

Establishment of Easements for the Purpose of Asset Protection Zones

This Practice Note provides direction on the establishment of easements for the creation and maintenance of Asset Protection Zones identified as a requirement during the development assessment process.

Asset Protection Zones (APZ) should be contained within the overall development and not on adjoining lands¹, other than exceptional circumstances². Easements will only be considered where exceptional circumstances have been demonstrated.

The exceptional circumstances and provisions for the creation of an APZ on adjoining lands are outlined in Section 3.3 of *Planning for Bush Fire Protection 2006*.

Responsibilities

When considering development applications, neither the RFS nor the Council has the power to impose an APZ on an adjoining landowner without their consent. It is therefore the developer's responsibility to negotiate with adjoining land owner/s as part of the development application process. The RFS does not have a role in these negotiations.

It is the responsibility of the developer to ensure that an APZ proposed on adjoining land is capable of being established and does not contravene any other legislative responsibility that is applicable to the site. The developer/applicant must demonstrate that exceptional circumstances apply when a

development application is lodged.

The owner/occupier of the land that is benefited by an easement is responsible for maintaining the APZ. An unmaintained APZ may result in a notice under Section 66 of the *Rural Fires Act 1997* (RF Act). This will be issued to the owner of the land on which the easement has been established.

A positive covenant requires a landholder to do something on their land and may be considered for the provision of an APZ where the developer owns the adjoining land (in a staged development for example).

Where an APZ has been established by community title, it shall be maintained in accordance with a plan of management.

Approval and Registration

Easements and positive covenants proposed as part of a development application will be approved through the development consent process by the relevant consent authority.

The requirement for the establishment of an easement or positive covenant will be included in the conditions of consent.

The RFS **does not** benefit by an easement and **will not agree** to be a party on any such instrument.

¹ *Planning for Bush Fire Protection 2006* p19

² See section 3.3 of *Planning for Bush Fire Protection 2006*



An easement that is legally binding shall allow for the following:

- A notice under section 66 of the RF Act to be issued to the owner of the land in order to clear the bush fire hazard; and
- The person/s benefited by the easement is legally responsible for the management of the APZ

The easement is to contain a provision for the cost of maintaining the APZ to be borne by the benefiting party.

For new easements which run with the title of the land the Land Titles Office will register for the period specified. The Certificate of Title issued by the Department of Lands – Land and Property Information Division will indicate that an easement exists on a site.

Extinguishment of Easement

An APZ easement can only be extinguished with the agreement of those parties affected by it.

In the past the RFS was named on easements and in some cases signed off on them. The RFS will review easements that it has been a signatory to on a case by case basis.

Where the RFS has been named on an easement without consent, it will not sign off on the release of, or any changes to the easement

Supporting documentation

Information to be included with development applications that are referred to the RFS and proposed an easement is:

- A statement that addresses the exceptional circumstances principles as identified in 3.3 of *Planning for Bushfire Protection 2006*.
- A site plan identifying the location of the APZ and proposed easement.
- Owners consent on the land the easement is to be created.
- A draft APZ Management Plan for the proposed easement

Note: The information contained within this Practice Note relates to the development assessment process and does not apply to legislative requirements to create and maintain an APZ as required by the bush fire hazard complaint process.

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