Local Government Association Tasmania

Our Ref: DJL/CA
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Department of Justice
Planning Policy Unit
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haveyoursay@justice.tas.gov.au

Dear Sir/Madam

Residential Housing Supply Bill 2018

Thank you for the opportunity to provide a submission on the Draft *Residential Housing Supply Bill 2018* (the Bill).

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993*, our functions being:

(a) to protect and represent the interests and rights of councils in Tasmania;
(b) to promote an efficient and effective system of local government in Tasmania; and
(c) to provide services to member councils, councillors and employees of councils.

The views and opinions expressed in this submission are representative of the Local Government sector, having been developed in consultation with member councils. Although it must be noted that due to the extremely short time frame allowed for submission, many of our member councils were unable to provide comment. LGAT fully supports councils who have made individual submissions to the consultation process and in turn, supports the content and opinions expressed within those submissions.

If you have any questions or would like further information, please do not hesitate to contact me at katrena.stephenson@lgat.tas.gov.au or via phone on (03) 6233 5966.

Yours sincerely

Katrena Stephenson
Chief Executive Officer

General Comments

While undoubtedly there are significant affordable housing challenges in parts of Tasmania, a number of councils have expressed a philosophical opposition to the process intended by the Bill. There is already a legislated land use planning system in Tasmania which provides a range of options for determining how the opportunities for land use are to be established, and how permission for use and development is to be obtained. Our existing system contains three main avenues for development depending on whether a proposed land use undertaking is of State, regional or local significance – and each process allows for changing a current zoning of land and for obtaining a permit for residential use and development. In addition, it has been noted that there has been a failure by the State Government to properly analyse the causes of the current housing affordable issues and consequently there is an insufficient evidence base from which to develop appropriate public policy. Housing markets are complex, with many of the factors influencing prices and supply beyond the control of Government. It has not been established to what extent housing availability, the rise of Airbnb and other holiday letting platforms, taxation arrangements (such as stamp duty and negative gearing) or other factors are contributing to the problem in Tasmania. To deal with these challenges it is imperative the Government introduce evidence-based reforms that are likely to deliver longer-term results, and it is not clear that this is the case with this Bill.

To further illustrate this point there has not been consideration of other land use planning mechanisms that have successfully supported affordable housing development elsewhere. For example, South Australia successfully delivered 5,485 affordable homes between 2005–15 through the application of an inclusionary planning target applying to new residential areas. This amounted to approximately 17% of total housing supply in that state[1]. In other jurisdictions (the UK and USA for example) affordable housing supply has been increased via the use of inclusionary planning, either through it being mandated when land is rezoned for residential development or through the use of voluntary planning incentives to encourage affordable housing inclusion as part of incremental residential development.

It is understood that the intent is to provide land for more housing at a lower price point. The process created should make sure that the land is developed in a way that achieves the best possible housing outcome, in particular an affordable housing outcome. This means meeting an appropriate level of amenity, being safe and connected to services (infrastructure and social) in a cost effective manner. However, as drafted, this Bill does not necessarily ensure that this is achieved.

Given the above concerns, but also a realization that the Government is seeking to deliver some urgent solutions to the current housing affordability issue, the Local Government sector seeks changes to necessary legislative provisions (as outlined below) to ensure that not only are there appropriate independent review mechanisms contained within the Bill, but also that councils are not only asked, but have some influence on the outcome for individual Crown land parcels. This influence is not necessarily over whether or not it happens, but certainly should be over how it happens.

[1] Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018) *Supporting affordable housing supply: inclusionary planning in new and renewing communities*, AHURI Final Report No. 297, Australian Housing and Urban Research Institute Limited, Melbourne, http://www.ahuri.edu.au/research/final-reports/297,

Specific Comments

The following table provides specific feedback relating to sections of the draft Bill.

Section	Comments / Concerns
3	Affordable housing is not defined. Many jurisdictions have grappled with this, including how to resolve issues that may occur after 'affordable housing' has been on-sold. How does it stay affordable? How do you ensure it is bought by someone who needs it? How do you ensure that the person who buys it first gets some market value increase when they sell it? As a minimum there must be a definition of what 'affordable' housing is.
3	Terminology is inconsistent. Some terms in the legislation are reflective of current planning schemes (Interim and Tasmanian Planning Schemes), however other terms are not. For example, Section 9(2) talks about *general residential use or higher density residential use* – why not just use existing terms (i.e. for a residential use class).
3	The later sections of the Bill refer to the term 'emergency residential' accommodation? What is this? There must be a clear and transparent 'test'.
5(1)	Power should be provided to the Minister to be able to include, at Column 1 of Schedule 1 of the proposed Act, land owned by a council where such land has been identified/nominated as suitable for 'housing supply land' by a Resolution of the Council.
5(2)(b)	It is assumed that the land identified, by virtue of being Crown Land, will be managed by Housing Tasmania. However, with respect to Section 5(2)(b) which provides that '*all or part of the area'* will be used for affordable housing – what happens to the part not used for 'affordable' housing?
5(2)(c)	The Minister should have regard to the Tasmanian Planning Policies (once in force), any applicable Codes within the planning scheme and also the zoning of the adjacent land. The Minister should also have regard to the Schedule 1 Objectives and potential for land use conflict as per s32(1)(e) of the former LUPAA provisions. All of these matters could have a material impact on the suitability of the land for residential use. The Bill is silent on Aboriginal Cultural Heritage and Natural and Built Heritage – are these Agencies/ Entities that the Minister will consider have an interest? Will subdivision permits be given in advance of the relevant agencies considering these matters, should they arise?
7 (2), 19 (2)(b), 24 (2)	The use of the word 'may' instead of 'must' in relation what the Minister lay before each House of Parliament is concerning. It is considered essential Parliament be provided with "a statement setting out the comments submitted in relation to the area of land/proposed subdivision"

7(3), 19 (1)(c), 24(3)	Three (3) sitting days after an order or subdivision permit has been laid is not sufficient time for Parliament to consider and disallow the proposed order, particularly if there are contentious sites where third parties of Local Government have concerns they wish to raise with Parliament. It is suggested the timeframe should span two sitting weeks.
8	It is considered that there should be provision for general public notification as per planning scheme amendments, it is not always adjoining landowners who may be affected or have an interest. In the interests of transparency and having an independent review, it is suggested that the Tasmanian Planning Commission be required to review and provide a report on any proposal to include land in Schedule 1 and also report on any comments received.
8(2) & 20 (2)	The use of the word 'may' instead of 'must' in relation to the giving of notice is also concerning. There must be certainty provided within the Bill on the giving of notice.
8 (3)(c)(i) & 20(3)(c)(i)	Road authorities should be included.
8(4)(c)	It is unlikely that any planning authority/agency would be able to provide a considered response regarding any issues with services, assets, traffic concerns, hazards, amenity impacts etc. within 14 days.
10(a)	The Bill contemplates additional or altered provisions from what is already contained in the current Interim Planning Schemes and State Planning Provisions. If these instruments do not contain appropriate planning provisions for affordable housing outcomes, then the question must be asked as to why and what is the State Government proposing to do about it to deliver long term results? At the very least this should be addressed through a concurrent review and updating of these provisions. The section should specify what matters must be considered in relation to a decision to do this. It is not clear what objective is furthered by this provision, it would be possible for example to remove a heritage listing or application of environmental or hazard overlays.
18(1)(a)	The State Government has no experience in the drafting of appropriate permit conditions for development control. If the subdivision process is done externally to the local permit authorities, then it is critical the permit adopts all the standard conditions regarding construction of council and other service providers assets. The Bill should include provision for this to occur unless the Minister can demonstrate (under clause 19) that there was a compelling reason as to why a condition had to be amended or omitted.

19(5)	The Minister should also have specific regard to the subdivision provisions applicable in the planning scheme. It is unclear whether the open space provisions of *Local Government (Building and Miscellaneous Provisions) Act 1993* apply..
19 (5) (a)	The section should be limited to residential subdivision, rather than being *substantially …for residential housing.*
19(5)(b)	The requirement that "some of" the residential housing facilitated by a subdivision will be affordable is a very low test. "Some" could easily be a very minor component. Given that this Bill facilitates the bypassing of the normal approval process in response to the affordable housing issue, it is considered reasonable and fair that a much more substantial proportion of the land is made available for affordable housing.
20	Again, it is considered that there should be provision for general public notification, as it is not always adjoining landowners who may be affected or have an interest.
22(4)	Three years (& possibly six) is not temporary, particularly for those people who are such circumstances. There is potential for poor quality housing, social and amenity outcomes, essentially the establishment of a 'shanty town'.
22	The Bill makes no reference to the *Building Act 2017*. Does this mean that normal building permit processes will apply? If so, how will the development associated with the Temporary Emergency Residential Planning Permits (TERPs) be categorized under that Act – low risk, notifiable or permit works?
22	There should be consultation with the planning authority prior to the granting of a TERP.
22	Again, it is considered that there should be provision for general public notification, as it is not always adjoining landowners who may be affected or have an interest.
23	Why is 'may' used? The Minister must only grant the permit if they have had regard to the planning scheme and whether the site is appropriate.
24	The Bill allows only for the second TERP to be disallowed. Given the risks (as highlighted above) that exists with the TERPs, it is essential that a third-party review process be included for the issue of all TERPs. To be consistent with the remainder of the Bill, it is suggested that all TERPs be laid before each House of Parliament for a period of 2 weeks.
25(1)	There should be consultation with the planning authority regarding TERP conditions.

28 (1)	This clause deems the permit to be issued under LUPPA and that the planning authority will be responsible for it, so will have to undertake enforcement. However, as currently drafted the Bill provides for no consultation with the planning authority, therefore relevant information on operational or enforcement issues may not have been considered by the Minister.
28 (2)	This clause implies that there are no requirements for the TERP use or development to meet any amenity provisions of the planning scheme – how will the government ensure this housing is not substandard?
Sunset clause	As the legislation is intended to address an urgent issue and override the more detailed assessment process and community involvement that would be required under LUPAA it is considered that it should have a sunset clause.