

HOUSING LAND SUPPLY ACT 2018: AN OVERVIEW

Overview

In response to the Housing Summit hosted by the Premier on 15 March 2018, the Tasmanian Government is taking action to assist in alleviating Tasmania's current housing shortage.

One of the key Government actions endorsed by attendees of the Housing Summit was for the Government to introduce legislation to fast-track the rezoning of surplus Government land suitable for residential use for affordable housing.

The *Housing Land Supply Act 2018* (the Act) has been prepared in response to the Government action endorsed at the Housing Summit.

The Act overrides the rezoning assessment process in the *Land Use Planning and Approvals Act 1993* (LUPAA) and provides:

- a more efficient and appropriate process for rezoning land owned by Housing Tasmania and surplus Crown land (Government land) that has been assessed as being suitable for residential use for affordable housing; and
- for residential planning controls to be replaced or modified to optimise the use of Government land for residential purposes.

The Act enables the Minister for Planning (the Minister) to make a Housing Land Supply Order declaring a specified area of Government land (i.e. Crown land or land held by the Director of Housing under the *Homes Act 1935*) as 'housing supply land'.

What does the Act do?

Subject to meeting strict eligibility and suitability criteria, the Act enables the Minister to:

- rezone areas of Government land that the Minister considers suitable for residential use, to help accelerate the supply of land for affordable housing; and/or
- specify that:
 - the State Planning Provisions (SPPs) for residential use and development (or a modified version of the provisions); or

- other modified planning provisions in a code related to parking and access requirements;

are to apply to areas of Government land that are either already zoned for residential purposes or other land that may be subject to rezoning in accordance with the provisions of this Act.

The Act includes mandatory consultation requirements. These require the Minister to notify and consult with a range of prescribed 'interested persons' before tabling a proposed Housing Land Supply Order in both Houses of Parliament. 'Interested persons' include relevant planning authorities, adjoining and affected land owners, utility providers, nominated statutory bodies and State agencies that the Minister considers have an interest.

Under the Act, both Houses of Parliament (the House of Assembly and the Legislative Council) may disallow a Housing Land Supply Order within five sitting days of the order being tabled.

The Minister then notifies the making of the Housing Land Supply Order declaring an area of Government land to be 'housing supply land'. Any Crown land that is rezoned for residential purposes is automatically transferred to the Director of Housing once the order is made.

However, before an amendment of a planning scheme takes effect:

- the Minister must direct the Tasmanian Planning Commission (the Commission) to amend the relevant planning scheme that applies to an area of land;
- the Commission must notify the Minister that it has amended the relevant planning scheme;
- the Minister must notify the 'interested persons' about the making of the amendment; and
- the Minister must notify the making of the amendment and the day on which the amendment is to take effect in the *Tasmanian Government Gazette* and in a newspaper that is published and circulates in Tasmania.

What are the other features of the Act?

The Act vests any 'housing supply land' subject to a Housing Land Supply Order in the Director of Housing and requires the Director to take all reasonable steps to ensure that the land is used to provide affordable housing in accordance with the *Homes Act 1935*.

Given that both Houses of Parliament can review and disallow a proposed Housing Land Supply Order, there is no ability to appeal the merits of an order.

For land to be assessed and determined under this Act, it must be Government land on the day the Act commences.

The Minister's power to make a Housing Land Supply Order expires five years after commencement of the Act.

If the former Crown land has not been developed for the purposes of residential housing within 10 years of becoming 'housing supply land' and being vested in the Director of Housing, the Minister may transfer the land back to the Crown.

How does the *Homes Act 1935* apply?

The *Homes Act 1935* provides the legal framework under which the Director of Housing provides housing support to eligible persons. Under the *Homes Act 1935*, the Director must take all reasonable steps to provide housing to people who are most in need that is "safe, secure, appropriate and affordable" and to provide housing assistance and enable the provision of housing support services that assists in the economic and social participation of people who may be restricted from participating in Tasmania's society.

The powers of the Director of Housing include acquiring land, subdividing land, and selling houses on the land that are affordable to eligible people. However, the Director can also sell or transfer land to a housing support provider (with the approval of the Minister for Housing), or sell land if it is not required for the purposes of the *Homes Act 1935*, to ensure there is the right

mix of affordable and privately owned housing. Any funds made available through the sale of land can then be used for the purposes of delivering affordable housing in other more suitable locations.

Why is the Government proposing the changes?

The current assessment process under the LUPAA specifies that only a local council can initiate an amendment of a planning scheme to rezone land or modify a planning scheme provision. This assessment process does not allow the Government to initiate a planning scheme amendment, and does not recognise the important role of the Government as an owner of a significant quantity of public land or its responsibility to the community to ensure the best use of that land.

In addition, the SPPs represent best-practice planning controls. While local councils are progressively implementing the SPP planning provisions for residential use and development into their planning schemes as part of the Government's single statewide planning scheme reforms, this Act ensures that these provisions can be applied with immediate effect to any specified Government land through the current planning schemes.

Further, the timeframes under the LUPAA for determining an application to rezone land or modify a planning scheme provision are not well suited to responding to the situation of 'urgent need' that defines the current housing affordability crisis. For example, under the current assessment process, it can be a lengthy process for a

local council to initiate an amendment of a planning scheme and for the Commission to determine a rezoning application. This Act maintains rigorous checks and balances, whilst reducing the time for assessing whether identified Government land is suitable for affordable housing.

Where do I find the Act?

A copy of the Act and accompanying Fact Sheets are available at the Tasmanian Planning Reform website at: www.planningreform.tas.gov.au or at www.justice.tas.gov.au.

A copy of the Act is also available on the Tasmanian Legislation Online website at: <https://www.legislation.tas.gov.au/>.

Enquiries

Any enquiries can be directed to the Planning Policy Unit within the Department of Justice at Planning.Unit@justice.tas.gov.au or by telephoning (03) 6166 1429.

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