



Council of the City of Gold Coast



**Public Guide for Local Law
No.17 (Maintenance of
Works in Waterway Areas)
2013**

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1. Introduction

This Guide explains how Gold Coast City Council *Local Law No 17 (Maintenance of Works in Waterway Areas) 2013* (**LL 17**) and subordinate local laws made under LL 17 are intended to operate.

LL 17 and *Subordinate Local Law 17.1 (Works in Non-Coastal Waterway Areas)* commenced on 5 July 2013.

However, nothing in this Guide should be taken to vary or detract from the actual provisions of LL 17. If a person has any concerns about the operation of LL 17 he or she should contact Council for clarification or seek independent legal advice.

This Guide explains the 3 key aspects of LL 17, being:

- (a) your obligation to build a required work in or near a waterway area (for example, a revetment wall on or near your property);
- (b) your obligation to maintain works in or near waterway areas (for example, a revetment wall, pontoon or jetty); and
- (c) your disclosure obligation when selling a waterfront property.

2. Object of LL 17

LL 17 is intended to:

- (a) ensure that certain works, like pontoons and jetties, in Gold Coast waterway areas are maintained by the people who control or whose lands are subject to, or which benefit from, those works;
- (b) ensure that works in Gold Coast waterway areas do not:
 - (i) fall into disrepair; or
 - (ii) present a risk to people, property or the environment;
- (c) ensure that works required to:
 - (i) protect waterway areas and other land;
 - (ii) protect persons who use waterway areas; and
 - (iii) avoid or minimise environmental harm or other damage to waterway areas,are built by appropriate persons;
- (d) ensure that:
 - (i) a continuous seawall is built and maintained on or near the coastal beaches of the Gold Coast if Council introduces a subordinate local law for that purpose; and
 - (ii) revetment walls are built and maintained in non-coastal waterway areas of the Gold Coast; and
- (e) protect the interests of buyers of certain lots which receive the benefit of works that have not been maintained.

3. Operation of LL 17

3.1 The 2 principal obligations under LL 17

You may be subject to 2 principal obligations under LL 17.

These obligations are:

- (a) an obligation for you to build a required work (a **required work obligation**) (for example, a revetment wall on or near your property); and
- (b) an obligation for you to maintain a prescribed work (a **maintenance obligation**) (for example, a constructed revetment wall or a pontoon).

3.2 How you may incur an obligation under LL 17

- (a) You may incur an obligation under LL 17:
 - (i) for a required work obligation, because you are a responsible person for a required work; or

- (ii) for a maintenance obligation, because you are a responsible person for a prescribed work.
- (b) A required work obligation does not arise until Council gives you, as the responsible person for a required work, a waterway area required work notice.
- (c) A maintenance obligation is a continuing obligation and applies from the start of LL 17 (5 July 2013). Council may give you, as a responsible person for a prescribed work, a compliance notice requiring you to take stated action in respect of the work where you have not maintained a work as required by LL 17.

3.3 Waterway areas

LL 17 applies to works in all types of waterway areas on the Gold Coast. This means the local law applies to works in, for example, tidal waterways (such as tidal rivers and coastal waters), non-tidal waterways, lakes and artificial waterways. However, a waterway area must be within Council's local government area. Council's local government area includes areas in bathing reserves and foreshores under Council's control.

4. Required work obligation (Part 4 LL 17)

4.1 How you may incur an obligation under LL 17 for a required work

If Council gives you a waterway area required work notice, you must build the required work in the way stated in the notice.

4.2 When can you be given a waterway area required work notice?

Council may give you a waterway area required work notice if:

- (a) you are a "responsible person for a required work" (see below); and
- (b) Council reasonably believes that you should build the required work.

4.3 When can you be a responsible person for a required work?

You can be a responsible person for a required work if you would be responsible under LL 17 to maintain the work, if the work were built. When a work is built it is called a **prescribed work** and persons who must maintain a prescribed work are "responsible persons for a prescribed work".

Example: Thomas is an owner of freehold land that is adjacent to a canal. Thomas's land is waterfront land under LL 17. There is no revetment wall that keeps in place soil on Thomas's land. Council decides that a revetment wall should be built on Thomas's land. A revetment wall is a prescribed work under LL 17. Because the revetment wall would, once built, be on Thomas's land, Thomas, as the owner of that land, will be a responsible person for the revetment wall, as a prescribed work. That is, Thomas will be the person responsible for maintaining the revetment wall, once the wall is built. Therefore, Thomas is a **responsible person for a required work** and can be given a waterway area required work notice to build the revetment wall.

If the revetment wall was to be built in the canal (that is, outside the boundaries of Thomas's land), Thomas will still be a **responsible person for a required work** as the wall, once built, will benefit Thomas's land because the wall will secure, protect, support or stabilise his land.

4.4 What is a required work?

- (a) A required work is a work (for example, an embankment, revetment wall, seawall, landscape works, hard surfacing and temporary works) that is necessary to secure, protect, support or stabilise a part of land or improvements on land that is or are adjacent to a waterway area. Therefore, the type of work which you may be required to build will be limited.
- (b) A required work may be a permanent or temporary work and is not necessarily required to secure, protect, support or stabilise land or improvements to a substantial or any particular degree.

4.5 Location of a required work

- (a) A waterway area required work notice will specify where the required work is to be built.
- (b) This may be on land which you do not own, occupy or control.

4.6 When can Council give you a waterway area required work notice?

- (a) Council can only give you a waterway area required work notice if Council **reasonably** believes that a required work should be built by you.
- (b) Council must outline the facts and circumstances forming the basis for Council's belief in the waterway area required work notice. These facts and circumstances must include certain prescribed information (detailed below).

4.7 The content of a waterway area required work notice

Among other things, a waterway area required work notice must:

- (a) state the required work to be built, including its location in the local government area and any other relevant matter;
- (b) state:
 - (i) a time period within which the required work must be built by the responsible person for the required work;
 - (ii) if relevant, a day by which a development permit or compliance permit under the *Sustainable Planning Act 2009*, or an approval under another Act, must be applied for to build the required work, including to use or occupy any other land, for example.

The purpose of this requirement is to ensure that you are taking steps to obtain any necessary approvals in a timely manner;
 - (iii) the facts and circumstances forming the basis for Council's belief that you should build the required work;
 - (iv) that you may make representations about the notice. You may object to:
 - A. the requirement for you to build the stated required work; and
 - B. the basis (or bases) on which Council has formed its belief that you should carry out the work, that the work should be

the work stated, the work should be built in a particular location, or any other matter stated in the notice.

Further, you may make a representation that you should not be required to build the required work because of matters personal to you (for example, financial costs, an intention to move in the near future etc);

- (v) how the representations may be made (for example, whether the representations may be made in writing or orally);
 - (vi) where the representations may be made or sent;
 - (vii) a day and time for making the representations and a time period within which the representations must be made.
- (c) You will be given a reasonable time in which to consider your position and to prepare any representation (including to get advice from a contractor and / or a legal representative). In any event, the day or period must be, or must end, at least 20 business days after the notice is given.

Sample waterway area required work notice

**Thomas Jenkins
Jones Court
Mermaid Waters Q 4218**

5 January 2014

WATERWAY AREA REQUIRED WORK NOTICE LOCAL LAW NO. 17 (MAINTENANCE OF WORKS IN WATERWAY AREAS) 2013 SECTION 10

Gold Coast City Council (**Council**) considers that you are the Responsible Person for the Required Work described in Attachment 1 to this notice (**Required Work**) under *Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013*.

Accordingly, you must build (or cause to be built) the Required Work:

- in the location set out in Attachment 2 to this notice; and
- within 9 months from the date of this notice.

If a development permit or compliance permit under the *Sustainable Planning Act 2009*, or any other approvals under other Acts, are required to build the Required Work in the location stated above (including to use or occupy any other land, for example) you must apply for these permits or approvals on or before that date which is 3 months from the date of this notice.

Attachment 3 to this notice outlines the facts and circumstances forming the basis for Council's belief that you should build the Required Work.

You may make representations to Council about this notice. Representations may only be made in writing or orally.

Written representations must be sent to the following address:

The Manager, Local Law Compliance

Gold Coast City Council
Attention: Steven Richards
PO Box 5042
Gold Coast MC 9729

Written representations must be received by Council with 20 business days from the date of this notice.

Oral representations may be made at Council's offices at 833 Southport Nerang Road, Nerang. Please phone Steve Miller on 5581 6235 to make an appointment. Oral representations must be made within 30 business days from the date of this notice.

Please contact Steve Miller on the above telephone number if you have any questions regarding this notice.

Yours faithfully

Michael Foster
Manager, Local Law Compliance

4.8 Your right to make representations

- (a) If you are given a waterway area required work notice you may make representations about the notice to Council.
- (b) After considering any representations made by you, Council may give you another notice stating the original waterway area required work notice:
 - (i) continues in force, with or without stated changes; or
 - (ii) is withdrawn.
- (c) Council must consider any of your representations fairly, objectively and in a timely way. If Council does not give you a second notice after considering your representations, the original notice is taken to have been of no effect and you will not be required to build the required work.
- (d) If Council gives you a second notice which states that the original waterway area required work notice is to continue in force (with or without stated changes), Council must give you reasons for its decision.

4.9 Your obligation to comply with a waterway area required work notice

- (a) As a responsible person for a required work you must comply with a waterway area required work notice. If you do not comply with a waterway area required work notice, you may incur a substantial penalty. The maximum penalty is 800 penalty units (being at the date of publication of this guide, \$88,000).
- (b) Also, Council may take all necessary steps to build the required work that you have failed to build and may recover the cost of doing so from you.

4.10 Do you need an approval for a required work under another law or a right to occupy other land?

- (a) You may not be liable for an offence for failing to comply with a waterway area required work notice if:

- (i) you need a permit or approval to build the required work (eg a development permit under the *Sustainable Planning Act 2009*) and that permit or approval is not given; or
 - (ii) if you need a right to occupy and use the land on which the required work is to be built and you are unable to obtain that right.
- (b) However, you must take steps to apply for all the necessary permits, approvals and rights.

5. Maintenance obligation (Part 5 LL 17)

5.1 How a person incurs an obligation under LL 17 to maintain a prescribed work

- (a) If you are a responsible person for a prescribed work you must maintain the prescribed work in the ways stated in LL 17.
- (b) A maintenance obligation applies at all times. It is not necessary for Council to give you a notice before you are required to maintain a prescribed work. Examples of some typical scenarios are set out in the Annexure.
- (c) You can be a responsible person for a prescribed work because of your particular relationship with land (eg your land is adjacent to a waterway area) and your relationship with the prescribed work (eg because you receive the benefit of a pontoon that is adjacent to your land).
- (d) In general, if you own or lease (under the *Land Act 1994*) land on which a prescribed work is situated, you will be a responsible person for the work.
- (e) If a prescribed work is situated in a waterway area that is adjacent to your (dry) land, you may be a responsible person for the work if your land:
 - (i) is waterfront land or waterfront (separated) land; and
 - (ii) receives the benefit of the work.
- (f) Accordingly, you may still be a responsible person for a prescribed work even if your land is not connected to the work or your land is not adjacent to a waterway area in which a prescribed work is situated. LL 17 applies to persons who own or lease land that is separated from a waterway area because there are numerous instances where an owner of that land may still receive the benefit of a prescribed work that is in the waterway area (eg a pontoon). The separating land must be a road, trust land or unallocated State land. It cannot be someone else's private land.
- (g) If your land is adjacent to the waterway area (that is, your land is waterfront land) you will be a responsible person for a prescribed work that is in the waterway area (eg a pontoon) if the work is connected to your land, unless you prove that you do not control the work.
- (h) If your land is separated from a waterway area which contains a prescribed work you can be a responsible person for the work if, for example, you use the work on a regular or recurring basis (eg you moor your boat to a pontoon when you are not otherwise using the boat). LL 17 says that you must be taken to be in control of the prescribed work. It does not matter that the "separating" land is used by the public. However, the separating land must still be a road, trust land or unallocated State land.

- (i) You can be a responsible person for a prescribed work in a waterway area that secures, protects, supports or stabilises your land or improvements on your land (eg a revetment wall) where your land is adjacent to the waterway area. You can also be a responsible person for a prescribed work in the same circumstances where your land is separated from the waterway area by a road, trust land or unallocated State land that is not used by the public and which does not contain any public infrastructure. This may include a situation where a revetment wall that adjoins an unformed and unused footway also provides support to your land which is on the other side of the footway.
- (j) Despite the above, you can also be a responsible person if, under another law or an agreement, you are required to maintain a prescribed work in a safe condition or in good working order, repair and condition, or if you would be liable in law if you failed to maintain the prescribed work. Additionally, you are a responsible person for a prescribed work if you are the owner of the prescribed work as defined in LL 17. This includes where you hold, for example, a development permit or an approval under an Act for the work. In these cases, you do not need to own or lease any land on which the prescribed work is situated or any land near the prescribed work.

5.2 What is a prescribed work?

- (a) A prescribed work is a work that is completely or partly in, on, above or below a waterway area. A prescribed work also includes the following:
 - (i) a tidal work or prescribed tidal work;
 - (ii) a work designed to be exposed, in whole or in part, to tidal or non-tidal water, of a waterway area because of a shoreline fluctuation or for any other reason (including flood, for example);
 - (iii) a work that is an integral part of a prescribed work, wherever located (including, for example, a walkway to a pontoon where the walkway is located on 'dry' land); or
 - (iv) a revetment wall.
- (b) A seawall is a prescribed work, but only if it is specified to be a prescribed work by a subordinate local law.

5.3 Who is a responsible person for a prescribed work?

- (a) You will be a responsible person for a prescribed work if:
 - (i) the prescribed work is completely or partly on your freehold land;
 - (ii) the prescribed work is completely or partly on land that you lease from the State under the *Land Act 1994*;
 - (iii) the prescribed work is completely or partly on trust land or other non-freehold land (including a road) and:
 - A. you occupy any part of the land on which the prescribed work is situated (for example, under a permit under the *Land Act 1994*); or
 - B. you own or occupy land that:

- 1) is waterfront land or waterfront (separated) land (see paragraph 5.4 below); and
- 2) receives the benefit of the prescribed work (see paragraph 5.5 below);

Example: Jennifer owns freehold land that is adjacent to a waterway area, which land receives the benefit of a pontoon. The pontoon is in a non-tidal reserve under the *Land Act 1994* which is for recreation purposes. Jennifer is a responsible person for the pontoon. It does not matter that Jennifer is not the trustee of the reserve. If there is a trustee for the reserve (other than Council or the State), the trustee may also be a responsible person for the pontoon because the trustee occupies the reserve.

Example: George owns freehold land that is adjacent to a waterway area and on which a revetment wall is situated. George is a responsible person for the revetment wall. George is also a responsible person for temporary rock buttressing constructed in a canal to benefit his freehold land by supporting the revetment wall.

- (iv) you are required under another law or an agreement to ensure that the prescribed work is:
 - A. maintained in a safe condition; or
 - B. in good working order, repair and condition;

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

- (v) you would be responsible for any loss or damage suffered by someone else because you have not maintained the prescribed work in a safe condition or in good repair and condition;

Example: James is a responsible person for a pontoon if, under the law of negligence, he would be responsible for any loss that another person suffers because he failed to maintain a pontoon that he constructed in a non-tidal watercourse.

- (vi) you are the owner of the prescribed work.

An "owner" of a prescribed work is:

- A. if the work is a structure under the *Local Government Act 2009* and is in a canal, the person who holds the development permit under the *Sustainable Planning Act 2009* for the structure or whose land the structure is connected to or benefits; or
- B. in any other case:

- 1) the holder of a development permit or compliance permit under the *Sustainable Planning Act 2009* to build the work; or
- 2) the holder of an approval under another Act to build the work (eg under the *Building Act 1975*); or
- 3) a person who is or was required by an Act under subparagraph (i) or (ii) to obtain a development permit, compliance permit or approval to build or undertake the work.

Example: Michael constructed a pontoon in a tidal watercourse without a development permit under the *Sustainable Planning Act 2009*. Michael is a responsible person for the pontoon because Michael was required by that Act to obtain a development permit to construct the pontoon.

- (b) You may be a responsible person for part of a particular prescribed work on one basis and a responsible person for another part of the same prescribed work on another basis.

Example: A revetment wall (which is a prescribed work) has been partly built on Thomas's freehold land and partly in an adjoining canal. Thomas is a responsible person for the part of the wall that is on his or her land. He is also a responsible person for the part of the wall in the canal.

- (c) Council can treat a prescribed work as an abandoned work where there is no responsible person for the work.

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

- (a) "Waterfront land" is land that is adjacent to a waterway area.
- (b) "Waterfront (separated) land" is:
- (i) waterfront (separated non-public) land; or
 - (ii) waterfront (separated public) land.
- (c) "Waterfront (separated non-public) land" is land that is separated from a waterway area only by any or all of the following (and which is not part of a waterway area) (known as "separating land"):
- (i) a road, including a road subject to an occupation right;
 - (ii) trust land, including trust land subject to an occupation right; or
 - (iii) unallocated State land, including unallocated State land subject to an occupation right.

An "occupation right" is a right of occupation of a place by an occupier (eg a permit over a road or reserve). That is, it does not matter that the separating land is subject to an occupation right.

However, if any separating land is public land, your land is known as "waterfront (separated public) land". "Public land" is separating land which:

- (i) the public is entitled to use and uses; or
- (ii) contains permanent public infrastructure (eg a public barbeque).

Example: Rod's freehold land is separated from a non-tidal waterway by a road. His freehold land may be waterfront (separated public) land or waterfront (separated non-public) land. If the public does not use the road, the road is not public land unless the road contains public infrastructure. If the road is not used by the public and does not contain public infrastructure, Ron's land is waterfront (separated non-public) land. However, if the public uses the road or the road contains public infrastructure, Ron's land is waterfront (separated public) land.

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

Your land is only taken to receive the benefit of a prescribed work located on trust land or non-freehold land in 3 circumstances:

- (a) where the prescribed work is a seawall:
 - (i) the seawall secures, protects, supports or stabilises your land (including any improvements on your land); and
 - (ii) if your land is waterfront (separated public) land, the separating land does not contain any public infrastructure; or

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

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

Example: Steven's freehold land that is waterfront (separated non-public) land (because his land is separated from a non-tidal waterway by trust land that is not used by the public and which does not contain any public infrastructure) receives the benefit of a revetment wall located in a reserve. Steven's land receives the benefit of the revetment wall because the wall keeps in place materials and improvements that are contained in Steven's freehold land.

- (c) if your land is waterfront land or waterfront (separated) land, you as the owner, lessee or occupier (as the case may be) of your land is taken to be in control of the prescribed work (other than a seawall).

5.6 When can you be taken to be in control of a prescribed work?

You can be taken to be in control of a prescribed work:

- (a) if the work is physically connected to your land and your land is waterfront land (that is, where your land is adjacent to a waterway area), unless you prove that you are not in control of the work; or

Example: Where a pontoon is physically connected to Matt's freehold land that is waterfront land, Matt is taken to be in control of the pontoon. However, Matt may try to prove that he does not control the pontoon because, for example, the pontoon is only used by someone else. However, this would be quite difficult for Matt to prove as it is likely a pontoon will be used in the normal enjoyment of his land. If Matt can establish that he does not control the pontoon, Council may identify another responsible person or establish the pontoon is an abandoned work and remove it.

- (b) where, although the prescribed work is not connected to waterfront land or your land is waterfront (separated) land (that is, whether your land is waterfront (separated public) land or waterfront (separated non-public) land), if you:

- (i) use the prescribed work for a purpose that is directly connected with the normal enjoyment, and not mere convenience, of your land;

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

- (ii) use the prescribed work, or any land on which the prescribed work is situated, on a regular or recurring basis, whether or not for the prescribed work's intended function (including, for example, the storage of property); or

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

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

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

- (iv) permanently attach property to, or remove attached property from, the prescribed work; or
- (v) maintain the prescribed work (including, for example, by painting or cleaning); or
- (vi) make improvements to, or otherwise alter, the prescribed work.

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

- (a) A body corporate of a community titles scheme under the *Body Corporate and Community Management Act 1997* may be a responsible person for a prescribed work.
- (b) A body corporate may, at law, be the owner of common property. Common property will be freehold land.
- (c) If any land, including common property, in a community titles scheme is waterfront land or waterfront (separated) land, all other land in the scheme land (that is, other lots, including any other common property) is taken to be waterfront land or waterfront (separated) land.
- (d) Also, any lot, including common property, in scheme land can be separately treated as other land. This means, because all lots in scheme land can be treated as waterfront land or waterfront (separated) land, an owner of a lot within the scheme land can, even if his or her lot does not adjoin a waterway area or is not immediately separated from a waterway area by a road or trust land, be a responsible person for a prescribed work.

Example: The Seaview Community Titles Scheme is waterfront land because common property of the scheme land adjoins a waterway area. The lot of each owner in that scheme land is taken to be waterfront land. The owner of a lot may be a responsible person because the owner maintains a pontoon in the waterway area. That is, the owner is taken to be in control of the pontoon and, therefore, his or her lot receives the benefit of the pontoon.

5.8 Who can not be a responsible person for a prescribed work?

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

5.9 How must a responsible person maintain a prescribed work?

- (a) As a responsible person, you must maintain and keep a prescribed work in:
 - (i) a safe condition; and

Example: You must ensure a pontoon is not a risk or danger to persons who may use the pontoon or carry out activities near the pontoon.

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

Example: For a seawall, you must maintain and keep the seawall in good working order, repair and condition so that the seawall can continue to perform its intended function of:

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

"Maintain"

- (b) "Maintenance" is not exhaustively defined in the local law. However, the dictionary says it includes repair and replacement and taking preventive action. "Maintain" has a corresponding meaning.
- (c) "Maintain" specifically includes:
 - (i) undertaking regular inspections of a work to determine whether it is in a safe condition or good working order, repair and condition; and
 - (ii) having regard to the nature and life expectancy of a work, obtaining a qualified expert's report, when reasonably prudent, to determine whether maintenance is required to ensure that the work is in a safe condition and in good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.

Example: Obtaining a qualified expert's report to determine that preventive action is necessary for a revetment wall so that the revetment wall can continue to perform its intended function of keeping in place the materials that are landward of the wall.

5.10 How may Council enforce your maintenance obligation?

- (a) Your obligation to maintain a prescribed work is a continuing obligation. The obligation started on the commencement of LL 17 (5 July 2013).
- (b) It is not necessary for Council to give you any sort of notice before you incur an obligation to maintain a prescribed work. However, Council can give you a compliance notice if you are not complying with your maintenance obligation.
- (c) A compliance notice may require you to perform work or otherwise take specified action for, or within, a time specified in the compliance notice to ensure compliance with your maintenance obligation.
- (d) A compliance notice may, for example, specifically require you to do any of the following:
 - (i) apply for a development permit, compliance permit or an approval;
 - (ii) repair or rectify the prescribed work;
 - (iii) carry out work to support, stabilise or protect the prescribed work or to ensure that the work performs, or is capable of performing, its intended function (eg rock buttressing of an existing revetment wall in a canal);
 - (iv) secure the prescribed work (whether by a system of supports or in another way);
 - (v) demolish, remove or replace the prescribed work; or
 - (vi) comply with a prescribed work inspection program.
- (e) It is an offence not to comply with a compliance notice. The maximum penalty is 800 penalty units (being at the date of publication of this guide, \$88,000).

5.11 Do you need an approval to maintain a prescribed work under another law or a right to occupy other land?

- (a) You may not be liable for an offence for failing to comply with a compliance notice if:
- (i) you need a permit or approval to comply with a maintenance obligation under LL 17 or a compliance notice (eg a development permit under the *Sustainable Planning Act 2009*) and that permit or approval is not given; or
 - (ii) if you need a right to occupy and use land to maintain a prescribed work or comply with a compliance notice and you are unable to obtain that right.
- (b) However, you must take steps to apply for all the necessary permits, approvals and rights.

Sample compliance notice

**John Grant
17 Circular Crescent
Mermaid Waters Q 4218**

1 February 2014

Ref LL17/01243

**COMPLIANCE NOTICE
LOCAL LAW NO. 17 (MAINTENANCE OF WORKS IN WATERWAY AREAS) 2012
SECTION 17**

This is a notice that you have contravened section 11 of *Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013 (Local Law)*.

Section 11 of the Local Law is set out in the attachment.

Under section 9 of the Local Law you are a responsible person for a prescribed work, namely, a pontoon in a canal that is adjacent to your property, and which pontoon is connected to your property.

Contravention

You have not maintained and kept the pontoon in good working order and condition, as required by section 11(1)(b) of the Local Law. A report (dated 1 March 2014) setting out details of the non-maintenance of the pontoon is attached to this notice.

Work required to be perform to remedy contravention

You must perform the work and otherwise take the action (the **work**) stated below to remedy your contravention of section 11(1)(b) of the Local Law. The work must be completed by 31 May 2014.

- Replace or remove the pontoon

Consequential damage

The Local Law also requires you to make good any damage (consequential damage) caused

directly or indirectly by your contravention, or involvement in the contravention, of the Local Law.

It is an offence not to comply with this notice under the Local Law. The maximum penalty for not complying with a compliance notice is 800 penalty units (currently \$88,000) (section 17(5)).

Please contact Steve Miller on 5581 6235 if you have any questions regarding this notice.

Yours faithfully

Michael Foster
Manager, Local Law Compliance

6. Sale of lots and prescribed work reports (Part 6 LL 17))

6.1 Sale of a lot subject to a specified prescribed work

- (a) Under LL 17, sellers of certain lots are required to comply with a contract disclosure obligation relating to specified prescribed works. Accordingly, the disclosure obligation does not apply to sellers of all lots who might under LL 17 be responsible persons for prescribed works.
- (b) Specifically, the disclosure obligation only applies to "relevant lots" and "specified prescribed works" (see paragraph 6.5 below). A seller should ascertain whether his or her lot is a relevant lot before entering into a contract to sell the lot. Generally, a relevant lot is a lot on which a specified prescribed work (eg a revetment wall) is completely or partly situated or waterfront land which is physically connected to a specified prescribed work.
- (c) The disclosure obligation is intended to alert prospective buyers of relevant lots of the operation of LL 17 and the actual specified prescribed work which that person may, if he or she proceeds with the contract, be required to maintain under the local law.
- (d) The disclosure obligation applies under section 15 of LL 17. Importantly, it is not necessary to separately establish that the seller is, or the buyer would be, a responsible person for a prescribed work under LL 17 before the disclosure obligation applies. The disclosure obligation can apply even if the seller is a responsible person for a prescribed work but is not liable for an offence under LL 17 for failing to maintain the work (eg, where the seller needed an approval under an Act to maintain the work and that approval was not given).¹
- (e) The disclosure obligation does not apply if no specified prescribed work is situated on or connected to a relevant lot, even if that lot is waterfront land.

6.2 What must be disclosed to a buyer?

If you are a seller of a relevant lot under a contract of sale you must ensure that, when a buyer for your lot becomes bound by the contract, the contract includes a clause (usually a special condition) stating the following matters:

¹ See sections 19 and 20.

- (a) the contract is a contract to which section 15 of LL 17 applies;
- (b) the actual specified prescribed work that is completely or partly situated on, or which is connected to, the relevant lot (eg a pontoon or revetment wall);
- (c) under LL 17, a person who is a responsible person for the specified prescribed work is, at that person's cost, required to maintain and keep the specified prescribed work in:
 - (i) a safe condition; and
 - (ii) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function; and
- (d) whether or not there is an outstanding notice issued by Council under LL 17 in relation to the actual specified work and, if so, the contents of that notice.

Sample special condition (where specified prescribed work is connected to a relevant lot)

Gold Coast City Council Local Law 17 (Maintenance of Works in Waterway Areas) 2013

- (a) This contract is a contract to which section 15 of Gold Coast City Council *Local Law 17 (Maintenance of Works in Waterway Areas) 2013 (Local Law 17)* applies.
- (b) A pontoon is connected to the Land.
- (c) Under Local Law 17, a person who is a responsible person for the pontoon is, at that person's cost, required to maintain and keep the pontoon in:
 - (i) a safe condition; and
 - (ii) good working order, repair and condition, including so that the pontoon can continue to perform its intended function.
- (d) There is no outstanding notice issued by the Gold Coast City Council under Local Law 17 in relation to the pontoon.

6.3 What can happen if a seller does not comply with his or her disclosure obligation?

- (a) It is an offence for a seller not to comply with section 15. The maximum penalty is 50 penalty units (being at the date of publication of this guide, \$5,500).

Contracts entered into before 5 June 2017

- (b) For contracts entered into before 5 June 2017 (the commencement of the *Court and Civil Legislation Amendment Act 2017* which amended section 57A of the *Property Law Act 1974*), a buyer may (even after 5 June 2017) terminate a contract (that has not settled) if:
 - (i) you do not comply with your obligation to include a clause in the contract of sale stated above; or

- (ii) Council has issued a notice under LL 17 in relation to the actual specified prescribed work and the notice is outstanding, and you did not specify that fact in the contract.
- (c) If a buyer terminates a contract, you, as the seller, must repay to the buyer any amount paid to you (or your agent) towards the purchase of your land (eg a deposit) within 14 days after the termination.

Contracts entered into since 5 June 2017

- (d) For contracts entered into since 5 June 2017, a buyer may not terminate a contract under LL 17 if you do not comply with the seller's disclosure obligation under section 15. This is because of section 57A of the *Property Law Act 1974*. Accordingly, while LL 17 still says a buyer may terminate a contract for your failure to comply with the disclosure obligation, the buyer cannot do so for a contract entered into by you from 5 June 2017.

6.4 How can a buyer find out if the seller has not complied with his or her disclosure obligation?

- (a) A noting will appear in the results of a Council property search (a rates search) made by the buyer that the land being sold under the contract may be subject to the disclosure obligation under section 15 of LL 17. A buyer should always make his or her own enquiries and take advice from a legal practitioner about the operation of section 15 and the buyer's rights, if any, under that section.
- (b) Council cannot provide any advice to a seller or buyer about the disclosure obligation or the buyer's right to terminate a pre-5 June 2017 contract under LL 17.

6.5 "Relevant lot" and "specified prescribed work"

- (a) A "relevant lot" is a lot:
 - (i) on which a prescribed work that is specified in a subordinate local law is completely or partly situated; or
 - (ii) that is waterfront land (that is, a lot which is adjacent to a waterway area) *and* which is physically connected to a specified prescribed work.
- (b) The disclosure obligation under LL 17 does not apply to a lot that is waterfront (separated) land (unless para 6.5(a)(i) above applies).
- (c) Although any lot in a community titles scheme may be waterfront land if any part of land in the scheme land is waterfront land, a seller of a lot will only be subject to a disclosure obligation under LL 17 if the conditions in para 6.5(a) above apply to that lot. If a specified prescribed work is not completely or partly situated on the lot to be sold *or* the work is not physically connected to that lot, the seller of that lot is not subject to the disclosure obligation under LL 17.
- (d) A "specified prescribed work" is a prescribed work specified under Subordinate Local Law 17.1 (Works in Non-Coastal Waterway Areas) 2013. Presently, only the following are specified prescribed works:
 - (i) revetment walls;
 - (ii) training walls;

- (iii) pontoons; and
- (iv) jetties.

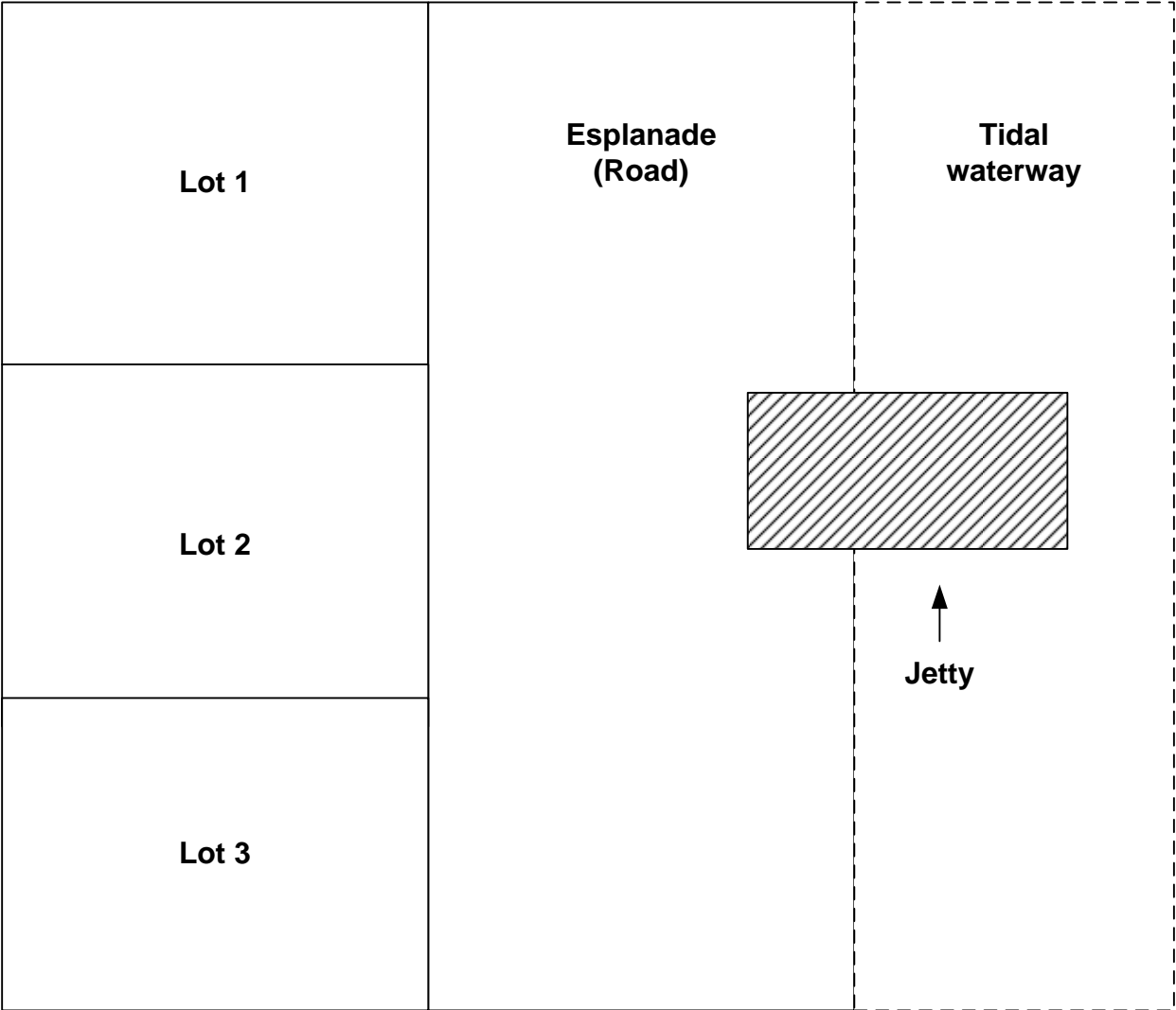
Example: A freehold lot that is waterfront land is a relevant lot if a pontoon is physically connected to the lot. However, a freehold lot is not a relevant lot if a revetment wall in a canal, although supporting land on the freehold lot, is not connected to the lot (for example, where there is material (eg soil) in the waterway area that separates the revetment wall from the boundary of the freehold lot).

6.6 Prescribed work reports

- (a) Council may give you, as a responsible person for a prescribed work, a notice requiring you to give Council a report from a qualified expert relating to the state of maintenance and repair of a prescribed work. Your obligation is not limited to a "relevant lot" (as defined above).
- (b) Council can only give you a prescribed work report notice:
 - (i) if you are a body corporate – only once every 2 years after the commencement of LL 17 (5 July 2013); or
 - (ii) in all other cases – only once every 5 years after the commencement of LL 17 (5 July 2013).
- (c) It is an offence for you not to comply with a prescribed work report notice. The maximum penalty is 50 penalty units (being at the date of publication of this guide, \$5,500).
- (d) If you do not comply with a prescribed work report notice, Council may obtain the prescribed work report at your cost.

Annexure

Figure 1: Where a responsible person is taken to be in control of prescribed work



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

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

If the owner of Lot 2 has recently painted the jetty, she is taken to be in control of the jetty. She is also a responsible person for the jetty.

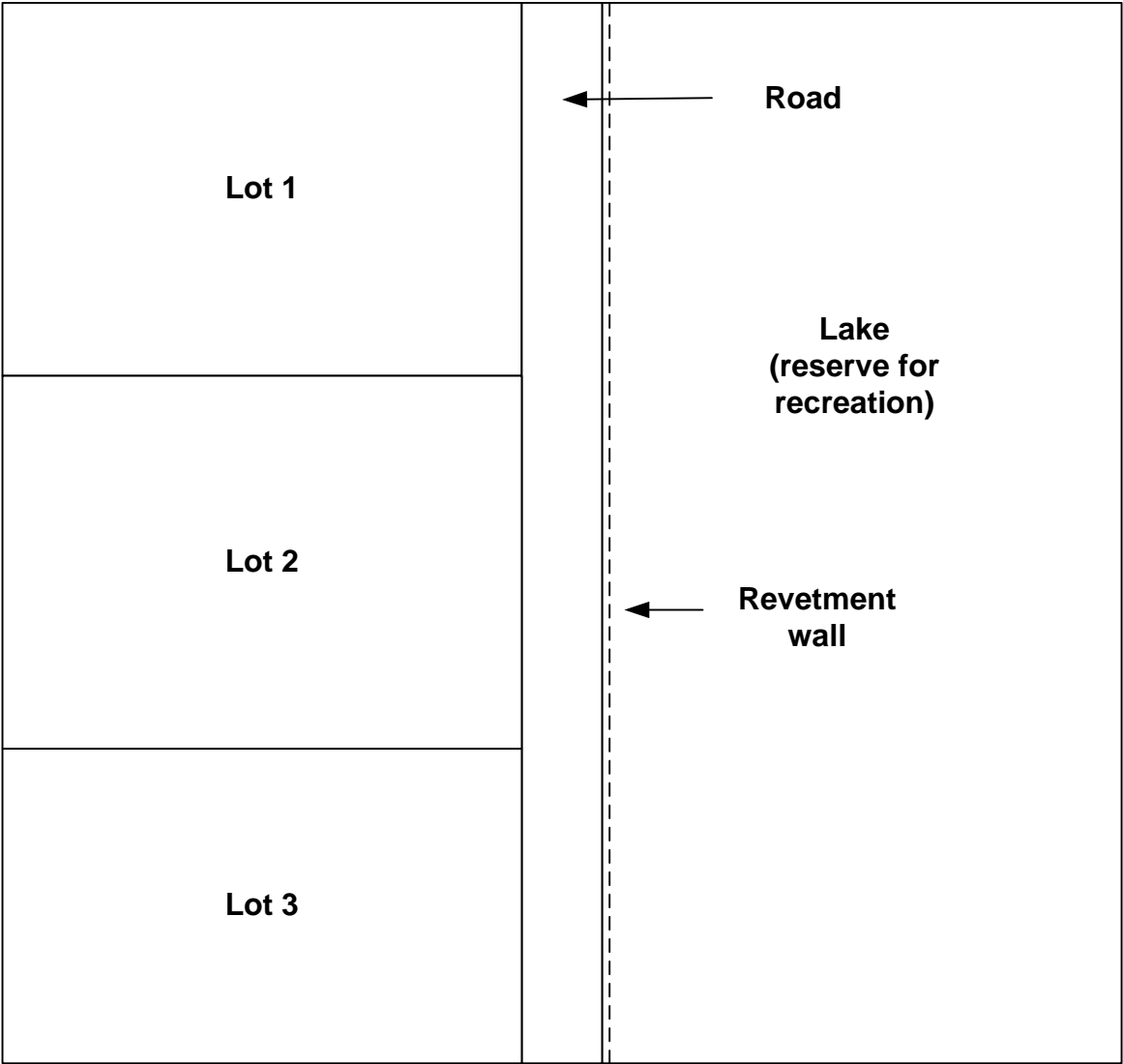
If the owner of Lot 3 has moored his boat to the jetty only on occasions, he is not taken to be in control of the jetty. He is not a responsible person for the jetty.

If the jetty is a public marine facility under the *Transport Infrastructure Act 1994* the jetty is not a prescribed work under LL 17, even if the owners of Lots 1, 2 and 3 use the jetty in the ways described.

Sale of Lot 1, 2 or 3

The contract disclosure obligation in part 6 does not apply to the sale of Lot 1, 2 or 3. This is because none of the lots are waterfront land and the jetty is not situated on or connected to any of these lots.

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



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

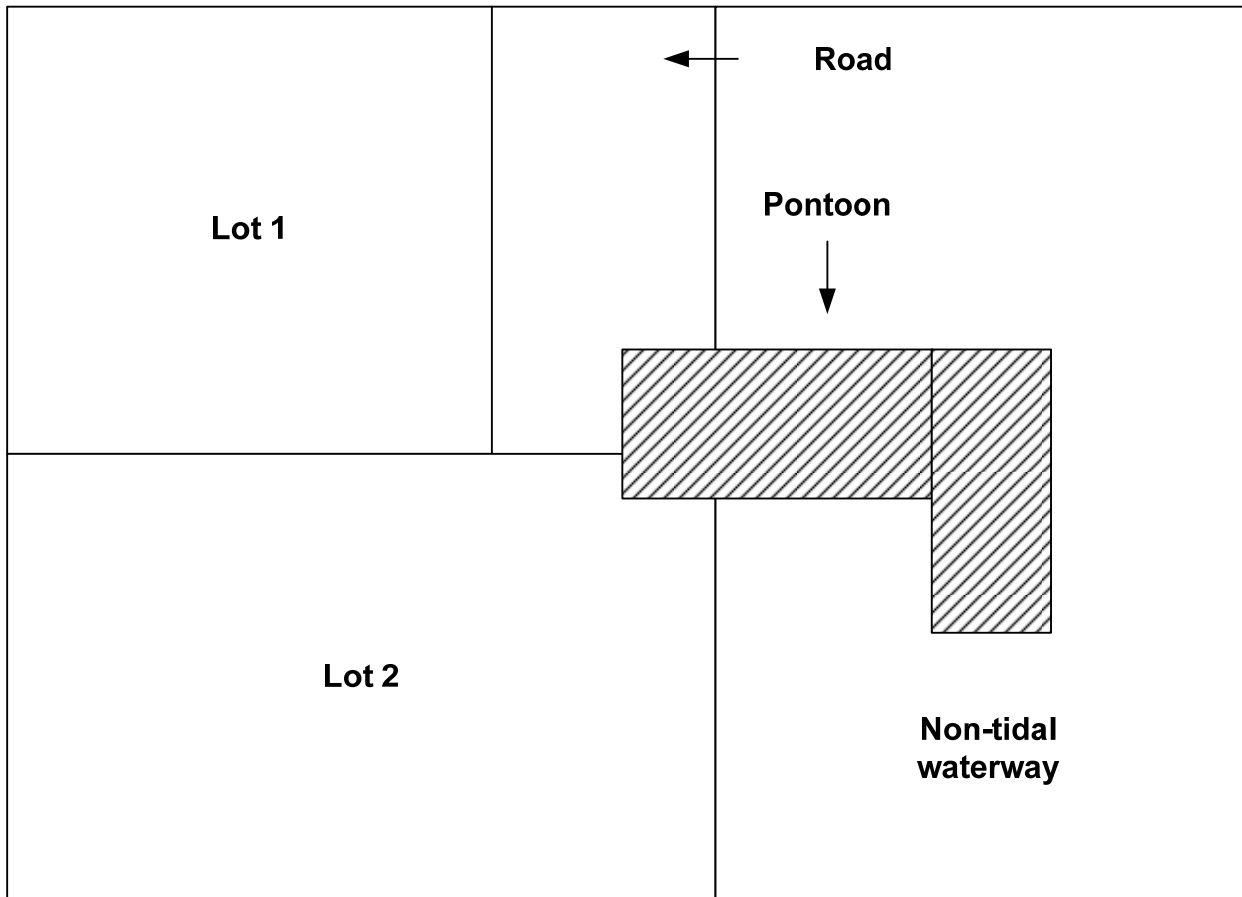
Where a lot is waterfront (separated non-public) land – that is, where the public does not actually use the road and the road does not contain any public infrastructure – the owner of Lot 1, 2 or 3 will be a responsible person if the revetment wall secures, protects, supports or stabilises his or her lot or if the owner of Lot 1, 2 or 3 is taken to be in control of the revetment wall.

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

Sale of Lot 1, 2 or 3

The contract disclosure obligation in part 6 does not apply to the sale of Lot 1, 2 or 3. This is because none of the lots are waterfront land and the revetment wall is not situated on or connected to any of these lots.

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



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

Lot 2 is waterfront land.

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

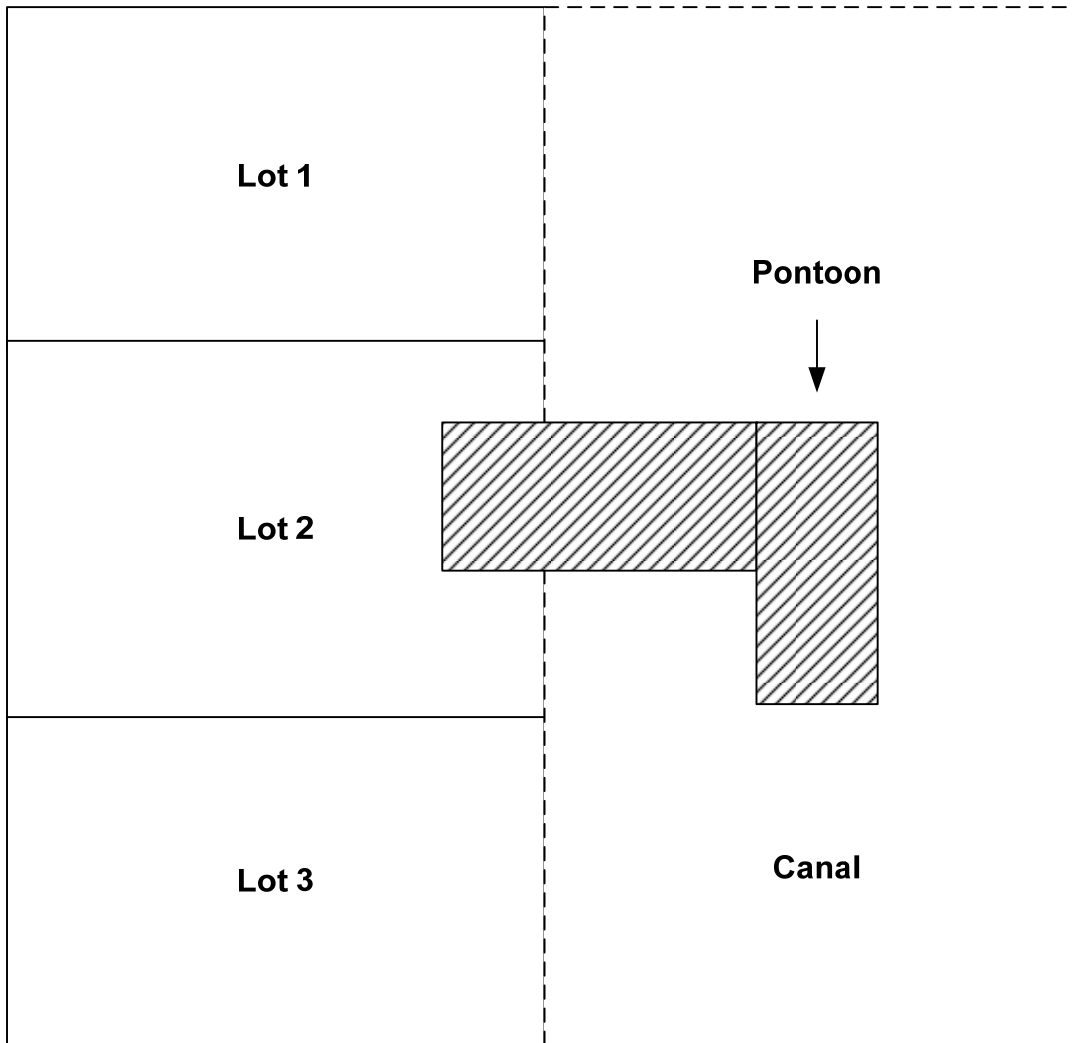
The owner of Lot 1 may also be a responsible person. However, as Lot 1 is waterfront (separated) land, it is necessary to show that the owner of the lot is taken to be in control of the parts of the pontoon that are in the non-tidal waterway and on the road, as non-freehold land. If, for example, the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

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

Sale of Lot 1 or 2

The contract disclosure obligation in part 6 do not apply to the sale of Lot 1. This is because that lot is not waterfront land. However, the contract disclosure obligation will apply to the sale of Lot 2. This is because the pontoon is partly situated on that lot.

Figure 4: Responsible persons for a pontoon in a canal



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

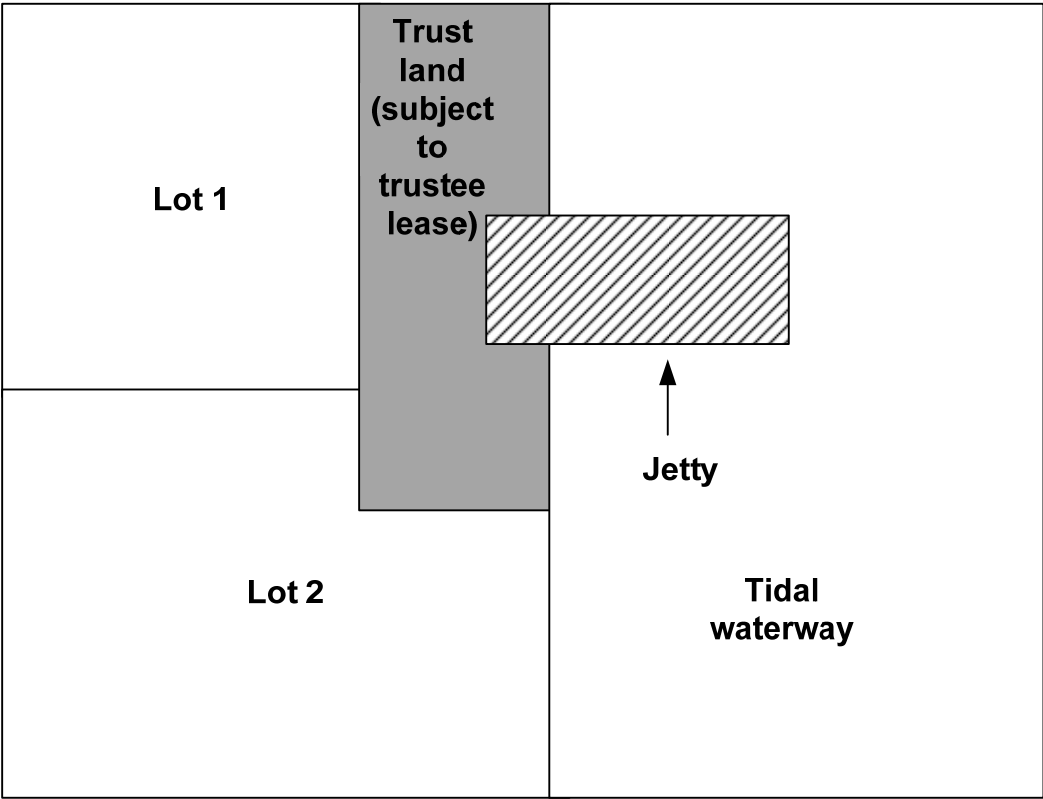
The owner of Lot 2 is a responsible person for the pontoon. The owner is a responsible person in respect of that part of the pontoon on her freehold lot. She is a responsible person for the part of the pontoon that is in the canal if she has a development permit for the pontoon. Because part of the pontoon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

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

Sale of Lot 1, 2 or 3

The contract disclosure obligation in part 6 does not apply to the sale of Lot 1 or 3. This is because, although each of these lots is waterfront land, the pontoon is not connected to either of these lots. However, the contract disclosure obligation will apply to Lot 2 as the pontoon is partly situated on that lot.

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



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

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

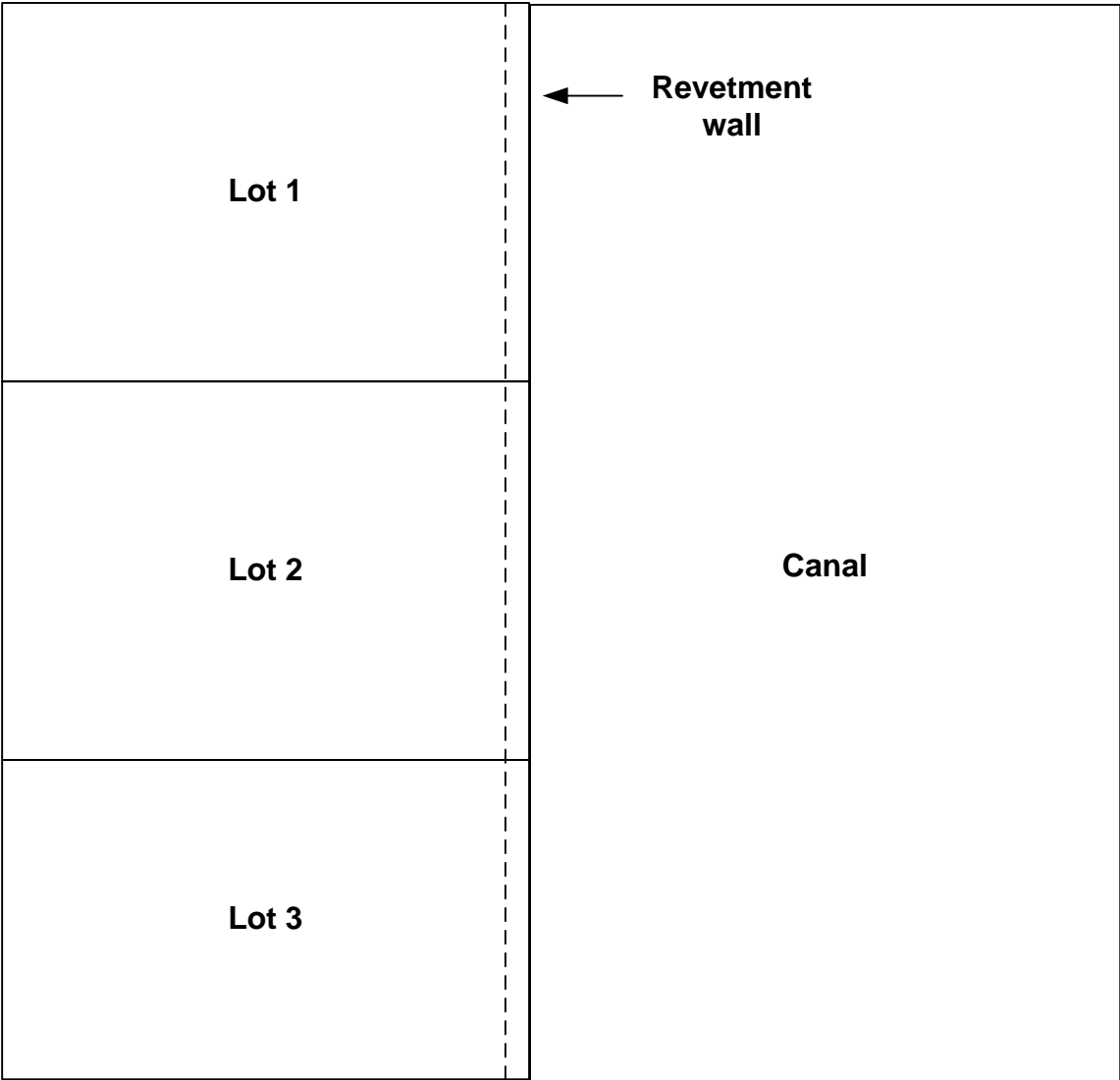
The lessee may also be a responsible person for the part of the jetty on the trust land if the trustee lease says that the lessee must maintain (that part of) the jetty in good working order, repair and condition. Also, the lessee, as the person responsible, under the trustee lease, to maintain (that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

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

Sale of Lot 1 or 2

The contract disclosure obligation in part 6 does not apply to the sale of Lot 1 or 2. Lot 1 is not waterfront land. Although Lot 2 is waterfront land, the jetty is not connected to that lot.

Figure 6: Revetment wall located completely on freehold land



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

Sale of Lot 1, 2 or 3

The contract disclosure obligation in part 6 will apply to the sale of Lot 1, 2 and 3. This is because the revetment wall is situated on each of these lots. (Although each lot is waterfront land, it is not necessary to establish that fact.)



Council of the City of Gold Coast

PO Box 5042 GCMC Qld 9729
E mail@cityofgoldcoast.com.au
W cityofgoldcoast.com.au
P 1300 GOLDCOAST