

Guideline

**Sustainable Planning Act 2009
Land Title Act 1994**

Development involving an artificial waterway

This document provides guidance to applicants on the information required to support the assessment of a development application to carry out operational work in connection with an artificial waterway under the Sustainable Planning Act 2009.

Introduction

Under the *Sustainable Planning Act 2009* (Planning Act) the State has responsibility for assessing development involving artificial waterways in a coastal management district.

The *Coastal Protection and Management Act 1995* (Coastal Act), broadly defines an artificial waterway as a channel, lake or other body of water but excludes water bodies that are used for a particular purpose (e.g. water storage facilities, treatment ponds) or water bodies used for private residential purposes (e.g. swimming pools, ornamental ponds, etc).¹

A canal is a type of artificial waterway that is connected, or intended to be connected, to tidal water and from which boating access to the tidal water is not hindered by a lock, weir or similar structure.

Canals and other artificial waterways are major coastal developments that can have significant adverse impacts on coastal resources depending on where they are located and how the waterways are designed and constructed.

Assessment for the purposes of coastal management

The following development involving an artificial waterway in a coastal management district is assessable development under the Sustainable Planning Regulation 2009 (Planning Regulation):

- Schedule 3, part 1, table 4, item 5(b)(iii) - Operational work (other than excluded work, work that is self-assessable development under part 2, table 4, item 8, work carried out in a priority development area and work carried out on premises to which structure plan arrangements apply) that is — (iii) constructing an artificial waterway
- Schedule 3, part 1, table 3, item 1 - Reconfiguring a lot under the Land Title Act 1994.

Depending on the planning scheme, the Department of State Development, Infrastructure and Planning (DSDIP) can be a referral agency or assessment manager for applications involving development in connection with the construction of an artificial waterway within a coastal management district and if the reconfiguration is in connection with the construction of a canal not in a coastal management district.

Below are the referral jurisdictions for reconfiguring a lot involving artificial waterway:

¹ Refer to s.8 and 9 of the Coastal Act for the complete definitions including inclusions and exceptions.

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- completely or partly in a coastal management district and involves the construction of an artificial waterway Planning Regulation, schedule 3, part 1, table 4, item 5(b)(iii) and Planning Regulation, schedule 7, table 2, item 14(a)), or
- not in a coastal management district but involves the construction of a canal (Planning Regulation, schedule 7, table 2, item 14(b)).

Local government is always the assessment manager for constructing an artificial waterway associated with the reconfiguration of a lot within a local government tidal area². Applications of the above type are assessed against the State Development Assessment Provisions (SDAP).

Information to accompany your application

Module 10 'Coastal Protection' of the SDAP sets out the performance outcomes and acceptable outcomes to ensure development in coastal areas is managed to protect and conserve environmental, social and economic coastal resources and to enhance the resilience of coastal communities to coastal hazards. All performance outcomes must be met and advice on this is available from DSDIP and the SDAP.

Specific information which DSDIP requires to progress in assessment of the development application is detailed below and should be included in the application:

Information about the land/activity

1) For reconfiguring a lot and/or works in connection with an artificial waterway, provide:

- A plan of the site, to a scale of not less than 1:2500, showing—
 - the metes and bounds descriptions of the boundaries of the site and of the proposed waterway, in relation to the existing boundaries of the parcels of land adjoining the site
 - spot levels or contour lines based on the Australian Height Datum, sufficiently spaced to clearly indicate the topographical features of the land as at the application date
 - the location of test bores taken of the soil at the site
 - logs of test bores taken to a depth of at least one metre below the bottom of the proposed waterway detailing the distribution and classification of soil types at the site and
 - adjacent lots with inundated land and leasehold lots identified.
- A recent coloured vertical aerial photograph of the site, to a scale of not more than 1:12,000, showing the boundaries mentioned above.

2) For reconfiguring a lot and works in connection with the construction of a canal—provide drawings of cross-sections of the proposed canal designed from information obtained from the test bores showing the:

- levels of the tide at mean low water springs and mean high water springs, as determined by continuous tide measurements over at least two periods, each of 29 days, or tide planes from Marine Safety Queensland
- width and length of the proposed canal when the tide is at mean high water spring;

² Refer to Schedule 6, Table 1, Item 1(e) of the SP Regulation.

- depth of the proposed canal when the tide is at mean low water spring, and
 - levels of the land at the site after the canal is constructed.
- 3) For reconfiguring a lot and works in connection with the construction of an artificial waterway provide details of—
- the proposed use and maintenance of the artificial waterway after it is constructed
 - how the top level in the waterway and the water supply, if any, to the waterway will be maintained
 - how water, if any, is supplied to the waterway
 - the capacity of the outlet structures if any from the waterway
 - how pollution and siltation of the waterway will be minimised and design bed levels maintained, and
 - how the waterway's water quality will be determined, monitored and maintained.
- 4) For constructing an artificial waterway not associated with reconfiguring a lot, details of—
- a plan showing a typical cross-section of the proposed work in relation to the high water mark
 - location of the work including in relation to real property boundaries, roads, esplanades, watercourses and existing structures and buildings
 - proposed maximum surface area and depth of the artificial waterway
 - how the top level in the waterway and the water supply, if any, to the waterway will be maintained
 - the capacity of the outlet structures if any from the waterway
 - how pollution and siltation of the waterway will be minimised and design bed levels maintained
 - intended purpose of the artificial waterway and purpose of the land around the artificial waterway, and
 - how the waterway's water quality will be determined, monitored and maintained.
- 5) For all cases—
- a plan showing current coastal hazard areas on the site
 - a plan showing matters of state environmental significance (MSES) on the site
 - if relevant, details of the actions to be undertaken to offset the loss of MSES in accordance with the relevant Queensland Government Environmental Offset Policy

Please note that DSDIP may request further information in order to decide the application.

Other matters to consider

Information request

When considering the application DSDIP may issue an information request or seek, or require the applicant to seek, the views of other authorities in particular circumstances as follows.

- The Great Barrier Reef Marine Park Authority, if the development involves the Great Barrier Reef Marine Park.

- The Department of Sustainability, Environment, Water, Population and Communities, if the works are triggered under the *Environment Protection and Biodiversity Conservation Act 1999*, for views on any matters of national environmental significance.

Referral and technical agencies

Technical agencies, if requested, may provide advice to DSDIP when they are assessing development involving an artificial waterway.

For development applications to reconfigure a lot in connection with a canal:

- Marine Safety Queensland, through the Regional Harbour Master (Brisbane, Gladstone, Mackay, Townsville or Cairns) or the Regional Manager, Gold Coast (where applicable) is a technical agency for the application.

For development applications on land below high water mark:

- The port authority is an advice agency for the application within port limits. For particular port operational areas within port limits as stipulated in the Planning Regulation such as the area adjacent to navigation channels and swing basins, the port authority will act as a concurrence agency.

For development applications to construct an artificial waterway associated with the reconfiguration of a lot or to construct an artificial waterway on land other than State coastal land, above high water:

Fisheries Queensland within the Department of Agriculture, Fisheries and Forestry (DAFF) is a technical agency if the development involves removal, destruction or damage or a marine plant and/or constructing or raising waterway barrier works. They will also be a technical agency when the development adjoins a declared fish habitat area.

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Further approvals

An approval under the *Sustainable Planning Act 2009* does not remove the need to obtain any further approval(s) for the work that may be required pursuant to other legislation, both State and Commonwealth. Applicants are advised to check with all relevant statutory authorities for such approvals as may be required.

Requirements for registering plans of subdivision showing artificial waterways

Applicant requirements

- (1) If a plan of subdivision shows an artificial waterway on the plan, the plan must—
 - (a) show the area of the artificial waterway as a separate lot; and
 - (b) include a metes and bounds description of the land on which the waterway is to be constructed; and
 - (c) clearly indicate—
 - (i) if the waterway is a canal—that the land is to be a canal; and
 - (ii) if the waterway is not a canal—that the land is an artificial waterway; and
 - (iii) any access channel associated with the waterway.
- (2) If the artificial waterway is a canal the plan of subdivision must—
 - (a) show the area of the canal that will be surrendered to the State as a public waterway

Local Government requirements

- (3) The local government for the local government area in which the waterway is constructed must certify on the plan that—
 - (a) the waterway, and any access channel associated with the waterway, is constructed in accordance with the development approval for the waterway; and
 - (b) if the waterway is not a canal—the local government is satisfied arrangements have been made, or will be made, for the maintenance and management of the waterway.

Registration of instruments—construction of artificial Waterways

The following are additional requirements for the registration of a plan of subdivision under the *Land Title Act 1994*, section 50.

- (4) The registrar of titles must not register an instrument³ dealing with land the subject of a reconfiguration of a lot in connection with the construction of an artificial waterway unless—
 - (a) the plan of subdivision for the reconfiguration of the lot is registered under the *Land Title Act 1994*; and
 - (b) if the artificial waterway is a canal—
 - (i) the plan of subdivision is certified by a local government; and
 - (ii) the area of the canal has been surrendered to the State as a public waterway; and

³ Defined under the *Land Title Act 1994*

- (c) if the artificial waterway is not a canal—the plan of subdivision is certified by a local government.
- (5) Subsection (4) above does not apply to an instrument surrendering the area of a canal to the State if the plan of subdivision for the reconfiguration of a lot in connection with the construction of the canal is—
- (a) registered under the *Land Title Act 1994*; and
 - (b) certified by a local government.

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Heritage Protection should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved by

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Signature

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