



Circular	13-006
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Related	PS 13-003 and PS12-003

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

The purpose of this circular is to advise councils, developers, bushfire consultants, and the community of the amendments to the Environmental Planning and Assessment Regulation 2000 and Rural Fires Regulation 2013 associated with the bushfire reforms under the *Environmental Planning and Assessment Amendment Act 2012* (2012 Amendment Act).

Introduction

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

The regulations give effect to changes made to the assessment process for development on bushfire prone land and bushfire prone land mapping under the 2012 Amendment Act which commenced 1 March 2013.

Environmental Planning and Assessment Amendment Act 2012

The 2012 Amendment Act contained provisions which allow:

- development to be excluded from the application of the bushfire assessment requirements in Section 79BA of the *Environmental Planning and Assessment Act 1979* (EP&A Act); and
- the Commissioner of the NSW Rural Fire Service (RFS) to revise the bushfire prone land maps.

The changes aim to streamline the assessment of development on bushfire prone land and to expedite the updating of bushfire prone land maps.

Amendment to Environmental Planning and Assessment Regulation 2000

In order to give effect to the changes in the 2012 Amendment Act, the Environmental Planning and Assessment Amendment (Bushfire Prone Land) Regulation 2014:

- identifies development which may be excluded from the requirements of Section 79BA in the EP&A Act and sets out the requirements for an exclusion to apply
- identifies the circumstances in which the Commissioner of the RFS may amend bushfire prone land maps.

The reforms will remove the need for multiple assessments and referrals by enabling bushfire risk to be addressed once at subdivision stage. The reforms will also reduce unnecessary bushfire assessments by allowing bushfire prone land maps to be updated to accurately reflect bushfire risk.

The changes will only apply to land in an urban release area. This land is to be identified on the Bushfire Planning - Urban Release Area Maps which are to be approved by the Secretary of the Department of Planning & Environment. These maps may be amended to include new zoned residential release areas in the future.

The amendments seek to balance streamlined assessment and approvals with the need to ensure potential risks to life and property are appropriately minimised and managed.

Changes to development assessment on bushfire prone land – development excluded from Section 79BA EP&A Act

Development applications on bushfire prone land trigger multiple assessments at the subdivision and building stage. The requirement for assessment of bushfire risk under Section 79BA of the EP&A Act at the building stage is often a duplication of matters

which have been considered by the RFS at the subdivision stage.

Where bushfire risk for future dwellings is addressed at the subdivision stage, the reforms allow the construction of dwelling houses, dual occupancies and secondary dwellings (or buildings ancillary to such) on land in an urban release area to be excluded from assessment under Section 79BA of the EP&A Act, providing certain requirements are met.

These requirements include:

- a bushfire safety authority has been issued under Section 100B of the *Rural Fires Act 1997* within the past five years and is still in force
- a Post-Subdivision Bushfire Attack Level (BAL) Certificate has been issued in relation to the land by the RFS or a recognised consultant

The Post-Subdivision Bushfire Attack Level Certificate must certify that the land to be developed has a bushfire attack level consistent with the proposed level indicated when the bushfire safety authority application was determined and that the land is not in BAL-40 or Flame Zone.

Bushfire attack levels are to be determined in accordance with the methodology approved by the Commissioner of the RFS.

The consent authority must also be satisfied that the proposed development complies with standards (concerning matters such as setbacks and asset protection zones) specified in the bushfire safety authority that are relevant to the development.

Where these requirements are met, no further bushfire risk assessment will be required. This scheme is optional and a developer may choose to rely on the exclusion or go through the usual assessment process under Section 79BA of the EP&A Act.

Development on land with a high bushfire attack level (BAL 40 or Flame Zone) will still need to be assessed under Section 79BA of the EP&A Act.

Amendment to the Rural Fires Regulation 2013

Clause 44 of the Rural Fires Regulation 2013 has also been amended to require additional information to be submitted with a bushfire safety authority application under Section 100B of the *Rural Fires Act 1997* to allow bushfire risk to be addressed comprehensively at the subdivision stage.

The amendment requires additional information, such as proposed bushfire attack levels for the land and setbacks for future dwellings.

The additional information is only required where an applicant wishes to have the Commissioner consider whether it would be appropriate for an exclusion under Section 79BA of the EP&A Act to be available for the future construction of dwelling houses, dual occupancies or secondary dwellings on that land.

Amending Bushfire Prone Land Maps

Bushfire prone land maps can be out of date, if they are not regularly updated to reflect changes to bushfire risk as a result of development having occurred. This can result in unnecessary assessments where land is no longer bushfire prone - but still designated as such on the bushfire prone land map.

The reforms allow the Commissioner of the RFS to amend bushfire prone land maps for land in urban release areas to ensure that the designation of bushfire prone land on the map is accurate.

The Commissioner may consider a Post-Subdivision Bushfire Attack Level Certificate or any other evidence the Commissioner considers relevant in determining whether to revise a map.

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

Further Information

A detailed Practice Note and Frequently Asked Questions are available at: www.planning.nsw.gov.au/bushfire-protection

An RFS Bushfire Prone Land Mapping User Guide and Post-Subdivision Bushfire Attack Level Certificate User Guide will be available at: www.rfs.nsw.gov.au

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

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 at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning & Environment's Information Centre on 1300 305 695.

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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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