

Canal Estates (Prohibition) Bill 2011

FACT SHEET

The purpose of the *Canal Estates (Prohibition) Bill 2011* is to prohibit canal estate developments in Tasmania.

In June 2010 the Tasmanian Planning Commission (TPC) presented the former Premier, the Hon David Bartlett MP, as Minister responsible for the *State Policies and Projects Act 1993*, with its final report on the Walker Corporation's Lauderdale Quay proposal which recommended that the project not proceed. The former Premier accepted this recommendation.

The Lauderdale Quay proposal and its subsequent assessment raised broader questions about the appropriateness of canal estate developments in Tasmania.

Available evidence indicates that by their nature canal estates are highly complex and their environmental impacts difficult to manage. Canal estates can have major adverse impacts on the host estuary, causing loss of habitat, polluting estuarine waters by urban runoff and boating activities and disturbing coastal and sulphate soils.

While the TPC's report focused specifically on the Ralphs Bay development, the issues raised in the report are applicable to canal estates generally. The report found that the Lauderdale Quay proposal was unsustainable; inconsistent with the objectives of the Resource Management and Planning System and the principles of the State Coastal Policy 1996; and had adverse ecological, social, cultural and general community impacts. It was considered that the construction of a canal estate on the tidal flats of Ralphs Bay was an unsustainable approach to satisfying demand for residential land. It could be expected that other similar types of development would possess some or all of these negative attributes.

In some other Australian jurisdictions, where canal estate projects have been carried out over a number of years, governments have now moved to either ban or circumscribe their development. New South Wales and Victoria have banned canal estate developments outright and Western Australia and Queensland have severely circumscribed their development through planning policy principles and guidelines.

The New South Wales ban is effected through legislation and the proposed Tasmanian legislation has drawn from this example.

In developing the legislation it has been necessary to carefully consider the scope and content of the prohibition to ensure that only inappropriate types of development are prohibited and that there are no unintended consequences resulting from the ban.

Accordingly there has been wide consultation with stakeholders on the proposed definition of a 'canal estate.' Those consulted include relevant State and Commonwealth Government agencies, the Tasmanian Planning Commission, the Environment Protection Authority, Marine and Safety Tasmania, local government, the three regional water corporations, Hydro Tasmania, Tasports, the Tasmanian Chamber of Commerce and Industry and the Tasmanian Irrigation Development Board.

The prohibition effected through the Bill is intended to deliver certainty for potential investors and local communities and to protect Tasmania's coastal and estuarine environments.

The Bill amends the *Land Use Planning and Approvals Act 1993* (LUPAA) to insert specific provisions to prohibit canal estate developments in Tasmania.

Clause 6 of the Bill inserts a new 'Part 2B' into LUPAA which provides that an area of land must not be developed as a canal estate and no land on which all or part of a canal estate is situated may be used. This effectively prohibits both the use and development of land as a 'canal estate.'

For the purposes of the Bill a 'canal estate' is defined as an area of land on part of which one or more 'recreational canals' are situated and on any part of which residential dwellings are, or are intended to be, situated.

A 'recreational canal' means a 'man-made' or artificial canal, other than a drainage, water-supply or transport canal, that is formed by excavating, elevating or extending land into a water body, and is inundated by, or drains to, a natural waterway or natural water body by surface or groundwater movement.

A 'residential dwelling' means any premises used, or intended to be used, primarily for accommodation (whether temporarily or permanently) but does not include premises for accommodating persons engaged in farming on land on or adjacent to a canal, or caretaking or monitoring the use of canals or water bodies.

The exclusion of a 'drainage or water supply' canal from the definition of a 'canal estate' is intended to ensure that drainage and other works associated with the supply or treatment of water, for example sewerage, irrigation or hydro electricity service canals, are not affected by the prohibition. Canals used primarily for transport are also excluded.

The definition has been drafted to avoid prohibiting jetties, piers, wharves, boats, 'boatels' and other floating structures as well as residential dwellings situated on land where there is a single dam (for example Grindelwald) or an existing residential canal. Such developments, would, however, still be subject to normal planning and assessment processes.

The Bill amends LUPAA to insert provisions requiring the Tasmanian Planning Commission to amend planning schemes as soon as practicable to ensure consistency with the provisions of this Bill; and stipulating that a canal estate project is not eligible to be declared a project of regional significance.

The amendments to LUPAA include provisions to ensure that planning schemes (including interim planning schemes) and special planning orders are amended to remove any inconsistency with this Bill. The Bill provides that a planning scheme or planning directive may not allow the development or use of a canal estate and that the Tasmanian Planning Commission may not grant a dispensation from the application of a local provision of an interim planning scheme if it would allow the development or use of a canal estate.

The amendment also provides that a project is not eligible to be declared or assessed as a project of regional significance if it consists wholly or partially of a canal estate.

The Bill amends the *State Policies and Projects Act 1993* to provide that a canal estate project is not eligible to be a project of State significance.

The Bill amends the State Policies and Projects Act to provide that a project is not eligible to be declared or assessed as a project of State significance if it consists either wholly or partially of a canal estate development as defined under LUPAA.