

# UDIA NSW Report to the Bushfire Forum

April 2004

## INTRODUCTION

The Urban Development Institute of Australia (UDIA) is Australia's peak representative body for all segments of the urban development industry. UDIA's mission is to promote innovation and best practice for sustainable environments and communities.

UDIA recognises the importance of minimizing the risk associated with bushfires to people and property, and is supportive of the need for a fair, sensible and workable framework for development in potential bushfire areas.

However, the regulatory framework (the framework) introduced in NSW as of 1 August 2002 for designing and building in potentially bushfire affected areas is causing concerns for an increasing number of developers, councils and consultants throughout NSW.

UDIA NSW has collected case studies (*see Appendix 1*) from members and others in the industry, and the following problem areas have been identified:

1. **NSW Planning System(Planning & Land Supply)**
2. **Rural Fire Service Assessment (Planning & Land Supply and Legislative Process)**
3. **Planning for Bushfire Protection Guidelines (Legislative Process)**
4. **Assessment of Asset Protection Zones (Legislative Process)**
5. **Development Types – Sub-Division, Infill and Aged Care (Legislative Process)**
6. **Mapping (Fire Management)**
7. **Whole of Government Compatibility (Legislative Process)**

## 1. NSW Planning System

- The NSW planning system is already complex and multi-layered without the addition of an additional agency (the RFS) to undertake a concurrent assessment and approval role.
- The NSW planning system previously incorporated bushfire risk management satisfactory. While many of the areas currently at risk from bushfires were zoned and approved decades ago, the system has evolved since the late 1970s to be thorough in most areas in its consideration of bushfire risk. Under the previous system, Council staff were responsible for development assessment and RFS officers with knowledge of local fire conditions were used as expert advisers when determining DAs.
- It is unclear whether the RFS have the appropriate resources and planning experience to assess the multitude of applications generated under the framework.

- While local government planners and assessment staff have the skills and experience to undertake assessments, they often lack a clear understanding of the assessment criteria for development in potential bushfire prone areas. In addition, councils have concerns about liability issues in regard to approving development in potential bushfire areas and are thus unnecessarily referring applications to the RFS.

### ***Recommendations***

- **Amend the framework to delegate assessment to Council staff, who have the appropriate training, resources and experience to undertake this role. RFS staff to provide expert advice on potential local fire conditions and behavior as required.**
- **Provide clear guidance to Council staff on the assessment criteria to be applied for developments in bushfire fire prone areas.**
- **Introduce a training and certification program for Council staff to off-set liability concerns.**
- **Audit selected Councils annually to ensure the assessment criteria is being followed.**

## **2. Rural Fire Service Assessment**

- RFS lack understanding of planning process and operation of the development industry, including the role of new development in providing all types of infrastructure and the effect of RFS decisions on land supply, provision of new housing and affordability.
- Only the RFS Manager, Planning & Environmental Services (in effect, the RFS Head Office) can approve development applications for integrated developments. This coupled with a lack of on-ground site inspections being carried out by the RFS means the knowledge of local fire conditions or the use of alternative fire protection solutions on a site is not incorporated into assessment decisions.
- The RFS have used a strict and inflexible application of the *Planning for Bushfire Protection* guidelines (the Guidelines) and framework when assessing developments.
- Instances of poor communication and feedback by RFS - rarely give reason why applications rejected.

### ***Recommendations***

- **Return the assessment of developments in bushfire prone land to Councils, with the RFS providing an expert advice role in the assessment process.**

- Continue to convene the RFS Industry Working Group on a regular basis to provide feedback and education to the RFS on development and planning issues and practice.

### 3. Planning for Bushfire Protection Guidelines

- As the Guidelines are designed to cover several areas of bushfire planning and to be used by a wide variety of users, including councils, planners, developers, fire authorities and home owners, the Guidelines have adopted an ambiguous, 'one size fits all' approach which can be confusing for the non-expert user.
- The Guidelines incorporate a simplistic hazard assessment method which only determines the level of hazard present, not the potential fire behaviour – largely irrelevant as all slopes in NSW have greater than 5% slope
- The Guidelines assess risk based on vegetation type and slope but do not allow for the assessment of potential bushfire risk based on local conditions (no merit-based assessment) nor do they provide guidance on mitigation methods that may be used to downsize Asset Protection Zones.
- Concerns over the range of information required to be provided to make assessment under the Guidelines i.e. flora and fauna

#### ***Recommendations***

- The Guidelines be revised and split into three separate documents:
  - Development Control Planning guidelines (Chapters 1, 2 & 3 of the existing Guidelines) containing advice on the preparation of bushfire planning instruments (for use by land use planners and development control makers, for example, councillors)
  - Development Assessment guidelines (Chapters 4,5 & 6) for local government planners, developers and consultants
  - Construction guidelines (Chapters 5 & 6) with advice for building in a bushfire prone area for builders and home owners/potential purchasers
- Amend the assessment methodology to recognize the real bushfire threat to a locality and to provide guidance on acceptable mitigation methods that may be used to downsize APZs.
- Allow proper assessment of the actual bushfire risk against the design of a development site using expert advice from the RFS and guidance from the Guidelines.

## 4. Assessment of Asset Protection Zones

- The Guidelines provide a methodology to determine the size of an APZ. Vegetation and slope are used to determine a rating (Low, Moderate or High) but there is no commentary or linkage to other important assessment criteria, for example, prevailing wind direction. The methodology thus only determines the level of hazard present, and not the actual threat.
- The RFS strictly apply the methodology from the Guidelines to determine the APZs. This strict application does not take into account any mitigation methods incorporated by the development, nor the effect of any vegetation clearance from the development activity occurring. This strict approach can result in significant loss to development yields which may affect the financial viability of a project.
- The Guidelines do not provide guidance on incorporating mitigation methods to downsize APZs.
- APZs cannot share neighbouring property even if instruments such as S.88Bs are used to ensure owner will undertake maintenance – this strict approach will sterilise a large number of properties.
- The framework places maintenance onus of APZs on private landowners. However, the responsibility for the maintenance of significant areas of public land, for example, hazard reduction, is largely undecided. In addition, future land owners are under no obligation to maintain APZs while local government lacks resources to stage follow-up inspections to ensure maintenance is occurring.

### ***Recommendations***

- **Revise the assessment methodology to incorporate an approach that recognises the real bushfire threat. Additional assessment would include:**
  - **The level of hazard likely to be in position following development, not just when the assessment takes place;**
  - **The potential bushfire risk of a site in relation to the planned movement of the urban/bushland interface;**
  - **The ‘actual’ and ‘potential’ danger from occupying a dwelling in a bushfire prone locality; and the potential danger for fire fighters and emergency service workers;**
  - **The impact of proposed mitigation methods on the protection of the site.**

## 5. Development Types

### **Sub-Division**

- Residential sub-divisions where covered adequately under the previous controls, especially in high-risk areas, for example, the Blue Mountains.

- Sub-divisions which have been planned but not approved prior to the introduction of the new framework are struggling to meet the new requirements, especially in regard to acceptable APZs and access. This is despite these sites having incorporated bushfire management controls in their design. In the current development environment, it is a costly and timely effort to re-design sub-division and masterplan lay-outs to incorporate the new requirements.

- Sub-divisions planned and approved prior to mid-2002 but with either stages to release or individual lots to sell are facing similar issues as above.

### **Infill Development**

- Where an infill site is adjacent to vegetated land, there are now a large number of circumstances where the proposed development will not comply with the (set-back) requirements of the Guidelines. If a strict application of the Guidelines is made, and regardless of the actual risk from bushfire, the site will not be able to be utilised.

### **Aged Care Master Planned Developments**

- The new Seniors Living SEPP, which has replaced SEPP 5, will not apply in areas identified as 'bushfire prone land – vegetation category 1' on BFPL maps. In addition, the new SEPP will not apply to land in the vicinity of BFPL considered by DIPNR (in consultation with the RFS) as having evacuation problems (*Refer to Schedule 1, State Environmental Planning Policy (Seniors Living) 2004*).

- The above exemption prohibits master planned retirement villages from being constructed in 'bushfire prone land – vegetation category 1' areas; a DA for a master planned retirement village in a prohibited area cannot even be considered by a council, even if the development construction eliminates the potential bushfire risk through, for example, the appropriate clearing of existing vegetation to facilitate the development or the proper maintenance of APZs.

- Potential large areas are thus being sterilised for the purpose of master planned retirement villages even though these sites could be adequately protected from potential bushfire risk. Villages which already have been approved in principle but need future DAs to implement the approved plan are also being stalled, and their continuing and future operation is placed at risk because of the retrospective nature of the prohibition in Schedule 1. These villages may already be in the process of construction.

- Master planned retirement villages are also included in the Special Fire Protection Purpose category. These developments should be excluded from this category. They are occupied by mainly active, mobile residents, have on-site staff and established evacuation procedures. Master planned retirement villages are as safe, if not safer, than normal residential developments and should not be burdened with any additional APZ/setback penalties other than the requirements for ordinary residential development.

### **Recommendations**

- **Sub-divisions be assessed on a site specific basis, noting especially any mitigation measures already incorporated into the planning design.**

- Introduce transitional arrangements allowing the RFS and Councils to apply discretion when assessing developments planned but not approved prior to the introduction of the new framework.
- Flexibility must be applied to all infill development assessments, i.e. if an infill site is in an area currently zoned for residential development, assess the development under the development controls for that area.
- Land identified as 'bushfire prone land – vegetation category 1' to be excluded from Schedule 1 of SEPP (Seniors Living) 2004
- Master planned residential villages should be excluded from the Special Fire Protection Purpose category.

## 6. Mapping

- Bushfire Prone Land (BFPL) mapping reflects the potential hazard areas but not the potential fire behaviour for an area. The single key element in identifying potential bushfire behaviour is the impact of wind speed and direction. This element is not considered in the mapping.
- Bushfire Prone Land maps are often based on poor and variable base data and have both overstated and incorrectly identified BFPL in most local government areas – this overstating means otherwise complying development now come under the assessment framework - for example, a sub-division becomes an integrated development and must be referred to the RFS for a Bushfire Safety Authority.
- While there are instances of developers, Councils and the RFS amending maps (in short time periods) which are clearly incorrect, if Council does not agree the map is incorrect, there is no process available to have the map amended. The responsibility is thus placed back on the developer or individual purchaser adding unnecessary cost and delay.
- There is no reference in the Guidelines for councils to take future land uses into account on when producing maps. The current five year update requirement is unrealistic in fringe development areas where residential development is progressing rapidly.

### **Recommendations**

- Use personnel with practical bushfire experience to refine maps to reflect specific fire behaviour
- Introduce a mechanism into the framework allowing developers and individual purchasers to work with Councils to amend incorrect maps.

## **7. Whole of Government Compatibility**

- The framework is often contradictory to other government legislation, especially with loss of ecological habitat due to APZ clearing and maintenance.

## Appendix 1 - Case Studies

### ***Case Study 1 - 119 lot residential sub-division, Forster***

- 14 March 2003 - A Bushfire Management Plan was prepared by a bushfire consultant and was lodged with the RFS, through the Great Lakes Shire Council.
- 9 May 2003 - Council advised it had received no feedback from the RFS.
- May/June 2003 - Developer and Consultant negotiate arrangements with Council for incorporation into an amended BMP.
- 26 June 2003 - RFS advise they will not grant a Bushfire Safety Authority – very brief reasons provided. Notification received before amended BMP lodged.
- July 2003 – RFS concerns incorporated into amended BMP, which is relodged with Council on 31 July 2003.
- 29 August 2003 – RFS confirm amended BMP is at RFS Head Office.
- 5-8 September 2003 – RFS report undertaking field inspections in Great Lakes LGA, including subject's development.
- 10 September 2003 – Developer contacts RFS advising of availability to discuss any issue arising. RFS advise report is being finalised.
- 4 November 2003 – RFS Bush Fire Safety Authority conditions issued. Received from Council on 18 November 2003.
- 18 November 2003 - Developer and Council contact RFS requesting explanation from RFS.
- 27 November and 1 December 2003 – Council advise of no response from RFS.
- January 2004 – Continued lack of response and inadequate feedback from the RFS. Developer wrote to senior RFS management outlining features of their BMP. Case was subsequently re-assigned to another RFS officer.
- February 2004 – RFS grant Bushfire Authority.

The developer estimates the above process delayed the granting of development consent by eight months (although they noted an unrelated issue had also stalled the consent process). The developer noted the RFS staff assigned to the case had little planning assessment experience or knowledge of development practices, which significantly slowed the assessment.

### ***Case Study 2 – Kiama***

Three one-acre blocks were created before August 2002. One block has been approved and sold, and two blocks are currently in the DA process. The Blocks are surrounded by farm and grassland. The RFS has imposed maximum APZs (as per the APZ assessment criteria in the Guidelines), resulting in a significant reduction in available building area.

*Further information to be provided.*

### ***Case Study 3 – 600 lot residential sub-division, Lake Macquarie***

This development has 15 stages and has been developed since 1995. All stages at least partially adjoin bushland. Stages 11 to 14 are mostly within an old gravel quarry, and restoration of the quarry has included the development of a number of small parks. All of Stages 11-14 have been developed with bushfire trails, fuel free zones etc to suit the former bushfire regulations.

All the lots have now been sold by the developer, and some houses were built prior to August 2002. However, when recent buyers have submitted a DA to Council for the construction of a house on their lot, they have been advised that the site is now located on bushfire prone land. Council has advised that all new houses must comply with AS3959, and one owner was advised by Council, "The way things are going, you're not going to be able to build on these lots."

### ***Case Study 4 – Jamberoo***

A one-acre lot was sub-divided from a farm. The lot is surrounded by open pasture on three sides for a few hundred metres and the fourth side is road frontage. There have been no bushfires in the area in recent memory and fuel loads are low due to grazing and the lack of bush.

The RFS asked the purchaser to provide a 20 metre APZ within the allotment on all three boundaries away from the road. When the purchaser complained about the APZ requirement, the RFS advised they would accept a 1.8 metre high concrete block wall around the boundary in lieu of the APZ. Such a standard would cause significant expenditure and impact on the landscape.

### ***Case Study 5 – 215 unit master planned retirement village, Kariong***

The developer provided appropriate APZs from the adjoining national park, as well as protection for aboriginal heritage items. However, despite spending some \$120,000 on the appropriate studies and dwelling design, the fact the site was in bushfire prone land prohibited the then SEPP 5 (and the newly introduced Seniors Living SEPP) from applying to the development.

Therefore, despite the fact the site would have been rendered safe from bushfires after the development was built, the development was prohibited and neither Council nor the RFS was able to consider the development on its merits.