

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Amendment Regulations 2015

Made by the Minister under Part 15 Division 1 of the Act.

1. Citation

These regulations are the *Planning and Development (Local Planning Schemes) Amendment Regulations 2015*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulations 3 and 4 — on the day after that day;
- (c) regulation 5 — on the day on which the *Fire and Emergency Services (Bush Fire Prone Areas) Order 2015* comes into operation.

3. Regulations amended

These regulations amend the *Planning and Development (Local Planning Schemes) Regulations 2015*.

4. Schedule 2 clause 61 amended

- (1) Delete Schedule 2 clause 61(1)(b) and insert:
 - (b) the carrying out of internal building work which does not materially affect the external appearance of

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the building unless the development is located in a place that is —

- (i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or
- (ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or
- (iii) included on a heritage list prepared in accordance with this Scheme and identified on that list as having an interior with cultural heritage significance; or
- (iv) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29;

(2) Delete Schedule 2 clause 61(3) and insert:

- (3) Despite subclause (1) development approval may be required for certain works carried out —
 - (a) in a special control area; or
 - (b) on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area.

5. Schedule 2 Part 10A inserted

After Schedule 2 Part 9 insert:

Part 10A — Bushfire risk management

78A. Terms used

In this Part, unless the contrary intention appears —

AS 3959 means Australian Standard AS 3959 —
Construction of buildings in bushfire-prone areas, as

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adopted from time to time as a referenced document for the purposes of the Building Code;

BAL contour map, in relation to a development site, means a scale map of an area that includes the development site —

- (a) prepared in accordance with State planning policy 3.7: Planning in Bushfire Prone Areas as part of a plan of subdivision that has been approved under Part 10 of the Act for the area; and
- (b) that shows the indicative bushfire attack levels (BAL) for the area;

bushfire attack level assessment means an assessment prepared in a manner and form set out in AS 3959 to determine a bushfire attack level (BAL) as set out in AS 3959;

construction of a building includes the erection, assembly or placement of a building but does not include the renovation, alteration, extension, improvement or repair of a building;

development approval means development approval of the local government obtained under Part 8;

development site means that part of a lot on which a building that is the subject of development stands or is to be constructed;

habitable building means a permanent or temporary structure on land that —

- (a) is fully or partially enclosed; and
- (b) has at least one wall of solid material and a roof of solid material; and
- (c) is used for a purpose that involves the use of the interior of the structure by people for living, working, studying or being entertained;

specified building means a structure of a kind specified in this Scheme as a kind of structure to which this Part applies in addition to its application to habitable buildings.

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78B. Application of Part to development

- (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.

78C. Determining whether development site is in a bushfire prone area

For the purposes of this Part, a development site is subject, or likely to be subject, to bushfires and is referred to as being ***in a bushfire prone area*** if the development site is on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area.

78D. Proposed development in a bushfire prone area

- (1) Unless subclause (2) applies, 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 —
 - (a) is in a bushfire prone area; and
 - (b) has been in a bushfire prone area for a period of at least 4 months.

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- (2) A developer is not required under subclause (1) to cause to be prepared a bushfire attack level assessment for a development site if —
- (a) a BAL contour map has been prepared in relation to the development site; or
 - (b) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site.
- (3) The developer must have development approval to commence any development on the development site if —
- (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 —
- (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.

78E. Matters to be considered for development approval

- (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.

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- (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.

78F. Transitional provisions for sites in new bushfire prone areas

- (1) In this clause, each of these terms has the meaning given in the *Building Act 2011* section 3 —

building permit

building work

- (2) In this clause —

application means an application under the *Building Act 2011* for a building permit;

transitional permit means a building permit granted in respect of an application to do building work on a development site if —

- (a) the site was not in a bushfire prone area when the application was made; or
- (b) the site had been in a bushfire prone area for a period of less than 4 months when the application was made.
- (3) Clause 78D does not apply to the commencement of development to which a transitional permit applies.

78G. Transitional provisions relating to *Planning and Development (Local Planning Schemes) Amendment Regulations 2015*

- (1) In this clause —

commencement day means the day on which the *Planning and Development (Local Planning Schemes) Amendment Regulations 2015* clause 5 comes into operation;

previous bushfire provisions means any provisions in this Scheme that, immediately before commencement day, required a developer in an area that was identified under this

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Scheme as being an area that is subject, or likely to be subject to bushfires to —

- (a) cause to be prepared a bushfire attack level assessment for a development site; or
- (b) to have development approval to commence development on a development site because —
 - (i) a bushfire attack level assessment prepared for the development site calculates the bushfire attack level of the development site as BAL - 40 or BAL - Flame Zone; or
 - (ii) it is not possible to calculate the bushfire attack level of the development site because of the terrain of the development site;

transitional development site means a development site that is located in an area that —

- (a) is a bushfire prone area; and
- (b) immediately before commencement day was an area identified in any way under this Scheme as being an area that is subject, or likely to be subject, to bushfires;

transition period means the period of 4 months beginning on commencement day.

- (2) Clause 78D(1) applies in respect of development on a transitional development site if —
 - (a) the development is commenced within the transition period; and
 - (b) a developer would have been required under the previous bushfire provisions to prepare a bushfire attack level assessment for the development site.
- (3) Clause 78D(3) applies in respect of development on a transitional development site if —
 - (a) the development is commenced within the transition period; and

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- (b) a developer would have been required under the previous bushfire provisions to have development approval to commence the development.
- (4) For the purposes of paragraph (b) of the definition of ***transitional permit*** in clause 78F(2), an area that immediately before commencement day was identified in any way under this Scheme as being an area that is subject, or likely to be subject, to bushfires is to be taken on and from commencement day to have been in a bushfire prone area for a period of at least 4 months.

J. DAY, Minister for Planning.