

## 4 STATUTORY & NON-STATUTORY FRAMEWORK

### 4.1 Overview

As outlined through the *Gap Analysis Report* (Cardno, 2011), coastal protection works are subject to both statutory and non-statutory instruments at the Commonwealth, State and Local Government levels. An overview of the non-statutory framework (key policies, strategies and plans) is provided in Section 4.2 and an overview of the statutory framework (key legislation) is provided in Section 4.3.

This is an important constraint on the selection of erosion management policies and options.

This section reflects the current regulatory environment and has been prepared based on consideration of the Commonwealth and State legislation, policies and plans currently in force.

### 4.2 Policy Framework for Management of the Coastal Zone

#### 4.2.1 Commonwealth Policies and Strategies

##### *National Strategy for Ecologically Sustainable Development (ESD) 1992*

The Brundtland Report, which was published in 1987, acted as a catalyst for a number of international advances on environment and development issues, including negotiation of a range of international treaties and conventions. These developments culminated in the United Nations Conference on Environment and Development, which was held in Brazil in June 1992, at which several documents setting out a direction for Ecologically Sustainable Development (ESD) were signed, including the Rio Declaration and Agenda 21.

Concurrent to this process, the Australian Government developed a *National Strategy for Ecologically Sustainable Development* in 1992. The stated goal of the policy is to achieve "development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends".

The core objectives of the strategy are:

- To enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
- To provide for equity within and between generations;
- To protect biological diversity and maintain essential ecological processes and life-support systems.

Chapter 17 of the Strategy identifies the need to develop comprehensive coastal zone policies which are consistent with ESD principles, protect and manage the coastline and beaches for the enjoyment of future generations, and ensure that coastal development is balanced, well planned and environmentally sensitive. One of the stated objectives was to develop a Coastal Policy consistent with the Resource Assessment Commission's recommendations on coastal management (see below).

### *Coastal Policy 1995*

The Commonwealth *Coastal Policy 1995* was developed in response to the outcome of the Final Report of the Resources Assessment Commission's Coastal Zone Inquiry. It presents the Commonwealth's vision for sustainable and integrated management of the coastal zone, with a focus on management of the Commonwealth's own coastal activities, and coordination of the range of initiatives undertaken by all Australian Governments.

Specific objectives included within the policy are:

- *Sustainable resource use*
  - *To ensure that coastal zone resources are available for fair and equitable public and commercial use, so that their use optimises the long-term benefits derived by the community;*
  - *To ensure that consequences arising from the dynamic nature of coastal environments are recognised. This includes taking into account natural fluctuations in sea level and climate, climate change, impacts associated with storm events, changes in shoreline position, and species mobility within coastal ecosystems;*
  - *To maintain adequate and appropriate public access to the coast, so that it is possible to enjoy a range of recreational opportunities that are consistent with these objectives. Where appropriate, public access should be managed to protect coastal resources and public safety;*
- *Resource conservation*
  - *To conserve and manage areas and features of significant ecological, physical, cultural, historic, landscape and scientific importance, so that their values are maintained;*
  - *To maintain the biological diversity and productivity of marine and terrestrial ecosystems and natural processes within the coastal zone for present and future generations. Where environmental qualities have been degraded remedial action should be taken to restore them;*
  - *To maintain or restore the quality of coastal waters, so that there is no significant detrimental impact on the integrity of coastal ecosystems and their ability to support a range of beneficial uses;*
- *Public participation*
  - *To ensure that there is informed public participation in open, consultative processes dealing with planning and management of coastal resources;*
  - *To recognise the interests in the coastal zone of Australia's indigenous peoples and incorporate these interests in management arrangements;*
- *Knowledge and understanding*

- To enhance and incorporate in decision making an understanding of coastal zone ecosystems and natural processes and the effects on them of human activities; this enhanced understanding should also be reflected in the skills of managers with responsibilities in the coastal zone;
- To encourage and support relevant decision making organisations in the preparation of management guidelines and codes of practice to deal with specific coastal management issues.

A series of initiatives to be undertaken by the Commonwealth in the sphere of coastal zone management are provided in relation to the following areas:

- Community participation in coastal management;
- Providing integrated solutions to particular management issues;
- Increasing the capacity and knowledge of those with coastal management responsibilities to discharge them effectively;
- Developing appropriate links with our regional neighbours.

There is cursory acknowledgement of the challenges faced by coastal erosion and sea level rise. The sole reference to these issues within the policy is made in relation to the need for regional cooperation (i.e. with other nations in the South Pacific region). Neither erosion nor sea level rise are identified as "*particular management issues*", which instead focus on marine pollution and exotic species.

#### *Coastal Climate Change Adaptation Decision Pathways Program*

At the Commonwealth level, the Department of Climate Change and Energy Efficiency (DCCEE) provides national oversight for adaptation planning (in particular for coastal communities). DCCEE (and its previous entities) has delivered a number of programs (such as the current Coastal Adaptation Decision Pathways Program) as well as supporting the publication of key guiding documents to assist Local Government with adaptation planning for climate change. In particular key relevant documents include:

- *Adapting to Climate Change in Australia - An Australian Government Position Paper* (DCC, 2010);
- *Climate Change Adaptation Actions for Local Government* (DCCEE, 2010); and
- *Climate Change Impacts & Risk Management - A Guide for Business and Government* (AGO, 2006).

The need for climate change adaptation has been highlighted through first pass national assessments, mapping and national forums such as:

- *Climate Change Risks to Australia's Coast – A First Pass National Assessment* (DCC, 2009);
- *Climate Change Risks to Coastal Buildings and Infrastructure - A Supplement to the First Pass National Assessment* (DCCEE, 2011);

- *Developing a national coastal adaptation agenda – A Report on the National Climate Change Forum* (DCCEE, 2010); and
- *Variability and trends in the Australian wave climate and consequent coastal vulnerability* (Hemer et al., 2008).

#### 4.2.2 State Policies and Strategies

##### *Queensland Coastal Plan 2011*

As outlined in Section 3.1, the QCP was prepared under the *Coastal Protection and Management Act 1995*. It provides guidance as to how the Queensland coastline should be managed so as to achieve the objectives of the Act. The QCP applies to activities such as management planning and decision making. The *State Planning Policy (SPP) for Coastal Protection* is a statutory instrument under the QCP which provides more detailed guidance on regional and local planning, assessing development applications, and how coastal hazards should be managed. There are a number of principles for management listed under both the main QCP document and the SPP for Coastal Protection and these are listed in Table 4.1. The management policies are primarily intended to be implemented by the managers of state and local government controlled coastal land and owners of private coastal land.

*Table 4.1: Principles for Coastal Management (after DERM, 2011a)*

Policy Outcome	Principle
<i>QCP</i>	
Protecting coastal resources in erosion prone areas.	Natural coastal processes including erosion and accretion are able to occur without interruption.
Buildings and structures in erosion prone areas.	Structures (including all infrastructure) in erosion prone areas are designed, located and managed to ensure that impacts on coastal processes are avoided or minimised.
Dune management.	Dunes are to be protected and dune vegetation is maintained and enhanced.
Management of areas of ecological significance.	Protect areas of high ecological significance (HES) and conserve other ecological values.
Indigenous cultural heritage.	The living culture of Indigenous Traditional Owners and their connection with cultural resources on the coast and in marine areas is maintained and enhanced.
Public access and use of the coast.	Public access and use of the coast is maintained and enhanced for current and future generations.
Buildings and structures on State coastal land.	Buildings and structures (including all infrastructure) are established on State coastal land only where they are essential, provide a public service, and cannot be feasibly located elsewhere.
Driving on beaches.	Driving on beaches is not supported unless required for access and is actively managed to prevent significant impacts on ecological values and ensure a safe environment for other beach users.
Management planning.	Management and use of coastal land is guided by plans of management.

Policy Outcome	Principle
Monitoring and review.	Coastal land managers achieve effective coastal management through regular monitoring, reviewing and reporting mechanisms.
Knowledge sharing and information.	Knowledge and awareness of coastal resources and their management is shared with the community.
Community engagement.	The community is engaged in coastal management decision-making processes.
<i>SPP for Coastal Protection</i>	
Land use planning.	Allocating areas for urban development avoids or minimises the exposure of communities to the risk of adverse coastal hazard impacts, maximises the conservation of coastal resources and preferentially allocates land on the coast for coastal-dependent development.
Coastal hazards.	Communities and development are protected from adverse coastal hazard impacts taking into account the projected effects of climate change and the preference for allowing the natural fluctuation of the foreshore and foreshore ecosystems to continue, including, in response to rising sea levels.
Nature conservation.	Areas of high ecological significance are protected and areas of general ecological significance on land and other ecological values are conserved.
Scenic amenity.	The scenic amenity of the coast is protected and enhanced.
Public access.	Public access to the coast is maintained and enhanced for current and future generations.
Coastal dependent development.	Protect and maintain opportunities for sustainable coastal-dependent development in a manner that minimises impacts on coastal resources.
Canals and artificial waterways.	Coastal resources are protected from canal or artificial waterway development.

In addition to providing guidance in relation to coastal management, the QCP and SPP for Coastal Protection provide more specific comment on development in EPAs and locations affected by coastal hazards. The preparation of SEMP is a key requirement under the QCP and SPP for Coastal Protection. Any development proposed within EPAs, be it a coastal protection work or other type of development, is required to be consistent with the local SEMP.

#### *Coastal Hazard Adaptation Strategies*

Within the SPP for Coastal Protection is a requirement for local planning instruments to incorporate a coastal hazard adaptation strategy for urban localities that fall within the projected 2100 high coastal hazard area (as defined by the mapping released by DEHP). The adaptation strategy should be based on a triple bottom line cost:benefit assessment of the most effective adaptation and/or mitigation options, and would also include a fully costed implementation strategy.

It is important to note that the term 'coastal hazards' as applied in this context relates not only to erosion hazard, but also hazard from storm tides and SLR (permanent) inundation. Affection of coastal areas by catchment flood processes and the interaction with coastal processes under climate change conditions is not explicitly referenced, but is also likely to have a significant impact on hazard for some coastal locations.

There is, therefore, something of a disjunct between the preparation of SEMP (which focus exclusively on erosion hazard) and the adaptation strategy (which focuses on the full range of coastal hazards). The coastal hazard adaptation strategy would provide a more holistic and strategic approach that would inform not only land use planning, but also asset management and emergency management as well.

### 4.3 Key Relevant Legislation

When reviewing the statutory framework, the key considerations include:

- Where or when different legislative constraints apply?
- How are the boundaries for different constraints defined (e.g. are they defined as per gazetted maps or in relation to a water level?), and how might these boundaries shift under climate change?
- What provisions are there relating to emergency coastal protection works, and how is an emergency defined?
- In the event of a conflict between two instruments, which is the overriding instrument?

Many of the statutory instruments discussed herein relate to fixed locations and the available mapping (see Table 2.1) for key legislation is presented in Figures 4.1 and 4.2, which show those parts of the study area that correspond to:

- Coastal Management Districts under the *Coastal Protection and Management Act 1995* (CPM Act);
- Essential Habitat under the *Vegetation Management Act 1999* (VM Act);
- Fish Habitat Areas A and B protected under the *Fisheries Act 1994* (F Act); and
- Directory of Important Wetlands and Great Sandy Strait Wetland, both of which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), Australia being a signatory to the Ramsar Convention; and
- The Fraser Island World Heritage Area, which is protected under the EPBC Act.

Due to the sensitive nature of the local environment of the Fraser Coast, it is probable that approvals for any proposed development in the coastal zone will fall under both the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) and the Queensland *Sustainable Planning Act 2009* (QLD) (SPA).

Other key pieces of legislation that could have implications for the implementation of any coastal protection works are as follows:

- *Coastal Protection and Management Act 1995* (Qld);
- *Marine Parks Act 2004* (Qld);
- *Fisheries Act 1994* (Qld);
- *Native title (Queensland) Act 1993* (Qld); and

- *Vegetation Management Act 1999 (Qld).*

As outlined through the *Gap Analysis Report* (Cardno, 2011) there is not yet an integrated local planning scheme for the recently amalgamated FCRC LGA. Until such time as an integrated planning scheme is gazetted, development (in the form of any proposed coastal protection works) in the study area would be assessed against the relevant local planning based on the former LGA boundaries (i.e. the City of Hervey Bay, City of Maryborough, and Shire of Tiaro planning schemes).

Local planning schemes identify:

- Desired environmental outcomes relating to the shoreline; and
- Codes which prescribe environmental standards for development in the coastal zone.

The regulatory framework hierarchy requires that all state legislation subordinate to the *Sustainable Planning Act 2009* is considered before local planning schemes, which will be the case with the management options being assessed through this report.

#### 4.3.1 Commonwealth Legislation

##### *Environment Protection and Biodiversity Conservation Act 1999*

Under the EPBC Act, a referral to the Australian Government must be made for proposed actions that have the potential to significantly impact on matters of National Environmental Significance (NES) or Commonwealth land. Matters of NES located within the study area are listed below:

- World Heritage Properties (Figure 4.1-4.2);
- National Heritage Places (Figures 5.8-5.9);
- Ramsar wetlands (Figure 4.1-4.2);
- Threatened species and ecological communities;
- Migratory species;
- Commonwealth marine areas.

There are a number of Matters of NES that occur within the study area, with National Heritage Places and/or Ramsar wetlands abutting almost the entire Fraser Coast shoreline. Therefore, it is likely that a specific proposal for coastal protection works would trigger the need to consider whether a significant impact on these features is likely to occur.

It is understood that DEHP is also leading a joint Queensland and Australian Government initiative to extend the boundaries of the Fraser Island World Heritage Area to encompass a large portion of the study area from Urangan to Tinnanbar. Under the Inter-Governmental Agreement on the Environment for the management and protection of world heritage areas, any works proposed under the SEMP would need to be located outside of "areas of state significance (natural resources)", or works not expanded in these areas, unless it can be demonstrated that there will be no adverse impacts on coastal resources and their values. An

exception to this requirement will be provided if it can be demonstrated that the proposal would have a net benefit for the State as a whole.

The EPBC Act also promotes the principles of ESD.

#### 4.3.2 Queensland Legislation

##### *Sustainable Planning Act 2009*

The SP Act 2009 seeks to achieve ecological sustainability by:

- Managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes;
- Managing the effects of development on the environment (including managing the use of a premises); and
- Continuing to coordinate and integrate planning at local, regional and state levels.

'Operational works' are defined under Section 10 of the Act as including:

1. *extracting gravel, rock, sand or soil from the place where it occurs naturally; or*
2. *conducting a forest practice; or*
3. *excavating or filling that materially affects premises or their use; or*
4. *placing an advertising device on premises; or*
5. *undertaking work in, on, over or under premises that materially affects premises or their use; or*
6. *clearing vegetation, including vegetation to which the Vegetation Management Act applies; or*
7. *undertaking operations of any kind and all things constructed or installed that allow taking or interfering with water, other than using a water truck to pump water, under the Water Act 2000; or*
8. *undertaking—*
  - a. *tidal works; or*
  - b. *work in a coastal management district (see Figure 4.1 and 4.2); or*
9. *constructing or raising waterway barrier works; or*
10. *performing work in a declared fish habitat area; or*
11. *removing, destroying or damaging a marine plant; or*
12. *undertaking roadworks on a local government road.*

Based on these definitions, any coastal protection works proposed for the study area will be classified as Operational works and constitute assessable development under Section 232 of the Act. Operational works are subject to the Integrated Development Assessment System (IDAS) managed through the SP Act 2009. Based on the nature of the Operational Works (in this case coastal protection works), regulatory authorities involved as part of the IDAS include:

- FCRC (acting as Assessment Manager or Concurrence Agency);
- DEHP (acting as Assessment Manager, or Concurrence Agency and Advice Agency);
- DAFF (acting as either Assessment Manager or Concurrence Agency); and
- Department of Transport and Main Roads – Maritime Safety Queensland (acting as Concurrence Agency).

Works to maintain an existing coastal protection structure would be self-assessable under the SP Act 2009.

It is relevant to note that under Section 585 of the SP Act (2009), provisions for emergency works effectively allow *Operational Works - tidal works* to be constructed without approval in a coastal emergency. However, while a person (whether an individual, a local Government or another entity) can quickly undertake works to protect structures in an emergency (or to protect the life and health of a person), 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 (after the works are commenced/completed).

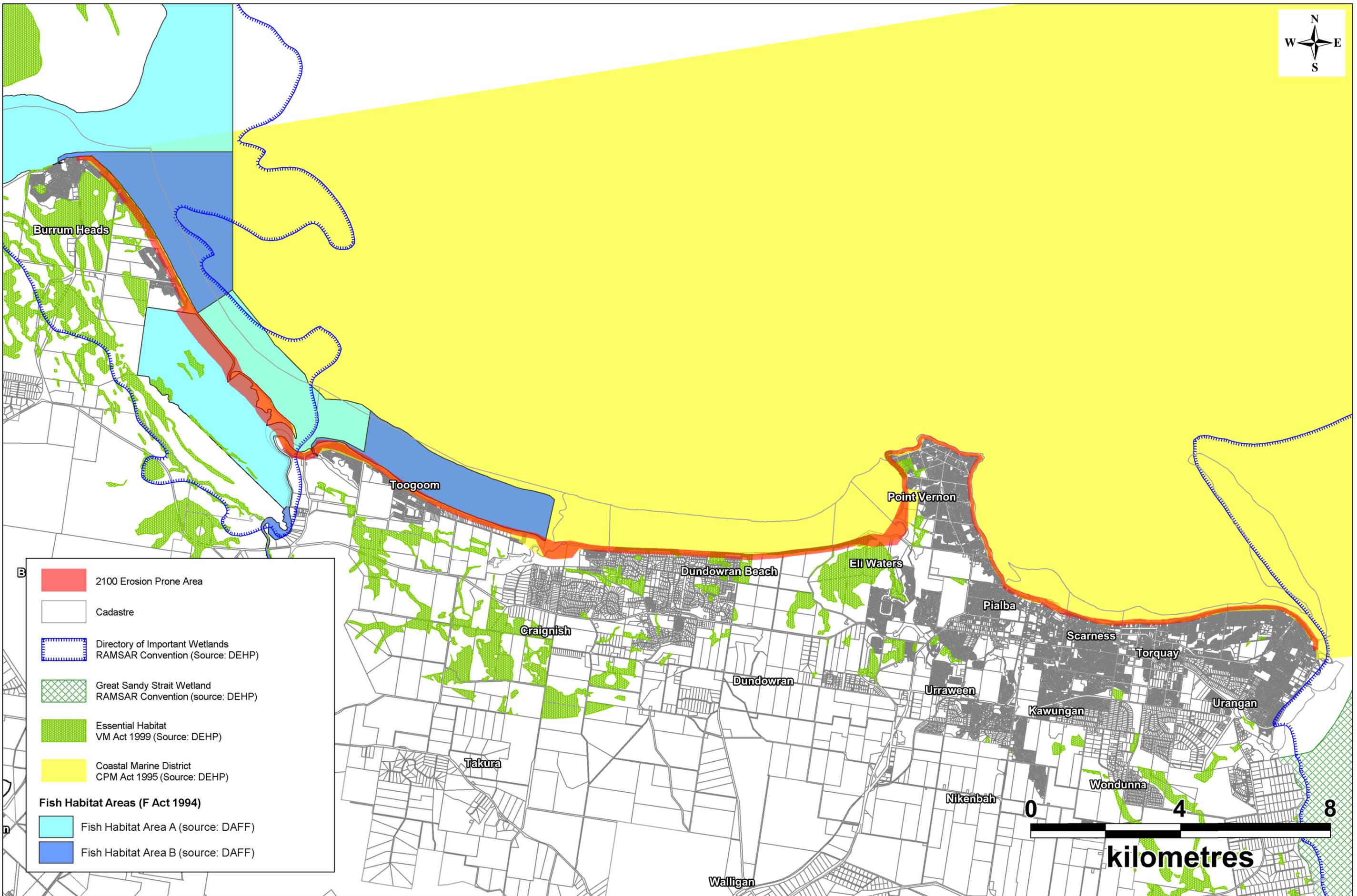
#### *Coastal Protection and Management Act 1995*

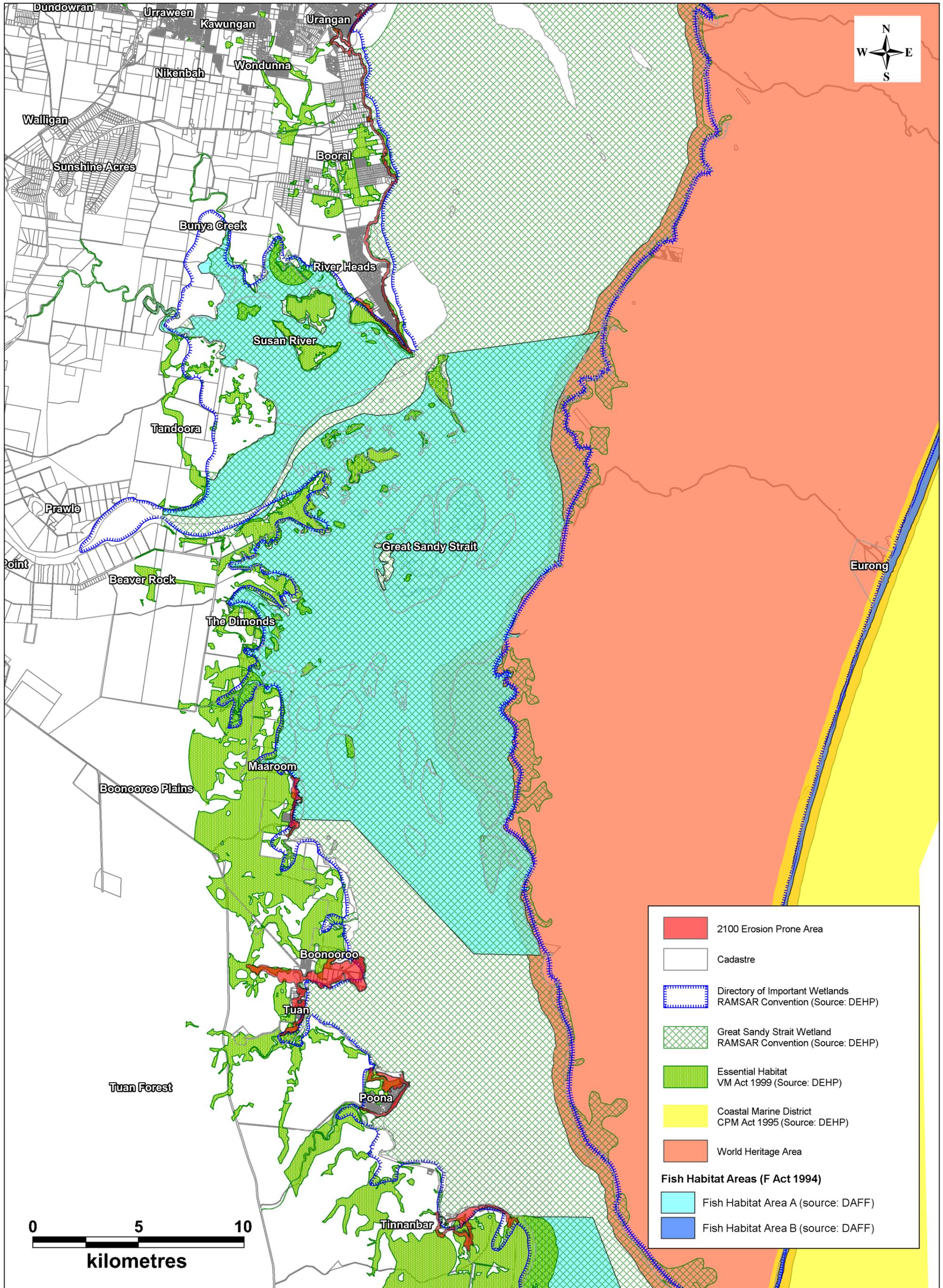
The *Coastal Protection and Management Act 1995* and subordinate QCP provide for the management and protection of Queensland's coastal zone and its economic, social and ecological resources. More specifically the legislation determines the ecological values that must be maintained, while also providing a framework to manage coastal protection works including:

- Tidal works;
- Operational works on state coastal land above the Mean High Water Springs (MHWS) mark;
- Disposal of material in tidal water; and
- Interfering with coastal dunes.

The QCP provides a holistic management framework that should be utilized through the assessment of any proposed coastal protection works, with the final outcome for the selected management option determined by genuine public "*planning need*" as opposed to "*private demand*."

Further discussion on the QCP is provided in Section 4.2.2.





#### *Marine Parks Act 2004*

The entire study area is adjacent to or partially within the Great Sandy Straits Marine Park. The *Marine Parks Act 2004* and more specifically the *Marine Park (Great Sandy) Zoning Plan 2006*, detail permissible actions within the Great Sandy Strait Marine Park. The boundary of the Great Sandy Marine Park includes the tidal lands and waters up to HAT, excluding freehold and leasehold land (i.e. as at the time of declaration of the GSMP 01/09/2006). Under Section 20 of the Act the Marine Park also extends into the airspace to a height of 915 m above the park and to a depth of 1,000 m below the surface of the park. No further definition is provided in the legislation, and it has been assumed that this translates to 915 m above HAT, and 1,000 m below the ground level (which will vary spatially and over time).

Where works are proposed in the Marine Park, permissions must be applied for and an assessment of the works made against a number of mandatory and other relevant criteria under Sections 10 and 11 of the *Marine Parks Regulation 2006*.

The Marine Park has five zonings:

- General use zone (covering most of management zone 3);
- Habitat protection zone (part management zone 1);
- Conservation park zone (part management zones 1 and 4, all of zones 2 and 5);
- Buffer zone (none in study area); and
- Marine national park zone (part of management zone 4, creek in zone 1).

Any activities proposed in the Marine Park should be consistent with the objectives for each of these zones, as outlined in the *Marine Parks (Great Sandy) Zoning Plan 2006*. Activities that may be conducted either with or without permission in each zone are identified in Part 2 of the zoning plan. Advice from Queensland Parks and Wildlife Service (QPWS) states that, under Section 108 of the *Marine Parks Regulation 2006*, if an activity is not allowed either with permission or without permission (as defined under Part 2 of the zoning plan), then it is classified as a prohibited purpose.

The zoning plan identifies that a person may, with permissions, undertake dredging, nourishment or coastal protection works in the 'General Use' and 'Habitat Protection' zones, provided that the proposed activity is consistent with the zone objectives defined under the *Marine Parks Regulation 2006* (noting, however, that the issue of a permit would be at the discretion of QPWS). Based on advice from QPWS, it is understood that coastal protection works involving dredging, nourishment or the construction of a structure would not be permitted within the Conservation Park or Marine National Park Zones.

There are also statutory Designated Areas declared under the zoning plan to enable special management of important habitat and species. In some instances these will be relevant to the SEMP, particularly the Shorebird Roosting and Feeding Area that covers the Great Sandy Strait area (management zones 4 and 5). Under Part 3 of the zoning plan, activities that may cause excessive disturbance of shorebirds or their habitat are prohibited. It is not clear what constitutes "excessive disturbance".

The current zonings would preclude certain erosion management options from being possible in certain locations. In particular, it would make identifying a local nearshore source of sand a significant challenge, due to the prevalence of the more restrictive zonings in the study area, adding significantly to the cost of any management option that would require dredging of sand. FCRC may wish to consider making a submission in regards to the permissibility of coastal protection works within the current zonings and/or re-zoning when the Zoning Plan is reviewed in 2016.

It is noted that, under Section 58 of the Zoning Plan, a person may 'enter or use' the Marine Park if there is an emergency in order to:

- (i) to investigate and respond to an emergency alert; or*
- (ii) to save human life or avoid the risk of injury to a person; or*
- (iii) to deal with a threat of pollution to the marine environment under a law of the Commonwealth or a national emergency response arrangement in which the chief executive participates; or*
- (iv) to locate or secure the safety of an aircraft, vessel or structure that is, or may be, endangered by stress of weather or by navigational or operational hazards; or*
- (v) to carry out emergency repairs to a navigational aid; or*
- (vi) to remove or salvage a vessel or aircraft, or a section of a vessel or aircraft, or other wreck, that is wrecked, stranded, sunk or abandoned and poses a threat to the marine environment or safety.*

This implies that emergency coastal protection works could be undertaken during a storm if they are intended for purposes of public safety or where a structure is under threat. It is understood that a permit would be required for the works once the storm has passed, and that this clause does not provide opportunity for large scale, permanent coastal protection works.

Also of interest is the fact that the Marine Park boundaries are overridden in the event that a historic tenure applies to the subject land. Any historic land tenures, such as lease hold or freehold land below HAT, would still apply and the subject land is therefore not part of the Marine Park, although it is understood that these areas should have been excluded from the Marine Park when it was gazetted. It would, however, only apply to cadastral lots for which right line boundaries have been mapped. Where ambulatory boundaries extend over tidal waters, the submerged land is deemed State land and the legislation would still apply.

#### *Fisheries Act 1994*

The *Fisheries Act 1994* and subordinate regulation manages Queensland's commercial and recreational fisheries. More specifically the mechanisms of the Act allow for:

- The establishment of Fish Habitat Areas with stringent development and operational controls;
- The protection of all marine plants from unauthorised disturbance including damage and removal; and
- The management of fish passage throughout water courses.

Importantly all marine plants, which includes both submerged (e.g. seagrass) and intertidal (e.g. mangroves) aquatic species and those growing on adjacent land are protected whether they are dead or alive, and regardless of whether they are situated on freehold, leasehold or unallocated state lands.

Development can be assessed against the provisions of the Act if it is:

- Work that is completely or partly within a Declared Fish Habitat Area;
- Works that involve the removal, destruction or damage of marine plants; or
- Construction of a waterway barrier.

All development, as defined through s232 of the *Sustainable Planning Act 2009*, in a Fish Habitat Area (Figures 4.1 and 4.2) requires consent through the Resource Allocation Authority which is administered through the SP Act (2009). In this case, DAFF would be a referral Agency and the Resource Allocator. It is noted that any works to maintain an existing structure that was lawfully erected, or was present prior to the designation, are permitted and are self-assessable.

Fish Habitat Areas with an 'A' designation are generally more restrictive, and no form of coastal protection work would be permitted within these areas unless it can be demonstrated that the structure has an overriding requirement to be on tidal land or within the Fish Habitat Area. This is unlikely to be the case for most, if not all, coastal protection works. In some locations the lot boundaries for specific cadastral parcels are currently submerged, and where this is the case and the parcel is delineated by a right line boundary, the subject land would not form part of the Fish Habitat Area, irrespective of whether it is submerged land. The Act is therefore a significant constraint on erosion management and the identification of permissible options in some locations.

Under s88B of the *Fisheries Act 1994*, it is an offence to carry out a development (i.e. an operational or building work) except in the event of an emergency endangering the life or health of a person, or the structural safety of a building. This implies that emergency coastal protection works could be undertaken where a structure is at threat. The term 'emergency' is not defined under the Act and it is not clear if this applies exclusively to, for example, a storm event, or may also be applied where a structure is under threat from long term erosion.

The provisions of the Act are also an issue for FCRC as it relates to the management of trees that have fallen due to coastal erosion. It is understood that the Department of Agriculture, Fisheries and Forestry (DAFF) maintain a policy that terrestrial coastal vegetation (such as trees) should be managed before it falls into the intertidal (or subtidal) zone due to erosion, after which point it becomes 'marine vegetation' as defined under the *Fisheries Act 1994* and may not be removed. This policy implies that trees should be removed before they are lost to erosion, however, this then places the subject terrestrial vegetation under the *Vegetation Management Act 1999* (see below), and the removal of an otherwise healthy tree that is at risk from erosion (and has potential to act as a hazard to public safety) would require further assessment and may not be permissible. This places FCRC in a difficult position with respect to the management of the impacts of coastal erosion and public safety liability.

### *Native Title (Queensland) Act 1993*

The *Native Title (Queensland) Act 1993* is a continuation of Commonwealth legislation reflecting the High Court decision recognising the occupation of land by Indigenous peoples prior to European settlement in Australia. Information regarding the location of native title in the study area should be investigated and incorporated into the IDAS process if required.

### *Vegetation Management Act 1999*

The *Vegetation Management Act 1999* affords protection to what is defined as 'essential habitat' under s20AC of the Act. There are a number of areas of essential habitat identified as occurring within the study area (Figures 4.1-4.2), and where a proposal involves the clearing of essential habitat, this would require further assessment under the Act.

## 4.4 Discussion on Legislative Constraints on Management Options

Pending preparation of a Coastal Hazard Adaptation Strategy (or more holistic climate change adaptation plan), it was recommended in Section 2.3 that FCRC focus on addressing existing and short term erosion risk in the SEMP by formulating management policies and options based on a 2030 planning horizon.

Within the SEMP guidelines (DERM, 2011c) there is a statement that the SEMP should be presented for the endorsement of the Minister, such that it "*can form the basis for a preliminary approval or development application for a scheme of works throughout the LGA, removing the administrative burden of managing multiple development applications and permits.*" Due to the large range of legislative constraints, this may be difficult to implement in practice. Consultation undertaken with the relevant consent authorities to date indicates that the provision of "*approval in principle*" of an SEMP is not considered appropriate, and that approval (or otherwise) for any proposed works is only appropriate on a case by case basis.

The current legislative framework is a significant constraint on management and effectively forces the SEMP to adopt certain management policies and options, particularly where multiple pieces of legislation apply to a single stretch of coastline. For some locations in the study area, the current legislation effectively forces FCRC into a position whereby they will not be able to adopt a policy of Holding the Line at its present location, and will be forced to adopt one the following policies:

- No Active Intervention (do nothing);
- Managed Retreat; or
- Managed Realignment (landward translation of the average shoreline position to the private property boundary).

There are potentially significant social, economic and environmental costs associated with each of these three management policies due to the loss of public open space and recreational amenity, public access to the shoreline, and associated decline in revenue from tourism and other coastally dependent commercial activities. Some significant areas of shoreline and intertidal habitat would also be impacted. This outcome would not be consistent with the principals for coastal management/development outlined in the QCP and

SPP for Coastal Protection (Table 4.1). This issue also highlights the conflicts within the statutory framework between protection of private property rights, environmental conservation and social equity. Furthermore, the first two policies would not likely be supported by the community at large, and the third policy would likely only be supported by those private landholders who would directly benefit from the works, provided the works were funded by FCRC or the State.

The consultation program conducted for this project (Section 2.2) has incorporated a high level of stakeholder involvement in the preparation of this document in an effort to ensure that the SEMP includes management policies or options that would be compatible with the legislative and policy framework. In the event that the statutory constraints appear insurmountable, this would be referred back to FCRC for consultation with the State Government. It is recommended that the parties involved work together to formulate a solution (even if it is only a short term solution) to address the current threat from erosion while a long term strategy is formulated. This may involve discussion around the possibility of amending some of the relevant instruments. Another avenue for discussion with the authorities centres as to whether an assessment of the SEMP against the net benefit to the State could be justified. If so, it is understood that this would provide some exemptions from the restrictions on management options currently in place under the legislative framework. It is also recommended that FCRC seek legal advice as to the extent (or allocation) of liability from failure to address the risk of erosion.

In the meantime, emergency management during a storm event will be a key concern for development currently at risk, and there appear to be sufficient clauses within the key legislation to permit emergency protection works where there is a threat to public safety or to a structure (e.g. a dwelling), noting that an approval would still be required after the emergency event has passed. Should such a circumstance arise, this could result in undesirable social and environmental outcomes, and the need to obtain a post hoc approval may come too late to address any negative impacts, in addition to which the cost of doing so may be significant.

Emergency management is also problematic because, in many cases what constitutes an 'emergency' is not well defined and it is recommended that FCRC seek legal advice as to the circumstance under which these clauses may be activated. In particular, guidance is required on the circumstances under which the 'emergency' clause(s) would be triggered and the type of coastal protection that works would be considered suitable. It is understood that the recent spate of natural disasters in Queensland has highlighted these issues and that the State Government is currently assessing these emergency management provisions.

Once the SEMP reaches the implementation stage, it may also be useful for FCRC to assess boundary determinations for cadastral lots that are located on the seaward edge of EPAs as it appears that where *right line* (as distinct from *ambulatory*) freehold or lease hold boundaries are below HAT, these boundaries would override any overlapping Marine Park zones or Fish Habitat Area designations, which are the two key legislative controls on erosion management options.