

Application of Section 100B

This Fast Fact outlines the NSW Rural Fire Service (RFS) position on the application of Section 100B of the *Rural Fires Act 1997 (RF Act)*, and the stipulation of conditions for existing development that is impacted by a development application on bush fire prone land.

Section 100B (2) of the RF Act states:

'A bush fire safety authority authorises development for a purpose referred to in subsection (1) to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire'

Emphasis is placed on the need to 'protect persons, property or the environment from danger that may arise from a bush fire' which is the guiding principle of both the RF Act and *Planning for Bush Fire Protection 2006 (PBP)*.

In order to adequately protect persons and property, the RFS may deem it necessary to apply conditions to an existing development on bush fire prone land that is the subject of a development application.

This would arise in situations where the RFS is determining an application for a Bush Fire Safety Authority (BFSA) for a site that incorporates an existing development (e.g. subdivision of a site that includes an existing

dwelling), or development which is an extension to an existing special fire protection purpose development).

The conditions of the BFSA may require modification to the land or existing structures which lie outside the physical boundaries of the new development proposal.

For such situations the extent to which upgrading is applied will be reasonable and commensurate with the works proposed. In addition, there will be a link between any conditions imposed and the subject of the development and the link will not be too remote.

Further to this, the Land and Environment Court adopted the Newbury test as the accepted test for determining the validity of consent conditions in NSW. In order to be valid under the Newbury test, a condition must:

- be imposed for a planning purpose
- fairly and reasonably relate to the development for which permission is given
- be reasonable

The RFS will also consider the Newbury test when recommending conditions for the provision of bush fire protection measures.



In summary the RFS will ensure that any BFSAs it imposes are fairly and reasonably relevant to the development for which a BFSAs is sought, and that any proposed conditions can be tied back to the application for the BFSAs.

In some situations it would be unreasonable for the RFS to recommend bush fire protection measures that are outside the scope of the development. For example it would be unreasonable to condition the upgrade of a public road to comply with PBP, where the road is located outside the property boundary.

As another example if a proposal is received for a minor addition to the rear of a special fire protection purpose development, it would be unreasonable to require reconstruction of the existing building for compliance with construction standards. However, conditioning some basic ember proofing would be reasonable where it would provide more adequate safety for the proposed development and be mutually beneficial for the overall development.

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