

Case Note: Harmanis Holdings No.2 Pty Ltd and WAPC

Subdivision, NASH standard and access in bushfire prone areas

In [Harmanis Holdings No. 2 Pty Ltd and WAPC \[2019\] WASAT 43](#), the Tribunal considered a decision by the WAPC to refuse an application for a three lot subdivision in a bushfire prone area on the Leeuwin-Naturaliste Ridge.

The Tribunal affirmed the WAPC decision for two main reasons. First, “the proposed design solution has not been established to provide the same or a higher level of safety as the relevant acceptable solution in the Guidelines” (148) since “...construction to the NASH Standard improves the ability of a building to withstand bushfire attack and provides some measure of protection to occupants... but... it does not ensure that a building will provide a tenable environment for humans or even that the building itself will survive a bushfire event” (133). Second, one of the proposed access routes “is in part by way of private easement and the Tribunal is not able to have any certainty in relation to the standard to which that access would be maintained in the future” and the Tribunal was not satisfied “the existing and proposed access routes... are adequate to provide safe and reliable egress for the purpose of early evacuation” (150).

It was also noted that: “...where a subdivision proposal relates to sufficiently large lots and specifies where building envelopes are to be located, then it is consistent with the intent of SPP 3.7 to understand the 'area' to be considered for the purposes of cl 6.7 of SPP 3.7 to be the area of the building envelope” (81), alternatively “...if it is not known where buildings are to be located within the lot, the 'area' must include the whole lot(s)” (83); and, a conservation covenant does not necessarily ensure that no development could ever occur on a particular lot (93).