

23 February 2024

Mr. Angelo Di Martino
Director
ADM Architects

Email: Angelo@admarchitects.com.au

Dear Mr. Di Martino,

Re: Bushfire Assessment – 61 Sydney Road, Goulburn

Blackash Bushfire Consulting has been engaged by ADM Architects to assess the bushfire risk and requirements associated with the proposed hotel or motel accommodation, or serviced apartments at 61 Sydney Road, Goulburn NSW, legally known as Lot 5 DP 793066.

The proposal seeks approval for the demolition and construction of a single storey 42 room hotel or motel accommodation or serviced apartment development. While a very small portion of the property is identified as bushfire prone (see Figure 1), the proposed development is not located on Bushfire Prone Land and therefore no formal assessment / legislative requirements apply from a bushfire perspective.

For new development on land that is identified as being bushfire prone it must comply with the NSW RFS document *Planning for Bushfire Protection 2019* (PBP 2019) under s.4.46 of the *Environmental Planning and Assessment Act 1997* (EPA Act). The proposed development is however NOT located on 'bush fire prone land' (see Figure 1) and the legislative requirements for building on bush fire prone lands are therefore not applicable.

From a legal perspective, advice in relation to the interpretation of bushfire prone land has consistently been as follows:

1. Section 100B of the *Rural Fires Act 1997* requires a person to obtain a bush fire safety authority (BFSa) before developing bush fire prone land for a purpose referred to in subsection 100B(1). These purposes include, among other things, Motel Accommodation.
2. The expression "bush fire prone land" is defined with reference to the *Environmental Planning and Assessment Act 1979* (EPA Act)³ as follows:

Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.

3. Considering the above definition, and the mapping shown in Figure 1, the relevant question is whether “land” should be taken as a reference to a legal allotment of land or to a physical area. Put another way, the issue is whether the “land” to which section 100B relates is the Existing Lot or only the area where the development is taking place?
4. The word “land” in the expression “bush fire prone land” means “area of land” and not “lot of land”. This is for a variety of reasons, including the following:
 - a. Absent a contrary intention, or an express definition, the plain and ordinary meaning of words should be adopted. “Land” would be understood as a reference to a physical area and not a legal allotment of land on this definition.
 - b. “Land”, being part of the composite phrase “bush fire prone land” defined in the EPA Act, may also be defined with reference to the EPA Act to refer to a range of physical areas including bodies of water and buildings. This supports a flexible and practical reading of land as “area” and is contrary to a reading of land as a strict, legal “lot”.
 - c. Reading “land” as “lot” would also create practical difficulties which would undermine the purpose of the *Rural Fires Act 1997*. Words should be given meaning which best serves the purpose of the Act they appear in, and its legislative context. The map at issue has a hierarchy of types of bushfire hazard and vegetation. The contours of the map respond to vegetation types and topographical features. The intentional, granular design of the map would be best captured by the expression “area of land” and not “lot of land”.
 - d. Further, in accordance with the principal of legality, words in a statute should be construed to interfere as little with private rights possible, in the absence of express words to the contrary. Construing “land” as “lot of land” means that more land is captured by section 100B(5) of the *Rural Fires Act 1997*, increasing the amount of land which cannot benefit from the complying development provisions of any environmental planning instrument. Accordingly, rights to redevelop land are more restricted under the “lot of land” interpretation – with no express words to require it.
5. Accordingly, the proposed development is not “development of bush fire prone land” within the meaning of section 100B of the *Rural Fires Act 1997*.

Finally, case law on earlier bush fire prone land provisions under the EPA Act and environmental planning instruments confirm this interpretation. See *Hones v Ku-ring-gai Council*, although a different statutory context, the approach taken by the Court is consistent with that above.

Notwithstanding the fact the site is not bushfire prone, an assessment of the proposal and the bushfire hazard has been undertaken to determine the suitability of the proposal in the context of the bushfire risk. Based on this assessment, there is insufficient bushfire risk to warrant specific bushfire protection.

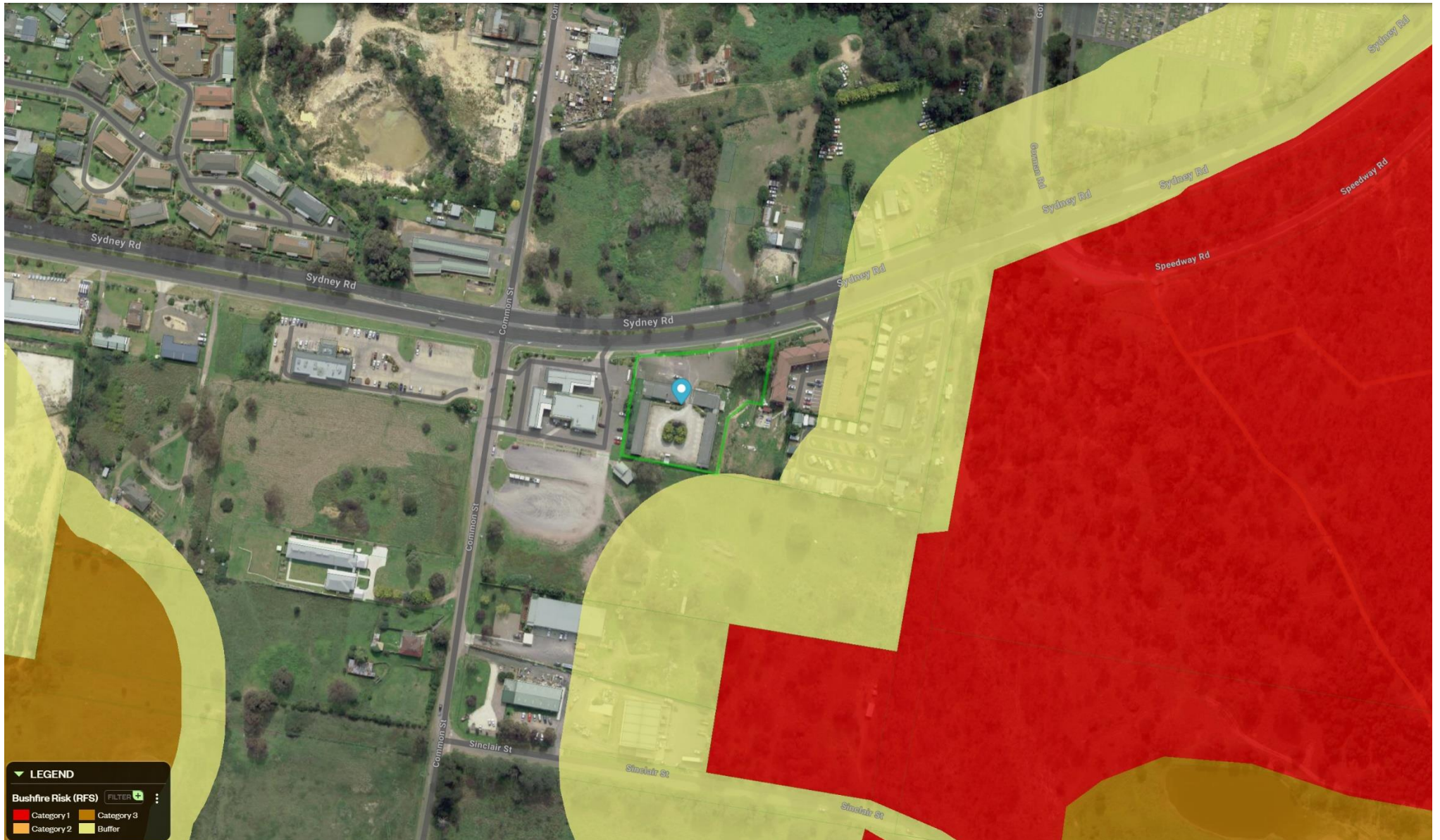


Figure 1: Bushfire Prone Land.

CONCLUSION

The proposed hotel or motel accommodation, or serviced apartments is not located on bushfire prone land and therefore no formal assessment / legislative requirements apply from a bushfire perspective. Notwithstanding, based on an assessment of the plans and the site, the proposed design is considered adequate in the context of the low bushfire risk.

As a person recognized by the NSW RFS as a qualified consultant, this assessment constitutes a 'certificate' and confirms that the proposed development conforms to all the relevant legislative requirements. Given this, there is no further assessment or consideration required in the context of bushfire.

If there are any questions or concerns, please don't hesitate to give me a call on 0418 412 118.

Yours sincerely



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