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Via email: haveyoursay@justice.tas.gov.au

Attention: Planning Policy Unit

Draft Residential Housing Supply Bill 2018

The Bill proposes the following solution to the housing crisis:

- to provide temporary housing of up to 3 years in existing non-residential buildings, which can be converted after time to permanent residential use;
- to rezone Crown land to facilitate new subdivision by private developers of which "some at least" or "in whole or in part" provide for "affordable housing";
- to fast-track these approvals by making the Minister for Planning the approval authority;
- to provide for a level of consultation by "interested persons" by the Minister on the rezoning for residential use and development, and the subdivision permit;
- to achieve this by creating new legislation, which displaces the Land Use Planning and Approvals Act 1993 (LUPA Act) and the Local Government (Building and Miscellaneous Provisions) Act 1993 (LGBMP Act).

Summary

The Planning Institute of Australia (PIA) Tasmania provide the following principal comments on this legislation:

1. The test should be to facilitate "affordable housing". Fast-track rezoning and subdivision of Crown land should only be used where the resulting development demonstrates that it will achieve real and long-term affordable housing gains;

2. Affordable housing not defined – leads to uncertainty. There is no definition of "affordable housing" in the Act. Legislation should be specific where there are threshold statutory tests to be met;

3. The test for rezoning needs to enable affordable housing. The test for subdivision permits should be amended to read "that the subdivision will provide for affordable housing" with both

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"affordable housing" and "social housing" being defined. Clause 5(2)(c) of the Bill must be amended to ensure the land is "consistent" with the RLUS.

4. Is a new Act required? The fast-track powers should be provided under the LUPA Act, rather than creating a new process which simply duplicates and (in the case of subdivision) extends the statutory time-frames under the LUPA Act;

5. The TERP permit process requires further consideration to avoid perverse effects and creating a different long-term problem;

6. Rezoning Crown land and temporary housing are only part of the solution. The planning system can help facilitate and guide delivery of housing in the medium to long-term. PIA Tasmania welcomes this opportunity to put in place medium to long-term planning for future housing requirements.

SUBMISSIONS ON DRAFT BILL

1. Test should be to facilitate "affordable housing"

The centrepiece of this Bill is to facilitate rezoning and subdivision of Crown land, apparently for the purposes of providing for affordable housing. Before nominating land for inclusion in Schedule 1, clause 5(2) requires the Minister must be satisfied that:

- Urgent need for land to be made available for residential use and development;
- All or part of the area of land will be used or development for the provision of affordable housing;
- The land is suitable for use and development for residential purposes, having regard to State Policies, the SPPs and the RLUSs.

Given that only part or some of the resulting development is to be affordable, the test is too weak. The Bill only provides for rezoning if "part" of the ultimate residential development is for "the provision of affordable housing". The test for subdivision is that "some at least" of the development be for affordable housing.

Either the rezoning occurs because it facilitates "affordable housing" or it does not. There is not such a need for land supply that rezoning must occur; the need is for housing which is affordable both for potential owners and renters.

If Crown land is to be rezoned and privately developed for profit, there should be as a matter of principle some public good achieved. We are concerned that the test of providing part of the housing – or "at least some" – of the housing does not achieve any resolution of the current housing crisis.

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The Act should be directed to either providing for new social housing – operated by the government or a community service provider – or providing some real and tangible gain to "affordable housing".

Further, there is no apparent need for more residential subdivision in the Hobart region. Land supply is adequate. The issue is that cost of housing is too high, and that there is insufficient rental stock in Hobart and that rental stock is increasingly unavailable in areas close to employment and services. The evidence base is lacking for the proposed statutory test.

Conversely, there is a demonstrated need for affordable housing, particularly rental supply. This should be the focus of these facilitation powers.

2. Affordable housing not defined – leads to uncertainty

There is no definition of "affordable housing" in the Act. This is of concern because "affordable housing" is a term widely used and often poorly understood. It should refer to all forms of housing, including home ownership and rental accommodation, but is not always used that way. Legislation should be specific where there are threshold statutory tests to be met.

PIA considers that "affordable housing" refers to an individual's ability to pay for their housing relative to their income. A common benchmark for "affordability" is that housing costs incurred are not more than 30% of a low to moderate household's gross income. Affordable rental housing refers to rental housing that is discounted below the normal market rate for rental accommodation in the area.

The term "affordable housing" can also include social housing. Social housing includes public and community housing and is rental housing that is provided and/or managed by government and non-government organisations. Community housing refers to privately operated housing models.

3. The test for rezoning needs to enable affordable housing.

Clause 5(2)(c) requires the Minister to be satisfied that the area of land to be placed in the Schedule to the Act is "suitable for…residential purposes", having regard to the State Policies, the SPPs and the RLUSs.

We agree that the State Policies and the regional land use strategies must be considered. However, whether "the land is suitable" is not the appropriate test.

The RLUSs ensure that settlement is well-located, integrated with transport, employment and services. This ensures that people live in areas where there are services, shops, roads, sewerage and water. The Minister should adopt the test in s30O of the former Part 3 of the LUPA Act, that the rezoning be "consistent" with the RLUS.

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The test for subdivision permits should be amended to read "that the subdivision will provide for affordable housing" with both "affordable housing" and "social housing" being defined. Clause 5(2)(c) of the Bill must be amended to ensure the land is "consistent" with the RLUS.

The test for rezoning should require that the Minister be satisfied that "the whole of the area of land will be developed by a government service provider for social housing, or be developed privately for affordable housing", or words to that effect.

4. Is a new Act required?

It is unclear what the driver is to create a new Act and approvals process and why preference was given to a new process external to the LUPA Act, rather than providing the Minister with facilitation powers under the LUPA Act. As a result, the Bill duplicates process unnecessarily, with no or limited obvious efficiency gains.

The Bill creates a lengthier approvals process. It creates a three-step process for a) identification of land, b) rezoning controls, and c) subdivision permit with a 28-day consultation period on each. If we add the dwelling permits, which are necessary before housing is actually built, it is a four-step process. The pathway to obtaining a subdivision permit appears to be longer than the existing subdivision permit process under the LUPA Act.

Facilitation powers could be created under the LUPA Act. The outcome sought - fast-tracking of rezoning of Crown land - could easily be accommodated within the existing LUPA Act.

A planning scheme amendment and permit application process (under s43A) is the prime example. There are no appeal rights arising from such an amendment, albeit the requirement for notice and public hearings. If the government's aim was to truncate timeframes by limiting consultation, or any perceived delay in authorisations by Council, this could readily be achieved.

If a different approvals process is to be established, how will these applications be assessed by government? As proposed, the Minister is to be the approval authority for subdivision and each application will need to be assessed. This requires a planning professional to undertake that assessment. Who in government is going to perform that function?

It appears to PIA Tasmania that the proposed process is not as efficient as it could be and will require additional government resources to facilitate.

We expect that this function could readily be performed by the Tasmanian Planning Commission, who assess these types of proposals every day. If certainty around timeframes and the removal of public hearings is thought necessary, amendments to the LUPA Act could provide for this.

The planning profession is equipped to facilitate development, without needing to carve out worthy development into a new and untested process.

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Delays are not due to the LUPA Act process. Planning professionals deal with subdivision applications every day. Delay in subdivision approvals is reportedly at the engineering design end of the process, when plans are being sealed, in particular in obtaining approval of plans from utilities. It is not clear to PIA Tasmania how this Bill will resolve those types of delays.

We recommend that the Government's time be better invested in discussions with utilities to fast track those approvals, than in taking on the approval role. If the specific issues that the government is seeking to address are in the planning and subdivisions system, we offer our assistance in finding solutions to resolve those issues.

5. The TERP permit process requires further consideration to avoid perverse effects

Temporary housing is a noble aim, but there will be perverse effects under the current proposal. PIA Tasmania supports measures that provide housing to those currently homeless. The idea of temporary permits has merit. For example, limited life use permits shop-top housing in commercial areas. However, any such approach must be carefully thought through so as not to create a new housing problem.

The proposed TERP permits applies to Crown land and all other privately-owned land: cl.22(1) of the Bill. This means that any land – industrial, commercial, agricultural land, public reserves and residential can be used or developed for residential on a temporary basis.

The TERP permit system as proposed may have perverse results which we caution against. Potential problems include:

- Approving a new residential use in an industrial area may constrain business and employment generating opportunities in its current terms. If there is a Level 2 activity operating next door, that conversion may mean a business cannot meet its EPA noise or air emission limits. This will require the business to adjust its operations for that temporary period and may effectively shut that business down. It would be perverse for temporary use permits to negatively impact on employment generating uses; that cannot have been the intention.
- This same issue occurs in relation to agricultural land and rights to farm should be protected by this Bill. Residential use should not displace agricultural use, and there are no guarantees under this Bill that there will be no such effect. Restoring the land or leaving it in "better condition" would be difficult and costly under many circumstances.
- There are potential liability risks of allowing residential use on potentially contaminated land, which the Minister should be obliged to consider.
- Development of temporary housing on public reserves, i.e. Crown land or council land reserved for a public purpose, maybe difficult to reverse. There are assurances that conditions will require land to be "in a better condition than they were in immediately before the TERP permit was granted", or "restored to at least the condition they were in

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immediately before the TERP permit was granted" (cl.23(e) of the Bill). However, what these terms mean is very unclear and not based in any "term of art" regularly used by the planning or environmental management professions. Further, there are no enforcement powers bestowed on the Minister under this Bill, and therefore any conditions imposed on permits are unenforceable.

Clause 23(b) refers to loss of amenity to other residential dwellings on adjoining or other land. We would be surprised if TERP permits were intended to be issued in a residential zone. As drafted, the TERP permit allows construction of new dwellings without complying with planning scheme requirements. Once constructed, the building will have the protection of s20 of the former Part 3 of the LUPA Act, namely, the planning scheme cannot prohibit the continuation of the use, or require the demolition of the structure, where the use was lawfully commenced and the building lawfully erected.

Allowing new buildings to be constructed on a temporary basis effectively permits them on a permanent basis. This undermines the planning system as a whole.

Temporary permits should only be for use, and only in zones other than residential, where the use will subsequently be prohibited. Otherwise, a temporary development built in a residential zone will be entitled to become permanent after the TERP expires.

The Act does not require temporary buildings or structures to be demolished on the expiry of the TERP permit. It is likely that the landowner will simply apply to a local council for any such building or structure to remain on the land. If in a residential zone, they will be entitled to make that application. However, how that application is to be treated is very unclear. Is the person entitled to have the building approved?

If a building permit has been issued with an occupancy certificate, the landowner may not have to apply for planning approval. Section 20 of the LUPA Act entitles a person to continue using a lawfully constructed building if the use was lawfully commenced. Existing use rights may therefore protect those buildings, and developers can circumvent all proper planning processes in order to provide for temporary housing. This cannot have been the government's intention.

Clause 26(3) – allows the Minister or authority that "was responsible for the use or development to which the TERP relates" to pay the Minister for the cost of any works carried out in order to satisfy the Minister's responsibility to ensure that the land be restored or left in a "better condition". It is unclear what legal rights the Minister has to recover such funds, unlike other legislation that makes such costs a charge on the land recoverable in a competent jurisdiction.

The question for the Minister is around issues of ownership – if on private land, who is the person responsible? What if the entity responsible for the development has ceased to exist? These powers seem unreasonably slim to enable any proper recovery of funds to discharge this

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responsibility. We refer you to the powers of the EPA under Part 5A of the EMPCA in relation to recovery of moneys for land contamination.

Our assessment of the TERP Permit approach is that the consequences of this separate permit authority have not been adequately explored. This form of fast-track approval seems more likely to achieve a new generation of "shack settlements" that a later government will have the responsibility of cleaning up, and a litany of complaints from business and residential owners alike.

There are other methods of "fast tracking" temporary accommodation, through existing powers under the LUPA Act, or through providing the Minister with powers under the LUPA Act, that would be far preferable to this new form of legislation. We offer to meet with you to discuss the possible options.

We recommend removing this process from the Bill and consider existing mechanisms under the LUPA Act.

If TERPs are to be retained in the Bill, we recommend that:

- in issuing a temporary permit, the Minister must consider constraint on industrial, agricultural or commercial uses as a result of conversion to temporary use.
- a temporary permit issued under this Act does not have the protections of s12 of the LUPA Act (or its predecessor, s20 of the LUPA Act before the commencement of the Land Use Planning (Tasmanian Planning Scheme) Amendment Act ##).
- development be removed from the TERP Permit process, such that it only allows conversion of use, or require the demolition of any building or structure on expiry of the TERP Permit;
- Include enforcement powers for the Minister and a legally enforceable method for recovery of money against the person responsible for the development, or the owner.

6. Rezoning Crown land and temporary housing are only part of the solution

New housing supply is but one of the tools available to the government to ensure that there are short, medium and long-term solutions to the affordable housing crisis unfolding in Tasmania.

The planning system is uniquely placed to help deliver medium to long term solutions. Planning designs communities, acts as a lever and incentive to investment, and can shift markets to sustainable long-term solutions. This takes long term vision and leadership.

Settlement strategy

PIA Tasmania has long called for a State-wide settlement strategy. We see a central vision for settlement across the State as critical to shaping and planning for Tasmania's population and

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economic growth. It can ensure that growth goals are achieved in a strategic, thought-through and planned way, while safeguarding against leaving anyone behind.

We recommend State Government prepare and adopt a State Settlement Strategy as part of the Tasmanian Planning Provisions.

Metropolitan strategy for Hobart

The growing pains Tasmania is experiencing are largely being felt in the Hobart region. Hobart is fast developing into a burgeoning metropolis. Signs of this include the congestion on our main roads, lack of rental housing in the inner city, and new business and development gaining pace. With this growth comes the need for difficult decisions, including where and how to house new entrants to the Hobart market? How to provide services for an expanding population? Whether to build up or to build out?

The Hobart region is comprised of six metropolitan councils - Hobart, Clarence, Glenorchy, Kingborough, Sorrell, Derwent Valley and Brighton, supported by the outlying Huon, Tasman, and Southern Midlands Councils. The ever-expanding suburbs on the outskirts only place greater pressure on city infrastructure, while missing the opportunity of driving greater commercial and business activity in the inner city and central business districts through greater density. There needs to be a policy for infill development in and around commercial centres, particularly within the CBD of Hobart.

As part of the development of a metropolitan strategy for Hobart, there needs to be a review of residential zone controls to facilitate infill development.

The review should include car-parking controls for infill development, re-instate discretionary use status for visitor accommodation and review how "affordable housing" targets/incentives can be included in planning schemes, for instance through inclusionary zoning or development bonuses.

We look forward to working with you on these measures to secure a sustainable housing supply for Tasmania.

Yours sincerely

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