RESOLUTION
G10.0326.019 moved Cr Pforr seconded Cr Sarroff

1 That the contents of the City Solicitor’s report on Maintenance of Gold Coast tidal waterways be noted.

2 That the Council resolves that it is in the public interest for the information in the report to be made available to the public, and accordingly that:
   a Legal professional privilege is hereby waived, and the report be marked Non-Confidential and
   b a copy be provided for public scrutiny on Council’s website.

3 Council notes that this report has been prepared by the City Solicitor after considering the potential impacts of aging infrastructure with the canal environment and notes that its present maintenance regime whilst complying with its legal obligations requires a review to take into account potential impacts of that aging infrastructure.

4 That Council’s Engineering Assets and Planning branch in consultation with Health Regulatory and Lifeguard Services branch and any other relevant branch be instructed and funded to prepare
   a a Maintenance Standard for the proper functioning and Operation of the Canal systems in Council’s local government area, taking into account the existing standards applied and any further matters raised by the City Solicitor’s Report;
   b Criteria and parameters in which Council may consider conducting
      i emergency works,
      ii or other works on private lands adjoining a canal (to prevent a system failure)

5 That a further Report be prepared by Engineering Assets and Planning in consultation with Health Regulatory and Lifeguard Services branch and any other relevant branch to Council to advise on the completion of the Maintenance Standard and any further budgetary requirements arising from it;

6 That Council endorse the inclusion of a Standard Drawing for Rock Armour and Gravel Blanket for specific canal systems in Council’s Land Development Guidelines and that Technical Services and Flood Management be instructed to undertake the necessary studies and prepare the necessary reports and drawings for this purpose.

7 Council has considered the contents of this report and the various issues raised and notes that it has no specific legal requirement for a local law for the purpose of meeting its obligations. Council considers however that in the public interest it should consider accruing powers and taking a more pro-active role in regulation and monitoring of the coastal environments in which ageing infrastructure and climate change factors may impact.

8 That Council endorse the preparation of a local law or laws to regulate the maintenance of revetment walls and other privately owned structures in Gold Coast waterways, and that the City Solicitor bring a further report to Council to approve a local law or laws for this purpose.

9 That the City Solicitor be directed to seek a gazettal for Council to control all canal foreshores of canals located within the Gold Coast region to support the enactment of a local law.

10 That the draft budget reflect and include suitable allocations consistent with the recommendations in the report.
ITEM 8  LEGAL SERVICES
REPORT TO COUNCIL MAINTENANCE RESPONSIBILITIES IN GOLD COAST TIDAL WATERWAYS
WFB/600/1123/01(P1)
REPORT CONFIDENTIAL

Refer 12 page attachment

1  BASIS FOR CONFIDENTIALITY

1.1  I recommend that this report be considered in Closed Session pursuant to section 463(1)(a) to (h) of the Local Government Act for the reason that the matter involves starting or defending legal proceedings involving Council.

1.2  I recommend that the report/attachment be deemed a confidential document and be treated as such in accordance with sections 250 (2) and 1143 (4) of the Local Government Act and that the document remain confidential unless Council decides otherwise by resolution.

2  EXECUTIVE SUMMARY

The City Solicitor has reviewed the scope of Council’s legal responsibilities to maintain a canal and other tidal waters and has made recommendations in this report as to how Council can continue to comply with its legal obligations to maintain a canal, considering the impacts of ageing infrastructure.

A table setting out Council’s obligations, current works and recommendations for further steps to be taken in order for Council to continue to comply with its obligations into the future, as discussed in this report are set out in the attached Schedule 1.

A position Statement highlighting Council’s legal position on responsibilities regarding tidal waterways, taken from the report is set out below. References to the report paragraph are noted in the statement.

1. The obligations of Council and private landowners under the CPMA to maintain a revetment wall adjoining a canal have been addressed in the Report to Council of 12th November 2007. (R6.4)

2. The Council cannot be expected to do the impossible in respect of maintenance of a canal. The maintenance standard, and its consequential maintenance scope, that applies to a canal means that mere disrepair of a part of a canal cannot be considered to be contrary to the requirement of the CPMA. (R1.7)

3. A broad view must be taken of the canal as a physical whole, and Council does not have an obligation to improve or alter a canal to ensure that it is capable of being reasonably used as a public waterway. (R1.11)

4. The presence of erosion in a particular location (which may undermine a revetment wall) does not necessarily mean the Council has not maintained a canal in accordance with the CPMA and is therefore liable for the cost of private revetment wall repairs. (R4.6)

5. Council is not in breach of its maintenance obligation if, at times, a canal is not navigable by all vessels for which the canal was constructed. It would only be if, by reason of a failure to maintain the canal, the canal was not able to be navigated for a long period of time that Council could be said to have not met the maintenance standard and, therefore, its obligation under s 121. (R5.4)
6. Council is not required to alter or improve a canal to ensure that it is navigable for vessels for which the canal was not designed. (R5.5)

7. It would be appropriate for Council to impose specific obligations on adjoining landowners to maintain revetment walls under a local law (rather than merely relying on existing regulatory and enforcement powers dealing with the failure of structures), providing such a law would not regulate “development” under the Sustainable Planning Act 2009 (that is, as being inconsistent with a State law). This would provide Council with an opportunity to clarify the detail of the obligations on various parties by using terminology that is not found in the more “broad brush” State legislation. This will assist property owners to understand the scope of their obligations and that a failure to comply with those obligations may lead to enforcement action by Council. This will also assist to clarify the breach of any obligations for the purpose of justifying the imposition of a special levy where necessary. (R8.8)

8. Council should undertake a suitable maintenance program which may include managing the removal of dangerous obstacles that are deposited on the foreshores without the fault of any person, and which may pose a safety threat to boating or other pedestrian traffic on the foreshore. (R11.6)

9. There is generally no basis for imposing on Council a responsibility for the maintenance of a revetment wall in a natural waterway which adjoins privately owned property. An exception to this general rule may be when Council is the lessee of a lease, or the trustee of a reserve, under the Land Act in respect of land in a natural tidal waterway. (12.1)

10. Also Council does not have a general responsibility in relation to the maintenance of other tidal works or structures such as pontoons and jetties in a natural tidal waterway. Section 124 of the CPMA may apply so as to require the "owner" of the structure to maintain it in a safe condition. (R12.7)

3 PURPOSE OF REPORT

The purpose of the Report is to clarify the legal obligations and maintenance responsibilities of Council. This report needs to be read in conjunction with the Revetment Wall Report considered by Council at its meeting on November 12, 2007 in relation to Gold Coast tidal waterways.

Maintenance responsibilities in non-tidal waters will be the subject of a further report to Council in the near future.

4 PREVIOUS RESOLUTIONS

Ex Minute No G08.1208.014 (ES08.1203.001 to ES08.1203.011)

Ex Minute No ES08.1203.010:

“That a further report regarding tidal works notice powers and the frequency of Council’s dredging program be presented following completion of the 2009 revetment wall marketing campaign.”
ITEM 8 (CONTINUED)

LEGAL SERVICES

REPORT TO COUNCIL MAINTENANCE RESPONSIBILITIES IN GOLD COAST TIDAL WATERWAYS

WFB/600/1123/01(P1)

That Council resolved “to investigate a marketing campaign to increase awareness that the adjacent land owner is responsible to maintain the revetment wall benefitting their property in a safe condition (CD07.1105.002)".

1) Marketing programs: Council recently considered the matter of responsibility for the stability of revetment walls (CD07.1105.002) and resolved to investigate a marketing campaign to increase awareness that the adjacent land owner is responsible to maintain the revetment wall benefitting their property in a safe condition. The inclusion of a flyer regarding revetment walls is recommended for the 2009 rates notices (see attachment 10.2 for a draft).

Ex Minute G07.1112.018  (CD07.1105.001 to CD07.1105.004)
Ex Minute G07.1112.019  (CD07.1105.001 to CD07.1105.004)
Ex Minute No CD07.1105.002:

“Item – Ownership of Revetment walls – Item 2 Coordination Committee Meeting 5th November 2007.”

1. “That the report of the City Solicitor be noted.

2. That the Chief Executive Officer write to the Local Government Association of Queensland regarding the indemnity under the CPMA seeking LGAQ support for the re-introduction of the indemnity previously provided under the Canals Act 1958.

3. That the Chief Executive Officer authorise and direct the City Solicitor to commence appropriate action to draft a local law regarding the maintenance of canals.

4. That the City Solicitor be directed to prepare further reports regarding:
   - issues relating to revetment walls and other structures in non-tidal waters.
   - Issues relating to “as approved and constructed” profiles of canals, including any associated flood mitigation issues.

5. That consideration be given to requesting a delegation of powers under the EPA to Council to enable “Tidal Works Notices” to be issued by Council where appropriate pursuant to the CPMA Act in the event of revetment walls or other structures in tidal waters being in need of repair or replacement.

6. That a procedure for inspection, identification, specification and supervision of necessary maintenance or other works be prepared for consideration and adoption.

7. That a policy statement be prepared for consideration and adoption, which is intended to, amongst other things, state clearly:
Canals

Land Owner’s Responsibilities

- Private land owners who own land that adjoins revetment walls and which receive a benefit from them are under an obligation pursuant to Section 124 of the CPMA Act to maintain the walls in a safe condition.
- Revetment walls located within the boundaries of privately owned lots are the sole responsibility of the registered proprietor to maintain.
- The responsibility is specifically to keep the “structure maintained in a safe condition” – this means that regular inspections must take place to ensure that the structural integrity of the revetment continues to be safe and is suitable to prevent failure.
- Inspection at other times may be advisable or required after flooding or storm events may have altered the usual flows or water levels in canals.
- Only a properly qualified engineer is able to carry out an inspection and certify the safety of any revetment.
- Re-certification of any revetment wall serving freehold land is required when any development application is approved.
- The responsibility extends to any works on the land that may affect the safety of the revetment such that land owners must ensure that any works undertaken on the land do not affect the safety and structural integrity of the revetment.
- A permit is required before any works may be done to repair or maintain or shore up any part of any revetment.
- Nothing is allowed to be attached or anchored in any way to any part of a revetment.
- Revetments are not to be used for the support of or connection to any structure or works on the land.
- Purchasers of land served by revetments become responsible for the maintenance and safety of the revetment upon completion of the purchase and it is recommended that an independent engineer’s report on the structural integrity of revetments benefiting the land be gained prior to purchase.

Council Responsibilities

- The responsibility of the Council is to maintain and keep canals clean.
- This extends to the Council being responsible to maintain any revetment wall that is within the canal boundary, noting that there is also an obligation on private land owners benefited by any revetment wall to maintain it.
- Primarily, the obligation to maintain and keep canals clean is achieved by the periodic dredging program undertaken.
- The Council’s program also includes necessary removal of vegetation (aquatic and land) from the canals, and maintenance of the canals to their “as constructed profile”.
- Maintenance of the banks of canals may take place through installation of rock protection or placement of dredged sand so that the original profile is maintained.
- Council is the relevant authority in respect of approval for any works which may impact on any revetment wall or canal.
8. That appropriate funding be provided for the implementation of the procedure for inspection, identification, specification and supervision of necessary works (point 6 above) and implementation of the policy as suggested (point 7 above)"

Ex Minute No CD07.1022.017:

“That the Chief Executive Officer prepares a report regarding the controls Council may or may not have over the use of boats that create excessive wake and that the State Govt be consulted with a view to policing the size and speed restrictions of boats on the City’s waterways."

5 DISCUSSION

Council is referred to the report presented at its meeting on November 12, 2007 pertaining to the legal position regarding maintenance of revetment walls and reminded that presently within the City there is:

- in excess of 675 kilometres of waterfront properties.
- in excess of 220 kilometres comprised of lake or canal front.
- in excess of 190 kilometres comprised of Broadwater and Southern Moreton Bay frontage.
- in excess of 206 kilometres of river and creek frontage.
- in excess of 400 kilometres of revetment walls.

BACKGROUND

Council’s local government area has the largest number of canals in Queensland (and Australia). Under the Coastal Protection and Management Act 1995 (CPMA) and its predecessor, the Canals Act, the Council has and continues to have a responsibility to maintain those canals. In recent years, there has been a higher incidence of reported canal revetment wall failure. Owners of land which adjoin canals and who receive the benefit of these revetment walls have asked the Council to repair the walls, and been referred to Council’s resolutions at the meeting referred to above. Council conducts a routine dredging program and maintenance/cleansing program on a rotational basis throughout the City.

In order to bring clarity to what Council’s legal obligations are in regards to canal maintenance and in order to be able to action Council’s resolutions of the November 12, 2007 meeting, it has been necessary for the City Solicitor to research, consider and form a view as to what is required of Council in order to meet its obligations pertaining to the welfare and maintenance of the tidal canals.

In order for a policy statement to be considered by Council, and adopted, there is a need to clarify what responsibilities Council is presently obligated to undertake. It is anticipated that upon clarifying these responsibilities Council will be able to proceed with finalising a policy position, introducing any necessary local laws and reviewing its maintenance program.
This report is also to provide clarity to Council’s position when dealing with owners of land adjoining the canals, who have pontoons and jetties and request Council to carry out more frequent dredging than is currently done routinely, as those owners consider it a mandatory responsibility of Council to ensure the access remains navigable.

The City Solicitor provides in this report advice in relation to various issues concerning those responsibilities. Issues canvassed in this report include:

1. What is the extent of Council’s general duty to maintain a canal under the CPMA
2. Climate Change Policy
3. Maintenance and management of water quality, weed and waste removal
4. Maintenance of canal floors according to "as constructed" profile
5. Maintenance of navigable access – canal
6. Maintenance of revetment walls – canals
7. Facilitation of Revetment Wall Protection – Rock Armour and Gravel Blanket
8. Regulation - maintenance of privately owned revetment walls – canal
10. Regulation - maintenance of other structures such as pontoons and jetties - canal
11. Foreshores-control of use by Council
12. Natural waterways
13. Local law
14. Regulation of Vessel Speed and No Dangerous Wash-the State

This Report examines these issues as they apply to tidal waters, rather than non-tidal waters. To ensure clarity for future reference by Council officers and members of the public, and in order to avoid confusion pertaining to the differing legal position, which results from differing land tenure and legislative regimes, a further Report to Council dealing with responsibilities for maintenance in Non-Tidal Waterways will be shortly provided.

DISCUSSION OF ISSUES

1. **What is the extent of Council’s general duty to maintain a canal under the Coastal Protection and Management Act 1995 (CPMA)**

   Council’s general obligation under s 121 of the CPMA

   1.1 Section 121 of the CPMA imposes a generalised obligation on Council to “maintain” and keep clean a canal

   Coastal Protection and Management Act 1995 (CPMA)
Section 121 of the CPMA says:

121 Maintenance of canals

(1) A local government must maintain and keep clean each—

a) canal in its area; and
b) access channel for a canal mentioned in paragraph (a), whether or not the access channel is in its area.

(2) Subsection (1) does not apply to—

a) a canal, other than an access channel for the canal, constructed under the Integrated Resort Development Act 1987; or
b) a canal constructed under the Sanctuary Cove Resort Act 1985.

(3) In this section—

canal means—

a) an artificial waterway surrendered to the State under this Act or the Canals Act; or
b) a canal surrendered under a lease under the Land Act 1994.

1.2 The meaning of "maintain"

The CPMA does not define the term "maintain". It is a word in common use and of ordinary meaning. Its related term "maintenance" suggests that there must by some physical intervention in the thing being maintained.

According to the Australian Oxford Dictionary, "maintain" means to "cause to continue; keep up, preserve", and the Macquarie Dictionary similarly defines the term as "keep in existence or continuance; preserve; retain". It does not, in its ordinary meaning, involve improving the thing that is being maintained.

In determining the meaning of "maintain" in s 121 of the CPMA, it is suggested that an undue focus on the thing that is a canal will distract one from the precise nature (including scope) of the Council's maintenance obligation as intended by Parliament.

Council's obligation under s 121 of the CPMA has been reviewed by having regard to certain principles of statutory construction, and consideration of case law.

1.3 In forming a view regarding the legal position the City Solicitor notes a dearth of case law or other statutory guidance that relevantly considers the meaning of maintenance.

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1 ACT Construction v Customs and Excise Commissioners [1981] 1 WLR 1542 per Lord Roskill.
2 See generally Palgo Holdings Pty Ltd v Gowans (2005) 221 CLR 249 at [35]-[36] per Kirby J.
1.4 In the absence of specific regulatory and judicial guidance, extrinsic materials from other jurisdictions have been considered to illuminate what maintenance standards are required. The City Solicitor considers from this review that maintenance of a canal system will include dredging and maintenance of waterway depth, sediment monitoring programs, hydroographical surveys, entrance dredging, monitoring of erosion or accretion of shorelines associated with the waterways, maintenance of breakwaters, monitoring and management of water quality, the collection and removal of weed or waste, the possible installation repair and replacement of pumps and equipment required for water exchange and flushing, design lifespan of revetments, resistance to erosion by water and wave action of waterway structures.

1.5 The City Solicitor suggests that in order to understand this duty, the whole of the canal system needs to be viewed as a physical thing such as a park, sporting facility or natural bushland area. While the CPMA imposes a requirement to maintain a canal, it does not explain the scope of that obligation with which Council must comply. Taking into account the above comments, the following constitutes the City Solicitor’s view of the legal position and in turn, Council’s responsibilities.

1.6 The Council must maintain the canal in an operating condition. The obligation includes to keep the canal in repair, to the extent that is necessary, so that it can operate as a canal. Relevantly, this means the canal must be, and remain:

a) navigable as a public waterway (where it connects with tidal waters)\(^3\);  
b) if designed as such, available for ornamental or recreational purposes; and  
c) in a condition so that it is able to be kept in operation as an artificial waterway (that is, an improbable alteration of nature) and not, under reasonable conditions, cause adverse impacts that would not have occurred, if it had been maintained (e.g. so it would not, in reasonable conditions, cause flooding to a waterway system). This position is much the same as planning requirements which ensure that approvals do not result in any additional damage to other properties or restrict use rights.

More specifically:

i. "maintain", as well as including the work of repair, requires the taking of preventive measures to forestall the development of defects in the canal which if left unattended would eventually require remedial action (maintenance measures);  
ii. the standard of maintenance must be measured by considerations of the use and functions of a canal, including as part of a waterway network involving navigational, water quality and level and canal failure elements, (maintenance standard); and  
iii. the scope of the maintenance obligation relates to the physical thing that is a canal and requires, at least, keeping the canal in a sound structural condition having reference to its original design (maintenance scope).

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\(^3\) For s 121 of the CPMA, a "canal" includes any artificial waterway surrendered to the State.
1.7 The Council cannot be expected to do the impossible. The maintenance standard, and its consequential maintenance scope, means that mere disrepair of a part of a canal cannot be considered to be contrary to the requirement of s 121 of the CPMA.

1.8 Preventive maintenance measures should be taken so as to ensure the maintenance standard is not breached. For example, Council should reasonably determine that dredging of a canal to remove sedimentation should take place at a particular time to ensure the canal continues to meet the maintenance standard. The Council's determination will be based on an assessment of the causes (including, if relevant, their frequency) that will influence the level of undesirable sedimentation.

1.9 Considerations of the use and functions of a canal may include matters relating to using the canal with reasonable safety and convenience. This would include, for instance, the removal of significant debris placed in the canal through natural events such as flood or storm tide.

1.10 Section 121 does not require the Council to provide a public waterway to a particular standard or to ensure that a canal does not cause or contribute to any particular adverse consequences. Council's only obligation is to maintain the physical thing that is a canal.

1.11 A broad view must be taken of the canal as a physical whole, and Council does not have an obligation to improve or alter a canal to ensure that it is capable of being reasonably used as a public waterway.

1.12 To determine what part of the canal must be "maintained" it is necessary to consider the maintenance standard which will be set by Council taking into account what is necessary for the function of the waterway as a canal. By analogy, maintaining a Holden Commodore so that it still operates as a Holden Commodore does not require every dent, scratch or damaged part to be repaired. The car will still function as a car with defects in it, and even with some large defects.

1.13 This approach is supported by the legislative history of a local government's maintenance obligation in respect of canals and powers previously exercisable by Harbours Boards and the physical nature of canals and their purposes (including for navigation, ornamental and recreational purposes).

1.14 The decision of the House of Lords in Goodes v East Sussex County Council⁴ is considered to be instructive in providing a basis for Council to adopt the legal position recommended by the City Solicitor in this report. This is so even though Goodes' case dealt with whether the council was liable for Mr Goodes' injuries for failing to take action to maintain a highway (public road).

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⁴ [2000] 3 All ER 603.
1.15 In the Goodes case, Mr Goodes was seriously injured when his car skidded on a patch of black ice on a public road. Mr Goodes sued the council as the highway authority for breaching its duty under s 41(1) of the Highways Act 1980 (UK) to "maintain the highway". According to Mr Goodes, the council, in fulfilling its maintenance duty should have prevented the formation of the ice by gritting the road.

1.16 In the House of Lords' view, on a proper construction of s 41(1) of the Highways Act 1980 (UK), the council's duty to maintain the highway did not extend to keeping it free from ice. Although recognising the duty as an absolute one and in holding that the provision was to be interpreted consistently with the common law obligations of highway authorities, the House of Lords said that to hold the council was obliged to keep its highways free from ice would mean that no council could avoid being in breach of its duty from time to time since the duty was an absolute one and applied to all highways, including pavements and footpaths.

1.17 The House of Lords acknowledged that removing ice and snow from a highway could constitute "maintenance" of the road, if a literal meaning of that term was applied. However, such a construction did not pay due regard to the purpose for which a highway was used. Although the plaintiff was severely injured by reason of the highway authority failing to remove the ice and snow, the (surface of the) highway remained, nevertheless, reasonably passable by traffic.

1.18 To transpose that reasoning to a canal under the CPMA the mere erosion or silting of a part of a canal, even a significant part, is not likely to render the canal unusable for its purpose or subject to failure. This is particularly so when the canal is viewed as a physical thing in its entirety, and not only certain functions considered in isolation.

1.19 Severe erosion or siltation may lead to a canal's failure. However, all that means for present purposes is that Council must regularly address erosion or siltation of a canal so that the totality of the erosion or siltation in the canal, considered with other potential failure influencers, at a particular time does not render the canal liable to failure as a canal. Accordingly, a regular maintenance program involving revetment maintenance and inspection will discharge the obligation, providing Council acts reasonably in such program's preparation and execution.

1.20 Were the obligation under s 121 of the CPMA to be construed as imposing on Council an obligation to address any erosion or siltation, however minor and when it first appears, it would impose a difficult, expensive, and virtually impossible maintenance obligation on Council. Council would need to be constantly monitoring the state of canal banks to detect the first signs of erosion or siltation and to immediately put in place remedial measures to prevent it developing further. The City Solicitor expresses the view, consistent with the approach of the House of Lords in Goodes, that the obligation under s 121 cannot be that strict.

\[^5\] Noting, of course, the differences between a highway that is a road and an artificial channel.
1.21 The Council may make a local law about its maintenance and cleaning obligations under s 934A of the Local Government Act 1993 (LGA). That local law cannot be inconsistent with its obligation under s 121 of the CPMA. Generally, any such law will be in furtherance of that obligation and therefore reflect Council’s desire to achieve a standard of service level that it considers appropriate.

1.22 If the Council acts reasonably in formulating and implementing a maintenance program for canals that sets out maintenance measures that are responsive to actual and predictable events that will impact on the maintenance standard and the maintenance scope, it will generally be able to meet the maintenance standard that is required in order to comply with its legal obligations under the CPMA. The maintenance standard is the “guiding” principle for the development and implementation of such a program. Such a program will also assist the Council in defending any action for damages for civil harm caused by an event which results from an alleged failure by Council to maintain a canal [s 35 Civil Liability Act 2003 (CLA)].

1.23 It needs to be noted the responsibility of maintenance mentioned above is not restricted to erosion or sedimentation but also includes other issues that could be associated with canals such as water quality, preservation of marine life and public safety.

The meaning of "canal" for s 121

1.24 For s 121 of the CPMA a canal includes all the land surrendered as an artificial waterway. Generally a canal will occupy a lot surrendered to the State as part of a development approval.

1.25 Under current standards of statutory interpretation (the purposive approach which is favoured by the High Court) s 121 of the CPMA imposes an absolute obligation (or duty) on Council to, at all times, maintain and keep clean canals in its local government area and access channels for those canals (whether or not those access channels are in the local government's area).

1.26 That obligation is not discharged by the Council merely taking reasonable care to maintain and keep clean the canals and access channels. As is the case with many other activities conducted by Council it cannot excuse its non-compliance with a legal obligation (to keep to its adopted maintenance standard) because it does not have sufficient funds or other resources to meet the obligation. It is noted that Council already considers its maintenance obligations in each and every budget, and deliberates over the level of service during its budgetary process and meetings. This report suggests that some greater scrutiny and methodology can be exercised should the contents of this report be adopted.
1.27 A person may seek a declaration that the Council is required to maintain a canal according to s 121 of the CPMA. Such an application was successful in the Telface Holdings case\(^6\) where there was some dispute or doubt in existence as to who was the party with responsibility to maintain a particular section of canal – the Council or the operator of a commercial marina. The Supreme Court in that case made an order that Council should “maintain” that section of the waterway, although no specific orders were made about what that should entail. The City Solicitor notes that for Council to have developed and put in place a suitable, well considered and appropriate standard for canals and adopted this report and subsequent resolutions which will provide greater guidance to Council officers, that Council would be able to argue to resist any additional obligations being imposed.

1.28 The obligation on Council differs where the concern is damages for civil harm caused by the Council’s failure to maintain the canal. In that regard, the Civil Liability Act 2003 (CLA), in particular ss 35 and 36, applies as the Council is a “public or other authority” in respect of its function to maintain a canal. In that case, Council is entitled to rely on the Act’s excusatory provisions in relation to allocation of its resources in accordance with its budgetary requirements. Those provisions of the CLA are set out below:

**Civil Liability Act 2003 (CLA)**

35 Principles concerning resources, responsibilities etc. of public or other authorities

The following principles apply to a proceeding in deciding whether a public or other authority has a duty or has breached a duty—

(a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising the functions;

(b) the general allocation of financial or other resources by the authority is not open to challenge;

(c) the functions required to be exercised by the authority are to be decided by reference to the broad range of its activities (and not merely by reference to the matter to which the proceeding relates);

(d) the authority may rely on evidence of its compliance with its general procedures and any applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.

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\(^6\) Telface Holdings Pty Ltd v Redcliffe City Council [2002] QSC 426.
36 Proceedings against public or other authorities based on breach of statutory duty

(1) This section applies to a proceeding that is based on an alleged wrongful exercise of or failure to exercise a function of a public or other authority.

(2) For the purposes of the proceeding, an act or omission of the authority does not constitute a wrongful exercise or failure unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.

2 Climate Change Policy

2.1 The science of climate change indicates there will be a change in the environmental conditions affecting waterways on the Gold Coast in a way that is not yet explicitly understood. Council has a stated policy position\(^7\) that Council will be increasingly active in coming years across the breadth of its responsibilities and functions. This will be informed by changing data, new legislation and emerging legal precedent.

2.2 Council has not yet formed a view as to what it will do in the face of climate change. Consideration is yet to be given by Council as to whether and if so how, Council may choose to adopt a community services standard that exceeds the CPMA obligation to maintain a canal. It is not known that Council will underwrite the impacts of climate change. This will be a consideration in a future policy. Accordingly Council is not in a position to make a definitive response at this stage to the potential impacts of climate change on canal maintenance. Council’s Climate Change group considers that Council’s approach should be a precautionary approach taking into account that the environmental conditions will change over time in a way that is not yet defined (an approach endorsed by the City Solicitor).

2.3 Council is monitoring and assessing the potential impacts of climate change including possible storm surge impacts on revetment wall stability. This information will be used to inform Council’s position moving forward with waterways maintenance issues.

2.4 A more proactive approach by Council to the monitoring of canal systems’ revetment wall stability (and other maintenance health indicators set out in the maintenance standard) together with an active Enforcement Regime (discussed below at paragraph 8) will place Council in a position to respond to adverse impacts from climate change in a timely manner.

\(^7\) Gold Coast City Council Climate Change Strategy 2009-2014
3 Maintenance and Management Of Water Quality, Weed And Waste Removal

3.1 It is considered from the City Solicitor’s review that water quality should be such that beneficial uses such as occasional accidental human immersion, boating, adjacent development, and passive recreation (which can be affected by odour, insects and rubbish) should not be adversely affected.

3.2 Council’s obligation to maintain the canal includes monitoring and addressing adverse water quality impacts through causes such as poor flushing (which can cause sedimentation, or affect structural integrity); impacts caused by storm-water and urban runoff, including erosion and sedimentation away from a canal estate development site, impacts associated with imported fill, problems caused by disturbing acid sulphate soils, and ongoing impacts from maintenance, including maintenance dredging.

3.3 Council in its water quality program addresses challenges to water quality arising from natural causes, human intervention or past design. For example, where canal estates are dredged to a depth greater than the adjacent estuary, a sill can be created that inhibits tidal exchange. Single entrance, canals are generally long and narrow with a uniform width and depth. This can promote stagnation, poor water quality and sediment quality. The disturbance of acid sulphate soils can produce sulphuric acid, which then mobilises aluminium which is toxic to fish. This has resulted in fish kills in some situations but such fish kills are not to be considered a significant problem citywide in tidal waterways.

3.4 Whilst the majority of fish kills in the Gold Coast area are considered to have been caused by pesticide contamination, even the most rigorous watchfulness on pollution will not prevent the occurrence, as fish kills can also be caused by natural processes such as freshwater runoff into salty water as a result of heavy rain.

3.5 These waterways phenomena must be appropriately managed in the interests of public health, safety and amenity.

3.6 Many of the mitigation methods necessary to maintain water quality in existing systems are equipment, labour and costs intensive, such as the installation of water aerators and use of buffer strips to act as contaminant filters. A range of expensive machinery is utilised by Council in its waterways maintenance programs.

3.7 Some contaminants arise from run off such as those found in lawn fertilisers and dog excreta. It is extremely difficult for Council to directly control these activities and Council must rely on co-operation from residents. Excessive nutrient load from this type of runoff can lead to excessive aquatic plant growth. This in turn can compromise navigational access from affected areas.

3.8 Public education programs are undertaken by Council to encourage a more thoughtful approach from residents to waterways living; however there is no guarantee of a successful outcome to lessen the maintenance burden. Changes in weather patterns over an extended period of time affecting plant and algal growth, sedimentation, and erosion can also wildly influence the amount of maintenance required to maintain water quality in an artificial waterway, necessitating constant revision of pre-budgeted maintenance schedules.
3.9 Council participates in the Healthy Waterways co-operative program with the State and other local authorities to focus on waterways health issues. The recent downgrading of the waterways health card report for the South East Queensland local government areas, underlines the challenges to water quality presented by natural weather conditions and urban and rural runoffs. It is important that Council’s efforts are sufficiently funded to maintain Council’s existing programs, with sufficient flexibility to respond to changing weather conditions which may necessitate more activity for a particular period.

4. **Should Maintenance include ensuring canal floors remain as constructed**

4.1 Council must undertake maintenance measures, including preventive measures, in respect of the canal floor to meet the maintenance standard. It is reasonable to expect that, generally, the floor must be maintained to close to its original profile to meet the maintenance standard and having regard to the maintenance scope. This expectation needs to be cognisant of other natural factors which could influence the ongoing profile such as bedrock.

4.2 Council should determine the types of events, including their frequency, in relation to the floor of a canal which if not attended to would mean the canal, as a whole, does not meet the maintenance standard. As an appropriate response (including as a preventive maintenance measure), the Council should, as part of a regular maintenance program, examine the state of the canal floor to determine its present state and any possible threats to the state of the floor, as against the maintenance standard and, if necessary, take preventive and, if necessary, remedial steps.

4.3 All decisions should be documented to show how Council arrived at any decision made. This action forms part of the process required to develop and reach the required maintenance standard, which will differ over the vast number of canals which have differing natural actions affecting them.

4.4 Dredging should be undertaken as a preventive and, if necessary, remedial, maintenance measure to ensure that sedimentation does not affect the maintenance of the canal to the maintenance standard.

4.5 The regularity with which the Council must dredge a canal will depend on, among other factors, the state of the floor of the canal at a particular time, its sedimentation characteristics and the occurrence or likely occurrence of reasonably expected (but not abnormal) events. Other factors such as water quality could also be part of any decision making process.

4.6 **The presence of erosion in a particular location (which may undermine a revetment wall) does not necessarily mean the Council has not maintained a canal in accordance with s 121 of the CPMA and is therefore liable for the cost of private revetment wall repairs.**
4.7 However, as erosion may undermine the foundation of a canal wall or other infrastructure within the surrendered lot, preventive maintenance measures may be necessary so that the maintenance standard is not ultimately breached should the canal wall (as a whole, as opposed to a particular property’s wall in the canal) or other infrastructure fail due to excessive erosion. An assessment of these events, the subsequent remedial action required and an identification of who will be responsible for undertaking the remedial action will require a case by case assessment.

4.8 The preventative actions available to Council can include the giving of a notice, or undertaking, works at the expense of a property owner. This responsibility must be read in conjunction with the earlier revetment wall report. The City Solicitor considered s 179 of the Property Law Act 1974 which states:

*Property Law Act 1974*

> For the benefit of all interests in other land which may be adversely affected by any breach of this section, there shall be attached to any land an obligation not to do anything on or below it that will withdraw support from any other land or from any building, structure or erection that has been placed on or below it.

It is considered that this provision does not impose an obligation on the Council to provide support to any revetment wall on adjoining land. It could apply however, in the event that Council were to take positive action to withdraw support from adjoining land. Thus the importance of a maintenance standard and compliance with that maintenance standard, which will ensure Council does comply with its statutory obligations.

5. A common question and point of discussion for Council Officers is, whether there is any obligation to provide navigable access within the canal thence to the sea?

5.1 The land which formed a canal from land surrendered under the Canals Act 1958 (which is now repealed) or s 116 of the CPMA is a public waterway. The Council's maintenance obligation under s 121 of the CPMA will require it to undertake maintenance measures to ensure the maintenance standard is met in relation to a canal as has been discussed above in this report. An element of that maintenance standard concerns the use of the canal by members of the public (in common) for reasonable purposes and in a reasonable way as a public (navigable) waterway.

5.2 It is suggested that it was Parliament's purpose to extend a right to the public which is identical to the public's common law right of navigation to a canal that is a public waterway. The public's use of the canal may not be anything more than it enjoys under the common law right of navigation. At common law, a navigable river is only navigable if it is, in fact, physically capable of being navigated.

5.3 The Council's maintenance obligation under s 121 of the CPMA is likely to require it to maintain a canal to a maintenance standard that ensures the canal may be navigated by vessels of a draught that, at the time the canal was constructed, were able to reasonably navigate the canal. Consideration of tidal movement and height is also a relevant consideration.
5.4 Council is not in breach of its maintenance obligation if, at times, a canal is not navigable by all vessels for which the canal was constructed. It would only be if, by reason of a failure to maintain the canal, the canal was not able to be navigated for a long period of time that Council could be said to have not met the maintenance standard and, therefore, its obligation under s 121.

5.5 Council is not required to alter or improve a canal to ensure that it is navigable for vessels for which the canal was not designed. The Council's maintenance obligation is only that; it does not carry with it any further obligation than that the Council must ensure that a person may reasonably navigate the canal and nearby waters.

5.6 If the Council has concerns in this area, it may make a local law about the movement and use of vessels in the canal under s 934A of the LGA. Subject to the Transport Operations (Marine Safety) Act 1994 the Council may prohibit the use of certain vessels in a canal. A public right of navigation may be abrogated by statute, particularly where it is a statute that creates a public waterway.

5.7 On occasions it is discovered that a canal has not been constructed according to its design drawings (for example areas of the canal floor are at a higher depth than indicated on the plans caused by failure to remove construction material, such as the earth bund used to keep waters out of the canal construction area). In this instance the canal may still operate as a canal and the Council's maintenance obligation under s 121 of the CPMA will only extend to maintaining the canal with reference to that "as constructed" state.

5.8 Council is not under an obligation to provide navigable public waterways or even functioning waterways as a primary responsibility or to correct the "defects" of a developer.

6. Maintenance of Revetment Walls – Canals

6.1 It is apparent that revetment walls in the Gold Coast local government area have variable life-spans. Average revetment economic life-spans are much shorter than that for cottages (30 years) or more substantial residences (50 years) for the area. An experienced local contractor has reported that some walls show "distress and distortion after 10 years, some clear structural damage in 20 years; and major repairs or replacement in 30 years." 

6.2 The costs of revetment wall removal and replacement in 2010, are significant, and in some instances beyond the immediate financial resources of a householder. A revetment reconstruction (at 2009 cost estimates) is in the range of $A60,000-$120,000 for a medium (20m) to larger sized frontage, and average around $3,000 per metre for a complete removal and reconstruction.

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8 Under the Local Government Act 2009, a local government has a general local law making power (chap 3, pt 1).
10 Davis, Alan J., 2009
6.3 Reasons for revetment wall failure are many and varied, one of which is failure of wall foundations. Foundations, in turn, interface with the canal floor. The maintenance of the canal floor profile can have implications for revetment wall stability and longevity.  

Figure 1

![Revetment wall failure on beach profile canal](image1)

Figure 2

![Residential lake subdivision revetment wall failure](image2)

11 Davis, Alan J “When Retaining walls Come Tumbling Down”, Alchar Consultants 2002 page 100-102
6.4 The obligations of Council and private landowners under section 121 of the CPMA to maintain a revetment wall adjoining a canal has been addressed in the Report to Council of 12th November 2007. The conclusions of that report should be referenced in relation to those obligations, and Council’s resolution as to its policy position is set out above (paragraph 4 page 3) in this report.

7. **Facilitation of Revetment Wall Protection – Rock Armour and Gravel Blanket**

7.1 One recognised method to provide temporary support to an existing revetment wall which has been adopted by Council in its own maintenance program is to place a rock armour and gravel blanket (also known as a “rock buttress”) against the face of an existing revetment wall for support. Although this is not seen as a permanent fix for an unstable revetment wall, it is a useful tool in supporting the wall in place, whilst more permanent measures are planned and implemented. In a suitable location (as may be recommended by a registered engineer) this technique may extend the life of an existing wall for a significant number of years.

7.2 Council’s asset owner has taken steps to prepare a draft standard drawing for the Runaway Bay canal system, which can be applied to a site with certification of its suitability for specific site conditions from the applicant’s registered engineer. In light of Council’s obligations to carry out works in an emergency situation (discussed below at paragraph 9) the City Solicitor considers it is prudent for Council to facilitate the process of revetment wall owners carrying out support works to existing walls which may be under stress, for a variety of reasons.

7.3 This will assist private owners in repairing their walls by reducing uncertainty as to Council’s requirements for the works as asset owner of the waterway, and attendant delays and will also assist Council by reducing the instances where emergency works must potentially be carried out at significant cost to the public purse, which must then be recovered from the landowner by way of a special charge.

7.4 To this end it is proposed that in instances where Council’s Flood Management group endorses the use of rock armour and gravel blanket works in a canal system, that Council’s Technical Services branch be instructed and authorised to prepare standard rock armour and gravel blanket works drawings appropriate to the particular system, and submit them through the existing corporate process to include them in Council’s Land Development Guidelines to be made available for use by the public where such use is certified by a registered engineer as being suitable for the specific site conditions.
8. Regulation - maintenance of privately owned revetment walls – canal

8.1 As the Council has a power to regulate the construction or maintenance of a wall (including under enforcement powers under the Building Act\textsuperscript{14}, the Sustainable Planning Act 2009 or the LGA), the circumstances (including the purpose of the power and the danger posed by the wall) may dictate that there is a public law duty on the Council to exercise its power of regulation. There is, then, a statutory duty to exercise the power (Pyrenees Shire Council v Day (1998) 192 CLR 330). However, in the case of a revetment wall on adjoining land, mere foreseeability of harm is not sufficient to enliven the duty, particularly where the Council has no control over the adjoining land. A relevant issue may be whether the Council is aware of a particular risk posed by a revetment wall and fails to exercise a power to remove that risk.

8.2 If the Council has the control of a foreshore in a canal, the Council’s risk may be increased by reason of its control of that area. However, that control is simply a matter to be considered in determining whether there is a duty, and if so, whether that duty has been breached.

8.3 Sections 35 and 36 of the CLA are now relevant as the Council is a "public or other authority" under that Act. Section 35 sets out various factors which determine whether a public or other authority is subject to a duty of care or has breached that duty (including the availability of resources to carry out functions and whether the functions are to be exercised by reference to a broad range of activities). Importantly, in determining whether there is a duty or a breach, the Council may rely on evidence of its compliance with its general procedures and any applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.\textsuperscript{15} Also, s 36(2) says in a proceeding based on an alleged wrongful exercise of or failure to exercise a function of a public or other authority, an act or omission of the authority does not constitute a wrongful exercise or failure unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.

8.4 Under s 934A of the LGA the Council may make a local law about the obligation of the owner of a structure in a canal, including, for example, obligations about maintaining the structure in a safe condition.\textsuperscript{16} An owner of a structure is the holder of a development permit under the Sustainable Planning Act 2009 or such permit as granted by prior legislation, to build the structure or the owner of the land receiving the benefit of the structure or to which the structure is connected. The Council may make a local law that requires an owner of the structure to keep the structure in a structurally sound condition, including doing all things necessary to maintain the structure.

\textsuperscript{14} See generally ss 248 to 253 Building Act 1975 and ss 1066 to 1069 Local Government Act.

\textsuperscript{15} Section 35(d) Civil Liability Act 2003.

\textsuperscript{16} Under the Local Government Act 2009, a local government has a general local law making power (chap 3, pt 1).
8.5 As a result of section 124 of the *CPMA*, if the foundations of a revetment wall that extend a number of metres into the canal are structures that are physically connected to adjoining land or benefit adjoining land, the person who owns the land or who receives the benefit of the foundations must maintain the foundations in a safe condition under s 124 of the *CPMA*. The Council may make a local law about the obligations of such a person in relation to the maintenance of those foundations. Should Council resolve to accept the recommendations made in this report, then a local law shall be presented to Council for consideration in the immediate future.

8.6 Although a structure, including foundations, may be part of a canal, that does not displace the obligation of a person other than Council to maintain it, including under a relevant local law.

8.7 Control of a foreshore (that is, land between ordinary high- and low-water marks at spring tides) may be placed in the hands of the Council. "Control" (including management) of itself does not mean that the Council has an obligation to maintain the foreshore, including a revetment wall on the foreshore. However, as the Council may manage and regulate the use of a foreshore, it may, under a local law place an obligation on the "owner" of a structure to maintain it.

8.8 It would be appropriate for Council to impose specific obligations on adjoining landowners to maintain revetment walls under a local law (rather than merely relying on existing regulatory and enforcement powers dealing with the failure of structures), providing such a law does not purport to regulate "development" under the *Sustainable Planning Act 2009*. This would provide Council an opportunity to clarify the detail of the obligations on various parties by using terminology that is not found in the more "broad brush" State legislation. This will assist property owners to understand the scope of their obligations and that a failure to comply with those obligations may lead to enforcement action by Council. This will also assist to clarify the breach of any obligations for the purpose of justifying the imposition of a special levy where necessary.

8.9 As Council’s duty is likely to arise and be breached only in circumstances where an adjoining landowner has not maintained the wall, an education campaign encouraging voluntary action would not satisfy the Council’s duty. Nor would regulatory steps *per se*.

9 As the revetment walls in the City are ageing the City Solicitor suggests that it is only a matter of time when Council will need to decide when Council should carry out works on privately owned revetment walls.

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17 Section 936 Local Government Act.
18 See Leichardt Municipal Council v Montgomery (2007) 230 CLR 22 at [50] per Kirby J. There, his Honour was speaking in relation to the control of a public road by the council.
9.1 Under chapter 15, pt 4, div 1 LGA the Council may perform work for an owner or occupier of land, where the owner or occupier has failed to carry out the work, and recover the cost of that work, including as a rate, from the owner or occupier. The cost also becomes a charge on the land (see ss 1066 to 1068).

9.2 There are two main instances where Council has the power and, possibly, the obligation to exercise its powers of regulation in the public interest by way of carrying out emergency works and levying a special charge on the benefitted land.

9.3 The first is where a revetment wall poses an immediate threat to public safety or property. It is more likely to be the case that a duty to carry out emergency works will be said to have arisen in such a case. This may apply to a revetment wall for a single property.

9.4 The second is where there is no immediate threat to public safety or property however, the condition of a series of revetment walls means that the non-maintenance of the walls may contribute to a failure of the maintenance standard in respect of the canal.

9.5 It should be noted however, that Council may only recover the cost from an affected resident if there is law to that effect or if the Council is subject to an action for failing to comply with its maintenance obligation. Through the Building Act and LGA the Council may issue an enforcement notice in relation to a structure and, if the owner fails to undertake the necessary works, the Council may enter the land and carry out the work. The cost of the work is a debt owed to the Council which the Council may recover as a rate and is a charge on the land. In some cases, a failure to carry out “emergency” works may give rise to a breach of a duty of care by the Council in relation to personal injury or property damage.

9.6 It is also noted that, as discussed above, a local law which clarifies the specific obligations of a property owner in relation to revetment wall maintenance would also strengthen Council’s position in proving that Council’s enforcement steps and subsequent works were properly undertaken so as to justify the special charge.

9.7 The Council should develop a policy regarding the physical circumstances in which emergency works will be carried out by Council and the scope of such works, which is clear and unambiguous.

10. Regulation - maintenance of other structures such as pontoons and jetties – canal

10.1 Council does not have a general obligation to regulate the maintenance of other structures such as pontoons and jetties installed in canals.

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19 Enforcement orders can be sought under the Sustainable Planning Act 2009 (chap 7, pt 3, divs 2 (Show cause notices) and 3 (Enforcement notices)).
20 Sections 248, 249, 252 Building Act 1975; ss 1066 to 1068 Local Government Act.
10.2 However, the Council may, under a local law made pursuant to s 934A of the LGA, regulate the maintenance of such structures.21 A Local Law has been prepared to address these issues, and if this report is adopted, will be presented to Council for approval in the immediate future.

Dangerous Pontoons or Jetties

10.3 There is one instance however, where Council may have the power and obligation to take regulatory or even practical remediation steps. Similarly to privately owned revetment walls, where a pontoon or jetty poses an immediate threat to public safety or property, it is more likely to be the case that a duty to take steps to remove that threat will be said to have arisen for Council.

10.4 It is likely that a pontoon or jetty will be considered to be a “structure” for the purposes of the Building Act, in the sense of being “constructed”, “put together” or “built” and fixed into place by some means. Similar to the position in relation to privately owned revetment walls, through the Building Act and LGA the Council may issue an enforcement notice in relation to a structure and, if the owner fails to undertake the necessary works, then Council may enter the land and carry out the work.22 The cost of the work is a debt owed to the Council which the Council may recover as a rate and is a charge on the land.23 In some cases, (especially where Council is on notice of the emergency) a failure to carry out “emergency” works may give rise to a breach of a duty of care by the Council in relation to personal injury or property damage.

10.5 Council’s response in the enforcement notice will need to be assessed on the basis of the type of danger or threat to safety that is posed in the circumstances. For instance, it may be appropriate for Council to require an owner to temporarily secure a structure to prevent it from coming loose and damaging other property or causing personal injury, with a further requirement in the enforcement notice for a more permanent solution to be submitted to Council for approval, and carrying out by the owner. In other more extreme instances, the structure may need to be demolished and/or removed. It would be up to the enforcement officer to make an appropriate determination depending on the level of risk presented.

Illegal Pontoons or Jetties

10.6 In the event that illegal tidal works are carried out by a member of the public, Council has enforcement powers in relation to a breach of the Sustainable Planning Act 2009 for carrying out assessable development without a permit, or in breach of conditions.

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21 Under the Local Government Act 2009, a local government has a general local law making power (chap 3, pt 1).
22 Enforcement orders can be sought under the Sustainable Planning Act 2009 (chap 7, pt 3, divisions 2 (Show cause notices) and 3 (Enforcement notices)).
23 Sections 248, 249, 252 Building Act 1975; ss 1066 to 1068 Local Government Act.
Cross-over with State Powers

10.7 The State also has regulatory powers to issue tidal works notices for illegal, dilapidated or dangerous tidal works, under section 60 of the CPMA. That section provides (in part):

(1) If, in the chief executive's opinion, tidal works need repair, are abandoned or should be removed, the chief executive may give a notice (a tidal works notice) to 1 or more of the following—

(a) the person responsible for the tidal works; or
(b) another person who, under section 124, must ensure a structure that forms all or part of the tidal works is maintained in a safe condition.

(3) The notice may direct the person within the reasonable time stated in the notice to take stated reasonable action to—

(a) repair the tidal works to the chief executive's reasonable satisfaction; or
(b) remove the tidal works and restore the site, as nearly as practicable, to its former condition.

10.8 The powers of Council and the State are exercisable independently of each other. Accordingly, the Council may, and should in the circumstances stated in para 7.3 (an immediate threat to public safety or property) exercise its enforcement powers in relation to illegal tidal works, regardless of whether the State issues a tidal works notice under the CPMA.

11. Foreshores- Council control of use

11.1 A canal may include a foreshore under the LGA. That foreshore may be placed under the control of the Council under s 936 of that Act. Schedule 2 of the LGA defines “foreshore” as the land lying between high –water mark and low water mark at ordinary spring tides. In practical terms this means that in some instances (where the ordinary high water mark and low-water mark at spring tides rest against a revetment wall itself) there will be no useable foreshore. In other cases the foreshore may be small.

11.2 However, the public only has a right to navigate in a canal, as a public waterway. But, this right exists because of s 116 of the CPMA. The public does not, assuming there is even such a right at common law, have a right to pass and repass over the foreshore of a canal. Unlike s 116 of the CPMA, there is no provision in the CPMA (or any other Act) creating or extending a right of passage over the foreshore.

11.3 There is no legal certainty that a Proclamation made in 1984 placing the control of foreshores in the City of the Gold Coast in the hands of the Council, under s 45 of the LGA, applied to canals that existed at that time. Further, the Proclamation could only have applied to foreshores that were within the City of the Gold Coast at the time of its
making and definitely not to canals built after 1984, nor in the area previously under the control of the Shire of Albert.
11.4 To facilitate the operation of any local law which Council may wish to make dealing with the control of the foreshore (such as prohibiting or regulating activities taking place there), all foreshores of a tidal body of water (including a canal) in Council’s local government area should be placed under Council’s control by a gazette notice effected under the *Local Government Act 1993* (or, on its introduction, the *Local Government Act 2009*).

11.5 Control of a foreshore does not impose an obligation per se on Council to maintain any improvement on the foreshore. Further, there is no requirement for the Council to exercise control of a foreshore in a particular way. However, control of the foreshore may give rise to a legal liability if that control is exercised in a negligent manner.  

11.6 Council should undertake a suitable maintenance program which includes managing the removal of dangerous obstacles that are deposited on the foreshores without the fault of any person, and which may pose a safety threat to boating or other pedestrian traffic on the foreshore.

12. Natural waterways

12.1 There is generally no basis for imposing on Council a responsibility for the maintenance of a revetment wall in a natural waterway which adjoins privately owned property. An exception to this general rule may be when Council is the lessee of a lease, or the trustee of a reserve, under the *Land Act* in respect of land in a natural tidal waterway.

12.2 In the public interest, Council has operated a “Waterfront Assistance Scheme” whereby impecunious or disadvantaged owners of land fronting natural waterways may seek to have Council carry out repair works, at a cost to the Owner. In 2009 this scheme operated at a low scale, and with a modest budget.

12.3 Land below high-water mark is the property of the State, unless it is inundated land or someone else has a registered interest in the land. As a tidal waterway, the land in the waterway below high-water mark may not be within the local government’s area.

12.4 However, control of a foreshore may be placed in the hands of the Council. In that case, Council may manage and regulate the use of the foreshore, as described above in paragraph 11.

12.5 In the event that Council chooses to exercise particular controls over the use of a canal foreshore (including for instance the requirement for an owner of property adjacent a State controlled natural waterway to maintain a revetment wall), then a local law will be brought to Council for further detailed consideration in this regard.

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26 See, however, the Civil Liability Act 2003.
27 “Inundated land” under the Land Act 1994 means freehold land that, through the excavation of the land or other land, has become inundated by water subject to tidal influence, but does not include a canal, or part of a canal, within the meaning of the *Coastal Protection and Management Act 1995*.
28 Section 9(1) Land Act.
29 The “foreshore” is the land between high- and low-water marks at ordinary spring tides (sch 2 Local Government Act).
30 Section 936 Local Government Act.
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12.6 Further, where relevant, Council may be subject to s 179 of the PLA which provides that an owner of land may not withdraw support from any other land (see paragraph 4.8 above):

12.7 As discussed, this provision may apply where Council takes positive action to withdraw support from adjoining land. It does not mean, of itself, that Council must take steps to prevent any erosion that may occur on its land that undermines the foundation of a channel or lake wall.

12.8 Also Council does not have a general responsibility in relation to the maintenance of other tidal works or structures such as pontoons and jetties in a natural tidal waterway. Section 124 of the CPMA, as discussed above, may apply, requiring the "owner" of the structure to maintain it in a safe condition.

12.9 A list of natural waterways in the Gold Coast area is attached as Schedule 2.

13. Local Laws

13.1 If Council were to consider encouraging private persons to maintain their revetment walls and other tidal structures in a structurally sound condition by way of Regulation as described in paragraphs 8 and 10 above, and to generally regulate the use of public structures in tidal waterways is desirable, the City Solicitor has considered that it is necessary and prudent for Council to enact a Local Law or Laws potentially dealing with these issues including:

a) Council’s maintenance role in maintaining the Maintenance Standard for Canals.
b) Requirements for an owner of lands on which a revetment wall is located, or the owner of a property benefitted by a revetment wall to maintain the revetment wall in a safe condition, and in accordance with Council’s Maintenance Standard.
c) Requirements for such owners of benefitted properties to maintain the foundations of a revetment wall extending into the canal in a safe structurally sound condition.
d) To take immediate and longer term actions to secure a structure to prevent injury to persons or property, or demolish or remove a structure.
e) If works are carried out by Council due to a failure of the owner to carry out the works, the cost can be recovered as a rate, and powers to defer collection of the rate in certain circumstances.
f) When offering a property on which a revetment wall is located, or which has the benefit of a revetment wall, for sale, to provide the purchaser with a condition report on the wall certified by an RPEQ engineer, prior to entering into the contract, and in the event of failure to do so to release the purchaser from the contract if requested to do so by the purchaser prior to settlement.
g) That the requirement for a sellers’ report on revetment wall condition be noted on the property rates card.
13.2 The requirements of the owner of a private pontoon or jetty may include then:

a) to maintain the structure in a safe condition,
b) to take immediate and longer term actions to secure a structure to prevent injury to persons or property, or demolish or remove a structure,
c) responsibilities for abandoned structures

13.3 The City Solicitor advises the adoption of these local laws to provide guidance to citizens as to their rights and responsibilities, and to protect Council’s revenue base in the event that enforcement action becomes necessary, and/or Council is required to carry out emergency works (in accordance with an adopted policy position), and costs need to be recovered from a property owner as a special rate.

13.4 In the event that Council resolves to adopt this report a draft local law or laws will be presented to Council in a further report for detailed consideration by Council.

14 Regulation of Vessel Speed and No Dangerous Wash Requirements

14.1 There is already provision under State maritime safety legislation (Maritime Safety Queensland Gazettal, Maritime Safety Queensland Act 2002 and Maritime Safety Queensland Regulation 2002) to regulate vessel speed and a "no dangerous wash" policy in Gold Coast waters.

14.2 These matters are able to be enforced by the State agencies of MSQ and the Queensland Water Police should Council consider that further enforcement action is desirable.

6 STATUTORY MATTERS

Coastal Protection and Management Act 1995 (CPMA)
Local Government Act 2009
Local Government Act 1993 (LGA)
Local Government Act 1936
Sustainable Planning Act 2009
Canals Act 1954 (repealed)
Civil Liability Act 2003 (CLA)
Transport Operations (Marine Safety) Act 1994
Harbours Act 1955 (repealed)
Building Act 1975 (Building Act)
Property Law Act 1974
7 CORPORATE/OPERATIONAL PLAN

Key Focus Area: 1 A city leading by example
1.1 There are strong foundations for a sustainable city
1.1.1 Encourage consideration of the social, environmental and financial impact that our
decisions will have on the city now and in the future
1.4 We respond to current and emerging challenges by working together.
1.4.1 Undertake environmental scanning and scenario planning as part of city-wide planning
processes
1.4.2 City-wide planning responds to the risks and opportunities posed by emerging
challenges such as climate change, city growth, economic fluctuations and
future sustainability as well as disaster events
1.4.3 Encourage the community to actively engage in planning for and responding to city
challenges

Key Focus Area: 2 A city loved for its green, gold and blue
Our targets for 2014 will include progress towards:
consistently achieving the highest level (i.e. “A” grading on the Environmental Health
Monitoring Program) on city waterway report cards for all natural and constructed waterways
2.5 Water and waterways across the city are protected and enhanced.
2.5.1 Maintain healthy catchments, waterways, lakes and wetlands in partnership with the
community and State water interests.
2.5.3 Manage waterways to provide access to safe water-based recreation.
2.5.5 Improve waterway resilience to increase recovery potential from the impact of floods
and storm surge

Key Focus Area: 3 A city connecting people and places
3.2 Public transport and other environmentally-friendly modes of travel are attractive and
desirable options for people to use.
3.2.5 Continue to review the potential for the use of the city’s waterways as a public transport
option.

Key Focus Area: 4 A safe city where everyone belongs
4.2 We are a safe and secure community and people live and visit without fear.
4.2.1 Promote the safe use and enjoyment of public facilities and spaces.
4.2.6 Maintain high standards of amenity and safety through appropriate local laws and
compliance programs, which take account of the growth and development of the city.

Key Focus Area: 5 A City With A Thriving Economy
5.4 The lifestyle and opportunities are seen as advantages
5.4.1 Promote the city globally as a destination recognised for its business opportunities,
lifestyle, liveability, sustainability and its natural and built environment

Key Focus Area: 6 A city shaped by clever design
6.3 Infrastructure is planned and delivered to meet the needs of the growing community;
6.3.2 Deliver Council’s capital works program to keep pace with community growth and
needs
8 COUNCIL POLICIES

Policy 11: Land Development Guidelines, Section 3 – Engineering Infrastructure – Design Requirements

Council’s Climate Change Strategy 2009-2014

9 DELEGATIONS

Not Applicable.

10 BUDGET/FUNDING

Engineering Services will provide a further report as to budgetary requirements arising from this report.

11 COORDINATION & CONSULTATION

Legal Services has consulted with Engineering Services, Technical Services, Flood Management Group, Health, Regulatory and Lifeguard Services and Climate Change Group in gathering information for this report.

12 TIMING

Not applicable.

13 STAKEHOLDER IMPACTS

Council and private land owners will be aware of their respective roles and responsibilities in providing a sustainable future for attractive and safe waterfront living on the Gold Coast.

14 CONCLUSION

Canal-front lands

Landowners have a primary responsibility to ensure that structures in a tidal waterway that benefit their properties are maintained in a safe condition. If landowners fail to do so, resulting in either deterioration of the revetment walls or other structures in a canal to a point where the operation of the canal as a canal is threatened, or if a structure on an individual property represents a threat to public health and safety, Council may have no option but to carry out the works itself, and levy a special charge on the benefitted property.

It may be considered preferable for Council to be pro-active and use its regulatory powers, for instance by way of taking steps under a local law, the Building Act 1975 (Building Act) or Sustainable Planning Act 2009 (as may be appropriate in the circumstances) to encourage landowners to maintain structures in the canal that benefit their properties in a safe condition. The passing of a local law dealing with these matters is recommended, to enable landowner’s obligations to be set out with clarity and detail using relevant terminology.
Council’s powers of regulation in relation to canal front property and structures can be exercised independently of any State powers.

Council has an obligation to maintain a canal in a condition that preserves its function as a canal, and this includes taking preventive and remedial steps. This requires that Council set a standard for the functional operation of the canal, and generally maintain the standard. This is likely to include both dredging and erosion controls as well as other measures. Disrepair of a part of the canal does not mean that Council has not fulfilled its maintenance obligations. Council does not have a positive obligation to provide support for adjoining lands.

Although maintaining navigable access for vessels which could navigate the canal at the time of its construction is desirable, Council would not be in breach of its maintenance obligations by reason of the canal not being navigable to such vessels, unless this were to continue for a long period of time. Council has no obligation to alter or improve a canal to ensure it is navigable for vessels larger than those for which it was originally designed.

A summary table of the Council’s legal responsibilities and recommendations as to what Council now needs to do to comply with its legal responsibilities is attached as Schedule 1.

A list of statements setting out Council’s position on potential waterways responsibilities and liability issues, as set out in this report, is set out in the Executive Summary at paragraph 2 on pages 1 and 2 of this report.
Council does not have any general obligations or powers in relation to maintenance of these waterways, as generally (with the exception of inundated land or land subject to some other registered interest) all land below high water-mark is the property of the State. Even if Council is granted control of the foreshores of such waterways, this does not bring with it an obligation to maintain the foreshore. Duty of Care issues under the general law of negligence may still arise where Council has control of the foreshore.

15 RECOMMENDATION

It is recommended that Council resolves as follows:

1 That the contents of the City Solicitor’s report on Maintenance of Gold Coast tidal waterways be noted;

2 That the report is noted to be “Confidential” on the basis that it is subject to legal professional privilege as it contains legal advice, however it is considered that it is in the public interest for the information in the report to be made available to the public, and accordingly that:
   a Legal professional privilege is hereby waived, and the report be marked Non-Confidential and
   b a copy be provided for public scrutiny on Council’s website.

3 Council notes that this report has been prepared by the City Solicitor after considering the potential impacts of aging infrastructure with the canal environment and notes that its present maintenance regime whilst complying with its legal obligations requires a review to take into account potential impacts of that aging infrastructure.

4 That Council’s Engineering Assets and Planning branch in consultation with Health Regulatory and Lifeguard Services branch and any other relevant branch be instructed and funded to prepare
   a a Maintenance Standard for the proper functioning and Operation of the Canal systems in Council’s local government area, taking into account the existing standards applied and any further matters raised by the City Solicitor’s Report;
   b Criteria and parameters in which Council may consider conducting
      i emergency works,
      ii or other works on private lands adjoining a canal (to prevent a system failure)

5 That a further Report be prepared by Engineering Assets and Planning in consultation with Health Regulatory and Lifeguard Services branch and any other relevant branch to Council to advise on the completion of the Maintenance Standard and any further budgetary requirements arising from it;

6 That Council endorse the inclusion of a Standard Drawing for Rock Armour and Gravel Blanket for specific canal systems in Council’s Land Development Guidelines and that Technical Services and Flood Management be instructed to undertake the necessary studies and prepare the necessary reports and drawings for this purpose.
7 Council has considered the contents of this report and the various issues raised and notes that is has no specific legal requirement for a local law for the purpose of meeting its obligations. Council considers however that in the public interest it should consider accruing powers and taking a more pro-active role in regulation and monitoring of the coastal environments in which ageing infrastructure and climate change factors may impact.

8 That Council endorse the preparation of a local law or laws to regulate the maintenance of revetment walls and other privately owned structures in Gold Coast waterways, and that the City Solicitor bring a further report to Council to approve a local law or laws for this purpose.

9 That the City Solicitor be directed to seek a gazettal for Council to control all canal foreshores of canals located within the Gold Coast region to support the enactment of a local law.

Author: David Montgomery
City Solicitor
16 March 2010

Authorised by: Joe McCabe
Director City Governance
## Schedule 1 – Waterways Maintenance for Tidal waters – Canals

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<tr>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Maintain a Canal as an entirety in an operating condition and keep it clean</td>
<td>Council</td>
<td>◆ Rubbish Collection and removal</td>
<td>➢ Erosion Management Program - canal profile bathymetric Survey Program; with support works/ rock replenishment works undertaken for eroded areas</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>◆ Vegetation Management (land and aquatic)</td>
<td>➢ Canal Profile Maintenance Program for bed and banks of rock walled canals as well as beach canals</td>
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<td>4</td>
<td></td>
<td></td>
<td>◆ Sedimentation Management: Dredging and beach profile replenishment to at or near “as constructed “ profile”</td>
<td>➢ Revetment Wall Condition Inspection and Monitoring Program</td>
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<td></td>
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<td></td>
<td>◆ Banks and wall/floor Profile Maintenance by way of rock armour and gravel blanket protection*</td>
<td>➢ “GCC Canal Maintenance Standard” to be formalised with supporting reasons and documented, setting out maintenance health indicators, and standards required to keep a functioning and structurally sound canal system</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>◆ Sedimentation/ Silt removal and disposal to generally maintain navigable access*</td>
<td>➢ Budgets adjusted to meet staffing requirements for application of GCCC Maintenance Standard</td>
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<tr>
<td></td>
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<td></td>
<td>◆ Maintenance of rock training walls</td>
<td>➢ Carry out system-wide preventive maintenance works</td>
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<td></td>
<td>◆ Flood Storage Monitoring</td>
<td>o to maintain a functioning canal system and avoid system</td>
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<td>◆ Removal of Significant Debris placed by flood or storm-tide</td>
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<td></td>
<td>◆ Water Quality Monitoring Program following events with adverse impacts, such as flooding leading to fish kills</td>
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</table>

*Unauthorised release of confidential reports or information may be an offence under the Local Government Act 1993 and other legislation and could result in disqualification from office and a penalty of up to 100 units.*
|   | Maintain Revetment Walls in a Safe Condition | Benefitted property owner | *Carried out on a 3 year cycle | failure  
|   |                                             | Owner of dry Lot on which wall is located |  | o to maintain the system in a sound structural condition, in accordance with the adopted GCCC Canal Maintenance Standard  
|   |                                             | |  | o to be funded by special levy on benefitted properties  
| 1 |                                             | ♦ Regular Monitoring, including wall toe and foundations which may extend into the canal  
|   |                                             | ♦ Inspections after storm or flood events  
|   |                                             | ♦ Keep Weepholes Clean and open  
|   |                                             | ♦ No super loading by development too close to wall  
|   |                                             | ♦ No anchoring or attaching structures to the revetment wall  
|   |                                             | ♦ Repair/ Replacement of wall when required  
|   |                                             | ♦ If repair or replacement required, make “prescribed tidal works “ development application for Operational Works to Council  
|   |                                             | ♦ Temporary works such a rock armouring requires  
<p>|   |                                             | ➤ (Proposed Requirement under Local Law ) : RPEQ Engineer’s report certifying wall stability when offering property for sale |  |</p>
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<td></td>
<td>“prescribed tidal works” application to Council in accordance with Council’s required standard design</td>
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<td></td>
<td>♦ Owner’s RPEQ Engineer’s report on wall stability when proposing development on the lot (Canals and Waterways Code)</td>
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<td>♦ (Recommended): Purchasers obtain RPEQ engineer’s report on wall stability as part of pre-purchase inspections</td>
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<tr>
<td>1.</td>
<td>Maintain Revetment Walls located on or benefitting Public Lands</td>
<td>Council</td>
</tr>
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<td>5.</td>
<td>Generally Maintain Navigable Access in canal systems</td>
<td>Council - in canals</td>
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<td></td>
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<td>♦ on a 3 year cycle, as constrained by</td>
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<td>♦ system wide requirements;</td>
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<td>♦ budget</td>
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<td></td>
<td>➢ Maintenance Standard to be formally adopted requiring maintenance of navigable access generally for vessels of a draught that were reasonably able to navigate the canal at the time of construction</td>
</tr>
</tbody>
</table>
|   | Carry out Emergency Works on private or public lot where is a threat to public safety or property | Council | NA- no specific revetment wall or other structures program in place | Decide upon and document a threshold standard of physical conditions which would exist whereupon Council would consider itself bound to carry out emergency works in the public interest, being either  
|   |   |   |   | o Where a structure poses an immediate threat to public safety or property  
|   |   |   |   | o Where non-maintenance of the walls may lead to failure of the maintenance standard (once a local law is in place to this effect)  
|   |   |   |   | o Costs can be recovered from an owner where  
|   |   |   |   | ▪ There is a law to that effect  
|   |   |   |   | ▪ Council is subject to an action for failing to meet the Maintenance Standard  
|   |   |   |   | ▪ Building Act or LGA Enforcement proceedings outstanding and Council carries out the work  
<p>|   |   |   |   | Works might include removal of |</p>
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<tbody>
<tr>
<td>7.</td>
<td>Carry out Emergency Works on Private Lot under CPMA</td>
<td>Owner</td>
<td>In accordance with State laws (s585 Sustainable Planning Act 2009 “SPA”) - See directions from Department of Resources and Mines (DERM) website</td>
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<td>dangerous pontoons and jetties, repair of dangerous revetment walls</td>
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<td></td>
<td>Procedures to be followed should be formalised in accordance with any other relevant law or Council policy.</td>
</tr>
<tr>
<td>14.</td>
<td>Vessels are controlled so as to create “no dangerous wash” in canal system</td>
<td>Vessel Owner/ State</td>
<td>Maintain moderate speeds to minimise vessel wash</td>
</tr>
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<td></td>
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<td></td>
<td>Liaise with MSQ to establish whether water police monitoring of “no dangerous wash” policy in canals is available, in accordance with Maritime Safety Queensland Regulations</td>
</tr>
<tr>
<td>10.</td>
<td>Regulation and Enforcement to require private landowners to keep structures such as revetment walls, pontoons and jetties in a safe condition</td>
<td>Council</td>
<td>NA – no program</td>
</tr>
<tr>
<td></td>
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<td>Council’s Regulatory Powers can be exercised independently of the State’s tidal works notice powers</td>
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<td>Instigate monitoring program of</td>
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<td>revetment wall stability</td>
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<td></td>
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<td>conditions of pontoons and jetties</td>
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<td>Instigate Enforcement Program to require private owners to properly maintain, repair or replace revetment walls, and other structures such as pontoons and jetties in a safe condition</td>
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<td></td>
<td>To be done by way of</td>
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<td>Enforcement Notice under the Building Act 1975</td>
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<td>As an interim step (until a local law is passed) for repairs and removal</td>
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<tr>
<td>State</td>
<td>Can issue tidal works notices for illegal, abandoned, dilapidated or dangerous works (CPMA s60)</td>
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</tbody>
</table>

| Council | NA – No Local law in Place |

<table>
<thead>
<tr>
<th>13. Regulation and Enforcement – Proposed Local Law Regarding Revetment Walls</th>
<th>Proposed Local Law to deal with:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Maintenance: requiring an owner of property on which a revetment wall is located, or the owner of a lot benefitting from a revetment wall</td>
<td></td>
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<tr>
<td>o To maintain a revetment wall:</td>
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<tr>
<td>▪ in a safe condition and</td>
<td></td>
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<tr>
<td>▪ As set out in the “GCCC Maintenance Standard”</td>
<td></td>
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<tr>
<td>o To maintain the foundations of a revetment wall extending onto the canal in a safe structurally sound condition</td>
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<tr>
<td>o Depending on the level of risk</td>
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</tbody>
</table>

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13 | Regulation and Enforcement – Proposed Local Laws Regarding
   | Maintenance of private structures in
   | Council | NA – a further Report will be brought to Council to consider these local laws in detail
   |  

- Immediately temporarily secure a structure to prevent injury to persons or property, and
- At a later date submit a more permanent solution for approval or
- Demolish/ remove a structure

- Penalties for Breach
- Council has the power to effect any wall maintenance if the owner fails to do so, and recover the cost of doing so from the owner.
- Timing of recovery is discretionary for Council and may be delayed, e.g. until next sale of property, or death of owner, whichever occurs first

2. Seller’s Report to Buyer on condition of the revetment wall prior to entry into contract for Sale
   a. Searchable Rates Record to contain notice that a Seller’s report on revetment wall stability is required for this property
   b. Owners to maintain pontoons and jetties in a safe condition
   c. Owner’s of land adjacent to a waterway to be responsible for removing abandoned/dilapidated
<table>
<thead>
<tr>
<th>Tidal waterways</th>
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</thead>
<tbody>
<tr>
<td>7. Facilitation of Development Application Process for Temporary Works – Rock Armour and Gravel Blanket</td>
<td>Council</td>
<td>♦ Council’s consent as “owner” (delegated responsibility under the State to maintain canals) of the waterway is necessary before application is “properly made”&lt;br&gt;♦ Council will not agree unless:&lt;br&gt; o design is acceptable to Council; and&lt;br&gt; o Applicant’s RPEQ engineer specifies the design is appropriate for specific site conditions</td>
<td>➢ Council to make process more streamlined by issuing “Standard Drawing” for specified canal systems with approved design&lt;br&gt;➢ Obtain confirmation from Flood Management branch that use of ‘rock armour and gravel blanket’ in particular systems will not adversely impact flood storage for the system, taking into account impacts of climate change&lt;br&gt;➢ When Flood Management sign off is given, include a set of Standard Drawings for rock armour and gravel blanket works for specified canal systems in Council’s Land Development Guidelines</td>
</tr>
<tr>
<td>Private Land Owner</td>
<td>♦ Makes “prescribed tidal works” development application for rock armour and gravel blanket works</td>
<td>➢ Applicant’s RPEQ Engineer can then certify the use of the standard Design is appropriate for site conditions</td>
<td></td>
</tr>
<tr>
<td>11. Control of Foreshores by Council</td>
<td></td>
<td>➢ Council currently controls foreshores of canals existing in Gold Coast under gazetted as at 1984</td>
<td>➢ Council to take steps to extend gazetted control of foreshores to all canals in the Gold Coast local government area.&lt;br&gt;➢ If required by Council, Council to...</td>
</tr>
</tbody>
</table>
| 12. | **Natural tidal waterways—Rivers, creeks and streams**  
| | - **responsible for Regulation and Enforcement** | **State—Area is not within Council’s local government control without further legislation/gazettal**  
| |  
| | - **State can issue “tidal works notices” under CPMA for unsafe/illegal works**  
| | - **Deals with development approvals for “tidal works” in State owned waterways** | **State is concerned with a limited number of matters considered to be of “State significance”. This does not usually include general maintenance of prescribed tidal works, unless some area of interest to the State such as a fish or other marine habitat is affected.**  
| |  
| | - **Council to undertake program of Enforcement under Building Act 1975 until a local law is enacted, and then under the local law** |  
| |  
|  | **Owner** | **Responsible to keep structures, such as jetties, pontoons and revetment walls in a “safe condition”** |  
|  |  
|  | **Council** | **Dangerous objects are removed in the public interest**  
| | - **Sometimes with State Funding under State Disaster Management Act Programs** | **If Council has control of the foreshores, and chooses to exercise that control—then such control must be exercised without negligence**  
|  |  
|  | **7.**  
| | - **responsibility as assessment manager for prescribed tidal works applications** | **Council**  
| |  
| | - **Deals with development applications for “prescribed tidal works” including:**  
| | - **Pontoons and jetties**  
| | - **Revetment wall** |  

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<table>
<thead>
<tr>
<th>Repairs and reconstruction:</th>
</tr>
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<tbody>
<tr>
<td>- Temporary profile maintenance works such as rock armour and gravel blanket</td>
</tr>
<tr>
<td>- Other works within the boundaries of a canal, whether above or below high-water mark.</td>
</tr>
</tbody>
</table>
Schedule 2 List of Rivers and Creeks – tidal and non-tidal, controlled by the State

Summary information is provided on rivers, listing the major tributaries

<table>
<thead>
<tr>
<th>Main River/Creek</th>
<th>List of Tributaries</th>
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</thead>
<tbody>
<tr>
<td>Logan River</td>
<td>Dairy Creek, Sandy Creek</td>
</tr>
<tr>
<td>Albert River</td>
<td>Windaroo Creek, Cedar Creek, Michie Creek, Rocky Creek</td>
</tr>
<tr>
<td>Pimpama River</td>
<td>Hotham Creek, McCays Creek</td>
</tr>
<tr>
<td>Coomera River</td>
<td>Coombabah Creek, Saltwater Creek, Yaun Creek, Brygon Creek, Baker Creek, Oaky Creek, Wongawallan Creek, Guanaba Creek, Clagiraba Creek</td>
</tr>
<tr>
<td>The Broadwater</td>
<td>Nerang River, Loders Creek, Biggera Creek, Coomera River, Wasp Creek, Pimpama River, Behms Creek</td>
</tr>
</tbody>
</table>

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<th>Main River/Creek</th>
<th>List of Tributaries</th>
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<tbody>
<tr>
<td>Biggera Creek</td>
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<td>Loders Creek</td>
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<td>Gardiners Creek</td>
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<td>Nerang River</td>
<td>Mudgeeraba Creek</td>
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<td>Bonogin Creek</td>
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<td>Wyangan Creek</td>
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<td>Worongary Creek</td>
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<td></td>
<td>Gardiners Creek</td>
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<td>Nixon Creek</td>
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<td>Boobegan Creek</td>
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<td>Bridge Creek</td>
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<td>Gin House Creek</td>
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<td>Little Nerang Creek</td>
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<td>Reedy Creek</td>
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<td></td>
<td>Crane Creek</td>
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<td>Mocumbin Creek</td>
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<td>Little Tallebudgera Creek</td>
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<td>Upper Nerang</td>
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<tr>
<td>Tallebudgera Creek</td>
<td>Syndicate Creek</td>
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<tr>
<td>Currumbin Creek</td>
<td>Petches Creek</td>
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<td>Flat Rock Creek</td>
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<td>Coolangatta Creek</td>
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