

Housing Land Supply Amendment Bill 2021

Briefing Pack

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TABLE OF CONTENTS

1. Introduction	4
2. Glossary	5
3. Overview of the draft Bill.....	5
4. Consultation	6
5. The draft Bill in detail	6
5.1 Broadened scope of eligible government land.....	6
5.1.1 Land owned by Tasmania Development and Resources	7
5.1.2 Land recently obtained by the Director of Housing	8
5.2 Application to land within Flinders municipality	8
5.3 More inclusive consultation and improved transparency for decision making	9
5.3.1 More inclusive consultation process.....	9
5.3.2 Improved transparency for decision making	10
5.4 Consistency with assessment criteria under the LUPA Act.....	10
APPENDIX 1 OVERVIEW OF THE CURRENT HOUSING LAND SUPPLY ACT 2018	12
APPENDIX 2 CONSULTATION REPORT.....	16

1. Introduction

The *Housing Land Supply Act 2018* (the HLS Act) was developed following the then Premier's Housing Summit in 2018. It introduced a more direct process for rezoning and modifying planning scheme requirements for eligible government land to facilitate housing, particularly for affordable and social housing developments.

The HLS Act targets land that is suitable for residential purposes and the provision of affordable housing through the making of Housing Land Supply Orders (Orders). It replaces the standard planning scheme amendment processes under the *Land Use Planning and Approvals Act 1993* (the LUPA Act) providing shorter timeframes for the assessment and approval of specific land, while still maintaining the same rigorous assessment criteria for determining the suitability of the land for residential development¹.

To date, five Housing Land Supply Orders (Orders) have been made under the HLS Act for land across all the three regions in the State at Rokeby, West Moonah, Devonport, Newnham and Huntingfield. A total of around 40ha has now been rezoned for housing purposes and transferred to the Director of Housing under the *Homes Act 1935*². More draft Orders are currently being progressed for areas around the State to further assist with the Director of Housing's work program for providing more affordable and social housing options for Tasmanians.

At the time of introducing the HLS Act, there was strong demand for housing in Tasmania. This demand has only been further amplified in recent times with significant house and rental price rises and increased demand for housing in general. The impacts of the COVID-19 pandemic have also driven demand for housing in regional areas of Australia outside the major mainland cities.

With the continued demand for housing, more needs to be done across a number of sectors with intervention ranging beyond the planning system. However, further assistance can be provided through the HLS Act with more government land being made eligible for consideration. The draft Housing Land Supply Amendment Bill 2021 (the draft Bill) aims to achieve this.

¹ More information on the *Housing Land Supply Act 2018* is available in [Appendix 1](#) and on the [Tasmanian Planning Reform website](#).

² The *Homes Act 1935* establishes the legal framework under which the Director of Housing provides housing assistance and support services for 'eligible persons' in Tasmania. More information is available on the [Department of Communities Tasmania website](#).

2. Glossary

The following acronyms and abbreviations are used in this report.

draft Bill	–	Housing Land Supply Amendment Bill 2021
Homes Act land	–	land owned, vested in, or held by the Director of Housing under the <i>Homes Act 1935</i>
HLS Act	–	<i>Housing Land Supply Act 2018</i>
LPS	–	Local Provisions Schedule
LUPA Act	–	<i>Land Use Planning and Approvals Act 1993</i>
Orders	–	Housing Land Supply Orders
SPPs	–	State Planning Provisions

3. Overview of the draft Bill

The draft Bill proposes amendments to the HLS Act to broaden the scope of eligible government land in order to deliver more affordable and social housing in Tasmania under the *Homes Act 1935*. It also better aligns the assessment criteria with the normal assessment process under the LUPA Act and improves transparency for decision making.

The amendments proposed to the HLS Act:

- broaden the scope of eligible government land, to include land:
 - owned by Tasmania Development and Resources prior to the HLS Act coming into effect; and
 - obtained by the Director of Housing (that was not previously eligible government land) since the HLS Act came into effect;
- enable the consideration of an Order for eligible government land within the Flinders municipality;
- deliver a more inclusive consultation process and improved transparency in the decision making processes by:
 - requiring public consultation for 28 days on all proposed Housing Land Supply Orders;
 - requiring the Minister to give more detailed reasons on how a proposed Housing Land Supply Order is considered to meet the requirements of the HLS Act; and

- providing a clear process for the Minister to follow if it is determined to not progress a proposed Order after consultation; and
- better align the assessment criteria with the LUPA Act in relation to the current regional land use strategies and the future Tasmanian Planning Policies.

A general overview of the current HLS Act is given in [Appendix 1](#).

4. Consultation

Public consultation on the draft Bill was open for 5 weeks, from 28 July 2021 to 1 September 2021. This was supported by an Information Package to assist people to clearly understand the draft bill and its intended purpose, and included a consultation report responding to issues raised in the initial 12 week targeted consultation on an earlier version of the draft Bill.

Letters were sent to all those consulted during the initial targeted consultation on the draft Bill inviting submissions on the revised draft Bill as part of the additional public consultation.

Details on the issues raised in the submissions and responses are contained in the Consultation Report in [Appendix 2](#).

5. The draft Bill in detail

5.1 Broadened scope of eligible government land

Demand for housing in Tasmania is increasing, with demand for affordable and social housing being more acute now than when the HLS Act was introduced in 2018. Further assistance can be provided through the HLS Act with more government land being made eligible for consideration.

Currently, the HLS Act only allows certain government land to be considered for an Order. This is limited to land that was owned, vested in, or held by the Director of Housing under the *Homes Act 1935* (referred to as Homes Act land), or was Crown land, before the HLS Act commenced in 2018.

It also excludes land that is:

- reserved under the *Nature Conservation Act 2002*;
- managed under the *National Parks and Reserves Management Act 2002*;
- managed under the *Wellington Park Act 1993*;
- permanent timber production zone land under the *Forest Management Act 2013*; or

- future potential production forest land under the *Forestry (Rebuilding the Forest Industry) Act 2014*.

The HLS Act was originally intended for surplus government land or land already owned or managed by the Director of Housing. However, with a number of Orders now made, the availability of suitable, eligible government land is limited, and more needs to be done to assist with the Tasmania's acute housing shortage.

Having a broader range of government land eligible for consideration under the HLS Act will further assist the Director of Housing's work program by delivering more land for affordable housing sooner.

The draft Bill captures two additional types of government land for consideration as an Order:

- land owned by Tasmania Development and Resources; and
- land obtained by the Director of Housing after the HLS Act came into effect.

The draft Bill retains the same exclusions for reserved and forestry land, as outlined above, and assessment criteria.

5.1.1 Land owned by Tasmania Development and Resources

(Refer to sections 4 and 5 of the draft Bill - amended section 3 and new section 5(5) of the HLS Act)

The draft Bill enables land owned by Tasmania Development and Resources (a Tasmanian government entity) to be considered for an Order under the HLS Act. This land was unintentionally excluded from the original HLS Act as it was thought at the time to be Crown land as defined under the *Crown Lands Act 1976*. While technically not Crown Land, it is land owned by the State Government.

Tasmania Development and Resources currently owns around 40 land parcels across Tasmania, with the majority being small sections of rural roads or road reserves, which would not be suitable for residential purposes. Others are reserved land and therefore cannot be considered under the HLS Act.

The only properties that are potentially suitable for consideration as an Order are those that form part of the Launceston Techno Park at Kings Meadows (two parcels) or the Hobart Techno Park at Dowsing Point (two parcels). These are located within the existing urban footprints of Launceston and Hobart.

Land within the Techno Parks would only be considered if determined to be surplus to current and future needs and suitable for residential purposes under the criteria of the HLS Act. The draft Bill requires the Tasmanian Development Board, established under the *Tasmanian Development Act 1983*, to give consent for any such land to be considered for an Order. There is currently no intention to consider any land located at the Hobart Techno Park.

5.1.2 Land recently obtained by the Director of Housing

(Refer to section 5 of the draft Bill – amended sections 5(1)(b) of the HLS Act)

The draft Bill proposes to broaden the scope of eligible government land to include land obtained by the Director of Housing under the *Homes Act 1935* (Homes Act land) after the commencement of the HLS Act. This is proposed in response to comments received during the initial consultation on the draft Bill, specifically the need to promote more affordable housing through planning schemes.

Currently, an Order can only be considered for land that was Crown land or Homes Act land before the HLS Act came into effect in July 2018.

To be eligible under the HLS Act, the recently obtained land must meet the same criteria, in that it must not be reserved or forestry land, and must satisfy the same planning requirements as all other government land.

5.2 Application to land within Flinders municipality

(Refer to sections 5 and 6 of the draft Bill – new sections 5(6), 6(2)(a) and (ab) of the HLS Act)

The draft Bill enables land within the Flinders municipality to be considered for an Order under the HLS Act subject to modified assessment criteria.

The lack of public transport and reticulated services on Flinders Island currently limit the consideration of an Order under the HLS Act criteria. The proposed changes allow for the consideration of land on Flinders Island by:

- excluding the need for such land to be proximate to public transport; and
- allowing for land to be included within the Residential Zone under the Flinders Planning Scheme 2000, or the Low Density Residential Zone or the Village Zone under the Tasmanian Planning Scheme, provided the Minister is satisfied land can be provided with adequate water supply, wastewater treatment and stormwater management.

The changes provide rezoning opportunities for affordable and social housing developments to meet the needs of the small communities on Flinders Island, such as Lady Barron, as identified by the Department of Communities Tasmania.

It is not intended at this point to broaden the scope to all other small communities in Tasmania. The change is specifically aimed at the Flinders Island communities taking into account the unique circumstances that exist as acknowledged under the Northern Tasmania Regional Land Use Strategy.

5.3 More inclusive consultation and improved transparency for decision making

It is important that the HLS Act provides both meaningful and inclusive consultation on proposed Housing Land Supply Orders. With the experience of operating the HLS Act and the expanded scope of eligible land, there is a need to improve the consultation process for proposed Orders and provide for improved transparency for decision making.

5.3.1 More inclusive consultation process

(Refer to sections 8, 9, 10 and 12 of the draft Bill – amended sections 10, 12 and 13 and new section 29 of the HLS Act)

The Bill proposes amendments to the current consultation process under the HLS Act to require a 28-day public consultation period for all proposed Orders processed after this Bill comes into effect. This aligns the consultation process with the normal planning scheme amendment process under the *Land Use Planning and Approvals Act 1993*.

Specifically, the draft Bill requires:

- public notices to be published in the relevant newspapers announcing the commencement of the public exhibition process and inviting submissions – published before the commencement of the exhibition period, and again within the 14 day period after the commencement of the exhibition period;
- the exhibition documents to be made available for public viewing at:
 - a nominated website address;
 - the offices of the relevant council for the municipality in which the order is proposed;
 - a Service Tasmania shop within that municipality (if any); and
 - a Service Tasmania shop that is within another municipality of it is the closest to the site subject to the proposed order.
- Written notice to be given to all defined ‘interested persons’ announcing the commencement of the public consultation period.

The exhibition documents include:

- a copy of the proposed Order;
- a statement of reasons from the Minister on why they want to make the proposed order and their opinion in relation to satisfying the planning assessment criteria in sections 5(2), 6(1) and 6(2) of the HLS Act; and
- any other information that the Minister thinks fit.

The draft Bill includes transitional arrangements for any proposed Orders that are being considered but have not been finalised at the time of the amended HLS Act coming into effect. For proposed orders that have undergone consultation, or are currently undergoing consultation, under the former provisions of the HLS Act, the proposed Order continues as per the process and provisions of the former HLS Act.

The relevant matters that may be included in a submission on a proposed Order have also been further clarified. The amendments align the matters with those that the Minister's statement of reasons must contain, specifically the planning assessment criteria under sections 5(2), 6(1) and 6(2) of the HLS Act.

This will ensure a more inclusive process and broader public input on all future proposed Orders.

5.3.2 Improved transparency for decision making

(Refer to sections 7, 9 and 11 of the draft Bill – amended sections 9(3) and 12 and new section 13A of the HLS Act)

With the more inclusive consultation process, there is also a need to make better quality information available for the public, key stakeholders and Parliament to make an informed view on a proposed Order.

The amendments require the Minister when consulting on a proposed Order, and tabling the Order in Parliament, to provide a clear statement outlining their opinion on how it satisfies the relevant criteria under the HLS Act. Specifically, the Minister must provide their opinion in relation to the planning assessment criteria in sections 5(2), 6(1) and 6(2) of the HLS Act.

The draft Bill also provides a clear process for the Minister to follow if it is determined to not progress a proposed Order after consultation. Notice must be given to all interested persons and each person who made a submission on the proposed Order.

The notice must give reasons why the Minister has made this decision, and the Minister's reasons and each submission is made available on the Department's website for a period of at least 6 months. This delivers transparency in the decision making process, consistent with the making of an Order.

5.4 Consistency with assessment criteria under the LUPA Act

(Refer to section 6 of the draft Bill – amended section 6(1)(a) of the HLS Act)

Currently, there are inconsistencies in the planning assessment criteria between the HLS Act and the LUPA Act for considering rezoning proposals, specifically in relation to regional land use strategies and the future Tasmanian Planning Policies.

To make an Order under the HLS Act, the Minister must be satisfied that it is 'consistent' with the regional land use strategy. By contrast the criteria under the LUPA Act requires a proposal to change the zoning of land to be 'as far as practicable' consistent with the regional land use strategy. The HLS Act assessment criteria also makes no reference to the Tasmanian Planning Policies.

The inconsistencies arose following amendments to the LUPA Act in December 2018 which established the framework for making the Tasmanian Planning Policies, and amended the assessment criteria for rezoning proposals. The amendments to the LUPA Act postdate the HLS Act, which came into effect in July 2018.

The draft Bill delivers consistency between the HLS Act and the LUPA Act assessment criteria by requiring a rezoning proposed as part of an Order to:

- be, as far as practicable, consistent with relevant regional land use strategy; and
- satisfy the relevant criteria in the Tasmanian Planning Policies, once made.

APPENDIX 1

OVERVIEW OF THE CURRENT HOUSING LAND SUPPLY ACT 2018

Purpose

The HLS Act was introduced in response to the then Premier's Housing Summit in March 2018. It provides a more direct process for rezoning and modifying planning scheme requirements to deliver housing, particularly affordable and social housing, on suitable government land. It provides assistance in alleviating the acute housing shortage and will continue to be used until it ceases to have effect in July 2023.

The HLS Act enables the making of an Order to rezone, or modify the planning scheme requirements for, eligible government land for housing.

Roles and Responsibilities

The Minister for Planning is responsible for preparing, consulting on, and making an Order under the HLS Act.

The Parliament of Tasmania (the House of Assembly and the Legislative Council) has a role in considering a proposed Order and may disallow it.

The Tasmanian Planning Commission is responsible for making amendments to the relevant planning scheme to implement an Order.

The local council (as the planning authority) will assess any development applications relating to the subdivision of land and the construction of houses after the making of an Order.

Eligible Land

The current HLS Act only allows certain government land to be considered for an Order. This is limited to land that was owned, vested in or held by the Director of Housing, or was Crown land, before the HLS Act commenced in 2018. It also excludes land that is:

- reserved under the *Nature Conservation Act 2002*;
- managed under the *National Parks and Reserves Management Act 2002*;
- managed under the *Wellington Park Act 1993*;

- permanent timber production zone land under the *Forest Management Act 2013*; or
- future potential production forest land under the *Forestry (Rebuilding the Forest Industry) Act 2014*.

Planning Assessment Criteria

The HLS Act sets a range of planning criteria for determining the suitability of the land and the intended zoning. These criteria must be satisfied to make an Order and include the Minister being satisfied with the following:

- there is a need for land to be made available for housing under the Homes Act to deliver affordable housing;
- the land is suitable for residential use and is appropriately located in proximity to public and commercial services, public transport and employment opportunities;
- the intended zone is consistent with the State Policies, the relevant regional land use strategy, and furthers the Schedule 1 objectives of the LUPA Act;
- the use and development of the land for residential purposes would not be significantly restricted by any codes that apply to the land under the relevant planning scheme;
- that it has regard to any Guidelines issued under section 8A of the LUPA Act;
- the environmental, economic and social effects, and the effect on Aboriginal and cultural heritage have been adequately considered;
- the intended zone would not be likely to create any significant land use conflicts; and
- the intended zone enables the land to be developed at least to a suburban density (consistent with the SPPs General Residential Zone).

Consultation and Submissions

The Minister, in preparing an Order, must consult with 'interested persons' prescribed in the HLS Act. These are:

- the relevant planning authority (the local council), and any adjacent planning authority the Minister considers may be affected by the proposed Order;
- State agencies that the Minister considers have an interest in the proposed Order;
- State authorities, or other entities, that are likely be required to provide water, sewerage, telecommunications, electricity or gas to the land, or may have its services affected by the proposed Order;
- the owners or occupiers of land adjoining the proposed Order;

- the owners or occupiers of any other land that the Minister considers may be affected by the proposed Order; and
- the Tasmania Fire Service, the Tasmanian Heritage Council, and the Aboriginal Heritage Council.

The Minister in consulting with 'interested persons' must give written notice of a proposed Order. The written notice must:

- contain a copy of the proposed Order and a statement of the reasons why the Minister wants to make the proposed Order; and
- invite submissions on the proposed Order.

Submissions on a proposed Order must be received within 14 days of receiving the notice, or a longer period allowed by the Minister. The submissions may relate to the following:

- the suitability of the land for residential use;
- the suitability of the zoning intended for the land; and
- the suitability of any the planning controls that will apply to the land.

Parliamentary Scrutiny

Before making an Order, the Minister must table the proposed Order in both Houses of Parliament (the House of Assembly and the Legislative Council). The documentation tabled must include:

- the proposed Order and a statement of the reasons why the Minister wants to make the proposed Order;
- a copy of each submission received;
- the Minister's opinion on each submission;
- if the proposed Order has been altered, a statement as to how and why it was altered; and
- any other information that the Minister considers relevant to the proposed Order.

There is a 5 sitting day period in which both Houses of Parliament may disallow a proposed Order. The Minister may make the Order after the end of the disallowance period in both Houses of Parliament.

Making of the Order and Amending the Planning Scheme

The making of an Order requires the Minister to publish a notice in the Gazette with an effective date.

The Minister directs the Tasmanian Planning Commission to make the necessary amendments to the relevant planning scheme to implement the made Order.

APPENDIX 2

CONSULTATION REPORT



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