



TASMANIA

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**SULLIVANS COVE PLANNING ACT 1995**

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**No. 101 of 1995**

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## SULLIVANS COVE PLANNING ACT 1995

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No. 101 of 1995

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AN ACT to provide for the planning of development of  
Sullivans Cove and to amend the *Marine Act 1976*

[Royal Assent 24 November 1995]

**B**E 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

#### Short title

1—This Act may be cited as the *Sullivans Cove Planning Act 1995*.

**Commencement**

2—This Act commences on the day on which it receives the Royal Assent.

**Interpretation**

3—(1) In this Act, unless the contrary intention appears—

“**Board**” means the Marine Board of Hobart;

“**building**” includes—

- (a) a structure and part of a building or structure; and
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

“**Committee**” means the Sullivans Cove Advisory Committee established under section 14;

“**Council**” means the Hobart City Council;

“**development**” includes—

- (a) the construction, exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and
- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land, including buildings or airspace; and
- (e) the placing or relocation of a building or works on land; and
- (f) the construction or putting up for display of signs or hoardings;

“**land**” includes—

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, servitude, privilege or right in or over land;

“**LUPA**” means the *Land Use Planning and Approvals Act 1993*;

“**plan**” means Plan No. LD1254-4 in the Central Plan Register, a reduced copy of which is set out, by way of illustration only, in Schedule 1 and includes that plan as may be amended from time to time under section 6;

“**planning scheme**” means the planning scheme required to be prepared under section 7 (1);

“**Sullivans Cove**” means the land shown bounded by a bold black line on the plan;

“**Tribunal**” means the Resource Management and Planning Appeal Tribunal;

“**use**”, in relation to land, means the manner in which land has been, is being or may be utilised, but does not include the undertaking of development in respect of land;

“**works**” includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

(2) In this Act, a reference to a Zone is a reference to a Zone as shown on the plan.

### **Application of planning scheme to Crown**

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

### **Objectives to be furthered**

5—It is the duty of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives specified in Schedule 1 to LUPA and Schedule 2 to this Act.

### **Amendment of plan**

6—(1) At any time before the planning scheme is given final approval under LUPA, the Minister may, with the agreement of the Council and the Board and by order published in the *Gazette*, amend the plan by altering the boundaries of the land which is subject to the scheme or the boundaries of a Zone.

(2) After the planning scheme is given final approval under LUPA, the boundaries of the land which is subject to the scheme or the boundaries of a Zone may only be altered if—

- (a) the Minister, Council and Board agree; and
- (b) the alteration is made under LUPA as an amendment to the scheme.

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## **PART 2**

### **SULLIVANS COVE PLANNING SCHEME**

#### **Preparation of planning scheme**

7—(1) The Council must, within one year after receipt of a direction under this Act or within such further time as the Minister may allow and in consultation with the Committee, prepare a planning scheme in accordance with the requirements of LUPA in respect of Sullivans Cove.

(2) If the Council fails to comply with subsection (1) within the period referred to in that subsection—

- (a) the Land Use Planning Review Panel may assume the responsibilities and obligations of the Council under that subsection; and
- (b) the Council must pay to the Panel all costs incurred by the Panel in assuming those responsibilities and obligations.

(3) A failure to comply with subsection (1) within the period referred to in that subsection does not invalidate a planning scheme finally approved under LUPA.

**Preservation of existing use rights**

8—(1) Subject to this section, nothing in the planning scheme is to—

- (a) prevent the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was being lawfully used before the commencement of the scheme; or
- (b) prevent the use of any building which was erected before that commencement for any purpose for which it was lawfully being used immediately before that commencement, or the maintenance or repair of such a building; or
- (c) prevent the use of any works constructed before that commencement for any purpose for which they were being lawfully used immediately before that commencement; or
- (d) prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that commencement; or
- (e) require the removal or alteration of any lawfully constructed buildings or works.

(2) Subsection (1) does not apply to a use of land—

- (a) which has not occurred for a continuous period of 2 years; or
- (b) which has not occurred for 2 or more periods which together total 2 years in any period of 3 years; or
- (c) in the case of a use which is seasonal in nature, if the use does not occur for 2 years in succession.

(3) Subsection (1) does not apply to the extension or transfer from one part of a parcel of land to another of a use previously confined to the first-mentioned part of that parcel of land.

(4) Subsection (1) does not apply where a use of any land, building or work is substantially intensified.

**Power of Minister to give directions to Council**

9—(1) The Minister must, within 30 days after the commencement of this Act, give the Council a direction in writing specifying the policy objectives of the Government of Tasmania with respect to the planning and development of Sullivans Cove but may not otherwise give a direction to the Council.

(2) The direction is to be in accordance with this section, Schedule 3 to this Act and section 20 of LUPA.

(3) A direction—

- (a) so far as it affects land contained in Zone 1, is to be given for the general purpose of creating a residential neighbourhood and for incidental uses; and
- (b) so far as it affects land contained in Zone 2, is to be given for the purpose of extension of existing buildings and development of vacant sites with new buildings of a character and form consistent with the surrounding development; and
- (c) so far as it affects land contained in Zone 3, is to be given for the purpose of facilities for transport and for incidental uses; and
- (d) so far as it affects land contained in Zone 4.1, is to be given for the purpose of providing port facilities for ships, shipping and incidental uses; and
- (e) so far as it affects land contained in Zone 4.2, is to be given for the purpose of providing port facilities for ships, shipping and incidental uses taking into account the visual aspects of the area as a main road entry to the City of Hobart; and
- (f) so far as it affects land contained in Zone 4.3, is to be given for the purpose of providing protection of, and promoting public awareness of, Sullivans Cove as a unique example of an historic Australian waterfront while ensuring that it continues to function as a port with—
  - (i) associated shipping, transport and other industries; and
  - (ii) facilities for fishing and yachting and harbour facilities; and



- (iii) cultural, recreational, leisure and entertainment facilities; and
- (iv) retail, tourist and commercial activities.

(4) On being given the direction, it is the duty of the Council to prepare the planning scheme so as to be consistent with the direction.

### Developments proposed by Board

10—(1) If, after the planning scheme receives final approval, the Board considers that a development is essential for the efficiency and effectiveness of the performance of its functions or exercise of its powers under the *Marine Act 1976*, the Board must make an application to the Council in respect of the proposed development under section 57 of LUPA unless the planning scheme provides for the development as a permitted use.

(2) In a case of urgency the Board may, while the application referred to in subsection (1) is pending, refer the application with the approval of the Minister to the Tribunal for its decision.

(3) For the purposes of exercising his or her powers under subsection (2)—

- (a) the Minister must, within 24 hours after the approval is requested, decide whether to grant the approval or not; and
- (b) the Minister must first consult with the Council on the matter; and
- (c) the Minister must not grant an approval unless he or she is satisfied that the application is urgent.

(4) For the purposes of this section—

- (a) the referral of the application to the Tribunal is taken to be an appeal under the *Resource Management and Planning Appeal Tribunal Act 1993*; and
- (b) the Board must serve notice of the appeal on the Council; and
- (c) the Tribunal must give public notice of the appeal; and

- (d) the Board, the Council and any other person who wishes to be a party are parties to the appeal; and
- (e) the Tribunal must forward a copy of its decision to the Minister, the Board, the Council and any other person who has been made a party to the appeal.

(5) For the purposes of an appeal, it is to be presumed that a development in respect of land contained in Zone 4·1, 4·2 or 4·3 relates to ships, shipping or incidental purposes and that the development is reasonable and acceptable unless it is established that—

- (a) in the case of land contained in Zone 4·1, it will cause a nuisance by reason of excessive noise or pollution; or
- (b) in the case of land contained in Zone 4·2, it will cause—
  - (i) a nuisance by reason of excessive noise or pollution; or
  - (ii) detriment to the visual aspects of the area as a main road entry to the City of Hobart; or
  - (iii) an adverse effect on the public amenity of the locality; or
- (c) in the case of land contained in Zone 4·3, it will cause—
  - (i) a nuisance by reason of excessive noise or pollution; or
  - (ii) an adverse effect on the cultural significance and historic character or the public amenity of the locality.

**Application of LUPA and *Resource Management and Planning Appeal Tribunal Act 1993***

**11—(1)** A development in Sullivans Cove is subject to LUPA.

(2) The application of LUPA and the *Resource Management and Planning Appeal Tribunal Act 1993* extend to the preparation of the planning scheme and to an application by the Board under section 10 (1).

**Developments in or over water by other authorities**

12—Notwithstanding any other law, where a person or body other than the Board proposes to undertake a development in or over any water in Zone 4·1, 4·2 or 4·3, an application to the Council in respect of that development may not be made without the consent of the Board.

**Effect of scheme on land in Battery Point Planning Scheme or City of Hobart Planning Scheme**

13—On the final approval of the planning scheme—

- (a) any land which is subject to it and to the Battery Point Planning Scheme 1979 in force under LUPA ceases to be subject to the latter Scheme; and
- (b) any land which is subject to it and to the City of Hobart Planning Scheme 1982 in force under LUPA ceases to be subject to the latter Scheme.

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**PART 3****SULLIVANS COVE ADVISORY COMMITTEE****Establishment and constitution of Sullivans Cove Advisory Committee**

14—(1) For the purposes of this Act, the Council must, within one month after the commencement of this Act, establish an advisory committee under the name of the Sullivans Cove Advisory Committee.

(2) The Committee is to be appointed by the Council and consists of—

- (a) a person nominated by the Minister who in the opinion of the Minister has special knowledge of, and experience in, town planning, architecture or building development who is to be the chairperson of the Committee; and

- (b) the Secretary of the responsible Department in relation to LUPA or a person nominated by the Secretary; and
- (c) the person holding the office of master warden of the Board or a person nominated by the master warden; and
- (d) the lord mayor or an alderman of the Council or a person nominated by the Council; and
- (e) a person nominated by the Royal Australian Institute of Architects; and
- (f) a person nominated by the Royal Australian Planning Institute; and
- (g) a person who represents the interests of the business community of the City of Hobart nominated by the Tasmanian Chamber of Commerce and Industry; and
- (h) a person representing community interests of Sullivans Cove nominated by the Sullivans Cove Citizens Association; and
- (i) a person representing commercial interests of Sullivans Cove nominated by the Sullivans Cove Merchants Association; and
- (j) if the Council is satisfied that an organisation has been established representing the permanent residents of Sullivans Cove, a person nominated by that organisation.

(3) If a nomination required by paragraph (e), (f), (g), (h), (i) or (j) of subsection (2) is not made within 30 days after it is requested in writing by the Council, the Council may nominate a suitable person who appears to represent the interests of the appropriate organisation referred to in that paragraph.

(4) Where the Council is satisfied that an organisation specified in paragraph (e), (f), (g), (h), (i) or (j) of subsection (2) has changed its name, the Council may, by order published in the *Gazette*, declare that it is sufficient compliance with that subsection if the member concerned is nominated by the organisation under its new name.

## Functions of Committee

**15—(1)** The functions of the Committee are—

- (a) to assist the Council in the preparation of the planning scheme; and
- (b) to advise the Council on development for the purposes of section 16; and
- (c) to promote public awareness of the historical significance of Sullivans Cove; and
- (d) to advise the Council on publicity, capital works, transport and any other work or activity which might enhance Sullivans Cove; and
- (e) on the final approval of the planning scheme, to make recommendations to the Council on—
  - (i) research on the effectiveness and operation of the planning scheme; and
  - (ii) any amendments considered necessary or desirable to the planning scheme for the purposes of Part 4 of LUPA.

(2) The members of the Committee referred to in section 14 (2) (b), (c) and (d) must consult at least once in each period of 12 months as to the provision of money for the performance of its functions and the exercise of its powers for the following triennium.

## Committee to advise Council on development

**16—(1)** The Council must not grant a permit under section 57 of LUPA in respect of any land that is subject to the planning scheme unless the application for the permit has first been referred to the Committee for advice and the Committee's advice has been taken into consideration by the Council.

(2) Where the Council does not accept any advice given by the Committee under subsection (1), it must notify the Committee in writing of its reasons for not accepting the advice.

**PART 4****MISCELLANEOUS****Amendment of *Marine Act 1976***

17—The *Marine Act 1976*\* is amended by inserting after section 65 the following section:—

**Planning scheme under *Sullivans Cove Planning Act 1995***

65AA—The Marine Board of Hobart must in respect of any land, within the meaning of the *Sullivans Cove Planning Act 1995*, that is subject to that Act, perform its duties and exercise its powers under this Act in accordance with a planning scheme in force under that Act and in accordance with the *Land Use Planning and Approvals Act 1993*.

**Administration of Act**

18—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.

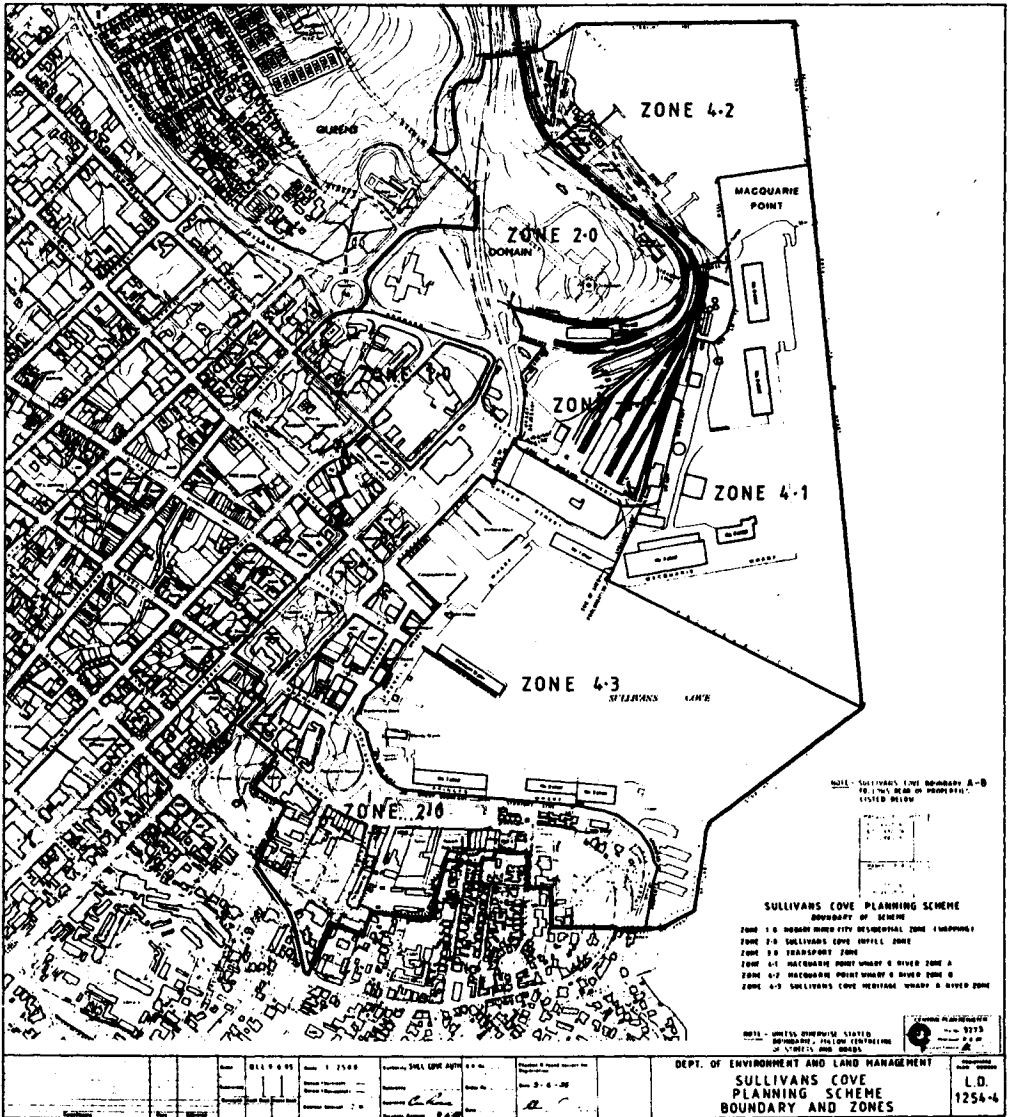
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\* No. 18 of 1976. For this Act as amended to 1 July 1987, see the continuing Reprint of Statutes. Subsequently amended by No. 44 of 1987, No. 20 of 1989, Nos. 32, 43 and 46 of 1991, Nos. 24 and 36 of 1993, Nos. 16, 38, 67 and 68 of 1994, Nos. 14, 18, 30, 52 and 71 of 1995.

SCHEDULE 1

Section 3 (1)  
(definition of  
"the plan")

PLAN OF SULLIVANS COVE



**SCHEDULE 2**

## Section 5

**OBJECTIVES OF THE PLANNING PROCESS ESTABLISHED BY THIS  
ACT**

The objectives of the planning process established by this Act are—

- (a) to provide a co-ordinated planning administration for Sullivans Cove and in doing so to provide a mechanism for public involvement in the planning and development of Sullivans Cove; and
  - (b) to provide protection for and to promote public awareness of Sullivans Cove as a unique example of an Australian historic waterfront while ensuring that it continues to function as a port with—
    - (i) associated shipping, transport and other industries; and
    - (ii) facilities for fishing and yachting and harbour facilities; and
    - (iii) cultural, recreational, leisure and entertainment facilities; and
    - (iv) retail, tourist and commercial activities; and
  - (c) to ensure that Sullivans Cove continues to be a unique historical site that is predominantly in authentic condition and will be used for commercial, cultural, residential, port and recreational purposes; and
  - (d) to ensure that the cultural significance and historical integrity of Sullivans Cove will be preserved; and
  - (e) to ensure that any development in Sullivans Cove will be in sympathy with the area's heritage and its continued use by the Tasmanian community.
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**SCHEDULE 3**

## Section 9 (2)

**REQUIREMENTS OF THE SULLIVANS COVE PLANNING SCHEME**

1—The scheme must recognise that Sullivans Cove—

- (a) contains the principal port in Southern Tasmania which must continue to operate as a port with all necessary port facilities and infrastructure including viable transport access; and
- (b) contains buildings, monuments, structures and spaces reflecting the history and development of Tasmania and establishing a unique precinct which must be developed, enhanced or preserved in a manner consistent with its historical character; and
- (c) must provide recreational and commercial opportunities for the Tasmanian community and visitors to Hobart which should be maintained, enhanced or developed.

2—The planning scheme must have regard to existing use rights as defined by section 20 (3) of LUPA and in particular rights relating to port activities.

3—The planning scheme must—

- (a) have regard to the different requirements of each Zone; and
- (b) have regard to the objectives and principles of—
  - (i) the Sullivans Cove Review published in 1991 by the Sullivans Cove Development Authority as existing before the commencement of this Act; and
  - (ii) the Wapping Outline Development Plan published in 1993 by that Authority; and

- (iii) the Sullivans Cove Traffic and Parking Management Strategy published in 1995 by that Authority.
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*[Second reading presentation speech made in:—  
House of Assembly on 17 October 1995  
Legislative Council on 7 November 1995]*