

CLAUSE NOTES

Sullivans Cove Waterfront Authority Repeal Bill 2011

Clause 1 – Short Title

Clause 2 – Commencement

The Act will commence on a day to be proclaimed. This is envisaged to be on or after 1 September 2011.

Clause 3 – Administration of Act

The responsible Minister for the Act is the Minister for Planning and the responsible agency is the Department of Justice, unless otherwise provided for in accordance with the *Administrative Arrangements Act 1990*.

Clause 4 – Savings and Transitional Arrangements

Explicit arrangements for the transition of incomplete dealings of the Authority on the date of proclamation are set out in Schedule 1.

Clause 5 – Consequential Amendments

Schedule 2 details the consequential amendments to be made to legislation other than the *Sullivans Cove Waterfront Authority Act 2004*. This affects the *Building Act 2000*, *Marine and Safety Authority Act 1997* and the *Tasmanian Planning Commission Act 1997*.

Clause 6 – Legislation Repealed

Provision is made for the repeal of legislation named in Schedule 3, namely the *Sullivans Cove Waterfront Act 2004*.

Clause 7 – Legislation Rescinded

Provision is made for rescinding subordinate legislation listed in Schedule 4, namely the regulations made under the *Sullivans Cove Waterfront Act 2004*.

Clause 8 – Legislation Revoked

The proclamation for the commencement of the *Sullivans Cove Waterfront Authority Act 2004* is revoked.

Schedule I Savings and Transitional Provisions

1. Interpretation

In the schedule the term ‘Authority’ means the *Sullivans Cove Waterfront Authority* and the term ‘HCC’ means Hobart City Council.

The term ‘records’ in the schedule refers to records associated with the performance of the Authority’s statutory responsibilities for planning, building, plumbing, subdivision and strata.

‘repealed act’ in the Schedule refers to the Act establishing the Authority (the *Sullivans Cove Waterfront Authority Act 2004*).

2. Abolition of the Authority

- (1) The Authority is abolished when the Act commences.
- (2) Membership of the Authority is revoked and members of the Authority are not entitled to any benefit in relation to the early winding up of the Authority.

3. Decisions of the Authority

Statutory planning, building and plumbing decisions made by the Authority before repeal of the Act are taken to be decisions made by Council.

This clarifies for permit holders that the Council will be the responsible Authority after the Act commences and that their permits remain valid.

4. References to Chief Executive Officer of the Authority

To clarify that where a permit or other approval references the Chief Executive Officer of the Authority, that this is taken to be the appropriate officer of the Council after the Act commences. For example, sometimes a planning permit may require further action to be taken to the satisfaction of the Chief Executive Officer as a condition of the permit. This would be taken to be to the satisfaction of the appropriate officer of Council, as determined by the General Manager of HCC.

5. Applications for Permits

- (1) If the Authority has received a planning application before the Act commences, then it is taken to be an application to the Council and can continue without the need to make a fresh application to the Council.
- (2) The Authority must provide the planning application and other relevant documents to the Council the day before the Act commences.
- (3) The 42 day period under section s 57(6)(b) and 58(2) of the *Land Use Planning and Approvals Act 1993* within which applications must be determined does not commence until the day on which the Council receives the application material from the Authority.

6. Minor Amendments of Permits

A request for a minor amendment to a permit not dealt with by the Authority before the commencement of this Act will be

saved and can be determined by the Council without the need for a fresh request.

7. Appeals against decision of the Authority

If an appeal to the Resource Management and Planning Appeal Tribunal has been made but has not been determined before the Act commences, the appeal is taken to be an appeal against a decision of Council.

This means that the appeal will continue but that Council will be the respondent in the Authority's place.

8. Rights of Appeal

If a party has a right of appeal against a planning or building determination made by the Authority at the time the Act commences, their right of appeal is preserved and can proceed as an appeal against the decision as if it were a decision of the Council with the Council as the respondent.

9. Planning Scheme Amendments

If the Authority is dealing with an amendment to the Sullivans Cove Planning Scheme 1997 and it has proceeded to the point of a report under section 39 of the *Land Use Planning and Approvals Act 1993* being provided to the Tasmanian Planning Commission, the matter can proceed as if the report was that of Council. If the amendment has not proceeded as far as this stage, it will lapse.

10. Proceedings under s.63 of the *Land Use Planning and Approvals Act 1993*

If the Authority was pursuing enforcement proceedings under section 63 before the commencement of the Act and these were

unresolved at the time the Act commences, the proceedings will continue as if initiated by the Council.

11. Annual report

- (1) The Department of Justice is responsible for providing a report to the Minister for Planning for the period 1 July 2011 to the end date of the Authority.
- (2) The report is to address the matters required to be contained in an Annual Report for the Authority.
- (3) The report is to be appended to the Department's Annual Report.
- (4) This does not otherwise affect the reporting requirements for the Agency under the *State Service Act 2000* and the *Financial Management and Audit Act 1990*.

12. Proceedings under s.63 of the *Land Use Planning and Approvals Act 1993*

Any proceedings commenced by the Authority and not concluded in relation to the breach of a planning instrument under section 63 will continue as if the proceedings had been initiated by the Council.

13. Proceedings under s.64 of the *Land Use Planning and Approvals Act 1993*

Any proceedings seeking an order from the Tribunal in relation to the contravention of the planning scheme will continue as if the proceedings had been initiated by the Council.

14. Applications, permits, consents, certificates, approvals and authorisations under the Building Act 2000

- (1) A building application made to the Authority before the commencement of this Act but not determined, will be saved and can be determined by the Council.
- (2) A permit, consent, certificate, approval or authorisation made by the Authority under the Building Act 2000 before the commencement of the Act is taken to be one that was made by the Council.

15. Notices and orders under the Building Act 2000

Notices and orders issued by the Authority before the commencement of the Act are taken to have been made or issued by the Council.

16. Proceedings under the Building Act 2000

Any proceedings instituted by the Authority under the Building Act 2000 and not determined before the commencement of this Act are taken to have been instituted by the Council.

17. Appeals and applications under the Building Act 2000

An appeal or application to the Building Appeal Board against a decision of the Authority and not determined before the commencement of this Act is to be dealt with as if the decision were that of Council.

Schedule 2 – Consequential Amendments

Building Act 2000

Section 5 states that the Building Act prevails over all other legislation and regulation except the *Sullivans Cove Waterfront*

Act 2004. The section is amended by deleting the reference to the *Sullivans Cove Waterfront Authority Act 2004*.

Marine and Safety Authority Act 1997

Section 34 is repealed in its entirety since it makes a redundant reference to the now repealed *Sullivans Cove Planning Act 1995* and to the planning regime to which the Authority would be subject. The *Land Use Planning and Approvals Act 1993* and *Sullivans Cove Planning Scheme 1997* apply in any case and do not require reference.

Tasmanian Planning Commission Act 1997

Schedule 3A of the Act references the provisions in respect of which delegation and directions are restricted. Reference to sections 32 and 33 of the *Sullivans Cove Waterfront Authority Act 2004* are omitted.

Schedule 3 - Legislation Repealed

This lists the legislation being repealed which is the *Sullivans Cove Waterfront Authority Act 2004* (No.60 of 2004)

Schedule 4 – Legislation Rescinded

This lists the legislation to be rescinded by the Act, being the *Sullivans Cove Waterfront Authority Regulations 2005* (No.150 of 2005) and the *Sullivans Cove Waterfront Authority Amendment Regulations 2007* (No.129 of 2007).

Schedule 4 – Legislation Revoked

The proclamation for the commencement of the *Sullivans Cove Waterfront Authority Act 2004* is revoked.

