

NSW Independent Bushfire Inquiry

UDIA NSW Response

April 2020

CONTENTS

Contact.....	1
About the UDIA	1
Executive Summary	2
UDIA NSW and Bushfire Protection	2
Bushfire Protection During Development.....	3
<i>Rezoning</i>	3
<i>Subdivision</i>	4
<i>Building</i>	5
<i>Maintenance</i>	6
Conclusion.....	6

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ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia (UDIA) is the leading industry group representing the property development sector. Our 500 member companies include developers, engineers, consultants, local government, and utilities. Our advocacy is focussed on developing liveable, affordable and connected cities.

EXECUTIVE SUMMARY

The Urban Development Institute of Australia – NSW (UDIA) welcomes the opportunity to respond to the NSW Independent Bushfire Inquiry. Many of our members were directly affected by the 2019-20 bushfire season, and have extensive expertise in planning for bushfire protection. We bring a high level of industry knowledge and experience to our submission.

While site surveys and investigations of the communities affected by the fires are ongoing, our analysis to date indicates that there is no need for major changes to the planning for bushfire protection regime in NSW. We believe that the recently-revised *Planning for Bushfire Protection 2019* is an effective tool for protecting communities from bushfire. We would not support the imposition of stricter requirements because it would raise project costs and worsen housing affordability, without substantial reduction in bushfire risk.

There are some opportunities to streamline the bushfire risk assessment process to incentivise strong bushfire protection at the subdivision stage. There is also a need to strengthen and clarify maintenance obligations for bushfire protection measures.

In summary, UDIA provides the following recommendations:

- Recommendation 1: Review the triggering and recording of the application of Planning Direction 4.4 to rezonings.
- Recommendation 2: Streamline the assessment of bushfire risk to ensure that issues resolved at the subdivision stage are not re-visited at the building stage if there is no material change to the development.
- Recommendation 3: Expand the 2014 bushfire planning reforms to more areas of NSW and simplify the requirements for approval so that there is more incentive for strong bushfire protection in new subdivisions.
- Recommendation 4: Strengthen the guidance on maintenance obligations and plans of management, and explore greater involvement in maintenance of Asset protection zones by the Rural Fire Service.
- Recommendation 5: Explore options for physical infrastructure to protect asset protection zones from vegetation creep and reduce maintenance burdens.

UDIA NSW AND BUSHFIRE PROTECTION

Several local councils that were directly affected by the 2019-20 bushfire season are UDIA members. For example, UDIA understands that our member Shoalhaven City Council lost approximately 320 residential dwellings and a large part of the local government area was burnt.

Our developer members are also directly involved in planning for bushfire protection for the communities they are building. They are committed to ensuring that these communities are protected from bushfire risk and that adequate measures are in place to keep residents, workers

and buildings safe. Many of the bushfire planning consultants they employ to design their communities are also UDIA members in their own right.

In developing this response to the NSW Independent Bushfire Inquiry, UDIA has been guided by input from the members of our Land Development Committee and Shoalhaven Committee, which represent the breadth of the development industry as well as organisations directly affected by the 2019-20 bushfire season.

In addition, we have engaged with independent bushfire planning experts who have been directly involved in developing the NSW bushfire planning regulations, reviewing *Planning for Bushfire Protection 2019*, revising fuel loads and asset protection zones, and surveying the locations that were burnt in the fires.

We understand that the results of various post-fire site surveys and investigations that have been conducted across NSW are yet to be released, but we have made our best effort to base our response to the Inquiry on the available evidence. We have structured our response along the stages of the urban development process.

In summary, our position is that the existing protections under AS 3959 and *Planning for Bushfire Protection 2019* are adequate and that major changes to fuel load calculations, asset protection zones or subdivision designs are not warranted. We provide some constructive suggestions for minor improvements to the bushfire protection regime in NSW, particularly ensuring bushfire protection is considered upfront in the development process, not duplicated later, and that protection measures are maintained throughout the life of a development.

BUSHFIRE PROTECTION DURING DEVELOPMENT

UDIA believes that there may be merit in strengthening the 'trigger' process for the consideration of bushfire protection at the early stages of development, so long as that assessment is offset by a streamlined approval process at later stages of development that avoids 'double dipping' on resolved issues. The level of detail required in this early-stage assessment needs to be balanced against the impact on project timeframes.

UDIA considers the key stages for consideration of bushfire protection are:

- Rezoning
- Subdivision
- Building
- Maintenance

REZONING

Rezoning of land in NSW requires a planning proposal to amend the Local Environmental Plan. This proposal needs to be supported by the local council, and is assessed via a process known as the Gateway Process which provides the Minister for Planning's approval for the rezoning.

On land that is mapped as bushfire prone land (and land in close proximity), Section 9.1(2) Planning Direction 4.4 Planning for Bushfire Protection requires the preparation of a bushfire

assessment and referral of the rezoning proposal to the RFS. Any comments from the RFS must be addressed before public exhibition.

For residential or special fire protection purpose development, an indicative development plan must be provided that addresses adequate road network and asset protection measures can be put in place.

UDIA believes these provisions are adequate to capture development in locations at risk of bushfires, and to apply sufficient rigour to the early design of new developments. We would not support an expansion of these provisions through, for example, additional special fire protection purposes (these were expanded in the 2019 review), or additional detail in indicative development layouts or bushfire assessments.

However, anecdotal evidence from our engagement with members and experts suggests that some developments at risk of bushfire may not be triggering these requirements at the rezoning stage because Planning Direction 4.4 is not being applied in some cases due to administrative oversight.

This issue does not seem to be widespread, but there may be scope to improve the rigour of the trigger process for bushfire assessment at the rezoning stage.

RECOMMENDATION 1: REVIEW THE TRIGGERING AND RECORDING OF THE APPLICATION OF PLANNING DIRECTION 4.4 TO REZONINGS.

The other important point is that the bushfire planning issues addressed and resolved at the rezoning stage should not be subject to re-assessment later in the development process unless there has been a material change to the design of the development. This is discussed further in the sections below.

SUBDIVISION

Planning for Bushfire Protection 2019 includes extensive requirements for the design of subdivisions in bushfire prone areas, including asset protection zones, access and services. These requirements reflect the latest knowledge on fuel loads and UDIA does not support revisiting these requirements in light of the 2019-20 bushfire season. We note that the new requirements for perimeter roads introduced in PBP 2019 are already more conservative than UDIA believes is necessary for bushfire protection.

Based on what we've heard, UDIA understands that subdivisions developed recently under the Planning for Bushfire Protection regime fared well during the fire season. The vast majority of areas burnt were subdivided decades ago, before the PBP regime was in place.

The assessment of bushfire risk at subdivision stage under Planning for Bushfire Protection 2019 is very detailed. UDIA supports this level of detail, so long as it translates to these issues being effectively resolved and not revisited at the dwelling construction stage. Unfortunately, feedback from our members suggests that many issues addressed at the subdivision stage are revisited by consent authorities at the dwelling DA stage. This issue is acknowledged in a 2014 Practice Note from the Department of Planning and Environment:

The requirement for assessment of bushfire risk at building stage often involved a duplication of matters which had been considered by the RFS at subdivision stage.

The Practice Note related to changes to bushfire planning regulations in May 2014 designed to reduce the number of bushfire risk assessments required during development. The changes removed the need for home-builders to do an assessment of bushfire risk when they lodge their DA to build, if the Rural Fire Service has already completed an upfront assessment at the subdivision stage.

Unfortunately, the changes only apply to low density residential development and specific mapped Urban Release Areas, and the process for removing the need for bushfire assessment at the dwelling DA stage was onerous, requiring:

- A Bushfire Safety Authority (BSA)
- A Post-Subdivision Bushfire Attack Level Certificate, and
- Acceptance by the consent authority that the development complies with the standards specified in the BSA.

As a result, the 2014 changes are rarely used in new subdivisions, and the duplication of assessment continues at the dwelling construction stage. UDIA believes that this is a missed opportunity for encouraging greater bushfire protection in NSW – the time savings from a streamlined assessment process would be a significant incentive for the industry to apply strong bushfire protection in new developments.

The changes to the bushfire planning regulations were also intended to allow the Rural Fire Service to update bushfire prone land maps more frequently in light of new subdivisions. It is unclear if this updating occurs frequently in practice.

RECOMMENDATION 2: STREAMLINE THE ASSESSMENT OF BUSHFIRE RISK TO ENSURE THAT ISSUES RESOLVED AT THE SUBDIVISION STAGE ARE NOT RE-VISITED AT THE BUILDING STAGE IF THERE IS NO MATERIAL CHANGE TO THE DEVELOPMENT.

RECOMMENDATION 3: EXPAND THE 2014 BUSHFIRE PLANNING REFORMS TO MORE AREAS OF NSW AND SIMPLIFY THE REQUIREMENTS FOR APPROVAL SO THAT THERE IS MORE INCENTIVE FOR STRONG BUSHFIRE PROTECTION IN NEW SUBDIVISIONS.

BUILDING

UDIA believes that the bushfire assessment requirements for individual building DAs should be based on the bushfire protection measures in the surrounding subdivision. As noted above, buildings within subdivisions that were assessed against the Planning for Bushfire Protection regime should not have to revisit bushfire protection at the building stage if there are no material changes to building location and design.

UDIA acknowledges, however, infill development within older subdivisions are susceptible to the bushfire risk of the surrounding buildings. Anecdotal evidence from the 2019-20 bushfire season is that building-to-building spread of fire was a significant factor. Notwithstanding construction materials requirements for each bushfire assessment level, infill developments are susceptible to fire from neighbours.

We consider that the existing measures in Planning for Bushfire Protection 2019 for infill development are adequate and that major revisions such as increased setbacks or minimum lot sizes are not warranted. Evidence emerging from post-fire site surveys suggests that landscaping

and physical barriers between buildings (such as colorbond fences and concrete paths) may have been effective in prevent building-to-building spread. Small changes to *Planning for Bushfire Protection 2019* to incorporate these physical barriers may be worth considering.

MAINTENANCE

Maintenance of bushfire protection measures is vital to the ongoing protection of communities. In some areas affected by the 2019-20 bushfire season, there appears to have been vegetation creep within the asset protection zones and access routes. This creep reduced the efficacy of these protection measures.

Planning for Bushfire Protection 2019 acknowledges maintenance as one of the limitations of the document. It requires that a DA is accompanied by a Plan of Management (PoM) that identifies who is responsible for maintenance of asset protection zones. However, in practice our members have found the negotiation of these PoMs with local councils and third parties problematic due to disagreements over responsibilities, maintenance standards and costs.

UDIA believes there is significant scope to strengthen and clarify the maintenance provisions for bushfire protection measures. These provisions need to ensure no party is unreasonably burdened and UDIA believes the RFS should provide more guidance on PoMs and model maintenance provisions, possibly within their *Standards for Asset Protection Zones* document, as well as potentially taking on more responsibility for the maintenance of asset protection zones across NSW.

Feedback from some of the experts UDIA has engaged with in preparing this response suggests that physical barriers can be effective in reducing vegetation creep and other maintenance issues within asset protection zones, and we suggest these options be further explored.

RECOMMENDATION 4: STRENGTHEN THE GUIDANCE ON MAINTENANCE OBLIGATIONS AND PLANS OF MANAGEMENT, AND EXPLORE GREATER INVOLVEMENT IN MAINTENANCE OF ASSET PROTECTION ZONES BY THE RURAL FIRE SERVICE.

RECOMMENDATION 5: EXPLORE OPTIONS FOR PHYSICAL INFRASTRUCTURE TO PROTECT ASSET PROTECTION ZONES FROM VEGETATION CREEP AND REDUCE MAINTENANCE BURDENS.

CONCLUSION

UDIA believes that the evidence emerging from the 2019-20 bushfire season does not indicate significant changes are needed to the current bushfire protection regime in NSW. The recently-revised *Planning for Bushfire Protection 2019* provides a robust regime for bushfire protection.

However, there are opportunities to streamline the assessment of bushfire protection in the development process by avoiding revisiting bushfire issues resolved earlier in the process. There is also a need to strengthen and clarify maintenance obligations for bushfire protection measures.

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