

Draft Planning Directive No. 7 – Permits for Temporary Housing

Background Report

Introduction

This background report provides supporting information to accompany the draft Planning Directive No. 7 – Permits for Temporary Housing (the draft planning directive). This draft planning directive will apply to all 28 interim planning schemes and the *Sullivans Cove Planning Scheme 1997* (SCPS).

The draft planning directive proposes to provide targeted opportunities for use and development for temporary housing. This is limited to temporary housing provided by the Director of Housing, or another recognised housing support provider, for people in immediate need of housing assistance on land where residential use or development may be prohibited or restricted under the provisions of the planning scheme.

In summary, the draft planning directive proposes:

- A Permitted pathway for the use of an existing building, and any associated minor development, for temporary housing for up to 12 months if within certain zones (or Activity Areas under the SCPS) and subject to restrictions relating to heritage and certain hazard codes.
- A Permitted pathway for the placement of buildings (such as converted shipping containers) for temporary housing for up to 12 months on the same site, or a site adjoining, an existing social housing facility if within certain zones, and subject to building height and setback requirements and restrictions relating to heritage and certain hazard codes.
- A Discretionary pathway for temporary housing for up to 12 months beyond the above options, subject to considering a range of matters.

The draft planning directive only relates to the assessment and granting of a planning permit for temporary housing. The normal approvals or authorisations under the *Building Act 2016* will still apply.

This background report has been prepared to assist with the formal assessment of the draft planning directive pursuant to Section 12 of the former provisions of the *Land Use Planning and Approvals Act 1993* (the Act). The background report provides the context for the draft planning directive, outlining the policy background, legislative basis, assessment process, stakeholder engagement undertaken, and an overview of the proposed provisions and requirements.

Policy Background

Tasmania is currently experiencing considerable pressures on housing affordability and availability as a consequence of numerous and complex factors.

The draft planning directive is focussed on providing a means of issuing a permit for temporary housing provided by the Director of Housing, another recognised housing support provider, in suitable locations for people in need of immediate housing assistance. This includes those who are homeless, on the brink of homelessness, or those seeking refuge from family violence.

While the overall goal is to provide suitable permanent accommodation for those in need, there is an urgent need to provide temporary housing options as an interim step until more permanent housing options become available. Some suitable options for temporary housing may be in locations where residential use or development is not normally permissible under the planning scheme.

Why is there a need to issue permits for temporary housing?

The draft planning directive aims to provide a temporary measure for housing for those people in immediate need of housing assistance. It is intended as an immediate, short-term response to any shortfall of permanent accommodation.

There are commonly long lead times for the approval and construction of long-term housing. This may initially include rezoning and subdivision of the land before any houses are constructed. Considerable lag times can occur between the land being approved for housing and the actual houses being constructed and completed for people to occupy.

The current methods of delivering houses to the market and providing homes to those in need require more options available to the Director of Housing and recognised housing support providers to enable more flexibility for temporary housing options to address the current levels of homelessness and for others in immediate need of housing assistance..

The draft planning directive intends to provide the means for issuing permits to enable temporary housing to be provided by the Director of Housing or other recognised housing support providers for up to 12 months, where the current planning scheme would normally limit or restrict such use or development.

What is homelessness and what are its effects?

Shelter Tasmania¹ suggest that the most commonly accepted definition of homelessness is one which comprises three categories:

Primary homelessness is experienced by people without conventional accommodation (e.g. sleeping rough or in improvised dwellings, including tents).

Secondary homelessness is experienced by people who frequently move from one temporary shelter to another (e.g. emergency accommodation, youth refuge/shelter, “couch-surfing”).

Tertiary homelessness is experienced by people staying in accommodation that falls below minimum community standards (e.g. boarding houses and caravan parks).

¹ <https://www.shelertas.org.au/housing-in-tasmania/homelessness/some-facts/>

Data from the 2016 Census shows that 1,622 people in Tasmania were experiencing homelessness, an increase from 1,145 in 2006 and 1,537 in 2011. Of these, 57% were in Hobart and south-east Tasmania, 23% in Launceston and the north-east, and 20% in the west and north-west Tasmania².

Shelter Tasmania³ consider that homelessness can result in great social and economic cost to the individual and to the community. It creates great instability, leaves people vulnerable to chronic unemployment, ill health and limits their capacity to participate in the social and economic life of the community. People experiencing homelessness are often living without basic human rights being met.

Legislative basis and assessment process

The draft planning directive will be lodged by the Department of Justice with the Tasmanian Planning Commission (the Commission) for assessment under section 10(1) of the former provisions of the Act.

The former provisions of the Act in relation to planning directives remain in effect through the savings provisions under Schedule 6 of the Act, specifically clause 3(2)(b), which provides for the making of a planning directive and an interim planning directive . This allows for the making of planning directives and interim planning directives as though the former provisions of Part 2A of Act were still in operation.

Under the former provisions Act, the Minister, may issue an interim planning directive following a recommendation from the Commission.

Schedule 6, Clause 3(2)(b) of the Act states:

(2) Despite the substitution of Parts 2A and 3 of the former provisions, if there was, immediately before the commencement day, a planning instrument in operation in relation to a municipal area, then, on and from the commencement day until an LPS comes into effect in relation to the municipal area –

(a) ...

(b) Parts 2A and 3 of the former provisions remain in force in relation to the municipal area and accordingly a planning directive, and an interim planning directive, each within the meaning of the former provisions, may be made under Part 2A of the former provisions in relation to the municipal area; and

...

Section 9 (in Part 2A) of the substituted Act provides that a planning directive may be made in respect of the following matters:

² <https://www.shelertas.org.au/housing-in-tasmania/homelessness/some-facts/>

³ <https://www.shelertas.org.au/housing-in-tasmania/homelessness/some-facts/>

- (a) *issues relating to use, development, protection or conservation of any land requiring consistency for all municipal areas;*
- (b) *issues relating to use, development, protection or conservation of any land unique to one municipal area or only some municipal areas;*
- (c) *procedural matters arising from the operation of this Act or a State Policy;*
- (d) *the application of a State Policy; and*
- (e) *any other matter the Minister considers appropriate.*

The draft planning directive is consistent with section 9(b) of the substituted Act in that it relates to issues for use and development on land that is unique to some municipal areas in Tasmania.

The process for developing the draft planning directive and issuing an interim planning directive, if this course of action is recommended by the Commission, under part 2A of the substituted Act is as follows:

1. The draft planning directive is prepared, by the Department of Justice, Planning Policy Unit (section 10(1)) of the substituted Act).
2. The draft planning directive is lodged with the Commission by the Department of Justice, as a State Service Agency (section 10(2) of the substituted Act).
3. The Commission forwards the draft planning directive to the Minister with a recommendation as to whether or not an assessment of the draft planning directive should be undertaken (section 10(3) of the substituted Act). The Commission also recommends to the Minister whether or not the draft planning directive should have interim effect as an interim planning directive (section 12A of the substituted Act).
4. Minister directs the Commission to undertake assessment of the draft planning directive (section 11(1) of the substituted Act).
5. Should the Commission so recommend, the Minister issues an interim planning directive (section 12A(2) of the substituted Act), gives notice to the Commission and all planning authorities, and publishes the notice in the *Gazette*.
6. The interim planning directive takes effect on the day the notice is published in the *Gazette* and it has effect for a period of 12 months (section 12A(9) of the substituted Act).

Stakeholder Engagement

The draft planning directive has been prepared in consultation with the Disability, Housing and Community Services Unit of the Department of Communities Tasmania.

The draft planning directive responds to community views submitted during the public consultation on the *Housing Land Supply Bill 2018*. The initial draft of the Bill included the

concept of temporary permits for residential use and development being issued by the Minister for Planning. A key issue raised in that consultation was that planning authorities, instead of the Minister, should have the responsibility of determining the temporary planning permits.

Additional consultation has been undertaken with Local Government Association of Tasmania (LGAT), and several of the metropolitan councils where the need for an immediate housing response is likely to be greatest, including Hobart City Council, Glenorchy City Council, Clarence City Council, Kingborough Council, Launceston City Council, Burnie City Council and Devonport City Council.

Overview of the Draft Planning Directive

The following provides an overview of the various clauses of the draft planning directive.

1.0 Citation

This clause sets out how the draft planning directive is to be cited.

2.0 Application

The draft planning directive will apply to land covered by all interim planning schemes and the SCPS. It will not apply to land administered under the *Flinders Planning Scheme 2000*. The *Flinders Planning Scheme 2000* already allows temporary permits to be issued, so this draft planning directive does not need to have any affect in that municipal area.

The draft planning directive is intended to be attached to the applicable planning schemes under section 14(6) of the substituted Act and therefore it will not form part of the planning scheme.

3.0 Interpretation

This clause provides definitions for four new terms introduced by the draft planning directive. These terms are used to clarify its scope and intent and for the assessment of proposals for temporary housing. The terms of 'Director of Housing', 'eligible persons', and 'housing support provider' are all defined in the *Homes Act 1935* (the Homes Act), of which the overall intent is the:

provision of housing assistance to, and improving the housing conditions of, persons in this State, the provision of assistance to persons or bodies providing housing support services, and the undertaking of activities that are consistent with the achievement of those purposes.

The 'Director of Housing' has the same meaning as the 'Director' under the Homes Act, which is the Director of Housing appointed pursuant to that Act.

An 'eligible person':

means a person:

- (a) *who is determined under subsection to be an eligible person; or*
- (b) *who is a member of a class of persons that is prescribed for the purposes of this definition.*

Section 3(3) of the Homes Act provides for the Director of Housing to “*determine that a person, or a class of persons, is or are an eligible person or eligible persons*”. As of 19 April 2018, the Director of Housing determined that an eligible person in need of housing assistance⁴:

- *is homeless or at risk of becoming homeless, or*
- *lives in housing that is unsafe or unsuitable, or*
- *is a safety risk to themselves or others or there is a third party threat to them, or*
- *is living in housing that does not meet or makes worse their health or mobility, or*
- *does not have the financial capacity to meet their housing needs.*

A ‘housing support provider’:

means a person or body that provides housing support services⁵ to eligible persons, whether or not that person or body also provides housing support services to persons who are not eligible persons.

Examples of ‘housing support providers’ in Tasmania include Bethlehem House and the Hobart Women’s Shelter.

The definition of ‘temporary housing’ describes the scope of the use or development, which is as a residential use or development for a period of not more than 12 months. It outlines that the 12-month period only commences after an occupancy permit, or temporary occupancy permit, is issued in accordance with the *Building Act 2016*.

4.0 Effect of the planning directive

This clause outlines the effect the draft planning directive has in relation to interim planning schemes and the SCPS. Subclause 4.1 applies to interim planning schemes and subclause 4.2 applies to the SCPS.

Both subclauses 4.1 and 4.2 provide three potential permit pathways for temporary housing for up to 12 months for eligible persons provided by the Director of Housing or another recognised housing support provider. These comprise:

⁴ https://www.communities.tas.gov.au/_data/assets/pdf_file/0019/43273/Fact-Sheet-Eligible-Persons-under-the-Homes-Act.pdf

⁵ ‘Housing support services’ as defined under the Homes Act as “*means –*
 (a) *services, approved by the Director –*
 (i) *that may enable or assist persons, including eligible persons, to obtain or remain in residential accommodation; or*
 (ii) *that co-ordinate the provision to persons, including eligible persons, of services that may enable or assist persons to obtain or remain in residential accommodation; and*
 (b) *any class of services that is prescribed for the purposes of this definition.*”

- A Permitted pathway for the use of an existing building, and any associated minor development, in certain zones (or Activity Areas under the SCPS) and subject to restrictions relating to heritage and certain hazard codes.
- A Permitted pathway for the use and development in the form of demountable, relocatable, or other temporary buildings (e.g. converted shipping containers) on the same site, or a site adjoining, an existing residential facility provided by the Director of Housing or another recognised housing support provider. This is limited to certain zones (or Activity Areas under the SCPS) subject to building height and setback requirements and restrictions relating to heritage and certain hazard codes.
- A Discretionary pathway for use or development of temporary housing for circumstances that do not meet the above two options, including the option of providing temporary housing in a wider range of zones where Residential use or development would normally be prohibited. This provides the consideration of specific matters such as suitability of the site, the purposes of applicable zones and codes, and potential land use conflicts with adjoining properties.

For interim planning schemes, the two Permitted pathways in subclause 4.1(a) and (b) are limited to temporary housing in the main residential zones (General Residential Zone and Inner Residential Zone), Urban Mixed Use Zone, the three business zones, Community Purpose Zone and the Recreation and Open Space Zones. The Commercial Zone under the *Hobart Interim Planning Scheme 2015* has also been included due to Residential use being allowable in the Zone. Land within the Low Density Residential Zone is not considered suitable due to the purpose of the zone and potential land constraints. The Permitted pathways are limited to Activity Area 1.0 Inner City Residential (Wapping) and Activity Area 2.0 Sullivans Cove 'Mixed Use' under the SCPS in subclause 4.2(a) and (b).

Residential use and development is not normally permissible in the Recreation or Open Space zones. However, the draft planning directives provides for temporary housing to occur in these locations if an existing building can be utilised, or on sites are available that adjoin an existing residential facility provided by the Director of Housing or another recognised housing support provider.

The Permitted pathway for the use of existing buildings in subclauses 4.1(a) and 4.2(a) also provides for minor building works or structures which that may be necessary to allow for the use of the existing building as temporary housing. This could include minor external alterations to the existing building such as access ramps, or minor temporary structures to allow the building to be used for temporary housing.

The Permitted pathways for both interim planning schemes and the SCPS are limited to land not covered by the relevant heritage code (or heritage schedule under the SCPS), or if the heritage code (or schedule) is applicable, then any use or development must not involve:

- any external alteration or modification to a building that forms part of a heritage place, unless required for compliance with fire regulation under the *Building Code of Australia* and is not visible from any road or public open space adjoining the site; or

- excavation of land to a depth of more than 0.3m and more than 20m² in area on a site within a listed place or precinct of archaeological significance.

The limitations on alterations and modifications to heritage buildings and excavations in archaeologically sensitive areas are based on the exemptions for minor development and works in the State Planning Provisions (SPPs) Local Historic Heritage Code.

Limiting the Permitted pathways to sites where the Bushfire-Prone Areas Code and any codes relating to flooding or inundation hazard do not apply is considered important to ensure the safety of future occupants. Codes relating to landslip hazard provide a further limitation for the consideration of temporary housing in the form of demountable, relocatable, or other non-permanent buildings under subclause 4.1(b). The same limitations are not included for the SCPS due to the characteristics of the applicable area and the lack of provisions dealing with such issues in the SCPS.

The 8m building height limit for temporary housing, in the form of demountable, relocatable, or other non-permanent buildings under subclauses 4.1(b) and 4.2(b), provides the ability for stacking two converted shipping containers with some flexibility for managing sloping sites. A setback requirement from adjoining residential zoned land is applied to interim planning schemes to minimise amenity impacts. This excludes the adjoining land with social housing to which the temporary housing relates. The setback requirement is based on the building envelope concepts in interim planning schemes (and the SPPs) and provides a greater setback as the building increases in height above 3m. Setback requirements are not included for the SCPS consistent with provisions in the two Activity Areas.

Subclause 4.3 requires all permits for temporary housing that are issued in accordance with the draft planning directive to include a condition requiring the restoration of the site within 6 months of the expiry of the permit, unless:

- a new permit for temporary housing has been granted; or
- the works, buildings, plant or materials associated with the temporary housing are to be used for a use or development for which a permit has been granted, or are exempt from requiring a permit.

5.0 Application of standards and planning requirements

This clause clarifies how the requirements in clause 4.0 applying in relation to the planning scheme.

Subclause 5.1 specifies that the Permitted pathways provided under subclauses 4.1(a) and 4.1(b) are not applicable if the proposal has a status of No Permit Required under the applicable planning scheme. This subclause does not apply to the Permitted pathways provided by subclauses 4.2(a) and 4.2(b) as the SCPS does not provide for a No Permit Required status.

Subclause 5.2 specifies that the Discretionary pathways provided under subclauses 4.1(c) and 4.2(c) are not applicable if the use or development if the proposal has a status of No Permit Required or Permitted under the applicable planning scheme.

Subclause 5.3 confirms that no other provision or requirement of the applicable planning scheme applies to a proposal considered under the Permitted pathways provided under subclauses 4.1(a) and (b) and 4.2(a) and (b).

Subclause 5.4 clarifies that other relevant provisions and requirements of the planning scheme apply in considering proposals through the Discretionary pathways subclause 4.1(c) and (d) and 4.2(c) and (d). However, provisions and requirements that are directly or indirectly inconsistent with the draft planning directive are not applicable to the extent of the inconsistency.

6.0 Commencement

This clause will identify the commencement date of the planning directive.

Consideration against the Schedule 1 objectives of the Act

The draft planning directive is considered to further the Schedule 1 objectives of the Act, as set out below:

- 1(a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity.*

The draft planning directive aims to promote the sustainable development of natural and physical resources and the provisions enable the consideration of any applicable code in the current planning scheme for Discretionary use and development which will in effect broadly further the objective.

- 1(b) *to provide for the fair, orderly and sustainable use and development of air, land and water.*

The draft planning directive provides for fair, orderly and sustainable development of land by implementing a consistent approach to the provision of temporary housing in appropriate locations for people in need of immediate housing assistance. In recognising the temporary nature of the use and development (12 months), the draft planning directive provides for planning authorities to condition the planning permit to restore of the site after the temporary use or development expires.

- 1(c) *to encourage public involvement in resource management and planning.*

The draft planning directive responds to community views submitted during the public consultation on the *Housing Land Supply Bill 2018*. The initial draft of the Bill included the concept of temporary permits for residential use and development being issued by the Minister for Planning. A key issue raised in that consultation was that planning authorities, instead of the Minister, should have the responsibility of determining the temporary planning permits. Key stakeholders have been consulted prior to formal lodgement of the draft planning directive. Public involvement will be encouraged through the public exhibition of the draft planning directive and the holding of any public hearings in accordance with the requirements of the Act and the *Tasmanian Planning Commission Act 1997*.

- 1(d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b), and (c)*

The draft planning directive provides a means to potentially offset the negative effects of homelessness through the implementation of planning permits for temporary housing for those in immediate need of housing assistance. This aims to contribute to economic development in accordance with the above objectives.

- 1(e) *to promote the sharing of responsibility for resource management and planning between spheres of Government, the community and industry in the State.*

The draft planning directive responds to community views submitted during the public consultation on the *Housing Land Supply Bill 2018*. The initial draft of the Bill included the concept of temporary permits for residential use and development being issued by the Minister for Planning. A key issue raised in that consultation was that planning authorities, instead of the Minister, should have the responsibility of determining the temporary planning permits. The process of developing the policy that forms the basis for the draft planning directive, has promoted the sharing of responsibilities and this will be furthered through its implementation with planning authorities being the ultimate decision makers.

- 2(a) *to require sound strategic planning and co-ordinated action by State and local government.*

The draft planning directive is considered to further this objective as it enables an important temporary solution to an immediate housing problem. The scope of the planning permits is not intended for a broader long-term application that will create a permanent strategic change to the built environment. Implementation of the draft planning directive will require coordinated action by State and local governments.

- 2(b) *to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land;*

The draft planning directive forms part of the system of planning instruments that set the objectives and controls for use and development in the State, specifically for the issue of planning permits for urgently needed residential accommodation. The draft planning directive furthers this objective by contributing to a consistent system of planning instruments across the State.

- 2(c) *to ensure the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about use and development.*

The draft planning directive provides for consideration of the effects on the environment by implementing a consistent approach to the provision of temporary housing for those in immediate need of housing assistance. For Discretionary applications, the relevant codes in the current planning schemes provide for explicit consideration of the effects of any proposal on the environment. In recognising the temporary nature of the use and development (12 months), the draft planning

directive also provides the ability for planning authorities to condition the planning permit to restore of the site after the temporary use or development expires.

- 2(d) *to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels.*

The draft planning directive will form one component of controls in the integrated resource management and planning system in the State, and takes into account existing policies, planning schemes and other instruments for managing temporary housing.

- 2(e) *to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals*

The draft planning directive will form one component of controls in the integrated resource management and planning system in the State, and will therefore provide for the consolidation of land use approvals.

- 2(f) *to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;*

The draft planning directive will provide for a pleasant, efficient and safe living environment, by offering an alternative means to provide temporary housing for those in immediate need of housing assistance.

- 2(g) *to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.*

The draft planning directive provides for planning authorities to take account of the applicable heritage code or schedule in their decision making.

- 2(h) *to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community.*

The draft planning directive provides for planning authorities to take account of the impact on existing public infrastructure or other assets or the capacity of existing infrastructure services in their decision making on Discretionary applications.