

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

Adoption Date:	20/04/2019
Amendment Date:	5/05/2020, 17/07/2023
Minute Number:	MIN19.247, MIN20.319, MIN23.363
Review Date:	01/12/2024
Directorate:	City Services
Record Number:	POL22/103

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 2019 (PBP2019)*.

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 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.

All approved APZs must be created by way of Positive Covenant in accordance with Section 88D or 88E or the *Conveyancing Act 1919*. Interests will only be registered on Council's Owned or Managed land title at Council's sole discretion.

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

3. 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 PBP2019.

One of the identified Bushfire Protection Measures (BPMs) 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 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 *Protection of the Environment Operations Act 1997*);
- Applicants BAL rating is assessed at BAL-40 or lower (excluding Jerberra Estate);
- Applications to extend the maintenance area to provide a greater reduction below BAL-29 (excluding Jerberra Estate);
- The proposed development is for the creation of dual occupancy or multi-dwelling developments, unless the responsibility for the APZ is non-ambiguous or not likely to become ambiguous (at Council Discretion);
- Applications within Jerberra Estate where the APZ area extends beyond the mapped “development area” as shown on the Development Area Map that forms part of the Shoalhaven LEP (Jerberra Estate) 2014;
- 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 coastal wetlands and littoral rainforests or areas of proximity to coastal wetlands and littoral rainforests as identified in the *State Environmental Planning Policy (Resilience and Hazards) 2021* or where areas of Critical Habitat are involved or the land is the subject of a biodiversity stewardship or conservation agreement.

4. 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 *PfBP2019* 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.

PfBP2019 outlines planning considerations that need to be taken into account when a development application is to be determined in bushfire prone areas.

5. 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 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. Applications for development in Jerberra Estate that comply with the biodiversity conservation provisions in the Jerberra Estate LEP and DCP (Chapter N20) will be assessed under the legislation that applied prior to the commencement of the *Biodiversity Conservation Act 2019*.

Referrals will be made to internal stakeholders to investigate the creation of the proposed APZ. The consideration will involve assessment against matters identified in this Policy 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 positive covenant 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 Biodiversity Conservation 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.

If an APZ request has potential to change the management and/or presentation of vegetation on unmanaged Council open space, the request will be reported to Council after seeking feedback from the local community.

6. 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. 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/m²). 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 ²
BAL-19	increased ember attack, ignition of debris & heat flux to 19kW/m ²
BAL-29	increased ember attack, ignition of debris & heat flux to 29kW/m ²
BAL-40	increased ember attack, ignition of debris, heat flux to 40kW/m ² & flame exposure
Flam Zone	direct flame exposure, ember attack & heat flux greater than 40kW/m ²

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, as designated on a bush fire prone land map that identifies vegetation types and associated buffer zones.

Bush fire prone land map

A map prepared in accordance with NSW RFS requirements and certified by the Commissioner of the NSW RFS under Section 10.3 of the EP&A Act.

Bush fire protection measures (BPMs)

A range of measures used to minimise the risk from a bush fire that need to be complied with. BPMs include APZs, construction provisions, suitable access, water and utility services, emergency management and landscaping. BPMs are defined in Chapter 3 of Planning for Bushfire Protection 2019.

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 Council road and Council road reserves.

In Fill Development

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

Jerberra Estate

Land identified as Development Area on the Development Area Map that forms part of the Shoalhaven Local Environmental Plan (Jerberra Estate) 2014.

7. Related Documentation

- Environmental Planning and Assessment Act 1979
- Rural Fires Act 1997
- Planning for Bush Fire Protection 2019
- Protection of the Environment Operations Act 1997
- State Environmental Planning Policy (Resilience and Hazards) 2021 Coastal Management Act 2016
- Biodiversity Conservation Act 2016
- Australian Standard: 3959 Construction of buildings in bushfire-prone areas 2009 (AS3959)
- National Construction Code
- Council Plans of Management
- Council's 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

8. Implementation

City Services implements this policy as part of its function as Property Manager of Council owned and managed lands.

9. Review

This Policy will be reviewed within 12 months of the election of a new council and where circumstances arise that warrant a review, such as amendments to relevant *Development Control Practice Notes* and/or *Planning for Bushfire Protection 2019* published by the NSW Rural Fire Service.