



3. Legislation & Approvals Context

3.1 State Government Policy Issues

The following State Government policies are relevant to the proposed development:

State Coastal Management Plan, in particular policy areas as follows:

- 2.1.2 Settlement pattern and design
- 2.1.12 Managing water resources
- 2.2.2 Erosion prone areas
- 2.3.1 Future need for access
- 2.3.2 Design of access
- 2.4 Water Quality
- 2.5 Indigenous Traditional Owner cultural resources
- 2.8.1 Areas of state significance (Natural Resources)
- 2.8.2 Coastal wetlands
- 2.8.3 Biodiversity
- » Regional Growth Management Framework (RGMF) for the Wide Bay Burnett Region, in particular policy areas as follows:
 - 6.1 Remnant native vegetation
 - 6.2 Riparian vegetation
 - 6.3 Native wildlife
 - 6.5 Fish and fisheries
 - 7.1 Places of major environmental and cultural heritage value
 - 8.1 Preferred settlement pattern for region
 - 8.2 Preferred settlement pattern for region
 - 8.4 Residential living opportunities
 - 9.2 Road transport facilities
 - 10.1 Development sequencing
 - 10.2 Regional water supply
 - 10.3 Rural community water and sewage
 - 11.2 Indigenous local heritage
 - 12.1 Community services
 - 12.2 Social impacts
- » Central Queensland Regional Growth Management Framework (Central Queensland: A New Millennium) including the following policy areas:
 - Land use planning and management (3.1.1)
 - Coastal planning and management (3.1.9)
 - Existing and emerging industries (3.2.1)



- Tourism (3.2.13)
- Regional identity marketing and promotion (3.4.1)
- Housing (3.4.4)
- Social infrastructure and social planning (3.4.5)
- Individual, family and community vitality (3.4.8)
- Healthy lifestyles (3.4.9)
- Education and training (3.5.1)
- Research and development (3.5.3)
- » Material Change of Use Policy for Vegetation Clearing NRM, June 2005, Part A.
- » *Environmental Protection (Air) Policy 1997*
- » *Environmental Protection (Noise) Policy 1997*
- » *Environmental Protection (Water) Policy 1997*
- » *Environmental Protection (Waste Management) Policy 2000.*
- » State Planning Policy 1/03 Mitigating the Adverse Impacts of Flood, Bushfire and Landslide
- » State Planning Policy 2/02 Planning and Management of Coastal development Involving Acid Sulfate Soils
- » State Planning Policy 1/92 Development of Conservation of Agricultural Land.

Responses to key policies are provided in Appendix C.

Note that a draft Regional Coastal Management Plan for the Wide Bay Burnett Region is currently being developed.

3.2 Approval requirements

Approvals for the proposed development at Hummock Hill Island are expected to be required at Commonwealth, State and local government level. At the State/local government levels, approvals will be required under the *Integrated Planning Act 1997* as well as legislative requirements not incorporated into the Integrated Development Assessment System (IDAS).

A review of applicable legislative requirements is provided in Table 4.



Table 4 Applicable Legislation and Policy

Legislation/Policy	Approval Requirements	Application to Proposed Development
COMMONWEALTH		
<i>Environmental Protection and Biodiversity Conservation Act 1999</i>	Under the EPBC Act a person must not take an action that has, will have or is likely to have a significant impact on a matter of national environmental significance without the approval of the Commonwealth Environmental Minister.	The proposed development may impact on the following matters of National Environmental Significance: <ul style="list-style-type: none"> » World Heritage Areas (Great Barrier Reef) » Listed endangered, migratory and marine species Referral has been made to Department of the Environment and Heritage with the recommendation that the proposed action be a Controlled Action.
<i>Great Barrier Reef Marine Park Act 1975</i>	Installing a structure in the Marine Park (below low tide mark) Discharging waste into the Marine Park	Boat ramps and a bridge will be constructed in Boyne Creek and Colosseum Inlet and will require placement of structures in the Queensland Great Barrier Reef Marine Park (ie below low water mark). A sewage outfall will be required for disposal of treated effluent when weather conditions preclude land irrigation. This will require a permit for the structure and a permit to discharge to the Commonwealth marine park.
STATE		
<i>State Development and Public Works Organisation Act 1971 (Non-IDAS approval)</i>	An Environmental Impact Statement must be prepared for any project declared a Significant Project under this Act. The Coordinator - General's assessment and attached conditions become a Concurrence Agency Response under IPA.	Application for Significant Project status under this Act has been made.
<i>Queensland Marine Parks Act 1982</i> <i>Marine Parks Regulation 1990</i> <i>Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004 (non-IDAS approval)</i>	Installing a structure in the Coast Marine Park (between high and low tide) Discharging waste into the Coast Marine Park	Boat ramps and a bridge will be constructed in Boyne Creek and Colosseum Inlet and will require placement of structures in the Queensland Great Barrier Reef Coast Marine Park (ie the land/waters between high tide and low tide). A sewage outfall will be required for disposal of treated effluent when weather conditions preclude land irrigation. This will require a permit for the structure. A permit to discharge will probably not be required as the discharge will be to the Commonwealth marine park (refer above).



Legislation/Policy	Approval Requirements	Application to Proposed Development
<i>Vegetation Management Act 1999</i> (IDAS approval)	Approval is required for the clearing of remnant native vegetation.	Remnant vegetation is present on Hummock Hill Island including endangered, of concern and not of concern regional ecosystems. The development has been planned to avoid clearing of endangered and of concern vegetation except where absolutely necessary for infrastructure provision. Clearing of not of concern regional ecosystems will be required.
<i>Water Act 2000</i> (IDAS approval)	Approval is required to conduct operational works that involve disturbance of the bed and banks of a stream. A water allocation is required to extract water from groundwater or surface waters.	There are no permanent freshwater streams on Hummock Hill Island to which the <i>Water Act 2000</i> applies. Mainland water supply pipeline alignments may include crossings of freshwater streams to which the <i>Water Act 2000</i> would apply. There is no intention to extract water from aquifers or surface waters.
<i>Aboriginal Cultural Heritage Act 2003</i>	Disturbance of Aboriginal cultural heritage material can only be undertaken in accordance with an approved Cultural Heritage Management Plan (CHMP). A CHMP is required for any project for which an Environmental Impact Assessment is undertaken.	There is Aboriginal cultural heritage material on Hummock Hill Island. A Cultural Heritage Management Plan is required as the project will undergo an Environmental Impact Assessment.
<i>Native Title Act 1993 (Cth)</i> <i>Native Title (Queensland) Act 1993</i>	An Indigenous Land Use Agreement (ILUA) is required if works are to be undertaken on land subject to Native Title.	NT has been extinguished over lot 3 (development lease). Infrastructure such as the bridge and road corridors will be dedicated as road reserves and thus not be subject to Native Title.
<i>Fisheries Act 1994</i>	Resource Allocation Authority for any disturbance within a Fish Habitat Area. (non-IDAS approval) Operational Works or Building Works within a Declared Fish Habitat Area (IDAS Approval) Operational Works Development Permit for the trimming or removal of Marine Plants. (IDAS Approval)	Colosseum Inlet boat ramp will require Resource Allocation Authority and Operational Works due to disturbance to Colosseum Inlet FHA. Note that the area 100m on either side of the centreline of the existing access track and causeway is excluded from the FHA and thus approvals for the bridge crossing and Boyne Channel boat ramp are not required. Trimming and removal of a small number of mangroves on Boyne Channel will require Operational Works approval. Disturbance to mangroves on Colosseum inlet can be avoided.
<i>Environmental Protection Act 1994</i> (IDAS Approval)	Development Approval for carrying out Environmentally Relevant Activities (ERAs)	Development Permit for ERA 15 Sewerage Treatment Plant and Operator Registration Certificate.



Legislation/Policy	Approval Requirements	Application to Proposed Development
		Development Permit for ERA 16 – Water Treatment if any on-site potable water treatment is proposed.
<i>Transport Infrastructure Act 1994</i> (IDAS Referral)	Development not contiguous to a State-controlled road that exceeds the threshold must be referred to Main Roads.	Traffic studies to be undertaken to determine whether threshold is exceeded on Bruce Highway. Not likely to apply.
<i>Coastal Management and Protection Act 1993</i>	Resource Allocation. (non-IDAS Approval) Operational Works Development Permit for Tidal Works. (IDAS Approval)	Required for excavation of material from Colosseum Inlet and Boyne Channel as part of bridge and boat ramp construction.
State Planning Policy 2/02 - Planning and managing development involving acid sulfate soils (IDAS Referral)	Development involving: excavating more than 1000m ³ of soil or sediment; or using more than 1000m ³ of material as fill Must be referred to Department of Natural Resources and Mines.	Excavation of acid sulfate soils will occur for construction of boat ramp and bridge crossing at Boyne Channel. Quantity of ASS/PASS to be excavated to be confirmed but likely to exceed 1,000 m ³ . Advice of Queensland Acid Sulfate Soils Investigation Team (QASSIT) to be sought in any case due to sensitivity of receiving environment.
State Coastal Management Plan (IDAS referral)	Demonstrate compliance with policies set in the Management Plan. Note that a Regional Coastal Management Plan has not been developed for the Wide Bay-Burnett Region.	Relevant policies have been identified in the Draft Terms of Reference (refer Appendix D). A discussion on the application of the State Coastal Management Plan to the project is provided in Appendix C .
Regional Growth Management Frameworks: Central Queensland A New Millennium and Wide Bay 2020	Demonstrate consistency with outcomes sought in each of the RGMFs.	Hummock Hill Island is located on the northern boundary of the Wide Bay Region with the Central Queensland Region.
LOCAL		
Miriam Vale Shire Council Planning Scheme (IDAS approval)	Development Permit for Material Change of Use, Reconfiguration of a Lot and Operational Works.	Site is zoned rural under current Transitional Planning Scheme. Note that the IPA compliant planning scheme is being drafted and due for release for public comment early in 2006. It is not yet clear whether the Development Approval application for the proposed Hummock Hill Island development will be made under the transitional scheme or the IPA compliant scheme.



3.3 Approvals Process

3.3.1 Overview of Commonwealth, State and Local Approvals Process

As identified in Section 3.1, the proposed Hummock Hill Island development will require environmental and planning approvals under Commonwealth, State and local laws.

Assessment as a Significant Project under the *State Development & Public Works Organisation 1971* (SDPWOA) requires an EIS.

The project has also been referred under the *Environment Protection & Biodiversity Conservation Act* (EPBC Act) with the recommendation that the project be designated a Controlled Action on the basis that it takes place within the Great Barrier Reef World Heritage Area.

A Bilateral Agreement exists between the Commonwealth and Queensland governments allowing a joint assessment process to be undertaken for these two Acts.

The outcome of the SDPWOA EIS process will be a Coordinator-General's Report, recommending whether the project should proceed or not. If recommended to proceed, the Coordinator-General's Report will contain any conditions required by the Coordinator-General or any of the State and local government referral agencies involved in review of the EIS. The Coordinator-General's Report then fulfils two further functions:

- » As an Assessment Report, it is forwarded to the Commonwealth Department of the Environment and Heritage for consideration in the application for approval under the EPBC Act.
- » As a Concurrence Agency Report, it forms the basis for subsequent approvals under the Integrated Planning Act (ie IDAS approvals identified in Table 4).

The Commonwealth Minister for the Environment may approve or reject the project and, if approved, may also place conditions on the project.

At the State/local government level, the proponent must submit a Development Approval Application and the IPA Assessment Manager (most likely Miriam Vale Shire Council) and referral agencies (for example EPA, DPI&F) must issue Development Approval that substantially mirrors the Coordinator-General's conditions.

Several other non-IDAS approvals are also required. These are discussed in Section 3.3.5.

3.3.2 EPBC Act

As discussed above, referral has been made to Department of the Environment and Heritage under the EPBC Act, recommending that the proposed Hummock Hill Island development is a Controlled Action. The controlling provision for the Action is Part 3 Division 1 Sections 12 and 15A, being that relating to World Heritage Areas.

While there is also potential for listed threatened species and migratory species to occur on and adjacent to Hummock Hill Island, the proposed development is not likely



to have a significant impact on these, given the lack of direct disturbance of habitat and environmental protection measures proposed to avoid indirect disturbance.

Once the project is designated as a Controlled Action, the process for EPBC Act assessment under the bilateral agreement is as follows:

- » Agree on assessment under a Bilateral Agreement. Agree on the assessment process.
- » Agree on Terms of Reference for EIS. (A draft Terms of Reference that satisfies both Commonwealth and State government a requirement is provided in Appendix C).
- » Commence State and Commonwealth assessment.
- » Conduct assessment as per State approvals pathway (refer Section 3.2).
- » Coordinator – General submits assessment report to Department of the Environment and Heritage.
- » Minister for Environment seeks views for any relevant Commonwealth Ministers and relevant agencies such as GBRMPA.
- » Minister issues/refuses approval.

Figure 10 shows the EPBC Act assessment process. The pathway under a bilateral agreement has been designated with ticks.

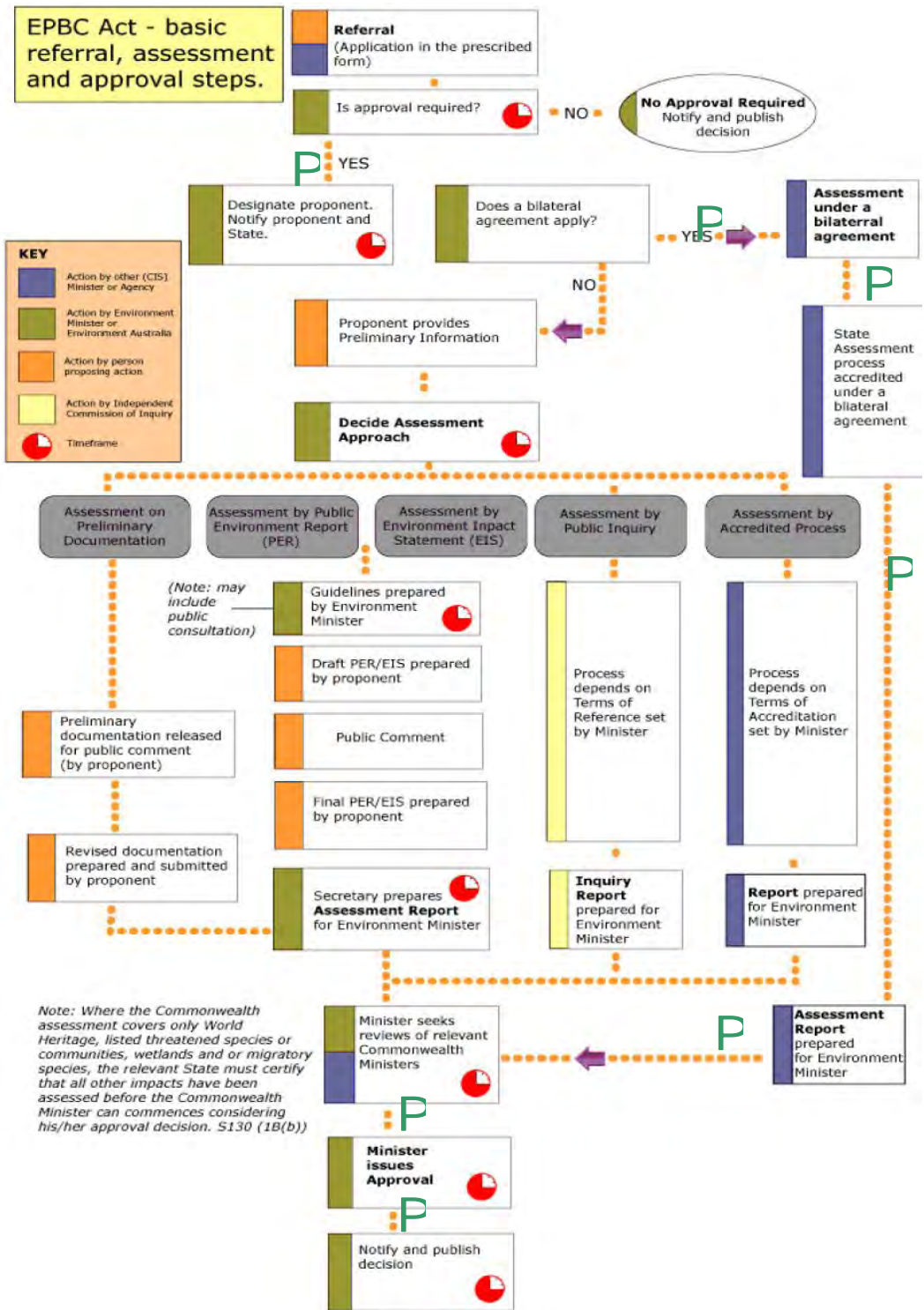


Figure 10: EPBC Act Approval Process



3.3.3 SDPWOA Approval

While there is no formal statutory process for Environmental Impact Assessment conducted under this Act, steps in the process are typically:

- » Proponent prepares and submits an Initial Advice Statement (this document)
- » The Coordinator-General considers the project against the criteria for a Significant Project under Section 27 of the Act
- » Terms of Reference for the EIS are prepared and agreed with the Coordinator-General's office
- » The Draft Terms of Reference are publicly advertised and distributed to relevant State government referral agencies and Department of the Environment and Heritage
- » Terms of Reference are finalised, taking into account any comments received.
- » An EIS is prepared in accordance with the requirements of the Terms of Reference
- » The EIS is reviewed and accepted by the Coordinator-General (or delegate)
- » The EIS is placed on public exhibition and is provided to all relevant State Government referral agencies and Department of the Environment and Heritage for a period of 4-6 weeks.
- » Comments from members of the public and referral agencies are submitted to Coordinator-General. Department of the Environment and Heritage may also submit informal comments on matters of National Environmental Significance.
- » The Coordinator-General considers all comments received on the EIS and directs the proponent to provide further information as considered necessary.
- » The proponent prepares and submits a Supplementary Report addressing matters raised in comments on the EIS.
- » The Supplementary Report is distributed to referral agencies and registered submitters who are requested to submit final comments and approval conditions to the Coordinator-General.
- » The Coordinator-General prepares a report containing an assessment of the project, a decision of whether to proceed or not, conditions that should be attached to the project and subsequent development approvals. This report becomes the Concurrence agency report under IDAS and the Assessment Report under the EPBC Act.

3.3.4 Subsequent Approvals - IDAS

The Coordinator-General's Report allows the project to proceed but work cannot proceed until development approvals are obtained. Those approvals outlined in



Table 4 are still required.

For IDAS approvals, the Coordinator-General's Report is the concurrence agency report and subsequent approvals must abide by the recommendations and conditions in the Coordinator-General's Report.

Further public notification under IDAS is not required as the public exhibition of the EIS is considered to satisfy *Integrated Planning Act 1997* public notification requirements.

The flowchart for these approvals is shown in Figure 11.

3.3.5 Non-IDAS Approvals

Great Barrier Reef Marine Park Act 1975/Queensland Marine Park Act 1982

A permit is required for the installation of a structure in a State marine park (Section 22) including the intake and discharge pipelines and discharge of concentrate. For the State marine park (State waters between high and low tide mark), this permit is administered by Queensland Parks and Wildlife Service (a subsidiary of EPA) while for the Commonwealth Marine Park, Great Barrier Reef Marine Park Authority administers the approval requirements.

Nature Conservation Act 1992

The *Nature Conservation Act 1992* is intended to conserve biological diversity, ecologically sustainable use of wildlife, ecologically sustainable development and international criteria developed by the World Conservation Union (International Union for the Conservation of Nature and Natural Resources) for establishing and managing protected areas.

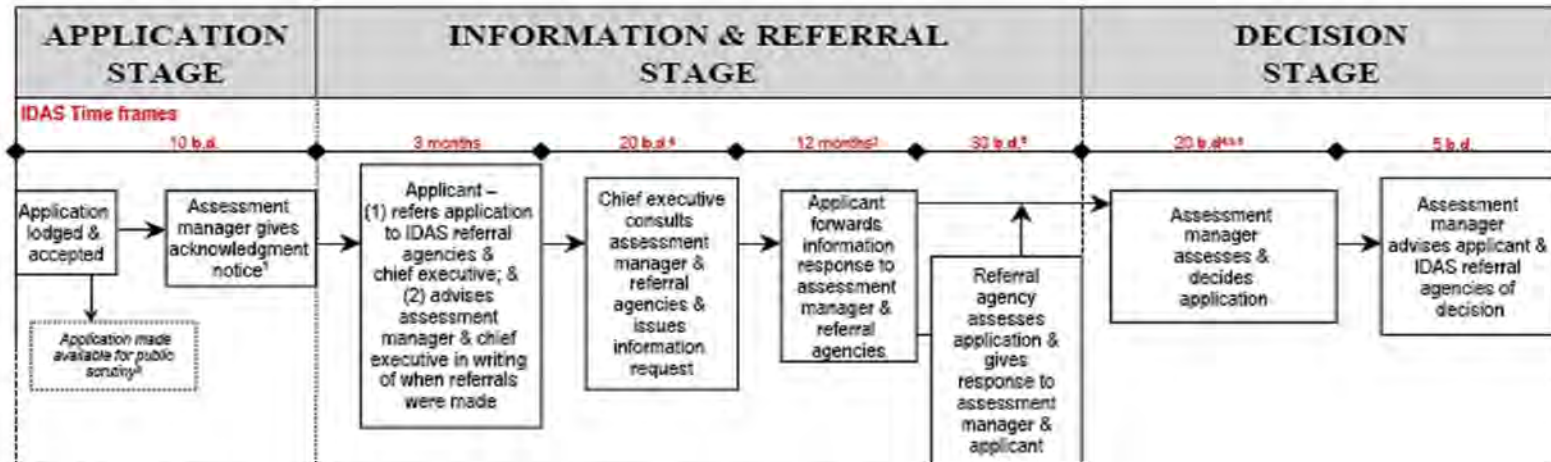
An approval is required to disturb, harm or destroy any species listed under the Act. This is not an *Integrated Planning Act 1997* approval.

Flora and fauna surveys undertaken to date have identified several bird species listed under the *Nature Conservation Act 1992* as being present on the site. It is not likely that the proposed development will harm or disturb these species and thus approval under the *Nature Conservation Act 1992* is not likely to be required. This will be confirmed in the EIS.

IDAS FLOWCHART 9

As at Tuesday 12 July, 2005

For an application involving – • Code assessment only • Referral coordination
 • IDAS referral agencies • Information request issued



Note: b.d. = business days

- ¹ If the application is for a brothel, the assessment manager must also provide the Prostitution Licensing Authority with a copy of the application and a written notice stating whether the development application is required to be subject to Code or Impact Assessment, within 10 business days after receiving the development application.
- ² If the application is in response to a show cause notice or an enforcement notice, the applicant will only have 3 months to respond to an information request.
- ³ Each application and any supporting material must be kept available for inspection and purchase from the time the assessment manager receives the application until the end of any appeal period or the application is withdrawn or lapses.
- ⁴ While the assessment manager may start assessing the application at any time, they may not decide the application during the first 10 business days after the day the decision making period commences, unless the applicant has given the assessment manager written notice that they do not intend to take action under Section 3.3.9 or 3.3.10.
- ⁵ An applicant may choose to stop the decision making process to make representations to a referral agency about the agency's response under Section 3.3.9 of the IPA. Alternatively, an applicant may choose to stop the decision making period to seek the Chief Executive's assistance under Section 3.3.10.

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Figure 11: IDAS Approvals Flowchart



Aboriginal Cultural Heritage Act 2003

The *Aboriginal Cultural Heritage Act 2003* provides for the protection of cultural heritage and establishes duty of care guidelines to ensure *all reasonable and practical measures are taken to ensure that (an) activity does not harm [remove or possess] Aboriginal Cultural Heritage*. The Act establishes a framework for the assessment of potential impacts on cultural heritage and processes to be undertaken in preparing Cultural Heritage Management Plans (CHMP).

The *Aboriginal Cultural Heritage Act 2003* establishes a risk management assessment based on many factors including nature of activity and likelihood of causing harm, extent of consultation, searches of database/register, extent of any survey, nature/extent of past use of area, nature of cultural heritage likely to be harmed and compliance with duty of care guidelines.

The *Aboriginal Cultural Heritage Act 2003* does not require any formal approvals to be obtained. Instead, it makes it an offence to harm any item of Aboriginal cultural heritage significance unless such harm takes place in accordance with an agreed CHMP. The content of a CHMP must be agreed between the Proponent and the Traditional Owners of the affected lands. The Act and the associated Duty of Care guidelines set out processes by which Traditional Owners can be involved in a process of negotiating a CHMP.

Demonstrated compliance with the Duty of Care guidelines is a defence against prosecution for harming items of Aboriginal Cultural Heritage material.

The actual investigation and management requirements as set out by the duty of care guidelines are basically a function of level of both existing and proposed disturbance of the subject site. Hummock Hill Island is largely undisturbed in an archaeological context, and the site is therefore a Category 5 in the Duty of Care Guidelines. Satisfaction of the Duty of Care requires a CHMP to be negotiated and adhered to for all development related activities on the site.

The Guidelines also require a CHMP for any project where an EIS is required.

Note that the *Aboriginal Cultural Heritage Act 2003* is not an *Integrated Planning Act 1997* approval and the CHMP negotiation process can be undertaken independently of Development Approvals.

Native Title Act 1993

One of the primary purposes of the *Native Title Act 1993* is to provide ways for working with native title, especially in relation to economic or other development activities that will affect native title rights and interests.

In situations where the native title holders or claimants are known, parties proposing future acts on lands for which Native Title has not been extinguished need to undertake preparation of an Indigenous Land Use Agreement (ILUA). The Port Curtis Coral Coast native title claim group have a registered native title claim over a large area of Central Queensland, including Hummock Hill Island.

An ILUA is a voluntary agreement made under the *Native Title Act 1993* between people who hold, or claim to hold, native title in an area and other people who have, or wish to gain, an interest in that area.

Native title has been extinguished over Lot 3, being the development lease on which the Hummock Hill Island development is proposed to take place. Outside Lot 3, road and infrastructure reserves associated with the development may extinguish native title.

Resource Allocations

Removal of any material from below the high water mark (i.e. tidal waters) requires a quarry allocation under the *Coastal Protection and Management Act 1993*. This is not an IDAS approval and must be obtained before the IDAS approval is applied for.

The application must include details of the material proposed to be removed, as well as an assessment of the proposed activity against the Coastal Management Policy.

The EPA assesses the application and timeframes for assessment are typically 8 weeks, although this may be extended in a more complex or large-scale project.

Under the *Coastal Protection and Management Act 1993*, a royalty may be payable for resource extraction. An application can be made to waive any royalty where the material has no commercial benefit.

Resource allocation will also be required under the *Fisheries Act 1994* for any works in a Fish Habitat Area. Details will need to be provided on impacts on ecosystems in the Fish Habitat Area. Again, this resource allocation must be obtained before development approval under *Integrated Planning Act 1997* can be applied for.



Figure 12 Coastal Wetlands