

## Creation of an Asset Protection Zone (APZ) over Council Owned or Managed Land Policy

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### 1. PURPOSE

The purpose of this policy is to provide clear guiding principles to regulate the use of land owned or managed by Council for private use as an Asset Protection Zone (APZ) to mitigate the threat of loss from bushfire.

### 2. STATEMENT

This policy has application in those cases where, on merit, some concession may be appropriate to assist a proposed development to meet the requirements of *Planning for Bushfire Protection 2006 (PBP2006)*.

Permission to establish APZs which benefit adjoining freehold land on Council Owned or Managed Land, will only be considered where the application meets all requirements set out below:

- The proposal is infill development (see 3 Definitions),
- The APZ cannot be wholly contained on the private land by the consideration of other options and/or reconfiguration by design and siting (acceptance of such proof at Council's sole discretion),
- Applicants Bushfire Attack Level (BAL) rating has been assessed at 'Flame Zone' and the BAL cannot be reduced through the use of other bushfire protection measures.

No interests will be created on any Council Owned or Managed Land. All approved APZs must be created by way of Positive Covenant in accordance with Section 88E of the *Conveyancing Act 1919* over the benefiting owners land.

Any proposal to establish APZs on Council Owned or Managed Land for new freehold subdivisions will **NOT** be supported under this policy.

## 2.1 SCOPE

Development or redevelopment on land that is mapped as Bushfire Prone under the *Environmental Planning & Assessment Act 1979* (EP&A Act) triggers compliance with PBP2006.

One of the identified Bushfire Protection Measures to improve property protection is the provision of an APZ. The APZ provides a buffer between the asset (new dwelling/s or dwelling additions) and the bushfire hazard. This is to ensure that there is a progressive reduction of bushfire fuels between the hazard and any asset.

It is acknowledged that, in some circumstances, site attributes can constrain the ability to provide an APZ wholly within the development allotment and conversely the same principles apply to Council Owned or Managed Land.

APZs over Council Owned or Managed Land will not be considered where:

- Council Owned or Managed Land is categorised as Community Land (see 3 Definitions);
- land subject to a Native Title Claim or Aboriginal Land Claim;
- vegetation management is not likely or cannot be legally granted (e.g. council bushland reserve i.e., Community Land categorised as Natural Area) or is likely to result in environmental harm or the activity will be carried out in an unsatisfactory manner or is an environmental protection offence (as defined by the POEO Act);
- applicants BAL rating is assessed at BAL-40 or lower;
- applications to extend the maintenance area to provide a greater reduction below BAL-40;
- the proposed development is for the creation of dual occupancy or multi-dwelling developments;
- the adjoining existing land-use is not compatible with vegetation management (e.g. environmental protection, endangered ecological communities, riparian corridors etc);
- the onus for management/maintenance of the APZ rests other than with the registered proprietor(s) of the benefiting land; and
- areas of SEPP 14 – Coastal Wetlands, SEPP 26 – Littoral Rainforests or areas of Critical Habitat are involved or the land is the subject of a biodiversity stewardship or conservation agreement.

## 2.2 BACKGROUND

The *Environmental Planning and Assessment Act 1979* (EP&A Act) establishes a system for requiring bushfire protection measures on bushfire prone land to be presented at Development Application (DA) stage, as follows:

- i. By requiring Councils to map bushfire prone land. If any part of a development site is within a bushfire prone area, bushfire related assessment requirements apply to the DA.
- ii. Section 4.14 of the *EP&A Act* requires compliance with *PBP2006* and, where a proposal is located within Flame Zone then consultation with the Rural Fire Service (RFS) is mandatory. In other cases, Council Officers can determine the level of compliance or they can rely upon a report prepared by a suitable qualified bushfire consultant.

*PfBP* outlines planning considerations that need to be taken into account when a development application is to be determined in bushfire prone areas.

### 3 PROVISIONS

All proposed APZs over Council Owned or Managed Land must be lodged as part of a Development Application. The Development Application must demonstrate that the requirements outlined in Section 2 of this policy apply to the development proposal prior to Council considering approval for the establishment of an APZ on Council Owned or Managed Land. All relevant documentation must be provided with the development application including but not limited to a plan detailing the proposed APZ area and Bushfire Assessment. Where the DA proposes an APZ that involves the clearing or modification of native vegetation on Council Owned or Managed Land, the applicant will need to provide a *NSW Biodiversity Conservation Act 2016 (BC Act)* compliant biodiversity impact assessment.

Referrals will be made to internal stakeholders to investigate the creation of the proposed APZ over Council Owned or Managed Land. The consideration will involve assessment against matters identified in Section 2.1 and whether there are proposals to use such land for a public purpose which may be incompatible with the proposed positive covenant.

The requirement, if approved, will then be included in the conditions of approval for the issuing of a Development Consent (additional fees may apply in accordance with Council's Fees & Charges).

All Section 88E documentation must ensure that:

The registered proprietor(s) of the land which is benefited by the positive covenant shall:

1. be responsible for maintenance of the APZ and any ongoing associated costs
2. Indemnify Council against any loss, injury or damages incurred undertaking the activities defined in the APZ Management Plan or from failure to maintain the APZ to the RFS approved standards.

All costs associated with the creation of the positive covenant must be met by the applicant including but not limited to legal costs, survey costs and registration fees.

Where the impact of the APZ on Council Owned or Managed Land triggers entry into the BC Act "offset scheme", the cost of the Biodiversity Assessment Report by an "accredited person" and the retirement of credits is the responsibility of the applicant. All other biodiversity impact assessment and mitigation costs post approval are also the responsibility of the applicant. This

could include costs for ecologist supervision of clearing and for the hollow-bearing tree removal and associated wildlife rescue.

## 4 DEFINITIONS

### Asset Protection Zone (APZ)

Development on bush fire prone land will normally require the implementation of a setback distance which is referred to as an asset protection zone. An APZ is also known as a fire protection zone and aims to protect human life, property and highly valued public assets and values. It is a buffer zone between a bush fire hazard and an asset or dwelling/s, which is managed to minimise fuel loads and reduce the potential radiant heat levels, flame contact, ember and smoke impact on life and property. The width of the APZ will vary with slope, vegetation and construction level.

An APZ can consist of an area maintained to minimise fuel loads and can be comprised of a combination of perimeter roads (subdivision), fire trails and managed lands so that a fire path is not created between the hazard and the new dwelling or addition to an existing dwelling.

### Bush fire attack Level (BAL)

Means of measuring the severity of a building's potential exposure to ember attack, radiant heat and direct flame contact using increments of radiant heat (expressed in kilowatts/m<sup>2</sup>). This is the basis for establishing the requirements for construction under AS3959-Construction of buildings in bushfire prone areas. The following BAL construction requirements apply in AS3959.

BAL-LOW	insufficient threat to warrant specific construction requirements
BAL-12.5	ember attack with heat flux to 12.5kW/m <sup>2</sup>
BAL-19	increased ember attack, ignition of debris & heat flux to 19kW/m <sup>2</sup>
BAL-29	increased ember attack, ignition of debris & heat flux to 29kW/m <sup>2</sup>
BAL-40	increased ember attack, ignition of debris, heat flux to 40kW/m <sup>2</sup> & flame exposure
Flam Zone	direct flame exposure, ember attack & heat flux greater than 40kW/m <sup>2</sup>

### Bush fire prone land/area

Is an area of land that can support a bush fire or is likely to be subject to bush fire attack. In general, a bush fire prone area is an area mapped for a local government area that identifies the vegetation types and associated buffer zones. Bush fire prone land maps are prepared by local councils and certified by the Commissioner of the RFS.

### Bush fire prone land map

Means a map that identifies the area certified as referred to in Section 10.3 of the EP&A Act.

### Bush fire protection measures (BPMs)

A range of measures (controls) available to minimise the risk arising from a bushfire. BPMs include APZs, construction standards, suitable access arrangements, water and utility services, emergency management arrangements and landscaping. BPMs are defined in Chapter 3 of Planning for Bushfire Protection 2006

### Community Land

Land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the Local Government Act 1993.

### **Council Owned or Managed Land**

Land which is Council owned or managed, developed or otherwise. Including but not limited to Community Land, Operational Land, Crown land managed as Crown Land Manager under the Crown Land Management Act 2016, Devolved Care Control and Managed Crown land and public unmade road and road reserves.

### **In Fill Development**

Refers to the development of land by the erection of or addition to a residential building (or buildings), which does not require the spatial extension of services including public roads, electricity, water or sewerage and is within an existing allotment.

## **5 RELATED DOCUMENTATION**

- Environmental Planning and Assessment Act 1979
- Rural Fires Act 1997
- Planning for Bush Fire Protection 2006
- Protection of the Environment Operations Act 1997
- SEPP Coastal Management
- Coastal Management Act 2016
- Biodiversity Conservation Act 2016
- Australian Standard: 3959 Construction of buildings in bushfire-prone areas 2009 (AS3959)
- Building Code of Australia
- Council Plans of Management
- Foreshore Reserves Policy
- Local Government Act 1993
- Crown Land Management Act 2016
- Native Title Act 1993
- Aboriginal Land Rights Act 1983
- Other relevant statutory plans and policies

## **6 IMPLEMENTATION**

The Business and Property Section implements this policy as part of its function as Property Manager of Council owned and managed lands.

## **7 REVIEW**

The Business and Property Section will review this policy within one year of the election of every new Council in consultation with relevant land managers and asset custodians. A review of this policy may also be triggered by amendments to relevant *Development Control Practice Notes* and/or *Planning for Bushfire Protection 2006* published by the NSW Rural Fire Service.

## **8 APPLICATION OF ESD PRINCIPLES**

- Enhancement of the bushfire protective measures employed for developments in bushfire prone areas providing both social and economic benefits to the community.
- The protection of threatened species and significant habitats through the incorporation of environmental assessment for the removal of vegetation with the APZ into the overall DA assessment process for the development approval.