Bushfire Planning Requirements for Subdivisions and Developments in Western Australia

By David Nicholson

In Western Australia, areas designated as 'bushfire prone' are subject to particular planning control measurements contained in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (**Deemed Provisions**), State Planning Policy 3.7: Planning in Bushfire Prone Areas (**SPP 3.7**) and the Guidelines for Planning in Bushfire Prone Areas (**Guidelines**). These instruments all contain provisions relating to the requirements applicable to planning-framework drafters, decision-makers and applicants. This article will focus on the bushfire planning requirements applicable to subdividers and/or developers the enforcement of which is the responsibility of local governments.

Requirements under the Deemed Provisions

Under clause 67 of the Deemed Provisions, the matters to which a local government is required to have regard in considering an application for development approval include

(q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;

(r) the suitability of the land for the development taking into account the possible risk to human health or safety;

Part 10A of the Deemed Provisions makes provision in relation to bushfire risk management. Part 10A has limited application and only applies where the proposal involves the construction and/or use of either –

(a) a single house or ancillary dwelling on lot/s with a total area of 1,100m2 or more;

(b) a habitable building other than a single house or ancillary dwelling; or

(c) a specified building.

Clause 78D(1) requires the preparation of a bushfire attack level assessment (**BAL**) prior to the commencement of any of the aforementioned developments located in a bushfire prone area, unless a BAL contour map has previously been prepared for the development site or because of the terrain of the development site it is not possible to calculate the bushfire attack level of the site.

Under clause 78D(3) development approval is required for the proposed development if:

(a) the bushfire attack level (**BAL**) assessment indicates a calculated BAL -40 or BAL -Flame Zone (**FZ**) for the development site;

(b) the BAL contour map prepared for the development site indicates a BAL -40 or BAL -FZ for the development site; or

(c) the terrain of the development site makes it impossible to calculate the BAL

Under clause 78E, local governments must, in considering an application for development approval where Part 10A applies, have regard to the bushfire resistant construction requirements of the Building Codes of Australia (**BCA**).

Requirements under SPP 3.7

In considering an application for development approval, local governments are also required by clause 67(c) to have due regard to SPP 3.7.

Under SPP 3.7 subdivision applications must be accompanied by a BAL contour map prepared by an accredited Bushfire Planning Practitioner. Development applications in a bushfire prone area must be accompanied by either –

- a BAL assessment prepared by an accredited Level 1 BAL Assessor or Bushfire Planning Practitioner (unless otherwise exempted by the Guidelines); or
- a BAL contour map prepared by an accredited Bushfire Planning Practitioner for an approved subdivision clearly showing the indicative acceptable BAL rating across the subject site.

Both subdivisions and/or development applications must include:

- the identification of any bushfire hazards issues arising from the BAL contour map or BAL assessment; and
- an assessment against the bushfire protection criteria requirements under the Guidelines.

The aforementioned information can be provided in the form of a Bushfire Management Plan (BMP).

Where subdivisions and/or development proposals involve a ‘vulnerable’ or ‘high-risk land use’ and have a calculated BAL of 12.5 to 29, BAL -40 or BAL-Flame Zone (FZ) then:

- BMPs must also be jointly endorsed by the local government and the Department of Fire and Emergency Services (**DFES**);
- subdivision applications should make provisions for emergency evacuation;
- development applications should include an emergency evacuation provisions and/or plans (prepared in accordance with AS 3745- 2010 or AS 4083-1997) for proposed occupants and/or a risk management plan for on-site flammable hazards.E

Subdivision and/or development applications that have, or will on completion have, an extreme Bushfire Hazard Level (**BHL**), BAL -40 or BAL-FZ, must either be ‘minor development’ or ‘unavoidable development’.

Where the subdivision and/or development proposal is ‘minor development’ and is in an area with, or will on completion of the subdivision/development have, an extreme BHL or has a calculated BAL -40 or BAL-FZ, the BMP must also include a statement addressing the bushfire risk management measures outlined in cl 6.7.1 of SPP 3.7.

Under clause 6.7.2 there is a presumption against approving any strategic planning proposal, subdivision or development application that will result in the introduction or intensification of development or land use in an area that has or will, on completion, have an extreme BHL and/or where BAL-40 or BAL-FZ applies, unless it meets the definition of 'unavoidable development'. Planning proposals of this nature will only be supported where risk is mitigated by satisfaction of the criteria set out in cl. 6.7.2(a)-(d).

Both minor and unavoidable development do not require compliance with the bushfire protection criteria contained in the Guidelines.

Under clause 6.9 subdivision and/or development applications must also include the advice of the DFES if:

- compliance with SPP policy measures is unlikely to be achieved;
- additional/alternative measures are proposed; and/or
- the application contains unavoidable development, or vulnerable or high-risk land uses.

Requirements under the Guidelines

The Guidelines for Planning in Bushfire Prone Areas provide supporting information to assist in the interpretation of the objectives and policy measures outlined in SPP 3.7. Like SPP 3.7 the Guidelines are applicable to every stage of the planning process. The intent of the Guidelines is that bushfire planning and management measures be addressed as early as possible in the planning process, with the level of information provided being progressively more detailed (cl. 5).

By way of example, subdivisions in bushfire prone areas are required to be well-designed to minimise bushfire risk and meet the following criteria:

- be located within close proximity to existing settlements and/or within existing cleared areas;
- minimise exposure to bushfire hazards and avoid further vegetation clearing;
- avoid placing residential development on steep slopes;
- provide for at least two safe access routes;
- ensure public open space and reserves avoid increasing the threat of bushfire to new properties;
- consider the creation of vegetation corridors where they may enable fire to enter the subdivision area;
- consider establishing or retaining recreational areas to have a dual purpose as public refuge areas and/or separation areas;
- have access to adequate water and infrastructure;
- provide for adequate separation from existing or proposed buffers for wetlands, foreshores and other conservation areas;
- where revegetation is required, consideration should be given to the bushfire threat implications of a fully vegetated area; and
- include 100 metre buffers on lots from bushfire prone vegetation or comply with the bushfire construction requirements of the Building Code of Australia appropriate to the current BAL rating (with the exception of BAL–40 or

BAL–FZ).

The Guidelines require that development in a bushfire prone area should:

- be accompanied by a BAL assessment (or BAL contour map);
- be constructed under the relevant bushfire construction requirements of the BCA (only applies to Class 1, 2, 3 and or 10a buildings);
- utilise any or all elements of Australian Standard 3959 (**AS 3959**) where the development is a Class 4 to 9 building; and
- aim to achieve a BAL -29 or less.

The bushfire planning criteria in Appendix 4 of the Guidelines also contains a number of requirements applicable to both subdivisions and developments. The requirements are split into four elements with each element having an overall intent that is to be achieved by meeting a number of 'acceptable solutions'. Where the acceptable solutions cannot be achieved, the overall intent of the element can still be achieved through the execution of 'performance principles'. Generally, performance principles are more relaxed. For the purposes of this article, only the acceptable solutions (summarised) will be discussed.

The intent of Element 1 is to ensure planning proposals are 'located in areas with the least possible risk of bushfire to facilitate the protection of people, property and infrastructure'. An acceptable solution is to ensure planning proposals are located in areas that are or will, on completion, have a moderate or low BHL or BAL -29 or below.

The intent of Element 2 is to 'ensure that the siting and design of development minimises the level of bushfire impact.' This can be achieved ensuring that every habitable building is surrounded by, and every proposed lot can achieve, an Asset Protection Zone (**APZ**) depicted on submitted plans, which:

- has a minimum width of 3 metres;
- is contained solely within the boundaries of the lot on which the building is situated (unless otherwise exempt); and
- is managed in accordance with the requirements of 'Standards for Asset Protection Zones' in Schedule 1.

Element 3 is intended to 'ensure that the vehicular access serving a subdivision/development is available and safe during a bushfire event'. This can be achieved by ensuring that:

- two different vehicular access routes are provided, both of which meet specified criteria;
- public roads meet the requirements in Table 6, Column 1 regarding trafficable surface and paving width and allowances for two-wheel drive vehicles and fire appliances;
- cul-de-sacs and/or a dead end roads are avoided in bushfire prone areas (unless otherwise exempted);
- battle-axe access legs are avoided in bushfire prone areas (unless otherwise exempted);
- private driveways longer than 50 metres from the house site to a public road meet specified criteria;
- emergency access ways that do not provide access to a public road are avoided in bushfire prone areas (unless otherwise exempted);
- fire service access routes are established to provide access within and around the edge of the subdivision and related developments and which meet specified criteria; and

- lots greater than 0.5 hectares must have an internal perimeter firebreak with a minimum 3 metre width or to the level prescribed in the local firebreak notice issued by the local government;

The intent of Element 4 is to 'ensure that water is available to the subdivision, development or land use to enable people, property and infrastructure to be defended from bushfire'. This can be achieved by ensuring that:

- the subdivision, development and/or land use is provided with a reticulated water supply in accordance with the specifications of the relevant water supply authority and DFES;
- non-reticulated areas have water tanks for fire-fighting purposes with a hydrant or standpipe which have a minimum volume of 50,000 litres per tank and other location and ratio to lot requirements; and
- single lots above 500 m2 without reticulation are provided with a static water supply on the lot with a capacity of 10,000 litres.

Other requirements

Pursuant to section 73(2A) of the *Planning and Development Act 2005*, local planning schemes can supplement provisions in the Deemed Provisions relating to bushfire risk management. Accordingly, developers may be subject to additional requirements under local planning schemes that incorporate such requirements.

Review of Bushfire Framework 2019

In 2019, the Minister for Planning in cooperation with the Minister for Emergency Services commissioned a review of the current bushfire planning policy framework by Dr Tony Buti MLA (**Report**). The Report made a total of 16 recommendations. In response to these recommendations, the Government has initiated the beginning stages of reform to the bushfire planning policy framework.

Some of the key recommendations of the Report include:

- Amendment of the bushfire planning framework to place emphasis on the importance of protecting human life within its main objective;
- More detailed classification of bushfire prone areas to replace current 'broad brush' approach, which would allow for more tailored application of planning and building requirements;
- Replacement of site specific assessment methods with a broader landscape assessment method, which will enable a more strategic and streamlined assessment of bushfire risk in bushfire prone areas; and
- Amendment of SPP 3.7 to provide provisions that allow for the disclosing of information regarding a property's designation as a bushfire prone area on the sale or transfer of the land.

The Report resulted in the State Government releasing an 'Action Plan for Bushfire Framework Review 2019' (**Action Plan**). The Action Plan proposes a 4-stage process by which the bushfire planning framework will be amended:

- Stage 1a – will involve the production of a new Bush Fire Prone Area Map for the Perth Central sub-region removing isolated pockets of vegetation less than four hectares;
- Stage 1b – will involve the finalisation of the mapping criteria for significantly built-up urban areas and the application

of these criteria to produce a new Bush Fire Prone Area Map for the Perth Central sub-region;

- Stage 2 – will involve a new mapping methodology and Bush Fire Prone Area Map for the rest of the State in collaboration with the Commonwealth Scientific Industrial Research Organisation; and
- Stage 3 – will involve the amendment of SPP 3.7, the Guidelines and any relevant policies and regulatory instruments.

To date, the Government has already completed Stages 1a and 1b and is now in the midst of carrying out stages 2 and 3. Stage 4 is indicated to begin sometime around October of 2020.

Conclusion

The WA bushfire planning framework is intended to address the dangerous and destructive nature of bushfires on urban areas. This framework is currently under review and local governments should be aware of the various planning requirements under the Deemed Provisions, SPP 3.7 and the Guidelines as well as future changes to these instruments.

For further information, please contact David Nicholson by email to dnicholson@mcleods.com.au. The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.

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