

Case Note: Bennett and WAPC

Vehicular access and designed solutions in Bushfire Prone Areas

In *Bennett and WAPC* [2018] WASAT 32, the Tribunal considered a decision by the WAPC to refuse to allow the subdivision of a rural residential lot into two freehold lots. The site is located at the end of a 1.4 km cul-de-sac and is in an identified bushfire prone area. The substantive issue in the case was the provision for vehicular access. The Tribunal found that the potential for reduced visibility due to smoke in the context of an access route 1.4 km long, which includes both a crest and sharp left hand turn and which could be subject to congestion in a bushfire, means that the proposed subdivision does not meet the performance principle of the Policy Guidelines in Element 3: Vehicular Access.

The applicant proposed a 'designed solution' to manage these vehicular access constraints. This solution centred on occupants being able to safely shelter in their house rather than leave a property when there is a likelihood that the egress route will be impacted by bushfire. A key component of the designed solution was the application of the National Association of Steelframed Housing standard (NASH Standard) for construction of buildings in bushfire areas. However expert witnesses agreed that: a building constructed to the standard does not guarantee that it would survive a bushfire event: and, the NASH Standards do not claim to provide a tenable environment for occupants present during a bushfire.

The Tribunal was not convinced that in the circumstances of the particular case, there was cogent and legitimate reasons which would warrant a departure from the existing planning policies. Accordingly, the decision of the WAPC to refuse subdivision was upheld.

The case judgement is available [here](#).