



CITY OF COCKBURN
DOC Set
01 FEB 2017
SUBJECT 109/119
RETENTION 124.2.3 AS
PROPERTY
APP
ACTION LORRENZO SANTORIELLO

Our ref: TPS/1950
Enquiries: Heather Brooks (6551 9436)

Chief Executive Officer
City of Cockburn
PO Box 1215
BIBRA LAKE WA 6965

Transmission via electronic mail to: customer@cockburn.wa.gov.au

Dear Sir

**LOCAL PLANNING SCHEME No. 3
AMENDMENT No. 119**

**MINISTERIAL DECISION FOR LOCAL PLANNING SCHEME AMENDMENT -
APPROVAL**

Pursuant to clause 87(2) of the *Planning and Development Act 2005* (the Act), the Minister for Planning has granted final approval to amendment 119 to the City of Cockburn Local Planning Scheme No. 3 on 20 January 2017.

In accordance with clause 87(3) of the Act, the Western Australian Planning Commission (Commission) will cause the amendment to be published in the Government Gazette.

The Commission has forwarded the notice to State Law Publisher and it is the Council's responsibility to make arrangements for the payment of any publication costs. Council is required under clause 87(4B) of the Act, and clause 62(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, to advertise and make copies of the amendment available to the public.

For all payment and purchase order queries, please contact State Law Publisher on (08) 6552 6012 or fax (08) 9321 7536. One signed set of the amending documents is returned herewith.

Yours sincerely

Kerrine Blenkinsop
Secretary
Western Australian Planning Commission
24 January 2017



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PLANNING AND DEVELOPMENT ACT 2005

APPROVED LOCAL PLANNING SCHEME AMENDMENT

CITY OF COCKBURN

LOCAL PLANNING SCHEME No. 3 - AMENDMENT No. 119

Ref: TPS/1950

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning approved the City of Cockburn Local Planning Scheme amendment on 20 January 2017 for the purpose of deleting the following Scheme text under section 5 of the Scheme, renumbering the remaining Clause numbers within the Scheme where appropriate and modifying the Scheme Maps accordingly.

1. Bushfire Vulnerability Area, being all land in the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone.

Bushfire Vulnerability Area

The purpose of the Bushfire Vulnerability Area special control area is to -

- (a) implement State Planning Policy 3.7 Planning for Bushfire Risk Management and Guidelines;
- (b) identify land that is subject, or likely to be subject, to bushfire hazard; and
- (c) ensure that development effectively addresses the level of bushfire hazard applying to the land;
- (d) in accordance with the Building Code of Australia activate Australian Standard 3959 which is construction of buildings in bush fire prone areas.

For the purpose of this clause, a Bushfire Prone Area means any area located in the Bushfire Vulnerability Area special control area and shown on a Bushfire Hazard Assessment Map as bushfire prone.

A Bushfire Hazard Assessment Map shall indicate bushfire prone areas.

If a Local Government resolves to prepare a Bushfire Hazard Assessment Map, the Local Government -

- (a) is to notify in writing the owners and occupiers of all the properties in the affected area;
- (b) is to publish a notice once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of -
 - a. where the draft map may be inspected;

- b. the subject nature of the draft map; and
 - c. in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made.
- (c) may publish a notice of the proposed Bushfire Hazard Assessment Map in such manner and carry out such other consultation as the local government considers appropriate.

After the expiry of the period within which a submission may be made, the local government is to:

- (a) review the proposed Bushfire Hazard Assessment Map in light of any submission made; and
- (b) resolve to adopt the Bushfire Hazard Assessment Map with or without modification.

If the local government resolves to adopt the Bushfire Hazard Assessment Map, the local government is to publish a notice of the Bushfire Hazard Assessment Map once in a newspaper circulating in the Scheme area.

The Bushfire Hazard Assessment Map has effect on publication of a notice under clause [5.6.6].

A copy of the Bushfire Hazard Assessment Map, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.

A land owner may dispute the classification of their land as set out on the Bushfire Hazard Assessment Map in writing to the local government for consideration.

In addition to development which otherwise requires approval under the Scheme, planning approval is required for any development within a bushfire prone area, that does not comply with an approved bushfire hazard assessment undertaken as part of the structure planning or subdivision of an area or is inconsistent with the WAPC's and FESA's Planning for bush Fire Protection Guidelines (Latest Edition).

In determining an application to carry out development in the Bushfire Prone Area, the Local Government may refuse the application, or impose conditions on any planning approval as to-

- (a) the provision of fire-fighting water supply.
- (b) the provision of fire services access.
- (c) the preparation of a fire management plan in accordance with the Planning for Bush Fire Protection Guidelines (Latest Edition) and implementation of specific fire protection measures set out in the plan, including any requirement for buildings to be constructed in accordance with A3959.
- (d) the requirement to register a notification under section 70A *Transfer of Land Act 1893* on the certificate of titles giving notice of the bushfire

hazard and any restrictions and/or protective measures required to be maintained at the landowner's cost.

An application for development approval must be accompanied by:

- (a) a bushfire attack level assessment carried out in accordance with the methodology contained in the Planning for Bush Fire Protection Guidelines (Latest Edition).
- (b) a statement or report that demonstrates that all relevant bushfire protection acceptable solutions, or alternatively all relevant performance criteria, contained in the Planning for Bush Fire Protection Guidelines (Latest Edition) have been considered and complied with, and effectively address the level of bush fire hazard applying to the land.

If in the opinion of the Local Government, a development application does not fully comply with the bushfire protection acceptable solutions contained in the Planning for Bush Fire Protection Guidelines (Latest Edition), the application shall be referred to the FESA for advice prior to a decision being made.

Notwithstanding the exemptions to the need for development approval set out in Part 7 of the deemed provisions and this scheme, development approval is required where the following development is included in a Bush Fire Prone Area, as defined by clause 5.6.2 of the Scheme:

- a) The erection or extension of a single house;
 - b) The erection or extension of an ancillary dwelling;
 - c) The erection or extension of a grouped dwelling.
2. Amending the Scheme maps and legend by deleting the Bushfire Vulnerability Area ('BVA') Special Control Area.

L HOWLETT JP
MAYOR

S CAIN
CHIEF EXECUTIVE OFFICER



TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 119

September 2016

**PLANNING AND DEVELOPMENT ACT, 2005
RESOLUTION TO AMEND A TOWN PLANNING SCHEME**

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 119**

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the City of Cockburn Town Planning Scheme No. 3 by deleting the following Scheme text under section 5 of the Scheme, renumbering the remaining Clause numbers within the Scheme where appropriate and modifying the Scheme Maps accordingly:

1. *Bushfire Vulnerability Area, being all land in the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone.*

Bushfire Vulnerability Area

The purpose of the Bushfire Vulnerability Area special control area is to -

- (a) implement State Planning Policy 3.7 Planning for Bushfire Risk Management and Guidelines;*
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For the purposes of this clause, a Bushfire Prone Area means any area located in the Bushfire Vulnerability Area special control area and shown on a Bushfire Hazard Assessment Map as bushfire prone.

A Bushfire Hazard Assessment Map shall indicate bushfire prone areas.

If a Local Government resolves to prepare a Bushfire Hazard Assessment Map, the Local Government—

- (a) is to notify in writing the owners and occupiers of all the properties in the affected area;*
- (b) is to publish a notice once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of -*
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 - b) The erection or extension of an ancillary dwelling;
 - c) The erection or extension of a grouped dwelling
2. Amending the Scheme maps and legend by deleting the Bushfire Vulnerability Area ('BVA') Special Control Area.

Dated this 13... day of October... 2016



CHIEF EXECUTIVE OFFICER

REPORT

1. LOCAL AUTHORITY City of Cockburn
2. DESCRIPTION OF TOWN PLANNING SCHEME: Town Planning Scheme No. 3
3. TYPE OF SCHEME: District Zoning Scheme
4. SERIAL NO. OF AMENDMENT: Amendment No. 119
5. PROPOSAL: Deleting the now superseded Bushfire Vulnerability Area ('BVA') within Town Planning Scheme No. 3 pursuant to; the more recent implementation of the State map of Bushfire Prone Areas, State *Planning Policy* 3.7, the *Guidelines for Planning in Bushfire Prone Area* and the incidental higher order Acts and Regulations amendments (7 December 2015) in relation to 'Bushfire planning'.

AMENDMENT REPORT

1.0 Introduction

The Proposed Scheme Amendment was prepared by the City of Cockburn. The amendment aims to delete the final Gazetted outcome of Amendment No. 92, including Bushfire Scheme text resultant upon by the Gazetted of Amendment No. 111 (Clause 5.1.2).

The function of Amendment No. 92 and the Schemes BVA has since been superseded by the subsequent State governments' range of legislative changes including, but not limited to;

1. The implementation of the State Governments' Designated Bushfire Prone Area Map (DFES),
2. Adoption of the Planning in Bushfire Prone Areas amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015*; and
3. The introduction of *SPP 3.7 'Planning in Bushfire Prone Areas'*.
4. The adoption of the incidental *Guidelines for Planning in Bushfire Prone Areas (December 2015)*,

The amendment is considered to fall within the definition of a 'basic amendment' as per Part 5 Division 1 Regulation 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as the amendment;

- *Aims to delete provisions that have been superseded by the deemed provisions in Schedule 2; and*
- *The amendment is consistent with State planning policy 3.7.*

2.0 Background:

The report titled "*A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*" was commissioned by the Western Australian Government in response to the Perth Hills Bushfire. The fire occurred on 6 February 2011 in the Roleystone-Kelmscott area of the Perth hills, destroying 71 homes and damaging a further 39.

The report was prepared by Mr Mick Keelty AO, and contains 55 recommendations which were endorsed by the Government in principle, subject to further analysis and consideration by relevant government agencies and other key stakeholders. The report was tabled by the Premier in Parliament on 17 August 2011.

Recommendation 3 under the Keelty Report response table specified; "*the Western Australian Planning Commission should urgently assess those areas that should be declared bushfire prone*". Incidental to this was Recommendation 4 which specified "*the State Government [is to] give legislative effect to the Planning for Bush Fire Protection Guidelines [or relevant equivalent/ updates]*".

On 12 April 2012 Council initiated the then draft Scheme Amendment No. 92 under item 14.1 which was described as; “*Bushfire prone areas and endorsement of methodology for identification of bushfire prone areas*”.

Later, on 9 May 2013 Council resolved to adopt the final Scheme Amendment No. 92 for final approval and to prepare a Local Planning Policy to; “*help guide development within designated Bushfire Prone Areas to provide consistency to officers, landowners and developers*”.

The [then/ previous] Hon. Minister for Planning approved Amendment No. 92 on 4 March 2015 and on 13 March 2015 Amendment No. 92 was formally Gazetted and included into the Scheme.

From 13 March 2015 up-until 7 December 2015; the BVA, LPP 1.13 and the additional Scheme provisions associated with Amendment No. 92 have resulted in the City of Cockburn’s proactive implementation of AS 3959-2009 prior to the implementation of the States’ bushfire mapping. The City’s proactive formulation and implementation of Amendment No. 92 is in accordance with good-governance principles and the principles described within the abovementioned ‘Shared Responsibility’ Report.

It is understood the *Planning and Development (Local Planning Schemes) Regulations 2015* provide that in the States’ designated bushfire prone areas, the requirements imposed by the deemed provisions apply in addition to the provisions or requirements of a Special Control Area relating to bushfire. This means that where a Special Control Area already exists in a local planning scheme, the Special Control Area continues to have effect, including in any additional areas identified as bushfire prone under the Special Control Area.

The purpose of this report is to explore the issues associated with a replicated bushfire planning trigger mechanism of which both ultimately assist in the implementation of AS 3959-2009 at building permit stage. The report aims to help determine whether it is appropriate to delete the Schemes’ local level bushfire controls, should their complete function be considered to be a replication of the comprehensive recent State bushfire controls.

3.0 Amendment Type

As per Part 5 of the Regulations, there several amendment types: basic, standard and complex. These are defined in Part 5, Division 1, Regulation 34.

Regulation 35(2) requires the local government to specify in their resolutions to prepare or adopt an amendment what type of amendment it is, as well as the explanation for forming that opinion.

This proposed amendment is considered to be a basic amendment, which Regulation 34 describes as:

basic amendment means any of the following amendments to a local planning scheme —

- a) *an amendment to correct an administrative error;*

- b) *an amendment to the scheme so that it is consistent with the model provisions in Schedule 1 or with another provision of the local planning scheme;*
- c) *an amendment to the scheme text to delete provisions that have been superseded by the deemed provisions in Schedule 2;*
- d) *an amendment to the scheme so that it is consistent with any other Act that applies to the scheme or the scheme area;*
- e) *an amendment to the scheme so that it is consistent with a State planning policy;*
- f) *an amendment to the scheme map to include a boundary to show the land covered by an improvement scheme or a planning control area;*
- g) *an amendment to the scheme map that is consistent with a structure plan, activity centre plan or local development plan that has been approved under the scheme for the land to which the amendment relates if the scheme currently includes zones of all the types that are outlined in the plan;*
- h) *an amendment that results from a consolidation of the scheme in accordance with section 92(1) of the Act;*
- i) *an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area if the amendment will have minimal effect on the scheme or landowners in the scheme area.*

Pursuant to Regulation 35(2), the proposed amendment satisfies (c) and (e) of the above criteria. In particular, since the introduction of the *Planning in Bushfire Prone Areas* amendment to the Regulations on 7 December 2015; and the adoption of *State Planning Policy 3.7 Planning in Bushfire Prone Areas* ('SPP 3.7') the above mentioned scheme provisions regarding the Schemes' BVA are now superseded.

5.0 Proposal

What is the Scheme's BVA?

The *Bushfire Vulnerability Area special control area* spatially identifies the 'Bushfire Prone Area' ('BPA'). Under the Building Code of Australia a '*Designated Bushfire Prone Area*' means "*land which has been designated under a power of legislation as being subject, or likely to be subject, to bushfires*".

Essentially the Schemes BVA/ Bushfire Prone area is a trigger mechanism which establishes when to apply AS 3959-2009, *construction of buildings in bushfire prone areas*, with respect to applications for residential development. The scheme BVA is an appropriate 'head of power' for the purposes of implementing AS 3959-2009 under an application to construct a 'residential' building or structure in accordance with the Building Code of Australia ('BCA').

The bushfire construction requirements of the BCA only apply to Class 1, 2 or 3 buildings or associated Class 10a buildings or decks associated with Class 1, 2 or 3 buildings in designated bushfire prone areas.

Class 1, 2, 3 and 10a buildings are generally speaking 'residential' buildings such as, but not necessarily limited to; single dwellings, town houses or villa units,

guest houses, hostels, backpackers accommodation, accommodation for the aged, children or people with disabilities. Included are buildings or structures which are not necessarily 'residential' buildings but generally associated with residential developments, including; a private garage, carport shed or the like.

The Schemes' 'BVA' is a trigger mechanism which helps developers, landowners, decision makers and the development industry determine when it is appropriate to implement AS 3959-2009. This is generally in areas that are within or adjacent to areas of native bushland.

Figure 1: Example of the Schemes' Bushfire Prone Area/ Bushfire Hazard Assessment Map/ BVA



Figure 1 above identifies an example of the Schemes' mapping for a part of the locality of Jandakot. In summary the Schemes BVA identifies land which is subject, or likely to be subject, to bushfires. Applications for the construction of 'residential' buildings or structures in the BVA are conditioned, as an outcome of a formal application, to comply with the relevant aspects of AS 3959-2009 relating to the specifics of the proposed development. This can vary between applications based on proximity of the proposed development to classified vegetation, the classification of vegetation and the slope of the land beneath the vegetation.

Why does the Scheme have a BVA?

As mentioned in the 2011 State Government endorsed 'Keelty report' and its description of a 'shared responsibility', the following two actions resulted which are of significant relevance to this report, those being;

- *"the Western Australian Planning Commission should urgently assess those areas that should be declared bushfire prone", and*
- *"the State Government [is to] give legislative effect to the Planning for Bush Fire Protection Guidelines [or relevant equivalent/ updates]"*.

On 12 April 2012 Council initiated the then draft Scheme Amendment No. 92 under item 14.1 which was described as *'bushfire prone areas and endorsement of methodology for identification of bushfire prone areas'*.

Later on 9 May 2013 Council resolved to adopt the final Scheme Amendment No. 92 for final approval and to prepare a Local Planning Policy to *'help guide*

development within designated Bushfire Prone Areas to provide consistency to officers, landowners and developers’.

The then/ previous Hon. Minister for Planning approved Amendment No. 92 on 4 March 2015 and on 13 March 2015 Amendment No. 92 was formally Gazetted and included into the Scheme.

The City of Cockburn embraced the above two mentioned principles of the ‘shared responsibility’ by implementing the BVA as at the time the WAPC was still working towards the finalisation and implementation of the State’s BPA. The Schemes BVA was Gazetted and came into effect in March 2015, 9 months before the States mapping was implemented.

In summary it was determined in WA that a BPA was required in 2011 to implement AS 3959-2009 in areas within proximity to ‘classifiable’ vegetation. The City of Cockburn managed to implement a local level version of the BPA under the Scheme in the interim period prior to the State governments state wide BPA. This allowed proposed residential buildings or structures within the Schemes BVA following March 2015 to be made to comply with AS 3959-2009.

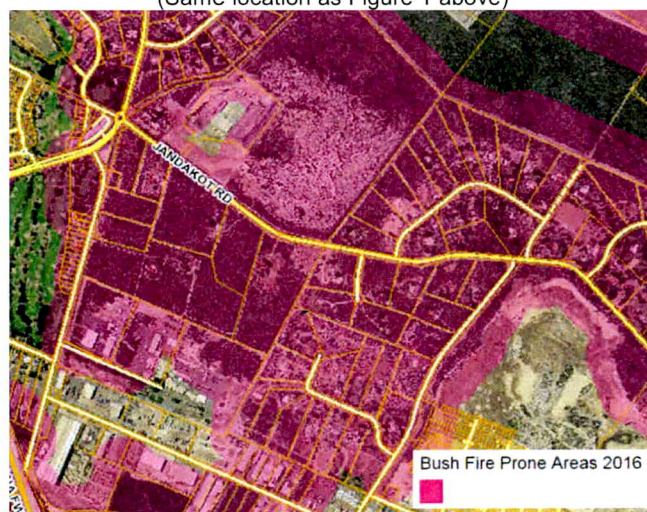
What is the State governments’ BVA equivalent?

Areas within Western Australia have now been designated as bushfire prone by the FES Commissioner. This order was gazetted in tandem with the *Planning and Development (Local Planning Scheme) Amendment Regulations 2015* and the new *State Planning Policy 3.7: Planning in Bushfire Prone Areas* (‘SPP 3.7’) which together form part of the State Government’s bushfire planning reforms.

The Map of Bush Fire Prone Areas identifies the parts of the State that are designated as bushfire prone and came into effect in December 2015.

SPP 3.7 provides the foundation for land use planning decisions in designated bushfire prone areas and as such all local governments, including the City of Cockburn, need to give due regard to the policy provisions.

Figure 2: DFES/ State Map of Bushfire Prone Areas
(Same location as Figure 1 above)



What is the difference between the State's Designated BPA Map and the Schemes BVA?

State Map - BPA:

Recommendation three of the Keelty Report proposed the transfer of responsibility for designating bushfire prone areas to the State, through the WAPC, to improve consistency in the application of bushfire planning and building controls.

The Fire and Emergency Services Act 1998 was identified as the appropriate legislation to contain designation provisions and following the passage of the Fire and Emergency Services Amendment Act 2015 in August 2015, the FES Commissioner is responsible for designating areas of the State as bushfire prone by order published in the Gazette.

The Office of Bushfire Risk Management ('OBRM') is responsible for the development of the Map that identifies designated bushfire prone areas of WA, working with local governments and partner agencies and with technical support from Landgate.

OBRM is an independent office within DFES reporting directly to the FES Commissioner. The OBRM Charter provides for the development and promotion of standards, including the establishment of a mapping standard for bush fire prone areas.

The OBRM vegetation data and mapping establishes a consolidated, single entity controlled whole of government approach. The vegetation data used to develop the Map was sourced from the Department of Agriculture and Food WA, the Forrest Products Commission and PF Olsen. This includes reviews in consultation with DFES and the Department of Parks and Wildlife to help determine which types of vegetation contained in the data are prone to bushfire.

As per Section 6 of the standard, local government and the Botanic Gardens and Parks Authority are provided with the opportunity to review the bushfire prone vegetation data for their administrative areas on an annual basis.

The state mapping standards are identified by the FFES, OBRM *'Mapping Standards December 2015'*. Inbuilt to the standards is the notion of the 'precautionary principle'. Where it is uncertain whether an area of vegetation meets the criteria a 'precautionary approach' ensures decision makers identify the vegetation as bushfire prone. Any reviews to the mapping are guided by the standards whereby the process is inclusive of the advice of local governments.

It is important to note the standards, for determining bushfire prone areas, is said to be reviewed every five years or as appropriate to maintain its currency. The review process will be managed by OBRM, in consultation with state and local government stakeholders.

Scheme Map - BVA/ BHAM:

Unlike the abovementioned whole of government collaborative mapping process, the Bushfire Hazard Assessment Map within the BVA is prepared solely by the City of Cockburn. The Scheme specifies however that the City of Cockburn, in preparing the mapping, *'may carry out such other consultation as the City considers appropriate'*.

Under the Scheme, the City of Cockburn is the decision making authority with respect to the preparation, consultation and adoption of the Schemes mapping. Incidentally the City is required to keep a copy of the mapping and make it available for public inspection during business hours at the administrative offices.

Under the State mapping there is no landowner dispute process once the State map is finalised. Under the Scheme, a Landowner may dispute the finalised version of the Local map. It is important to note the mapping is essentially a trigger mechanism of when to consider bushfire issues and at times may be where an applicant provides justification as to why AS 3959-2009 may not be required. This is based on the precautionary principle and is therefore not always an accurate representation of the bushfire risk for a particular property.

Under LPP 1.13, which is an incidental component of the above mentioned Scheme provisions, it makes mention *'for the purpose of the identification of Bushfire Prone Areas on a Bushfire Hazard Assessment Map [under the Scheme] the methodology as applied in Section 7 of the [OBRM standard] shall be applied'*.

What are the merits in maintaining local government legislative bushfire planning guidance and control in addition to the States' new bushfire planning legislation, policy and guidelines?

It is important to note, the requirements imposed by the 'deemed provisions' under the Regulations apply in addition to the requirements of the Schemes Special Control Area relating to bushfire.

A development site under the State BPA is subject, or likely to be subject, to bushfires when it is referred to as being in a bushfire prone area if the development site is land designated by an order made under the *Fire and Emergency Services Act 1998 section 18P* as a bushfire prone area. The OBRM is responsible for the state map working with local governments and partner agencies as a whole of government approach.

OBRMs current process for review of the states mapping is identified by the details prescribed within section 6.1 of the OBRM mapping standards. The City of Cockburn's Local level mapping follows similar methodology, referring to the OBRM standards, however under the Scheme the BVA applies only to land in the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone.

The Scheme requires the City to publish a notice of a decision to adopt the BVA Map in the newspaper. This applies to 1039 lots and differs from the OBRM process, in that regard.

The State map and the local map should be similar in their classifications as they follow similar processes and methodology. In this respect in most areas the maps represents a replicated trigger mechanism. Please refer above to an example illustrated by figures 1 and 2 of this report which apply to the same area of Jandakot. The City's mapping is similar and generally a replication of the States' mapping however the City's map applies only to rural land. The City's mapping is controlled within the red BVA boundary.

In consideration of the scheme text, as opposed to mapping as described above, the Scheme provisions relating to refusing or conditioning applications are addressed separately under the new planning framework as at 7 December 2015. This clause, see above within the resolution section for details, is therefore considered a replication in that regard.

The Scheme specifies the ability to 'refuse' or impose conditions on applications relating to bushfire. The element of 'refusal' is addressed also under section 5.4.1 of the new State Government comprehensive guidelines. The guidelines address this as follows:

"The precautionary principle remains applicable to minor development applications. It may be that some sites have poor access, inadequate water supply, are in a remote location or on sloping topography which would pose an unacceptable risk even if the development was constructed to AS 3959-2009. In these instances, there is a strong argument for refusal of the proposal even when it meets the definition of minor development. However, each case will be assessed on its merit."

Appendix 1 of this report explores the intricacies of the Scheme text in the context of the new State Bushfire controls. Appendix 1 provides a technical review of the Scheme text which reflects the above discussions. In this regard it is expected that the Community will not be exposed to increased bushfire risk as a result of the potential Gazettal of the proposed Amendment.

6.0 Conclusion

Since the introduction of State government bushfire controls, the City's local level bushfire controls and incidental LPP 1.13 are now redundant.

This amendment proposes to delete the above mentioned Scheme text and the BVA Special Control Area Map. Should this amendment be supported, the incidental LPP 1.13 is proposed to be revoked simultaneously.

In light of the above mentioned review inclusive of Appendix 1 of this report, there is no added benefit in having a local and a State legislative control for the issue of bushfire planning with respect to the City of Cockburn Town Planning Scheme No. 3.

It is considered within the interests of proper and orderly planning to streamline the planning process. The proposed outcome is considered to result in no additional risk to the community regarding bushfire.

The proposed outcome is likely to reduce the levels of liability associated with maintaining the Scheme maps, where they relate to bushfire mapping. This is on the basis that the Schemes Maps are currently required to be updated on an ongoing basis by the City. The process for formulating and maintaining the States' maps is comprehensive and more appropriately suited to informing planning and building decisions.

On this basis it is recommended the proposed 'basic amendment' (as defined by the Regulations) is supported.

**PLANNING AND DEVELOPMENT ACT, 2005
RESOLUTION TO AMEND A TOWN PLANNING SCHEME**

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 119**

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For the purposes of this clause, a Bushfire Prone Area means any area located in the Bushfire Vulnerability Area special control area and shown on a Bushfire Hazard Assessment Map as bushfire prone.

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- (a) is to notify in writing the owners and occupiers of all the properties in the affected area;*
- (b) is to publish a notice once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of -*
 - a. where the draft map may be inspected;*
 - b. the subject nature of the draft map; and*
 - c. in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made.*

- (c) may publish a notice of the proposed Bushfire Hazard Assessment Map in such manner and carry out such other consultation as the local government considers appropriate.

After the expiry of the period within which a submission may be made, the local government is to:

- (a) review the proposed Bushfire Hazard Assessment Map in light of any submission made; and
- (b) resolve to adopt the Bushfire Hazard Assessment Map with or without modification.

If the local government resolves to adopt the Bushfire Hazard Assessment Map, the local government is to publish a notice of the Bushfire Hazard Assessment Map once in a newspaper circulating in the Scheme area.

The Bushfire Hazard Assessment Map has effect on publication of a notice under clause [5.6.6].

A copy of the Bushfire Hazard Assessment Map, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.

A land owner may dispute the classification of their land as set out on the Bushfire Hazard Assessment Map in writing to the local government for consideration.

In addition to development which otherwise requires approval under the Scheme, planning approval is required for any development within a bushfire prone area, that does not comply with an approved bushfire hazard assessment undertaken as part of the structure planning or subdivision of an area or is inconsistent with the WAPC's and FESA's Planning for Bush Fire Protection Guidelines (Latest Edition).

In determining an application to carry out development in the Bushfire Prone Area, the Local Government may refuse the application, or impose conditions on any planning approval as to-

- (a) the provision of fire-fighting water supply.
- (b) the provision of fire services access.
- (c) the preparation of a fire management plan in accordance with the Planning for Bush Fire Protection Guidelines (Latest Edition) and implementation of specific fire protection measures set out in the plan, including any requirement for buildings to be constructed in accordance with A3959;
- (d) the requirement to register a notification under section 70A Transfer of Land Act 1893 on the certificate of titles giving notice of the bushfire hazard and any restrictions and/or protective measures required to be maintained at the landowner's cost.

An application for development approval must be accompanied by:

- (a) a bushfire attack level assessment carried out in accordance with the methodology contained in the *Planning for Bush Fire Protection Guidelines (Latest Edition)*;
- (b) a statement or report that demonstrates that all relevant bushfire protection acceptable solutions, or alternatively all relevant performance criteria, contained in the *Planning for Bush Fire Protection Guidelines (Latest Edition)* have been considered and complied with, and effectively address the level of bush fire hazard applying to the land.

If, in the opinion of the Local Government, a development application does not fully comply with the bushfire protection acceptable solutions contained in the *Planning for Bush Fire Protection Guidelines (Latest Edition)*, the application shall be referred to the FESA for advice prior to a decision being made.

Notwithstanding the exemptions to the need for development approval set out in Part 7 of the deemed provisions and this scheme, development approval is required where the following development is included in a Bush Fire Prone Area, as defined by clause 5.6.2 of the Scheme:

- a) The erection or extension of a single house;
 - b) The erection or extension of an ancillary dwelling;
 - c) The erection or extension of a grouped dwelling
2. Amending the Scheme maps and legend by deleting the *Bushfire Vulnerability Area ('BVA') Special Control Area*.



ADOPTION

Adopted by resolution of the Council of the City of Cockburn at the ordinary meeting of the Council held on ~~13~~ day of ~~October~~ 2016.

Logan Hewlett
MAYOR

[Signature]
CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted for final approval by resolution of the City of Cockburn at the Meeting of the Council held on the ~~13~~ day of ~~October~~ 2016, and the Common Seal of the City of Cockburn was hereunto affixed by the authority of a resolution of the Council in the presence of:

(Seal)



Logan Hewlett
MAYOR

[Signature]
CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final Approval

DELEGATED UNDER S.16 PLANNING AND DEVELOPMENT ACT 2005

DATE.....

Final Approval Granted

It is hereby certified that this is a true copy of the ~~Scheme~~ Amendment, final approval to which was endorsed by the Minister for Planning on ~~20/1/16~~.

MINISTER FOR PLANNING

DATE.....

Certified by *[Signature]*

Officer of the Commission Duty authorised pursuant to Section 24 of the Planning and Development Act 2005 and Regulation 32(3) Scheme and Regulation 63(3) (Amendment) of the Planning and Development (Local Planning Scheme) Regulations 2015.

Appendix 1



SCHEME AMENDMENT 92 (GG 13.03.15) AND LOCAL PLANNING POLICY (LPP 1.13) REVIEW FOLLOWING THE STATE GOVERNMENTS BUSHFIRE PLANNING REFORMS WHICH CAME INTO OPERATION ON 7 DECEMBER 2015.

CLAUSE	SCHEME TEXT	7 DECEMBER 2015+	OFFICER COMMENT	RECOMMENDATION
6.6	Bushfire Vulnerability Area - - AMD 92 GG 13/3/15	<p>Areas within Western Australia have now been designated as bushfire prone by the FES Commissioner. This order was gazetted in tandem with the <i>Planning and Development (Local Planning Scheme) Amendment Regulations 2015</i> and the new <i>State Planning Policy 3.7: Planning in Bushfire Prone Areas (SPP 3.7)</i> which together form [part of] the State Government's bushfire planning reforms.</p> <p>The Map of Bush Fire Prone Areas identifies the parts of the State that are designated as bushfire prone and came into effect in December 2015.</p> <p>SPP 3.7 provides the foundation for land use planning decisions in designated bushfire prone areas and local governments need to give due regard to the policy provisions.</p> <p>Please note the WAPC document '<i>Planning in Bushfire Prone Areas Bushfire Policy Framework Information Sheet December 2015 – Information for Local Government</i>' This document can be found using the following link: http://www.planning.wa.gov.au/dop_public/Bushfire_info_sheet_local_govt.pdf</p>	<p>Local Government Maps of Bushfire Prone Areas:</p> <p>Where local governments have existing maps that identify parts of the local government area as being bushfire prone, these maps will only remain valid if they form part of a special control area relating to bushfire.</p> <p>CoC Special Control Areas Relating to Bushfire:</p> <p>The LPS Amendment Regulations 2015 provide that in designated bushfire prone areas, the requirements imposed by the deemed provisions apply in addition to the provisions or requirements of a Special Control Area relating to bushfire.</p> <p>For example, if a Special Control Area required a Bushfire Attack Level (BAL) assessment to be undertaken for the development of a single house on a lot of less than 1,100m² (for example), then this requirement would continue to apply in addition to the deemed provisions relating to bushfire risk management. However, if a Special Control Area only required a BAL assessment to be undertaken for the development of a single house on a lot</p>	<p>It is understood the requirements imposed by the deemed provisions apply in addition to the requirements of the Special Control Area relating to bushfire.</p> <p>It is recommended that each Clause under 6.6 of the Scheme is reviewed in the context of the Bushfire Framework post 7 December 2015.</p> <p>This table seeks to provide that review.</p> <p>The result of the scheme component of this review, as outlined above, could have three potential outcomes following due consideration of the analysis and consultation with the relevant stakeholders;</p>

			<p>of greater than 2,000m² (for example), the effect of the deemed provisions relating to bushfire risk management would mean that a BAL assessment would also be required for lots equal to or greater than 1,100m².</p> <p>Scheme Amendment 92 forms part of Part 6 of TPS 3 'Special Control Areas'. On this basis the City of Cockburn's '<i>Bushfire Hazard Assessment Map(s)</i>' which designate bushfire prone areas remain valid under the new regulations as they form part of a special control area, in TPS 3, relating to bushfire.</p>	<ol style="list-style-type: none"> 1. It could result in no change to the scheme text under Clause 6.6 of TPS 3 and/ or the scheme maps (referring to the BVA and BHAM). 2. It could result in changes to the scheme text under Clause 6.6 of TPS 3 and/ or the scheme maps (referring to the BVA and BHAM). 3. It could result in the decision to delete the scheme text under Clause 6.6 of TPS 3 and the scheme maps (referring to the BVA and BHAM).
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<p>6.6.1</p>	<p>The purpose of the Bushfire Vulnerability Area special control area is to -</p> <ul style="list-style-type: none"> a) implement State Planning Policy 3.7 Planning for Bushfire Risk Management and Guidelines; b) identify land that is subject, or likely to be subject, to bushfire hazard; and c) ensure that development effectively addresses the level of bushfire hazard applying to the land. d) in accordance with the Building Code of Australia activate Australian Standard 3959 which is construction of buildings in bush fire prone areas. <p>- AMD 92 GG 13/3/15</p>	<p>As at 7 December 2015 The State Government announced a package of reforms to help protect lives and property against the threat of bushfires throughout Western Australia.</p> <p>This includes, but is not limited to;</p> <ol style="list-style-type: none"> 1. <i>Fire and Emergency Services Act 1998 Fire and Emergency Services (Bush Fire Prone Areas) Order 2015.</i> 2. <i>Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Amendment Regulations 2015.</i> 3. <i>Planning and Development Act 2005 State Planning Policy 3.7 Planning in Bushfire Prone Areas.</i> 4. <i>Building Act 2011 Building Amendment Regulations (No.3) 2015.</i> 5. WAPC <i>Guidelines for Planning in Bushfire Prone Areas.</i> 6. WAPC <i>Guidelines for Planning in Bushfire Prone Areas – Appendices.</i> 	<p>Clause 6.6.1 specifies the purpose of the BVA is to meet points (a) to (d).</p> <ul style="list-style-type: none"> i. With reference to Clause 6.6.1 (a): SPP 3.7 applies to the BVA area under the post 7 December 2015 Planning regulations. In the context of this provision alone, Clause 6.6.1 (a) replicates the planning framework as at 7 December 2015. ii. With reference to Clause 6.6.1 (b): The WA Designated bushfire prone area is an area that has been designated by the Fire and Emergency Services (FES) Commissioner under s.18P of the <i>Fire and Emergency Services Act 1998</i> (as amended) as an area that is subject, or likely to be subject, to bushfires. The Office of Bushfire Risk Management (OBRM) is responsible for the development of the Map that identifies designated bushfire prone areas of WA, working with LGs, partner agencies and with technical support provided by Landgate. 	<p>In summary:</p> <p>Clauses (a), (b) & (c) in the context of this provision alone, replicate the current framework.</p> <p>Clause (d) is considered to be inconsistent with the planning framework. Noting also AS 3959 is ultimately determined at Building permit stage regardless of the planning outcome (see the text box at the end of section 5.8.2 of the guidelines, pg 36).</p> <p>Clause 6.6.1 in this context alone is recommended for deletion from the scheme.</p>
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			<p>For more details regarding this please refer to the 'Mapping Standard for Bush Fire Prone Areas' DFES document dated December 2015 under this link; http://www.dfes.wa.gov.au/wae/mergencyandriskmanagement/obrm/Documents/OBRM-Mapping-Standard-for-Bush-Fire-Prone-Areas.pdf</p> <p>The state bushfire prone area mapping applies in addition to the CoC's BVA mapping. The City's 'mapping standards' process is not defined under Clause 6.6 of the scheme. Local Planning Policy 1.13 point (1) under 'identification of bushfire prone land' identifies the methodology in line with Section 7 of the '<i>Bushfire Prone Area Mapping Standard Western Australia</i>' (OBRM document).</p> <p>Pursuant to LPP 1.13 and Clause 6.6.1 (b) therefore, the CoC mapping and the State mapping (in areas where the BVA applies) both follow the methodology under the OBRM document. In the context of this provision alone, Clause 6.6.1 (b) replicates the planning framework as at 7 December 2015.</p>	
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			<p>iii. With reference to Clause 6.6.1 (c)</p> <p>The objective of this clause is sufficiently met under SPP 3.7 section 6.5 and also the specific details within Appendix 4 of the Guidelines.</p> <p>In the context of this provision alone, Clause 6.6.1 (c) replicates the planning framework as at 7 December 2015.</p> <p>iv. With reference to Clause 6.6.1 (d)</p> <p>This clause is inconsistent with 78E (1) and (2) of the regulations which provide the following;</p> <p>78E. Matters to be considered for development approval</p> <p>(1) In considering an application for development approval for development to which this Part applies, the local government is to have regard to the bushfire resistant construction requirements of the Building Code.</p> <p>(2) The matters referred to in subclause (1) are in addition to any other matters that the local government is to have regard to in considering the application in accordance with this Scheme.</p> <p>In the context of this provision alone, Clause 6.6.1 (d) is inconsistent with the planning framework as at 7 December 2015.</p>	
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<p>6.6.2</p>	<p>For the purposes of this clause, a Bushfire Prone Area means any area located in the Bushfire Vulnerability Area special control area and shown on a Bushfire Hazard Assessment Map as bushfire prone. - AMD 92 GG 13/3/15</p>	<p>The WA Designated bushfire prone area is an area that has been designated by the Fire and Emergency Services (FES) Commissioner under s.18P of the <i>Fire and Emergency Services Act 1998</i> (as amended) as an area that is subject, or likely to be subject, to bushfires.</p> <p>The Office of Bushfire Risk Management (OBRM) is responsible for the maintenance of the Map that identifies designated bushfire prone areas of WA, working with LGs, partner agencies and with technical support provided by Landgate. For more details regarding this please refer to the 'Mapping Standard for Bushfire Prone Areas' DFES document dated December 2015 under this link; http://www.dfes.wa.gov.au/waemergencyandriskmanagement/obrm/Documents/OBRM-Mapping-Standard-for-Bush-Fire-Prone-Areas.pdf</p>	<p>LPP 1.13 point (1) under 'identification of bushfire prone land' specifies the following:</p> <p><i>"For the purpose of identifying BPA on a BHAM the methodology as applied in Section 7 of the BPA Mapping standards (OBRM) shall be applied".</i></p> <p>Section 7 of the OBRM document provides the following;</p> <p>7. Monitoring and Review</p> <p>7.1 Mapping Standard for Bush Fire Prone Areas</p> <p><small>The Standard shall be reviewed every five years or as appropriate to maintain its currency. The review process will be managed by OBRM, in consultation with state and local government stakeholders. Public and industry input can be provided to the relevant local government and will be captured through the OBRM consultation processes.</small></p> <p>Section 7 refers to the review of the standards and not the review of the bushfire prone vegetation data. It is considered more appropriate if LPP 1.13 (1) referred to 6.1 of the OBRM document rather than section 7 of the OBRM document, as outlined above.</p>	<p>The review of bushfire prone vegetation data under the WA mapping is outlined under 6.1 of the OBRM document and is designated by the Fire and Emergency Services (FES) Commissioner under s.18P of the <i>Fire and Emergency Services Act 1998</i> (as amended).</p> <p>The identification of Bushfire prone land under LPP 1.13 refers to section 7 of the OBRM document. This refers to the review of the standards being every 5 years rather than what is mentioned under 6.1 which is the 'review of the bushfire prone vegetation data'.</p> <p>The supplementary Clause (3) of LPP 1.13 'right of review' is considered to be</p>
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				<p>of minimal influence given the state mapping and its review process noting the state mapping applies also in the CoC mapping area.</p> <p>This should be noted and addressed under any LPP and Scheme review.</p>
6.6.3	<p>A Bushfire Hazard Assessment Map shall indicate bushfire prone areas. - AMD 92 GG 13/3/15</p>	<p>Under the regulations Clause 78C provides the following:</p> <p>78C. Determining whether development site is in a bushfire prone area</p> <p>For the purposes of this Part, a development site is subject, or likely to be subject, to bushfires and is referred to as being <i>in a bushfire prone area</i> if the development site is on land designated by an order made under the <i>Fire and Emergency Services Act 1998</i> section 18P as a bush fire prone area.</p>	<p>As elaborated on above, as the BVA falls under a Special control area under TPS 3. Clause 6.6.3 is currently required to be read in addition to 78C of the regulations. On this basis there is effectively two separate 'bushfire prone areas' within the CoC.</p>	<p>Same as above.</p>
6.6.4	<p>If a Local Government resolves to prepare a Bushfire Hazard Assessment Map, the Local Government -</p> <ol style="list-style-type: none"> a) is to notify in writing the owners and occupiers of all the properties in the affected area; b) is to publish a notice once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of - <ol style="list-style-type: none"> a. where the draft map may be inspected; 	<p>The Office of Bushfire Risk Management (OBRM) is responsible for the development of the Map that identifies designated bushfire prone areas of WA, working with LGs, partner agencies and with technical support provided by Landgate. For more details regarding this please refer to the 'Mapping Standard for Bush Fire Prone Areas' DFES document dated December 2015 under this link; http://www.dfes.wa.gov.au/waemergencya ndriskmanagement/obrm/Documents/OBR</p>	<p>OBRMs process for review of the states mapping (which also applies to CoC) is identified under 6.1 of the 'Mapping Standard for Bush Fire Prone Areas' DFES document dated December 2015.</p>	<p>The owner and occupiers notification requirements as prescribed under 6.6.4 of the scheme are required to be undertaken in addition to the State mapping process.</p> <p>This should be noted</p>

	<p>b. the subject nature of the draft map; and</p> <p>c. in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made.</p> <p>c) may publish a notice of the proposed Bushfire Hazard Assessment Map in such manner and carry out such other consultation as the local government considers appropriate. - AMD 92 GG 13/3/15</p>	<p><u>M-Mapping-Standard-for-Bush-Fire-Prone-Areas.pdf</u></p>		<p>and addressed under any LPP and Scheme review.</p>
6.6.5	<p>After the expiry of the period within which a submission may be made, the local government is to:</p> <p>a) review the proposed Bushfire Hazard Assessment Map in light of any submission made; and</p> <p>b) resolve to adopt the Bushfire Hazard Assessment Map with or without modification. - AMD 92 GG 13/3/15</p>	<p>Same as above.</p>	<p>OBRM is responsible for the development of the Map that identifies BPA of WA. The OBRM Charter provides for the development and promotion of standards, including the mapping standards. The FES Commissioner under the FES Act 1998 designates the BPA.</p> <p>Clause 6.6.5 (b) specifies the LG resolves to 'adopt' the Bushfire Hazard Assessment. The identification of Bushfire prone areas on a bushfire hazard assessment map under LPP 1.13 (1) is as per section 7 of the OBRM document. This Policy provision refers to the mapping standards review and not the bushfire prone vegetation data review (see 6.1 of the OBRM document).</p>	<p>Clause 6.6.5 (b) and LPP 1.13 (1) should be modified or deleted.</p>

6.6.6	If the local government resolves to adopt the Bushfire Hazard Assessment Map, the local government is to publish a notice of the Bushfire Hazard Assessment Map once in a newspaper circulating in the Scheme area. - AMD 92 GG 13/3/15	Same as above	Clause 6.6.6 requires the LG to publish a notice of a decision to adopt the BVA Map in the newspaper. This applies to a small area of the scheme (1039 lots) and differs from the OBRM process.	This Clause should be considered for deletion in any Scheme amendment review.
6.6.7	The Bushfire Hazard Assessment Map has effect on publication of a notice under clause 6.6.6. - AMD 92 GG 13/3/15	No detailed comment, incidental point to the above.	No detailed comment, incidental point to the above.	No detailed comment, incidental point to the above.
6.6.8	A copy of the Bushfire Hazard Assessment Map, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government. - AMD 92 GG 13/3/15	The WA BPA is available electronically using this link: https://www.dfes.wa.gov.au/regulationandcompliance/bushfireproneareas/Pages/default.aspx	The CoC is required under Clause 6.6.8 to keep a 'copy' of the CoC BHA Map. It is assumed this refers to a hard copy. It is understood the state mapping and the BHA Map applying to the same land could differ. On this basis the CoC map as approved by the CoC would need to be maintained at CoC offices for public inspection.	This Clause should be considered for deletion in any Scheme amendment review.
6.6.9	A land owner may dispute the classification of their land as set out on the Bushfire Hazard Assessment Map in writing to the local government for consideration. - AMD 92 GG 13/3/15	Section 6.1 of the OBRM document provides <i>that Local government and the Botanic Gardens Parks Authority will have a minimum 60 days to review the data for their administrative areas, with technical assistance by OBRM as required. In most cases, a desktop assessment and application of local knowledge is an adequate process for verifying the bushfire prone vegetation data. A field assessment is appropriate where data or local knowledge is not sufficient to make a determination.</i>	The current framework provides for a centralised agency standardising the hazard classification. This involves multiple stakeholders including the BGPA. Under clause 78D of the regulations... before commencing any development on a development site a person [the developer] must cause to be prepared a bushfire attack level assessment for the development site if the development site is in a bushfire prone area. On this basis the	The methodology for the CoCs maps follows the same process as the state maps. It is understood that land owners are not granted any 'dispute rights' under the state maps. As both the state and local maps are likely to be similar (if the City maintains them in an

			<p>consequence of being in a bushfire prone area (where a landowner disagrees with the classification) is that a BAL assessment may be required. It is worth noting the BVA applies to 1039 lots. It is also worth noting the WA BPA and the City's maps should be similar as they follow similar processes. This Clause allows for a land owner to dispute the classification under the CoC mapping but not the WA BPA mapping.</p>	<p>appropriate manner and follows due process) then what benefit is there in having a dispute process for the local maps and not the state maps where they apply to the same land (the 1039 lots). On this basis it makes rational sense to consider deleting Clause 6.6.9 of the Scheme.</p>
6.6.10	<p>In addition to development which otherwise requires approval under the Scheme, planning approval is required for any development within a bushfire prone area, that does not comply with an approved bushfire hazard assessment undertaken as part of the structure planning or subdivision of an area or is inconsistent with the WAPC's and FESA's Planning for Bush Fire Protection Guidelines (Latest Edition). - AMD 92 GG 13/3/15</p>	<p>Clause 78D 'Proposed development in a bushfire prone area' of the Planning regulations stipulates;</p> <ul style="list-style-type: none"> (3) The developer must have development approval to commence any development on the development site if— <ul style="list-style-type: none"> (a) the bushfire attack level assessment prepared under subclause (1) calculates the bushfire attack level of the development site as BAL - 40 or BAL - Flame Zone; or (b) a bushfire attack level assessment has not been prepared under subclause (1) but a BAL contour map prepared in relation to the development site indicates that the bushfire attack level of the development site is BAL - 40 or BAL - Flame Zone; or (c) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site. (4) Subclause (3) applies— <ul style="list-style-type: none"> (a) in addition to any requirement in this Scheme for development approval to be obtained; and (b) despite any exemption in this Scheme from the requirement to obtain development approval. <p>Clause 78B 'application of part to development' provides the following;</p>	<p>The guidelines under 5.5 provides the following;</p> <p>The IPS Amendment Regulations 2015 and SPP 3.7 specifically exclude development applications for single houses and ancillary dwellings on a lot or lots less than 1,100m² from requiring further assessment. In these situations, planning can only play a limited role in reducing the bushfire risk to those properties. Where lots of less than 1,100m² have already been created, the application of the appropriate construction standard at the building permit stage is the instrument used to reduce the residual bushfire risk to those properties. In all instances, the assessment of future planning proposals will aim to ensure that lots are not created in areas that pose an unacceptable risk to property.</p> <p>It is understood there are 1039 lots within the CoC BVA area. There are six lots under 1,100sqm in area as follows;</p>	<p>Clause 6.6.10 should be considered for deletion in any scheme amendment relating to bushfire issues.</p>

- (1) This Part does not apply to development unless the development is —
- (a) the construction or use, or construction and use, of a single house or ancillary dwelling on a lot or lots with a total area of 1 100 m² or more; or
 - (b) the construction or use, or construction and use, of —
 - (i) a habitable building other than a single house or ancillary dwelling; or
 - (ii) a specified building.
- (2) The requirements in this Part are in addition to any provisions relating to development in a bushfire prone area that apply in a special control area.

- 3412019 - 56 Britannia Av, Beeliar
(House)
- 4413932 - 323 Wattleup Rd, Wattleup
(House)
- * 5516112 - 50L Pinstrup Rd, Jandakot
(Water Corp)
- * 5517887 - 117L Peppercorn Pl, Jandakot
(Western Power)
- * 5517892 - 116L Peppercorn Pl, Jandakot
(Western Power)
- * 6012531 - R50622 Descanso Lp, Alban Grove
(City of Cockburn - Drainage)

Of these six lots two are residential in nature.

Section 5.8.2 of the guidelines provides the following;

For development of Class 1, 2 or 3 buildings or Class 10a buildings or decks associated with Class 1, 2 or 3 buildings in a bushfire prone area, the bushfire construction requirements of the Building Code of Australia will be applied at the building permit stage irrespective of the planning assessment process.

It is understood the BVA essentially applies to 2 residential lots which are under 1,100sqm. One of these lots (Lot 501 (No. 56) Britannia Avenue Beeliar) is not within the WA BPA. Lot 306 (No. 323) Wattleup Road Wattleup does fall within the WA BPA however this lot is not immediately adjacent to native vegetation/hazardous bushland. It is assumed under a desktop investigation that any Class 1, 2, 3 or 10a structure could be

			<p>made to comply under the building code of Australia in accordance with AS3959. It is unlikely, under this level of assessment, that Clause 6.6.10 would result with its retention, in refusing a development application on this land for reasons associated with bushfire. Please see aerial photograph below:</p>	
6.6.11	<p>In determining an application to carry out development in the Bushfire Prone Area, the Local Government may refuse the application, or impose conditions on any planning approval as to-</p> <ul style="list-style-type: none"> a) the provision of fire-fighting water supply. b) the provision of fire services access. c) the preparation of a fire management plan in accordance with the Planning for Bush Fire Protection Guidelines (Latest Edition) and implementation of specific fire protection measures set out in the plan, including any requirement 	<p>Appendix four 'Bushfire Protection criteria' under the WAPC Guidelines for Planning in Bushfire Prone Areas have been provided to assist in the assessment of proposed bushfire risk management measures required for strategic planning proposals, subdivision or development applications in bushfire prone areas.</p> <p>The criteria are divided into four elements - location, siting and design, vehicular access and water. Each element has an intent outlining the overall aim. The acceptable solutions provide examples of how that</p>	<p>Clauses 6.6.11 (a) to (d) requirements are addressed separately and adequately under the planning framework as at 7 December 2015. This clause is therefore a replication in that regard.</p> <p>This scheme clause specifies the ability to 'refuse' or impose conditions. The element of 'refusal' should be considered in the context of section 5.4.1 of the guidelines. The guidelines addresses this as follows:</p>	<p>Clause 6.6.11 is considered to be a replication of the planning framework as at 7 December 2015. The single lot which is below 1,100sqm in the CoC BVA would be made to comply with AS 3959 via any building permit irrespective of the planning process. The</p>



	<p>for buildings to be constructed in accordance with A3959;</p> <p>d) the requirement to register a notification under section 70A Transfer of Land Act 1893 on the certificate of titles giving notice of the bushfire hazard and any restrictions and/or protective measures required to be maintained at the landowner's cost. - AMD 92 GG 13/3/15</p>	<p>intent may be met. The performance principle allows for 'alternative solutions' to be developed where the acceptable solutions cannot be achieved.</p> <p>a) Element 4: Water (pg 69) provides for '<i>The [proposed] development is required to provide permanent and secure water supply that is sufficient for fire-fighting purposes.</i>'</p> <p>b) Element 3: Vehicular access specifies "<i>The internal layout, design and construction of public and private vehicular access and egress in the subdivision/ development allow emergency and other vehicles to move through it easily and safely at all times.</i>"</p> <p>c) SPP 3.7 under section 6.5 mandates BMPs as part of development applications. It is noted 'development application' is a term defined under SPP 3.7 which excludes single houses and ancillary dwellings on lots less than 1,100sqm. There are 1039 lots above 1,100sqm within the BVA and 6 lots under 1,100sqm of which 2 are residential and 1 is within the WA BPA but expected to be compliant with a BAL-29 or lower classification (as outlined above).</p>	<p><i>"The precautionary principle remains applicable to minor development applications. It may be that some sites have poor access, inadequate water supply, are in a remote location or on sloping topography which would pose an unacceptable risk even if the development was constructed to AS 3959. In these instances, there is a strong argument for refusal of the proposal even when it meets the definition of minor development. However, each case will be assessed on its merit."</i></p>	<p>remaining 1033 lots within the BVA are above 1,100sqm and therefore the current planning framework adequately manages the bushfire issues as per the objectives of Clause 6.6.11 of the scheme.</p>
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		d) 6.10 of SPP 3.7 mandate notifications on title where a BMP is required.		
6.6.12	An application for development approval must be accompanied by: a) a bushfire attack level assessment carried out in accordance with the methodology contained in the Planning for Bush Fire Protection Guidelines (Latest Edition); b) a statement or report that demonstrates that all relevant bushfire protection acceptable solutions, or alternatively all relevant performance criteria, contained in the <i>Planning for Bush Fire Protection Guidelines (Latest Edition)</i> have been considered and complied with, and effectively address the level of bush fire hazard applying to the land. - AMD 92 GG 13/3/15	a) Section 6.5 (a) (i) of SPP 3.7 requires a BAL assessment for any development application. It is noted 'development application' is a defined term in SPP 3.7 and excludes lots less than 1,100sqm. b) Section 6.5 (c) of SPP 3.7 requires an assessment against the bushfire protection criteria requirements contained within the Guidelines demonstrating compliance within the boundary of the development site.	Both points (a) and (b) under Clause 6.6.12 are met by SPP 3.7.	Clause 6.6.12 is considered to be a replication of the planning framework as at 7 December 2015. There would be minimal consequences in deleting this clause from the scheme. Noting there is 1 lot within the WA BPA identified within the BVA as being under 1,100sqm. This should be considered in any scheme amendment.
6.6.13	If, in the opinion of the Local Government, a development application does not fully comply with the bushfire protection acceptable solutions contained in the Planning for Bush Fire Protection Guidelines (Latest Edition), the application shall be referred to the FESA for advice prior to a decision being made. - AMD 92 GG 13/3/15	Clause 66 and 67 (za) of the Planning regulations are of relevance. 67 (za) under matters to be considered by local government, specifies <i>"the comments or submissions received from any authority consulted under clause 66"</i> . 66 provides <i>'consultation with other authorities'</i> .	The objective of Clause 6.6.13 is met by the planning regulations.	The objective of Clause 6.6.13 is considered to be addressed under the regulations via 67(za) and (66). There would be minimal consequences in deleting this clause from the scheme. This should be considered in any scheme amendment.

Concluding Officer level recommendation with regard to AMD 92 and LPP 1.13 review following the state governments bushfire planning reforms which came into operation on 7 December 2015:

In accordance with the above assessment, it is considered appropriate (if not imperative) to undertake a scheme amendment to delete the scheme text under Clause 6.6 of TPS 3 and the associated scheme maps (referring to the BVA and BHAM). It is considered appropriate (if not imperative) to also delete Local Planning Policy 1.13.