



BUSHFIRE PLANNING REFORMS

Practice Note	Issued by the Corporate Communication Unit
Issued	30 May 2014
Related	PS12-003 and PS 13-003 and PS 13-006

Changes to the assessment of development on bushfire prone land and bushfire prone land mapping in urban release areas

Introduction

The NSW Government has introduced bushfire planning reforms to:

- enable bushfire risk assessment to be addressed just once at subdivision stage, removing the need for further bushfire risk assessment at the building stage
- enable the Rural Fire Service (RFS) to update bushfire prone land maps.

By enabling the RFS to update bushfire-prone land maps, the reforms help to ensure development decisions will be made using up to date information. Where land is no longer bushfire prone, this will eliminate unnecessary assessments.

The reforms have been jointly developed by the Department of Planning and Environment and the RFS. The reforms uphold the underlying principle of bushfire planning legislation to protect life and ensure property is not compromised. Safety is our first priority.

Where the changes will apply

The changes are proposed to initially only apply to land in urban release areas in 40 local government areas and will not affect development in existing subdivisions in bushfire prone areas.

The changes are proposed to apply to land zoned for residential use in high growth areas, where new subdivision or Greenfield development is planned. This includes land in the Sydney metropolitan area (including be excluded from the bushfire risk assessment requirements contained in that section.

Western Sydney), Illawarra, the Hunter and other high growth areas.

The urban release area maps are being finalised and will soon be made available at www.planning.nsw.gov.au/bushfire-protection

The urban release area maps may be amended to include new zoned residential release areas in the future.

The changes are optional

The changes are not mandatory. Applicants submitting development applications for subdivision do not have to take up the opportunity to streamline the assessment process for future dwellings on that land.

The existing bushfire provisions will continue to apply where a landowner/developer does not take up the new process.

Summary of legislative changes

The *Environmental Planning and Assessment Amendment Act 2012* (2012 Amendment Act) contained two changes relating to the assessment of development of bushfire prone land which commenced 1 March 2013, being:

1. Amendment to s79BA of the *Environmental Planning and Assessment Act 1979* (EP&A Act)

The 2012 Amendment Act inserted a new provision into section 79BA of the EP&A Act (sub-section 79BA(1C)) to allow the regulations to identify development which may

To give effect to this change, the Environmental Planning and Assessment Amendment (Bushfire Prone Land) Regulation 2014 amended the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) to identify certain development which may be excluded from the requirements of section 79BA and sets out the requirements for the exclusion to apply.

An amendment was also made to the Rural Fires Regulation 2013 to require additional information to be submitted with an application for a bushfire safety authority under section 100B of the *Rural Fires Act 1997* where bushfire risk is to be addressed comprehensively at the subdivision stage. This amendment was contained in the Rural Fires Amendment (Bushfire Safety Authorities) Regulation 2014.

2. Amendment to s146 of the EP&A Act

The 2012 Amendment Act also inserted a new sub-section into section 146 of the EP&A Act (sub-section 146(2A)) to allow the Commissioner of the RFS to review bushfire prone land maps.

The Environmental Planning and Assessment Amendment (Bushfire Prone Land) Regulation 2014 identifies the circumstances in which this may occur.

The Commissioner is required to notify the relevant council of any changes to the bushfire prone land map affecting their area.

The Environmental Planning and Assessment Amendment (Bushfire Prone Land) Regulation 2014 and the Rural Fires Amendment (Bushfire Safety Authorities) Regulation 2014 commenced late May 2014.

Exclusions to Section 79BA assessment

This section explains when and how exclusions to Section 79BA assessment can be sought.

Development types and land the exclusions apply to

Section 79BA of the EP&A Act has been amended to provide the opportunity to exclude development from the application of that section under certain circumstances. These

circumstances are now prescribed in Clause 273 of the EP&A Regulation.

The reforms exclude from bushfire assessment under section 79BA of the EP&A Act development that comprises the erection of a building that is, or is ancillary to, the following:

- a dwelling house
- a dual occupancy
- a secondary dwelling.

The exclusion only applies where the land proposed to be developed is shown as being within an urban release area on the Bushfire Planning – Urban Release Area Map.

Further, the development application for the dwelling must also be accompanied by a Post-Subdivision Bushfire Attack Level Certificate and the proposed development must comply with the relevant requirements on the Bushfire Safety Authority under section 100B of the *Rural Fires Act 1997* (BFSA). These requirements are discussed further below.

Where these requirements are met, such development applications for dwelling houses, dual occupancies and secondary dwellings will not be subject to bushfire risk assessment under section 79BA.

Seeking an exclusion from consideration under section 79BA is optional.

How the system worked prior to the reforms

Under the old system, development on bushfire prone land triggered multiple assessments at subdivision and building stages.

Development involving the subdivision of bushfire prone land that could lawfully be used for residential or rural residential purposes is generally the subject of an assessment and authorisation process (the BFSA) under the section 100B of the *Rural Fires Act 1997*. This usually occurs through the process for integrated development under Section 91 of the EP&A Act, as part of a development application for subdivision.

Notwithstanding this bushfire risk assessment at subdivision stage, a development application for the erection of buildings on the subdivided land was also subject to bushfire risk assessment requirements in section 79BA of the EP&A Act.

The requirement for assessment of bushfire risk at building stage often involved a duplication of matters which had been considered by the RFS at subdivision stage.

Under the reforms, the requirements for bushfire risk assessment at the subdivision stage remain the same. It is still necessary to obtain a BFSA and development consents (if applicable).

However, the reforms exclude the development types listed above from assessment under section 79BA at the building stage. This can only occur where the bushfire risk assessment at subdivision stage considered the future erection of dwellings on the land.

The benefits of seeking an exemption

The changes work within the existing regulatory framework to allow additional assessment of bushfire risk at subdivision stage.

This additional assessment includes consideration, as part of the BFSA application, of a plan (a BAL Plan) showing the proposed bushfire attack levels that will apply to the land following completion of clearing as part of the subdivision works and proposed setbacks for future dwellings.

The assessment done at subdivision stage will address bushfire risk for future development in accordance with Planning for Bushfire Protection and identify construction requirements for future houses.

This approach aims to reduce the need for further assessment of bushfire risk for future residential development.

Post-Subdivision Bushfire Attack Level Certificate and other requirements for exclusion from Section 79BA

Requirements for Exclusion from Section 79BA of the EP&A Act

As noted above, Clause 273 of the EP&A Regulation allows an exclusion from consideration under Section 79BA of development applications for dwellings, dual occupancies and secondary dwellings in urban release areas.

In order for this exclusion to apply, certain requirements must be met. These are:

- The consent authority has to be provided with a BFSA under section 100B of the *Rural Fires Act 1997* for the subdivision of the land that is no more than five years old and in force when the development application for the proposed development is lodged.
- The consent authority has also to be provided with a Post-Subdivision Bushfire Attack Level Certificate accompanied by a BAL Plan that is noted as having been considered by the RFS when determining the application for the BFSA.

The Post-Subdivision Bushfire Attack Level Certificate (Post-Subdivision BAL Certificate) must certify that, when issued, the bushfire attack level for that part of the land on which the development is proposed to be carried out corresponds to the bushfire attack level shown on the BAL Plan and that the land is not in bushfire attack level-40 (BAL-40) or the flame zone (BAL-FZ).

- The consent authority is to be satisfied that the proposed development complies with standards specified in the BFSA that are relevant to the development.

Therefore, the exclusion scheme requires that the consent authority checks that:

- The relevant BFSA has been issued for the subdivision of the land - within five years from the date of lodgement of the development application for dwelling house, dual occupancies or secondary dwellings and that it is still in force.
- The proposed development complies with the relevant standards (concerning setbacks, asset protection zones, provision of water supply or other matters) specified in the BFSA.
- A Post-Subdivision BAL Certificate has been produced that certifies that the BAL for the land corresponds with that in the BAL Plan and that the land is not in BAL-40 or BAL-FZ.
- The BAL Plan attached to the Post-Subdivision BAL Certificate contains a notation that it was considered by the RFS when the application for the BFSA was determined.

In summary, an exemption requires a council to consider two documents, being the BFSA

and the Post-Subdivision BAL Certificate as part of its assessment of the development application.

It is anticipated that this information should generally already be held on council files for the original subdivision application.

Where the requirements for an exclusion are met, an assessment of bushfire issues under section 79BA(1) of the EP&A Act 1979 is not required to be undertaken.

Where the requirements are not met, section 79BA assessment requirements will continue to apply. This includes for development on land that retains a very high bushfire risk (BAL-40 and Flame Zone).

An exclusion can be available for five years from the date of issue of the BFSA (whilst the BFSA remains in force).

Post-Subdivision Bushfire Attack Level Certificate

As noted above, a Post-Subdivision BAL Certificate is required for development to be excluded from the application of section 79BA.

An applicant can request a recognised consultant or the RFS to issue a Post-Subdivision BAL Certificate. The regulation does not mandate when the certificate is to be issued. Although in practice, the most appropriate time to issue the certificate is at the Subdivision Certificate stage.

The Post-Subdivision BAL Certificate certifies the bushfire attack levels of the land. For the exclusion to apply, the bushfire attack level on the Post-Subdivision BAL Certificate for that part of the land proposed to be developed must be consistent with the bushfire attack level on the BAL Plan that was considered by the RFS when the application for the BFSA was determined. In addition, the Post-Subdivision BAL Certificate must identify that the bushfire attack level for that part of the land to be developed is not BAL-40 or BAL-FZ.

Obtaining a Post-Subdivision BAL Certificate is an optional process; it is not a mandatory requirement.

In addition to certifying the above matters, the Post-Subdivision BAL Certificate needs to include the following information:

- the property address – Lot & DP
- the date of issue

- identifying particulars of the relevant BFSA for the land
- identifying particulars of the relevant development consent for the land (if applicable)
- details of the person who issued the certificate.

The Post-Subdivision BAL Certificate also has to be accompanied by the BAL Plan which contains a notation from the RFS showing the plan was considered when the application for the BFSA was determined.

A subdivision may be the subject of a single a Post-Subdivision BAL Certificate or multiple Post-Subdivision BAL Certificates covering only parts of the land. However, it is likely to be more cost effective to obtain a Post-Subdivision BAL Certificate applying to larger number of lots..

Recognised consultant

The Regulations allow the RFS or a recognised consultant to issue a Post-Subdivision BAL Certificate.

A recognised consultant is a person recognised by the RFS as a qualified consultant in bushfire risk assessment.

Recognised consultants are published on the RFS website. Recognised consultants can also issue bushfire attack level certificates for the purpose of complying development.

If a Post-Subdivision BAL Certificate has been issued by a recognised consultant, the certificate must be forwarded to the RFS within seven days of issue. This will enable the RFS to undertake audits of certificates, and track the take up of the reforms.

Urban release areas

The bushfire planning reforms only apply to urban release areas that are mapped. Urban release areas have been defined in the EP&A Regulation at clause 273(8) as land that is shown as being within an urban release area on the series of maps marked Bushfire Planning – Urban Release Area Map.

The Department of Planning & Environment's Secretary determines urban release areas. These maps are then notified in the Government Gazette. They are held in the head office of the Department of Planning &

Environment and will also published on the Department of Planning & Environment' website.

The proposed Urban release areas were identified from:

- a LEP as an Urban Release Area
- Metropolitan Development Program urban release areas
- Major Project Approvals
- LEP Amendment (Planning Proposal)
- a released or zoned precinct in the Sydney Growth Centres.

The land criteria determined that it must be:

- zoned Residential
- generally greater than 25 hectares
- less than 80 per cent developed

It is proposed that the changes will apply to 40 local government areas. Relevant councils have been consulted on the proposed urban release area maps. The maps are currently being finalised. When finalised, the maps and a list of councils affected by the changes will be available at www.planning.nsw.gov.au/bushfire-protection

Additional information for Bushfire Safety Authority applications

Amendment to Clause 44 of the Rural Fires Regulation 2013

To allow for a single bushfire risk assessment to be undertaken at subdivision stage, the Rural Fires Regulation 2013 has been amended to allow the RFS to require additional information to be provided where the application is for a subdivision for the purpose of dwelling houses, dual occupancies or secondary dwellings on land that is within an urban release.

The additional information required includes:

- The BAL Plan – as noted above, this is a plan of subdivision that shows bushfire attack levels that will apply to the property on completion of clearing proposed to be carried out as part of subdivision works and proposed setbacks for future buildings (including asset protection zones).
- Any other information concerning the proposed development which the Commissioner may require.

This additional information need only be provided where the applicant for the BFSA has

specified that they wish for the RFS Commissioner, when determining the BFSA, to consider whether it would be appropriate for an exclusion from 79BA to apply to the future erection of dwelling houses, dual occupancies or secondary dwellings on the land.

This will allow the BFSA to reference the BAL Plan, which will be certified by the Post-Subdivision Post-Subdivision BAL Certificate.

Process and practice

Development Applications for Subdivision

In most instances, development involving the subdivision of bushfire prone land that could lawfully be used for residential or rural-residential purposes will require a BFSA under section 100B of the *Rural Fires Act 1997* and development consent under the EP&A Act.

As part of this development application and assessment process, a bushfire assessment is undertaken and a determination is usually made as to the bushfire attack levels of the land and the need for limitation or restrictions required to be placed on property e.g. Asset Protection Zones, setbacks, restrictions as to users, etc.

Such development will generally be integrated development under section 91 of the EP&A Act.

As part of the integrated development processes under the EP&A Act, the consent authority is required to obtain from the RFS the General Terms of Approval (GTAs) which the RFS propose to grant in relation to the development (if so minded). The terms of any development consent granted by the consent authority are required to be consistent with the GTAs.

Generally, the RFS will issue the GTAs and BFSA at the same time (in a single document).

As the reforms now require matters relating to future dwellings to be considered at subdivision stage as part of the BFSA, some corresponding changes to practice in the issue of the BFSA from the RFS will occur.

The process for subdivision development applications under the changes is illustrated at Figure A on page seven.

Changes to format of GTAs/BFSA

In order to reflect the proposed reforms, where the applicant wishes an exclusion from 79BA to be available in the future, the BFSA is proposed to now include:

- matters that are required to be complied with prior to release of a Subdivision Certificate
- the BAL Plan
- matters required to be complied with for future residential development.

The proposed bushfire attack levels on the BAL Plan attached to the BFSA, will need to be certified in any future Post-Subdivision BAL Certificate for an exclusion from section 79BA to apply.

Subdivision Certificate applications and the issue of Post-Subdivision BAL Certificates

If you are applying for a Subdivision Certificate, you may include a Post – Subdivision BAL Certificate.

This is not mandatory. If a Post-Subdivision BAL Certificate is not included, it simply means that future applications for dwellings will need to be assessed under section 79BA, or an applicant may provide a Post-Subdivision BAL Certificate for the land at a later date.

Where a Post –Subdivision BAL Certificate is included as part of the Subdivision Certificate application, this will be registered on council's application tracking system.

Future development applications for dwellings

Where a Post-Subdivision BAL Certificate has been issued for a subdivision, future development applications for the erection of dwelling houses, dual occupancies or secondary dwellings will be exempt from s79BA - subject to meeting the requirements set out at clause 273 of the EP&A Regulation.

The Post-Subdivision BAL Certificate must already be on council files or be lodged with the development application.

To seek the exemption, the applicant is required to submit the following to the consent authority with its development application:

- A copy of the Post-Subdivision BAL Certificate, accompanied by the BAL Plan that contains a notation that it was

considered when the application for the BFSA was determined.

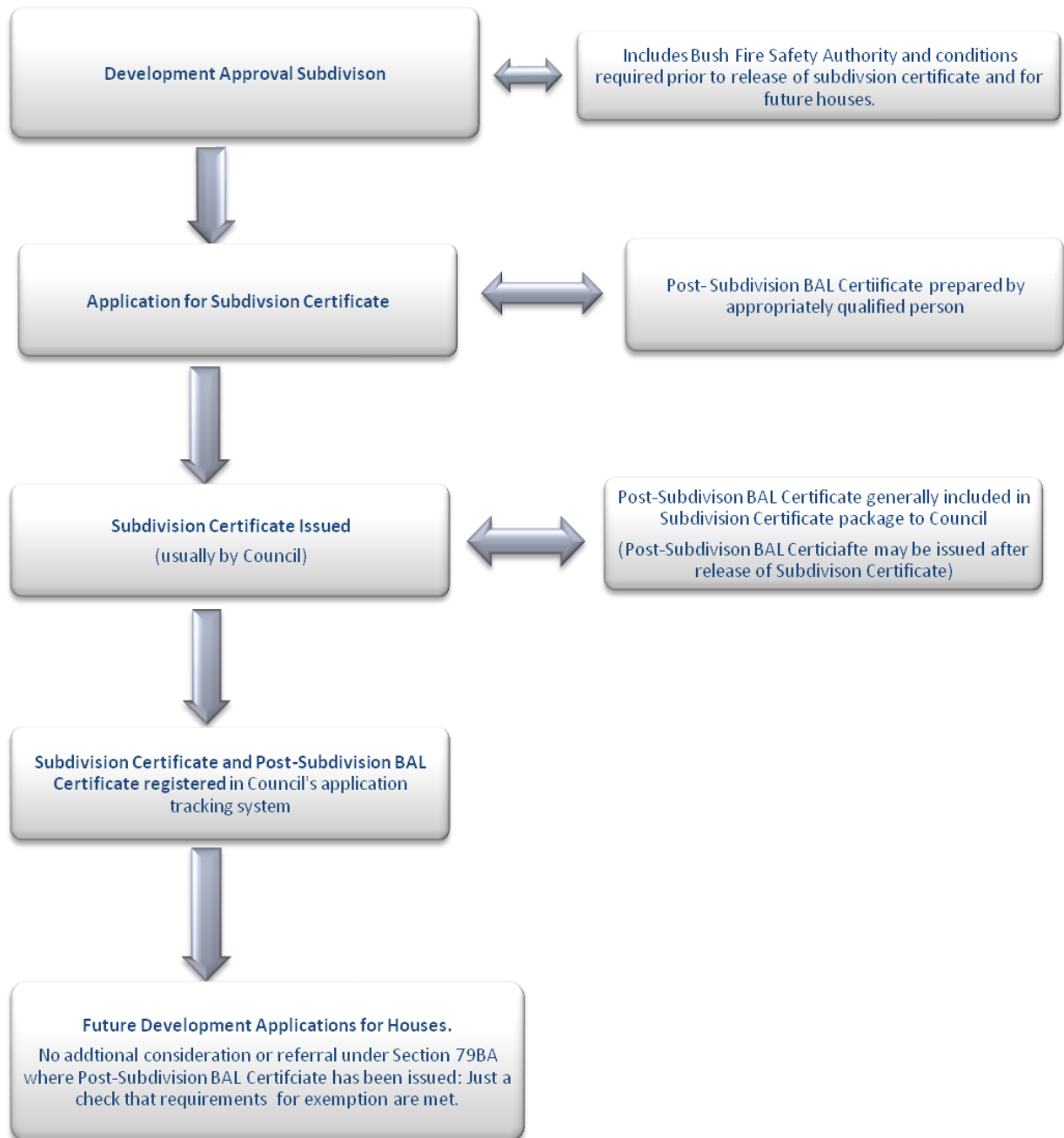
- A copy of the relevant BFSA issued for the subdivision of the land – it needs to have been issued within five years from the date of lodgement of the development application and still be in force.

The consent authority will need to:

- Review the BFSA issued for the subdivision of the land – ensuring it has been issued within five years from the date of lodgement of the development application for the dwelling and that it is still in force.
- Be satisfied that the proposed development complies with the relevant standards (concerning setbacks, asset protection zones, provision of water supply or other matters) specified in the BFSA.
- Check that a Post-Subdivision BAL Certificate has been produced that certifies that the BAL for the land corresponds with that in the BAL Plan and that the land is not in BAL-40 or BAL-FZ.
- Check the BAL Plan attached to the Post-Subdivision BAL Certificate to ensure it contains a notation that it was considered by the RFS when the application for the BFSA was determined.

Figure A: Process for issuing a Bushfire Attack Level Certificate – urban release areas

This flow chart outlines the new process available to applicants to reduce the need for multiple assessments.



Updating Bushfire Prone Land Maps

The requirement for bushfire risk related assessment and authorisations for development is triggered by the recording of the land as bushfire prone land on the bushfire prone land map under section 146 of the EP&A Act.

In an urban release area where development is occurring rapidly, bushfire prone land maps can be out of date, if they are not regularly updated and do not respond to change to risk as development occurs. This results in additional assessment requirements adding time and cost to housing development.

Previously, bushfire prone land maps were updated by councils at least every five years and certified by the RFS. The reforms now allow the RFS to directly update bushfire prone land maps for land in an urban release area. Where land is no longer bushfire prone, this will eliminate unnecessary assessments.

Process to amend Bushfire Prone Maps

The process to amend bushfire prone land maps is illustrated at Figure B on page nine.

The EP&A Regulation at clause 273A permits the Commissioner of the RFS to review the designation of land on the Bushfire Prone Land Map in relation to an Urban Release Area and revise the map:

- so that land on which the risk of bushfire is low is no longer recorded as bushfire prone land
- so that land on which the risk of bushfire is not low is recorded on the map as bushfire prone land

- to correct or record changes to other information relating to land that is shown on the map.

In forming this view, the Commissioner may have regard to a Post-Subdivision BAL Certificate or any other evidence that the Commissioner considers to be relevant.

An applicant can lodge an application to update a bushfire prone land map at any time. The application does not need to be linked to a development application.

As an example, an applicant can submit information to the RFS demonstrating that vegetation has been cleared as part of an approved subdivision.

The information should include aerial photographs and supporting evidence about the bushfire prone risk of the land.

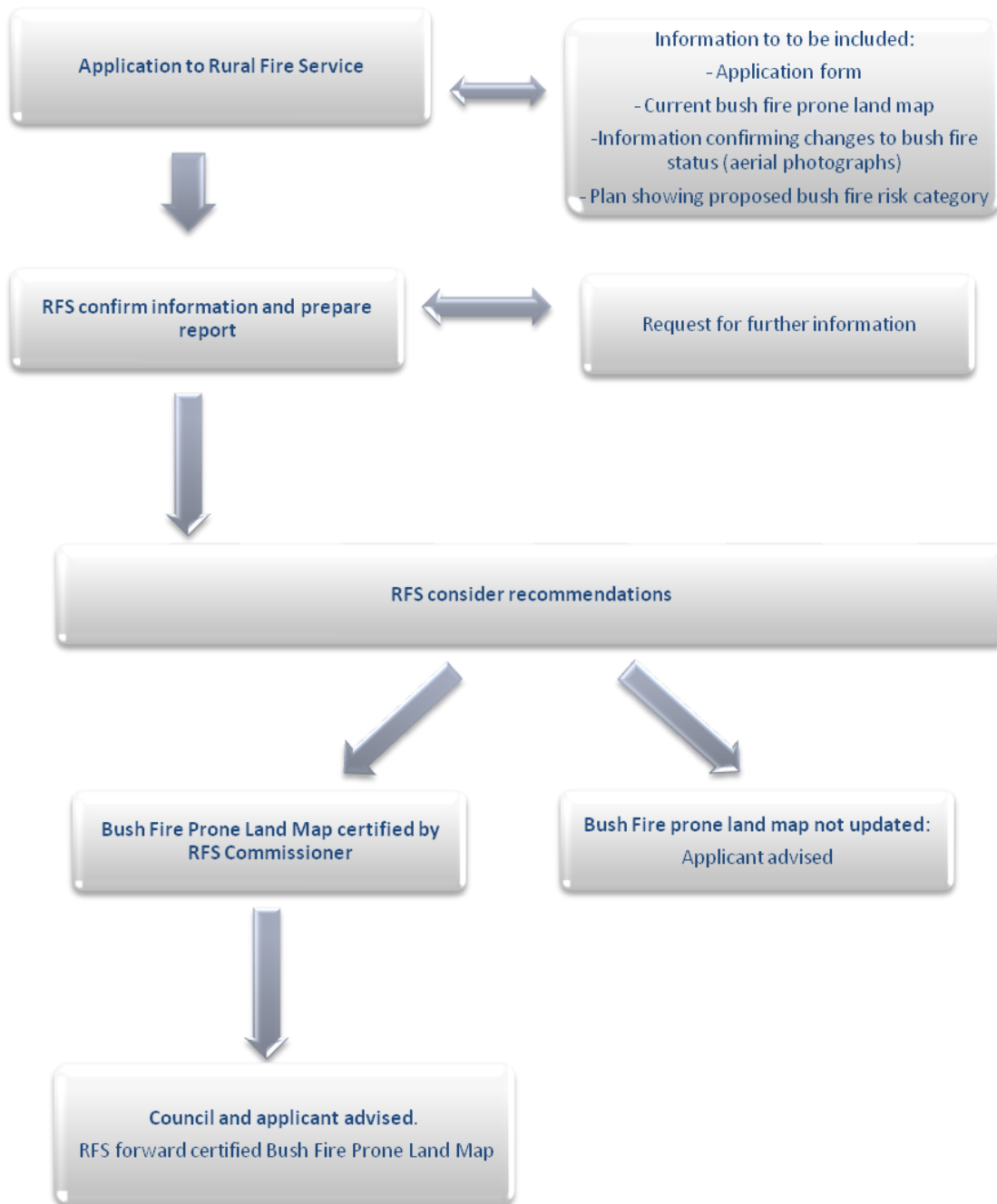
The information required to accompany an application is outlined in the RFS User Guide which is available to view on the Department of Planning & Environment website at www.planning.nsw.gov.au/bushfire-protection

An applicant can request the bushfire prone land mapping dataset from the RFS and provide the updated mapping layer to RFS for certification.

The RFS would then consider this information and if in agreement, update the bushfire prone land map. The RFS would re-certify the map and notify council of the updated map.

The RFS will notify council of any change to a bushfire prone land map. At that point, council would update their s149 Certificate system.

Figure B: Process to update Bushfire Prone Land Maps – Urban Release Areas



Further Information

The 2012 Amendment Act, Environmental Planning and Assessment Amendment (Bushfire Prone Land) Regulation 2014 and the Rural Fires Amendment (Bushfire Safety Authorities) Regulation 2014 are available from www.legislation.nsw.gov.au

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