

Guide 24

Prescribed tidal work

This guide has been prepared to assist applicants determine if an application for operational work that is tidal work is prescribed tidal work and requires assessment by local government as the assessment manager.

Triggering local government assessment of tidal works

An application for operational work that is carrying out tidal works¹ in, on, or above land under tidal waters (see Guide 18) may be assessable by local government as prescribed tidal work.

Prescribed tidal work is defined in the *Coastal Protection and Management Regulation 2003*. Tidal work is **prescribed tidal work** if the work is:

- completely within a single local government tidal area; or
- partly in a single local government tidal area and in no other local government tidal area or strategic port land area; or
- starting in a local government tidal area and extending into another local government's tidal area, but into no strategic port land tidal area.

However, the following tidal works are not prescribed tidal work—

- (a) tidal works for a new or existing structure that is used for the operation of any of the following—
 - (i) a port authority;
 - (ii) a public marine facility² constructed by or for Queensland Transport or a port authority;
- (b) tidal works for any of the following—
 - (i) creating or changing the configuration or characteristics of a navigational channel;
 - (ii) an inlet or outlet for aquaculture carried out on land if the aquaculture is made self-assessable under the local government's planning scheme;

¹ See the Schedule of the *Coastal Protection and Management Act 1995* for definition of **tidal works**.

² A marina in a local government tidal area that is not for a public marine facility constructed by or for Queensland Transport or a Port Authority is prescribed tidal work and the local government is the assessment manager. If the Marina is not within a local government tidal area or it is a public marine facility constructed by or for Queensland Transport or a Port Authority within a local government tidal area, it is not prescribed tidal work and the Environmental Protection Agency (EPA) is the assessment manager.

- (c) tidal works the subject of—
 - (i) a deemed approval; or
 - (ii) a development approval given under the *Integrated Planning Act 1997* (IPA) on or before the day this section commenced; or
 - (iii) a development application made but not decided on or before the day this section commenced.

A local government tidal area (defined in the *Integrated Planning Act 1997* as tidal area for a local government) is the area of land under tidal water measured 50 metres from high water mark out to sea. If the work is within a river, creek estuary or other inlet, and there is only one local government area on both banks of the inlet, the local government tidal area includes the entire width of the inlet.

If the work is within an inlet where different local government areas are on each bank of the inlet, each local government tidal area is the area of land under tidal water measured to half way across the inlet. The local government tidal area extends up inlets to high water mark (refer to the Guideline - *Making an application for Prescribed Tidal Work* on the [EPA Website](#) for diagrams).

A local government tidal area does not include strategic port land tidal area. The relevant port authority will continue to be the assessment manager for works completely or partly within strategic port land tidal areas³.

Local government as the assessment manager for tidal works

The local government is the assessment manager for all prescribed tidal works within a local government tidal area, other than those exclusions listed above and those within a strategic port land tidal area. The works are assessed by local government as prescribed tidal work under section 3.1.7(3) of IPA. The assessment of prescribed tidal work is "code assessable" under schedule 1, part 3, table 4 of the *Integrated Planning Regulation 1998*.

Local government will assess applications for prescribed tidal work against the IDAS Code, the *Prescribed Tidal Work Code*, which is contained in schedule 4A of the *Coastal Protection and Management Regulation 2003*.

³ Strategic port land tidal area is defined in the *Integrated Planning Act 1997* as tidal area for strategic port land.

Local government will assess prescribed tidal work applications for:

- compatibility with the aesthetics and amenity of the location;
- structural integrity;
- safety;
- infrastructure provision;
- use of state land; and
- impacts on public access, navigable access, natural features of the waterway, and the structural integrity of existing structures.

All applications for tidal works that are not prescribed tidal work will continue to be assessed by the EPA.

Appropriate use of State land

Under section 3.2.1 of IPA, a development application for prescribed tidal work must be supported by:

- the written consent of the owner of the land; or
- evidence of “resource entitlement”⁴ if the application involves a State resource⁵ prescribed under a regulation.

All applications for prescribed tidal work, unless they are located in a canal or are built over freehold inundated land, will involve a State resource.

Details about the nature of the State resource and the required evidence of “resource entitlement” for prescribed tidal work is completed at question 10 of the IDAS Form 1 Part A and will be evidence that the chief executive of the department administering [the relevant] Act is satisfied:

- the development is consistent with an allocation⁶ of, or entitlement to, the resource; or
- the development application may proceed in the absence of an allocation of, or entitlement to, the resource.

Written evidence of the “resource entitlement” must be signed on behalf of the State of Queensland by different agencies depending on the status of the land or the purpose of the work. State Agencies no longer provide “owner’s consent” for development applications, as evidence of “resource entitlement” is provided in its place. Evidence of “resource entitlement” is not required for an application for a prescribed tidal work in a canal as defined under the *Coastal Protection and Management Act 1995* (Coastal Act⁷).

If evidence of resource entitlement is required, the application will be taken to be not properly made until the required written evidence is provided to the assessment manager.

⁴ Refer s 3.2.1(5), (5A) and (6) of IPA

⁵ State resources are prescribed in schedule 10 of the Integrated Planning Regulation 1998 (IP Regulation)

⁶ Allocations may include a resource allocation authority under the *Fisheries Act 1994* or a lease under the *Land Act 1994*

⁷ The definition of a canal however excludes a marina, boat harbour or commercial boat mooring facility. NR&M will need to provide the “resource entitlement” in these instances.

Applicants should refer to the Guideline - *Evidence of “resource entitlement” and owner’s consent for development under the Coastal Act* on the [EPA website](#) for more information and to determine the appropriate State agency to apply to for written evidence of “resource entitlement”.

Referral agencies for prescribed tidal work

Appendix 1 attached to this guide indicates which referral agencies are applicable to applications for prescribed tidal works.

Additional referrals may also be triggered by an application for prescribed tidal work. Completion of the Development Application Form 1 IDAS Assessment Checklist will assist in determining if any other referrals are required.

Applicants for prescribed tidal work will be notified on the acknowledgement notice if the application requires referral. Applicants are required to forward copies of the application to all referral agencies at about the same time, and advise the assessment manager when these referrals have been made.

Referral agencies assess the application under their relevant jurisdiction, and may make further information requests to the applicant if necessary.

Pre-application referral agency response

Under s3.3.2 of IPA, if requested by the applicant, a referral agency may give a referral agency response on a matter within its jurisdiction about a proposal before an application for the proposal is made to the assessment manager. If applicants request a referral agency to provide a response prior to applying to the assessment manager, details about the response must be provided at Section 6 on the IDAS Assessment Checklist.

It is advised that applicants seek a pre-application response from Maritime Safety Queensland (MSQ) if there are existing or approved but yet to be constructed structures on neighbouring lots, to ensure their design plans and location of the work is suitable, before lodging the application with the assessment manager. This will assist in avoiding delays and costs associated with any necessary redesign of plans for the work.

Search for previous approvals

In order to undertake a comprehensive assessment of the application, the assessment manager and referral agencies may require information about existing or proposed structures approved but not yet constructed on neighbouring lots within 20 metres of the proposed structure.

If the application is in a cul-de-sac or on a bend of a waterway, applicants are advised to obtain information about approvals that have been granted for neighbouring structures in order for MSQ and the assessment manager to determine if maritime safety and navigable access to and from the proposed and existing work on abutting waterfront properties would be maintained. For more information on searching for previous approvals, refer to the Guideline – *Preparing a water allocation area for*

tidal works on the [EPA website](#). To determine if there are previous approvals on abutting waterfront properties contact your local government. To obtain information about previous approvals, applicants will need to apply to the EPA.

Quarry Material Allocation Notice

The consent of the State is required for taking quarry material that is the property of the State. This process involves making an application for an allocation notice from the EPA. If required, a quarry material allocation notice is required prior to lodging an application for prescribed tidal work. Application forms are available from the EPA. Refer to the EPA Guideline - *Allocation of quarry material* on the [EPA website](#).

Form 1 Development Application – Part P and the IDAS Assessment Checklist

When an application for tidal works is partially or completely within a local government tidal area – Part P of Form 1 Development Application and all questions on the IDAS Assessment Checklist must be completed in addition to Part A Form 1 Development Application.

Applicants should use IDAS form 1 Part M instead of Part P for applications for tidal works that are not prescribed tidal work.

Plans to accompany applications

All plans submitted to accompany applications for prescribed tidal work should contain the information requested in Question 5 on Part P to avoid delays during the assessment of the application.

Plans for the work should also be certified by a Registered Professional Engineer of Queensland (RPEQ), or an interstate or international equivalent registered with the appropriate professional body in that State or Country, to certify that the plans have been prepared based on sound engineering practices. Details about the RPEQ certification that the design and safety provisions in the *Prescribed Tidal Work Code* have been achieved are required to be provided at Question 4 on Part P.

Portable Long Service Leave Levy

Development Application Form 1 Part A question 13 is relevant if the Building and Construction Industry Portable Long Service Leave Levy is payable for the proposed development. This levy applies if the total cost of all building and construction work in Queensland, including operational work, is \$80,000 or more. The levy and fee are usually paid by the project owner and must be paid prior to receiving a development permit. The levy and fee are calculated at 0.35% of the total cost of the work and can be paid at any Australia Post office or agency, or directly to QLeave. For more information on the Portable Long Service Leave Levy refer to the [QLeave Website](#)

Additional information to accompany applications

Each local government is likely to assess applications for prescribed tidal work using different methodologies and may therefore request different information to accompany applications. Additional information required by local government to assess applications for prescribed tidal work can be obtained from the relevant local government.

Local governments are able to prescribe fees for the assessment of prescribed tidal work. Please contact your local government office for more information on application fees.

For more information

For guidance contact your local government office or the EPA:

ECOACCESS Customer Service Unit
Environmental Protection Agency
PO Box 15155
CITY EAST
Queensland 4002

Enquiries: 1300 368 326
Facsimile: (07) 31159600
eco.access@epa.qld.gov.au

Appendix 1 Table of Referral agencies for prescribed tidal works

Agency	Referral role	Jurisdiction	Matters to be considered in assessment and conditioning	Contact details
Environmental Protection Agency - Chief Executive administering the <i>Coastal Protection and Management Act 1995</i> – if the work occurs in a natural waterway	Concurrence	Coastal management in natural waterways	Coastal processes, erosion, water quality and other ecological systems.	Ecoaccess Customer service Unit Environmental Protection Agency PO Box 15155 City East Q 4002 Telephone: 1300 368 326 Facsimile: 07 3115 9600 E-mail address: eco.access@epa.qld.gov.au www.epa.qld.gov.au/ecoaccess .
Queensland Transport (Maritime Safety Queensland) – Regional Harbour Master under the <i>Transport Operations (Marine Safety) Act 1994</i>	Concurrence	Navigational safety and maritime management.	Maritime navigation, setting quay-lines, designating water allocation areas in consultation with the applicant and the local government.	Regional Harbour Master (Brisbane, Gladstone, Mackay, Townsville or Cairns) or regional Manager Marine (Gold Coast). MSQ Regional contacts
Department of Primary Industries and Fisheries under the <i>Fisheries Act 1994</i> – if the work is likely to disturb fisheries resources or fish habitats	Concurrence / advice	Marine plant disturbance and works within or adjoining a declared fish habitat area	Disturbance to fisheries resources and fish habitats.	DPI regional delivery offices
Queensland Heritage Council under the <i>Queensland Heritage Act 1992</i> – Development on a registered heritage place.	Concurrence	Protection and conservation of heritage places where work is on the place.	Protection and conservation of heritage places where work is on the place ⁸ .	Queensland Heritage Council Secretariat Environmental Protection Agency PO Box 15155 CITY EAST QLD 4002 tel : (07) 3227 6499 fax: (07) 3227 7803 email: heritage.council@epa.qld.gov.au
Port Authority under the <i>Transport Infrastructure Act 1994</i> – if the works occur within port limits ⁹ .	Concurrence / Advice	Port authority functions as defined in Chapter 7, Part 3 of the <i>Transport Infrastructure Act 1994</i>	Potential impacts of the works on port operations	Relevant Port Authority for the locality: Port of Brisbane, Bundaberg, Gladstone, Rockhampton, Mackay, Townsville and Cairns or the Ports Corporation of Queensland Refer to Qld Transport website for links to each port authority
Queensland Fire and Rescue Service ¹⁰ – if the works involve a marina, as defined under the <i>Transport Operations (Marine Pollution) Regulation 1995</i> , with more than 6 vessel berths. (NOTE a marina is only prescribed tidal work if it is not a public marine facility constructed by or for Queensland Transport or a Port Authority.)	Advice	The fire safety management procedures under the <i>Fire and Rescue Service Act 1990</i> .	Fire safety management	Contact your closest Community Safety Office

⁸ See section 1.3.5 of IPA for works considered for administering IDAS under the *Queensland Heritage Act 1992*, and schedule 8, table 5, part 2, for more information on development on a heritage registered place.

⁹ The limit for each port is defined in the *Transport Infrastructure (Ports) Regulation 1994* and maps of the port limits may be inspected on the Queensland Transports website <http://www.transport.qld.gov.au/ports>

¹⁰ <http://www.fire.qld.gov.au/about/scsu.asp> provides contact details for each regional State Community Safety Unit of the Queensland Fire and Rescue Service. Applications should be addressed to the Manager.