

# Housing Land Supply Amendment Bill 2021

## Consultation Report

October 2021



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# 1. Introduction

This report has been prepared by the Department of Justice’s Planning Policy Unit to outline the response to the submissions received during the public consultation on the draft Housing Land Supply Amendment Bill 2021 (the draft Bill) undertaken between July and September 2021.

The draft Bill proposes amendments to the *Housing Land Supply Act 2018* (the HLS Act) to help increase the supply of land for affordable and social housing and improve the assessment processes for Housing Land Supply Orders (Orders). This, along with a range of other instruments, will assist in addressing the ongoing acute demand for housing in Tasmania.

Public consultation was undertaken on the draft Bill for a 5 week period commencing in 28 July 2021 and closing on 1 September 2021.

The feedback received was very constructive and informed a number of important revisions to the draft Bill. Submissions to each component of the Bill are summarised and responded to, including information on the changes made in response.

# 2. Glossary

The following acronyms and abbreviations are used in this report.

Commission	–	Tasmanian Planning Commission
draft Bill	–	Housing Land Supply Amendment Bill 2021
HLS Act	–	<i>Housing Land Supply Act 2018</i>
LUPA Act	–	<i>Land Use Planning and Approvals Act 1993</i>
Orders	–	Housing Land Supply Orders
TDR	–	Tasmania Development and Resources

# 3. 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.

A public notice was placed in the three major Tasmanian newspapers on 28 July 2021 to announce the start of the public consultation period and invited submissions on the draft Bill. Letters were also sent to all those consulted during the initial targeted consultation on the draft Bill inviting submissions on the revised draft Bill.

A total of 12 submissions were received on the draft Bill from two councils and the Local Government Association of Tasmania, six State agencies or authorities, one peak body representing housing and homelessness services, and two community groups. Of these, six (50%) expressed support or had no issues to raise. The remaining six submissions (50%) identified issues with the draft Bill.

The submissions can be viewed at [Amendments to the Housing Land Supply Act 2018 – Have your say](#)

## 4. Summary of revisions

Consideration of the submissions received has resulted in the following revisions being made to the draft Bill:

- altering the public consultation requirements under the HLS Act to require public consultation for a 28 day period for all proposed Orders, not just proposed Orders relating to land obtained by the Director Housing after the commencement of the HLS Act;
- aligning the documentation requirements for consultation with those required for the tabling a proposed Order in both Houses of Parliament, specifically requiring the Minister to provide a statement of reasons that addresses how they consider the proposed Order to satisfy the requirements under the HLS Act; and
- clarifying that the Minister’s statement of reasons must outline how they consider the proposed Order to meet the relevant requirements in sections 5 and 6 of the HLS Act.

## 5. Summary of issues raised in the submissions

Six submissions raised issues with the draft Bill. Most indicated general support for the draft Bill but raised some concerns to be considered and also suggested improvements that could be made. One submission did not support the Bill and reiterated their concerns with the current HLS Act.

### 5.1 Eligible Land – Tasmania Development and Resources land and land recently obtained by the Director of Housing

The majority of submissions generally considered that broadening the scope of eligible housing land has value, however concerns were raised with the:

- current and proposed consultation process for proposed Orders under the HLS Act;
- the quality and detail of information provided as part of the consultation on proposed Orders;
- potential for some land owned by Tasmania Development and Resources (TDR) being considered for a proposed Order; and
- uncertainty over the amount and where eligible land is located, particularly land obtained by the Director of Housing after the commencement of the HLS Act.

### 5.1.1 Consultation process on proposed Orders

Divergent views were presented on the current 14-day targeted consultation process with defined 'interested persons', and the proposed 28-day public consultation for land obtained by the Director of Housing after the commencement of the HLS Act.

One submission did not support public consultation on proposed Orders for any newly obtained land, nor did they support extending the consultation period from 14 days to 28 days. It was submitted that the existing 14-day consultation with defined 'interested persons' was sufficient given the process is limited to certain Government land. The submission noted that the HLS Act was intended to provide a more efficient and expedient process for rezoning land by overriding the normal rezoning process under the *Land Use Planning and Approvals Act 1993* (the LUPA Act). It was noted in other submissions that having two different consultation periods dependent on whether the land was recently acquired or not would likely cause confusion.

Other submissions were in support of the 28-day full public consultation period for land recently obtained by the Director of Housing as it was considered to be consistent with the notification period in the standard rezoning process under the LUPA Act. However, some submissions suggested that all proposed Orders should be subject to a 28-day full public consultation period.

One submission that supported full public consultation for all proposed Orders noted that the Tasmania's planning system, of which the HLS Act is part, is founded on the statutory objectives of providing for the fair, orderly and sustainable use of land. Therefore encouraging public involvement and promoting the sharing of responsibility between government, the community and industry is considered paramount in the Housing Land Supply consultation process. It was further suggested that having different consultation processes based on ownership is inequitable.

It is important that the HLS Act provides both meaningful and inclusive consultation on proposed Orders. While the HLS Act was approved by both Houses of Parliament to only include targeted consultation, there is a need to improve the consultation process for proposed Orders, particularly with the expanded scope of eligible land.

The draft Bill has been revised 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 LUPA Act. Written notice will still be provided to all defined 'interested persons' announcing the commencement of the public consultation period. This will ensure both broad public input and direct notification to interested persons on all future proposed Orders.

One submission also raised concerns with the requirements in section 13 of the HLS Act unduly limiting matters that may be raised in submissions on a proposed Order. It was suggested that section 13(2) of the HLS Act be amended to allow submissions to raise matters relating to all criteria contained in sections 5(2), 6(1) and 6(2) of the HLS Act.

Section 13(2) of the HLS Act outlines the relevant matters that may be raised in a submission on a proposed Order. Sections 13(2)(a) and (b) generally relate to the suitability of the land for residential use and the intended zone which would generally capture the criteria for determining a suitability of a proposed Order under sections 5(2), 6(1) and 6(2) of the HLS Act. However, this should be clarified to avoid any confusion. The draft Bill has been revised to amend section 13(2) of the HLS Act accordingly.

### *5.1.2 Quality and detail of information provided for consultation*

Concerns were raised with the quality and detail of information supplied as part of the consultation on proposed Orders. Using recently proposed Orders in Burnie and Huntingfield as examples, it was submitted that the documentation supplied with the proposed Orders did not specifically reference the criteria in sections 5 and 6 of the HLS Act, nor contain enough information to establish the need to make more land available under the *Homes Act 1935*. This, according to the submission, has made it difficult for parties to comment on the proposed Orders if the Minister's intention is not adequately disclosed.

It was recommended that section 12(2)(c) of the HLS Act be amended to require the Minister's statement of reasons provided during the consultation phase to include substantially the same information as the Minister intends to provide to Parliament under section 9(3)(a) and (b).

It is agreed that the information provided during consultation on a proposed Order should be expanded. This will assist the community and interested persons to better understand the proposal and to provide appropriate feedback on a proposed Order.

The draft Bill has been revised to require the Minister to provide, as part of the consultation package, their opinion on how they consider that the proposed Order meets the relevant requirements under the HLS Act, specifically sections 5(2), 6(1) and 6(2).

At the time of consultation, the Minister has not finalised their decision on whether the proposed Order meets the requirements of the HLS Act. The Minister will need to take account of any feedback received from the consultation process before finalising their decision. Consequently, the

information provided by the Minister when tabling the proposed Order in Parliament will differ to that provided at the time of consultation.

### *5.1.3 Application to certain land owned by Tasmania Development and Resources*

One submission was concerned with the inclusion of residential uses on some land currently owned by TDR, specifically land at the Hobart Technopark in Dowsing Point. The concern was that residential land within this precinct could potentially create significant limitations on current and future operations through land use conflicts. It was noted that this precinct is currently identified to support and encourage innovative industry growth and expansion. It was suggested that any intended rezoning must be consistent with the applicable regional land use strategy to have value.

There is currently no intention to rezone land for residential purposes within the Hobart Technopark. The Information Package supplied with the draft Bill simply identified all land currently owned by TDR for transparency reasons and noted that any proposed Order would need to satisfy the requirements under the HLS Act. This includes:

- receiving written consent from TDR to have the land considered for a proposed Order;
- consideration against the policies and outcomes in the regional land use strategy;
- the general suitability of the land for residential purposes, including consideration of any potential land use conflicts; and
- feedback from the relevant local council, State agencies and authorities, and the broader community.

### *5.1.4 Extent of eligible land*

One submission raised concerns with how much land would be eligible under the HLS Act and where it was located, particularly land obtained by the Director of Housing since the HLS Act came into effect in July 2018.

The proposed changes to eligible land bring in land owned by TDR prior to the commencement of the HLS Act, and land obtained by the Director of Housing since the commencement of the HLS Act. No changes are proposed to the eligibility of land within the Flinders municipality. Instead, changes are proposed to the assessment criteria to adequately cover the unique circumstances that exist on Flinders Island, as acknowledged under the Northern Tasmania Regional Land Use Strategy.

The previously prepared Consultation Information Pack outlined that TDR 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 TDR 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). As outlined above, there is currently no intention to rezone land for residential purposes within the Hobart Technopark.

Not all land obtained by the Director of Housing after the commencement of the HLS Act will be subject to a proposed Order. Only those proposed for rezoning will be considered and will be subject to public consultation in accordance with the proposed amendments to the HLS Act.

## 5.2 Consistency with assessment criteria under the Land Use Planning and Approvals Act

The majority of submissions supported the proposal to better align the assessment criteria with the LUPA Act, particularly in relation to regional land use strategies and the Tasmanian Planning Policies (TPPs). However, some submissions did raise concerns with this proposal.

### *5.2.1 Consistency with the future Tasmanian Planning Policies*

One submission considered requiring consistency with future TPPs as duplicative and creating additional red tape for the existing process under the HLS Act. The change was considered to be a hindrance and inconsistent with the intent of the HLS Act of providing a separate and more direct process for rezoning suitable Government land for housing.

The Minister for Local Government and Planning has recently released a scoping paper on the TPPs and they are expected to be in place by the end of 2022. Proposed Orders should be considered in accordance with the future TPPs, consistent with proposals to rezone land under the normal process for amending Local Provisions Schedules under the LUPA Act. The only reason the HLS Act does not already reference the TPPs is because the amendments to the LUPA Act that established the framework for the TPPs postdated the HLS Act coming in effect.

### *5.2.2 Consistency with the regional land use strategies*

One submission raised concerns with the proposed criteria for considering proposed Orders against the regional land use strategies.

The submission was concerned with the further 'watering down' of the assessment against the regional land use strategies with the intended zoning only having to be 'as far as practicable' consistent. The proposal is simply aligning the criteria under the HLS Act with those used by the Tasmanian Planning Commission (the Commission) in considering a rezoning under the normal planning scheme amendment process under the LUPA Act. As under the LUPA Act, this provides

the decision maker with the ability to apply an appropriate level of professional judgement in determining compliance with the regional land use strategy

Another submission suggested that clarification could be provided on the meaning of 'as far as practicable' consistency. This is considered unnecessary given the criteria has been successfully applied by the Commission in determining a rezoning under the LUPA Act process since 2014.

### *5.2.3 Consistency with other planning documents*

One submission suggested that proposed Orders should also be consistent with the Residential Development Strategy (2013), prepared by the Office of the State Architect for the then Minister for Human Services, as the strategy was developed to ensure that Tasmanian Government subsidised social and affordable housing developments are managed in way that do not repeat the mistakes of the past.

The Residential Development Strategy presents a number of 'liveability development principles' and example of residential developments of varying types and scales. Much of the strategy relates to the detailed design of the residential developments which is beyond the scope of the HLS Act being largely limited to the rezoning of the land.

The relevant considerations from the Residential Development Strategy for suitably locating housing are already embodied in the assessment criteria in the HLS Act. This includes proximity to public and commercial services, public transport and employment opportunities and the assessment required against the relevant regional land use strategy.

It is noted that the Department of Communities Tasmania's current Design Policy for Social Housing incorporates the design principles from the Residential Development Strategy, in addition to the Livable Housing Design Guidelines and the Victorian Universal Design and Sustainability Guidelines. This ensures that all new social housing is appropriately designed.

Some of the key 'liveability development principles' of the Residential Development Strategy include providing a range of housing types, sizes and tenures, increasing residential density, and locating development to support other residential developments and to contribute to a sense of place and community. It is noted that the Huntingfield site was intended as a key case study for the delivery of the strategy outcomes, which is consistent with the outcomes proposed for the site following its rezoning under the HLS Act.

## **5.3 Application to Flinders municipality**

In applying the HLS Act to the Flinders municipality, one submission specifically supported the draft Bill considering the unique conditions of the remote communities on Flinders Island. It was

observed that the proposal would result in a good outcome if the implementation and the extent of a proposed Order was made with sound land use planning.

## 5.4 Additional comments

Some comments recommended the implementation of housing policies to improve affordability through the wider planning system, and through other means extending beyond the planning system or out of the State's control, such as:

- suggestions for inclusion of provisions in the State Planning Provisions to encourage social and affordable housing instead of relying on the HLS Act, like inclusionary zoning;
- reviewing the regional land use strategies to improve suitable land supply without compromising good development practice;
- concerns that the main causes of house affordability issues are not being addressed, such as uncontrolled short term accommodation, negative gearing and capital gains tax concessions on real estate, and foreign investment in real estate.

Further concerns were raised with:

- the perceived aggressive population growth targets without proper strategic planning and the provision of infrastructure and services to support this growth; and
- a focus on zoning regulation only, ignores many other steps and barriers in securing housing for all Tasmanians.

The Consultation Information Package supplied with the draft Bill acknowledged that more needs to be done across a number of sectors to improve housing affordability with intervention ranging well beyond the planning system. The draft Bill is by no means the only intervention being considered.

Broader affordable housing policies in the planning system can be considered through the recently commenced Phase 2 Planning Reforms<sup>1</sup>, including the introduction of the Tasmanian Planning Policies and comprehensive reviews of the regional land use strategies.

It is important to note the benefits that the HLS Act provides in delivering social and affordable housing. The declaration of an Order vests the land in the Director of Housing to deliver housing outcomes under the *Homes Act 1935*. The Homes Act specifically governs how housing assistance and housing support services are provided to assist 'eligible persons', including those that:

- are homeless or at risk of becoming homeless;
- live in housing that is unsafe or unsuitable;

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<sup>1</sup> More information on the Phase 2 Planning Reforms is available on the [Planning in Tasmania website](#).

- are a safety risk to themselves or others or there is a third party threat to them;
- are living in housing that does not meet or makes worse their health or mobility; or
- do not have the financial capacity to meet their housing needs.

In essence, the HLS Act in conjunction with the Homes Act provides a form of 'inclusionary zoning' for the delivery of social and affordable housing in Tasmania.

Some submissions reiterated previous concerns with the HLS Act along with other concerns based on experience from recent Orders, including concerns that it:

- undermines the roles of the local council and the Tasmanian Planning Commission, compromises strategic planning and transparent decision making, and is inconsistent with the objectives of the Resource Management and Planning System;
- provides limited safeguards for the environment;
- only benefits developers by bypassing the normal rezoning process under the LUPA Act;
- places greater risk on any social license for affordable housing;
- gives no guarantees of social and affordable housing being delivered; and
- provides no further consultation occurring on the Order after the Parliamentary process.

Concerns were also raised with the master planning and consultation processes after the making of the Huntingfield Order.

The HLS Act is already in effect and has been successfully utilised to declare five Orders on land across all the three regions in the State. The HLS Act was unanimously supported and approved by Parliament in 2018 in its current form. It is not proposed to reconsider this approach.

The same safeguards are applied to the assessment of proposed Orders as in the normal rezoning process under the LUPA Act, including determining consistency with the State Policies, the relevant regional land use strategy, the future Tasmanian Planning Policies and furthering the Schedule 1 objectives of the LUPA Act. The HLS Act actually applies additional requirements beyond those in the LUPA Act to ensure the land is suitable for residential purposes, including:

- 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 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; and
- the intended zone would not be likely to create any significant land use conflicts.

Declaration of an Order under the HLS Act vests the land in the Director of Housing for delivery under the *Homes Act 1935* which provides guarantees on the delivery of social and affordable housing.

## 6. Next steps

The revised draft Bill will be tabled and debated in both Houses of Parliament. If passed, the Bill will come into effect upon receiving Royal Assent from the Governor.



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