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EJB:VAB: FM 6743 L 10

4/08/25

The Manager
Keylin

Attention . Ms K Schneider

Project; Proposed Project
54 George Alexander Way
Coomera

Dear Mc Schneider

We, Eldon Bottcher Architects have been requested to respond to a RFI dated from Gold Coast City Council, in particular to the Bushfire Mitigation Report numbered FM 6743 prepared by this company.

These items a and b are building provisions under the Planning Act and Building Act.

There seems to be a misunderstanding of Council's role in these matters, even though this is clearly spelt out in Section 2.4 of our report, so to further clarify this, I attach extracts from the relevant Acts.

The RFI references the Bushfire Resilient Communities Technical Reference Guide, which was published in October 2019.

This document is not a document referenced by either the Building Act or as a Queensland Variation to the National Construction Code and is therefore not relevant in matters relating to Building provisions.

The RFI deals with FFDI.

AS 3959 is quite clear in Section 2.2.2 Step 1 relevant Fire Danger Index, in referring to Table 2.1, which sets out FFDI of 40 for Queensland. **THERE IS NO DIFFERENTIATION FOR METHOD 1 OR 2** as represented in the Council RFI.

The notes under that table also comment

"The FDI values may be able to be refined within a jurisdiction or region where sufficient climatological data is available and in consultation with the relevant authority."

The relevant authority is not the Queensland Fire Department, it is the Department of Housing and Public Works, and I attach a letter from that department in relation to FFDI - refer the third paragraph.

In November 2021, the State published a further document "Integrating Building Work in Planning Schemes" which clarifies what councils can do in relation to Bushfire, and extracts are attached as an appendix to this letter, with particular reference to *Section 3.9.1 Planning scheme cannot include.*

"Building work applications for specified classes of building in a "designated bushfire prone area" are required to meet the mandatory bushfire provisions in the BCA and AS3959-2018:Construction of buildings in bushfire prone areas"

For building works, the scheme is limited to designating the bushfire prone area, it is not the role of the scheme to include additional benchmarks to mitigate bushfire hazard, such as the design of the building or setbacks/clearance requirements from vegetation.

The planning scheme provisions need not and should not deal with the construction or built form of Class 1-3 buildings and class 10 structures in bushfire prone areas, such as the Bushfire Attack levels (BAL) defined by ASS3959-2018”

We note further that the Bushfire Hazard Overlay Code published the Gold Coast City Council does not include any of the measures referred to in the RFI. These must then be a matter of personal opinion by the Council Bushfire “specialist”

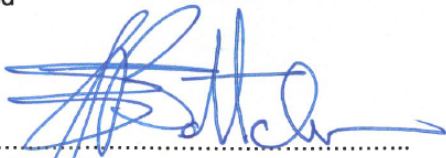
The Planning Act- see appendix B, Chapter 3 Development assessment Section 43 (2) cites

An assessment benchmark does not include-

- (a) A matter of a persons opinion.

Therefore to comply with the Planning Act and the Council Town Plan, may I respectfully suggest that these issues raised by council be withdrawn.

Signed



.....
Eldon Bottcher

Grad. Dip. DBPA (UWS) Dip. Arch. (QIT), Cert. R.F.M. (USQ), F.R.A.I.A., M.A.I.E.S. AIFireE

Architect

BPAD-L3 Practitioner



Appendix A
Department of Housing and Public Works letter



Department of
Housing and Public Works

Ref: HPW00958-2018

Mr Daniel Chidgey
Senior Standards Development Manager
Standards Australia
GPO Box 476
SYDNEY NSW 2001

Dear Mr Chidgey

Thank you for your letter of 18 December 2017 addressed to Ms Nightingale from the former Queensland Department of Infrastructure, Local Government and Planning. As the matter raised falls under the administration of the Department of Housing and Public Works (the department), the matter has been referred to me for direct response to you.

I appreciate you bringing to our attention the comments made by the South East Queensland Fire and Biodiversity Consortium (SQFBC). Officers of the department met with key industry stakeholders to discuss these comments and your suggestions relating to the Fire Danger Index (FDI) values.

The department and the stakeholders have agreed that the FDI value of 40 should remain unchanged in the next publication of AS3959 – *Construction of buildings in bushfire prone areas*. It was also agreed that further research should be carried out in relation to FDI values prior to the next review.

The matters raised include important issues for Queensland. We would like to offer any assistance we may have available to support the future research work you have suggested be undertaken prior to the next review.

If you need any more information or help with this matter, Mr Philip Finnimore, Principal Advisor, Strategic Policy (Building) can be contacted on (07) 3008 2506 or at philip.finnimore@hpw.qld.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read "Don Rivers", with a date "27.4.18" written below it.

Don Rivers
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Appendix B

Planning Act and Regulation Extracts

- (c) a planning scheme policy.
- (4) To the extent of any inconsistency—
 - (a) a State planning policy applies instead of a regional plan or local planning instrument; and
 - (b) a regional plan applies instead of a local planning instrument; and
 - (c) a planning scheme applies instead of a planning scheme policy; and
 - (d) a TLPI applies instead of a planning scheme or planning scheme policy.

Note—

A TLPI may also suspend, or otherwise affect, the operation of a planning scheme or planning scheme policy—see section 23(3).

- (5) A local planning instrument must not include a provision about building work, to the extent the building work is regulated under the building assessment provisions, unless allowed under the Building Act.
- (6) To the extent a local planning instrument does not comply with subsection (5), the local planning instrument is of no effect.

9 When planning instruments and designations have effect

- (1) This section explains when certain instruments made under this chapter start to have effect.
- (2) The *effective day* is the day when the following instruments start to have effect—
 - (a) a planning instrument or designation;
 - (b) an amendment or repeal of a planning instrument or designation.
- (3) If this chapter requires public notice of the instrument to be published, the effective day is—
 - (a) the day on which the notice is published in the gazette; or

17 **Assessment benchmarks that local categorising instruments may not be inconsistent with—Act, s 43**

- (1) For [section 43\(5\)\(c\)](#) of the [Act](#), a local categorising instrument may not, in its effect, be inconsistent with the effect of the following assessment benchmarks—
 - (a) an assessment benchmark stated in [schedule 11](#) or [12A](#);
 - (b) the building assessment provisions stated in the [Building Act, section 30\(a\)](#) to (d), (f) or (g);
 - (c) the [Coastal Regulation, schedule 3](#);
 - (d) an assessment benchmark prescribed under the [Environmental Protection Act, section 580\(4\)\(a\)](#) for a material change of use for an environmentally relevant activity that is a concurrence ERA;
 - (e) the [Prostitution Regulation 2014, schedule 3](#);
 - (f) the [Queensland Heritage Regulation 2015, schedule 2](#);
 - (g) an assessment benchmark stated in the regional plan for a region to which the local categorising instrument applies;
 - (h) an assessment benchmark stated in the Caboolture West interim structure plan for the Caboolture West growth area.
- (2) However, subsection (1)(h) applies only to the extent the local categorising instrument applies to the Caboolture West growth area.

Chapter 3 Development assessment

Part 1 Types of development and assessment

Division 1 Instruments and categories

43 Categorising instruments

- (1) A *categorising instrument* is a regulation or local categorising instrument that does any or all of the following—
 - (a) categorises development as prohibited, assessable or accepted development;
 - (b) specifies the categories of assessment required for different types of assessable development;
 - (c) sets out the matters (the *assessment benchmarks*) that an assessment manager must assess assessable development against.
- (2) An assessment benchmark does not include—
 - (a) a matter of a person's opinion; or
 - (b) a person's circumstances, financial or otherwise; or
 - (c) for code assessment—a strategic outcome under [section 16\(1\)\(a\)](#); or
 - (d) a matter prescribed by regulation.

Examples of assessment benchmarks—

a code, a standard, or an expression of the intent for a zone or precinct

- (3) A *local categorising instrument* is—
 - (a) a planning scheme; or
 - (b) a TLPI; or
 - (c) a variation approval, to the extent the variation approval does any of the things mentioned in subsection (1).
- (4) A regulation made under subsection (1) applies instead of a local categorising instrument, to the extent of any inconsistency.

Appendix C
“Integrating Building Work in planning schemes Guidance for local governments” Extract

- determine the appearance of a fence for aesthetic and streetscape character or environmental reasons. For example, a planning scheme can include provisions that a fence be 50 per cent transparent if over a certain height, to deliver CPTED principles or to not impede overland flow.

A planning scheme may also regulate filling and excavation and associated retaining walls where these comprise stand-alone operational works not associated with building work, or operational work that are only part of reconfiguring a lot, (as building work does not include undertaking works for reconfiguring a lot).

3.9 Bushfire prone areas

Example relevant BAPs	Applicable building class/es	Can be modified or dealt with in a planning scheme
NCC – Volume 2, Part G5 and Volume 2, Part 3.10.5	1, 2, 3 and 10 (where associated)	No, may not be modified, but planning scheme 'triggers' application

3.9.1 Planning scheme cannot include

Building work applications for specified classes of buildings in a 'designated bushfire prone area' are required to meet the mandatory bushfire provisions in the BCA and AS3959–2018: *Construction of buildings in bushfire prone areas*.

For building works, the scheme is limited to designating the bushfire prone area, it is not the role of the scheme to include additional benchmarks for building work to mitigate bushfire hazard, such as the design of the building or setbacks/clearance requirements from vegetation.

The planning scheme provisions consequently need not and should not deal with the construction or built form of class 1-3 buildings and class 10 structures in bushfire prone areas, such as the Bushfire attack levels (BAL) defined by AS3959–2018.

3.9.2 Planning scheme may include

When a local government includes bushfire prone area mapping in its planning scheme it has the option under Section 7 of the Building Regulation, to designate all or part of the area as a designated bush fire prone area for the BCA or QDC in the planning scheme. On the making of the designation, the provisions of the BCA or QDC that apply to a designated bushfire prone area apply for any building assessment work that relates to the area. In effect the planning scheme 'triggers' the application of the mandatory bushfire provisions in the BCA and AS3959–2018 at the building work application stage.

This designation must follow the requirements of the Building Regulation, Section 7, including:

- the local government must, if it is practicable to do so, ensure its planning scheme maps show each of its designated bush fire prone areas
- if it is not practicable for the local government to show each of the areas in its planning scheme maps, it must prepare maps showing the areas and ensure the maps are updated from time to time to show its current designated bush fire prone areas
- the maps must state when each designation was made.

In addition to clearly identifying up-front in the planning scheme that BAPs are included, a note in the planning scheme to alert users that these requirements will apply at building application stage can ensure that siting and design considerations are considered as early as possible in the planning for the development, and building design factors that may also impact on planning requirements, be resolved if necessary. For example:

Editor's note – The bushfire hazard area defined by this planning scheme is declared as designated bushfire prone area pursuant to section 7 of the Building Regulation 2021. Building work in a designated bushfire prone area must meet the mandatory provisions in the Building Code of Australia and AS3959–2018: Construction of buildings in bushfire prone areas.

A planning scheme may consider mitigating bushfire risk when allocating zones and addressing aspects of development other than building work. For example, a planning scheme may:

- allocate zones and identify land uses appropriate for the risk and hazard presented

- consider how a subdivision pattern will ensure lots are created to ensure future development may safely occur. On large lots, this may involve a development footprint plan being included as part of the subdivision approval that identifies the portions of the site in which future development is to be located
- in allocating land for future development, consider whether that land is located within a reticulated water supply area (or will be provided with reticulated water supply as part of the development) and if not, apply an assessment benchmark for the provision of an appropriate static water supply, and a development condition may specify how this is to be provided (However, the planning scheme should not include information about the construction of hardstand areas, the size of water tanks, or tank fittings, for example, as these are not matters that are assessed at planning development application stage). For further details refer to the QFES [Bushfire resilient communities](#) document.

For further guidance on matters a planning scheme may address in relation to bushfire hazard, refer to the [Integrating state interests in a planning scheme - Guidance for local governments](#) and to the [Natural hazards, risk and resilience - Bushfire state interest - Example planning scheme assessment benchmarks](#) document for example assessment benchmarks that a local government may choose to adopt or otherwise adapt when making or amending a planning scheme.

In addition, local government may seek to alert their community to the [Bushfire Resilient Building Guidance for Queensland Homes](#) non-statutory guidance document that contains considerations for improving the bushfire resilience of homes.

3.10 Landslide

Example relevant BAPs	Applicable building class/es	Can be modified or dealt with in a planning scheme
NCC – Volume 1, Part B1 and Volume 2, Part 2.1	All	No

3.10.1 Planning scheme cannot include

The BCA addresses that a building or structure, during construction and use must perform adequately having regard to site conditions including ground movement caused by landslip or subsidence and siteworks associated with the building or structure.

As such, the planning scheme's built form provisions should not, and do not need to, deal with the siting of buildings within the lot, the structural design of the buildings, or the siteworks associated with the building or structure.

3.10.2 Planning scheme may include

On steep land and land identified as subject to landslide, the planning scheme considerations relate to identifying the type of development that is suitable on these lands, considering the effect of the constraints. This may inform the zone applied to the land or locally specific provisions such as an overlay, and associated intents for the land. For example, the planning scheme may:

- consider how the reconfiguration of lots will enable the creation of lots of a size and configuration that means they are capable of being utilised for their intended purpose, having regard to the site conditions
- contain provisions for earthworks, excavation or filling where operational work associated with the reconfiguration of lots, rather than siteworks associated with the building or structure
- contain provisions limiting clearing of vegetation on the balance of the site (i.e. not part of site works associated with the building or structure), where the clearing of that vegetation may adversely affect slope stability and increase the risk of landslides.