

Case Note: Boynton and WAPC

Subdivision of lot owned as Tenancy in Common, in a Bushfire Prone Area

In *Boynton and WAPC* [2018] WASAT 60, the applicants appealed a decision by the WAPC to refuse subdivision of a 28.8 hectare site in a designated bushfire prone area, which is jointly owned in four equal shares by the applicants as tenants in common. The WAPC submitted that, as the applicants did not provide information in relation to bushfire with the subdivision application, the proposed subdivision did not comply with SPP 3.7, and on this basis should be refused.

The applicants submitted that the proposed subdivision: did not give rise to any intensification of development on the site; did not increase the number of residents or employees; did not involve the occupation for employees on site; and, would not result in an increase in bushfire threat, and therefore, having regard to the exemptions from the requirements of SPP 3.7 provided in [Planning Bulletin 111/2016](#), there was no need to comply with SPP 3.7 in this case.

However, the Tribunal was not satisfied that the mere fact that the subdivision did not itself incorporate any development work and did not change the number of dwellings located on the site, were reasons to depart from the policy. In addition, the need for a fire management plan was a condition of subdivision of the site as contemplated by the Local Planning Scheme.

Consequently, the Tribunal accepted the evidence of the respondent; that without the information required by SPP 3.7 it was not possible to determine the bushfire threat for each proposed new lot, nor was it possible to know whether any required mitigation measures are able to be carried out within the boundaries of each lot. Therefore “it would not be appropriate to grant approval to a proposed subdivision in those circumstances” (at 63).

The original decision by the WAPC to refuse subdivision was affirmed. The case judgement is available [here](#).