

4.02 Bush Fire Protection

Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	15/11/2011	15/06/2012	New
2	27/10/2020	02/11/2020	Amended
3	27/09/2022	1/11/2022	Amended

Introduction

Bush fire prone land is an area of land that can support a bush fire or is likely to be subject to bush fire attack. The *Environmental Planning and Assessment Act 1979* requires councils to map bush fire prone land within their local government area.

The bush fire prone land map for the Newcastle Local Government Area (LGA) has been prepared using the NSW Rural Fire Service's (NSW RFS) 'Guide for Bush Fire Prone Land Mapping'.

Mapping of bush fire prone land provides a trigger for assessment of development.

Development on land that has been mapped as bush fire prone land must meet the requirements of the NSW RFS 'Planning for Bush Fire Protection, 2019' (as amended). *'Planning for Bush Fire Protection, 2019'* requires certain protective measures be provided in order to make a building less susceptible to damage or destruction from bush fire.

Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Development to which this section applies

This section applies to all development, including subdivision, on bush fire prone land within the Newcastle Local Government Area.

Note 1: Bush fire prone land is formally defined by the EP&A Act 1979 and NSW Rural Fire Service (RFS) publication *Planning for Bush Fire Protection 2019*, being land recorded as bush fire prone land on a relevant map, prepared in accordance with NSW RFS requirements, certified by the Commissioner of the NSW Rural Fire Service.

Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instrument/s and legislation also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- The Rural Fires Act 1997

In the event of any inconsistency between this section and the applicable environmental planning instruments and legislation, the environmental planning instrument and/or legislation will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply in addition to those listed above.

Note 2: The *Environmental Planning and Assessment Act 1979* enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

Note 3: This section refers to materials which are produced and/or legislated by a third party. Where referenced materials are superseded by updated versions, the version current at the time of lodgement of the Development Application shall apply.

Note 4: The NSW Government has provided a pathway for streamlined assessment to occur for development on new lots created in Urban Release Areas (URAs) and are located on Bush Fire Prone Land. For more information on the application of URAs, visit planning.nsw.gov.au.

Associated technical manual/s

- Nil

Additional information

- Planning for Bush Fire Protection 2019, NSW Rural Fire Service (as amended).
- Building in Bush Fire Prone Areas Single Dwelling Application Kit 2020, NSW Rural Fire Service.
- Australian Standard 3959: 2018 – Construction of buildings in bush-fire prone areas.
- *Guide for Bush Fire Prone Land Mapping*, 2015, NSW Rural Fire Service.

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless it is otherwise defined in this development control plan.

Other words and expressions referred to in this section are defined within Part 9.00 - Glossary, of this plan, and include:

- **Bush fire prone land** has the same meaning as in the Act.

Note 1: The term is defined, in relation to an area, as land recorded for the time being as bush fire prone land on a map for the area certified as referred to in section 10.3 (2) of the Act.

Note 2: In general, bush fire prone land identifies a range of vegetation types and associated buffer zones. Bush fire prone land is described as Category 1, Category 2, Category 3 or associated vegetation buffer. Factors that determine the level of bush fire threat include elevation, slope, orientation, the vegetation type and distance to or proximity to the subject property.

- **Bush fire prone mapping** – identifies a property's potential to be threatened by bush fire and to initiate an assessment under the NSW Rural Fire Service *Guideline Bush Fire Prone Land Mapping*, 2015 to determine whether land management and building construction measures need to be adopted to help safeguard a development from bush fire.

Note: Detailed Bush Fire Prone Land maps for specific parts of the Newcastle Local Government Area are available for viewing on Council's web site or at its Customer Enquiry Centre.

- **Category 1 vegetation** - appears as red on the Bush Fire Prone Land Map and represents forests, woodlands, heathlands, pine plantations and wetlands. Land within 100m of this

category (indicated by the Vegetation Buffer on the map) is also captured by the Bush Fire Prone Land Map due to the likelihood of bush fire attack.

- **Category 2 vegetation** - appears as light orange on the Bush Fire Prone Land Map and represents grasslands, scrublands, rainforests, open woodlands and mallee. The land within 30m of Category 2 vegetation (ie as indicated by the Vegetation Buffer on the map) is also captured by the Bush Fire Prone Land Map due to the likelihood of bush fire attack.
- **Category 3 vegetation** - appears as yellow on the Bush Fire Prone Land Map and represents grasslands, freshwater wetlands, semi-arid woodlands, alpine complex and arid shrublands. The land within 30m of Category 3 vegetation (i.e. as indicated by the Vegetation Buffer on the map) is also captured by the Bush Fire Prone Land Map due to the likelihood of bush fire attack.
- **Residential Infill Development** - refers to the development of land by the erection of, alteration or addition to, a dwelling which does not require the spatial extension of services including public roads, electricity, water or sewerage and is within an existing lot.
- **Special Fire Protection Purpose development** - is one which is occupied by people who are considered to be at risk members of the community. In a bush fire event, these occupants may be more susceptible to the impacts of bush fire. Evacuating at risk members of the community is more challenging because they may be physically or psychologically less able to relocate themselves or are unfamiliar with their surroundings.
- **Suitably qualified consultant** – a consultant providing bush fire assessments and BAL Certificates who has been accredited by a recognised accreditation scheme.

Aims of this section

1. To specify guidelines for development on land classified as being bush fire prone land within the Newcastle Local Government Area.
2. To consider climate change in hazard and risk assessment for development on bush fire prone land.

4.02.01 Bush Fire Protection

Objectives

1. Ensure risks associated with bush fire, including projected increase in the occurrence and severity of hazards as a result of climate change, are appropriately and successfully managed through effective and innovative design, as well as in connection with the preservation of the ecological values of the site and adjoining lands.

Controls

The following controls apply for all development, including subdivision

1. All development on, or subdivision of, land identified as being bush fire prone land must provide a bush fire assessment report completed by a suitably qualified consultant that:

- a) establishes the requirements for construction under the Australian Standard AS 3959:2018 – Construction of buildings in bush-fire prone areas (as amended or replaced); and
- b) demonstrates compliance with the requirements of the NSW Rural Fire Service publication: *Planning for Bush Fire Protection*, 2019 (as amended or replaced).

A bush fire assessment report is required regardless of the extent to which the hazard projects into the property, even if only partially.

Note 1: The NSW Rural Fire Service requirements can be met if evidence is provided that demonstrates the proposed development conforms to the specifications and requirements of *Planning for Bush Fire Protection* 2019 (as amended or replaced); or

Note 2: For more complex applications or performance-based solutions (as defined in *Planning for Bush Fire Protection*, 2019), a recognised consultant should be engaged to prepare a bush fire assessment report and Bush Fire Management Plan. Search <http://www.fpaa.com.au/bpad> for a list of Accredited Practitioners.

Note 3: The NSW Rural Fire Service provides a pre-DA advice service for proponents of development to seek information and obtain clarity about the NSW Rural Fire Service position on a proposal before a formal DA is lodged with the consent authority. Further information on the pre-DA advice service can be found online at NSW Rural Fire Service website.

- 2. Bush fire protection measures, including Asset Protection Zones (APZs), are placed wholly within the development site.
- 3. Asset Protection Zones are to be located outside of areas of environmental significance, including:
 - a) Endangered Ecological Communities;
 - b) Inner Vegetated Riparian Zones for all mapped creeks; and
 - c) other vegetation to be retained or protected due to environmental constraints as assessed by Council.
- 4. Where development proposes fire trails and/or APZs, the fire trail and APZ spatial data, including associated metadata that references the relevant assessments and management plans are provided to Council in a format as requested.

Additional controls apply to subdivision

Note: An Asset Protection Zone imposed by a development consent condition must be maintained for the lifetime of the development, unless modified by a subsequent consent.

- 5. Fire trails, if required, are not accepted on existing Council owned land or any land proposed to be dedicated to Council through the subdivision.
- 6. In any instance where the NSW Rural Fire Service requires Asset Protection Zones or fire trails to be the subject of an easement, restriction, or covenant registered against the title of existing or future lots pursuant to section 88 of the Conveyancing Act 1919, Council is not to be identified as a Prescribed Body having benefit of such an easement, restriction, or covenant. However, Council shall be noted as a party whose consent is needed to release, vary or modify the easement, restriction, or covenant.
- 7. Applications for subdivision that are proposed to be constructed in stages should demonstrate how effective bush fire protection measures can be temporarily established, maintained and then released when future stages are completed, and those temporary

measures are made redundant. Temporary Asset Protection Zones should not conflict with the environmental protection criteria set out in the controls above.

The following controls apply for Integrated Development

8. The bush fire assessment report outlines the proposed development's consistency with the NSW Rural Fire Service's guidelines *Planning for Bush Fire Protection, 2019* (as amended or replaced) and *Australian Standard AS3959:2018 – Construction of buildings in bush-fire prone areas* (as amended or replaced), and any other relevant documents that have been adopted by NSW Rural Fire Service.
9. All Integrated Development Applications on bush fire prone land will be referred to the Rural Fire Service Headquarters for appropriate review and determination as to whether a Bush Fire Safety Authority will be authorised.

Note 1: The following types of development are considered Integrated Development under s4.46 of the *Environmental Planning and Assessment Act 1979* and require a Bush Fire Safety Authority from the NSW Rural Fire Service under s100B of the *Rural Fires Act 1997*:

- a) subdivision of land that could be used for residential or rural residential purposes.
- b) development of bush fire prone land for a Special Fire Protection Purpose (including but not limited to educational establishments, tourist and visitor accommodation, seniors housing or group home).

Note 2: Search <http://www.fpaa.com.au/bpad> for a list of Accredited Practitioners.

Note 3: Where the NSW Rural Fire Service refuses to grant a Bush Fire Safety Authority, Council cannot approve the Integrated Development Application.