

The draft *State Planning Policy 3.7: Planning for Bushfire Risk Management (Policy)* has now been released for public comment. The Policy is supplemented by the revised *Planning for Bushfire Risk Management Guidelines (Guidelines)*, also available for public comment. It is anticipated that the Policy will be gazetted by late this year.

The Policy will form the foundation for land-use planning in addressing bushfire risk management. All referral authorities and decision makers must be aware of its provisions to ensure acceptable fire protection outcomes on planning proposals are achieved where required.

Key Components

- (a) All land in bushfire prone areas subject to a development or planning application will be required to undergo an independent bushfire hazard assessment. This assessment will determine whether bushfire risk is low, moderate or extreme. This will be at the cost of the proponent.
- (b) Proponents subject to the Policy will be required to submit a Bushfire Management Plan as prepared by an independent fire consultant.
- (c) Bush Fire Management Plans for development proposals will be required to contain a Bushfire Attack Level assessment as prescribed by *Australian Standard 3959: Construction of buildings in bushfire-prone areas (AS 3959)*.
- (d) Planning authorities will be able to impose development conditions to address bushfire protection issues in accordance with the Policy, including title notifications and ongoing bushfire management contributions.

Application

The Policy will apply to all areas that have been designated as “bushfire prone” by the Fire and Emergency Services Commissioner or under a legislative instrument. Such areas will be identified either:

- (a) on a local government bushfire map, prepared in accordance with the Guidelines;

- (b) on the State Bushfire-Prone Area Map (**State Map**), prepared by the Fire and Emergency Services Commissioner; or
- (c) as any land within 100 metres of an area of bushfire prone vegetation equal or greater than one hectare.

The State Map will be given statutory effect via the *Fire and Emergency Services Act 1998* and therefore does not need to be adopted into local planning schemes.

The Policy will only apply to new planning proposals and will not be retrospective.

Identifying Risk

The onus will be on owners of bushfire prone land to assess the level of risk through either a bushfire hazard assessment, or in accordance with the Bush Fire Attack Level assessment in AS 3959. Land identified as low risk will not be required to comply with the Policy provisions.

Implementation

The Policy recommends that implementation occur through high level planning documents, such as sub-regional structure plans and local planning strategies. Enforcement will be delivered via local planning schemes and amendments. The relevant emergency services authority must be consulted in the preparation of all sub-regional structure plans, local planning strategies, and local and regional planning schemes.

Planning authorities will be required to apply the “precautionary principle” to all applications which potentially involve bushfire risk, refusing proposed development or intensification where there is insufficient evidence to show that potentially significant adverse impacts can be reduced and managed. The proponent will carry the burden of demonstrating that bushfire risks have been identified and managed where necessary.

Impact on Development

All new development will be bound by the highest achievable level of bushfire protection and impacted by the Policy (inter alia) as follows:

- (a) any rezoning or proposed land-use intensification must be assessed against bushfire risk and bushfire management mechanisms;
- (b) all proposals in extreme bushfire risk areas will generally not be supported, unless it is considered unavoidable development;
- (c) all proposals on land occupied by persons who may be less able to respond to a bushfire emergency in moderate risk areas will generally not be supported;
- (d) all proposals on land which use may lead to potential ignition of a bushfire in moderate risk areas will generally not be supported; and
- (e) any development within moderate or extreme risk areas may have bushfire protection conditions imposed on its approval.

Response

Public submissions respect of the Policy and Guidelines must be provided by **4 July** and **1 August 2014** respectively. Please contact us if you require any further advice or assistance in respect of your submissions.

In the meantime, consistency will be required between the State Map and any locally prepared bushfire prone area maps. We can assist you in developing and/or reviewing your local bushfire map, and with any amendments required to your Local Planning Strategy.

Contacts

Margie Tannock

Partner

T +61 8 9429 7456

E margie.tannock@squiresanders.com

Kate Oosterhof

Associate

T +61 8 9429 7421

E kate.oosterhof@squiresanders.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.