



New South Wales

Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2014

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

Explanatory note

The objects of this Regulation are as follows:

- (a) to exclude certain development applications for the erection of various types of dwellings on bush fire prone land in urban release areas from the operation of section 79BA of the *Environmental Planning and Assessment Act 1979* (*the Act*),
- (b) to specify the circumstances in which the Commissioner of the NSW Rural Fire Service may review and revise the designation of land as bush fire prone land,
- (c) to make certain law revision amendments.

Section 79BA of the Act generally prevents a consent authority from granting development consent unless the consent authority is satisfied (or has been provided with a qualified consultant's certificate stating) that the development conforms to *Planning for Bush Fire Protection*. The *Rural Fires Amendment (Bush Fire Safety Authorities) Regulation 2013* contains amendments related to the exclusion of development by this Regulation from the operation of section 79BA.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 79BA, 146 and 157 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 41 Certain development allowed

Insert “standard instrument set out in the” before “*Standard Instrument (Local Environmental Plans) Order 2006*” wherever occurring in the definitions of *commercial use* and *light industrial use* in clause 41 (3).

[2] Clauses 273 and 273A

Insert after clause 272:

273 Development excluded from application of requirements relating to bush fire prone land

- (1) Development comprising the erection, on land in an urban release area, of a building that is, or is ancillary to, a dual occupancy, dwelling house or secondary dwelling is excluded from the application of section 79BA of the Act if:
 - (a) the consent authority has been provided with a bush fire safety authority for the subdivision of the land that:
 - (i) was in force on the date on which the development application for the development was duly lodged, and
 - (ii) was issued no more than 5 years before that date, and
 - (b) the consent authority is satisfied that the proposed development complies with standards (concerning setbacks, asset protection zones, provision of water supply or other matters) specified in the bush fire safety authority that are relevant to that development, and
 - (c) the consent authority has been provided with a copy of a plan of subdivision that:
 - (i) shows bush fire attack levels for the land, and
 - (ii) contains a notation from the NSW Rural Fire Service showing that the plan was considered when the application for the bush fire safety authority was determined under the *Rural Fires Act 1997*, and
 - (iii) accompanies a certificate (a *post-subdivision bush fire attack level certificate*) to the effect that, when the certificate was issued, the bush fire attack level of the part of the land on which the development is proposed to be carried out corresponded to the bush fire attack level shown on the plan and that part of the land was not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ).
- (2) The post-subdivision bush fire attack level certificate must:
 - (a) specify the address and formal particulars of title of the land to which it relates, and
 - (b) specify the date on which it was issued, and
 - (c) contain identifying particulars of the bush fire safety authority, and
 - (d) if the subdivision to which the bush fire safety authority relates required development consent—contain identifying particulars of that development consent (such as the name of the applicable consent authority or certifying authority, the date on which the consent was granted or issued and any registered number of the consent).

- (3) A post-subdivision bush fire attack level certificate may only be issued by the NSW Rural Fire Service or a recognised consultant.
- (4) If an application for a post-subdivision bush fire attack level certificate is made to the NSW Rural Fire Service, it must be accompanied by the fee determined by the NSW Rural Fire Service.
- (5) The maximum fee that the NSW Rural Fire Service may charge for the application is as follows:
 - (a) if the application relates to a single lot or proposed lot—\$500, or
 - (b) if the application relates to 2 to 10 lots or proposed lots—\$500, plus \$300 for each lot or proposed lot exceeding 1 lot, or
 - (c) if the application relates to 11 or more lots or proposed lots—\$3,200, plus \$150 for each lot or proposed lot exceeding 10 lots.
- (6) A recognised consultant must, within 7 days after issuing a post-subdivision bush fire attack level certificate, forward it to the Commissioner of the NSW Rural Fire Service.
- (7) The methodology for determining bush fire attack levels, for the purposes of this clause, is the methodology approved by the Commissioner of the NSW Rural Fire Service by notice published in the Gazette.
- (8) In this clause:

AS 3959—2009 means the Australian Standard AS 3959—2009, *Construction of buildings in bushfire-prone areas*.

bush fire attack level has the same meaning as in AS 3959—2009.

bush fire attack level—40 (BAL—40) and *flame zone (BAL—FZ)* have the same meanings as in Appendix G to AS 3959—2009.

Note. More information about bush fire attack levels, including the flame zone, can be found in Table A3.4.2 of *Addendum: Appendix 3* (published by the NSW Rural Fire Service in 2010) to the publication titled *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in 2006.

bush fire safety authority has the same meaning as in Division 8 of Part 4 of the *Rural Fires Act 1997*.

dual occupancy, dwelling house and *secondary dwelling* have the same meanings as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

recognised consultant means a person recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment.

urban release area means land that is shown as being within an urban release area on the series of maps marked “Bush Fire Planning—Urban Release Area Map” (approved by the Director-General, by notice published in the Gazette, and held in the head office of the Department), as amended by the maps (or specified sheets of maps) that are:

 - (a) approved by the Director-General, by notice published in the Gazette, and
 - (b) marked as specified in that notice, and
 - (c) held in the head office of the Department.

273A Bush fire prone land map

- (1) For the purposes of section 146 (2A) of the Act, the Commissioner of the NSW Rural Fire Service may review the designation of land on a bush fire prone land map, and revise the map accordingly, if the land is in an urban release area

(within the meaning of clause 273) and the Commissioner is of the opinion that the map needs to be revised:

- (a) so that land on which the risk of bush fire is low is no longer recorded on the map as bush fire prone land, or
 - (b) so that land on which the bush fire risk is not low is recorded on the map as bush fire prone land, or
 - (c) to correct, or to record changes to, other information relating to land that is shown on the map.
- (2) For the purposes of forming an opinion under this clause, the Commissioner of the NSW Rural Fire Service may have regard to a post-subdivision bush fire attack level certificate applying in relation to the land or any other evidence that the Commissioner considers to be relevant.

[3] Schedule 4 Planning certificates

Omit “instrument set out in the Schedule to” from clause 7A (3).

Insert instead “standard instrument set out in”.