

Planning for Bushfire: Risk Management Policy Framework



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Introduction

The Western Australian Government (**Government**) is introducing new measures to reduce the risk to people, property and infrastructure from bushfires through the planning system. The 'Planning for Bushfire Risk Management Policy Framework' will operate in areas designated as bushfire-prone. By encouraging a conservative approach to strategic planning, subdivision, development and other planning decisions, the new measures may impact on recent amendments to the planning system that were aimed at reducing the cost and time taken to develop land.

The new measures will be standard across local government areas, but local governments will be able to introduce additional bushfire management provisions into their local planning schemes, if deemed necessary. This may lead to inconsistency in development approval requirements between local government areas, contrary to the Government's stated intention to make local planning schemes more consistent across the State.

The proposed regulations that will implement the new measures are currently available for public comment, with submissions closing on Friday 31 October 2014. Norton Rose Fulbright has a market leading planning practice. We would be happy to discuss the implications of the new bushfire measures for your business with you, or assist you to prepare a submission.

Background and purpose

In response to recommendations made in the Keelty Report² and the findings of the Victorian Royal Commission on the Black Saturday bushfires, the Government reviewed the *Planning for Bush Fire Protection Guidelines*, published in 2010. Following the review, the Government released draft *State Planning Policy 3.7 – Planning for Bushfire Risk Management (SPP 3.7)* and revised *Planning for Bush Fire Management Guidelines (Guidelines)*. The old 2010 Guidelines are referenced in SPP 3.4, so to the extent of any inconsistency SPP 3.7 will prevail over SPP 3.4.

Draft *Planning and Development (Bushfire Risk Management) Regulations (Regulations)* have also been prepared to complement SPP 3.7 and the Guidelines. The Regulations will implement the policy objectives of SPP 3.7 at the development stage. The Government is currently seeking public comment on the proposed Regulations, which will introduce new mandatory provisions into local planning schemes across Western Australia with effect from 1 May 2015.

The aim of the Regulations is to apply consistent criteria, that will reduce the risk of bushfire damage to habitable buildings in bushfire-prone areas, to development throughout Western Australia.

In short, the Regulations will:

- (1) determine whether a property is within a bushfire-prone area;
- (2) ensure that a bushfire risk assessment is undertaken before a new habitable building is constructed, or a new land use implemented, in a bushfire prone area; and

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² Mr Mick Keelty AO, *A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*



- (3) require development approval for habitable buildings and land uses on sites of extreme bushfire risk to ensure appropriate bushfire risk management measures are undertaken.

The basic requirements under the Regulations will be the same for all local governments throughout the State, but local governments will have discretion to include additional bushfire management provisions in their schemes to meet local needs. Any additional provisions must be consistent with the Regulations.

Who will be affected?

The Regulations will apply throughout Western Australia from 1 May 2015. The Regulations will affect owners and developers of property:

- (1) which is located in an area designated as bushfire-prone on the *State Bushfire Prone Area Map*; or
- (2) where any part of the development site falls within 100 metres of an area of 'bushfire-prone vegetation' of at least one hectare in size (**default definition**).

Bushfire-prone vegetation includes grasses and shrubs, but not maintained lawns, parks and gardens, nature strips, plant nurseries, golf courses, vineyards, orchards or vegetation on land used for horticultural purposes. The default definition will catch areas that may be at risk but which have not yet been designated. The Government is seeking the public's view on whether the default definition is effective to manage development in areas at risk of bushfire prior to their statutory designation, and also whether the definition of bushfire-prone vegetation is right.

The identification of an area as 'bushfire-prone' on the *State Bushfire Prone Area Map* will trigger additional planning requirements for properties in that area, and will also trigger the use of particular building construction standards under the Building Code of Australia. The map is being prepared in stages by the Fire and Emergency Service Commissioner, with the first stage expected to be available in late 2014. There is no formal process to seek a review of the decision to designate a property as being within a bushfire-prone area.

Proponents preparing planning and building applications must address the requirements of SPP 3.7. For example, proponents must:

- (1) be aware of the bushfire risk affecting their property;
- (2) support their application with a Bushfire Management Plan (discussed below);
- (3) prepare contingency measures in the event of a bushfire;
- (4) prepare a bushfire hazard level assessment and/or Bushfire Attack Level assessment (discussed below) to support their application where required; and
- (5) consult with the Department of Fire and Emergency Services (DFES) where necessary.

The Regulations will not apply at the scheme amendment, structure plan or subdivision approval stages, where the policy approach in SPP 3.7 and the Guidelines will apply.

Bushfire Attack Level Assessments (BALs)

A Bushfire Attack Level (BAL) assessment is a detailed risk assessment of potential bushfire damage to a proposed development. This will help to determine the suitability of land for future subdivision and development, and identify suitable locations for particular land uses. For example, a BAL assessment may indicate that a site contains moderate or extreme hazard areas, which may be reduced to low or moderate respectively through appropriate risk management measures.

BAL assessments will be required at the building permit stage for all development in bushfire-prone areas, but will also be used in the planning process to determine whether a site requires additional

bushfire measures to respond to a potential bushfire hazard. Prior to the construction of a habitable building³ in a bushfire prone area, a proponent must engage a fire consultant to conduct a BAL assessment in accordance with the standards set out in Australian Standard – *Construction of Buildings in Bushfire-Prone Areas* (AS 3959).

The BAL assessment must be undertaken based on site characteristics as they exist at the time of the assessment, with no allowance for clearing that may occur on adjacent properties in the future. It will give the land one of six numeric BAL ratings, based on a combination of vegetation type, the effective slope of the land and the proposed building's distance from predominant vegetation. The higher the rating, the more severe the risk. The ratings are: BAL-LOW, BAL-12.5, BAL-19, BAL-29, BAL-40, BAL-Flame zone.

Bushfire Management Plans (BMPs)

Bushfire Management Plans (BMPs) replace Fire Management Plans. BMPs will take into account the BAL assessment and provide technical information to inform planning assessment for the land. BMPs will be required:

- (1) as part of a local planning scheme rezoning, where bushfire provisions require it;
- (2) as a requirement of a bushfire special control area;
- (3) during the preparation of a structure plan in a bushfire-prone area;
- (4) as a requirement of a structure plan;
- (5) as a condition of approval to subdivide land in a bushfire-prone area; and
- (6) as part of, or as a condition of, an application for planning approval in areas identified as being bushfire-prone, or in areas with a moderate or extreme bushfire hazard level, including vulnerable and high-risk land uses.

BMPs must be prepared by a fire consultant on behalf of the proponent in accordance with the template provided in the Guidelines. Once a BMP has been endorsed by the local government or DFES, the landowner must implement it and ensure that bushfire risk management on the property remains effective, for example by implementing the hazard separation and building protection zones.

Local governments must ensure BMPs are complied with by issuing fire protection notices and fining landowners who fail to comply.

Requirement for development approval

Development approval will be required for the development of any new habitable building on a site assessed as being at extreme risk of bushfire damage (that is, BAL-40 or BAL- Flame zone) regardless of whether that class of building would otherwise have been exempt from development approval under the relevant local planning scheme. This change is significant for single dwellings that previously did not require development approval if they complied with the relevant R-codes.

The development approval process will facilitate consideration of SPP 3.7 and the Guidelines and will remove reliance on building construction standards alone to manage bushfire risk in extreme areas.

For sites with a BAL rating of less than BAL-40, there will be no change to the existing requirements for, or exemption from, development approval under the local planning scheme.

To link to the consultation paper and submission form, click [here](#).

³ A habitable building means any building in which people are expected to spend appreciable time, including homes, schools, shops, workplaces, dining and entertainment venues. It includes permanent or temporary structures that are fully or partially enclosed.