

Projects in bushfire-prone areas

 PRACTICE 15 October 2018

When asked to design a 'fire bunker', 'fire-shelter', 'fire refuge', or the like, it is wise to be extremely careful and risk adverse about what you say in response to such a request, and preferably in writing.

Provide a disclaimer

Include a disclaimer in all conversations, correspondence and documentation to the effect that:

While your building/dwelling has been designed to meet the Bushfire Attack Level [insert applicable rating level], it should not be considered safe to inhabit the dwelling at times of bushfire risk. It is strongly recommended that you are away from the area at times of advised risk.

It is recommended that you consult a lawyer or professional indemnity insurer on the precise wording of a disclaimer.

Make it very clear to the client in writing that you will respond to their request for a room or space they may choose to consider as a fire enclosure, but that you do not promise and cannot guarantee that any such enclosure will keep people or animals safe in a fire.

Avoid using words like 'fire-proof', 'fire bunker', 'fire refuge' or 'fire safe' lightly, in conversations, correspondence or in documents. Such words may be considered representations about future performance or quality, and unless you can prove that your use of the phrase was reasonable in all the circumstances at the time, (such as that it was based on definitive and authoritative research), your client may rely on your representation. If the representation fails in the future, you may be exposed to liability and costs for that risk eventuating. An expression such as 'fire-resistant' may be more appropriate.

Advise your client in writing that in suggesting adoption of higher standards, either equal to or better than what is mandated by the National Construction Code (NCC), you are not promising that their home will be able to withstand a fire, merely that its defences against fire attack may be better.

It is also important to clarify that fire-rated construction is not sufficient to provide refuge from bushfires. There are other issues that need to be considered such as air supply, food, etc.

Engaging a qualified or specialist consultant

The planning and building process of development in bushfire-prone areas may be onerous and difficult. Local authorities, accredited bushfire-hazard assessors and the regional, territory or state fire service should be able to assist, and we suggest you seek their advice.

You should exercise particular caution before advising on projects in bushfire-prone areas. Do not provide advice that is outside your discipline, expertise or insurance coverage. If the expertise of a fire engineer or bushfire-hazard assessor is necessary, there is no choice but to have the client engage one accordingly. Providing advice on a matter on which you are not qualified increases your risk of being sued and could render your advice uninsured.

Disclaimer

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Reference Info:

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