

# CLAUSE NOTES

## Canal Estates (Prohibition) Bill 2011

### PART 1 - PRELIMINARY

#### CLAUSE 1 – SHORT TITLE

This clause provides the short title to be used when citing the proposed Act for any legal purpose.

#### CLAUSE 2 – COMMENCEMENT

The proposed Act commences on the day it receives Royal Assent.

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

#### CLAUSE 3 – PRINCIPAL ACT

This clause provides that, for the purposes of Part 2, the *Land Use Planning and Approvals Act 1993* (LUPAA) is the Act to be amended.

#### CLAUSE 4 – SECTION 3 AMENDED (INTERPRETATION)

This clause amends section 3(1) of LUPAA by inserting the definition of a 'canal estate' after the definition of 'building'. The definition of a 'canal estate' is set out in a new section 17 to be inserted into LUPAA. The definition is explained in detail under Clause 6 below.

#### CLAUSE 5 – SECTION 9A INSERTED

Clause 5 provides for the insertion of a new section 9A in Part 2A of LUPAA. The new section 9A provides that a planning directive, as defined in LUPAA, may not permit a canal estate. In effect this means that a planning directive may not in any way authorise a development or use of land that consists either wholly or partially of a canal estate.

#### CLAUSE 6 – PART 2B – CANAL ESTATES PROHIBITED - INSERTED

This clause provides for the insertion of a new Part 2B, prohibiting canal estates, after section 16 of LUPAA.

Part 2B comprises two new sections: section 17 which prohibits the development or use of canal estates; and section 18 which provides for the amendment of planning schemes to ensure that they are consistent with the new section 17 of LUPAA.

### **New Section 17 Development or use of a canal estate prohibited:**

This clause prohibits the development or use of canal estates.

Subsection 17(1) defines 'canal', 'drainage or water supply canal', 'premises', 'recreational canal', and 'residential dwellings' for the purposes of the Act.

- 'canal' means an artificial or 'man-made' watercourse or channel.
- 'drainage or water supply canal' means a canal used for drainage and other works associated with the supply or treatment of water, for example canals used for the purpose of sewerage treatment, irrigation or electricity generation etc., where the canal is constructed by a person or body responsible for that activity, or their agent, and the canal is no larger than is reasonably necessary to carry out that activity
- 'premises', as the term is used in the definition of 'residential dwellings', does not include a vessel, ship, boat or habitable building situated on a floating structure.
- 'recreational canal' means a 'man-made' or artificial canal (watercourse), other than a drainage or water supply canal, or transport canal, that is formed by excavating land, elevating land on one or more sides of a canal or extending land into a water body, and that is inundated by, or drains to, a natural waterway or natural water body by surface or groundwater movement.
- 'residential dwellings' means any premises used, or intended to be used, primarily for accommodating persons (whether temporarily or permanently) but does not include premises for accommodating persons engaged in farming the land on, or land adjacent to, the canal, caretaking or as otherwise employed in respect of the land, or monitoring the use of canals or water bodies.
- 'transport canal' means a canal used or intended to be used primarily for the movement of vessels.

Subsection 17(2) prohibits both the use and development of land as a 'canal estate'.

Subsection 17(3) defines a 'canal estate'. A canal estate is an area of land on part of which one or more 'recreational canals' are situated and on any part of which 'residential dwellings' are currently situated, or are intended to be situated.

Subsection 17(4) provides that a canal estate is not an area of land, where there is a single dam and where residential dwellings are currently situated, or are intended to be situated.

Subsection 17(5) provides that a canal estate is not an area of land where there is a recreational canal already in existence when this Act comes into effect, and where residential dwellings are currently situated, or are intended to be situated.

Subsection 17(6) provides that a canal is not formed merely by virtue of the fact that it is a structure that constitutes a wharf, jetty or pier unless the structure is situated on land on one or more sides of a canal that was constructed after this Act comes into effect by excavating, elevating or extending land into a body of water.

### **New Section 18 Amendment of planning schemes, &c.:**

This clause provides for the amendment of planning schemes to ensure they are consistent with the new section 17 of LUPAA.

As soon as practicable after the new section 17 of LUPAA comes into operation the Tasmanian Planning Commission must, in consultation with the relevant planning authority and by notice in the *Gazette*, amend any planning schemes (including interim planning schemes) and special planning orders to remove any inconsistency with the new section 17 and give notice of any such amendment in an appropriate manner.

## **CLAUSE 7 – SECTION 20 AMENDED (WHAT CAN A PLANNING SCHEME PROVIDE FOR?)**

This clause amends section 20 of LUPAA by inserting after subsection (2) a new subsection (2A), which provides that a planning scheme may not authorise, or issue a permit that authorises, a development or use that consists wholly or partially of a canal estate.

## **CLAUSE 8 – SECTION 30R AMENDED (GRANT AND REVOCATION OF DISPENSATIONS)**

This clause amends section 30R of LUPAA by inserting after subsection (2) subsection (2A), which provides that the Tasmanian Planning Commission may not grant a dispensation for the application of a local provision of an interim planning scheme if it would authorise, or issue a permit that authorises, a development or use that consists wholly or partially of a canal estate..

## **CLAUSE 9 – SECTION 32 AMENDED (REQUIREMENTS FOR PREPARATION OF AMENDMENTS)**

This clause applies the amendment to section 20 of LUPAA made by this Act to the amendment of planning schemes also.

It also rectifies inconsistencies that currently exist between section 20 of LUPAA, insofar as it deals with those things that a planning scheme can provide for, and section 32 of LUPAA, insofar as it deals with those things that a planning amendment can provide for.

## **CLAUSE 10 – SECTION 60C AMENDED (PROJECTS ELIGIBLE TO BE DECLARED PROJECTS OF REGIONAL SIGNIFICANCE)**

This clause amends section 60C of LUPAA by inserting after subsection (1) subsection (1A), which provides that a project is not eligible to be declared or assessed as a project of regional significance, as defined in that Act, if it consists wholly or partially of a canal estate.

## **CLAUSE 11 – SECTION 63 AMENDED (OBSTRUCTION OF SEALED SCHEMES)**

This clause makes it an offence for a person to use land in a way, or undertake development, or do any other act, that is in contravention of the new section 17 of LUPAA and makes that person liable for a fine not exceeding 500 penalty units.

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

### **CLAUSE 12 – PRINCIPAL ACT**

This clause provides that for the purposes of Part 3 of the Act, the *State Policies and Projects Act 1993* (SPPA) is the Act to be amended.

### **CLAUSE 13 – SECTION 16 AMENDED (INTERPRETATION: PART 3)**

This clause amends section 16 of the SPPA to provide that a project is not eligible to be declared or assessed as a project of State significance if it consists wholly or partially of a canal estate.

## PART 4 – REPEAL

### CLAUSE 14 – REPEAL

This clause is a drafting convention for amendment Acts and provides that the Act is repealed ninety days from the day it commences.