

30 July 2024

Bush Fire Planning Team
Department of Planning, Housing & Infrastructure

via email: resilience.planning@planning.nsw.gov.au

RE: UDIA NSW Submission to the draft Bush Fire Prone Land Package

Dear Project Team,

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development across NSW. UDIA invests in evidence-based research that informs our advocacy to state, federal and local government, so that development policies and critical investment are directed to where they are needed the most. Together with our over 450 member organisations representing developers, consultants, local government and state agencies, we shape the places and cities where people will live for generations to come.

UDIA appreciates this opportunity to comment on the Draft Bush Fire Prone Land Package (Draft Package), which includes the Draft Bush Fire Policy for Land Use Planning, Draft (updated) local planning direction 4.3, Planning for Bushfire Protection, and Draft (updated) bush fire planning system circular.

The Draft Package is in response to Recommendation No. 27 of the 2019/2020 Independent Bush Fire Inquiry that noted that the current approach to bush fire planning focuses on site-based decisions and that there would be benefits from moving to a more strategic, risk-based approach.

UDIA notes the Draft Package is effectively incomplete without visibility to future changes to the strategic planning chapter of the NSW Rural Fire Services document, Planning for Bush Fire Protection (PBP). Our submission comments on the direction of the Package and makes recommendations especially in the context of the upcoming review of the PBP.

UDIA recommends:

- 1. Work closely with the development industry in developing PBP amendments.**
- 2. A Better Regulation Statement should be completed and provided as part of the bush fire planning reform process.**
- 3. In the local planning direction, retain wording to allow for a planning proposal to be inconsistent with the direction if certain criteria are satisfied, as per the 1 March 2022 Ministerial Direction.**
- 4. Consider all implications of imposing the Draft direction on all planning proposals to 700m of bush fire prone land and clarify application specific to building construction.**

More information required

The Draft Package notes the proposed changes would be supported by amended content within the strategic planning chapter (Chapter 4) of the NSW Rural Fire Services (RFS) document, Planning for Bush Fire Protection (PBP). As stated in the Draft Package, the revised Chapter 4 will clarify how bush fire risk should be considered in strategic land use planning, and will include methodologies, benchmarks, and guidance to successfully integrate risk, climate change and evacuation considerations for bush fire in strategic planning.

However, there are no details on the proposed amendments to Chapter 4 of Planning for Bushfire Protection. UDIA is concerned the proposed enabling provisions of the Draft Package give weight to something that is not part of the current consultation process.

For example, at this stage, there is no visibility from the Draft Package on what the likely changes are in relation to climate change. If the climate change provisions seek to modify the way asset protection zones (APZ) are calculated, this will have impact on land availability for housing and jobs. Other variations could increase the cost of building.

Another area of uncertainty relates to cumulative impacts and landscape applications. The Draft Policy states:

- “identify and consider the cumulative impacts of bush fire risk for existing and future communities”, and
- “consider bush fire risk in a landscape context”.

UDIA is concerned these concepts would be applied to individual sites, when it is beyond the capacity of individual proposals to consider cumulative impacts of land use decisions across a large planning area. A cumulative impact would need to be clearly defined by the RFS and tested with the broader sector. Cumulative impacts are best considered as part of regional and local strategic land use plans, which is prior to the land being identified for rezoning.

For individual developments that are designed and built to NSW and national standards, it could be argued that the cumulative impact is minimal at best as the developments themselves provide the required safety. Where development complies with PBP, the development should be considered as reaching an acceptable level of bush fire risk because its PBP compliance provides for protection from exposure, prevention of likely fire spread and appropriate operational access and egress for emergency services.

These are two examples where the Draft Package alludes to or includes significant shifts in policy where detailed understanding of the implications has not been demonstrated.

Overall, if there is evidence of the system failing, it should be provided by the RFS as part of an evidence base for broader change. UDIA notes there has been limited evidence provided for change, yet there could be profound impacts on housing supply, pending the outcome

of anticipated amendments to Planning for Bush Fire Protection over the next 12 to 18 months. This is an important issue as the proposed changes seek to give absolute power to the RFS in any comments provided as part of a planning proposal. To avoid unintended negative impacts on the efficient provision of safe and affordable housing supply, we urge RFS and DPHI to work closely with the development industry as the PBP amendments are contemplated.

In light of the above and considering the broad proposed changes to the bush fire policy framework, we believe the NSW Government *Guide to Better Regulation* applies. We recommend that a Better Regulation Statement (BRS) be delivered to ensure that the proposed changes have been appropriately considered and costed. The BRS would articulate more fully the rationale for change and the proposed changes themselves, including potential impacts on housing supply and housing affordability.

Recommendation #1 – Work closely with the development industry in developing PBP amendments.

Recommendation #2 – A Better Regulation Statement should be completed and provided as part of the bush fire planning reform process.

Allowing for inconsistency

As exhibited, the Draft local planning direction 4.3 (direction) states “the planning proposal **must** be substantially consistent with the terms of this direction” (emphasis added). The current Ministerial Direction on this point states “A planning proposal may be inconsistent with this direction only if the relevant planning authority...”. See below. The current approach aligns with the majority of the other directions.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Issued to commence 1 March 2022 (replaces previous Direction 4.4)

UDIA strongly supports the 1 March 2022 wording in the existing Ministerial Direction which allows for inconsistency where it can be justified. We are concerned that the Draft direction provides almost absolute authority to the RFS and does not allow for merit-based reasons for non-compliance.

Significant time and expense are spent on planning proposals. The proposed wording of the Draft direction would expose the process to further uncertainty where the RFS could foreseeably impose new considerations, requirements or issues late in the process that **must** then be complied with. This is particularly problematic as there is no process whereby

an applicant can seek to engage with the RFS early in the master planning process for a PP, nor are there any appeal mechanisms (such as Land and Environment Court) to hear and adjudicate on the merit of a planning proposal. Given the highly technical nature of bush fire planning, there could be many reasons why non-compliance would be supported or even preferred, but the proposed wording does not provide the necessary flexibility to arrive at a considered solution in such situations.

UDIA strongly supports the existing Ministerial Direction which allows for inconsistency where it can be justified.

Recommendation #3 – In the local planning direction, retain wording to allow for a planning proposal to be inconsistent with the direction if certain criteria are satisfied, as per the 1 March 2022 Ministerial Direction.

Application

The Draft local planning direction would apply to any planning proposal on, or where in proximity to land mapped as bush fire prone land as certified by the Commissioner of the NSW Rural Fire Service under section 10.3 of the EP&A Act.

The word “proximity” is used but not defined in the current Ministerial Direction. In contrast, the Draft direction defines “proximity” as “to or within 700m to land mapped as bush fire prone land as taken from the boundary of the proposal”.

While definitions are welcomed for clarity, the use of 700m is not explained. UDIA member experience reveals that the 700m distance would be a practical expansion over current common application. 700m will capture many more planning proposals and add to the workload of RFS, when experience suggests many of those additional PPs are likely to ultimately be determined safe from the impact of bushfire attack.

While it may be appropriate to apply this distance when considering strategic land use decisions, we note a different approach is taken for buildings under the *National Construction Code* (NCC) and the *Australian Standard for Construction of Buildings in Bushfire Prone Areas 2018* (AS3959) which both limit the building response to 100m or less from bush fire prone land. To avoid uncertainty or unnecessary costs to construction, we recommend the RFS, in any building responses should seek to remain aligned with the NCC or seek national alignment through the NCC amendment process.

Recommendation #4 – Consider all implications of imposing the Draft direction on all planning proposals to 700m of bush fire prone land, and clarify application to building construction.

Conclusion

UDIA appreciates the opportunity to offer our comments on the Draft Bush Fire Prone Land Package. We look forward to future opportunities to engage with both DPHI and RFS on these important issues.

Please contact Elizabeth York at eyork@udiansw.com.au with any questions or follow up.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Stuart Ayres', with a long horizontal flourish extending to the right.

Stuart Ayres
CEO