

Development assessment on bush fire prone land – section 79BA

The purpose of this circular is to outline the role of consent authorities and the Rural Fire Service in the assessment of development applications on bush fire prone land under section 79BA of the *Environmental Planning & Assessment Act 1979*.

Background

Section 79BA of the *Environmental Planning and Assessment (EP&A) Act 1979* was introduced to allow consent authorities (typically councils) to assess infill development on bush fire prone land without referral to the Rural Fire Service (RFS) where a development meets the requirements of *Planning for Bush Fire Protection 2006*.

Infill development is generally residential buildings on existing lots (including those in a release area). It does not include subdivision of land for residential or rural residential purposes or development of land for special fire protection purposes, for example schools and hospitals.

Although not required for all proposals it has been common practice for consent authorities to refer all development applications on bush fire prone land to the RFS for assessment.

This has resulted in many applications being unnecessarily referred to the RFS under section 79BA.

Clarifying the role of consent authorities

The role of consent authorities (including councils) has been clarified through an amendment to section 79BA.

Consent authorities are responsible for the assessment of applications for infill development on bush fire prone land.

Development applications on bush fire prone land need to satisfy the requirements of *Planning for Bush Fire Protection 2006*.

To determine whether a development proposal meets the requirements of *Planning for Bush Fire Protection 2006*, consent authorities can either undertake their

own assessment, or rely on a certificate provided from a qualified consultant in bush fire risk assessment.

If the development satisfies the requirements of *Planning for Bush Fire Protection 2006* the consent authority is now required to determine the application without referral to the RFS.

Only applications that do not meet the requirements of *Planning for Bush Fire Protection 2006* are now to be referred to the RFS for assessment under section 79BA.

Amendment to section 733 of the Local Government Act

Section 733 of the *Local Government (LG) Act 1993* was also amended to provide protection for councils when making a decision relating to bush fire prone land in accordance with the provisions of the EP&A Act.

Section 733 of the LG Act exempts councils from liability for any advice furnished, or anything done or omitted to be done, in good faith, in respect of bush fire prone land.

Role of Rural Fire Service

The RFS only needs to be consulted where an application does not comply with the requirements of *Planning for Bush Fire Protection 2006*.

The RFS will continue to provide support and advice to councils for development on bush fire prone land if requested.

In addition the RFS will continue to implement a training program for council development assessment staff to assist in the assessment of development applications in accordance with *Planning for Bush Fire Protection 2006*.

The RFS will continue its assessment of integrated development applications under section 91 of the EP&A Act, the assessment of local environmental plans and the certification of bush fire prone land maps.

Integrated development includes the subdivision of land for residential or rural residential purposes or development of land for special fire protection purposes, for example schools and hospitals.

Transitional provisions

Transitional provisions which allowed consent authorities to continue to refer applications to the RFS applied up to the 25 February 2012. These transitional provisions have ended. This means that consent authorities can no longer refer applications that meet the requirements of *Planning for Bush Fire Protection 2006* to the RFS.

Further information

Planning for Bush Fire Protection 2006 is available from the RFS website
<http://www.rfs.nsw.gov.au>

The RFS can be contacted on 1300 679 737 if additional training in *Planning for Bush Fire Protection 2006* is required.

For further information please contact the Department of Planning & Infrastructure's information centre on 1300 305 695.

Department of Planning & Infrastructure circulars are available from
<http://www.planning.nsw.gov.au/circulars>

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