



The Tasmanian Planning System

What has changed?

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Planning Basics

Discretionary use

- Council may approve it (i.e. Council exercises its discretion), and *LUPAA* requires that Council advertise the proposal for comment and provides the right to appeal the approval

Permitted use

- Council must approve it – the proposal will not be advertised and there will be no opportunity for public comment or appeal

The **planning scheme** is the document which defines what types of development are **permitted** and what are **discretionary**

Minister Gutwein

on the

Tasmanian (statewide) Planning Scheme

- Fundamentals of planning system are unchanged
- Retains the role of the independent Planning Commission
- Retains the role of local councils as planning authorities

Minister is technically correct

- Fundamentals unchanged. e.g.
 - there are still different levels of planning permit applications (development categories) i.e. exempt, no permit required, permitted and discretionary
 - the level of public involvement (i.e. mandatory 14 day public notification period for discretionary planning permit applications) has not changed
- The TPC is still independent
 - But in some circumstances (e.g. making SPPs) it does not make decisions - it makes recommendations to Minister
- Councils are still planning authorities
 - But they have less control over development than previously

The fundamentals may be unchanged but this does not mean that the changes are insignificant – there is a major reduction in discretionary developments without any compensatory safeguards of individual and public amenity

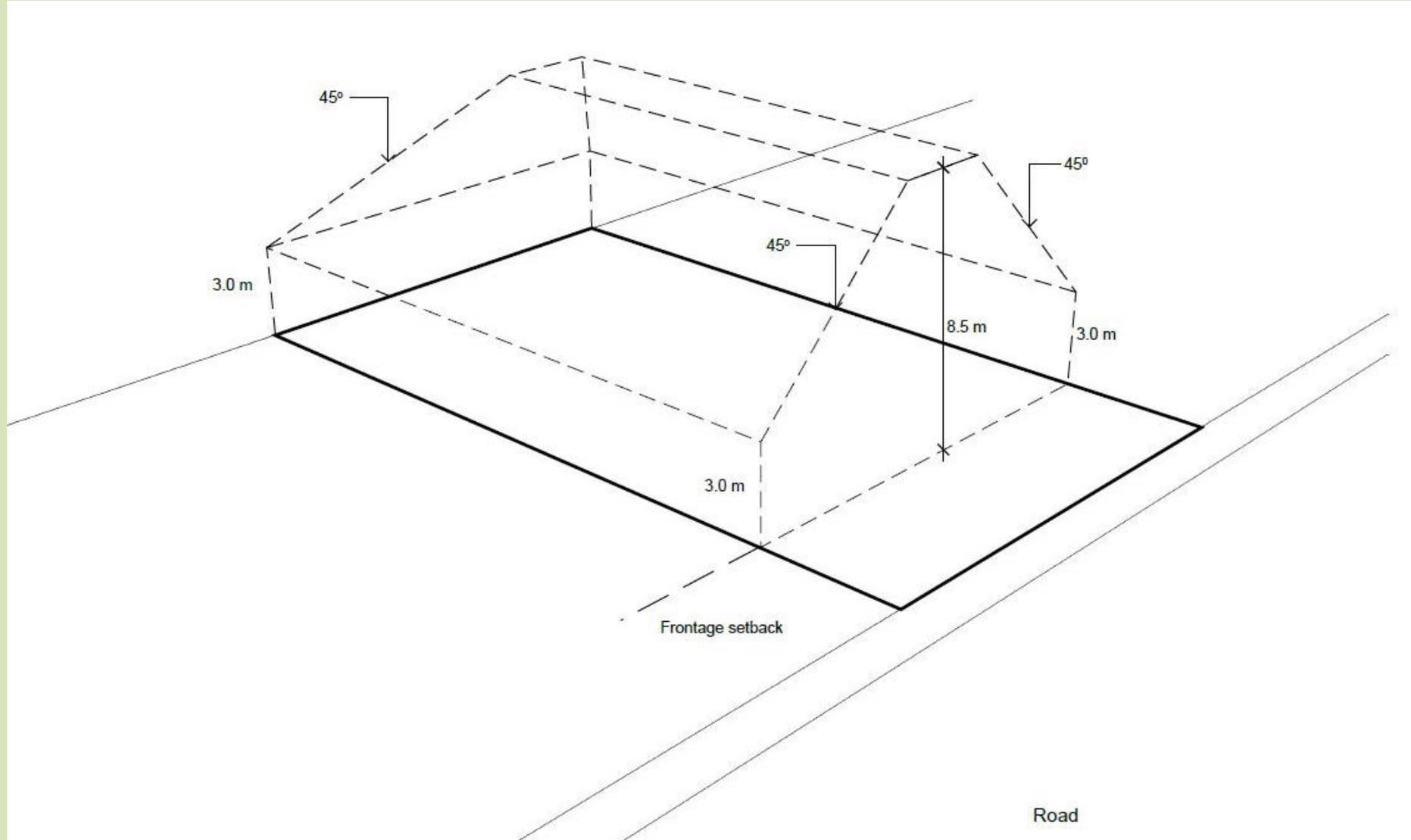
Consequence: criticism has to be carefully targeted if we are not to be brushed off as “uninformed”

Tasmanian (statewide) Planning Scheme

- Changes to legislation passed state parliament in 2015 but Statewide Planning Scheme does not take effect until Local Provisions Schedules are finalised
- **Interim Planning Schemes** introduced in 2013-15 (public comment still being considered)
- **Planning Directive 4.1**
Standards for Residential Development in the General Residential Zone
 - Introduced 28 February 2014 (immediately overrides corresponding requirements in all existing planning schemes)
 - Has been in place for over 3 years!
 - State election was held 15 March 2014
 - Subsequently incorporated into SPPs (section 8)
- **Statewide Planning Scheme:**
 - State Planning Provisions
 - Prepared by Planning Reform Task Force – reviewed by Tasmanian Planning Commission
 - Made by Minister 22 February 2017 – took effect 2 March 2017
 - Local Provisions Schedules
 - Councils have 6 months from finalisation of SPPs to formulate LPSs and additional 6 months for review by TPC (includes 60 days for public comment)

Building envelope - General Residential Zone

Figure 8.1 State Planning Provisions





Case Study 1

PLANNING SCHEME REVIEW PROCESS

prior to introduction of interim schemes in 2013-15

1. Local Council prepared new Draft Scheme based on goals and objectives which it set
 - e.g. a goal of maintaining the amenity of an area could be implemented by prescriptions relating to size of buildings, lot size etc
2. Draft Scheme was reviewed by TPC
 - advertised for public comment
 - included public hearings
3. The Minister's only role was to sign off on the new Scheme (TPC role is independent arbiter)

Case Study 1

PLANNING SCHEME REVIEW PROCESS

following introduction of State Planning Provisions in 2017

- It is no longer the review of a local planning scheme – Council prepares the Local Provisions Schedule which fits within the Tasmanian (statewide) Planning Scheme
- The process is essentially the same as previously
- So, why are we concerned about it?

Old: Council was able to set its own goals for particular areas and draft prescriptions accordingly

New: LPS required to be consistent with the SPPs. Council has to select prescriptions from the limited choice within the SPPs

There is provision for exceptions but need to be approved by TPC and Minister

Statements of Desired Future Character have been replaced by *Zone Purpose Statements*

Case Study 2

Development Application

“typical” suburban residential

prior to introduction of PD 4.1 and interim schemes in 2013-15

- If you were applying to build a house generally similar to those already in the district, it was a **permitted** use
- If you were applying to build anything else it was **discretionary**
 - Council may approve it (i.e. Council exercises its discretion)
 - Council must advertise the proposal for comment
 - *LUPAA* requires that all documentation is publically available and provides the right to appeal the approval

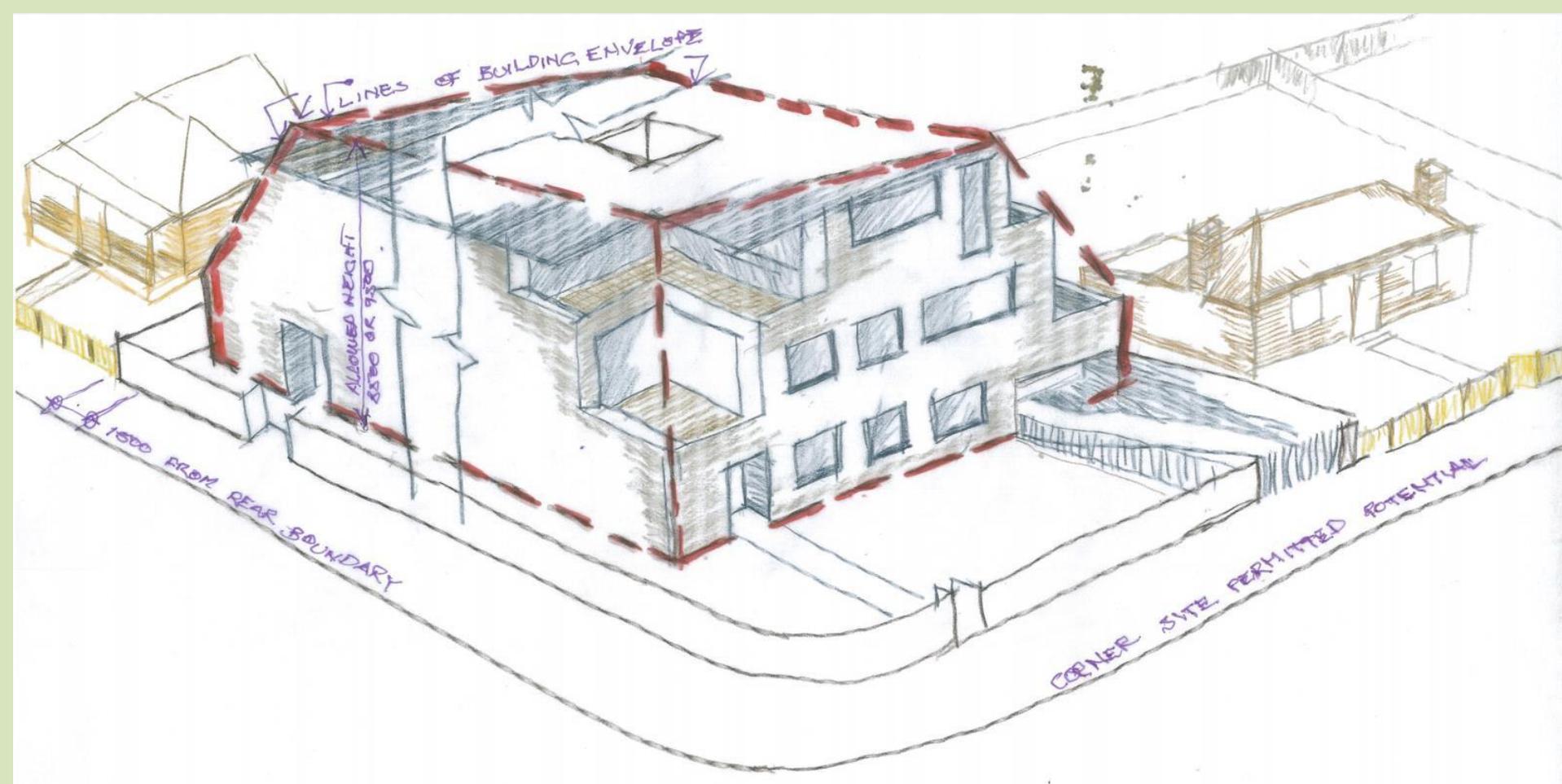
Case Study 2

Development Application

“typical” suburban residential

following introduction of PD 4.1 and maintained by State Planning Scheme

- The process is essentially the same as previously
- So, why are we concerned about it?
 - Old:** the only developments that were permitted ones which were generally similar to those already in the district
 - New:** anything that fits within a greatly expanded building envelope is permitted. For example ...



- This is a **permitted** use.
- It will **not be advertised** and there is **no legal opportunity to challenge** its approval.
- Only proposals which do not fit within the building envelope are **discretionary**.

SPPs – Other Concerns

- Making SPPs – Review by TPC but Minister not bound by TPC advice
- Inadequacy of Natural Assets Code
 - TPC recommended that the Natural Assets Code be excluded from the SPPs and further work be undertaken to ensure that the Code protected natural values
 - **but it's still in there!**
- Reliance on external instruments e.g. RAA, FPP, bushfire hazard plans
- Divides the rural landscape into four zones (Agriculture, Landscape Conservation, Rural and Rural Living – very few restrictions on buildings
- Local Heritage Code under the SPPs provides less protection than previously for heritage values
- No mention of Aboriginal heritage

Resource Management and Planning System (RMPS)

- *Land Use Planning and Approvals Act 1993*
- *State Policies and Projects Act 1993*
- *Environmental Management and Pollution Control Act 1994*

Strengths of RMPS

“Sustainable development”

Open and transparent process

- Development proposal clearly defined and this information made available to public
- Public comment prior to Council making decision
- Documentation relating to decision made public
- Appeal rights if unsatisfied with decision

RMPS does not cover ...

Development not on private land

- Reserved land (e.g. national parks)
- Unallocated Crown Land
- Forestry
- Mining
- Dams
- Aquaculture

What else is changing ...

- **Tasmanian Planning Policies** (different from State Policies under SPP Act)
- **Development on reserved land**
 - No longer “discretionary”
 - Loss of statutory assessment process including requirement for public consultation from 2016 Management Plan for Tasmanian Wilderness World Heritage Area
 - Expressions of Interest in tourism developments process
 - Reserve Activity Assessment is not statutory – only PWS policy
 - Need for development assessment process defined in *NPRM Act*
- **Major Projects legislation**

Likely to define a role for Coordinator-General and limit role of Council

 - Over-height hotels in Hobart proposed by Fragrance Group
 - Cradle Mountain Cable Car
 - Mount Wellington Cable Car

Resource Management and Planning Appeals Tribunal

- Independent statutory body - often confused with Tasmanian Planning Commission
- No formal changes but appeals becoming increasingly legalistic and expensive
- Practical support for the community
 - Reduce cost of appeals
 - Protective cost orders
 - RMPAT appointed experts
 - Other ways to level the playing field

Tasmanian (statewide) Planning Scheme

Selling points:

- State-wide uniformity is good
- Fundamentals of planning system are unchanged

Reality:

- Trojan Horse to impose sweeping changes
 - Most significant changes (in SPPs) redefine what developments are permitted or discretionary
 - Outcomes
 - Facilitate market-driven, ad hoc development
 - Reduce opportunity for community involvement