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Environmental Planning & Assessment Amendment Act 2008 – Commencement Proclamation - bush fire prone land

This circular advises councils, practitioners and the community of the repeal of section 76A(6) of the *Environmental Planning & Assessment Act 1979* (the Act) and amendments to section 79BA of the Act and section 733 of the *Local Government Act 1993*. These commence on 25 February 2011.

Introduction

The *Environmental Planning & Assessment Amendment Act 2008* (the Amendment Act) amends the Act and other relevant legislation regarding a range of planning matters.

Section 2 of the Amendment Act states that it will commence on a day appointed by proclamation. The proclamation appoints 25 February 2011 as when certain provisions of the Amendment Act commence.

The provisions of the Amendment Act repealing section 76A(6) of the Act, which sets out controls for complying development, amendments to section 79BA of the Act, and section 733 of the *Local Government Act* relating to assessment of bush fire risk of a development application, will commence on that day. These provisions are described in detail below.

Repeal of section 76A(6)

Section 76A(6) of the Act is repealed by the Amendment Act.

The controls for complying development currently set out in that section have been reproduced in clause 1.17A of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), excluding designated development.

To coincide with the repeal of section 76A(6) clause 1.17A of the Codes SEPP will also commence on 25 February 2011.

The controls in clause 1.17A will apply to complying development under any environmental planning instrument.

Deeming provision

A consequential amendment has been made to the Environmental Planning and Assessment Regulation 2000 (the Regulation). It introduces a provision that any reference to section 76A(6) of the Act in any Act, regulation, environmental planning instrument or otherwise is taken to be a reference to clause 1.17A of the Codes SEPP.

The deeming provision will commence on 25 February 2011 (refer to the Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2010).

Amendment to section 79BA

The amendment to section 79BA of the Act provides that development consent cannot be granted (other than a subdivision of land for residential or rural residential purposes or development for a specified fire protection purpose) unless the consent authority is satisfied the development conforms with the requirements of *Planning for Bush Fire Protection*. Alternatively, the consent authority can be provided a certificate from a qualified consultant in bush fire risk assessment that the development conforms.

The amended section 79BA will allow consultation with the Commissioner of the NSW Rural Fire Service. Consultation can be about measures to protect persons, property and the environment from danger that may arise from a bush fire where the consent authority is satisfied that the

development does not conform to the *Planning for Bush Fire Protection*.

Savings and transitional provision

A transitional provision for the commencement of amended section 79BA of the Act has been made to the Regulation.

The provision applies to applications for development consent lodged before 25 February 2012. It permits consent authorities to consult with the Commissioner of the NSW Rural Fire Service in relation to appropriate protection measures for development on bush fire prone land, in conjunction with the amended consultation requirements in section 79BA.

The provision will commence on 25 February 2011 (refer to the Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2010).

Amendment to section 733 of the Local Government Act

The amendment to section 733 of the *Local Government Act 1993* (the LG Act) is consequential to the amendment to section 79BA of the Act.

Section 733 of the LG Act currently provides for exemptions from liability for flood liable land and land in the coastal zone. The amendment to section 733 will also exempt 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.

Further information

The Amendment Act is available online at legislation.nsw.gov.au.

Information about the Codes SEPP is available on the Department's website at housingcode.planning.nsw.gov.au.

For further information, please contact codes@planning.nsw.gov.au or call the Department's Information Centre on freecall 1300 305 695 or 02 9228 6333.

Authorised by:

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refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.
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