

2.1 Environmental Planning and Assessment Act, 1979

On 1 August 2002 the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Rural Fires Act 1997* (RF Act) were both amended to enhance bush fire protection through the development assessment process.

In broad terms, the planning considerations provide two main steps. These involve:

- (a) *Strategic Planning through;*
- *the mapping of bush fire prone areas (BPAs);*
 - *determining suitable bush fire requirements during the preparation of a Local Environmental Plan/Development Control Plan; and*
 - *the identification of the extent to which land is bush fire prone.*
- (b) *Development assessment through;*
- *obtaining a bush fire safety authority for residential or rural-residential subdivision and special fire protection purpose developments in BPAs from the RFS;*
 - *seeking advice from the RFS in relation to infill and other developments in BPAs that cannot comply with the requirements of PBP; and*
 - *the application of additional requirements of the Building Code of Australia (BCA) in relation to construction standards for Class 1, 2, 3, 4 and some Class 9 buildings in BPAs.*

2.2 Bush Fire Prone Land Mapping

Bush fire prone land maps provide the trigger for the various development assessment provisions.

The identification of BPAs in NSW is required under section 146 of the EP&A Act. The Commissioner of the RFS designates, through separate guidelines, what constitutes a BPA and how it is to be mapped. Each council then prepares a map in accordance with the guidelines and submits the map for approval by the Commissioner.

These maps are updated at least every 5 years.

Guidelines for the mapping of BPAs can be obtained from the RFS website on www.rfs.nsw.gov.au.

2.3 Preparation of LEPs and DCPs

LEPs and DCPs are the best way of strategically achieving bush fire protection objectives. Inclusion of bush fire planning provisions in an LEP:

- gives weight to bush fire management planning principles, ensuring they are considered

- at subdivision and construction stages;
- can allow for sufficient space to be incorporated into land use zones for setbacks and adequate access for firefighting and evacuation; and
- controls inappropriate land uses in BPAs.

LEP amendments that affect BPAs need to address the planning principles of PBP (see below). Where appropriate the proposed land uses must be considered with respect to bush fire protection (including appropriate setbacks).

If a proposed amendment to land use zoning or land use affects a designated BPA, then the section 117(2) Direction No 19 must be applied (section 117 of the EP&A Act provides for the Minister for Planning to direct a council, in relation to the preparation of a draft LEP, to apply the planning principles specified in that direction).

The section 117 Direction No 19 requires councils to:

- consult with the Commissioner of the RFS under section 62 of the EP&A Act, and to take into account any comments by the Commissioner; and
- have regard to the planning principles of PBP below.

If a council proceeds with a draft LEP that does not comply with the provisions in the section 117 Direction, the council must obtain written advice from the Commissioner of the RFS to the effect that the RFS does not object to that non-compliance.

The requirement to review LEPs in accordance with the Standard LEP is an opportunity to consider appropriate uses on Bush Fire Prone Land as well as exempt and complying development provisions.

Planning Principles for Rezoning to Residential Land in Bush Fire Prone Areas

- Provision of a perimeter road with two way access which delineates the extent of the intended development;*
- Provision, at the urban bushland interface, for the establishment of adequate asset protection zones for future housing;*
- Specifying minimum residential lot depths to accommodate asset protection zones for lots on perimeter roads;*
- Minimising the perimeter of the area of land, interfacing the hazard, which may be developed;*
- Introduction of controls which avoid placing inappropriate developments in hazardous areas; and*
- Introduction of controls on the placement of combustible materials in asset protection zones.*

2.4 The development assessment framework and structure of PBP

(a) Types of Development

The EP&A Act establishes a system for requiring bush fire protection measures on bush fire prone land at Development Application (DA) stage as follows:

- (i) by requiring councils to map bush fire prone land. If any part of a development site is affected, special submission and assessment requirements may apply to the DA;
- (ii) Section 79BA of the EP&A Act requires compliance with PBP and, where an infill proposal does not comply with acceptable solutions in Chapter 4, consultation by the consent authority with the RFS is required; and
- (iii) Section 91 of the EP&A Act (in combination with the RF Act requirements for a section 100B Bush Fire Safety Authority) classes the following types of DA as Integrated Development:
 - residential and rural residential subdivision.
 - “Special Fire Protection Purposes” (SFPP).

Special procedures apply to these forms of development, though some exceptions to these may apply.

In summary, if a development site is on bush fire prone land, the requirements of this document will apply. For residential/rural residential subdivision and SFPPs, an Integrated DA approval must be obtained from the RFS (i.e. BFSA) is required.

The following table compares the two types of development application:

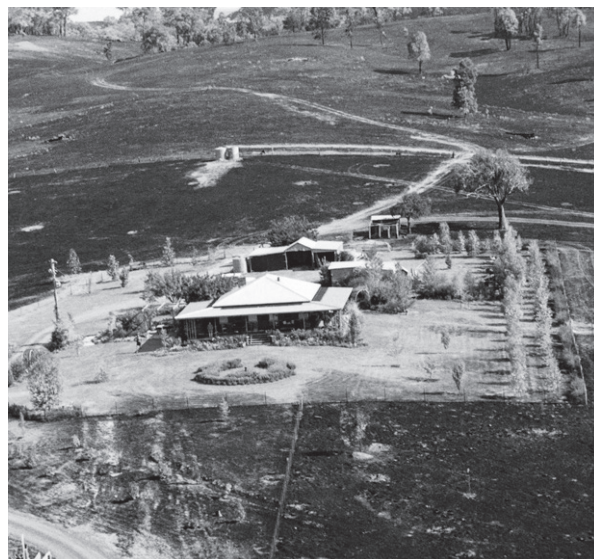
Non Integrated DA	Integrated DA
<ul style="list-style-type: none"> • development site on bush fire prone land and not “integrated” • includes “infill” other than residential /rural subdivision or SFPP • s. 79BA EP&A Act 	<ul style="list-style-type: none"> • residential/rural residential subdivision or SFPP eg. - schools - hospitals - child care - nursing homes - seniors living • s. 91 EP&A Act & s. 100B RF Act
<ul style="list-style-type: none"> • possible consultation with RFS 	<ul style="list-style-type: none"> • a BFSA from RFS required.

There are also significant differences between the categories of uses that are “Integrated Developments”. For instance:

Residential/Rural - Residential Subdivision	SFPPs e.g. Seniors Living, Tourist Facilities, Schools
<ul style="list-style-type: none"> • building as a refuge • assume able-bodied residents with motor car available • APZ requirements based on Level 3 construction (AS 3959-1999). As a result APZ minimised (yield & environmental protection maximised) 	<ul style="list-style-type: none"> • assisted evacuation possible: higher exposure; working outdoors. • assume special needs of residents. • APZ requirements maximised and based on radiant heat exposure to emergency services

DAs for integrated development do not all fit neatly into the categories above. Both categories can cover existing developments that do not conform to PBP. These situations can include, for instance, a block size that cannot accommodate the required APZ e.g. small scale subdivision, strata subdivision, B&Bs, extensions to other established SFPPs (such as schools, nursing homes or hospitals) and as such are treated as infill, having been previously approved prior to the introduction of PBP.

Development that is not integrated development is subject to section 79BA and covered as infill or other development on bush fire prone land.



Effective bush fire protection measures protect a rural dwelling.

(b) Section 79BA Consultation

Section 79BA of the EP&A Act requires that a consent authority shall not grant approval for a development application for any purpose on bush fire prone land, unless it:

- is satisfied that the development conforms to the specifications and requirements of PBP; or
- consults with the RFS concerning measures to be taken to protect persons, property and the environment from danger that may arise from a bush fire.

The consent authority is only required to consult with the RFS under section 79BA when a proposed residential dwelling (i.e. infill) does not comply with the “acceptable solutions” within section 4.3 of this document or meet performance requirements.

The advice to the consent authority from the RFS is intended to provide a performance-based assessment to assist the consent authority in arriving at a determination of the proposal. Most s79BA matters are likely to be Class 1 or 2 buildings under the BCA or extensions or additions to these buildings.

(c) Exempt and complying development

Exempt development does not require development consent from a consent authority because it is considered to be of a specified class or description that has minimal environmental impact. Development consent is still required if it is to take place on land that is a critical habitat or is part of a wilderness area. Environmental planning instruments relevant to the proposed development such as an LEP provide for the types of development considered to be exempt development. If the relevant planning instrument provides that a form of development is ‘exempt development’ on bush fire prone land then the provisions of PBP do not apply however it must comply with the BCA in relation to bush fire.

Complying development is development which complies with specified predetermined development standards contained in the relevant environmental planning instrument. A Complying Development Certificate from a Certifying Authority such as the local council or an accredited certifier must be obtained (Refer to s76A and ss84-87 of the EP&A Act) A Complying Development Certificate is considered to be a form of development consent which requires a Construction Certificate prior to the commencement of work. Environmental planning instruments relevant to the proposed development such as a Local Environmental Plan provide for the types of development considered to be complying development. Complying development

would normally be exempted from the requirements of s79BA by virtue of an exception contained in s77 of the EP&A Act.

However, residential buildings (such as Classes 1, 2 and 3 under the BCA), if classified as complying development under the relevant planning instruments and located on bush fire prone land, must also comply with the BCA. This requirement is satisfied by following the site assessment methodology in Appendix 3 of PBP (and the construction requirements in section 3 of AS 3959-1999) which is adopted as the New South Wales Variation to the BCA.

Planning authorities should carefully consider the types of exempt and complying development that are permitted in bush fire prone land in their area when drafting any planning instruments so that the issue of bush fire is adequately addressed.

Residential/rural residential subdivision and SFPPs are integrated development under the EP&A Act (and require a bush fire safety authority under the RF Act). Development requiring a BFSA is not considered to be complying development, despite its classification in any LEP.

(d) Planning Certificates (Section 149)

Planning certificates provide information on the development potential of a parcel of land including any planning restrictions that apply.

A person can apply to a council for a Planning Certificate under section 149 of the EP&A Act on any land within the council area. The certificate will detail matters relating to the land as listed in schedule 4 of the EP&A Regulation which identifies bush fire prone land (or any part of the land) as being a relevant matter that should be notified within the section 149 Planning Certificate.

2.5 Major Projects

Part 3A of the EP&A Act commenced on 1 August 2005 and provides an assessment process for development declared to be a Major Project under a SEPP or by the Minister for Planning.

Part 3A provides for an integrated assessment of major development taking into account bush fire risk. Proponents should consult with PBP when selecting sites for development and undertaking environmental assessments.

2.6 Construction Provisions: The BCA and AS 3959

The Building Code of Australia (BCA) is a performance based code which derives its statutory power through the EP&A Act and EP&A Regulation, in NSW. The EP&A Regulation requires a Certifying Authority, prior to issuing a construction certificate or complying development certificate, to be satisfied that the relevant requirements of the BCA will be met.

The BCA contains both performance requirements and deemed-to-satisfy provisions relating to the construction of buildings in bush fire prone areas. These provisions apply to Class 1, 2, 3, 4 and SFPP buildings that are proposed for construction in designated bush fire prone areas.

The construction requirements of AS 3959 - 1999 *Construction of Buildings in Bush Fire-prone Areas* are accepted by PBP as the deemed-to-satisfy construction standard for buildings in designated bush fire prone areas.

In addition, the BCA has been amended with a NSW specific variation to include Appendix 3 which contains the site assessment methodology and replaces Section 2 of the AS 3959 - 1999 when determining bush fire attack and the construction levels required to comply with the BCA on BPA.

For Residential/Rural Residential Subdivision, the APZ distances are designed to meet the deemed-to-satisfy arrangement under the BCA (by reference to AS 3959). DA stage applicants must determine the relevant construction level, without necessarily providing full construction detail for future dwellings on the 'interface' allotments. This commits certifying authorities to that level of construction. Proposed changes to the level of construction or BCA alternative solutions may require DA modification. The path for infill housing is similar, with Level 3 construction (as a minimum) or other alternative solutions providing bush fire protection at DA construction certificate (CC) stage.

For sites proposed for SFPPs, APZs are based on a derived radiant heat exposure (10 kW/m²) to an emergency worker, which corresponds to Level 1 construction standards (AS 3959).

Similarly, PBP uses AS 3959 to cover Class 4 (BCA) buildings i.e. caretakers accommodation. Class 10a buildings forming an addition or extension to a Class 1 - 4 building are treated the same as a Class 1 - 4 building. For other BCA Classes, bush fire specific construction standards are not addressed (i.e. Classes 5-8 some Class 9 and 10b).

2.7 Rural Fires Act, 1997

(a) Bush Fire Safety Authorities (section 100B of the RF Act)

Government agencies may be required to consider the environmental or physical constraints to development through the granting of licences, permits or other approvals. These agencies are referred to as approving authorities and their licences, permits or approvals are integrated through section 91 of the EP&A Act.

An example is the requirement under Section 100B of the RF Act for the Commissioner of the RFS to issue a bush fire safety authority for applications for residential or rural - residential subdivisions and any application for SFPP.

Under the integrated development process, the approval authority (in this case the Commissioner of the RFS) is required to provide "general terms" of agreement to the consent authority. Where an approving authority refuses to grant an approval, the consent authority cannot issue the consent and the development cannot proceed. In general, the approving authority has 40 days upon receipt of the development application and supporting documents in which to determine the matter.

A refusal is subject to appeal to the Land and Environment Court.

Section 100B provides that where a BFSA is required for subdivision, or an SFPP, the development cannot be considered 'complying development' under any environmental planning instrument in a bush fire prone area.

(b) Information required for a Bush Fire Safety Authority

To support an application for a bush fire safety authority, an applicant is required to submit a bush fire assessment in accordance with clause 46 of the RF Regulation.

The information to be contained in such a report is listed in Appendix 4.

The consent authority will determine the acceptability of the environmental impact of a proposed development in terms of environmental significance, threatened species and Aboriginal heritage.

In considering the issues of threatened species and Aboriginal heritage, the RFS uses this information to determine any site constraints or the rationale for performance-based solutions.

(c) Section 63 of the RF Act

Section 63 of the RF Act places a 'duty of care' on all land managers/owners to prevent a fire spreading on or from their land. This duty is related to future developments in that the provision and maintenance of appropriate setbacks and landscaping must be addressed when developing land.

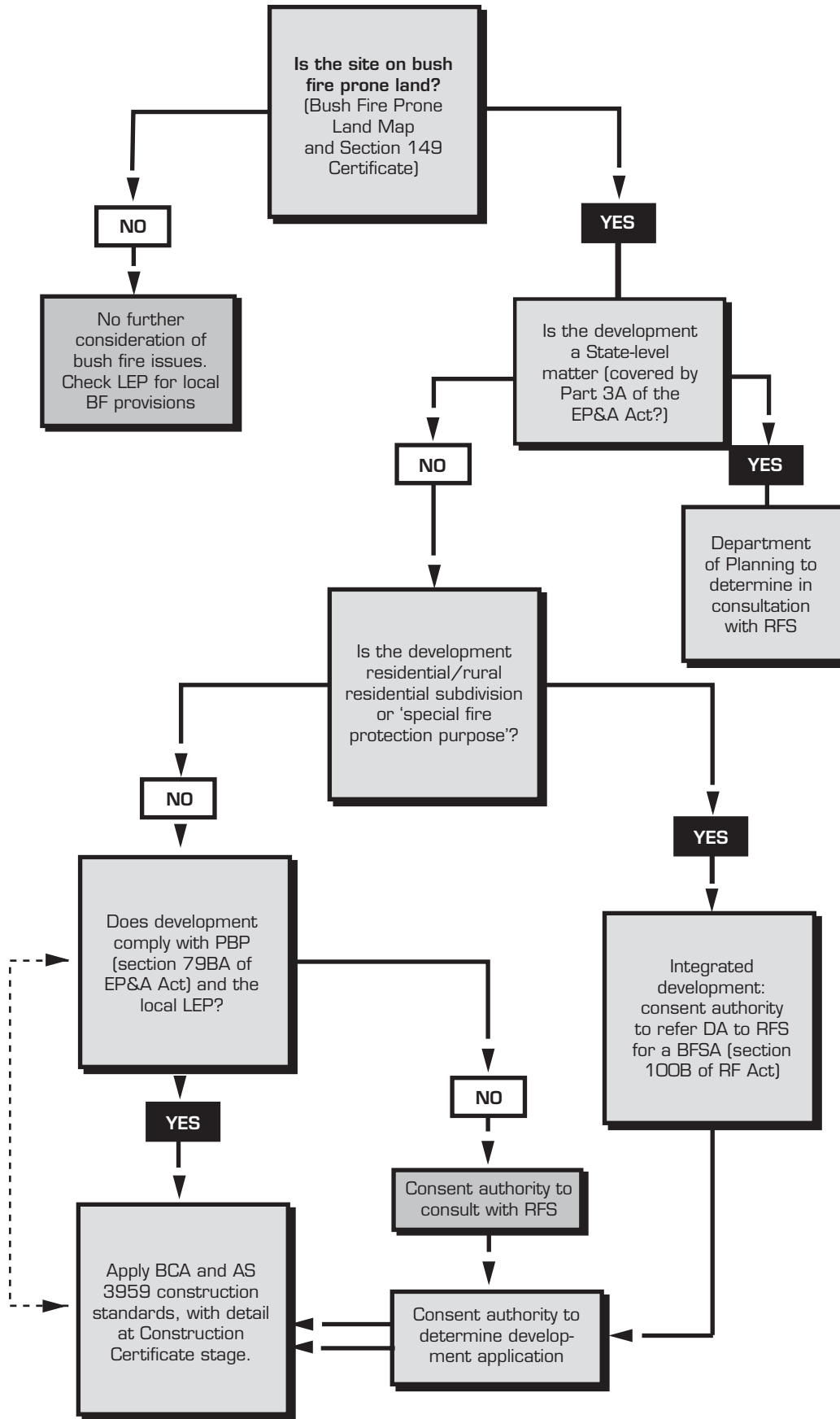


Figure 2.1 Development Control Process for Developments in Bush Fire Prone Areas