



Planning circular

PLANNING SYSTEM

Development on bush fire prone land

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Considering bush fire risk in land-use planning and development on bush fire prone land

This circular outlines the land use planning considerations that apply to development on bush fire prone land, including its application to (but not limited to) regional strategic plans, district strategic plans, precinct and master plans, place-based strategies, local strategic planning statements, and local planning (including Planning Proposals), development applications and complying development.

Introduction

In 2020, the NSW Bushfire Inquiry (the Inquiry), led by Professor Mary O’Kane AC and Dave Owens APM, reviewed the causes of, preparation for, and responses to the 2019-20 bush fires. The Inquiry made 76 recommendations, including Recommendation 27 which states *“That Government commit to shifting to a strategic approach to planning for bush fire, and develop a new NSW Bush Fire Policy similar to the NSW Flood Prone Land Policy in order to accommodate changing climate conditions and the increasing likelihood of catastrophic bush fire conditions; to build greater resilience into both existing and future communities; and to decrease costs associated with recovery and rebuilding”*.

The NSW Department of Planning, Housing and Infrastructure (the Department) is working with the NSW Rural Fire Service (RFS) to implement the NSW Government’s response to the Inquiry.

This circular provides advice to councils and other planning authorities about land use planning and development assessment on bush fire prone land (BFPL). This includes information on:

- existing planning policies
- further advice on bush fire related matters for planning authorities.

A Strategic Approach to Considering Risk

The Inquiry recommends that planning authorities move towards bush fire resilient communities through changes to the planning system by applying a risk-based approach in strategic land use planning (Final Report of the NSW Bushfire Inquiry Report, 2020, p.193) The Department and the RFS are working to further integrate bush fire risk considerations into

strategic and other land-use planning processes, including supporting upfront consideration of bush fire risk in regional strategic plans, district strategic plans, precinct and master plans, place-based strategies, local strategic planning statements, and local planning (including planning proposals).

Bush Fire Policy

To support the transition to a more strategic approach to considering bush fire risk, the Department has prepared a Bush Fire Policy for Land Use Planning (the Policy).

The Policy seeks to protect life and safety and enhance existing and future communities’ bush fire resilience by avoiding and minimising bush fire impacts on property and environment. This policy provides objectives and strategic planning principles to guide planning authorities when making merit-based decisions on or near bush fire prone land.

The objectives of the Policy are to:

- make sure areas identified for population growth and development are planned and designed improve resilience and minimise the risk to life and property
- consider and plan for the impact of changing climate conditions on bushfire behaviour in areas identified for population growth and development
- make sure adequate evacuation capacity and capability for existing and future communities in the event of a bush fire.

The Department is also continuing to work with the NSW Reconstruction Authority to define the relationship between the BFPL package and the State Disaster Mitigation Plan and any relevant Disaster Adaptation Plans.

Further Guidance

Comprehensive consideration of bush fire in the planning system requires a sound understanding of the hazards and risks, as well as consideration of strategic land-use planning and development controls that will adequately mitigate these identified risks. The [National Disaster Resilience Strategy](#) (COAG 2011) and the [Second National Action Plan](#) (2023), developed to implement the [National Disaster Risk Reduction Framework](#) (2019), provide additional guidance about these hazards and risks.

Planning for Bush Fire Protection 2019

Under section 4.14 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a consent authority cannot grant consent for development on BFPL unless the consent authority is satisfied that the development conforms to the relevant specifications and requirements of the [Planning for Bush Fire Protection 2019](#) (PBP) as prescribed by section 271 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).¹

The specifications and requirements outlined in PBP include asset protection zones, access, landscaping, water supply, building design and construction and emergency management arrangements.

Chapter 4 Strategic Planning of PBP sets out bush fire principles and considerations relevant to strategic planning.

Identifying Bush Fire Prone Land (BFPL)

Councils are required to identify BFPL on a map prepared under section 10.3 of the EP&A Act and certified by the Commissioner of the RFS (the Commissioner).

BFPL mapping identifies bush fire hazard and classifies vegetation types as Vegetation Category 1, Vegetation Category 2, Vegetation Category 3 or Buffer (100m around Category 1; 30m around Category 2 and 3).

BFPL mapping can be accessed via the [NSW Planning Portal Spatial Viewer](#) and may also be available on the relevant council's website. The RFS also provides an [online property search tool](#) that identifies if the land is bush fire prone.

The BFPL maps are required to be re-certified at least every five years. The Commissioner may amend the maps at any time.

If a property is bush fire prone it will be identified on the property's planning certificate that can be obtained from the relevant council.

Bush Fire Attack Level (BAL) Rating

The BFPL maps are the trigger for the consideration of bush fire protection measures for new development. For most development on BFPL the

BAL will need to be assessed to demonstrate compliance with PBP.

The BAL rating is the Australian standard for measuring the threat of a proposed development's exposure to ember attack, radiant heat, and direct flame contact. The rating also determines the construction and building requirements necessary to protect homes in bush fire prone areas.

The BAL rating is defined by applying the method outlined in Appendix 1 of PBP. This Appendix replaces Section 2 of AS 3959 for the purposes of NSW G5.2(a)(i) of Volume One and NSW 3.10.5.0(c)(i) of Volume Two of the NCC. It must also be used to determine the relevant BAL for the purposes of the NASH Standard under NSW 3.10.5.0(d)(i) of Volume Two of the NCC. Appendix 1 sets out the methodology that must be used to determine BALs.

Note: A recognised Bushfire Planning and Design (BPAD) consultant can assist with determining the BAL. See the Fire Protection Association of Australia website for further information at www.fpaa.com.au.

Council liability in respect to bush fire prone land

Section 733(2A) of the *Local Government Act 1993* exempts councils from liability for any advice furnished, or anything done or omitted to be done, in good faith insofar as it relates to the likelihood of land being subject to the risk of bush fire or the nature or extent of any such risk.

Development on Bush Fire Prone Land

Planning Proposals

Section 9.1, Local Planning Direction 4.3 Planning for Bush Fire Protection requires that for planning proposals where in proximity to (or within 700 metres) to land mapped as bush fire prone land as certified by the Commissioner of the RFS under section 10.3 of the EP&A Act, the planning proposal authority must consult with the Commissioner and consider and apply (as relevant) any feedback provided by the RFS and include a copy of that feedback with the submission for a gateway determination. The planning proposal must consider and apply the policy objectives and strategic planning principles of the Policy, and consider and apply (as relevant) Chapter 4 'Strategic Planning' of PBP.

Bush Fire Safety Authority (BFSa)

Integrated development under section 4.46 of the EP&A Act includes development that, in order for it to be carried out, requires development consent and a BFSa under section 100B of the *Rural Fires Act 1997* (RF Act).

The Commissioner may issue a BFSa for a subdivision of land that could lawfully be used for

¹ Some exceptions apply under section 4.14 of the EP&A Act.

residential or rural residential purposes, or development of land for special fire protection purposes (SFPPs). SFPPs are listed in section 100B(6) of the RF Act. Additional SFPPs are listed in section 47 of the *Rural Fires Regulation 2022* (RF Regulation).

Note: *SFPPs include land uses such as schools, hospitals, nursing homes, tourist accommodation, certain manufactured home estates, sheltered workshops, respite care centres, student or staff accommodation associated with a school, university or other educational establishment and community bush fire refuges.*

An application to the Commissioner for a BFSA must address the matters in section 45 of the RF Regulation, including an assessment of the extent to which the development conforms with or departs from the PBP.

A BFSA is not required for carrying out internal alterations to a building, development that is excluded under section 46 of the RF Regulation or complying development.

Assessment of development applications on bush fire prone land – s4.14 EP&A Act

Development applications for development on BFPL should include a bush fire assessment report.

To determine whether a development proposal conforms with the specifications and requirements of PBP a consent authority can either undertake their own assessment or rely on a BAL certificate provided from a qualified BPAD consultant in bush fire risk assessment. This includes where a performance solution under PBP is proposed. Consultation with the RFS is not required for development proposals that conform with PBP and councils should not refer such proposals to the RFS.

If, following assessment of the proposed development, the consent authority forms the view that the development does not conform to the relevant specifications and requirements of PBP, the consent authority may still grant development consent, but only if it has consulted with the RFS regarding measures to be taken to protect persons, property and the environment from bush fire.

Exclusions from s4.14 EP&A Act Bush Fire Requirements

Under section 272 of the EP&A Regulation, development on BFPL in an urban release area (URA) is excluded from assessment under section 4.14 of the EP&A Act, if the consent authority has been given a:

- BFSA for the subdivision of the land under section 100B of the RF Act within the past five years and is still in force
- A copy of a plan of subdivision that shows BALs for the land and contains a notation from the RFS that the plan was considered in determining the application for the BFSA

- A Post-Subdivision BAL Certificate.

The exclusion applies to URAs identified on the 'Bush Fire Planning—Urban Release Area Maps' which are approved by the Secretary of the Department.

The exemption allows for the construction of dwelling houses, dual occupancies, and secondary dwellings (or buildings ancillary to such) on land in the mapped area, providing certain requirements are met.

The consent authority must also be satisfied that the proposed development complies with standards, concerning matters such as setbacks and asset protection zones, as specified in the BFSA.

Additional information on the subdivision of URAs can be found on the RFS website.

https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0014/23900/Guide-Subdivision-URA-on-BFPL.pdf

Note: *A Subdivision BAL Plan will not be approved by the RFS if it includes land that cannot support development of BAL-29 or less.*

Consideration of bush fire under section 4.15 of the EP&A Act

When determining a development application under section 4.15 of the EP&A Act, a consent authority must consider bush fire hazard or risk to the extent relevant to the development as part of their assessment and may seek the advice of the RFS even where a site is not mapped as BFPL.

This is in recognition that the BFPL mapping is not a detailed measure of bush fire hazard, and development of other land may still require consideration of bush fire risk.

Complying development

Development of BFPL will only be complying development for the purposes of a complying development code under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) if:

- the development is not carried out on land that is BAL-40 or BAL-FZ
- in the case of development specified for the Rural Housing Code—any associated access way that is located on grasslands or land that is not BAL-40 or BAL-FZ

Development of BFPL will only be complying development for the purposes of Chapter 3 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* ([Transport and Infrastructure SEPP](#)) if

- a BAL Certificate is obtained from the council, or a person recognised by the RFS as a suitably qualified consultant in bush fire risk assessment, stating in accordance with the PBP that the development is not located in BAL-40 or BAL-FZ

- the development is carried out on grasslands, and the development conforms to the specifications and requirements of Table 7.9a of PBP.

Specific development standards are included under the Codes SEPP and Transport and Infrastructure SEPP and apply to complying development carried out on BFPL. This includes development having direct access to a public road, be connected to mains electricity, a reticulated water supply or having a water tank of a specific capacity.

Additional information on complying development on BFPL can be found on the Department's website. [Guide to Complying Development – August 2023 \(nsw.gov.au\)](https://www.planning.nsw.gov.au/sites/default/files/2023-03/development-referrals-guide.pdf)

Note: Development on land in BAL-40 or BAL-FZ is not complying development.

National Construction Code (NCC) requirements

Building work on BFPL must also comply with the requirements of the National Construction Code (NCC). The NCC contains the technical provisions for the design and construction of buildings. Under the Deemed to Satisfy provisions of the NCC, building work on BFPL must comply with Australian Standard 3959:2018 Construction of buildings in bush fire-prone areas (AS 3959) or the National Association of Steel Framed Housing (2021) Steel Framed Construction in Bush Fire Areas (NASH Standard). This does not apply however in BAL-FZ, or when modified by the specific conditions of the relevant development consent.

Housing SEPP

Development for housing for seniors and people with a disability under State Environmental Planning Policy (Housing) 2021 (Housing SEPP) on BFPL must comply with the requirements of PBP. A BFSA may be required where the development is local or regional development.

State Significant Development and State Significant Infrastructure

SSD and State Significant Infrastructure (SSI) are not subject to BFSA requirements, as per section 5.23(1)(f) of the EP&A Act. However, given the scale of SSI and SSD projects, it is suggested that the development standards, aims and objectives for designing and building on BFPL as specified in PBP be considered. Seeking advice from the RFS is encouraged.

Further information

Attachment A to this circular summarises the roles and responsibilities in bush fire planning.

PBP and the property search tool are available from the RFS website:

<http://www.rfs.nsw.gov.au>

The NSW Planning Portal spatial viewer is available at:

<https://www.planningportal.nsw.gov.au/spatialviewer/>

The DPE Development and Referrals Guide provides further information regarding development application requirements, including bush fire referrals:

<https://www.planning.nsw.gov.au/sites/default/files/2023-03/development-referrals-guide.pdf>

For further information please email questions to stakeholder.engagement@planning.nsw.gov.au

Department of Planning, Housing and Infrastructure circulars are available at [planning.nsw.gov.au/circulars](https://www.planning.nsw.gov.au/circulars)

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Appendix A

Roles and Responsibilities in Bush Fire Planning

Agency	Role & Responsibility
Department of Planning, Housing and Infrastructure	<p>Governor of New South Wales Makes State Environmental Planning Policies.</p> <p>Minister for Planning Recommends State Environmental Planning Policies be made by the Governor. Takes steps to consult on proposed State Environmental Planning Policies. Makes regional strategic plans and district strategic plans. Makes local environmental plans. Makes Ministerial directions (also known as local planning directions).</p> <p>Planning Secretary Prepares regional strategic plans. Prepares and, in the Six Cities Region, makes district strategic plans. Prepares planning proposals if directed by the Minister.</p> <p>Department Exercises functions of the Minister and Secretary under delegation. Responsible for revising and maintaining PBP in coordination with the RFS. Responsible for general State and regional strategic planning activities that give effect to Government policies and priorities, eg State-led rezoning, place based strategies, and Special Activation Precincts. Provides guidance on strategic planning activities to councils.</p>

Rural Fire Service	<p>Commissioner</p> <p><u>Designates BFPL.</u></p> <p><u>Issues BFSAs under section 100B of the RF Act.</u></p> <p>Service</p> <p>Responsible for revising and maintaining PBP in coordination with the Department.</p> <p>Publishes BFPL mapping (including updated mapping) on their website.</p> <p>Recognises suitably qualified consultants for the purposes of issuing a certificate in accordance with Section 4.14(1)(b) of the EP&A Act, Clause 272 of the EP&A Regulation and for the purposes of issuing a post-subdivision BAL certificate to support complying development.</p> <p>Provide advice to the relevant planning authority for strategic planning matters and SSD/SSI on BFPL.</p>
Local councils	<p>Responsible for planning proposals and local strategies e.g. preparation of LEPs, Local Strategic Planning Statements.</p> <p>Provide proponents with written advice relating to planning proposals.</p> <p>Make LEPs when designated as local plan-making authorities.</p> <p>Consent authority for local development on BFPL (<i>Note: Where local planning panels are constituted, the functions of the council as a consent authority are exercisable by a local planning panel or an officer or employee of the council to whom the council delegates those functions</i>).</p>