

HOUSING LAND SUPPLY ACT 2018: REQUIREMENTS & PROCESSES FOR MAKING HOUSING LAND SUPPLY ORDERS

Overview

The *Housing Land Supply Act 2018* (the Act) provides a more effective 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. It also enables the residential planning controls to be replaced or modified to optimise the use of Government land used for that purpose.

Subject to meeting strict eligibility and suitability criteria, the Act enables the Minister for Planning (the Minister) to make an order (a Housing Land Supply Order) declaring an area of Government land to be 'housing supply land'. This enables the Minister to:

- declare a zone to be the intended zone for the relevant land; and/or
- specify the planning provisions that are to apply to the relevant land.

This fact sheet provides a high-level summary of the steps involved in making and implementing a Housing Land Supply Order. It covers:

- eligibility and suitability criteria;
- consistency with planning requirements;
- restrictions on rezoning Government land;
- what zones can be applied;
- restrictions on modifying planning provisions;
- consultation requirements;
- seeking the approval of Parliament;
- amendment of a Housing Land Supply Order;
- implementation of a Housing Land Supply Order through an applicable planning scheme; and
- commencement of a Housing Land Supply Order.

Eligibility

Under the Act, a Housing Land Supply Order can only be made for Government land. This means Crown land and land owned or managed by the Director of Housing under the *Homes Act 1935* (Homes Act).

The consent of the Minister for Crown land and the Secretary of the department responsible for controlling or administering the relevant land must be obtained (and where the land is already Homes Act land the consent of the Director of Housing must also be obtained) before a Housing Land Supply Order can be made.

The land must also be Government land on the day the Act commences, and can only be included on a Housing Land Supply Order for a period of five years following the commencement of the Act.

However, some Government land is excluded, specifically:

- reserved land under the *Nature Conservation Act 2002*;
- land managed under the *National Parks and Reserves Management Act 2002* or the *Wellington Park Act 1993*;
- permanent timber production zone Crown land, within the meaning of the *Forest Management Act 2013*; and
- future potential production forest land that is owned by the Crown within the meaning of the *Forestry (Rebuilding the Forest Industry) Act 2014*.

A Housing Land Supply Order cannot be made for land owned by local councils or land that is privately owned.

Suitability for Affordable Housing

In addition to satisfying the eligibility criteria, the Minister must be satisfied that there is a need for land to be made available for the purposes of the Homes Act. This is the legal framework that gives the Director of Housing powers and responsibilities to deliver housing support programs, including affordable housing solutions.

In addition, the land must be suitable for residential use and appropriately located in close proximity to public and commercial services, public transport and employment opportunities.

Consistency with planning requirements

As well as meeting the eligibility and suitability criteria, the Minister can only make a Housing Land Supply Order to rezone an area of Government land if he or she is satisfied that:

- assigning the intended zone to the area of land would be consistent with the State Policies and the Regional Land Use Strategy that applies to the land;
- application of the relevant zone would not be significantly restricted by any codes that apply to the land under the relevant planning scheme;

- assigning the intended zone would further the objectives of the *Land Use Planning and Approvals Act 1993* (LUPAA);
- having regard to any Guidelines under section 8A of LUPAA, assigning the intended zone to the area of land would be consistent with the zone purpose contained in the State Planning Provisions (SPPs) for the intended zone; and
- assigning the intended zone would not be likely to create any significant land use conflict.

The Minister must also consider the environmental, economic and social effects and the effects on Aboriginal and cultural heritage of assigning the intended zone to the area of land.

Restrictions on rezoning

Under the Act, the Minister cannot make a Housing Land Supply Order declaring a zone to be the intended zone for an area of Government land unless:

- there is a need for land to be made available for the purposes of the Homes Act to deliver affordable housing;
- the land is close to services, public transport and employment opportunities; and
- the zone enables the land to be developed at ‘suburban residential density’ or higher density.

Application of zones

The Minister can apply the General Residential Zone, Inner Residential Zone, or Urban Mixed Use Zone under the SPPs to an applicable planning scheme or a Local Provisions Schedule (LPS) providing that a ‘suburban residential density’ or higher density is achieved.

A ‘suburban residential density’ is provided if the minimum size of a lot or the maximum area of land for a dwelling will be no more than the minimum size of a lot or the maximum area of land for a dwelling (if multiple dwellings are intended) as they relate to provisions of the SPPs for the General Residential Zone.

In some cases, a larger site may require multiple zones to deliver a good planning outcome, although the majority of the site should contain the intended residential zone. Other non-residential zones (such as the Open Space Zone, Recreation Zone, Utilities Zone, Community Purpose or the Local Business Zone) might be necessary or appropriate to apply to part of an area of Government land to deliver a best practice zoning and/or subdivision outcome whereby parks, reserves, roads and infrastructure or other services are incorporated into any future subdivision.

The application of non-residential zones may be applied where the scale of the future subdivision requires a mix of zones to enable the creation of liveable communities. In some cases, it may be necessary to retain a zone that applied to part of an area of land immediately before the intended zone(s) was specified to achieve this outcome.

Restrictions on modifying planning provisions

Under a Housing Land Supply Order, the Minister may nominate specific planning controls for residential use and development that apply to the area of land including:

- that a provision of an applicable planning scheme is not to apply to the area of land;
- how a provision of an applicable planning scheme is to be modified in relation to its application to the area of land;
- that a provision of the SPPs is to apply to the area of land under an applicable planning scheme or an LPS that forms part of the Tasmanian Planning Scheme; or
- that a modified provision of the SPPs is to apply to the area of land.

The Minister can only replace or modify planning scheme provisions that relate to residential use and development. This might also include provisions that deal with parking and access requirements. Any other provision, code or code overlay under an applicable planning scheme or the SPPs will still need to be met.

Consultation

Once a proposed Housing Land Supply Order is made, the Minister is required to give notice to prescribed ‘interested persons’. These are:

- the relevant planning authority (the local council) in relation to an area of identified Government land or any other planning authority that the Minister considers may have an interest in the proposed Housing Land Supply Order;
- State agencies that the Minister considers have an interest in whether, or the manner in which, the area of land ought to be developed for residential purposes;
- statutory authorities, or other entity, that the Minister considers to be likely to be required to provide water, sewerage, telecommunications, electricity or gas to the area of land or may have its services impacted on by the proposal;
- landowners or occupiers of land that adjoin the area of land or that the Minister considers likely to be affected by the proposal; and
- the Tasmanian Fire Service, the Tasmanian Heritage Council and the Aboriginal Heritage Council.

A notice in relation to an area of Government land must:

- specify the area of land;
- the proposed zoning or altered planning provisions that are to apply to the area of land;
- contain a copy of the proposed order in relation to the area of land; and

- contain a statement of the reasons why the Minister wants to make the proposed order.

‘Interested persons’ have 14 days to submit any comments to the Minister on the following matters:

- the suitability for residential use of the proposed area of land;
- the suitability of the zone, or zones, proposed for the relevant area of land;
- the suitability of any planning provisions proposed to be applied to the relevant area of land; and
- the suitability, in relation to the proposed area of land (or part of the land) of the proposed amendment to an applicable planning scheme.

Seeking the approval of Parliament

After consulting with ‘interested persons’, the Minister must consider any submissions before tabling the proposed Housing Land Supply Order in both Houses of Parliament (the House of Assembly and the Legislative Council), together with a report setting out:

- the reasons why the Minister wants to make the proposed order;
- the reasons why the Minister is satisfied that the proposed order may be made;
- a copy of each submission received from the ‘interested persons’;

- the Minister’s response to the issues raised in submissions; and
- if the proposed order has been altered by the Minister following consideration of submissions received from ‘interested persons’, a statement of reasons why the order was altered.

The Minister can also table any other information to the Parliament that he or she thinks fit.

Under the Act, either House of Parliament may disallow the order within five sitting days of it being tabled.

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

However, a Housing Land Supply Order is subject to judicial review by the Supreme Court on a matter of law in accordance with the *Judicial Review Act 2000*. This means that a person or organisation can apply to the Supreme Court for a review of the Minister’s decision on matters of natural justice, procedural fairness and points of law.

Amendment of a Housing Land Supply Order

After considering any comments received from ‘interested persons’ in relation to a proposed Housing Land Supply Order, the Minister may decide to modify the proposed order or not proceed.

If a significant change to either the character or effect of the proposed order is required,

the Minister would need to make a new Housing Land Supply Order and consult with ‘interested persons’ on the new order. Effectively, the process would start again.

Implementation of a Housing Land Supply Order

Once the disallowance period has expired for a proposed Housing Land Supply Order without a motion for a disallowance by either House of Parliament, the Minister must notify the making of the order. Any Crown land that is rezoned for residential purposes is automatically transferred to the Director of Housing once the order is made.

The Minister then directs the Tasmanian Planning Commission (the Commission) to amend the relevant planning scheme within 14 days of receiving a notice from the Minister.

The Commission is responsible for:

- amending the zoning map that forms part of a relevant planning scheme (i.e. an interim planning scheme or an LPS that forms part of the Tasmanian Planning Scheme);
- including a specific area plan (SAP) in an applicable planning scheme (i.e. an interim planning scheme), containing the replaced or modified planning provisions that apply to the identified area of land;
- amending an LPS to include a site-specific qualification or a SAP containing the modified planning

provisions that apply to the identified area of land;

- amending an applicable planning scheme or LPS to alter or remove any zoning, specified planning provisions, site-specific qualification or SAP that applies to the identified area of land; and
- notifying the Minister that it has amended a planning scheme that applies to an area of land;

When amending a planning scheme, the Commission is able to correct minor mistakes or anomalies that might arise from making a zoning change or including a site-specific qualification or SAP in a planning scheme.

Commencement of a Housing Land Supply Order

Use and development in accordance with a Housing Land Supply Order can occur after:

- the Parliamentary disallowance period has expired;
- the Minister has notified the making of the Housing Land Supply Order declaring an area of Government land to be ‘housing supply land’;
- the Minister has directed the Commission to amend the relevant planning scheme that applies to an area of land;

- the Commission has notified the Minister that it has amended the relevant planning scheme;
- the Minister has notified the ‘interested persons’ about the making of the amendment; and
- the Minister has notified 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.

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.

27 July 2018