

Appendices

Appendix 1

Key Legislation Relating to Bush Fire Prone Lands and Development Assessment

This legislation is current as at 1 December 2006. Check legislative provisions if in doubt. Proposed regulations commencing 1 March 2007 are also included.

A1.1 Section 79BA - *Environmental Planning and Assessment Act 1979*

79BA Consultation and development consent—certain bush fire prone land

(1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:

- (a) is satisfied that the development conforms to the specifications and requirements of Planning for Bushfire Protection (2001) produced by the NSW RFS (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document), that are relevant to the development, or
- (b) the consent authority has consulted with the Commissioner of the NSW RFS 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.

(2) In this section: special fire protection purpose has the same meaning as it has in section 100B of the *Rural Fires Act 1997*.

A1.2 Section 146 - *Environmental Planning and Assessment Act 1979*

146 Bush fire prone land

(1) If a bush fire risk management plan applies to land within the area of a council, the council must, within 12 months after the commencement of this section (and before the end of the period of every five years after the commencement):

- (a) request the Commissioner of the NSW RFS to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk

management plan, to be bush fire prone land, and
(b) must record any land so designated on a map.

(2) The Commissioner of the NSW RFS must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.

(3) Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.

(4) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.

(5) In this section: bush fire risk management plan has the same meaning as it has in the *Rural Fires Act 1997*.

A1.3 Section 100B - *Rural Fires Act 1997* - Bush Fire Safety Authorities

(1) The Commissioner may issue a bush fire safety authority for:

- (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
- (b) development of bush fire prone land for a special fire protection purpose.

(2) 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.

(3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).

(4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations.

(5) Development to which subsection (1) applies: (a) does not include the carrying out of internal alterations to any building,

Appendices

- (a1) does not include the carrying out of any development excluded from the operation of this section by the regulations, and
- (b) is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument.

(6) In this section:

“special fire protection purpose” means the purpose of the following:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- (f) housing for older people or people with disabilities within the meaning of State Environmental Planning Policy No 5—Housing for Older People or People with a Disability (now SEPP (Seniors Living))
- (g) a group home within the meaning of State Environmental Planning Policy No 9—Group Homes,
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.

A1.4 Schedule 4 – EP&A Reg 11 - Bush fire prone land

The following information is required to be included within a planning certificate under section 149 of the EP&A Act:

“If any of the land is bush fire prone land (as defined in the Act), a statement that all or, as the case may be, some of the land is bush fire prone land.

If none of the land is bush fire prone land, a statement to that effect.”

A1.5 Clause 46 - Rural Fires Regulation 2002 - Application for bush fire safety authority

Clause 46(1) of the Rural Fires Regulation 2002, specifies the information requirements for consideration of a bush fire safety authority under section 100B of the RF Act.

- (1) For the purposes of section 100B (4) of the Act, an application for a bush fire safety authority must be in writing and include the following:
 - (a) a description (including the address) of the property on which the development the subject of the application is to be carried out,
 - (b) a classification of the vegetation on and surrounding the property (out to a distance of 140 metres from the boundaries of the property) in accordance

with the system for classification of vegetation contained in *Planning for Bush Fire Protection*,

- (c) an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property),
- (d) identification of any significant environmental features on the property,
- (e) the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property,
- (f) the details and location of any Aboriginal relic (being a relic within the meaning of the *National Parks and Wildlife Act 1974*) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,
- (g) a bush fire assessment for the proposed development (including the methodology used in the assessment) that addresses the following matters:
 - (i) the extent to which the development is to provide for setbacks, including APZs,
 - (ii) the siting and adequacy of water supplies for firefighting,
 - (iii) the capacity of public roads in the vicinity to handle increased volumes of traffic in the event of a bush fire emergency,
 - (iv) whether or not public roads in the vicinity that link with the fire trail network have two-way access,
 - (v) the adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response,
 - (vi) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site,
 - (vii) the construction standards to be used for building elements in the development,
 - (viii) the adequacy of sprinkler systems and other fire protection measures to be incorporated into the development,
- (h) an assessment of the extent to which the proposed development conforms with or deviates from the standards, specific objectives and performance criteria set out in Chapter 4 (Performance Based Controls) of *Planning for Bush Fire Protection*.

A1.6 Clause 46A - Rural Fires Regulation 2002 - Development excluded from requirements for bush fire safety authority

- (1) For the purposes of section 100B (5) (a1) of the Act, the following development is excluded from the operation of that section:
 - (a) development for the purposes of licensed premises that do not provide overnight accommodation (other than for the owner or manager of the premises),

- (b) strata subdivision of a building, but only if development consent for the erection of the building was granted in accordance with section 79BA of the *Environmental Planning and Assessment Act 1979*,
- (c) strata subdivision of a class 2 building erected before 1 August 2002, but only if the building complies with the requirements of Level 1 construction under AS 3959-1999, *Construction in Bushfire Prone Areas*,
- (d) subdivision of land for the purposes of converting an existing dwelling to a dual occupancy, but only if development consent for the dwelling was granted in accordance with section 79BA of the *Environmental Planning and Assessment Act 1979*,
- (e) subdivision of land (including any boundary adjustments) that is leased under the *Western Lands Act 1901*,
- (f) subdivision for the purposes of consolidations of lots or boundary adjustments on land where the number of lots are reduced, but only if any existing dwelling on the land complies with the requirements of Appendix 3 (Site Bush Fire Attack Assessment) of *Planning for Bush Fire Protection*,
- (g) development for the purposes of bed and breakfast accommodation using an existing building, but only if the building is more than 30 metres from native vegetation,
- (h) subdivision of land used or proposed to be used for industrial purposes on which the erection of a dwelling related to the industrial use of the land (such as a manager's residence) is permitted,
- (i) subdivision of land for a rural residential purpose in a Western New South Wales district, but only if:
 - (i) no lot created by the subdivision is greater than 10 hectares, and
 - (ii) the bush fire prone land in any lot is less than 10 per cent of the lot, and
 - (iii) each lot has direct access to an existing public road.

(2) In this clause:

class, in relation to a building, means a building of the specified class under the *Building Code of Australia*.

Building Code of Australia has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

Western New South Wales district means any of the following weather forecast districts referred to in Schedule 1:

- (a) Upper Western Weather Forecast District,
- (b) Lower Western Weather Forecast District,
- (c) Riverina Weather Forecast District,
- (d) South West Slopes Weather Forecast District,
- (e) Central West Plains Weather Forecast District,
- (f) Central West Slopes Weather Forecast District,
- (g) Central Tablelands Weather Forecast District,

- (h) North West Plains Weather Forecast District,
- (i) North West Slopes Weather Forecast District.

A1.7 Clause 46B - Rural Fires Regulation 2002 - Additional special fire protection purposes for which bush fire safety authority required

For the purposes of paragraph (i) of the definition of **special fire protection purpose** in section 100B (6) of the Act, the following purposes are prescribed:

- (a) manufactured home estates (within the meaning of *State Environmental Planning Policy No 36—Manufactured Home Estates*), comprising two or more caravans or manufactured homes, used for the purpose of casual or permanent accommodation (but not tourist accommodation),
- (b) sheltered workshops, or other workplaces, established solely for the purpose of employing persons with disabilities,
- (c) respite care centres, or similar centres, that accommodate persons with a physical or mental disability or provide respite for carers of such persons,
- (d) student or staff accommodation associated with a school, university or other educational establishment.

A1.8 Classifications (of Buildings) – Volume 1, Building Code of Australia (2006)

The Building Code of Australia is updated annually and classes of buildings should be confirmed within the latest version of the Code. Buildings are classified as being from Classes 1 to 10.

For the purposes of *Planning for Bush Fire Protection*, the descriptions of the various Classes within the document apply to the 2006 version of the Code.

Classes 1, 2, 3 and 4 are buildings primarily used as a residence.

Classes 5, 6, 7 and 8 are buildings used as shops, warehouses, factories, offices and carparks and the like.

Class 9 buildings include health care, assembly buildings and aged care buildings.

Class 10 buildings are non-habitable building such as a shed as well as fences, free standing walls and swimming pools.

Importantly, Class 3 (other than a detention centre) and Classes 9a and 9c buildings will be a special fire protection purpose for the purposes of section 100B of the *Rural Fires Act 1997*. Other classes of buildings can be assessed under the provisions of section 79BA of the *Environmental Planning and Assessment Act, 1979*.