

TASMANIA

CANAL ESTATES (PROHIBITION) BILL 2011

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CANAL ESTATES (PROHIBITION) BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 June 2011

*(Brought in by the Minister for Planning, the Honourable
Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Land Use Planning and Approvals Act 1993* and the *State Policies and Projects Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Canal Estates (Prohibition) Act 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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s. 3

Part 2 – Land Use Planning and Approvals Act 1993 Amended

**PART 2 – LAND USE PLANNING AND APPROVALS
ACT 1993 AMENDED**

3. Principal Act

In this Part, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of “building” the following definition:

“**canal estate**” has the meaning it has in section 17;

5. Section 9A inserted

After section 9 of the Principal Act, the following section is inserted in Part 2A:

9A. Planning directive may not authorise canal estate

A planning directive may not authorise, or authorise the issue of a permit that authorises, a development or use consisting in whole or in part of a canal estate.

*No. 70 of 1993

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Part 2 – Land Use Planning and Approvals Act 1993 Amended

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6. Part 2B inserted

After section 16 of the Principal Act, the following Part is inserted:

PART 2B – CANAL ESTATES PROHIBITED

17. Development or use of canal estate prohibited

(1) In this section –

“canal” means an artificial watercourse;

“drainage or water supply canal” means a canal –

(a) for the purposes of –

(i) enabling the drainage of land;
or

(ii) enabling the supply or treatment of water, including the supply of water for irrigation; and

(b) that is constructed by or with the authority of a person or body responsible for the provision of drainage, or

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irrigation or other water supply; and

- (c) that is no larger, and of no greater capacity, than is reasonably necessary to enable adequate drainage of water or supply of water;

“premises” does not include –

- (a) a vessel, ship or boat; or
- (b) a habitable building that is situated on a floating structure;

“recreational canal” means a canal that is –

- (a) formed by –
 - (i) excavating land; or
 - (ii) elevating land on one or more sides of the canal; or
 - (iii) extending land into a body of water; and
- (b) inundated by, or drains to, a natural waterway or natural body of water by

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surface water or
groundwater movement –

and includes, but is not limited to including, a canal so formed that is inundated by tidal waters but does not include a drainage or water supply canal or a transport canal;

“residential dwellings” means any premises on land, which premises are used, or intended to be used, primarily for residential accommodation, whether temporary or permanent, but does not include premises for the accommodation of –

- (a) persons engaged in farming the land or land adjacent to the land; or
- (b) persons engaged as caretakers, or employees, in respect of the land; or
- (c) persons engaged in monitoring the use of a canal or water;

“transport canal” means a canal used, or intended to be used, primarily as a route for the passage of vessels.

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Part 2 – Land Use Planning and Approvals Act 1993 Amended

- (2) 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.
- (3) For the purposes of this Act, a canal estate is an area of land –
 - (a) on part of which one or more recreational canals are situated; and
 - (b) on part of which residential dwellings are, or are intended to be, situated.
- (4) For the purposes of this Act, an area of land is not a canal estate by reason only that it is an area of land, referred to in subsection (3), that is an area of land –
 - (a) on which a single dam is situated; and
 - (b) on part of which residential dwellings are, or are intended to be, situated.
- (5) For the purposes of this Act, an area of land is not a canal estate by reason only that it is an area of land, referred to in subsection (3), that is an area of land –
 - (a) on part of which is situated a recreational canal that is in existence on the day on which

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this section comes into operation;
and

- (b) on part of which residential dwellings are, or are intended to be, situated.
- (6) For the avoidance of doubt, a canal is not to be taken to be formed for the purposes of this section by reason only that a structure constituting a wharf, jetty or pier extends into or over an area of land, unless the structure is situated on land on one or more sides of a canal that was formed, after this section commenced, by –
- (a) excavating land; or
 - (b) elevating land on one or more sides of the canal; or
 - (c) extending land into a body of water.

18. Amendment of planning schemes, &c.

- (1) As soon as practicable after section 17 comes into operation, the Commission must, in consultation with the relevant planning authority, by notice in the *Gazette*, amend –
- (a) any planning scheme, including an interim planning scheme or a

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Part 2 – Land Use Planning and Approvals Act 1993 Amended

planning scheme made under
section 30N; or

(b) any special planning order –

if required in order to remove any inconsistency between section 17 and the planning scheme or special planning order.

(2) Division 2 of Part 3 does not apply to an amendment made under subsection (1).

(3) If the Commission amends under subsection (1) a planning scheme or special planning order –

(a) the amendment is to be taken to have come into operation on the day on which section 17 came into operation; and

(b) the Commission must give notice, in the manner it thinks fit, of the amendment.

7. Section 20 amended (What can a planning scheme provide for?)

Section 20 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) A planning scheme may not authorise, or authorise the issue of a permit that would authorise, a development or use

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consisting in whole or in part of a canal estate.

8. Section 30R amended (Grant and revocation of dispensations)

Section 30R of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) The Commission may not grant a dispensation if it would authorise, or authorise the issue of a permit that would authorise, a development or use consisting in whole or in part of a canal estate.

9. Section 32 amended (Requirements for preparation of amendments)

Section 32(2) of the Principal Act is amended by omitting “section 20(2), (3), (4), (5), (6), (7), (8) and (9)” and substituting “section 20(2), (2A), (3), (3A), (4), (5), (6), (7), (7A), (8), (9), (10), (11) and (12)”.

10. Section 60C amended (Projects eligible to be declared projects of regional significance)

Section 60C of the Principal Act is amended by inserting after subsection (1) the following subsection:

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Part 2 – Land Use Planning and Approvals Act 1993 Amended

- (1A) A project is not eligible to be declared to be a project of regional significance if all or part of the project consists of a canal estate.

11. Section 63 amended (Obstruction of sealed schemes)

Section 63(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) contravenes section 17; or

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Part 3 – State Policies and Projects Act 1993 Amended

s. 12

**PART 3 – STATE POLICIES AND PROJECTS ACT 1993
AMENDED**

12. Principal Act

In this Part, the *State Policies and Projects Act 1993** is referred to as the Principal Act.

13. Section 16 amended (Interpretation: Part 3)

Section 16 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) For the purposes of this Part, a project is not eligible to be a project of State significance if it consists in whole or in part of a canal estate within the meaning of the *Land Use Planning and Approvals Act 1993*.

*No. 65 of 1993

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s. 14

Part 4 – Repeal

PART 4 – REPEAL

14. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.