

CLAUSE NOTES

Housing Land Supply Bill 2018

Clause 1 **Short title**

This clause cites the short title of the Act – the *Housing Land Supply Act 2018*.

Clause 2 **Commencement**

This clause provides for the Act to commence upon receiving Royal Assent.

Clause 3 **Interpretation**

This clause defines a range of key terms used in the Act, including:

- Government land
- Homes Act land
- Housing supply land
- Housing land supply order

Clause 4 **Housing land supply orders**

This clause enables the Minister to make an order declaring an area of land as housing supply land. The Minister's ability to declare an area of land as housing supply land is constrained by the limitations contained in clause 5.

This clause also clarifies that a 'housing land supply order' may include:

- a provision declaring that a zone in the applicable planning scheme is to apply to the land subject to the order, provided the requirements of clause 6 are satisfied;
- one or more of the modified planning provisions that can be included in a 'housing land supply order' under clause 7.

This clause also specifies when a 'housing land supply order' takes effect.

Clause 5 **Land that may be declared to be housing supply land**

This clause limits the type of land that the Minister can declare as housing supply land and the period in which the Minister can make such a declaration. It also requires the Minister to be satisfied of certain matters regarding the land prior to making a declaration.

Under this clause, only land that is government land (Crown land or land owned or held under the *Homes Act 1935*) at the date the Bill commences can be declared. Further, the land must not be government land that is:

- reserved land 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, within the meaning of the *Forest Management Act 2013*; or
- future potential production forest land within the meaning of the *Forestry (Rebuilding the Forest Industry) Act 2014*.

The Minister can only declare land as housing supply land within 5 years of the Bill commencing.

This clause includes a requirement for the Minister to be satisfied of certain matters before declaring land as housing supply land. These are that:

- there is a need for land to be made available for the purposes of the *Homes Act 1935* (the Homes Act); and
- the area of land is suitable for residential use and/or development having regard to its proximity to services and employment opportunities.

This clause also requires the consent of the Minister for Crown land and the Secretary of the department responsible for controlling or administering the relevant land before a 'housing land supply order' can be made. It also requires that the consent of the Director of Housing be obtained where the land is already Homes Act land.

Clause 6 Inclusion of intended zones in housing land supply orders

This clause requires the Minister to be satisfied of certain matters (and comply with certain requirements) in order to declare that a zone under an applicable scheme applies to an area of housing supply land.

Under this clause, the Minister must be satisfied that assigning the intended zone to the area of land would be consistent with the State Policies, the State Planning Provisions (SPPs) and the relevant regional land use strategy. The Minister also needs to be satisfied that:

- the use or development of the land will not be significantly restricted by the requirements of any code that applies to the land under the applicable planning scheme;
- the intended zone is consistent with the zone purpose specified in the SPPs in relation to the intended zone, whether or not the Tasmanian Planning Scheme is the applicable planning scheme;
- assigning the intended zone furthers the objectives set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993* (LUPAA); and
- any guidelines under section 8A of the LUPAA have been considered.

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. Further, the Minister must be satisfied that the rezoning would not cause any significant land use conflicts.

The Minister can only declare a zone to apply to housing supply land if the zone would enable housing density that maximises the use of infrastructure and the capacity of the land, akin to suburban densities or a higher density. Alternatively, where the intended zone relates to part only of the land, the Minister can declare a zone to apply provided it either meets the above requirement, is necessary or appropriate for subdividing the land for residential use, or was a zone that applied to the relevant land immediately before the 'housing land supply order' was made.

Clause 7 Modifications of planning requirements that may be specified in housing land supply order

This clause provides for the Minister to specify certain types of provisions to apply to an area of land under a 'housing land supply order'. These are:

- provisions modifying or nullifying a 'relevant housing provision' of the applicable planning scheme (i.e. an interim planning scheme); and/or
- provisions applying a 'relevant SPPs provision' (or a modified provision) of the SPPs in a 'housing land supply order'.

Under this clause, a 'relevant SPPs provision' is a provision that can be included in a 'housing land supply order' that:

- specifies a use or development standard in relation to the General Residential Zone, the Inner Residential Zone or the Urban Mixed Use Zone in the SPPs;
- is in the Parking and Sustainable Transport Code in the SPPs;
- relates to the interpretation of words or phrases under the relevant planning scheme.

Clause 8 Amendment of housing supply orders

This clause enables the Minister to amend a 'housing land supply order'. This includes:

- amending a provision declaring an area of land to be housing supply land;
- amending, including or revoking a provision assigning a zone under the applicable planning scheme to the area of housing supply land or a provision including a modified housing provision or modified SPP provision.

Under this clause, amendments can only be made that are within the scope of the relevant order making power under clauses 5, 6 and 7 of the Bill.

This clause also specifies when an amendment to a 'housing land supply order' takes effect.

Clause 9 Parliament may disallow proposed housing land supply orders and amendments

This clause requires the Minister to table the proposed 'housing land supply order' (including an amendment to an order) in both Houses of Parliament, together with a report including:

- the reasons why the Minister wants to make the order;
- the reasons why the Minister is satisfied that the order should be made;
- a copy of the submissions received during statutory consultation on the proposed order under clause 10 of the Bill and the Minister's response to the issues raised in submissions;
- if the proposed order has been altered by the Minister following consideration of submissions from 'interested persons' (these are defined in clause 11), a statement of reasons why the order was altered.

The Minister can also table any other information the Minister thinks fit.

Under this clause, either House of Parliament can disallow the order within five sitting days of it being tabled.

Clause 10 Consultation to occur before housing land supply orders put to parliament

This clause requires the Minister to comply with certain consultation requirements before tabling a proposed 'housing land supply order' (including an amendment of an order) in Parliament.

Under this clause, the Minister must give notice of the proposed order to 'interested persons' (defined in clause 11) and consider any comments provided by those persons. Requirements for the form and content of the notice are contained in clause 12.

The Minister can either lay before both Houses of Parliament:

- the proposed 'housing land supply order' that was provided to the interested persons; or
- amend a proposed 'housing land supply order' after considering any submission received providing the altered proposed order has not significantly changed either the character or effect of the proposed order.

- If there is a significant change to either the character or effect of the proposed order, the Minister would need to make a new 'housing land supply order' and re-consult with interested persons.

Clause 11 Interested persons

This clause defines the 'interested persons' for the purposes of the Bill.

The interested persons are:

- the planning authority responsible for the relevant land;
- any Head of Agency that the Minister considers has an interest in the use or development of the land for residential purposes;
- a statutory authority that the Minister considers likely to be required to provide utility services to the land, or where the effective and efficient provision of services by that authority is likely to be affected by the use or development of the land for residential purposes;
- the owner or occupier of adjoining land, or the owner or occupier of land that the Minister considers is likely to be affected by the use or development for residential purposes;
- the Tasmanian Fire Service;
- the Heritage Council;
- the Aboriginal Heritage Council;
- any planning authority responsible for adjacent land or any other planning authority that is not within the same municipal area that the Minister considers may be affected by the proposed 'housing land supply order'.

Clause 12 Giving of notice to interested persons

This clause prescribes the requirements for the Minister to give written notice to 'interested persons' of the proposed 'housing land supply order'. These include a requirement to:

- provide a copy of the proposed order;
- include a statement of the Minister's reasons for proposing the order; and
- invite submissions on the proposed order within 14 days of receipt of the notice.

Clause 13 Submissions by interested persons

This clause enables an 'interested person' to make a submission to the Minister following an invitation from the Minister under clause 12 and prescribes the

matters that may be addressed in a submission.

Clause 14 Revocation of housing supply order

This clause enables the Minister to revoke a 'housing land supply order' in prescribed circumstances. These are where the area of land no longer meets the criteria for declaration under clause 5 or where the land has been developed after a 'housing land supply order' was made.

This clause also specifies when a revocation of a 'housing land supply order' takes effect.

Clause 15 Notice to be given that land has ceased to be housing supply land

This clause requires the Minister to notify Parliament and the public where the Minister makes an order revoking a 'housing land supply order'.

Under this clause, the Minister must table a copy of the order before each House of Parliament, a statement of reasons for revoking the order, the grounds on which the order is being revoked, and any other relevant information in the Parliament. The Minister must also publish a notice in a newspaper that is published, and circulates generally, in Tasmania notifying that the area of land is no longer housing supply land and the date on which this occurred.

Clause 16 Housing supply land vests in Director of Housing

This clause vests housing supply land that is Crown land to the Director of Housing on the day the land becomes housing supply land.

Clause 17 Director of Housing to ensure housing supply land is developed or used for housing

This clause requires the Director of Housing to take all reasonable steps to ensure that housing supply land is used for the purposes of the Homes Act.

Clause 18 Former Crown land that is not developed within 10 years may be transferred back to the Crown

The clause enables the Minister to transfer housing supply land that has vested in the Director of Housing back to the Crown if the land has not been transferred to another person under the Homes Act or been used or developed for residential housing within a period of 10 years since the land become housing supply land.

This clause also specifies when the transfer of land from the Director of Housing back to the Crown takes effect.

Clause 19 Alteration of zoning of housing supply land

This clause requires the Minister to direct the Tasmanian Planning Commission

(the Commission) to amend the zoning map under the relevant planning scheme to reflect the new zoning effected by a 'housing land supply order' referred to in clause 4(2).

This clause also requires the Minister to direct the Commission to update the relevant zoning map to reflect an amendment to a 'housing land supply order' that amends or revokes the zoning under clause 8(1) effected by the original order under clause 4(2). For these amendments, this clause provides that relevant area of land is assigned the same zone that applied prior to it becoming housing supply land or (if that zone is no longer in the relevant planning scheme) the zone that most closely resembles the previous zone.

The Commission has a minimum of 14 days following a direction from the Minister to make the relevant amendments.

Clause 20

Alteration of planning provisions in relation to housing supply land

This clause requires the Minister to direct the Commission to amend a planning scheme that applies to an area of land that is subject to a 'housing land supply order' to reflect the inclusion of a specified or modified planning provision under clause 4(3). The Commission must either:

- amend the applicable planning scheme to include a specific area plan which contains the provision; or
- amend the Local Provisions Schedule (LPS) to include a site-specific qualification or a specific area plan if the Tasmanian Planning Scheme applies to the land.

The Commission is also provided the ability to resolve any transitional issues that might arise when the LPS comes into effect after a 'housing land supply order' is made

This clause also requires the Minister to direct the Commission to amend an applicable planning scheme to reflect an amendment to a 'housing land supply order' that amends or revokes a planning scheme provision under clause 8(1)..

Under this clause, the Commission has a minimum of 14 days to make the necessary amendment.

Clause 21

Directions to amend planning scheme where land ceases to be housing supply land

This clause provides the Minister with the option to direct the Commission to amend the applicable planning scheme where an area of land ceases to be housing supply land because it has not been used or developed for a residential purpose and is no longer needed to be made available for the purposes of the Homes Act. The Minister may direct the Commission to:

- reassign to the land (as far as practicable) the zone that applied before

the land became housing supply land; or

- revoke a specific area plan or site-specific qualification that applies to the land.

Under this clause, the Commission has a minimum of 14 days to make the necessary amendment.

Clause 22 Correction by Commission of anomalies, or minor mistakes, in applicable planning schemes

This clause enables the Commission to amend a planning scheme to correct minor mistakes or anomalies that arise in giving effect to a direction from the Minister under clause 19, 20 or 21. This includes amending an LPS to correct a minor mistake or anomaly that arises due to a planning scheme transitioning to the Tasmanian Planning Scheme after the making of a 'housing land supply order'.

Clause 23 Taking effect of, and notice of, amendment of planning scheme

This clause requires the Minister to give notice of an amendment to a planning scheme as a result of a direction to the Commission under clause 19, 20, 21 or 22(3).

Under this clause, the Commission must notify the Minister of the making of the amendment. The Minister must then notify the interested persons under clause 11 and publish a notice in the *Tasmanian Government Gazette* and in a newspaper that is published and circulates generally in Tasmania notifying the making of the amendment and the date it commences.

Clause 24 Amendment in compliance with direction not to be taken to contravene Act, planning scheme, &c.

This clause clarifies the effect of an amendment to a planning scheme as a result of a direction from the Minister under clauses 19, 20, 21 or 22 of the Bill.

This clause ensures that the amendment is valid despite any requirement in LUPAA to the contrary. It also ensures that a use or development in accordance with the amended planning scheme does not contravene section 63 of LUPAA.

Clause 25 Applicable planning scheme not to be amended so as to alter amendments made under this Act

This clause prevents a zone assigned to an area of land under a 'housing land supply order' being altered without the permission of the Minister unless the amendment is required to subdivide the area of land.

This clause also prevents an amendment to a planning scheme that would

change the effect of a 'housing land supply order' unless the amendment:

- is approved by the Minister;
- occurs through the provisions of the Bill;
- involves a minor change to an LPS or an interim planning scheme to correct an error, anomaly or inconsistency that does not warrant public exhibition;
- is an urgent amendment to an interim planning scheme to correct an error, anomaly or inconsistency that does not warrant public exhibition.

Once an area of land ceases to be housing supply land, this clause enables that land to be considered for rezoning under the normal LUPAA land use planning assessment processes.

Clause 26 **Calculation of periods**

This clause clarifies that statutory holidays are not counted when calculating time periods under the Bill.

Clause 27 **Regulations**

This clause provides a power for the Governor to make regulations for the purposes of the Bill. This includes a power to make regulations to provide for savings and transitional matters under the Bill.

Clause 28 **Administration of Act**

This clause assigns responsibility for the Bill to the Minister for Planning and the Department of Justice.