Implementing Reform of Legacy Housing Stock Against Bushfire: A Legislative Basis

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ABSTRACT

Governments face great difficulty in convincing private property owners to retrofit housing for dispersed risks such as bushfire risk, when more ‘everyday’ risks such as car accidents are considered. The hip pocket nerve is often the determinant when individuals are making tradeoffs between such risks. This article seeks to analyze these difficulties and establish a legal scheme to appropriately assist these individuals preparing against wildfire. It found that legacy housing in particular is under threat from exposure to bushfire, and that therefore a government response defined by partnerships which sought to retrofit both housing and communities would be an effective measure to enhance pre-existing housing, and community resilience to wildfire. It also argued that numerous complimentary benefits from retrofitting could be accrued for the public, the private sector, and government, and it then made policy recommendations. It concludes with an appraisal of what the rule of law can offer, and how executive and community action and engagement were key to the success of any such retrofitting project (specifically those targeting private property).

KEYWORDS

Bushfire, Legislative Scheme, Planning, Property Owners

INTRODUCTION

This paper is a legal-doctrinal analysis paper, concerned with determining the issues that pre-existing housing stock in fire prone areas face. Due to the prospective nature that the planning scheme, and the building code amendments entail, the argument is made that a further legislative impetus exists to develop some sort of scheme for housing retrofitting projects. The ‘context’ section covers the roles that spatial planning plays within the broader disaster risk reduction literature, but also in relation to the Victorian planning scheme and building codes. Specifically, it looks at the way in which spatial planning can be used as a tool to enhance community resilience. The ‘legacy housing stock’ section defines what ‘legacy housing stock’ refers to, and why this is of particular concern in relation to mitigating the damage from bushfires. It looks at the previous royal commissions into Black Saturday

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and Black Friday and what these reports indicated about housing in relation to bushfire. The ‘legal framing of the scheme’ section gives legal framing for the proposed Act, and the ‘informing the scheme’ section delves into the specifics of what would inform the requisite scheme that would be instrumental to executing the proposed intergovernmental agreement, and how such a scheme would form part of a larger wildfire exposure reduction strategy. The ‘complimentary benefits’ section covers its namesake (potential complimentary benefits accruing from the adoption of such a scheme), and the ‘policy recommendations’ section makes specific policy recommendations to develop and implement such a legislative agenda. Finally, the conclusion gives insight into what this paper covered, before critically appraising the role of law, and how it must act with executive authority, and strong community engagement if strong community participation is sought after in this scheme.

**CONTEXT**

Spatial planning is cited as a term encompassing methods, processes, and tools, at the centre which direct the location of economic, social, and environmental activities within the landscape (Europäische Kommission, 2000). To achieve these ends policymakers rely upon various different governing assemblages which includes framing instruments; information; regulatory tools; compulsory acquisition of land; voluntary ‘opt-in’ processes; taxes and charges as tools; and liability shielding (Further reading: Macintosh et al., 2013; Roach, 2016). Many of these instruments are codified through different legislative regimes, however in the state of Victoria (Australia) it is the ‘planning scheme’ which is utilized to coordinate spatial planning (Parliament of Victoria, 1988). The ‘planning scheme’ refers to the combined municipal/shire planning documents which constitute the rules and regulations around land use in each Local Government Area (‘LGA’) known as the Local planning Policy Framework; additionally, the planning scheme includes the State Planning Policy Framework, and the Victorian Planning Provisions, in addition to the overarching Metropolitan Plan ‘Plan Melbourne 2017-2050’ (Department of the Environment, Land, Water and Planning, 2017b). This combined scheme exists as legislative instruments created by the Planning and Environment Act (1987).

As such, the distribution of activities and people within the landscape is in no-small part the product of the Planning and Environment Act. After the 2009 Back Saturday Bushfires various changes to regulations and rules within The Building Act (1993) and The Planning and Environment Act were implemented to remedy some of the core issues identified as problematic within spatial planning, in regions which had been affected by the fires (Parliament of Victoria, 1995). Various recommendations were put forward to enhance the ability of communities to weather future wildfire events, however the Final Report – Summary into the 2009 Bushfires stated that “although it might be possible to reduce the number of severe fires and to be better prepared for fire, bushfire will never be eliminated from the Australian landscape”(Leonard, 2009; Teague et al., 2009, p. 1). Many of the changes to the Planning and Environment Act, the Building Act, and the (then) Building Regulations Act (2006) were implemented to control prospective development in ‘peri-urban’ regions (‘peri-urban’ refers to areas which are characterized by housing development directly abutting fire prone ecologies) slated for expansion of housing whilst at the same time having the potential to be affected by future bushfires (it is not within the scope of this paper to delve into these changes).

It is worth noting that numerous academics within the disaster risk reduction field have explored the concepts of vulnerability and resilience as they relate to what are termed ‘natural disasters. Aguirre argues that “vulnerability and resilience are part of a dialectic process taking place over time without end, in social organizations operating as complex open systems”, whilst Folke makes the case that there is a dualist-dialectic relationship between resilience and vulnerability in both ecological and other scientific fields (Aguirre, 2007; Folke, 2006). In broad terms it is suggested that vulnerability is the outcome of the total risks that face social groups at a given point in time; reconstruction, recovery and mitigation as the sum total of efforts by these groups that respond to these risks which create significant upheaval within their communities; and finally a transformed social group or synthesis
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