

KELLEHERS AUSTRALIA

In-House Briefing Memorandum

~

Bushfire Management Overlays

The Victorian landscape has always had a strong relationship with bushfires.¹ From fire, spring forth new life, plants and ecology, a fact well understood by Indigenous Australians whose land management practices used fire for millennia.² Following the tragic 2009 Black Saturday Bushfires, planning changes occurred to reflect a renewed emphasis on protecting human life through adequate bushfire risk management planning.

The protection of human life became a paramount planning concern. The Statewide Victorian Planning Provisions now require

*“the decision maker to protect human life, even at the expense of the loss of vegetation, ecology and landscape”.*³

This was emphasised recently by VCAT in *Adamson v Yarra Ranges SC*,⁴ which held that the most important consideration when applying for a permit is whether there is a “high likelihood that human life can be protected if [the] development proceeds”.⁵

It is astonishing that many areas tragically affected by the Black Saturday fires are not yet protected by a Bushfire Management Overlay (BMO). For example, at Kinglake, in Murrindindi Shire Council, where 42 people lost their lives and enormous trauma occurred, no BMO exists and only the scattered Wildfire Management Overlays that predated the fires provide specific bushfire protection.

Local government planning schemes can apply a BMO to areas of bushfire prone land. BMOs seek to ensure that appropriate bushfire protection measures are put in place by requiring construction or work proposals to incorporate measures which reduce risk to life, property and community infrastructure before a planning permit will be issued.

For those whose land is affected by a BMO, it is important to undertake pre-emptive work to plan and prepare for bushfire.

Any permit application for subdivision or construction must be accompanied by a Locality and Site Description and a Bushfire Management Statement, which describe the context of the site and the proposed bushfire protection measures. Every such permit application is referred to the Country Fire Authority or Metropolitan Fire Brigade for assessment. As a determining referral authority, the fire authority must approve the permit application before it can proceed. As vegetation coverage and character are integral considerations in assessing a site’s bushfire risk, a comprehensive Vegetation Management Plan is generally required to complement the Bushfire Management Statement.⁶

VCAT has emphasised the need for adequate and independent bush fire risk assessments, noting that a Bushfire Management Plan must provide “an independent view of the range of bushfire risks and the appropriate levels of responses”.⁷ It has also rejected undertakings to make personal effort when a fire is approaching regarding them insufficient to defend a property.⁸ All permits now issued concerning land subject to a BMO contain a condition requiring that bushfire protection measures detailed in the Bushfire Management Statement are maintained indefinitely.

¹DEPI Website, Bushfire History Page <<http://www.depi.vic.gov.au/fire-and-emergencies/fighting-and-managing-fire/bushfire-history>> (accessed 28 November 2013)

² Bill Gammage, *The Biggest Estate on Earth* (2012, Allen and Unwin) (Gammage, 2012)

³ Clause 13.05, Victorian Planning Provisions

⁴ [2013] VCAT 683

⁵ Member Rundell at [33]

⁶ The Country Fire Authority recommends producing these documents and has produced a publication guiding their preparation, Planning for Bushfire Victoria: Guidelines for meeting Victoria’s bushfire planning requirements; available at:

<http://www.cfa.vic.gov.au/fm_files/attachments/plan_and_prepare/planning-for-bushfire-web-complete.pdf>

⁷ *Stagliano v Hepburn SC* [2013] VCAT 1651 [36] Member Potts

⁸ *Stagliano v Hepburn SC* [2013] VCAT 1651 [42] Member Potts