Planning circular

PLANNING SYSTEM

Development on bush fire prone land

Circular	PS 21-010
Issued	2 December 2021[1,2]
Related	Replaces PS 20-001, PS 13-006 & PS 12-004

Development on bush fire prone land

This circular outlines the planning considerations that apply to development on bush fire prone land, including application to planning proposals, development applications and complying development.

Introduction

Planning for bush fire protection is embedded in the NSW land use planning framework and is an evolving area which responds to the experience of extreme fire events in NSW and across Australia.

Comprehensive consideration of bush fire in the planning system requires a sound understanding of the hazards and risks, as well as consideration of strategic planning and development controls that will adequately mitigate these identified risks, as outlined in the *National Disaster Resilience Strategy* (COAG 2011).

This planning circular provides an overview of planning considerations for development on bush fire prone land.

Identification of bush fire prone land

Section 10.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) requires the identification of bush fire prone land through mapping.

The NSW Rural Fire Service (NSW RFS) Commissioner designates what constitutes bush fire prone land. Each council is required to prepare a bush fire prone land map and to seek certification of the map from the Commissioner.

Bush fire prone mapping classifies vegetation as Vegetation Category 1, Vegetation Category 2, Vegetation Category 3 or Buffer, based on vegetation types and potential risk.

Bushfire prone land mapping can be accessed via the NSW Planning Portal spatial viewer and may also be available on the relevant council's website. The NSW RFS also provides an online property search tool that can identify if land is bushfire prone.

The bush fire prone land maps are required to be recertified at least every five years. However, the Commissioner may amend the maps at any time.

If a particular property is bush fire prone it will also be identified on a planning certificate for the property that can be obtained from the relevant council.

Amending bush fire prone land maps

Bushfire prone land maps can be out of date if they are not regularly updated to reflect changes to bushfire risk. 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 NSW RFS Commissioner may consider a Post-Subdivision Bushfire Attack Level (BAL) Certificate or any other evidence the Commissioner considers relevant in determining whether to revise a map.

Upon certification by the Commissioner, the revised map becomes the bush fire prone land map for the area. The Commissioner is required to notify the

[1] Revised 10 August 2023 to include reference to the *Environmental Planning and Assessment Regulation 2021*, consolidated State Environmental Planning Policies and address outdated provisions.

[2] Revised 1 July 2026 with updated reference to Section 9.1 Ministerial Direction and note establishment of the Development Coordination Authority as a referral authority.

relevant council of any changes to a bushfire prone land map affecting their area.

Bush fire attack rating (BAL)

The Bushfire Attack Level (BAL) rating is the Australian standard for measuring the risk of a home's exposure to ember attack, radiant heat and direct flame contact.

There are six levels of the BAL rating in accordance with the *Australian Standard – AS 3959:2018 Construction of buildings in bushfire-prone areas*: BAL-LOW, BAL-12.5, BAL-19, BAL-29, BAL-40 and BAL-FZ.

The BAL rating determines the construction and building requirements necessary to protect homes in bushfire prone areas.

Planning for Bush Fire Protection 2019

Planning for Bush Fire Protection 2019 (PBP 2019) is a document prepared by NSW RFS that provides development standards for designing and building on bush fire prone land in NSW.

All development on bush fire prone land must satisfy the aim and objectives of PBP 2019. Bush fire protection measures outlined in PBP 2019 include asset protection zones, access, landscaping, water supply, building design and construction and emergency management arrangements. Planning proposals and development applications must demonstrate that bush fire protection is provided that is commensurate with the assessed level of bush fire risk and the characteristics of the occupants.

PBP 2019 replaces an earlier 2006 version and is to be used for development applications or planning proposals to develop bush fire prone land which are lodged from 1 March 2020. Proposals lodged prior to this date are to continue to have regard to *Planning for Bush Fire Protection 2006*.

Assessment of development applications on bush fire prone land[3]

Section 4.14 of the EP&A Act requires that a consent authority must be satisfied that a proposed development on bush fire prone land conforms with PBP 2019.

Accordingly, applications for development on bush fire prone land are generally required to include a bush fire assessment report.

To determine whether a development proposal meets the requirements of PBP 2019, a consent authority can either undertake their own assessment or rely on a certificate provided from a qualified consultant in bush fire risk assessment.

The consent authority may grant development consent for a development proposal that does not meet the requirements of PBP 2019, but only if it has consulted with NSW RFS regarding measures to be taken to protect persons, property and the environment from bush fire.

Section 4.14 of the EP&A Act does not apply to State significant development or developments for a special fire protection purpose (SFPP) such as schools and hospitals, or to subdivision of bush fire prone land for residential purposes. Instead, development for a SFPP will require a bush fire safety authority from the NSW RFS Commissioner under section 100B of the *Rural Fires Act 1997*.

Referral under section 4.15 of the EP&A Act[4]

When determining a development application under section 4.15 of the EP&A Act, a consent authority may seek the advice of NSW RFS even where a site is not mapped as bush fire prone land.

This is in recognition that the bush fire prone land mapping is not a detailed measure of bush fire risk, and other land may require consideration.

Bush fire safety authority for SFPP developments and subdivision[5]

Proposals for special fire protection purpose (SFPP) developments and residential or rural subdivision require an approval from the NSW RFS in the form of a bush fire safety authority (BFSA) and are categorised as integrated development under section 4.46 of the EP&A Act.

Development which comprises only the carrying out of internal alterations to a building does not require a BFSA, as per section 100B(5)(a) of the *Rural Fires Act 1997*.

SFPP developments are as defined in section 100B of the *Rural Fires Act 1997,* and includes schools, hospitals, nursing homes and tourist accommodation.

An application for a BFSA must address the extent to which the development complies with PBP 2019.

Exclusions from bush fire requirements

Section 272 of the *Environmental Planning and Assessment Regulation 202*1 provides an exclusion from assessment under section 4.14 of the EP&A Act where bush fire risk for future dwellings has been addressed at the subdivision stage.

The exclusion only applies to urban release areas identified on *'Bushfire Planning - Urban Release Area Maps'* which are approved by the Secretary of the

[3,4,5] From July 2026, the Development Coordination Authority (DCA) will operate as a central point of contact for planning matters involving NSW Government agencies, including the NSW RFS. Visit the website to find out more about the DCA's role: Development Coordination Authority | Planning

Department of Planning, Environment and Infrastructure.

This allows 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 4.14 of the EP&A Act, providing certain requirements are met.

These requirements include:

- a bush fire 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 Bush Fire Attack Level (BAL) Certificate has been issued in relation to the land by the RFS or a recognised consultant

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

Bush fire attack levels are to be determined in accordance with the methodology approved by the NSW RFS Commissioner.

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 BFSA that are relevant to the development.

Where these requirements are met, no further bush fire 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 4.14 of the EP&A Act.

Development on land with a high bush fire attack level (BAL 40 or Flame Zone) will still need to be assessed under section 4.14 of the EP&A Act.

State significant development and infrastructure

Development which is classified as State significant development (SSD) is not required to be assessed under section 4.14 of the EP&A Act and is exempt from requiring a BFSA (as per section 4.14(1B) of the EP&A Act).

State significant infrastructure (SSI) is also not subject to BFSA requirements (as per section 5.23(1)(f) of the EP&A Act).

Given the scale of SSI and SSD projects, it is suggested that the requirements of PBP 2019 should still be applied, and seeking advice from the NSW RFS is encouraged.

Complying development on bush fire prone land

Development that requires a BFSA cannot be complying development, as per section 100B(5)(b) of the *Rural Fires Act 1997*.

Complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) or Chapter 3: Educational Establishments and child care facilities of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (T&I SEPP) cannot be carried out on land in the two highest risk categories (BAL-40 and BAL-FZ) of bush fire prone land.

In certain circumstances, a Bush Fire Attack Level (BAL) Certificate must be obtained from the local council or a suitably qualified consultant confirming that the development is not located in BAL-40 or BAL-FZ. These circumstances are defined in clause 1.19A of the Codes SEPP and section 3.19 of the T&I SEPP.

Additional development standards apply to complying development carried on bush fire prone land under the Codes SEPP or within Chapter 3 of the T&I SEPP, including that the land must have direct access to a public road, be connected to mains electricity, and be connected to a reticulated water supply or have a water tank of a specific capacity. This allows for complying development to occur on bush fire prone land while maintaining an appropriate assessment regime for managing bush fire risk.

Bush fire prone land and planning proposals[6]

Section 9.1 Ministerial Direction – *P5.9 Planning for Bush Fire Protection* requires that planning proposals that will affect, or are in proximity to, bush fire prone land are to have regard to PBP 2019 and consent authorities are to consult with the NSW RFS on these planning proposals.

National Construction Code (NCC) requirements

Building work on bush fire prone land must also comply with the requirements of the National Construction Code (NCC). The NCC contains the technical provisions for the design and construction of buildings. Under the Deemed to Satisfy provisions of the NCC, building work on bush fire prone land must comply with *Australian Standard 3959:2018 Construction of buildings in bushfire-prone areas* (AS 3959) or the *National Association of Steel Framed Housing (2014) Steel Framed Construction in Bush Fire Areas* (NASH Standard). This does not apply however in Bush Fire Attack Level - Flame Zone (BAL-

[6] From July 2026, the Development Coordination Authority (DCA) will operate as a central point of contact for planning matters involving NSW Government agencies, including the NSW RFS.

FZ), or where modified by the specific conditions of the relevant development consent.

Council liability in respect to bush fire prone land

Section 733(2A) of the *Local Government Act 1993* 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.

Further information

Planning for Bush Fire Protection 2019 and the property search tool are available from the NSW RFS website:

http://www.rfs.nsw.gov.au

The NSW Planning Portal spatial viewer is available at:

https://www.planningportal.nsw.gov.au/spatialviewer/

For further information please contact Service NSW on 13 77 88.

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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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