



FACT SHEET

- Bush Fire Prone Land

This Fact Sheet has been prepared to briefly explain the approval processes for development proposed on bush fire prone land.

WHAT IS BUSH FIRE PRONE LAND?

Bush fire prone land comprises two components, namely:

- Vegetation Classification Areas; and
- Buffer zones.

Vegetation Classification Areas are typically divided into one of two types – Class 1 and Class 2. Their classification is determined by a combination of the vegetation type's bush fire hazard and its proximity to existing and proposed development. The vegetation Classes can be further broken down into 12 subcategories which are used to determine building construction levels and the establishment of asset protection zones.

Buffer zones extend beyond the primary Vegetation Classification Area, and comprise land that may be directly affected by a bush fire as a result of ember attack or exposure to radiant heat. Buffer zones in North Sydney are either 100m or 30m in breadth depending of the vegetation classification type.

Bush fire prone land is identified on a map prepared by Council in collaboration with the NSW Rural Fire Service. In addition, land which is identified as being bush fire prone land is identified on a Planning Certificate issued under s.149 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

WHAT APPROVAL PROCESSES ARE REQUIRED IF MY PROPERTY IS IDENTIFIED AS "BUSH FIRE PRONE LAND"?

Where development is proposed on bush fire prone land, one of two-development assessment processes will apply. These two assessment processes depend on the type of development being proposed, including:

- **Integrated Development** - Development that requires a *Bush Fire Safety Authority* from the NSW Rural Fire Service (RFS) which becomes 'integrated development' under s.91 of the *EP&A Act*; and
- **Local Development** - Development that does not require a *Bush Fire Safety Authority* (most notably Class 1, 2, and 3 buildings under the Building Code of Australia) under s.79BA of the *EP&A Act* (and s.79C).

Each of these development paths are described in detail below and gain more simply in the flow chart attached to the end of this memo.

Integrated Development

Section 91 of the *EP&A Act* identify those types of developments which are deemed to be "integrated development" and therefore require an approval from a public body other than Council prior to granting of consent. In particular, s.91 identifies that additional approval is required for developments caught by, amongst other Acts, s.100B of the Rural Fires Act.



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Section 100B of the Rural Fires Act requires that a Bush Fire Safety Authority must be obtained for the following types of developments:

- a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
- development of bush fire prone land for a special fire protection purpose, including:
 - o a school,
 - o a child care centre,
 - o a hospital (including a hospital for the mentally ill or mentally disordered),
 - o a hotel, motel or other tourist accommodation,
 - o a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
 - o seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,
 - o a group home within the meaning of State Environmental Planning Policy No 9 - Group Homes,
 - o a retirement village,
 - o any other purpose prescribed by the regulations, including:
 - manufactured home estates (within the meaning of State Environmental Planning Policy No 36 - Manufactured Home Estates), comprising two or more caravans or manufactured homes, used for the purpose of casual or permanent accommodation (but not tourist accommodation),
 - sheltered workshops, or other workplaces, established solely for the purpose of employing persons with disabilities,
 - respite care centres, or similar centres, that accommodate persons with a physical or mental disability or provide respite for carers of such persons,
 - student or staff accommodation associated with a school, university or other educational establishment

Pursuant to s.91A of the EP&A Act, the consent authority is required to forward an application for integrated development to the Rural Fire Services and obtain their approval or refusal of the application and any general terms of that approval or refusal.

Pursuant to s.91A(4) of the EP&A Act, if the Rural Fires Services refuses approval of the application, Council must also refuse the application. However, nothing prevents Council from refusing a development application for reasons other than bush fire related matters, despite the issuing of approval from the Rural Fire Services.

Local Development

Section 79BA of the *EP & A Act* relates to the consultation and assessment requirements for development on bush fire prone land. In particular, it states that the consent authority must not grant development consent to a development application for any purpose (excluding matters under s.100B of the *Rural Fires Act 1997*) on bush fire prone land, unless the consent authority:

- (a) is satisfied that the development conforms to the specifications and requirements of *Planning for Bush Fire Protection 2006* produced by the NSW Rural Fire Service; **OR**



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- (b) has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire (essentially those developments proposing an alternative to meeting the specifications and requirements of *Planning for Bush Fire Protection 2006*).

Therefore, pursuant to s.79BA the consent authority is only required to consult with the RFS when a proposed development does not comply with *Planning for Bush Fire Protection 2006*. Advice received from the RFS is intended to provide a performance-based assessment to assist the consent authority in their final determination of the proposal.

What types of “local development” are required to consider Planning for Bush Fire Protection?

In practice, the scope of *Planning for Bush Fire Protection 2006* is directed to the subdivision of land and the construction of buildings of Class 1, 2 or 3 (residential development) under the Building Code of Australia where the land is identified as being bush fire prone. In addition, Class 10 buildings (ancillary non-habitable buildings) that form an addition to or extension of a Class 1, 2 or 3 building are also covered. Class 10 buildings include items such as decks, patios and attached pools and garages.

In many cases, Class 2 and 3 buildings used in conjunction with special fire protection purposes or subdivisions will not be subject to the provisions of s.79BA (see below).

For all other purposes Class 2 or 3 buildings will be subject to s.79BA consideration. As such, most s.79BA matters are likely to be Class 1A or 1B buildings. Dual occupancy dwellings, not subject of a subdivision, will therefore be covered under s.79BA when either of the dwellings is unable to meet the requirements of *Planning for Bush Fire Protection 2006*.

What types of developments are not covered by s.79BA?

As indicated, the subdivision of land for a residential or rural-residential purpose or development identified as a special fire protection purpose is not subject to s.79BA of the *EP&A Act*. These matters are considered to be integrated development and are subject to s.91 of the *EP&A Act*.

In addition, minor building elements such as antennae, clothes lines, swimming pools, fencing and awnings may be exempt development and do not get captured under s.79BA.

The principles of *Planning for Bush Fire Protection 2006* can be applied to other development types, such as commercial or industrial development. However, such development types are not subject to the legislative requirements of s.79BA or s.100B. As such, all forms of subdivision (other than for residential purposes), buildings used for special fire protection purposes and buildings of Class 4-9 and Class 10 building which are detached from the principle residence are not subject to s.79BA.



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WHAT THINGS NEED TO BE CONSIDERED IN PREPARING AN APPLICATION FOR DEVELOPMENT ON BUSH FIRE PRONE LAND?

The *Planning for Bush Fire Protection 2006* guidelines state that a **Bush Fire Assessment Report** must be submitted with all development applications on bush fire prone land that is subject to s.79BA or s.91 of the *EP&A Act*. A Bush Fire Assessment Report may comprise either:

- A completed pro-rata form contained within the Application Kit to the *Planning for Bush Fire Protection* guidelines; or
- An independent report prepared by a suitably qualified bush fire consultant.

The Bush fire Assessment Report is required to demonstrate how the proposal will satisfy the aims and objectives of the *Planning for Bush Fire Protection* guidelines, specific objectives for the development type and the performance criteria for the various bush fire protection measures.

Integrated development proposals are also required to address specified criteria in sections 4.1 and 4.2 of the *Planning for Bush Fire Protection* guidelines. Local development are also required to address specified criteria in section 4.3 of the *Planning for Bush Fire Protection* guidelines.

The performance criteria to the bush fire protection measures can be met by one of two ways:

- Use of acceptable solutions; **OR**
- Demonstrating an alternative solution which satisfies the specific objectives and performance criteria.

Anyone seeking to have an alternative solution approved, should be encouraged to submit a Bush Fire Assessment Report prepared by a qualified bush fire consultant to ensure that the alternative solution is adequately justified.

WHAT WILL COMPLETING A BUSH FIRE ASSESSMENT REPORT DO?

The preparation of a Bush Fire Assessment Report will result in essentially determining two outcomes, including:

- The establishment of Asset Protection Zones; and
- Determining building construction standards.

What are Asset Protection Zones?

Asset protection zones (APZs) are areas of managed land that are cleared of vegetation in accordance with the *Planning for Bush Fire Protection* guidelines to minimise fuel loads and provide a safety buffer between buildings and the vegetation (hazard).

The size of an APZ is based on vegetation type, slope of the land and levels of building construction. Construction standards alone do not provide sufficient protection from the impacts of a bush fire. Essentially the lower the level of construction standards provided, the greater the APZ will need to be.



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An APZ is to be established entirely on the subject site and on the hazard side of the development. However, the containment of APZs within the boundary of the development site is not always achievable. In such instances, a performance based assessment may be able to be achieved through the use of appropriate certified building materials. In exceptional circumstances, APZs may be permitted across an adjoining property/s. However, such instances will be subject to establishing an easement over the adjoining property for the purposes of APZs.

For a proposed development on bush fire prone land adjacent to forest and woodland vegetation, the APZ consists of two areas:

- **Inner Protection Area**, closest to buildings, incorporating the defensible space and for managing heat intensities at the building surface; and
- **Outer Protection Area**, for reducing the potential length of flames by slowing the rate of spread, filtering embers and suppressing the crown fire

A defensible space, a subset of the APZ, is required as a workable area in which firefighters, emergency services personnel, residents and others can undertake property protection after the passage of a bush fire.

Maintenance of an APZ is the sole responsibility of the property owner. Accordingly, the consent authority is required to ensure that a mechanism is established for the maintenance of APZs over the life of the development. This can be achieved by the incorporation of a specific condition of development consent.

Development such as pergolas, decks, garages, fences and sheds may be permitted within an APZ and within 10m of a dwelling, but only where it is constructed from non-flammable materials. This avoids providing a point of ignition or radiant heat attack within the APZ that could threaten the dwelling.

What are building construction standards?

Building construction standards for dwellings that are built on bush fire prone land are based on Australian Standard AS3959 – “Construction of Buildings in Bush Fire Prone Areas.” This Australian Standard establishes 3 levels of construction including:

- Level 1 construction for “Medium” bush fire attack;
- Level 2 construction for “High” bush fire attack; and
- Level 3 construction for “Extreme” bush fire attack.

Where the bush fire attack upon a dwelling has been assessed as being “Low” or greater than 100 metres from the hazard, no special building construction requirements shall be required.

In some circumstances more than one construction level may apply to a single dwelling. This will depend on the design and placement of the dwelling in relation to the hazard.



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Additional construction matters that should be considered in any proposal include:

- Avoiding the use of low-pitched roofs or roof designs that feature valleys or corners that may accumulate leaf matter.
- Locating LPG cylinders or fixed above ground gas supply fixtures on the side of the building away from the bush fire hazard unless they are adequately protected by non-combustible radiant heat shields.
- Sealing of garages doors to garages that are attached to a dwelling to prevent the entry of embers.

In relation to the use of timber in construction of dwellings and ancillary development, only fire retardant treated timbers may be used in the external construction of a dwelling for particular levels of construction pursuant to the requirements of AS3959 –1999 Construction of buildings in bush fire prone areas.

How are the APZs and Construction levels determined?

The extent of an APZ or building construction levels are dependant on a number of factors including:

- Type of vegetation that is the bush fire hazard;
- Distance to vegetation;
- Slope of land;
- Orientation of the allotment;
- Fire danger index of the Local Government Area;

WHAT CONSIDERATIONS ARE TO BE GIVEN TO ALTERATIONS AND ADDITIONS TO RESIDENTIAL DEVELOPMENT ON BUSH FIRE PRONE LAND?

Alterations and additions should comply with the requirements of *Planning for Bush Fire Protection 2006*. Where an existing dwelling does not comply and it is proposed to construct additions to a building, no part of the proposed additions are to be built closer to the bush fire hazard than that of the adjoining properties. Generally the following will need to be considered:

- Alterations and additions to the hazard side/s of an existing house will need to meet the relevant standards under AS3959 and part 4.10 of the *Planning for Bush Fire Protection*.
- Where an existing dwelling has not been built to the required AS3959 construction level and major renovations or additions are proposed, the entire existing building may need to be upgraded to a minimum of Level 1 construction. Where the bush fire threat for an existing dwelling is High or Extreme, other appropriate measures such as fire rated glass for windows on the hazard side will need to be considered. Bush fire building construction protection measures that require manual operation should be avoided.
- Proposed additions or alterations towards the bush fire hazard that increases the level of bush fire attack from “Extreme” to “Flame Zone” should not be approved. Building levels of construction are not a substitute for appropriate asset protection areas.
- Where level 1 or greater construction standards apply, permanent openings or screened enclosures should be fitted with corrosion resistant steel or bronze mesh with a maximum aperture of 1.8mm.

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BUILDING IN THE FLAME ZONE

What is meant by Flame Zone and what impact does this have on a development application proposal?

For a dwelling assessed as having a bush fire attack greater than that of Extreme (level 3 building construction) under AS3959, the proposal will be categorised as being within the “Flame Zone” and is therefore beyond the scope of AS3959.

Where a dwelling has been determined as being within the flame zone, and only where the application is a local development (i.e. does not apply to integrated developments), the RFS will recommend a performance-based solution to Council that exceeds that of level 3 construction of AS3959.

The consent authority is responsible for the supervision and certification of building construction compliance with consent conditions.

Flame Zone building construction requirements

Buildings to be erected in a flame zone are required to consider the following matters:

- Preference will be given to establishing APZs over construction levels;
- Building construction must not involve any exposed timber;
- Windows exposed to the hazard are to utilise a suitably performing glazing material and/or non-combustible shutters to provide protection from radiant heat and impact;
- Minimise the size and number of windows and skylights on the hazard side of the dwelling;
- Where there is no dependable reticulated water supply a dedicated accessible static water supply for fire fighting purposes shall be provided; and
- Ensure that emergency vehicles are able to gain access without stopping on the public road.

Integrated Development Path

Local Development Path

Is my property identified as bush fire prone land?

NO

YES

Does the proposed development require a Bush Fire Safety Authority from the Rural Fire Services (RFS)?

i.e. Is the development for:

- a subdivision for residential or rural residential purposes,
- a school,
- a child care centre,
- a hospital (including a hospital for the mentally ill or mentally disordered),
- a hotel, motel or other tourist accommodation,
- a home or other establishment for mentally incapacitated persons,
- seniors housing,
- a group home,
- a retirement village,
- manufactured home estates, comprising two or more caravans or manufactured homes, used for the purpose of casual or permanent accommodation
- sheltered workshops, or other workplaces, established solely for the purpose of employing persons with disabilities,
- respite care centres, or similar,
- student or staff accommodation associated with a educational establishment

YES

NO

Does the application involve construction of a new dwelling or external alts or adds to a building used for a dwelling?
(excludes ancillary structures such as carports, garages, detached from the subject dwelling)

YES

NO

Prepare Bush Fire Assessment Report
(Alternative solutions to "acceptable solutions" must be provided).

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(Alternative solutions to "acceptable solutions" must be provided).

Refer to RFS as "Integrated Development"

Does the development comply with the acceptable solutions within the *Planning for Bush Fire Protection 2006*?

RFS replies to Council with its recommendation

NO

YES

Did RFS grant approval?

Refer Application to RFS for advice

Does RFS recommend approval?

NO

YES

NO

YES

Council must refuse DA.

Council continues assessment of DA incorporating any conditions recommended by RFS.

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