comply with a waterway area required work notice subject to any stated changes contained in the notice given under subsection (11)(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.

- (16) To remove any doubt, to comply with subsection (15) a responsible person for a required work must carry out all incidental and consequential work that is—
 - (a) stated in a waterway area required work notice (subject to any stated changes

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contained in a notice under subsection (11)(a)); and

- (b) reasonably necessary to comply with a waterway area required work notice, whether or not stated in the notice (or in a notice under subsection (11)(a)).

Note—

See part 6 in relation to carrying out incidental and consequential work for a seawall or a revetment wall on adjacent land

- (17) Subject to subsection (18), if a responsible person for a required work does not comply with subsection (15), the local government may take all necessary steps to build the required work and carry out any incidental and consequential work.
- (18) 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 (11)(a).
- (19) Subsection (17) does not limit the action the local government may take if a responsible person for a required work does not comply with subsection (15).

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

- (20) 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 (including carrying out any incidental and consequential work) as a debt payable by the responsible person who failed to build the work.
- (21) Subsection (20) 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 (and carrying out any incidental and consequential 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

- (22) Any requirement or belief of the local government under this section may not be construed as or involving an assessment or process for assessment of, or approval for, the building of a required work or the carrying out of incidental and consequential work, including for the purpose of another law.

Note—

A requirement to build a required work or to carry out incidental and consequential work may require assessment and approval under another law

- (23) In this section—

comply with, in relation to a waterway required work notice, includes doing all things reasonably necessary to comply with the notice, including carrying out all reasonably necessary incidental and consequential work not otherwise stated in a waterway area required work notice.

existing wall means a seawall or revetment wall that—

- (a) exists when the waterway area required work notice is given; and
- (b) is a prescribed work for which the responsible person for the replacement wall (as a required work) is a responsible person for a prescribed work.

incidental and consequential work, in relation to complying with a waterway required work notice or building a required work, includes—

- (a) repairing any damage to, and restoring any, land or a work owned, leased or controlled by the local government or the State, as far as is practicable; and
- (b) interfering with, or undertaking any activity (including building) on or in respect of—
 - (i) land owned, leased or controlled by, or a work the property of, someone other than the local government or the State; or
 - (ii) a prescribed work for which another person is a responsible person under this local law; and

Example for subparagraph (b)(ii)—

interfering with an existing seawall for which another person is a responsible person under this local law so that a seawall to be built as a required work physically aligns with, and connects to, the existing seawall

- (c) repairing any damage to, and restoring any, land or work referred to in paragraph (b), as far as is practicable.

Examples for paragraph (c)—

- restoring an existing seawall for which another person is a responsible person so that the wall can continue to perform its intended function
- reinstating a fence

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 *Planning Act 2016* or an approval under another Act; and
 - a right to occupy the waterway area,
- to be able to maintain the prescribed work. Sections 25 and 26 explain what happens if the responsible person does not obtain the necessary permit, approval or right. However, under part 6, a responsible person for a prescribed work that is a seawall or revetment wall may enter adjacent land in certain circumstances to carry out authorised activities.

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

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- (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 prescribed work 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 prescribed work 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

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- 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.
- (4) Subsection (5) applies if—
- (a) a person is liable under a local government Act to pay a special rate or charge to the local government; and
 - (b) the special rate or charge is for a service, facility or activity that is for, or includes, the maintenance (to any standard) by or on behalf of the local government of the prescribed work or part of the prescribed work (the **local government maintenance service**); and
 - (c) the person mentioned in paragraph (a) (the **relevant responsible person**) is a responsible person for a prescribed work for any part of the prescribed work (or of the part of the prescribed work) that is subject to the local government maintenance service.
- (5) The relevant responsible person does not contravene subsection (1) in respect of the prescribed work or the part of the prescribed work (an **affected part**) that is subject to the local government maintenance service.
- (6) Subsection (7) applies if the relevant responsible person—
- (a) must comply with subsection (1) in respect of part of a prescribed work to which subsection (5) does not apply (the **unaffected part**); and
 - (b) would, but for subsection (5), be liable to comply with subsection (1) in respect of the affected part.
- (7) If the relevant responsible person contravenes subsection (1) in respect of the unaffected part, the local government may give the relevant responsible person a compliance notice requiring the relevant responsible person to do a thing in relation to the whole or part of the prescribed work (including to replace the whole of the unaffected part and the affected part, for example).

Example—

a person may be a responsible person for a prescribed work that is a revetment wall in respect of that part of the wall that is on the responsible person's freehold lot under section 9(1)(a). That person may also be responsible for maintaining a part of the same wall that is in an adjoining canal (for example, rock buttressing supporting the wall on the responsible person's lot) under section 9(1)(c), (d) or (e). The responsible person must maintain each of the different parts of the revetment wall under section 11. However, the local government may, when maintaining the canal as a whole, decide to also maintain the part of the revetment wall

that is within the canal. If the responsible person for the revetment wall is liable to pay the local government a special rate or charge for the local government providing a service of maintaining the part of the wall that is in the canal, the responsible person is a relevant responsible person and cannot be liable for not maintaining that part of the wall under subsection (1). However, because the relevant responsible person will be responsible for maintaining the part of the revetment wall on the responsible person's lot, the local government can, under section 23, give that person a compliance notice for failing to comply with subsection (1) in respect of that part. The compliance notice may, however, require the relevant responsible person, for example, to repair or replace the whole of the revetment wall, including that part that is subject to the local government's maintenance service. This is because repairing or replacing the whole wall may be the only or the best way to address the relevant responsible person's non-compliance with subsection (1) in respect of the part of the wall that is on the responsible person's lot.

- (8) Subsection (5) does not apply if, in the local government's opinion, maintenance of the prescribed work or an affected part that is subject to the local government maintenance service is necessary because of the default of the relevant responsible person.
- (9) If subsection (8) applies, the obligation of the relevant responsible person under subsection (1) in respect of the prescribed work or an affected part that is subject to the local government maintenance service is, despite anything else, to be construed as an obligation to maintain the prescribed work or the affected part to the same standard to which the local government would, at the relevant time, otherwise maintain the prescribed work or affected part under the local government maintenance service.
- (10) The local government may give a notice to the relevant responsible person under subsection (8) stating its opinion and the reasons therefor.
- (11) A notice under subsection (9) is evidence of the matters stated in it.
- (12) Nothing in subsection (5) affects—
 - (a) the liability of a prescribed person for a prescribed work who is not a relevant responsible person to comply with subsection (1) in respect of a prescribed work; or
 - (b) section 10.

- (13) In this section—

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

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, a reserve 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

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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 land referred to in section 12(1)(a) (*relevant land*); and

(b) restore the relevant land, 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) Subsection (6) applies if the local government attempts to dispose of a removed prescribed work under subsection (3)(b) but the work is not disposed of.

(6) The local government may dispose of the removed prescribed work as the local government sees fit, including by private sale, destruction, restoring or giving away.

(7) The local government must apply the proceeds of sale or disposal of a removed prescribed work in way required by the *Local Government Act 2009*, section 38A(2).

(8) To remove any doubt, the *Local Government Act 2009*, section 38A(3), applies to a secured party.

(9) 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.

(10) In this section—

secured party has the same meaning as in the *Local Government Act 2009*, section 38A(4).

Part 6 Entry to adjacent land for authorised activities relating to a seawall or revetment wall

14 Definitions for pt 6

In this part—

adjacent land means land—

- (a) other than land owned, leased or controlled by the State or the local government, that is adjacent to—
 - (i) land on which a prescribed work is located and for which there is a relevant person under the definition of relevant person, paragraph (b); or
 - (ii) land on which a required work is required to be built to comply with a waterway area required work notice by a relevant person under the definition of relevant person, paragraph (a); or
- (b) for which a relevant person—
 - (i) under the definition of relevant person, paragraph (a), reasonably requires entry to carry out an authorised activity; or
 - (i) under the definition of relevant person, paragraph (b), reasonably requires entry to carry out an authorised activity.

authorised activity means—

- (a) for a required work—any incidental and consequential work a responsible person for the required work must carry out to comply with section 10(14); or
- (b) for a prescribed work—any activity a responsible person for the prescribed work must do to comply with section 11(1).

damage, to land or a thing (including a prescribed work defined in section 6), does not include damage that is reasonably necessary to carry out an authorised activity.

existing prescribed work means a prescribed work—

- (a) existing immediately before a notice is required to be given under section 15(1); and
- (b) which is, or is to be, interfered with by the carrying out of an authorised activity.

occupier, of land includes a person, other than a relevant person, who is a responsible person for an existing prescribed work on adjacent land, but does not include the State or the local government.

prescribed work means a prescribed work that is a seawall or a revetment wall.

relevant person means—

- (a) a responsible person for a required work who is required to carry out an authorised activity; and
- (b) a responsible person for a prescribed work who is required to carry out an authorised activity; and
- (c) for sections 16, 17, 18 and 19—includes a person engaged or authorised by a person in paragraph (a) or (b) to carry out an authorised activity.

required work means a required work that is a seawall or a revetment wall.

15 Notice of entry

- (1) A relevant person who intends to enter adjacent land under this part must give the occupier of the land written notice of the entry.

Note—

For land for which the State or the local government is an occupier see section 26

- (2) The written notice must state the following matters—
 - (a) a relevant person is permitted, under this local law, to enter the adjacent land without consent or a warrant to carry out authorised activities on relevant land; and
 - (b) the period during which the entry will be made; and
 - (c) the authorised activities that will be carried out on the relevant land; and
 - (d) the period during which the authorised activities mentioned in paragraph (c) will be carried out; and
 - (e) the number and names of persons engaged or authorised by the relevant person, and things the relevant person or engaged or authorised person intends to take onto or over the adjacent land, to carry out the authorised activities mentioned in paragraph (c).
- (3) However, before the relevant person gives the written notice under subsection (1), the relevant person must make a reasonable attempt to contact the occupier of the adjacent land and obtain the occupier's consent to the entry.
- (4) In this section, **entry** includes entry by a person mentioned in subsection (2)(e).

16 Entering adjacent land for authorised activities

- (1) A relevant person may, without consent or a warrant, enter adjacent land if—
 - (a) the entry is for the purpose of carrying out an authorised activity; and
 - (b) a relevant person has given written notice (the **notice**) of the entry under section 15; and
 - (c) the entry—
 - (i) happens during the period stated in the notice but after the notice period has ended; and
 - (ii) is for the purpose of carrying out an authorised activity stated in the notice.

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- (2) The relevant person may, when entering the adjacent land, take onto or over the adjacent land any person or thing the relevant person reasonably requires for carrying out an authorised activity stated in the notice.

Examples of things the relevant person may reasonably require for carrying out an authorised activity—

vehicles, tools, building or landscaping supplies

- (3) However, subsections (1) and (2) do not authorise—
- (a) entry of, or a part of, a structure (except a relevant prescribed work), without the consent of each occupier of the structure or part; or
- (b) entry of adjacent land between 6pm and 7am unless the entry is reasonably necessary to carry out an authorised activity stated in the notice during that period.

- (4) In this section—

enter includes re-enter.

notice period means a period of 10 business days starting on the day when the occupier of the adjacent land has been given the notice.

17 Duty to avoid inconvenience and minimise damage

A relevant person who enters adjacent land under this part, or with the consent of an occupier of the land, must take all reasonable steps to avoid—

- (a) causing inconvenience to an occupier; and
- (b) damaging the land or anything on the land (other than is reasonably necessary to carry out an authorised activity).

18 Relevant person must give notice of damage

- (1) This section applies if—
- (a) a relevant person enters adjacent land under this part, or with the consent of the occupier of the land, to carry out an authorised activity; and
- (b) the relevant person causes or contributes to damage to the land or something on the land.
- (2) However, this section does not apply if—
- (a) the relevant person reasonably considers the damage is trivial; or
- (b) for damage to a thing—the relevant person reasonably believes there is no one in possession of the thing.
- (3) The relevant person must give notice of the damage to the occupier of the adjacent land.

Maximum penalty—50 penalty units

- (4) For subsection (3), if the damage is caused or contributed to by a relevant person mentioned in section 14, definition of relevant person, paragraph (c) (*the authorised relevant person*), a relevant person also includes the relevant person

- mentioned in section 14, definition of relevant person, paragraph (a) or (b), if—
- (a) that relevant person has knowledge of or ought to have knowledge of the damage; and
 - (b) the authorised relevant person does not give the notice to the occupier.
- (5) However, if it is not practicable to comply with subsection (3), the relevant person must—
- (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.
- (6) The notice must state—
- (a) particulars of the damage; and
 - (b) that the owner of the land or thing may seek remediation of the damage under this part.
- Note—*
- Remediation of the damage may occur under a remediation agreement between the owner and the local government under section 20. An owner must, however, first give the local government a notice under section 19.
- (7) If the relevant person believes the damage was caused by a latent defect, or other circumstances beyond the relevant person's control, the relevant person may state the belief in the notice.

19 Interested person may give notice of damage to the local government

- (1) This section applies if—
- (a) a relevant person enters adjacent land under this part, or with the consent of an occupier of the land, to carry out an authorised activity; and
 - (b) a person (the *interested person*) reasonably believes the relevant person has caused or contributed to damage to the land or something on the land; and
 - (c) the interested person owns the land or thing.
- (2) The interested person may give the local government written notice of the damage.
- (3) The notice must include the following information—
- (a) details of the damage; and
 - (b) details of the entry during which the interested person believes the damage was caused or contributed to; and
 - (c) whether the interested person believes the land or thing can be returned to the condition it was in before the damage; and
 - (d) the remedial action the interested person considers—
 - (i) if the interested person maintains the belief mentioned in paragraph (c)—reasonably necessary to return the land or thing to the condition it was in before the damage; or
 - (ii) otherwise—appropriate having regard to the consequences of the damage to use of the land or thing.

- (4) A notice must be given no later than 90 days after the interested person first became aware of the damage.
- (5) Within 30 days of receiving the notice, the local government must notify the interested person and the relevant person of whether the local government will enter into a remediation agreement under section 20.

20 Remediation agreement

- (1) This section applies if—
 - (a) an interested person gives the local government a notice under section 19 within the notice period; or
 - (b) if an interested person gives a notice under section 19 after the notice period has ended—the local government is satisfied the person has a reasonable excuse for not giving the notice within the notice period.
- (2) The local government may enter into an agreement (a **remediation agreement**) with the interested person to take remedial action in relation to the land or thing stated in the notice.
- (3) A remediation agreement has no effect unless it is—
 - (a) in writing; and
 - (b) signed by or for the parties to the agreement.
- (4) A remediation agreement is binding on the parties to the agreement and the parties' personal representatives, successors and assigns.
- (5) The local government may recover the amount that the local government properly and reasonably incurs in taking any remedial action under a remediation agreement as a debt payable by the relevant person who caused or contributed to the damage.
- (6) For subsection (5), a relevant person is the responsible person under section 14, definition of relevant person, paragraph (a) or (b) who—
 - (a) caused or contributed to the damage; or
 - (b) engaged or authorised the person who caused or contributed to the damage.
- (7) In this section—

notice period means the period stated in section 19(4).

Part 7 Sale of lots

21 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) In this section—

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

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.

Note for paragraph (b)—

A lot in scheme land that is waterfront land and which may separately be treated as other land for section 9(4) may not necessarily be a relevant lot because the lot is not connected to a specified prescribed work

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

Part 8 Prescribed work reports

22 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.

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- (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*.

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.

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

Part 9 Enforcement

23 Compliance

- (1) This section applies if a person contravenes this local law, other than section 10, 21 or 22.
- (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 32.
- (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—

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

*Maintenance of Works
in Waterway Areas Local Law 2023*

- (a) apply for a development permit or an approval; and
- (b) repair or rectify the prescribed work; and
- (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; and

Example for paragraph (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); and
 - (e) fence off the prescribed work to protect persons; and
 - (f) cleanse, purify and disinfect the prescribed work; and
 - (g) demolish, remove or replace the prescribed work; and
 - (h) comply with a prescribed work inspection program; and
 - (i) obtain a prescribed work report, to be given to the local government, about the safety or condition of, or any other matter relating to, the prescribed work; and
 - (j) restore, as far as practicable, the prescribed work to the condition the prescribed work was in immediately after completion of the construction of the prescribed work; and
 - (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) The compliance notice must include, or be accompanied by, a decision notice.
- (6) A person who is given a compliance notice must comply with the notice.

Maximum penalty—800 penalty units.

- (7) To remove any doubt, a compliance notice may require a person to do a thing in relation to the whole or part of a prescribed work.
- (8) In this section, **prescribed work report** means a report prepared by a person who is qualified to provide the report about the prescribed work as if the prescribed work were a specified prescribed work under section 22.

24 Liability for consequential damage

- (1) A person who contravenes this local law, other than section 10, 21 or 22, is liable for any loss or damage, including the incurring of any cost or expense (**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 or incurred in respect of—
- (a) land that is owned, leased or controlled by the local government; or
 - (b) a work that is the property of the local government or is on land in paragraph (a).

Example for paragraph (b)—

removing a seawall that has not been maintained by a responsible person as required by this local law from a foreshore 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 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.

25 Permission required to perform obligation

- (1) Subsection (2) applies if—
 - (a) this local law, except for this section or section 24, or a compliance notice requires a person (the **liable person**) to perform an obligation (the **original obligation**); and
 - (b) performing the original obligation would be a development offence under the *Planning Act 2016* or a contravention under another law unless the liable person obtained an approval or permission (the **permission**) 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 23.
- (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 permission 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, the liable person is not liable for an offence under this local law for failing 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; 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) nothing in this local law is intended to establish an alternative development process and any obligation or requirement imposed by or under this local law, or belief of the local government, relating to a required work or a prescribed work is not, and does not involve, an assessment of development; and
- (e) 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 28, the local government may perform work that a person has failed to perform under a provision of this local law.

- (10) In this section—

alternative development process has the same meaning as in the *Local Government Act 2009*, section 37.

development has the same meaning as in the *Planning Act 2016*, schedule 2.

existing permission means a permission that existed immediately before the original obligation arose.

Example—

a sanction to carry out works under the *Harbours Act 1955* (repealed), section 86

26 Occupation right required to perform obligation

- (1) Subsection (3) applies if—

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

*Maintenance of Works
in Waterway Areas Local Law 2023*

30

- (a) this local law, except for this section or section 25, 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 or permission to use or occupy land or waters (an **occupation right**) under an Act or given or consented to by another person to perform the original obligation; and
 - (c) the occupation right does not exist when the original obligation first applies.
- (2) However, this section does not apply to the carrying out of an authorised activity under part 6.
- (3) 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 given.
- Maximum penalty for subsection (2)(a)—50 penalty units.

- (4) Subject to subsection (1)(b), if, apart from this local law, the local government may give an occupation right to a liable person, the local government must give the liable person an occupation right.
- (5) Subject to subsection (6), if, after complying with subsection (3)(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.
- (6) To remove any doubt—
 - (a) the liable person will, subject to subsection (5) 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 28; 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 28, the local government may perform work that a person has failed to perform under a provision of this local law.

27 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.

28 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 10 Release

29 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 design, state or condition of any prescribed work or required work; or
 - (b) the construction, maintenance or non-maintenance of a prescribed work or required work; or
 - (c) any act or omission of the released party under this local law; or
 - (d) 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 11 Administrative provisions

30 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 by another person, 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.

31 Joint and several liability

- (1) Where this local law imposes a liability on an owner or occupier of a place, or a person engaged in a particular activity, and 2 or more persons are the owners or occupiers of the relevant place, or are jointly engaged in the relevant activity, the liability is joint and several.
- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

32 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.

33 Providing false or misleading information

A person must not give information for this local law, either orally or in a document, that the person knows is false or misleading.

Maximum penalty —20 penalty units

34 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.
- Maximum penalty for subsection (1)— 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.

35 Defences

It is a defence to any breach of or non-compliance with 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.

36 Proceedings for offences

Proceedings for an offence against this local law must (*offence proceedings*)—

- (a) be taken in a summary way; and
- (b) start—
 - (i) within 1 year after the offence is committed; or
 - (ii) within 1 year after the offence comes to the complainant's knowledge but within 2 years after the offence is committed.

37 Enforcement orders

- (1) After hearing offence proceedings, and without limiting another provision of this local law, a Court may make an order (an **enforcement order**) for the defendant to take stated action within a stated period.
- (2) The enforcement order may be in terms the Court considers appropriate to secure compliance with this local law.
- (3) An enforcement order must state the period within which the defendant must comply with the order.
- (4) An enforcement order may be made under this section in addition to the imposition of a penalty.

38 Extrinsic material

- (1) The local government may make an explanatory note to assist in the interpretation of this local law.
- (2) The local government makes an explanatory note by—
 - (a) passing a resolution to make the explanatory note; and
 - (b) publishing the explanatory note on the local government's website.
- (3) An explanatory note made in accordance with this section is declared to be a relevant document for the purposes of the *Acts Interpretation Act 1954*, section 14B (as modified by section 15 of the *Statutory Instruments Act 1992*, section 15).

Note—

Pursuant to the *Statutory Instruments Act 1992*, part 4, division 1, the *Acts Interpretation Act 1954* is modified so that a document declared by a local law to be a relevant document for the purposes of the *Acts Interpretation Act 1954*, section 14B, is extrinsic material which may assist in the interpretation of a provision of the local law.

Part 12 Reviewing decisions

39 Application for review

- (1) A person who is given, or is entitled to be given, a decision notice may apply to the local government for a review of the relevant decision (a **review application**).
- (2) The review application must be made within 15 business days of—
 - (a) if the person is given a decision notice—the day the person receives the notice; or
 - (b) if subparagraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (3) The review application must be in writing and accompanied by a statement of the grounds on which the applicant seeks the review of the decision.

40 Review decision

- (1) The local government must review the original decision within 20 business days of receiving a review application and make a decision (the *review decision*) to—
 - (a) confirm the original decision; or
 - (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision unless that person was the chief executive officer.
- (3) The local government must, within 5 business days of the review decision being made, give the applicant notice of the decision (the *review notice*).
- (4) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (5) If the local government does not make the review decision within 20 business days of receiving a review application or does not give the review notice within 5 business days of making the review decision, the review decision is taken to confirm the original decision.

41 Stay of operation of original decision

A review application does not stay the original decision that is the subject of the application.

Part 13 Authorised persons

42 Appointment of authorised persons

- (1) The local government may appoint a person as an authorised person under this local law if that person possesses appropriate expertise or qualifications in respect of the powers to be exercised by an authorised person under this local law.
- (2) An authorised person's instrument of appointment must state that the appointment is made under subsection (1).
- (3) An appointment made by the local government under subsection (1) may be general or subject to limitations stated in the appointment.
- (4) An authorised person is authorised by the local government to exercise the powers attaching to that position under this local law unless otherwise stated in the instrument of appointment.

43 Threatening an authorised person

A person must not threaten, insult or use abusive language towards an authorised person.

Maximum penalty—20 penalty units.

Part 14 Subordinate local laws

44 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) a work that is a required work under section 7; 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) any other matter that may be stated in a waterway area required work notice under section 10; and
- (i) 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
- (j) that the subordinate local law applies for the purposes of parts 5 and 8; and
- (k) the requirements of a prescribed work report under parts 5 and 8; and
- (l) a specified prescribed work for the purposes of sections 21 and 22; and
- (m) records that are required to be kept under section 27; and
- (n) the terms of a periodic inspection, monitoring or management program which must be complied with under section 27; and
- (o) such other matters as are provided for in this local law.

Schedule Dictionary

adjacent to, in relation to land, means immediately adjoining or touching other land or another area (including a waterway area).

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.

Example of approval—

a permission under the *Marine Parks Regulation 2017*

artificial waterway means—

- (a) an artificial waterway within the meaning of the *Coastal Protection and Management Act 1995*, section 8(1) and (2), except to the extent that meaning includes a canal under that Act; and
- (b) an area shown as an artificial waterway (that is not a canal under the *Coastal Protection and Management Act 1995*) in a plan of subdivision registered in the land registry; and
- (c) a canal.

authorised person is an authorised person of the local government under the local government Act 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 Regulation 2012*.

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 install, construct, undertake, prepare, make, plant, lay, secure, alter, move, remove, excavate, fill; and
- (b) built has a corresponding meaning.

building has the same meaning as in the *Building Act 1975*.

canal means—

- (a) a canal within the meaning of the *Coastal Protection and Management Act 1995*, section 9(1) and (2); and
- (b) an area shown as a canal in a plan of subdivision registered in the land registry.

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

common property—

- (a) has the same meaning as in the *Land Title Act 1994*, section 115B(2)(b); and
- (b) includes common property to which the *Building Units and Group Titles Act 1980* continues to apply.

compliance notice see section 23(2).

connected to, in relation to a work that is connected to land, means physically connected, joined or attached to land by any means.

corporation means a corporation under the *Corporations Act 2001* (Cth) 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.

decision means a decision by the local government to—

- (a) give a notice under section 10(1); or
- (b) give a compliance notice under section 23(2).

decision notice, for a decision, means a written notice stating the following—

- (a) the decision; and
- (b) any relevant details about the decision; and

Example for paragraph (b)—

the date on which the decision takes effect or actions required under the notice must be taken

- (c) the reasons for the decision; and
- (d) that the person to whom the notice is given may apply for a review of the decision within 15 business days after the notice is given; and
- (e) how to apply for a review.

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*.

incidental and consequential work, in relation to a required work, see section 10.

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 *Planning Act 2016*, schedule 2; 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 *Planning Act 2016*, schedule 2.

maintenance—

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

non-freehold land means—

- (a) all land that is not recorded in the freehold land register under the *Land Title Act 1994*; and
- (b) land granted in trust by the State (but excluding trust land).

Note—

Trust land under this local law that is land granted in trust by the State only refers to that land where the local government is the trustee.

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

original decision means a decision the subject of a review application under section 39.

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 Regulation 2012*, section 60(2); or
- (b) otherwise—
 - (i) the holder of a development permit under the *Planning Act 2016* to build the work; or
 - (ii) the holder of an approval under another Act (including a statutory instrument) to build or use the work; or
 - (iii) a person who is or was required by an Act under subparagraph (i) or (ii) to obtain, or who is or was only lawfully able to build or use the work if there is or was, a development permit or approval to build or use the work.

perform work includes seizing and removing a thing.

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

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.

pontoon means a floating landing structure (including a platform) and includes all other structures or things supporting the floating landing structure (including piles or cables attached to a revetment wall, for example) or which provide access to the floating landing structure from land or another structure (including a bridge, gangway or walkway, for example).

prescribed tidal work means a work that is a prescribed tidal work under the *Coastal Protection and Management Regulation 2017*, section 15.

prescribed work—

- (a) generally—see section 6; or
- (b) for part 6—see section 14.

prescribed work report—

- (a) for part 5—see section 11; or
- (b) for part 7—see section 22; or
- (c) for part 9—see section 23.

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

required work—

- (a) generally—see section 7; or
- (b) for part 6—see section 14.

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.

scheme land—

- (a) has the same meaning as in the *Land Title Act 1994*, section 115B(1)(a); and

- (b) includes a site under the—
- (i) *Integrated Resort Development Act 1987*; and
 - (ii) *Mixed Use Development Act 1993*.

specified prescribed work—

- (a) for part 5—see section 11; or
- (b) for part 7—see section 22.

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 Moreton Bay Regional 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 under any circumstances.

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.

waterway area required work notice see section 10.

work see section 8.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

**#2 Draft Maintenance of Works in Waterway Areas
Subordinate Local Law**



**Maintenance of Works in Waterway Areas
Subordinate Local Law 2023**

Consultation Copy Only

Maintenance of Works in Waterway Areas Subordinate Local Law 2023 1

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Moreton Bay Regional Council

Maintenance of Works in Waterway Areas Subordinate Local Law 2023

Part 1 Preliminary

1 Short title

This subordinate local law may be cited as the *Maintenance of Works in Waterway Areas Subordinate Local Law 2023*.

2 Authorising local law

This subordinate local law is made pursuant to the *Maintenance of Works in Waterway Areas Local Law 2023*.

3 Object

The object of this subordinate local law is to assist in the implementation of the *Maintenance of Works in Waterway Areas Local Law 2023* by specifying certain matters for the purposes of that local law relating to specified prescribed works and prescribed work reports.

Part 2 Maintenance of prescribed works in waterway areas, sale of lots and prescribed works reports

4 Application of pt 6 of local law—local law, ss 11, 22

This subordinate local law applies for the purposes of *Maintenance of Works in Waterway Areas Local Law 2023*, parts 5 and 8.

5 Specified prescribed works—local law, ss 21, 22

For each of *Maintenance of Works in Waterway Areas Local Law 2023*, sections 21 and 22, definition, *specified prescribed work*, each of the following is a specified prescribed work—

- (a) a seawall; and
- (b) a revetment wall; and
- (c) a training wall; and
- (d) a jetty; and
- (e) a pontoon; and
- (f) a boat ramp.

6 Requirements for a prescribed work report—local law, ss 11, 22

- (1) For *Maintenance of Works in Waterway Areas Local Law 2023*, section 11, the following is a minimum requirement for a prescribed work report—
 - (a) for a prescribed work that is a seawall or revetment wall—the report must be prepared by a person who is a registered professional engineer under the *Professional Engineers Act 2002* and who can competently address the matters specified in *Maintenance of Works in Waterway Areas Local Law*, section 11(2)(b); or
 - (b) for another prescribed work—the report must be prepared by a person who is reasonably qualified to provide the report and who can competently address the matters specified in *Maintenance of Works in Waterway Areas Local Law*, section 11(2)(b).
- (2) For *Maintenance of Works in Waterway Areas Local Law 2023*, section 22, each of the following is a requirement for a prescribed work report—
 - (a) for—
 - (i) a prescribed work that is a seawall or revetment wall—the report must be prepared by a person who is a registered professional engineer under the *Professional Engineers Act 2002*; or
 - (ii) another prescribed work—the report must be prepared by a person who is reasonably qualified to provide the report; and
 - (c) the report must be prepared by a person who can competently address the matters specified in paragraphs (d) and (e); and
 - (d) the report must state whether the specified prescribed work—
 - (i) is in a safe condition; and
 - (ii) is in good working order, repair and condition; and
 - (iii) in any respect, presents a danger to any person or property; and
 - (iv) needs any specific repairs or other works to ensure that the specified prescribed work is in a safe condition and good working order, repair and condition; or
 - (v) should be demolished; and
 - (e) if the report states that the specified prescribed work needs specific repairs or other works or should be demolished, the report must state an approximate time by which the repairs or other works (including any demolition works) should be carried out, having regard to any danger to any person or property that the specified prescribed work may present and the specified prescribed work's capacity to fulfil its intended function.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

#3 Draft Maintenance of Works in Waterway Areas Explanatory Note

Moreton Bay Regional Council

Maintenance of Works
in Waterway Areas
Local Law 2023

Explanatory Notes

2023 | Version 1.0

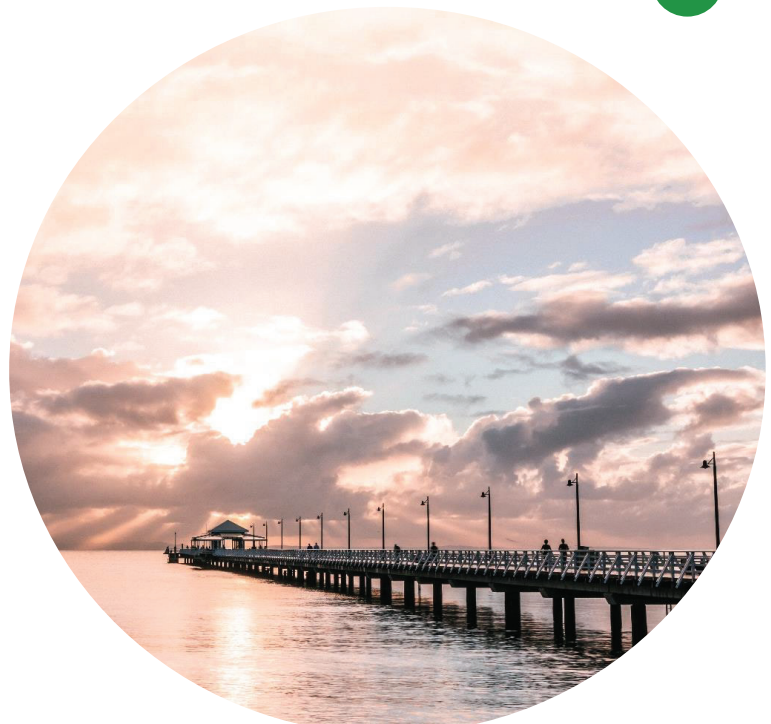


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Short title

This Local Law may be cited as the *Maintenance of Works in Waterway Areas Local Law 2023*.

What is this Local Law trying to achieve and why?

The Moreton Bay Region has expansive waterway areas unique to Southeast Queensland. These areas include those waterways exposed to tides, coastal wetlands, lakes and canals. Moreton Bay Regional Council (**Council**) considers it necessary to regulate certain structures (**works**), including canal revetment walls, seawalls, jetties and pontoons, so that they do not fall into disrepair or cause harm. This is necessary to ensure built and natural waterway areas can be preserved and maintained.

There are a number of canal estates within the Region. Canals are man-made waterways which require different up-keep compared to naturally formed waterways. The primary function of a canal is to provide navigable access and safe mooring within a waterfront residential estate. To support this primary function, canal revetment walls are permanent works located along the canal frontage of the land which prevent subsidence of the land and erosion into the canal. Revetment walls have an engineered design life and will require regular inspection and proper maintenance. Revetment walls can collapse if they are not adequately maintained. Depending on the size and location of the wall, the consequences of falling walls could have severe impacts on nearby structures, people, neighbouring properties and the canal environment.

Our Region's coastal backdrop also has various natural waterway areas which experience erosion and land displacement from the sea. These natural processes help shape our unique coastline. However, they can become hazardous and impact coastal values. Beachmere, Scotts Point, Scarborough and Woody Point are areas in which permanent seawalls have been constructed to protect land from waves and to secure materials behind the wall.

This Local Law aims to clarify who is responsible for the maintenance and up-keep of these works, ensure works are maintained to an acceptable standard so they don't fall into disrepair or result in harm to other people, property or the environment and ensure that works (such as seawalls) are constructed where required to protect waterway areas, other land and people who use the waterway areas and avoid or minimise environmental harm and other damage to the waterway areas.

Ultimately, Council's aim in regulating these works is to ensure that our waterway areas remain attractive and safe locations to live and visit.

How will the Local Law achieve those aims?

This Local Law achieves its aims by:

- providing that the maintenance and repair of works in waterway areas is the responsibility of the person/s whose land is subject to, or receives a benefit from, the works and ensuring that these works do not fall into disrepair or cause harm to other people, property or the environment;
- ensuring that people build works where it is necessary to protect waterway areas and other land or persons who use waterway areas, or to avoid or minimise environmental harm or damage to waterway areas;
- ensuring that, specifically, seawalls are built and maintained on or near coastal beaches and that revetment walls are built and maintained in canals and non-coastal waterway areas; and
- protect the interests of buyers of certain lots by requiring sellers notify them about works that may be subject to obligations under the Local Law.



(1) Providing that the maintenance and repair of works in waterway areas is the responsibility of the person/s whose land is subject to, or receives a benefit from, the works and ensuring that these works do not fall into disrepair or cause harm to other people, property or the environment

This Local Law sets out who is a responsible person for the maintenance of works within a waterway area and includes a person who receives a benefit from the work. It also specifies the standard to which a responsible person must maintain the work and what is means to 'maintain' a work.

The purpose of requiring responsible persons to maintain a work is to ensure that works in waterway areas do not fall into disrepair or cause harm to human health or safety, property damage, or an environmental harm or nuisance.

(2) Ensuring that people build works where it is necessary to protect waterway areas and other land or persons who use waterway areas, or to avoid or minimise environmental harm or damage to waterway areas

This Local Law applies to all waterway areas within the local government area. There may be circumstances where Council believes it necessary for a person to build a work (a required work). This may be to stabilise their land or prevent adverse effects to another property. This Local Law gives Council the ability to issue a responsible person a waterway area required work notice to build a required work.

The waterway area required work notice must comply with rigorous requirements set out in this Local Law and must include all the facts and circumstances forming the basis for Council's belief that the responsible person for the required work should build the required work. It is important to note that a person given such a notice may make written representations and seek a review regarding the decision to issue a waterway area required work notice. To ensure compliance with such a notice, Council may undertake the works itself where a person has failed to comply with the notice. It may also recover the amount it properly and reasonably incurs in taking all necessary steps to build the required work.

The purpose of this is to protect waterway areas and other land or persons who use waterway areas. It achieves this aim in guaranteeing that a work will be built, either by the responsible person, or, upon the failure by the responsible person, Council, to avoid or minimise the risk of damage in waterway areas. Council considers this power necessary as a fast-acting compliance measure so that unintended consequences of a person's action or failure to act can be minimised.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

(3) Ensuring that, specifically, seawalls are built and maintained on or near coastal beaches and that revetment walls are built and maintained in canals and non-coastal waterway areas

A person may be responsible for the maintenance of a work, including a canal revetment wall and a seawall, where they receive a benefit from the work. Ancillary to this, Council recognises that sometimes responsible persons need to enter adjacent land and interfere with existing seawalls or revetment walls to ensure new walls align. This Local Law authorises these responsible persons for required works and prescribed works to do this.

This authority is subject to a notice process, including a notice for entry and notice of damage, and a duty to avoid inconvenience and minimise damage. Additionally, Council may enter into a remediation agreement for Council to take remedial action in relation to any damage, by which Council may recover the cost of taking action from the relevant person who caused or contributed to the damage. This is to ensure that any damage to another's property can be rectified promptly.

Ensuring that seawalls and revetment walls are built and maintained accordingly is vital as the integrity and proper function of these works are generally dependant on other works. By guaranteeing this compliance, Council can reduce and promptly resolve disagreements between the respective owners of adjoining works. It also ensures that the responsible persons are actively aware of their responsibilities and rights to build and maintain seawalls and revetment walls.

(4) Protect the interests of buyers of certain lots by requiring sellers notify them about works that may be subject to obligations under the Local Law.

Council considers it necessary to ensure that buyers are made aware of the maintenance obligations for a work. Accordingly, this Local Law requires a seller to advise a buyer via a contract of sale of any relevant obligations in relation to a work under this Local Law. This ensures that when a property is sold, the buyer of that property is fully informed of their maintenance obligations under this Local Law.

Who did Council seek feedback from in forming this law?

Council sought the community’s feedback on Local Law issues from 1 March to 5 September 2021. During this time, Council undertook targeted consultation regarding the maintenance of seawalls. This consultation took the form of a public survey, and Council invited submissions from relevant peak body organisations and state departments, including:

- Department of Environment and Science;
- Department of Agriculture and Fisheries;
- Department of Local Government, Racing and Multicultural Affairs;
- Newport Waterways Canal Property Owners Association;
- Pacific Harbour Residential Community Association;
- Bribie Gardens Waterway Association Inc.; and
- Bribie Island Environmental Protection Association.

Approximately 701 public survey responses and 2 peak body submissions were received on the issue of seawall maintenance.¹ Council reviewed all responses and identified issues that were the most prevalent for the community. An overview of the community feedback is provided below.

Seawall Maintenance Survey		
Survey question	Responses received	Outcome
“Should Council or landholders pay to maintain seawalls that benefit private properties?”.	701	Landowner = 52% Council = 41% Unsure = 7%

In response to this question, common themes of the public survey suggested that Council should not have to pay to maintain infrastructure that benefits a specific property and that landowners take on that risk when they buy those kinds of properties. Other respondents said seawalls protect the coastline generally, which benefits everyone, and the general public have use of the canals too, so Council should pay for or at least contribute to the cost of maintaining canal revetment wall and seawall infrastructure.

Council decided to introduce this Local Law to clarify the circumstances in which a landowner who receives the benefit of a canal revetment wall or seawall will be required to maintain the wall and the standard to which the wall must be maintained.

¹ Consultation was also undertaken via social media and while responses provided via social media were considered, they are not counted in the totals.

Plain English explanations of each section of the Local Law

Part 1 - Preliminary

Section 1 - Short title

This section establishes the short title of the Local Law.

Section 2 - Objects

This section sets out the objects of the Local Law. Provisions of the Local Law, including as imposing obligations on responsible persons and giving Council enforcement powers, are intended to give effect to, or facilitate the achievement of, these objects. Therefore, the Local Law's provisions are to be understood and operate consistently with the objects. In particular, the Local Law aims to:

- provide for the maintenance and repair of works in waterway areas that are in Council's local government area by persons whose land is subject to, or which receives a benefit from, those works;
- ensure that works in waterway areas do not fall into disrepair or cause harm to human health or safety, property damage, or an environmental harm or nuisance;
- ensure that, when appropriate, responsible persons build works that are necessary to protect waterway areas and other land or persons who use waterway areas, or to avoid or minimise environmental harm or damage to waterway areas;
- specifically, ensure that seawalls are built and maintained on or near coastal beaches and that revetment walls are built and maintained in canals and non-coastal waterway areas;
- protect the interests of buyers of certain lots by requiring sellers to notify them about works that may be subject to obligations under the Local Law; and
- protect the health and safety of users of waterway areas and the health of waterway areas.

The terms **works** and **waterway area** are respectively defined in sections 5 and 8.

Part 2 - Relationship with other laws

Section 3 - Relationship with other laws

This section provides that powers under the Local Law can only be exercised in a way that is not inconsistent with all State and Commonwealth Acts, including those expressly stated. For example, Council cannot require a person to build a work in a waterway area if an Act prohibits the building of the work.

Part 3 - Interpretation

Division 1 - Dictionary

Section 4 - Definitions—the dictionary

This section provides that the dictionary in the schedule contains definitions of particular works that are used in the Local Law.

Division 2 - Other definitions

Section 5 - Waterway area

This section defines **waterway area**. The Local Law applies to works in all types of waterway areas in the Moreton Bay Region. This means the Local Law applies to works in, for example, tidal waterways (such as tidal rivers and coastal waters), non-tidal waterways, lakes and artificial waterways, including canals. However, a waterway area must be within Council's local government area. Council's local government area includes areas that are within bathing reserves and foreshores under Council's control.

A waterway area is not confined to the waters of a waterway area. It includes the land of a waterway area. This also means that some waterway areas may include land that is not regularly subject to waters. Further, subsections (3) and (4) provide that where unallocated State land separates a parcel of land that is in a register under the *Land Act 1994* or the *Land Title Act 1994* and a waterway area, the unallocated State land is taken to be part of the waterway area.

This definition is important in determining when a person will be responsible for maintaining or repairing a work (see definition of "prescribed work" in section 6 and the obligation to maintain a prescribed work in section 11).

Section 6 - Work that is a prescribed work

This section defines **prescribed work**. A prescribed work is a work defined in section 8 that is completely or partly in, on, above or below a waterway area defined in section 5. However, a prescribed work also includes the following:

- a tidal work or prescribed tidal work (as defined);
- a work designed to be exposed, in whole or in part, to tidal or non-tidal water, of a waterway area because of a shoreline fluctuation or for any other reason (including flood, for example);
- a work that is an integral part of a prescribed work, wherever located (including, for example, a walkway to a pontoon where the walkway is located on 'dry' land);
- a revetment wall (as defined); and
- a seawall (as defined).

Under section 11, a responsible person for a prescribed work must maintain the prescribed work in the way stated in that section.

Section 7 - Work that is a required work

This section defines **required work**. A required work is a work defined in section 8 (for example, an embankment, landscape works, vegetation, hard surfacing and temporary works) that is necessary to secure, protect, support or stabilise a part of land that is, or improvements on land that is, immediately adjoining or touching a waterway area. Therefore, the type of work which a responsible person for a required work may be required to build will generally be limited.

However, a required work includes a revetment wall, a seawall, and a work that is prescribed by a subordinate local law to be a required work.

Section 8 - A work

This section defines **work**. A work is defined very broadly and is an inclusive definition. Mostly, the definition is relevant to the definition of prescribed work in section 6 and the definition of required work in section 7. Section 8 makes clear that a work can be a temporary work and part of a work.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

Section 9 - Responsible person for a prescribed work and a required work

This section defines **responsible person for a prescribed work** and **responsible person for a required work**. Under the Local Law, a person only has an obligation to maintain a prescribed work under section 11 if the person is a responsible person for the prescribed work. A person only has an obligation to build a required work under section 10 if the person is a responsible person for the required work.

Responsible person for a prescribed work

Under section 9(1), any of the following persons will be a *responsible person for a prescribed work*:

- (a) if the prescribed work is completely or partly on freehold land—the owner of the land;
- (b) if the prescribed work is completely or partly on land that is leased from the State under the *Land Act 1994*—the lessee of the land;
- (c) if the prescribed work is completely or partly on land granted in trust under the *Land Act 1994* for which Council is the trustee or a reserve under Council's control or for which Council is the trustee, or other non-freehold land (including a road)—either or both of:
 - (i) a person who occupies any part of the land on which the prescribed work is situated (for example, under a permit under the *Land Act 1994*); and
 - (ii) a person who owns freehold land, leases land from the State under the *Land Act 1994*, or occupies other non-freehold land which:
 - 1) is waterfront land or waterfront (separated) land (as defined); and
 - 2) receives the benefit of the prescribed work under section 9(4);

Examples for section 9(1)(c)(ii)

- Jamie owns freehold land that is adjacent to a waterway area. Jamie's land receives the benefit of a pontoon. The pontoon is in a non-tidal reserve under the *Land Act 1994* which is for recreation purposes. Jamie is a responsible person for the pontoon. It does not matter that Council is the trustee of the reserve. If there is a trustee for the reserve (other than Council or the State), the trustee may also be a responsible person for the pontoon because the trustee occupies the reserve.
- Erin owns freehold land that is adjacent to a canal and on which a revetment wall is situated. Erin is a responsible person for the revetment wall. Erin is also a responsible person for rock buttressing constructed in the canal to benefit her freehold land by supporting the revetment wall. However, Erin may not be required to maintain the rock buttressing (as part of the revetment wall) if Erin pays a special rate or charge to Council for Council to maintain the rock buttressing (see section 11(5)).

- (d) if another law or an agreement obliges a person to maintain a prescribed work in a safe condition or in good working order, repair and condition—the person subject to that obligation;

Example for section 9(1)(d)

Majella is a responsible person for a jetty because she is a relevant person under section 124 of the *Coastal Protection and Management Act 1995* and is required to maintain the jetty in a safe condition under that section.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

- (e) if a person would be responsible in law for any loss or damage suffered by someone else because the person has not maintained the prescribed work in a safe condition or in good repair and condition—the person who would be responsible in law;

Example for section 9(1)(e)

Jon is a responsible person for a pontoon if, under the common law of negligence, he would be responsible for any loss or damage that another person suffers because Jon failed to maintain a pontoon that he constructed in a watercourse.

- (f) if a person is the owner of the prescribed work—the owner.

An owner of a prescribed work is:

- if the work is a structure under the *Local Government Act 2009* and is in a canal, the person who is an owner under section 60(2) of the *Local Government Regulation 2012*;
- the holder of a development permit under the *Planning Act 2016* to build the work;
- the holder of an approval under another Act to build or use the work (for example, under the *Building Act 1975*); or
- a person who is or was required by an Act to obtain, or who is or was only lawfully able to build or use the work if there is or was a requirement for, a development permit or approval to build or use the work.

Example of an owner of a prescribed work

Alex constructed a pontoon in a canal without a development permit under the *Planning Act 2016*. Alex is a responsible person for the pontoon because Alex was required by that Act to obtain a development permit to build the pontoon.

A person may be a responsible person for part of a prescribed work on one basis and a responsible person for another part of the same prescribed work on another basis.

Example

Kaia may be a responsible person for part of a revetment wall as a prescribed work that is on her freehold land. Kaia may also be responsible for the part of the same revetment wall that is in an adjoining waterway area that is a canal. This is because Kaia's freehold is waterfront land and receives the benefit of the part of the revetment wall that is in the canal.

What are waterfront land, waterfront (separated) land, waterfront (separated non-public) land and waterfront (separated public land)?

These concepts are relevant to section 9(1)(c)(ii). They are defined in section 9(13).

Where a prescribed work is on trust land or a reserve or non-freehold land (including a road), a person who owns freehold land, is a lessee under a lease from the State under the *Land Act 1994*, or an occupier of other non-freehold land is a responsible person for the prescribed work if the person's land is waterfront land or waterfront (separated) land and his or her land receives the benefit of the prescribed work.

"Waterfront land"

"Waterfront land" is land that immediately adjoins or touches a waterway area. For example, freehold land that shares a common boundary with a canal is waterfront land.

ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)
"Waterfront (separated) land"

"Waterfront (separated) land" is either:

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

"Waterfront (separated non-public) land" is land that is separated from a waterway area only by any or all of the following (and which is not part of a waterway area) (known as "**separating land**"):

- (a) a road, including a road subject to an occupation right;
- (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.

An "occupation right" is a right of occupation of a place by an occupier (for example, a permit over a road or reserve). That is, it does not matter that the separating land is subject to an occupation right. Because the land is "waterfront (separated non-public) land" it will be treated for section 9(1)(c)(ii) as though, for instance, an owner's freehold land is not separated from a waterway area by any other land.

However, if any separating land - land between an owner's, lessee's, or occupier's land and a waterway area - is public land, the owner's, lessee's or occupier's land is "waterfront (separated public) land". "Public land" is separating land which:

- (a) the public is entitled to use and uses; or
- (b) contains permanent public infrastructure (for example, a formed walkway, recreation equipment or public toilets).

Example of difference between "waterfront (separated non-public) land" and "waterfront (separated public) land"

Sarah's freehold land is separated from a waterway by a public road. Her freehold land may be waterfront (separated public) land or waterfront (separated non-public) land.

If the public does not use the road (for example, because it is an unformed esplanade), the road is not public land unless the road contains public infrastructure. If the road is not used by the public and does not contain public infrastructure, Sarah's land is waterfront (separated non-public) land. However, if the public uses the road or the road contains public infrastructure, Sarah's land is waterfront (separated public) land.

For section 9(1)(c)(ii), whether Sarah's freehold land is "waterfront (separated public) land" or "waterfront (separated non-public) land" is important because the distinction is relevant to determining whether Sarah's land receives the benefit of a prescribed work that is not on her land under section 9(4). See below for an example.

When does land (other land) receive the benefit of a prescribed work where the prescribed work is on trust land or non-freehold land?

It is important here to identify **other land**. The other land is the land which may receive the benefit of a prescribed work that is on or in a waterway area and, therefore, make the owner, lessee or other occupier of the other land a responsible person for the prescribed work.

For section 9(1)(c)(ii), freehold land, land leased from the State under the *Land Act 1994*, or other occupied non-freehold land (the **other land**) that is waterfront land or waterfront (separated) land (whether waterfront (separated non-public) land or waterfront (separated public) land) only receives the

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benefit of a prescribed work that is on trust land or non-freehold land in any of the 3 circumstances stated in section 9(4).

The 3 circumstances are:

- (a) where 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) if the other land (for example, freehold land adjoining a waterway area) is waterfront (separated public) land, the separating land does not contain any public infrastructure;

Example for section 9(4)(a)

Tim's freehold land is waterfront (separated public) land because it is only separated from a tidal waterway area by an unsealed esplanade (a public road) that is partly contained in a coastal beach. Unless the esplanade contains public infrastructure (such as a formed walkway or a public barbeque), Tim is a responsible person for a seawall that is located on the seaward side of the esplanade. This is because the seawall protects Tim's freehold land by preventing the encroachment, by wave action, of the sea past the wall.

- (b) where the other land (again, for example, freehold land adjoining a waterway area) 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 your land);

Example for section 9(4)(b)

Georgina's freehold land that is waterfront (separated non-public) land (because her land is separated from a waterway area by land in a deed of grant in trust for which Council is the trustee that is not used by the public and which does not contain any public infrastructure) receives the benefit of a revetment wall located in a reserve. Georgina's land receives the benefit of the revetment wall because the wall keeps in place materials and improvements that are contained in Georgina's freehold land.

- (c) where the other land is waterfront land or waterfront (separated) land (or either type), the owner, lessee or occupier (as the case may be) of the other land is taken to be in control under section 9(5) of the prescribed work (other than a seawall). See explanation below.

When is the owner, lessee or occupier of other land taken to be in control of a prescribed work?

Under section 9(5), an owner, lessee or other occupier of other land (see above) - that is, land that is waterfront land or waterfront (separated) land - is taken to be in control of a prescribed work on trust land or non-freehold land for section 9(4)(c) and, therefore, benefit the other land for section 9(1)(c)(ii)(B):

- (a) if the work is physically joined or attached to the other land by any means and the other land is waterfront land (that is, the other land immediately adjoins or touches a waterway area), unless the owner, lessee or occupier of the other land proves that he or she is not in control of the work;

Example for section 9(5)(a)

Where a pontoon is physically attached to Lisa's freehold land that is waterfront land because a walkway extends from her land to the pontoon, Lisa is taken to be in control of the pontoon. However, Lisa may prove that she does not control the pontoon because, for example, the pontoon is only used by someone else. However, this would be difficult for Lisa to prove as it

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is likely a pontoon will be used in the normal enjoyment of her land (given it is connected to her land). If Lisa can establish that she does not control the pontoon, Council may identify another responsible person or establish the pontoon is an abandoned work and remove it.

(b) where, although the prescribed work is not physically joined or attached to other land (and whether the other land is waterfront land or waterfront (separated) land), if the owner, lessee or other occupier:

(i) uses the prescribed work for a purpose that is directly connected with the normal enjoyment, and not mere convenience, of owner's, lessee's or occupier's land;

Example for section 9(5)(b)(i)

Freya's freehold land is waterfront (separated) land. Freya may be taken to be in control of the jetty because she uses the jetty in the course of her normal enjoyment of her land (for example, by permanently maintaining tables and chairs on the jetty). If Freya uses the jetty as a mere convenience with other members of the public, Freya would not control the jetty.

(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 example, the storage of property);

Example for section 9(5)(b)(ii)

Sam, the owner of freehold land that is waterfront (separated) land, may be taken to be in control of a pontoon in a non-tidal waterway where he regularly moors his boat to the pontoon or jetty. It does not matter that Sam has no legal right to moor his boat to the pontoon.

(iii) regulates, or tries to regulate, access by other persons to the prescribed work (including, for example, by means of a locked gate, sign or direction);

Example for section 9(5)(b)(iii)

Eleanor, the owner of freehold land that is waterfront land, erects a sign on a pontoon that is not connected to her land but is located in a non-tidal waterway that says the pontoon is not for public use. Eleanor has tried to regulate access by other persons to the pontoon. Eleanor, then, is taken to be in control of the pontoon.

(iv) permanently attaches property to, or removes attached property from, the prescribed work;

Example for section 9(5)(b)(iv)

Kirby, the owner of freehold land that is waterfront (separated) land, installs a railing on a jetty that is not connected to her land but which is near her land. Kirby may be taken to be in control of the jetty.

(v) maintains the prescribed work (including, for example, by painting or cleaning);

Example for section 9(5)(b)(v)

Kerrie, the lessee of land leased under the *Land Act 1994* that is waterfront land, regularly cleans a boat ramp that is near, but not connected to, her lease land. Kerrie may be taken to be in control of the boat ramp.

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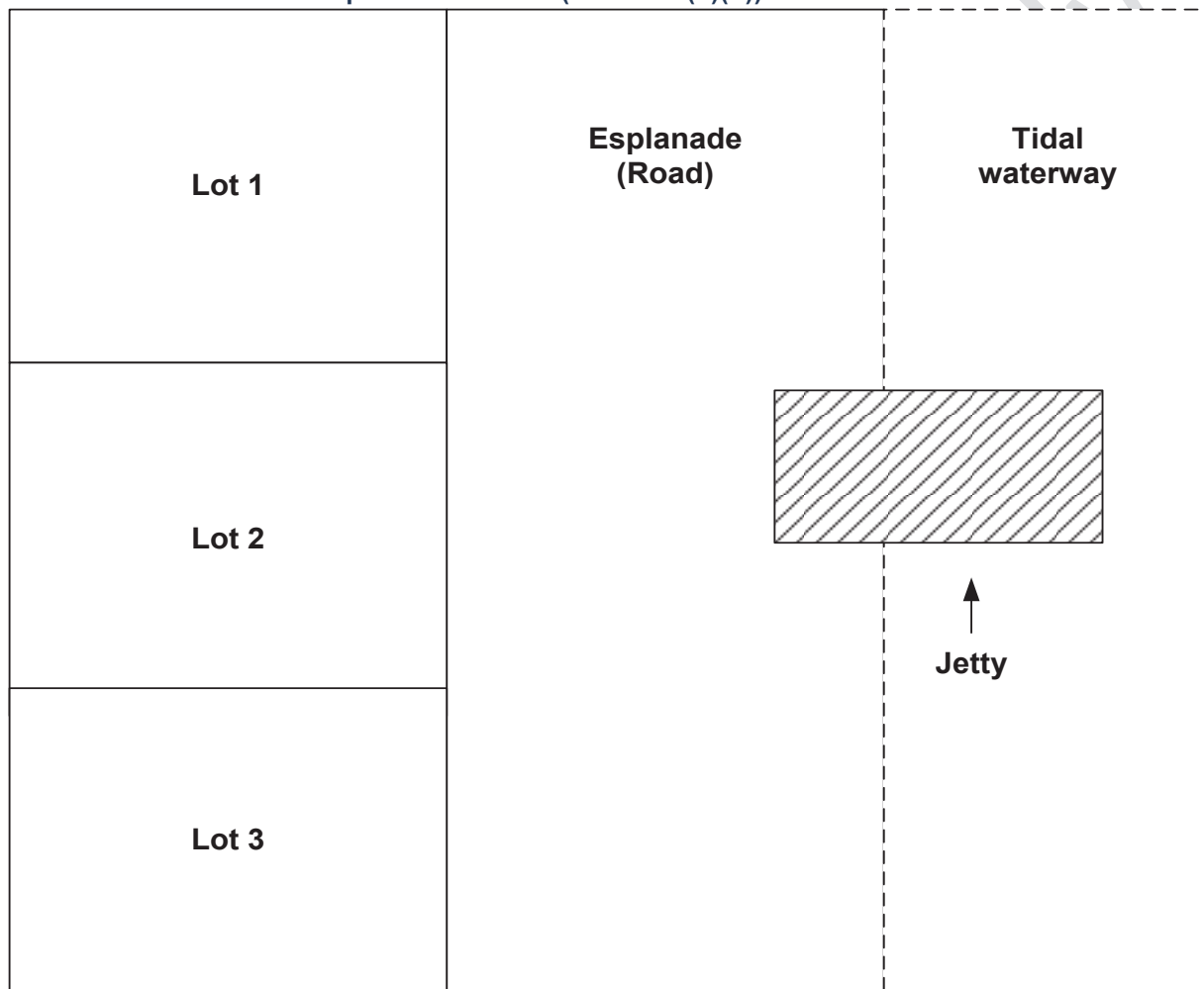
(vi) makes improvements to, or otherwise alters, the prescribed work.

Example for section 9(5)(b)(vi)

Melanie, the owner of freehold land that is waterfront land, replaces a part of a pontoon not connected to her land that has fallen into disrepair. Melanie may be taken to be in control of the pontoon.

Further illustrations of section 9's operation in relation to prescribed works

Figure 1: Where a responsible person is taken to be in control of prescribed work and, therefore, receives the benefit of the prescribed work (section 9(5)(b))



An owner of Lot 1, 2 or 3, as waterfront (separated) land, will be a responsible person for the jetty if he or she is taken to be in control of the jetty. The control establishes that an owner's land receives the benefit of the jetty. It does not matter that the jetty is not physically connected to any of the lots or is closest to Lot 2.

If the owner of Lot 1 uses the jetty to moor his boat on a regular basis, he is taken to be in control of the jetty (section 9(5)(b)(ii)). He is a responsible person for the jetty.

If the owner of Lot 2 has recently painted the jetty, she is taken to be in control of the jetty (section 9(5)(b)(v)). She is also a responsible person for the jetty.

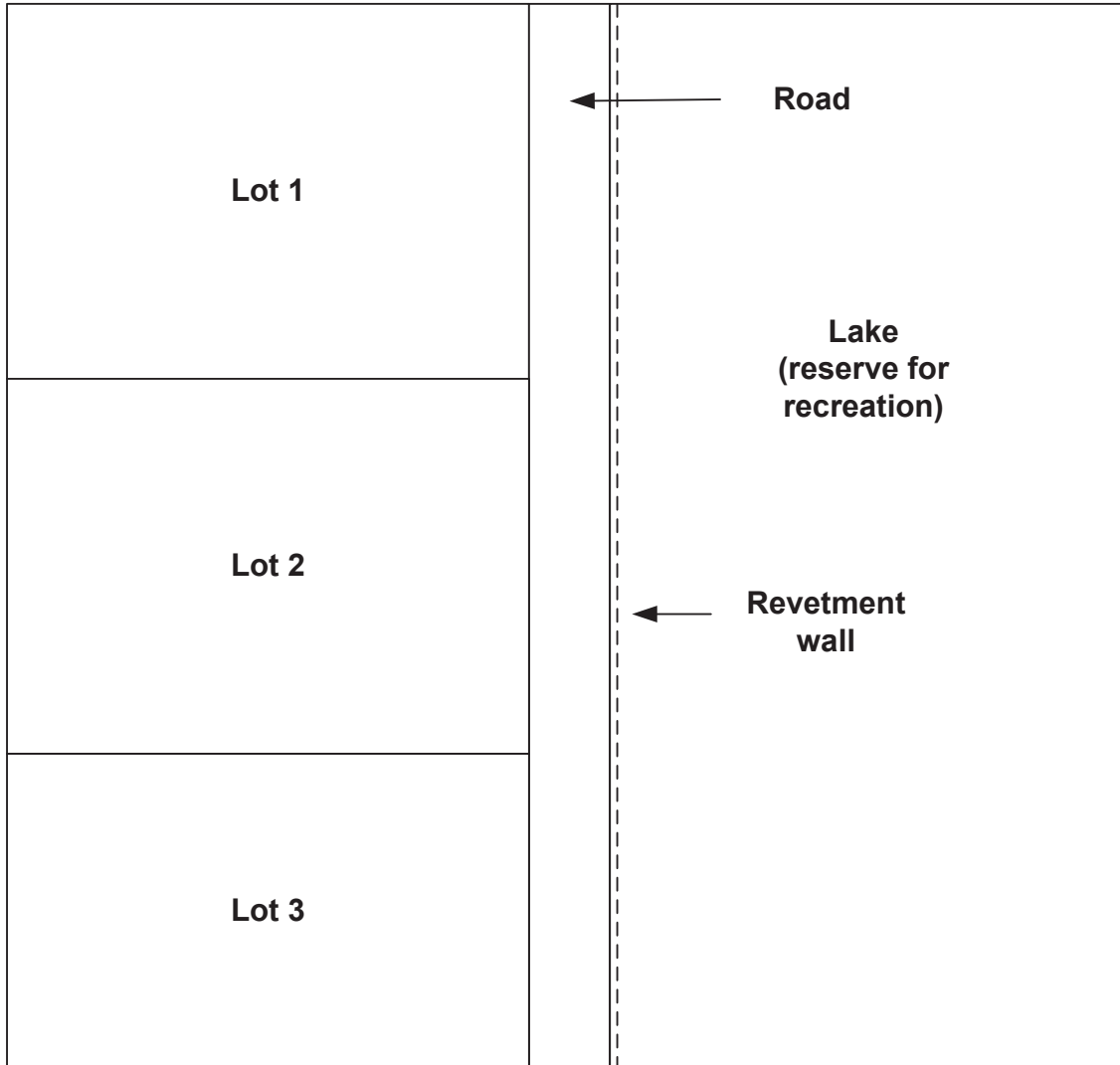
If the owner of Lot 3 has moored his boat to the jetty only on occasions, he is not taken to be in control of the jetty. He is not a responsible person for the jetty.

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However, an owner of Lot 1, 2 or 3 could still be a responsible person for the jetty if section 9(1)(d) or (e) applies.

If the jetty is a public marine facility under the *Transport Infrastructure Act 1994* the jetty is not a prescribed work under the Local Law, even if the owners of Lots 1, 2 and 3 use the jetty in the ways described.

Figure 2: Where a responsible person receives the benefit of a prescribed work



Lots 1 to 3 (freehold lots) are waterfront (separated) land. It may be necessary to establish whether the waterfront (separated) land is waterfront (separated public) land or waterfront (separated non-public) land.

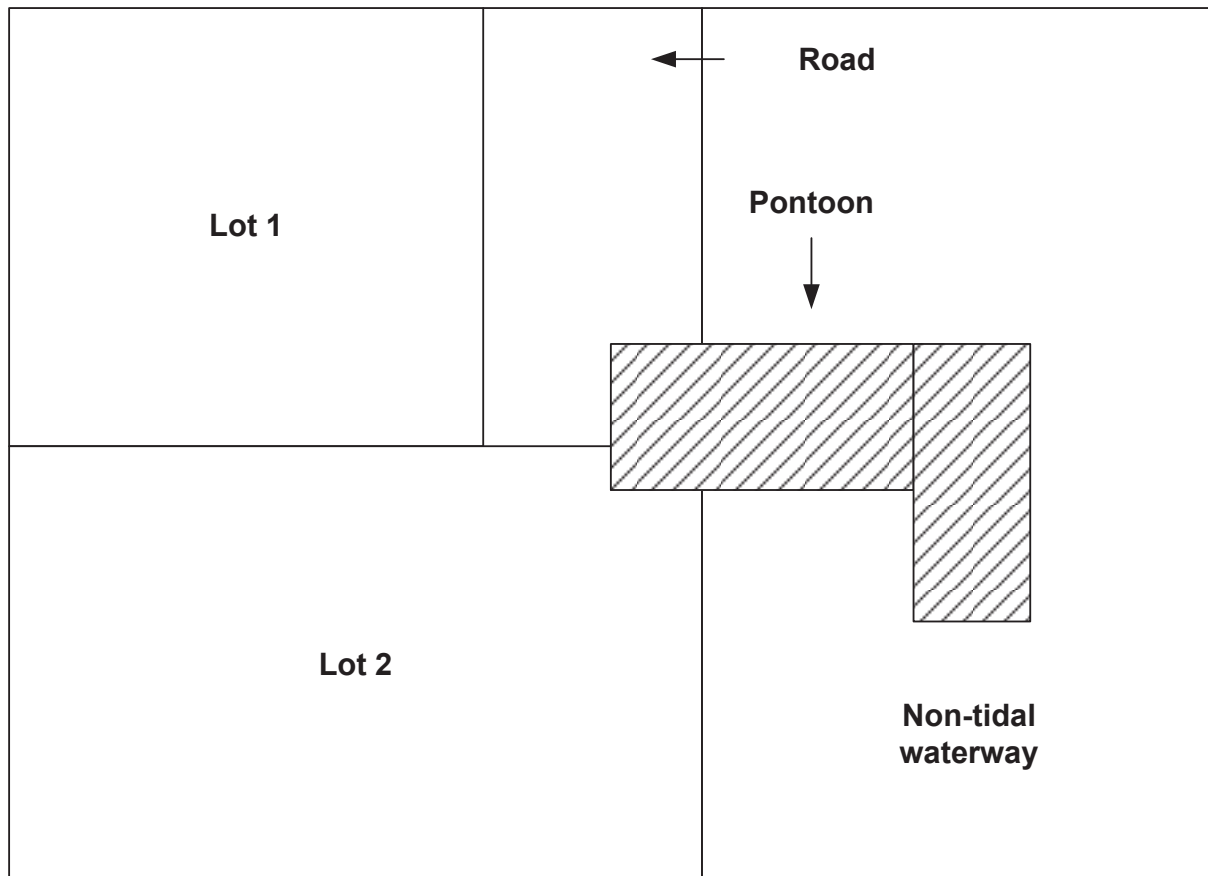
Where a lot is waterfront (separated non-public) land – that is, where the public does not actually use the road and the road does not contain any public infrastructure – the owner of Lot 1, 2 or 3 will be a responsible person if the revetment wall secures, protects, supports or stabilises his or her lot (section 9(1)(c)(ii), (4)(b)); if the owner of Lot 1, 2 or 3 is taken to be in control of the revetment wall (section 9(5)(b)); if the owner of Lot 1, 2 or 3 is responsible under another law or agreement to ensure the revetment wall is maintained or in good working order, repair and condition (section 9(1)(d)(i)); if the owner of Lot 1, 2 or 3 is responsible for any wrong arising out of a failure to ensure the revetment wall is maintained in a safe condition or in good repair and condition (section 9(1)(d)(ii)); or if the owner of Lot 1, 2 or 3 is the owner of the revetment wall (as defined in the dictionary) (section 9(1)(e)).

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Where a lot is waterfront (separated public) land – that is, where the public actually uses the road or the road contains public infrastructure – the owner of Lot 1, 2 or 3 will only be a responsible person if he or she is taken to be in control of the revetment wall (unless one of the other provisions making the owner a responsible person applies).

Figure 3: Various responsible persons for a prescribed work which is partly located on freehold land and partly located on non-freehold land



Lot 1 (freehold lot) is waterfront (separated) land.

Lot 2 is waterfront land.

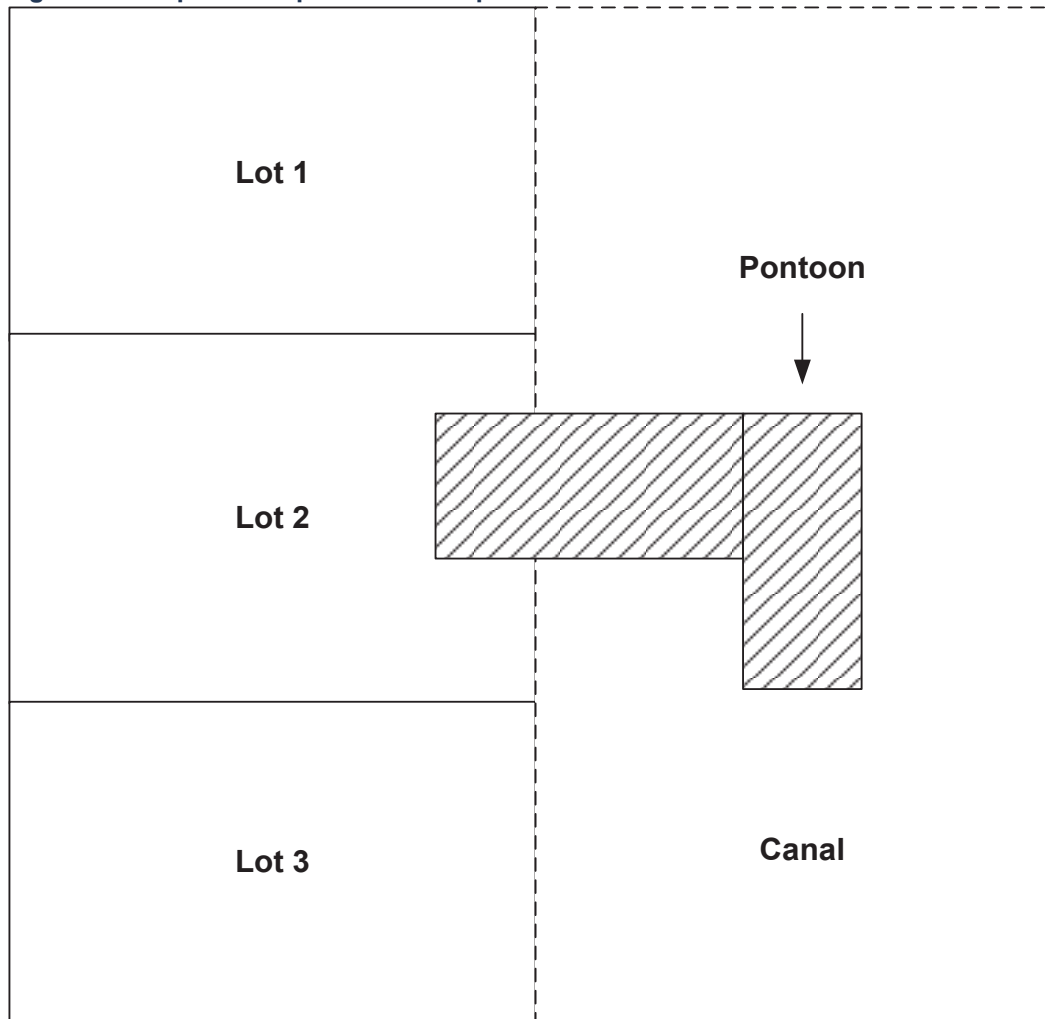
The owner of Lot 2 is a responsible person in respect of the part of the pontoon on Lot 2 (section 9(1)(a)). This person, as the owner of waterfront land, may also be a responsible person for the parts of the pontoon that are in the non-tidal waterway and the road, as non-freehold land (section 9(1)(c)(ii), (4), (5)). However, this will only be the case if Lot 2 receives the benefit of those parts of the pontoon. Lot 2 will receive a benefit if the owner of Lot 2 is taken to be in control of those parts of the pontoon. The owner can be taken to be in control because the pontoon is connected to Lot 2 (as waterfront land) (section 9(5)(a)). (It is not necessary to establish that the owner uses the pontoon.)

The owner of Lot 1 may also be a responsible person. However, as Lot 1 is waterfront (separated) land, it is necessary to show that the owner of the lot is taken to be in control of the parts of the pontoon that are in the non-tidal waterway and on the road, as non-freehold land. If, for example, the owner of Lot 1 uses the pontoon by mooring his boat to the pontoon, she is taken to be in control of the parts of the pontoon on the non-freehold land, including the road (section 9(5)(b)).

Also, the owner of the pontoon may be a responsible person (section 9(1)(e)). An owner includes the holder of an approval under an Act to build the pontoon or a person who was required by an Act to obtain an approval to build the pontoon.

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Figure 4: Responsible persons for a pontoon in a canal



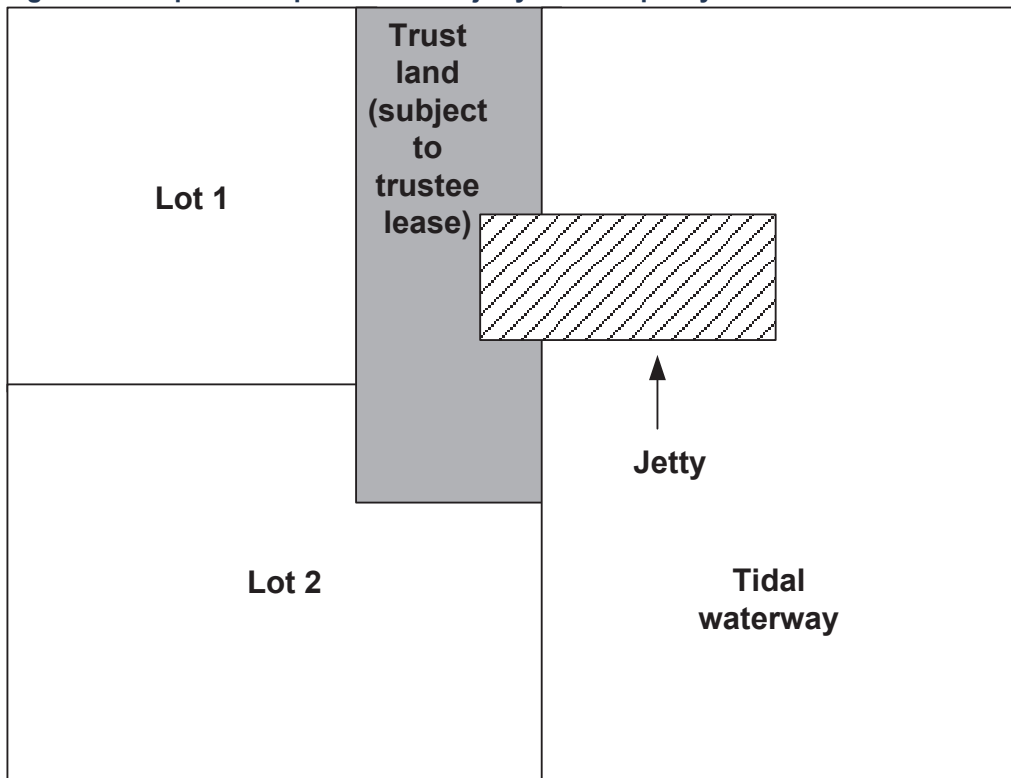
The owners of Lots 1 and 3 (freehold lots) are unlikely to be responsible persons for the pontoon.

The owner of Lot 2 is a responsible person for the pontoon. The owner is a responsible person in respect of that part of the pontoon on her freehold lot (section 9(1)(a)). She is a responsible person for the part of the pontoon that is in the canal if she has a development permit for the pontoon. Because part of the pontoon is in a canal, she will be a responsible person because she is required to maintain the pontoon in a safe condition under section 124 of the *Coastal Protection and Management Act 1995* (section 9(1)(d)). Also, she is a responsible person because, as the holder of a development permit for the pontoon, she is owner of the pontoon (section 9(1)(e)). If she built the pontoon without a development permit, she is still a responsible person as an owner of the pontoon because she was required to obtain a development permit (for operational works that are prescribed tidal works).

It is not necessary to establish that Lot 2 benefits from the pontoon. However, because Lot 2 is waterfront land, the owner of the lot would be a responsible person as the pontoon is connected to the lot.

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Figure 5: Responsible persons for a jetty located partly on trust land and in tidal waterway



In this scenario, there may be more than one responsible person for the jetty. Each responsible person is required to maintain the jetty.

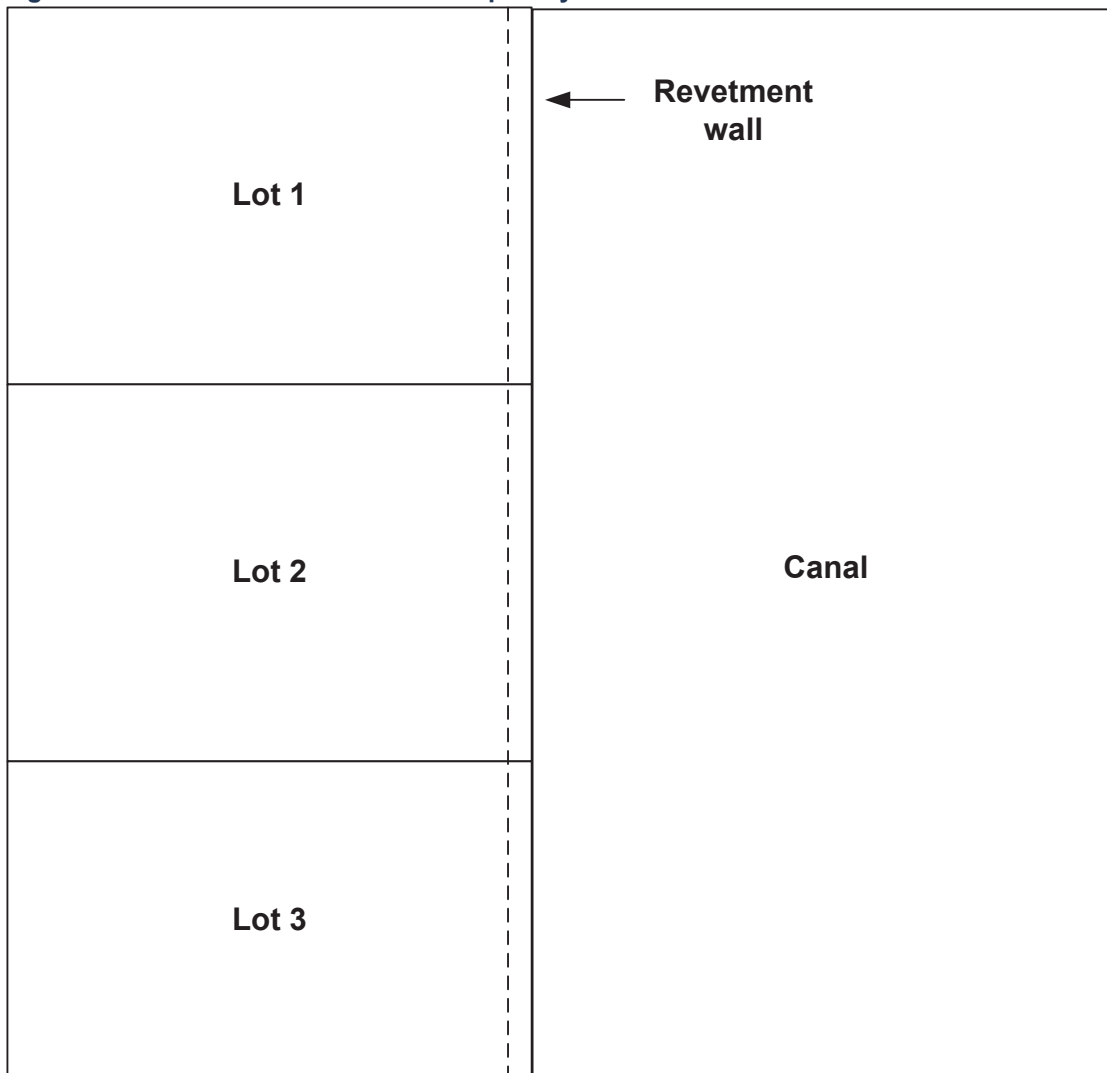
The lessee of the trustee lease is a responsible person for the part of the jetty that is on the leased land (section 9(1)(c)(i)). The lessee may also be a responsible person for the part of the jetty that is in the tidal waterway as the trust land (that is subject to the trustee lease) is waterfront land and the trust land receives the benefit of the jetty (section 9(1)(c)(ii)). This is because the lessee, as an occupier, is taken to be in control of the part of the jetty in the tidal waterway as the jetty is connected to the trust land (section 9(4)(c), (5)(a)). However, the lessee can show that he or she is not in control of the jetty in the tidal waterway by proving to the contrary. It is highly unlikely the lessee would be successful in showing that he or she is not in control of the part of the jetty in the waterway area if the lessee leases the part of the jetty that is on the trust land.

The lessee may also be a responsible person for the part of the jetty on the trust land if the trustee lease says that the lessee must maintain (that part of) the jetty in good working order, repair and condition (section 9(1)(d)(i)). Also, the lessee, as the person responsible, under the trustee lease, to maintain (that part of) the jetty may be a responsible person because he or she would be responsible for any wrong arising out of a failure to ensure the jetty is maintained in a safe condition or in good repair and condition (section 9(1)(d)(ii)).

The owner of Lot 1, which is waterfront (separated) land, may be a responsible person if she can be taken to be in control of the jetty (section 9(1)(c)(ii), (4)(c), (5)(b)). Also, the owner of Lot 2, which is waterfront land, may be a responsible person if he can be taken to be in control of the jetty. Although the owner of either of these lots may use the jetty on a regular or recurring basis, their control is less likely to be able to be established when compared with the trustee lessee.

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Figure 6: Revetment wall located completely on freehold land



Each of the owners of Lots 1 to 3 (freehold lots) is a responsible person for that part of a revetment wall that is situated on his or her lot (section 9(1)(a)). Each lot owner is also a responsible person because he or she is the owner of the revetment wall (section 9(1)(e)).

Under the definition of **revetment wall** in the dictionary, a revetment wall is a "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.

Part of a revetment wall - for example, a vertical wall - may be located on Lot 1, 2 and 3. Therefore, the owner of each of Lot 1, 2 and 3 is a responsible person for that part of the revetment wall because the vertical wall is on an owner's lot. However, another part of the revetment wall - for example, rock buttressing that supports the vertical wall - may be located in the canal. In that case, the owner of Lot 1, 2 or 3 may be a responsible person for that part of the revetment wall because each of Lot 1, 2 and 3 is waterfront land and the part of the revetment wall in the canal secure, protects or stabilises the lot.

Also, an owner of Lot 1, 2 or 3 could be a responsible person for the part of the revetment wall in the canal because the owner is required under section 124 of the *Coastal Protection and Management Act 1995* to maintain that part or because the owner is the owner of that part (as a prescribed work) (section 9(1)(d), (e)).

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Note, however, that where the responsible person is liable to pay the local government a special rate or charge for the local government's maintaining the part of the revetment wall that is in the canal, the responsible person cannot be liable for contravening a maintenance obligation under section 11(1) in respect of that part, except in certain circumstances (see section 11(5)).

When can a body corporate or a lot owner in a community titles scheme be a responsible person for a prescribed work?

A body corporate of a community titles scheme under the *Body Corporate and Community Management Act 1997* may be a responsible person for a prescribed work.

A body corporate may, at law, be the owner of common property. Common property will be freehold land.

Under section 9(10), if any land, including common property, in scheme land of a community titles scheme is waterfront land or waterfront (separated) land, all other land in the scheme land (that is, other lots, including any other common property) is taken to be waterfront land or waterfront (separated) land.

Also, any lot, including common property, in scheme land can be separately treated as other land (see above). This means, because all lots in scheme land can be treated as waterfront land or waterfront (separated) land, an owner of a lot within the scheme land can, even if his or her lot does not adjoin a waterway area or is not immediately separated from a waterway area by a road, trust land or unallocated State land, be a responsible person for a prescribed work.

However, it is unlikely that the owner of a lot in scheme land that is not connected to a prescribed work will be a responsible person for that work. Section 9(11) means that, where a person can only be a responsible person for a prescribed work because the prescribed work is connected to waterfront land (that is, as provided for in section 9(5)(a)), land in scheme land to which a prescribed work is not physically connected, joined or attached by any means - for example, a lot in the scheme land that is on the far, landward side - is not connected to the land even it is otherwise taken to be waterfront land. However, the owner of a lot in scheme land that is not connected to a prescribed work can still be a responsible person for the work if, for example, the person controls the work.

Example for section 9(10)(b)

The Seaview Community Titles Scheme is waterfront land because common property of the scheme land physically adjoins a waterway area that is a canal. The common property and each lot in that scheme land is taken to be waterfront land. If a pontoon as a prescribed work is physically connected only to the common property lot, for section 9(5)(a), only the body corporate is a responsible person for the pontoon. However, if the pontoon is not connected to any lot in the scheme, the body corporate or a lot owner in the scheme land could be a responsible person for the pontoon by applying section 9(5)(b). For example, if a particular owner of a lot in the scheme land uses the pontoon for his or her own purposes or maintains it, that owner is a responsible person for the pontoon. Alternatively, the body corporate may, for example, be a responsible person for the pontoon because it is the owner of the pontoon (section 9(1)(e)).

Who cannot be a responsible person for a prescribed work?

Neither Council nor the State is a responsible person for a prescribed work (section 9(7)(a)).

Council may, by a subordinate local law, exclude a person, or a class of persons, as a responsible person (or responsible persons) for a prescribed work (section 9(7)(b)). A class of persons is a class of persons described by reference to their relationship with land or with a prescribed work.

In some circumstances (see sections 11(5), 25 and 26), although a person may be a responsible person for a prescribed work, that person may not be liable under the Local Law for not maintaining the work.

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Responsible person for a required work

A required work (as defined in section 7) is different to a prescribed work (as defined in section 6). Generally, a required work is a work that needs to be built under the Local Law. Generally (but not always), a prescribed work is a work that already is built and must be maintained under the Local Law.

Under section 9(9), a person may be a responsible person for a required work if the person would be a responsible person for maintaining the work as a prescribed work if it were built. When any work is built it will be a prescribed work under section 6.

A responsible person for a required work may be given a waterway area required work notice under section 10. A waterway area required work notice requires a responsible person for a required work to build a specified required work.

Example for section 9(9)

Barry is an owner of freehold land that is adjacent to a canal. Barry's land is waterfront land under the Local Law. There is no revetment wall that keeps in place soil on Barry's land. Council decides that a revetment wall should be built on Barry's land. A revetment wall is a prescribed work under section 6(2)(d). Because the revetment wall would, once built, be on Barry's land, Barry, as the owner of that land, will be a responsible person for the revetment wall, as a prescribed work under section 9(1)(a). That is, Barry will be the person responsible for maintaining the revetment wall, once the wall is built, under section 11. Therefore, Barry is a responsible person for a required work and can be given a waterway area required work notice under section 10 to build the revetment wall.

If the revetment wall was to be built in the canal (that is, outside the boundary of Barry's land), Barry will still be a responsible person for a required work because, for example, the wall, once built, will benefit Barry's land - which is waterfront land - because the wall will secure, protect, support or stabilise his land (section 9(4)(b)).

Part 4 - Building of required works in waterway areas

This part deals with required works. It imposes obligations on responsible persons for required works to build such works. Parts 6, 9 and 11 affect the operation of Part 4.

A required work is defined in section 7. A responsible person for a required work is defined in section 9.

If Council gives a waterway area required work notice (see section 10(1)) to a responsible person for the required work, the responsible person must, at the responsible person's cost, build the required work in the way stated in the notice and carry out all necessary incidental and consequential work. It is an offence for a responsible person not to build the required work, including any necessary incidental and consequential work.

For Part 4 most required works will be revetment walls and seawalls. A responsible person may be required to replace an existing revetment wall or seawall in certain circumstances.

Section 10 - Building of required work

This section provides that Council may give a responsible person for a required work a waterway area required work notice if Council reasonably believes that the person should build a required work in Council's local government area.

A waterway area required work notice must comply with all the requirements of section 10(2) and may also state:

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- (a) if Council reasonably believes undertaking particular incidental and consequential work is necessary to build a required work, the particular incidental and consequential work (as defined in section 10(21)); and

Example for section 10(4)(a)

Council gives Alex a waterway area required work notice to build a new seawall. Council may state in the notice that Alex must remove an existing seawall as incidental and consequential work because removal of the existing seawall is necessary to enable Alex to build the new seawall.

- (b) any other matter which a subordinate local law specifies may be stated in the notice.

A waterway area required work notice must always outline the facts and circumstances forming the basis for Council's belief that the responsible person for the required work should build the required work. Under section 10(3)(a), these 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 (**relevant land**); and
- (b) a failure to build the required work in the location stated in the notice will, or is likely to:
- (i) at any time, result in the escape of materials (of any nature, for example, soil or fill) from the relevant land into a waterway area; or
- (ii) adversely affect:
- A. the use of a waterway area by another person or the public generally;
- B. the use, stability or function of, or support for, land or improvements owned or controlled by another person or a prescribed work for which another person is a responsible person;

Example for section 10(3)(b)(ii)(B)

Council may give Jamie a waterway area required work notice for Jamie to build a seawall in a waterway area adjacent to Jamie's land because, in addition to protecting Jamie's land, a failure to build the seawall adversely affects a seawall that protects Jamie's neighbour's land.

- C. a waterway area or coastal, tidal or any other natural processes (including the transportation of sediment, for example) associated with a waterway area.

However, sections 10(5) and 10(6) provide that, if the required work is a revetment wall or a seawall, Council may, for section 10(1), be taken to reasonably believe that a person should build a required work and section 10(3) may be taken to be satisfied:

- (a) 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 for the wall owns, occupies or controls; or
- (b) if there is no existing wall, but there is a development permit in place to build a new wall (and paragraph (a) is satisfied); or
- (c) if the wall is a replacement wall for an existing wall for which there is no existing approval and no approval could be given for the wall or there is a development permit in place to build the replacement wall (and paragraph (a) is satisfied).

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WATERWAY AREAS (Cont.)

Example for section 10(5)(b)(i))

Jon's land is currently protected by an existing seawall. However, the seawall has not been approved as required by law and cannot be approved in its current form. Council may require Jon to build a replacement wall even though the existing seawall protects his land. Alternatively, if there is a development permit in place for the replacement wall, Council may require Jon to build the replacement wall.

Person given notice may make representations and seek review about waterway area required work notice

A person given a waterway area required work notice may make representations about the notice. Council must consider any representations made by the notice.

After considering any representations, Council may, under section 10(11) give the person a notice stating that the waterway area required work notice:

- (a) continues in force, with or without stated changes; or
- (b) is withdrawn.

The notice under paragraph (a) must be accompanied by a decision notice (see section 34 and definition of **decision notice** in the dictionary). If Council gives a person a notice that the waterway area required notice continues in force, the person may apply for a review of Council's decision under part 11 (section 10(14)).

Compliance with a waterway area required work notice

A responsible person who is given a waterway area required notice that has not been withdrawn must comply with the notice (section 10(15)). In complying with the notice, the responsible person must also carry out all incidental and consequential work that is expressly stated in the notice or which is reasonably necessary to comply with the notice (section 10(16)). Such incidental and consequential work may include repairing any damage, or restoring land or a work, owned, leased, or controlled by someone else or interfering with a prescribed work for which another person is a responsible person under the Local Law.

Example for section 10(16)

To build a seawall on her land under a waterway area required work notice, Erin may need to carry out incidental and consequential work consisting of interfering with her neighbour's seawall. If carrying out that interference has been stated in the waterway area required work notice or if the interference is reasonably necessary to build her seawall, she must interfere with the neighbour's seawall to comply with the notice. The interference is an authorised activity under Part 6. If Erin causes damage to the neighbour's land or something on the land, the owner of the land or thing may give Council notice of the damage. Council may, then, enter into a remediation agreement with the owner to take remedial action in relation to the land or thing.

It is an offence for Erin not to comply with the waterway area required work notice (section 10(15)). Also, Council may take all necessary steps to build the seawall and undertake any incidental and consequential work (section 10(17)). Council may recover the amount it properly and reasonably incurs in taking all necessary steps to build the required work (including carrying out any incidental and consequential work), including as a debt payable by Erin to Council (section 10(20), (21)).

Part 5 - Maintenance of prescribed works in waterway areas

This part deals with prescribed works. It imposes obligations on responsible persons for prescribed works to maintain those works.

A prescribed work is defined in section 6 and will include a wide variety of works such as a seawall, a revetment wall, a pontoon, a jetty, a boat ramp, landscaping and vegetation.

A responsible person for a prescribed work is defined in section 9.

Parts 6 (Entry to adjacent land for authorised activities relating to a seawall or revetment wall), 9 (Enforcement) and 12 (Reviewing decisions) affect the operation of Part 5. In particular, a responsible person may need to obtain:

- (a) a development permit under the *Planning Act 2016* or an approval under another Act; and
- (b) a right to occupy the waterway area from the manager of the waterway area,

to be able to maintain the prescribed work in the ways required in Part 5. Sections 25 and 26 (in Part 9) explain what happens if the responsible person does not obtain the necessary permit, approval or right to occupy the waterway area. However, if the prescribed work is a seawall or a revetment wall, Part 6 may authorise the responsible person to enter certain other land so that person can maintain the wall.

A responsible person for a prescribed work must maintain a prescribed work in the ways stated in section 11. These ways are, one, in a safe condition, and, two, in good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

A maintenance obligation applies at all times. While Council can take enforcement action for non-compliance with the maintenance obligation, it is not necessary for Council to give a responsible person a compliance notice before the responsible person becomes liable to maintain, including repair, a prescribed work.

As explained in section 9, a person can be a responsible person for a prescribed work because of that person's particular relationship with land (for example, the person's land is adjacent to a waterway area) and with the prescribed work (for example, because a landowner receives the benefit of a pontoon that is near the landowner's land or because the landowner is the owner of the prescribed work). Accordingly, a person may, in some instances, still be a responsible person for a prescribed work even if the person's land is not physically connected to the work.

Section 11 - Good repair and safe condition requirement

This section provides that a responsible person for a prescribed work must maintain and keep the prescribed work in:

- (a) a safe condition; and
- (b) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function (section 11(1)).

Example for section 11(1)(b)

Chloe is a responsible person for a prescribed work that is a seawall. Chloe must maintain and keep the seawall in good working order, repair and condition so that the seawall can continue to perform its intended function of:

- i. preventing encroachment, by wave action, of the sea past the wall; and
- ii. keeping in place the materials that are landward of the wall.

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"Maintain" is not exhaustively defined in the Local Law. However, the dictionary says "maintenance" includes repair and replacement and taking preventive action and that "maintain" has a corresponding meaning.

Section 11(2) does say that "maintain" specifically 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 report prescribed under a subordinate local law, 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 section 11(2)(b)

Several seawalls in the general location of Chloe's seawall failed during recent coastal storm activity. Those seawalls were built at the same time and according to the same specifications as Chloe's seawall. While Chloe's seawall has not failed, it would be reasonably prudent for her to obtain a prescribed work report to determine whether any particular maintenance of her seawall is required to ensure the seawall currently is in a safe condition and in good working order, repair and condition, including so it will not fail if more coastal storm activity should occur.

For deciding whether a responsible person is complying with the obligation, any of the matters stated in section 11(3) may be taken into account (for example, the age, structural integrity and existing or intended function of the prescribed work).

The obligation under section 11 of the Local Law may apply in addition to an obligation under a State law (for example, section 124 of the *Coastal Protection and Management Act 1995*) or another local law to maintain a structure or work or to keep a structure or work in a particular condition (for example, under a condition of a development permit).

Where responsible person for a prescribed work pays a special rate or charge to Council to maintain the prescribed work or part of the prescribed work

In some circumstances, although a person may be a responsible person for a prescribed work, the person may not be liable under the Local Law for not maintaining the prescribed work as required by section 11(1) if the person is liable to pay Council a special rate or charge for Council to maintain the prescribed work or part of the prescribed work (section 11(5)) (a **relevant responsible person**). A relevant responsible person must, however, maintain any part of the prescribed work that Council does not maintain under its maintenance service.

Although a relevant responsible person for a prescribed work (for example, a revetment wall) may only be liable to maintain the part of the revetment wall on the person's land (for example, the part of the revetment wall consisting of a vertical wall constructed on freehold land) (the **unaffected part**) while Council maintains another part of the wall (for example, rock buttressing in a canal) (the **affected part**), if the relevant responsible person does not comply with the maintenance obligation under section 11(1) in relation to the unaffected part, Council may give the responsible person a compliance notice requiring the relevant responsible person to do a thing stated in section 23(3) and (4) in relation to the affected part as well. This is because, for example, the only real way to repair the unaffected work is to also repair the affected part.

Also, a relevant responsible person does not obtain the benefit of section 11(5) in relation to a prescribed work or affected part subject to Council's maintenance service if maintenance is necessary because of the relevant responsible person's default (section 11(8)). This means the maintenance obligation under section 11(1) will apply. Default may occur, for example, because the relevant responsible person has been negligent or has deliberately caused damage to the prescribed work or affected part subject to Council's maintenance service.

Section 12 - Removal of a prescribed work which is abandoned

This section applies to a prescribed work (or part of a prescribed work) on trust land, a reserve or non-freehold land (including a road) that is abandoned. Section 13 explains what Council may do with an abandoned prescribed work.

The prescribed work can only be abandoned under the Local Law if Council:

- (a) reasonably believes there is no responsible person for the prescribed work under section 9(1)(c) or (d) (that is, generally, a person whose land would ordinarily receive the benefit of a prescribed work that is not on the person's land or a person would, under a law (other than the Local Law) or agreement, be responsible for maintaining the prescribed work);
- (b) publishes a notice in a local newspaper stating that a person may show cause, in writing, why Council should not remove the prescribed work;
- (c) attaches a notice stating the information in (b) to the prescribed work; and
- (d) no one shows cause why Council should not remove the work from its present location.

A person may only show cause why Council should not remove the prescribed work by showing that the person is a responsible person for the prescribed work. This means that, by doing so, the person may be responsible for maintaining the work under section 11.

Section 13 - Removal of abandoned prescribed work by local government

This section provides for what Council may do with a prescribed work that has been abandoned under section 12.

Council may remove an abandoned prescribed work from the relevant land and restore the land. Council may also dispose of a removed prescribed work. Depending on the prescribed work's value, Council may, for example, sell the work by private sale or public auction, destroy it or give it away.

Council must apply any proceeds of sale received for a disposed prescribed work as provided for in the section.

Part 6 - Entry to adjacent land for authorised activities relating to a seawall or revetment wall

This part authorises responsible persons for required works and prescribed works that are seawalls and revetment walls to enter adjacent land and to interfere with an existing seawall or revetment wall on adjacent land in certain circumstances.

Part 6 is limited to seawalls and revetment walls because the integrity and proper functioning of a seawall or revetment wall in a particular location along a coastal beach, canal or other waterway area generally depends on the wall's joining any existing seawall or revetment wall. If, however, the responsible person causes damage to the adjacent land or existing seawall or revetment wall, the affected person may enter into a remediation agreement with Council. Under the agreement, Council will repair the damage and may claim the cost of doing so from the person who caused the damage.

If a responsible person for a seawall or revetment wall can enter adjacent land under Part 6, section 26 (in Part 9) does not apply.

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Section 14 - Definitions for pt 6

This section sets out definitions for Part 6. Three key definitions for Part 6 are **adjacent land**, **authorised activity** and **relevant person**.

"Adjacent land" is land:

- (a) that is immediately adjoining or touching:
 - i. land on which an existing seawall or revetment wall exists as a prescribed work and for which there is a relevant person (being a person required to carry out an authorised activity); or
 - ii. land on which a seawall or revetment wall is required to be built under a waterway area required work notice under section 10 by a relevant person (that is, a person required to build the seawall or revetment wall); or
- (b) for which a relevant person reasonably requires entry to carry out an authorised activity.

Under paragraph (b), the land, although called "adjacent land", need not be immediately adjoining or touching any land.

An "authorised activity" is:

- (a) for a seawall or revetment wall that is required to be built, any incidental and consequential work a responsible person for the required work must carry out to comply with section 10(13);
- (b) for a seawall or revetment wall that is a prescribed work, any activity a responsible person for the prescribed work must do to comply with the maintenance obligation under section 11(1).

A "relevant person" is

- (a) a responsible person for building a seawall or revetment wall who is required to carry out an authorised activity; and
- (b) a responsible person for maintaining a seawall or revetment wall who is required to carry out an authorised activity; and
- (c) for sections 16, 17, 18 and 19—includes a person engaged or authorised by a person in paragraph (a) or (b) to carry out an authorised activity (for example, a licensed contractor who is engaged by a responsible person to build a seawall and to carry out an authorised activity).

Section 15 - Notice of entry

This section provides that a relevant person (under paragraph (a) or (b) of the definition of "relevant person" in section 14) who intends to enter adjacent land under Part 6 - including entry of a person engaged or authorised by the relevant person - must give the occupier of the adjacent land written notice of the intended entry. The written notice must state the matters in subsection 15(2). However, before giving a written notice, the relevant person must make a reasonable attempt to contact the occupier of the adjacent land and obtain the occupier's consent to the entry.

Example for section 15

Jon has been given a waterway area required work notice by Council to build a seawall on Jon's land. To carry out all necessary incidental and consequential work (an "authorised activity"), Jon needs entry to land owned by his neighbour Freya and to interfere with the seawall on Freya's land (by aligning Jon's seawall with Freya's). Jon should approach Freya to explain that he needs to enter her land and to interfere with her seawall so that he can comply with the waterway area required work notice. Jon

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should give Freya all the details that are set out in section 15(2) so Freya can make an informed decision about giving (or not giving) her consent. If Freya is prepared to give Jon her consent to entry, Freya and Jon may agree on the terms of Jon's entry. If Freya does not give her consent, Jon may then give Freya a notice under section 15. Jon's notice must state the matters in section 15(2) otherwise Jon may not enter Freya's or interfere with her seawall under section 16.

Section 16 - Entering adjacent land for authorised activities

This section provides that a relevant person may, without consent or warrant, enter adjacent land to carry out an authorised activity. However, a relevant person can only enter adjacent land without consent or warrant, if a relevant person has given the occupier of the adjacent land written notice under section 15.

Section 16 says what a relevant person may take onto or over the adjacent land (for example, vehicles and building supplies). Section 16 also places limits on a relevant person's entry (for example, only entering adjacent land between 7am and 6pm unless the entry is otherwise reasonably necessary).

A relevant person for section 16 includes a person engaged or authorised by a relevant person who has given notice under section 15.

Example for section 16

Jon has given Freya a written notice to enter her land (as adjacent land) under section 15 to carry out authorised activities of interfering with her seawall so Jon can build a seawall (as a required work) on his land.

Jon has authorised Seawall Constructions Pty Ltd to build his seawall and to carry out all necessary incidental and consequential work, including aligning his seawall with Freya's seawall (as authorised activities). Jon's notice under section 15 stated all persons employed by Seawall Constructions Pty Ltd who intend to enter Freya's land and to interfere with, as necessary, her seawall for that purpose.

Jon and the stated employees of Seawall Constructions Pty Ltd (as relevant persons) may, after a period of 10 days has passed since giving Freya the written notice under section 15, enter Freya's land to carry out the authorised activities. A relevant person who enters Freya's land may take any thing the person reasonably requires for the carrying out the authorised activities onto Freya's land (for example, a vehicle). However, Jon and any other relevant person must, when entering Freya's land, comply with sections 17 and 18.

Section 17 - Duty to avoid inconvenience and minimise damage

This section provides that a relevant person who enters adjacent land (including with the consent of an occupier of the adjacent land) must take all reasonable steps to avoid:

- (a) causing inconvenience to an occupier; and
- (b) damaging the land or anything on the land (other than is reasonably necessary to carry out an authorised activity).

Section 18 - Relevant person must give notice of damage

This section provides that a relevant person who enters adjacent land (including with the consent of an occupier of the adjacent land) and who causes or contributes to damage to the adjacent land or something on the land (other than where there is trivial damage or, for a thing on the land, there is no one in possession of the thing) must give notice of the damage to the occupier of the adjacent land. It is an offence not to give notice of the damage to the occupier. The notice must state particulars of the damage and that the owner of the land or thing may seek remediation of the damage under Part 6. See sections 19 and 20.

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If the damage has been caused by a person engaged or authorised by a responsible person for a seawall or revetment wall, and the engaged or authorised person (the "authorised relevant person") does not give an occupier notice of the damage in circumstances where the responsible person knew or ought to have known of the damage, the responsible person must give the occupier a notice.

Section 19 - Interested person may give notice of damage to the local government

This section applies in circumstances where a relevant person has entered adjacent land (including with the consent of the occupier) and a person (an "interested person") reasonably believes the relevant person has caused or contributed to damage to the adjacent land or something on the land. An interested person is a person who owns the land or the thing.

The interested person may give Council written notice of the damage. The notice must include the information stated in section 19(3) and must be given no later than 90 days after the interested person became aware of the damage.

Council must, within 30 days of receiving the notice, give the interested person and the relevant person notice of whether Council will enter into a remediation agreement with the interested person under section 20.

An interested person may give Council a notice under section 19 even if a relevant person does not give an occupier notice of damage under section 18.

Section 20 - Remediation agreement

This section provides entry into a remediation agreement between Council and an interested person under section 19 (that is, the person whose land or thing has been damaged by a relevant person).

A remediation agreement provides for Council to take remedial action in relation to land or a thing that has been damaged by a relevant person when entering adjacent land (including with the consent of an occupier of the land). A remediation agreement binds the parties to the agreement and the parties' personal representatives, successors and assigns.

Council may recover the amount it properly and reasonably incurs in taking any remedial action under a remediation agreement as a debt payable to Council by the relevant person who caused or contributed to the damage. A relevant person is a person who caused or contributed to the damage or a responsible person for a seawall or revetment wall who engaged or authorised the relevant person who caused or contributed to the damage (such as a licensed contractor). A relevant person is not a party to a remediation agreement.

Example for sections 19 and 20

An employee of Seawall Constructions Pty Ltd (as a relevant person) engaged by Jon to carry out an authorised activity (see above) on Freya's adjacent land destroys an ornamental tree on Freya's land.

Freya, as the owner of the adjacent land (and whether or not she receives a notice of the damage under section 18), may give a notice to Council detailing the damage to the tree and the circumstances she believes led to the damage. Freya must also state in her notice what remedial action she considers Council should take. Here, that would be for Council to replace the tree.

On reviewing Freya's notice, Council decides to enter into a remediation agreement with Freya to take remedial action of replacing the tree. Council may recover the cost of taking the remedial action from the relevant person who caused or contributed to the damage or Jon, as the person who authorised Seawall Constructions Pty Ltd to carry out authorised activities on Freya's land.

Sections 19 and 20 are not intended to prevent an interested person from taking legal action against a relevant person who causes damage to his or her land or any thing on his or her land.

Part 7 - Sale of lots

Section 21 - Sale of lot subject to specified prescribed work

This section provides that sellers under contracts of sale for relevant lots must disclose certain matters relating to specified prescribed works (for example, a seawall or a revetment wall) for which the seller may be a responsible person under the Local Law. A prescribed work is only a specified prescribed work if it is stated to be a specified prescribed work in a Subordinate Local Law.

It is an offence not to comply with section 21. Section 21 does not authorise a buyer under a contract of sale to terminate a contract if the seller does not comply with the disclosure requirement.

Section 21 is intended to give buyers, when entering into contracts to buy relevant lots, information about their potential obligations under the Local Law relating to specified prescribed works.

Part 8 - Prescribed work reports

Section 22 - Prescribed work report

This section says that Council may give a responsible person for a prescribed work a prescribed work report notice requiring the person to obtain and give Council a prescribed work report about a specified prescribed work (for example, a seawall or a revetment wall) within a reasonable period state in the notice. A prescribed work is only a specified prescribed work if it is stated to be a specified prescribed work in a Subordinate Local Law.

The purpose of section 22 is to allow Council to monitor the state of maintenance of a specified prescribed work. If appropriate, Council may decide to take enforcement action against a responsible person under Part 9 as a result of a prescribed work report.

It is an offence not to comply with a prescribed work report notice. Also, Council may obtain the report if the responsible person does not and may recover the cost of doing so from the responsible person. However, Council cannot give a responsible person for a prescribed work a compliance notice under section 23 for not complying with a prescribed work report notice.

Part 9 - Enforcement

This part explains how Council may enforce certain provisions of the Local Law, in particular, section 11 (Good repair and safe condition requirement). Enforcement generally starts with compliance action under section 23.

Section 23 - Compliance

This section applies if a person contravenes the Local Law, other than section 10 (Building of required work), 21 (Sale of lot subject to specified prescribed work) and 22 (Prescribed work report).

Council may give a person who contravenes the Local Law or who is involved in the contravention a compliance notice. A compliance notice may require a person to do any of the things stated in section 23(3) and (4).

It is an offence not to comply with a compliance notice (section 23(6)).

A compliance notice must include, or be accompanied by, a decision notice (section 23(5)). This means a person given the compliance notice may apply to review the giving of the notice under Part 12.

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Section 24 - Liability for consequential damage

This section provides that a person who contravenes the Local Law (other than section 10, 21 or 22) is liable for any consequential loss or damage to or incurred in respect of Council's land or a work that is the property of Council.

Council may recover the amount that it properly and reasonably incurs in taking all necessary steps to make good the consequential damage from the person whose contravention caused the consequential damage (section 24(3)).

Example for section 24

Alex fails to maintain a seawall (a prescribed work) on a foreshore (a waterway area) for which Alex is a responsible person, as required by section 11. The foreshore is controlled by Council. The seawall eventually fails and must be removed. Council decides to remove the seawall. Council may recover the cost of removing the seawall from Alex. *Note:* Alternatively, Council could give Alex a waterway area required work notice requiring Alex to build a new seawall and, as incidental and consequential work, remove the existing seawall so the new seawall may be built.

Section 25 - Permission required to perform obligation

This section provides that, if the Local Law or a compliance notice under section 23 requires a person (the "liable person") to perform an obligation (for example, to build a seawall under a waterway area required work notice) (an "original obligation") and performing the obligation would contravene another law (for example, the *Planning Act 2016*) unless the person had an approval or permission to perform the obligation, the liable person is not liable for an offence under the Local Law for failing to perform the original obligation. However, the liable person must take all reasonable steps to obtain the approval or permission because the liable person remains, at all times, a responsible person for the required work or prescribed work (as the case may be).

Council can, though, still give a liable person a notice requiring the person to take other action. Also, the liable person must continue to perform any part of the original obligation that may be performed without the permission.

Section 26 - Occupation right required to perform obligation

This section provides that, if the Local Law or a compliance notice under section 23 requires a person (the "liable person") to perform an obligation (an "original obligation") and the person needs an occupation right to use or occupy land or waters under an Act or from another person to perform the original obligation, the liable person must take all reasonable steps to apply for or acquire the occupation and comply with the terms and conditions of the occupation (if acquired). If, after taking the reasonable steps, the liable person is unable to acquire an occupation right, the liable person is not liable for an offence under the Local Law for failing to perform the original obligation.

Section 26 does not apply to the carrying out of an authorised activity for a seawall or revetment wall on adjacent land under Part 6. Part 6 authorises entry to adjacent land in certain circumstances.

Section 26 will generally apply to acquiring an occupation right on or in the State's land (for example, in a tidal waterway) to build or maintain a work such as a seawall or revetment wall. If Council can, apart from the Local Law, give the person an occupation right, Council must do so (section 26(4)).

Examples for sections 25 and 26

- Majella, the owner of freehold land, is given a waterway area required work notice by Council under section 10 requiring Majella to build a revetment wall in a tidal waterway that is adjacent to her land and which is State tidal land under the Coastal Protection and Management Act 1995. If a development permit under the Planning Act 2016 is granted so the revetment wall may be built, Majella is a relevant person who has a right to occupy and use the State tidal land to build and

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maintain the revetment wall (section 123 Coastal Protection and Management Act 1995). Under section 25, Majella must take all reasonable steps to obtain the development permit.

- Kaia, the owner of freehold land that is landward of a right line tidal boundary, is given a waterway area required work notice by Council under section 10 requiring Kaia to build a seawall wholly on land that is seaward of the right line tidal boundary, including land below high-water mark. That land is the property of the State under section 9 of the *Land Act 1994* and may be dealt with as unallocated State land. If the State does not give owner's consent to a development application to build the seawall, Kaia will not have a right to occupy and use State tidal land. Separately, if the State refuses to give Kaia an occupation right, she will not be able to build the seawall. Kaia cannot be liable for an offence under the Local Law for failing to build the seawall.

Section 27 - Inspection of places

This section provides for authorised persons under the Local Law to enter and inspect places to establish whether there is compliance with the requirements of the Local Law or a compliance notice under section 23.

Section 28 - Performance of work

This section applies where a person has failed to perform work required to be performed by a compliance notice under section 23 (for example, to repair a revetment wall that has fallen into disrepair).

Under section 28 Council may perform the necessary work and may recover the amount that it properly and reasonably incurs in performing the work as a debt payable by the person who failed to perform the work (section 28(6)).

Part 10 - Release

Section 29 - Release

This section applies only to the extent it is not contrary to a State law.

Under section 29, no action for damages or other right to remedy lies against Council or any officer, employee or agent of Council, in relation to those matters stated in section 29(2). However, the release only applies to an act or omission if the act was done or the omission was made in good faith and without negligence.

Part 11 - Administrative provisions

This part contains provisions that support the operation of other provisions of the Local Law in relation to offences.

Section 30 - Owners and occupiers must ensure compliance with the local law

This section provides that owners and occupiers of places must ensure that an offence under this Local Law is not committed in or on a place. Failure to do so means the owner or occupier also commits an offence. The intent of this provision is to ensure persons take responsibility for activities occurring in places they own or occupy. It is a defence for an owner or occupier of a place where the offence occurred to prove that they did not have knowledge of the act/omission which led to an offence, and they could not have reasonably prevented it. Council recognises that there are some circumstances where it may not be reasonable or fair to hold the owner or occupier of a place responsible for an offence.

The words *'place'*, *'owner'* and *'occupier'* are defined in the dictionary schedule of this Local Law.

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Section 31 - Joint and several liability

This section provides that where this Local Law imposes responsibility on multiple people that are either engaged in the activity or joint owners/occupiers of a place, each person can be held liable, with or separate from the other. The aim of this section is to ensure any and all responsible parties can be held accountable via compliance and enforcement mechanisms under this Local Law.

Section 32 - Liability of third parties

This section provides that a person involved in a contravention of the Local Law (for example, by aiding a contravention) also commits an offence.

Section 33 - Providing false or misleading information

This section makes it an offence for a person to give information that they know is false or misleading in relation to this Local Law. This aims to ensure the community is aware of their obligations to provide correct and truthful information to Council and to deter the community from providing false or misleading information, through penalties. False or misleading information could result in Council making a decision that is not consistent with the objects of this Local Law, or community expectations.

Section 34 - Attempts to commit offences

This section provides that a person who attempts to commit an offence under this Local Law commits an offence. This means that even if a person unsuccessfully attempts to commit an offence, the person has committed the offence of attempting to commit an offence.

The maximum penalty for the offence under this section is half the penalty for the offence attempted.

Section 35 - Defences

This section provides that it is a defence to any breach of or non-compliance with any provision in this Local Law if the person has a lawful excuse or defence.

Section 36 - Proceedings for offences

This section sets out the requirements and timeframes within which Council can commence proceedings for offences under this Local Law. If Council seeks to prosecute a person in court for an offence under this Local Law, it must be dealt with in the Magistrates Court as a summary offence. The purpose of this section is to facilitate legal proceedings occurring within a reasonable period of time after the commission of the offence. See section 237 of the *Local Government Act 2009* for the name in which proceedings by the local government may be started

Section 37 - Enforcement orders

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this clause is to give the presiding Magistrate power to order a person to comply with a direction to secure compliance with this Local Law. This is particularly useful where a person has previously been given opportunities to comply by Council officers but has refused to do so (e.g., has not complied with a compliance notice to disclose certain matters relating to section 21 of this Local Law). It also means that there are more potential consequences that can be imposed by the court on the person if they fail to comply with the enforcement order.

Section 38 - Extrinsic material

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or is debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory Note passed by Council resolution) to try and determine the meaning of the section. The information provided in the Explanatory Note should not

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be treated as an exhaustive statement on the subject, but rather a tool to inform of the operation and intent behind each provision.

Part 12 - Reviewing decisions

This part applies to the review of certain decisions made by Council under the Local Law.

Section 39 - Application for review

This section provides that a person who is given, or entitled to be given a decision notice may apply to Council for a review of a decision. This gives the person a right to have the following types of decisions reviewed internally by Council:

- decisions to issue waterway area required work notices, under section 10.
- decisions to issue compliance notices, under section 23.

A review application must be made within the period stated in section 39(2). The application must be accompanied by a statement of the grounds on which the applicant seeks the review of the decision (section 39(3)). It is important to state the grounds so that Council can properly assess the application and review the relevant decision.

Internal reviews help Council ensure consistency in decision-making. If a person wishes to complain about any other issues that do not attract a formal review right under this Local Law, they may be do so through the administrative actions complaints process, which Council must administer under the *Local Government Act 2009*.

Section 40 - Review decision

This section sets out requirements for Council's review of a decision. Council is required to either confirm or amend the original decision or substitute another decision. It is a requirement that the review application cannot be handled by the same person who made the original decision or a less senior person, unless the original decision was made by the CEO. This is to ensure the objectivity, impartiality and fairness of the review decision.

Section 41 - Stay of operation of original decision

This section provides that a review application does not stay the original decision. This means a person remains bound by the original decision unless and until the original decision is amended or substituted by another decision. *For example, if Council issues a compliance notice and the person applies for a review of that decision, Council's decision to issue a compliance notice is still valid while the review process is underway, and the person must comply with the compliance notice.*

Part 13 - Authorised persons

Section 42 - Appointment of authorised persons

This section provides for the appointment of authorised persons under the Local Law. For the Local Law, an authorised person is a person appointed under section 37 or the *Local Government Act 2009*.

Section 43 - Threatening an authorised person

This section makes it an offence to threaten, insult or use abusive language to an authorised person. The intention of this provision is to protect the safety of authorised persons and enable them to perform their roles and responsibilities under the Local Law in an effective and safe manner. If a person commits an offence under this section, an authorised person can issue them with a penalty infringement notice.

Part 14 - Subordinate local laws

Section 44 - Subordinate local laws

This section allows Council to make Subordinate Local Laws in relation to those matters listed in section 44.

The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law.

Schedule Dictionary

The *dictionary* sets out the meaning of words commonly used in the Local Law.

Consultation Copy Only

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles. While it imposes obligations on responsible persons to build and maintain works that are not on their own land, the Local Law only does so where the person's land has some connection with or receives the benefit of the work. The Local Law does authorise entry to, and activities on, adjacent land under Part 6 for a responsible person to carry out authorised activities. However, this is necessary for the responsible person to be able to comply with his or her obligations to build or maintain a seawall or revetment wall. Council and an interested person may enter into a remediation agreement requiring Council to take remedial action in respect of any damage caused to land or a thing owned by the interested person.

Is this law consistent with Human Rights?

The Local Law is generally compatible with the Human Rights Act 2019. In particular, the Local Law does not seek to acquire or interfere with any right of property. However, as explained, the Local Law does authorise entry onto land, without consent or warrant, in certain circumstances.



ITEM 6.5 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - MAINTENANCE OF WORKS IN WATERWAY AREAS (Cont.)

#4 MBRC Local Law Making Process

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#1 Appendix A Local Law Making Process

LOCAL LAW MAKING PROCESS

The process—

- (a) applies to the making of—
 - (i) each local law that incorporates a model local law; and
 - (ii) each local law that is a subordinate local law; and
 - (iii) each other local law; but
- (b) does not apply to a local law that is an interim local law.

Making a local law that incorporates a model local law

The process (model local law making process) specified must be used to make a local law that incorporates a model local law into the local laws of the local government.

Making a local law that incorporates a model local law

- Step 1 — By resolution, propose to incorporate the model local law.
- Step 2 — If the model local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions.
- Step 3 — If there is an existing local law about a matter in the model local law that would be inconsistent with the matter in the model local law—amend or repeal the existing local law so that there is no inconsistency.
- Step 4 — By resolution, incorporate the model local law.
- Step 5 — Let the public know that the local law has been made, by publishing a notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 6 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 7 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 8 — Update the local government's register of its local laws.

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Making an “other” local law

The process (other local law making process) specified must be used to make a local law (a proposed local law) other than—

- (a) a model local law; or
- (b) an interim local law; or
- (c) a subordinate local law.

Making an “other” local law

- Step 1 — By resolution, propose to make the proposed local law.
- Step 2 — Consult with relevant government entities about the overall State interest in the proposed local law.
- Step 3 — Consult with the public about the proposed local law for at least 21 days (the consultation period) by—
 - (a) publishing a notice (a consultation notice) about the proposed local law at least once in a newspaper circulating generally in the local government’s area; and
 - (b) displaying the consultation notice in a conspicuous place at the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period; and
 - (c) making a copy of the proposed local law available for inspection at the local government’s public office during the consultation period; and
 - (d) making copies of the proposed local law available for purchase at the local government’s public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed local law; and
- (b) the purpose and general effect of the proposed local law; and
- (c) the length of the consultation period and the first and last days of the period; and
- (d) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial change, the local government may proceed to step 6 without satisfying step 3 or step 5.

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Making an "other" local law

- Step 4 — If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 3, and this step 4, may be undertaken contemporaneously.
- Step 5 — Accept and consider every submission properly made to the local government.
- A submission is properly made to the local government if it —
- (a) is the written submission of any person about the proposed local law; and
 - (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
 - (c) is given to the local government on or before the last day of the consultation period.
- Step 6 By resolution, decide whether to—
- (a) proceed with the making of the proposed local law as advertised; or
 - (b) proceed with the making of the proposed local law with amendments; or
 - (c) make the proposed local law as advertised; or
 - (d) make the proposed local law with amendments; or
 - (e) not proceed with the making of the proposed local law.
- If the local government resolves to proceed with the making of the proposed local law with amendments, and the amendments are substantial, the local government may again —
- (a) consult with the public at step 3; and
 - (b) accept and consider every submission properly made to the local government at step 5.
- For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.
- Step 7 — Let the public know that the local law has been made, by publishing a notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.

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Making an "other" local law

- Step 8 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.

- Step 9 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.

- Step 10— Update the local government's register of its local laws.

Making a subordinate local law

The process (subordinate local law making process) specified must be used to make a subordinate local law (a proposed subordinate local law).

The local government may start the process for making a subordinate local law even though the process for making the local law (including a model local law) on which the subordinate local law is to be based (the proposed authorising law) has not finished.

The local government may use steps 1 to 5 of the subordinate local law making process (other than actually making the subordinate local law) before the proposed authorising law is made if—

- (a) in making the proposed authorising law, the local government has to satisfy—
 - (i) the model local law making process; or
 - (ii) the other local law making process; and
- (b) if the proposed authorising law is made under the other local law making process— the notice about the subordinate local law under step 2 of the subordinate local law making process is published no earlier than the notice about the proposed authorising law under step 3 of the other local law making process is published.

For the avoidance of doubt, a subordinate local law made by the local government using the process detailed in this resolution may provide for the local government to, from time to time, by resolution, reference or incorporate information.

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For example, under the *Local Government Regulation 2012*—

- (a) the identification guidelines for the identification of anti-competitive provisions are a document made by the department and available for inspection on the department's website; and
- (b) the public interest test procedures are a document made by the department and available for inspection on the department's website.

Making a subordinate local law

Step 1 — By resolution, propose to make the proposed subordinate local law.

Step 2 — Consult with the public about the proposed subordinate local law for at least 21 days (the consultation period) by—

- (a) publishing a notice (also a consultation notice) about the proposed subordinate local law at least once in a newspaper circulating generally in the local government's area; and
- (b) displaying the consultation notice in a conspicuous place in the local government's public office from the first day of the consultation period until the end of the last day of the consultation period; and
- (c) making a copy of the proposed subordinate local law available for inspection at the local government's public office during the consultation period; and
- (d) making copies of the proposed subordinate local law available for purchase at the local government's public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed subordinate local law; and
- (b) the name of—
 - (i) the local law allowing the proposed subordinate local law to be made; or
 - (ii) if the local government has started the process for making a subordinate local law even though the process for making the proposed authorising law on which the subordinate local law is to be based has not finished — the proposed authorising law; and
- (c) the purpose and general effect of the proposed subordinate local law; and
- (d) the length of the consultation period and the first and last days of the period; and
- (e) that written submissions by any person supporting or objecting to the proposed subordinate local law may be made and given to the local government on or before the last day of the consultation period

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Making a subordinate local law

stating—

- (i) the grounds of the submission; and
- (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed subordinate local law only amends an existing subordinate local law to make an insubstantial change, and the amendment does not affect an anti-competitive provision, the local government may proceed to step 5 without satisfying any of step 2 to step 4 inclusive.

Step 3 — If the proposed subordinate local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 2, and this step 3, may be undertaken contemporaneously.

Step 4 — Accept and consider every submission properly made to the local government.

A submission is properly made to the local government if it—

- (a) is the written submission of any person about the proposed subordinate local law; and
- (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

Step 5 — By resolution, decide whether to—

- (a) proceed with the making of the proposed subordinate local law as advertised; or
- (b) proceed with the making of the proposed subordinate local law with amendments; or
- (c) make the proposed subordinate local law as advertised; or
- (d) make the proposed subordinate local law with amendments; or
- (e) not proceed with the making of the proposed subordinate local law.

If the local government resolves to proceed with the making of the proposed subordinate local law with amendments, and the amendments are substantial, the local government may again —

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Making a subordinate local law

- (a) consult with the public at step 2; and
- (b) accept and consider every submission properly made to the local government at step 4.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.

- Step 6 — Let the public know that the subordinate local law has been made, by publishing a notice of the making of the subordinate local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 7 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the subordinate local law may be inspected and purchased at the local government's public office.
- Step 8 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the subordinate local law in electronic form; and
 - (c) if the subordinate local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 9 — Update the local government's register of its local laws.