

3.3 Planning Scheme Amendment AM 2019/03 – Section 35 Report

Proposal:	To amend the Glamorgan Spring Bay Interim Planning Scheme 2015 by inserting the Bushfire-prone Areas Overlay
Requested by:	N/A – Council initiated amendment
Location:	Glamorgan Spring Bay Municipality
Attachments:	Attachment A – Draft Amendment AM 2019/03 Attachment B – Supporting Report prepared by the Tasmania Fire Service (Nov 2019) Attachment C – Information Sheet- FAQs prepared by the Tasmania Fire Service
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1. INTRODUCTION

The purpose of this report is to consider the initiation, and potential subsequent certification, of draft amendment AM 2019/03 to the Glamorgan Spring Bay Interim Planning Scheme 2015 which proposes to insert the Bushfire-prone Areas Overlay as provided in Attachment A.

The Tasmania Fire Service (TFS) has been working with Local Government to produce bushfire-prone area mapping for each municipal area. The process has involved the production of a modelled overlay that has been progressively refined based on site verification and local knowledge.

The TFS have now completed the mapping for the Glamorgan Spring Bay municipality and it is proposed to adopt the mapping by amending the planning scheme to insert the Bushfire-prone Areas Overlay.

2. BACKGROUND

Planning Directive No. 5.1 – Bushfire-prone Areas Code (PD5.1) applies the Bushfire-prone Areas Code (the Code) to all interim planning schemes in Tasmania. The Code applies standards to subdivision and Vulnerable and Hazardous uses within a bushfire-prone area.

The Code defines 'bushfire-prone area' as;

Means:

(a) *land that is within the boundary of a bushfire-prone area shown on an overlay on a planning scheme map; or*

(b) *where there is no overlay on a planning scheme map, land that is within 100m of an area of bushfire-prone vegetation equal to or greater than 1 hectare.*

The Code also defines 'bushfire-prone vegetation' as:

Contiguous vegetation including grasses and shrubs but not including maintained lawns, parks and gardens, nature strips, plant nurseries, golf courses, vineyards, orchards or vegetation on land that is used for horticultural purposes

Currently, there is no bushfire-prone areas overlay in the planning scheme. In order to determine if a site is within a bushfire-prone area, and therefore subject to the Code, applicants are required to work their way through part (b) of the definition of 'bushfire-prone area', incorporating the criteria contained in the 'bushfire-prone vegetation' definition.

The use of an overlay to spatially identify bushfire-prone areas is anticipated as provided for in part (a) of the Code's 'bushfire-prone area' definition.

3. LEGISLATION

The purpose of this report is to consider the initiation and certification of the proposed draft amendment pursuant to Sections 32 and 35 of the former provisions of the *Land Use Planning and Approvals Act 1993* (the Act). These provisions are addressed in the body of the report below.

The Planning Authority must consider this report but is not bound to adopt its recommendations. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions, or (3) replace an approval with a refusal (or vice versa).

Any alternate decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2005*.

4. RISK AND IMPLICATIONS

While the draft amendment will have no direct financial implication for Council, it will provide greater certainty for determining if a property is within a bushfire-prone area thereby facilitating the reduction of risk associated with bushfire.

5. ASSESSMENT

5.1 Mapping

The TFS Supporting Report (refer to Attachment B) outlines the methodology used to generate the mapping for the draft amendment. It essentially applies the criteria contained within the part (b) definition of 'bushfire-prone area' although, because it is more refined, it has excluded some areas that would be considered to be in a bushfire-prone area that are deemed to be suitably low threat based on expert opinion and bushfire behaviour modelling.

The draft amendment is anticipated to provide an authoritative and accessible information source that will simplify the process for determining if a site is within a bushfire-prone area. Improved clarity will benefit landowners, developers and permit authorities by providing greater certainty with respect to planning and building regulatory matters.

The TFS has prepared an Information Sheet outlining responses to frequently asked questions regarding the application of the bushfire-prone areas overlay which is contained in Attachment C.

The maps comprising the draft amendment are also proposed to be inserted in the Glamorgan Spring Bay draft LPS (draft LPS) that will form part of the Tasmanian Planning Scheme once the draft LPS has been approved.

It is acknowledged that bushfire-prone areas are based on vegetation types that may change over time. As a result, the Bushfire-prone Area Overlay, if approved, will need to undergo periodic review to remain accurate.

It is also noted that the draft amendment is consistent with the relevant provisions in AS 3959-2009¹ and therefore, facilitates integration with building requirements.

¹ Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas.

5.2 Statutory Assessment

Section 32(1) of the Act states that, in the opinion of the relevant decision-maker, a draft amendment:

(a)-(d)....

(e) *must, as far as practicable, avoid potential for land use conflict with use and development permissible under the planning scheme applying to the adjacent area;*

(ea) *must not conflict with the requirements of section 300;*

(f) *must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.*

Under section 32(2), the provisions of section 20(2)-(9) inclusive apply to the amendment of a planning scheme in the same way as they apply to a planning scheme.

The draft amendment will not cause the potential for land use conflict with adjacent planning scheme areas consistent with section 32(1)(e) of the Act. Break O'day and Northern Midlands Councils have amended their respective planning schemes to incorporate the Bushfire-prone Areas Overlay consistent with the TFS mapping methodology used for this draft amendment.

It is understood that Sorell and Southern Midlands Councils have their bushfire mapping but are anticipating that it will come into effect once their draft LPSs are approved and subsequently the Tasmanian Planning Scheme is implemented in those municipalities. Due to uncertainty regarding the timeframe for the approval of the Glamorgan Spring Bay draft LPS, it is recommended that the mapping be implemented by amendment to the interim planning scheme.

Section 300 include that:

- 1) *an amendment may only be made under Division 2 or 2A to a local provision of a planning scheme,if the amendment is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.*

The Southern Tasmania Regional Land Use Strategy (STRLUS) identifies bushfire as a key land hazard which is addressed through Regional Policy MRH1. Although there is no specific reference to the mapping of bushfire-prone areas, the draft amendment furthers MRH1 by helping to easily identify land that is in a bushfire-prone area, thereby supporting regulatory measures to reduce the risks associated with bushfire.

For the purpose of assessment under section 32(1)(f), the draft amendment is part of a statewide approach to mapping bushfire-prone areas and will assist with the implementation of the Code. There are not considered to be any adverse impacts in social, economic and environmental terms for the region as an entity.

The TFS report, at sections 7.1 and 7.2, demonstrates how the draft amendment furthers the Schedule 1 Objectives of the Act and that it has been prepared in accordance with State Policies. It is recommended that the opinions expressed in the TFS report are adopted by the Planning Authority, in particular the draft amendment will:

- Provide for the fair, orderly and sustainable use and development of land by easily identifying land the is subject to increased risk of bushfire consistent with adopting a statewide approach to mapping bushfire-prone areas as seen by 11 Councils having already applied the mapping through their interim planning schemes;
- Facilitate economic development by making it easier for developers, regulators and the general public to determine what land is within a bushfire-prone area; and
- Support the efficient application of the Code (and building regulations).

5.3 Glamorgan Spring Bay Community Strategic Plan 2013

The Glamorgan Spring Bay Strategic Plan 2013 identifies high-level guidance relating to six key future directions. Direction 6 includes the following statement:

Extreme weather events, emergencies and the possible impacts of climate change need to be planned for and managed to ensure the safety of our towns and communities.

The draft amendment supports this direction by making it easier to determine if a property is within a bushfire-prone area, thereby facilitating the application of regulatory controls to reduce the risk to life and property as a result of bushfire.

6. APPROVAL PROCESS

If the Planning Authority resolves to initiate and certify the draft amendment, section 38 of the Act requires that it is then placed on exhibition for a period of 28 days. During that time the Planning Authority may receive comments which will be reviewed and the opinion as to the merits of those comments will be reported to the Tasmanian Planning Commission who will ultimately decide on the draft amendment.

7. REFERRALS

Should the Planning Authority resolve to initiate the draft amendment, referrals to the relevant State agencies and entities will be made.

8. CONCLUSION

The draft amendment proposes to insert the Bushfire-prone Areas Overlay into the planning scheme. Currently, to determine if land is within a bushfire-prone area, there is a requirement to apply a subjective definition that is open to interpretation and therefore, potential error that can cause additional cost and delays to applicants and regulators.

The bushfire-prone area overlay will provide certainty in determining land that is subject to increased bushfire risk, facilitating with greater certainty the necessary regulations to reduce that risk.

The draft amendment has been prepared by the TFS and verified by Council officers and is consistent with mapping that has been undertaken for other municipalities and is assessed as complying with Section 32 and is suitable for certification in accordance with Section 35 of the Act.

9. RECOMMENDATION

That the Planning Authority resolves:

- A. Pursuant to 34(1)(b) of the former provisions of the *Land Use Planning and Approvals Act 1993* to initiate draft amendment AM 2019/03 to the Glamorgan Spring Bay Interim Planning Scheme 2015 to insert the Bushfire-prone Areas Overlay.

- B. Pursuant to section 35 of the former provisions of the *Land Use Planning and Approvals Act 1993* that draft amendment AM 2019/03 is certified as meeting the requirements of section 32 of the former provisions of the *Land Use Planning and Approvals Act 1993*.
- C. Pursuant to section 38 of the former provisions of the *Land Use Planning and Approvals Act 1993* that draft amendment AM 2019/03 be placed on public exhibition for 28 days.
- D. Pursuant to section 39 of the former provisions of the *Land Use Planning and Approvals Act 1993*, that if no representations are received, or representations received are in favour of draft amendment AM 2019/03, the General Manager is to advise the Tasmanian Planning Commission accordingly.

Attachment A – Draft Amendment AM 2019/03

Attachment B – Supporting Report, prepared by the TFS (2019)

Attachment C – Information Sheet – FAQs, prepared by the TFS