Alterations and additions to existing buildings in bushfire-prone areas (firefighting water and property access)

TFS is aware that the requirements under current Tasmanian building legislation for water and access for alterations and additions to existing buildings are being misinterpreted.

Different practitioners and building surveyors are taking different stances when dealing with alterations and additions. This is unfair, potentially unsafe and can also be needlessly expensive.

The Issue

Part 1A of the Building Regulations 2014 remains in force until the Tasmanian Planning Scheme becomes effective in an area.

R.11E (2) specifies:

(2) In respect of any additions or alterations to an existing building requiring a building permit –

(a) the addition or alteration must not restrict any existing vehicular access to any part of the habitable building, or access to any existing water supply for firefighting; and

(b) if the addition or alteration –

(i) is 20 square metres gross floor area or less and does not result in the building being closer to bushfire-prone vegetation, no special bushfire requirements apply to either the new work or to the existing building; or

(ii) is greater than 20 square metres gross floor area –

(A) the addition or alteration, existing building, and other buildings associated with the existing building must be provided with hazard management areas of dimensions no less than that for the BAL assessed for the addition or alteration; and

(B) where an existing water supply for firefighting is not available, a water supply for firefighting must be provided that meets the requirements in the Director’s determination; and

(C) where property access is not available, property access must be provided that meets the requirements in the Director’s determination.
It is clear that where an existing water supply and/or access is not available for firefighting purposes, r.11E (2) (b) (B) and (C) require that these protective measures be provided in accordance with the Director’s Determination.

The Director’s Determination – Requirements for Building in Bushfire-Prone Areas (v.2.1, 29 August 2017) contains Deemed-to-Satisfy (DTS) requirements which relate to construction (clause 4.1), access (clause 4.2), water (clause 4.3), hazard management areas (clause 4.4) and emergency plans (clause 4.5).

The DTS requirements for construction and hazard management areas (clauses 4.1 and 4.4) specifically refer to new buildings as well as additions and alterations to existing buildings. However, the requirements for access and water (clauses 4.2 and 4.3) only refer to new buildings – the DTS clauses are silent with regards to alterations and additions.

In practice, some bushfire practitioners and building surveyors have decided that since there are no DTS requirements for access and water supplies under clause 4 then the existing access and water supplies are not assessed or reported and nothing is being done to address the performance requirements under clause 3. There are a range of other responses and this is not an acceptable situation.

Although the Building Regulations 2014 will cease to have effect with the introduction of the Tasmanian Planning Scheme, until then there should be a consistent interpretation used by all.

TFS Interpretation

Regulation 11E requires the provision of firefighting access and water in situations where these protective measures are not present with any real capacity to support firefighter intervention or owner action.

The principle in drafting Regulation 11E was that when access or water supply is not already present then it must be provided and it should conform to the code in force. At the same time, there is no intention to require landowners to upgrade pre-existing access and firefighting water supplies where these elements have already been lawfully constructed and are effectively functioning as protective measures albeit without strict conformance to the code in force.

There is no ambiguity about this issue in the Regulation. Therefore the question is: what are the requirements for access and water if the Determination has no DTS provisions?

The Director’s Determination provides Performance Requirements (clause 3) and the set of Deemed-to-Satisfy provisions (clause 4). This structure mirrors the National Construction Code, under which the Performance Requirements are the only requirements that need to be satisfied and it is explicit that this can either be demonstrated through compliance with DTS or through a Performance Solution or through a combination of both.

There is no similar interpretation clause within the Determination which explicitly requires compliance with the Performance Requirements in the same way as the NCC. However, it is also clear that r.11E does not refer to parts of the Directors Determination and so the whole Determination must be complied with to meet the Regulation. Clearly the experience
has been that people have in the main applied the DTS provisions to comply with the Regulations.

So, it is concluded that r.11E requires compliance with all of the Determination and the absence of a DTS provision does not remove the need to satisfy the applicable Performance Requirements.

**Application for Access and Water Supplies for Firefighting**

Compliance with r.11E requires a practitioner to use the Performance Requirements (clause 3) instead of requiring strict adherence to the DTS requirements.

The practitioner must assess and record the extent of any existing access and water supplies for firefighting (this is already expected of every practitioner for every report).

The practitioner must report on the relative divergence from Tables 4.2 and 4.3 (this is already expected of every practitioner for every report to inform the client).

The practitioner must assess the acceptability of the existing arrangements with respect to the Performance Requirements in clause 3.

The practitioner needs to provide reasons which address the site specific details and the Performance Requirements. These reasons will allow the Building Surveyor to decide the merits of the proposed solution.

**The Way Forward**

Consumer, Building & Occupational Services (CBOS) supports TFS’s assessment of the current requirements, and TFS is working with CBOS to resolve any ambiguity.

Building work involving alterations and additions that are not exempted under r.11E(2) must currently be considered as a Performance Solution with respect to access and water.

Please contact us if you require advice on particular projects that might be affected.

**Use of the Form 55 – Certificate of Specialist**

For work certified under the Building Act 2016, bushfire hazard practitioners are required to issue a completed Form 55.

The Form 55 must clearly state the assessed Bushfire Attack Level, the documents relied on for the certification, and the extent to which the work will comply with the applicable Deemed-to-Satisfy requirements.

Bushfire hazard practitioners are not accredited to certify performance solutions.

**Accreditation Panel**

The next Accreditation Panel meeting is scheduled for 14th January 2019 (subject to bushfire incident management commitments). Provisional practitioners and those seeking additional levels of accreditation at this time must submit their application and supporting documentation by no later than 11th January 2019.