

Guideline

Coastal Protection and Management Act 1995

Necessary operational work that is tidal works¹

This guideline outlines the process and requirements for necessary operational work that is tidal works¹ under s. 166 of the Planning Act 2016. This guideline only considers the tidal works aspects of s.166.

Background

Section 166 of the *Planning Act 2016* allows tidal works to be constructed without a development approval in an emergency. While a person (whether an individual, a local government or another entity) can quickly undertake works to protect structures in an emergency, there are provisions to ensure that the works are installed and maintained safely, and a development approval is applied for as soon as reasonably practicable. The works must not be prohibited development as the offence of carrying out prohibited development in section 162 still applies.

Section 166 Exemptions if emergency causing safety concerns

Section 166 states:

- (1) This section applies to works, development or a use (an activity) carried out because an emergency endangers—
 - (a) a person's life or health; or
 - (b) a building's structural safety; or
 - (c) the operation or safety of infrastructure, other than a building; or
 - (d) for tidal works—the structural safety of a structure for which there is a development permit for operational work that is tidal works.
- (2) A person who, in an emergency, is carrying out necessary operational work that is tidal works does not commit a development offence, other than an offence against section 162, if the person—
 - (a) has made a safety management plan for the works, after considering—
 - (i) the long-term safety of members of the public who have access to the works or a structure to which the works relate; and
 - (ii) if practicable, the advice of a registered professional engineer who has audited the works or structure; and
 - (b) complies with the plan; and

¹ Emergency tidal works under the repealed *Sustainable Planning Act 2009*.

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- (c) gives a copy of the plan to the enforcement authority as soon as reasonably practicable after starting the works; and
 - (d) takes reasonable precautions and exercises proper diligence to ensure the works or a structure to which the works relate are in a safe condition, including by engaging a registered professional engineer to audit the works or structure.
- (3) A person who, in an emergency, is carrying out necessary building work on a Queensland heritage place, or local heritage place, does not commit a development offence, other than an offence against section 162, if the person—
- (a) gets the advice of a registered professional engineer about the works before starting the works, unless it is not practicable to do so; and
 - (b) takes all reasonable steps—
 - (i) to ensure the works are reversible; or
 - (ii) if the works are not reversible—to minimise the impact of the works on the place's cultural heritage significance.
- (4) A person who, in an emergency, is carrying out any other necessary activity does not commit a development offence if the person gives notice that the person has been carrying out the activity, as soon as reasonably practicable after starting the activity, to—
- (a) the enforcement authority; and
 - (b) a person who must be given notice of the activity under another Act.
- (5) Subsections (2), (3) and (4) stop applying to a person carrying out an activity if an enforcement notice or order requires the activity to stop.
- (6) Subsections (2) and (3) stop applying to a person carrying out the activity if—
- (a) the person does not, as soon as reasonably practicable after starting the activity—
 - (i) make a development application that, but for the exemption, would be required for the activity; and
 - (ii) give a notice of a type mentioned in subsection (4); or
 - (b) the person complies with paragraph (a), but the person's development application is refused.
- (7) If the person's development application is refused, the person must restore, as far as practicable, premises to the condition the premises were in immediately before the activity was carried out.

Maximum penalty—4500 penalty units.

- (8) In this section—

emergency means an event or situation that involves an imminent and definite threat requiring immediate action (whether before, during or after the event or situation), other than routine maintenance due to wear and tear.

Example of an action not done because of an emergency—

the carrying out, in winter, of a use or of building or operational work in anticipation of the next cyclone season

necessary, in relation to an activity, means the activity is necessary to ensure the emergency does not, or is not likely to, endanger someone or something stated in subsection (1)(a) to (d).

registered professional engineer means—

- (a) a registered professional engineer under the *Professional Engineers Act 2002*; or
- (b) a person registered as a professional engineer under an Act of another State.

Intent of section 166 for operational work that is tidal work

Section 166(2) provides an exemption to the development offences in part 2 of chapter 5, other than the offence of carrying out prohibited development in section 162. The exemption applies if a development permit is ordinarily required for works, development or use, and an emergency endangers the structural safety of an existing structure for which there is a development permit for operational work that is tidal works.

Under this exemption the person must make, and comply with, a safety management plan for the tidal works, and meets the other requirements in subclause (2), including by giving a copy of the safety management plan to the enforcement authority as soon as reasonably practicable after starting the works. The person must also comply with subclause (6), including by making a development application for the tidal works as soon as reasonably practicable after starting the works.

The exemption will cease to apply if the person is required by an enforcement notice or enforcement order to stop carrying out the emergency works, development or use.

As soon as reasonably practicable after starting works under the exemption, the person must make a development application that would otherwise be required for the works and give the enforcement authority written notice of the work. The exemption will cease to apply if these requirements are not carried out, or if the person's development application is refused.

If the development application is refused, the person must then restore, as far as practicable, the premises to the condition they were in immediately before the work, development or use was carried out. It is an offence to fail to restore the premises (maximum penalty of 4500 penalty units).

Further information

You can access customer support regarding environmental licences and permits by phoning 13 QGOV (13 74 68).

The latest version of this publication can be found at www.des.qld.gov.au using the publication number ESR/2016/2045 as a search term.

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Approved:

3 July 2017

Enquiries:

Permit and Licence Management
 Ph: 1300 130 372 (select option 4)
 Ph: 13 QGOV (13 74 68)
 Email: palm@des.qld.gov.au

Template version history

Version	Date	Version details
1.00	10 August 2012	Versioning first added.
2.00	4 February 2013	Updated for corporate style. Added new subsection (iv) to section 585(1)(c).
2.01	4 August 2016	Added version history, publication number ESR/2016/2045 and effective date.
3.00	3 July 2017	Replaced <i>Sustainable Planning Act 2009</i> with <i>Planning Act 2016</i> .
3.01	25 June 2018	Document rebranded to align with machinery of government changes.
3.02	18 November 2020	Added Permit and Licence Management's direct phone number '1300 130 372'.
3.03	06 May 2022	Facsimile number removed.