

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

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.

Land to which this section applies

This section applies to all land that is affected by City of Newcastle's Bush Fire Prone Land Maps.

Development (type/s) to which this section applies

This section applies to all development including subdivision on land identified as being bush fire prone.

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. Applicants are encouraged to verify that they are accessing the most current version of these materials, as they may be updated from time to time. Where referenced materials are superseded by updated versions, the version current at the time of lodgement of the Development Application shall apply.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. This process allows the assessment of bush fire provisions at subdivision stage within URAs and may exempt the resulting lots from reassessment of bush fire matters when purchasers are ready to develop their lots. Post-Subdivision Bush Fire Attack Level Certificates (PSBC's) may be issued at the time of subdivision assigning Bush Fire Attack Levels (BALs) to all individual lots within the subdivision. An applicant and a Consent Authority may rely on a PSBC subject to satisfaction of cl 273 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) and on the condition that the Bush Fire Safety Authority for the subdivision was issued no more than 5 years before the date of application. For more information on the application of URAs, visit planning.nsw.gov.au.

Associated technical manual/s

- *Planning for Bush Fire Protection 2019*, NSW Rural Fire Service.
- *Building in Bush Fire Prone Areas Single Dwelling Application Kit 2020*, NSW Rural Fire Service

Additional information

- Newcastle Bush Fire Prone Land Map, available on Council's website.
- NSW Rural Fire Service website.
- 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.

Aims of this section

1. To outline Council’s requirements for development on land classified as being Bush Fire Prone Land within the Newcastle Local Government Area (LGA).

Objectives

1. Ensure the statutory requirements of the *Rural Fire Service Act 1997* are considered in development assessment where relevant.
2. Ensure risks associated with bush fire are appropriately and effectively managed.
3. Ensure bush fire risk is managed in connection with the preservation of the ecological values of the site and adjoining lands.

Controls

The following controls apply to all development to which this section applies

1. All development on, or subdivision of land identified as being bush fire prone must comply with the requirements of the NSW Rural Fire Service publication: *Planning for Bush Fire Protection 2019*, or subsequent versions.

The following controls apply to subdivision

2. Bushfire protection measures are placed wholly within the development site. All proposed Asset Protection Zones are within the property to be subdivided and incorporated into affected lots or within the existing or proposed road reserve, or a combination of both. Asset Protection Zones will not be accepted on existing Council reserves, other public lands or in reserves proposed to be dedicated through the subdivision. 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.
3. Fire trails, if required, are not accepted on existing Council owned land or any land proposed to be dedicated through the subdivision.
4. 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 should be noted as a party whose consent is needed to release, vary or modify the easement, restriction, or covenant.
5. Applications for subdivision that are proposed to be constructed in stages should demonstrate how effective bushfire protection measures can be temporarily established, maintained and then released when future stages are completed, and those temporary measures are made redundant.

The following control applies to all residential infill development

6. Any development application involving the erection of a dwelling house, alterations and additions to an existing dwelling house within bush fire prone land or other development that is in proximity to bush fire prone land must comply with the requirements of the NSW Rural Fire Service publication titled *Planning for Bush Fire Protection 2019* or subsequent versions.

Note1: The requirements of the Rural Fire Service can be met if:

- a) CN is provided with evidence that demonstrates the proposed development conforms to the specifications and requirements of *Planning for Bush Fire Protection*; or
- b) CN has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment. The certificate must include the calculated BAL, stating that the development conforms to the relevant specifications and requirements; or
- c) if CN is satisfied that the development does not conform to the relevant requirements of *Planning For Bushfire Protection*, it may still grant consent to the development but only after it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

The following controls apply to Integrated Development – Section 4.46 of the *Environmental Planning and Assessment Act 1979* and Section 100B of the *Rural Fire Act 1997*

Note: The following types of development are considered Integrated Development under the Act 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, senior living self-care or residential care facilities)

7. Any Integrated Development Application is accompanied by a Bush Fire Assessment report prepared by a suitably qualified and experienced bush fire consultant. Search <http://www.fpaa.com.au/bpad> for a list of Accredited Practitioners.
8. The Bush Fire Assessment report outlines the proposed development's consistency with the NSW Rural Fire Service's *Planning for Bush Fire Protection 2019 Guidelines* and *Australian Standard AS3959 –2018*, Construction of buildings in bush-fire prone areas, and any other 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.

The following control applies to all other development on bush fire prone land, unless listed above. This includes commercial and industrial uses, infrastructure and other developments which may attract large numbers of people.

10. All development proposals for commercial and industrial uses, infrastructure and other developments which may attract large numbers of people on Bush Fire Prone Land must demonstrate compliance with the specific requirements of *Planning for Bush Fire Protection 2019*, or subsequent versions.

Note: For more complex applications or performance-based solutions (as defined in *Planning for Bush Fire Protection*), a recognised consultant should be engaged to prepare a Bush Fire Assessment report and Bush Fire Management Plan.

Note 1: Where the Rural Fire Service refuses to grant a Bush Fire Safety Authority, Council cannot approve the Integrated Development Application.

Note 2: Applications to build within the flame zone or proposing an alternate solution under the *Planning for Bush Fire Protection 2006 2019 Guidelines* will generally be referred by Council to the district Rural Fire Service Fire Control Centre Headquarters for comment, prior to the determination of the application by Council.

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. The pre-DA advice service is intended for more complex proposals which raise issues in relation to compliance with the requirements of *Planning for Bushfire Protection*. This may involve instances where a performance-based solution (as defined in *Planning for Bush Fire Protection*) is proposed or where bush fire protection issues are raised in strategic or rezoning planning processes. Further information on the pre-DA advice service can be found online at NSW Rural Fire Service website.

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