

BUSH FIRE MANAGEMENT FOR PROPOSED DEVELOPMENT ADJOINING CROWN LAND



Land and Property
Management Authority
Crown Lands



This Fact Sheet assists:

- (i) persons intending to carry out development on land near Crown land where that development must address requirements relating to protection from bush fires; and
- (ii) authorities considering applications for such development under the *Environmental Planning and Assessment Act 1979*.

It establishes matters of interest to the NSW Land and Property Management Authority (LPMA) in its responsibility to manage Crown land in accordance with the *Crown Lands Act 1989*.

In summary, development should be designed and sited with appropriate set backs and fire breaks so that there is no impact on any Crown land. This includes protection measures (e.g. asset protection zones, perimeter trails) required by *Planning for Bush Fire Protection 2006* (NSW Rural Fire Service), and any other requirement.

Background

Section 63 of the *Rural Fires Act 1997* requires owners of land to:

- (i) take all practical steps to prevent the occurrence of bush fires on, and the spread of fires from, their land; and
- (ii) take any steps advised to them by a bush fire coordinating committee and/or which are included in a bush fire risk management plan applying to the land.

Prior to 2002, legislation allowed land holders adjoining Crown land to carry out bush fire hazard reduction within the Crown land. This is no longer the case and any bush fire protection work on Crown land requires authorisation by LPMA.

Associated amendments to the *Environmental Planning and Assessment Act 1979* establish particular procedures for development on 'bush fire prone land' (identified on maps certified by the Commissioner of the NSW Rural Fire Service and held by councils). Development for subdivision for residential or rural residential purposes, or for 'special fire protection purposes' as defined in s.100B of the *Rural Fires Act 1997*, requires an 'authority' issued by the Commissioner of the Rural Fire Service. (A development application (DA) for these development types becomes an 'integrated development application' under the *Environmental Planning and Assessment Act 1979*). Where development is for other purposes, development consent cannot be granted unless:

- (i) it complies with *Planning for Bush Fire Protection 2006* (or other document prescribed by the *Environmental Planning and Assessment Regulation 2000*); and

- (ii) the consent authority has consulted with the Commissioner of the NSW Rural Fire Service.

Planning for Bush Fire Protection 2006 sets out standards for the management of bush fire risk and is also used by the Commissioner when deciding whether to issue an authority. Such standards include the establishment and management of 'asset protection zones'.

Asset protection for new development

Asset protection zones (and other bush fire protection measures) on Crown land can impose significant costs on LPMA and may compromise the use and values of that Crown land. As such:

- (i) new development is not to locate any bush fire protection measures on Crown land.
- (ii) LPMA may consider allowing bush fire protection measures on adjoining Crown land for:
 - (a) 'infill development', as defined in *Planning for Bush Fire Protection 2006* (i.e. construction within an existing approved subdivision), and
 - (b) additions to existing development, where measures cannot reasonably be accommodated on the site because of existing development and/or lot size.
- (iii) LPMA may also consider use of Crown land for protection measures where the proposal will lead to improved bush fire risk outcomes or reduce overall impacts on Crown land (compared to where the development does not proceed).

Where LPMA is willing to consider bush fire protection measures on Crown land, proponents will be expected to first take steps to minimise the impacts on Crown land by:

- (a) siting development so that protection measures are maximised within the proponent's land
- (b) siting development so that it is no closer to the Crown land than approved dwellings on adjacent land, or any existing dwellings on the site. Where there are no existing dwellings, LPMA will consider the proposal on merit
- (c) building to Level 3 of Australian Standard 3959-1999 (construction of buildings in bushfire-prone areas), unless there are exceptional circumstances (eg. for a minor addition it may be acceptable for the dwelling to be upgraded to Level 1 of AS 3959-1999).

Need to seek land owner consent and an appropriate tenure from LPMA

Where LPMA has agreed in principle that protection works may be located on Crown land (ie. in the circumstances above), they need to be included as part of any DA to Council. As such, that DA will need the consent of LPMA, as landowner, for it to be lodged with Council.

Applications for landowner consent are to be consistent with the *LPMA Policy for the Issue of Landowner's Consent* (which includes an application form) and are to include:

- (i) a plan clearly showing the proposed bush fire protection measures on Crown lands
- (ii) details of the proposed construction level under AS 3959-1999.
- (iii) details of nearby development, to allow a determination of whether the development is 'infill development'.

If (following the issue of landowner consent) development consent is granted, work cannot commence on the Crown land until an easement under the *Conveyancing Act 1919* has been granted by LPMA over that part of the Crown land affected.

Where the proponent is to maintain an asset protection zone (or other measure) at their cost, the easement will include a public positive covenant (under the *Conveyancing Act 1919*) to that effect and registered on the title of the proponent's land.

Aboriginal Land Claims and Native Title

Where Crown land is under Aboriginal Land Claim, LPMA will not approve any bush fire protection works or the grant of a tenure on that land without the consent of the claimant Aboriginal Land Council, as evidenced by a resolution of that council.

Where Native Title has not been extinguished by a previous exclusive possession act by the Crown, any tenure offered by LPMA will include conditions to the following effect:

- (i) the tenure will terminate on the making of a determination that Native Title exists (unless the tenure is extended under an Indigenous Land Use Agreement); and
- (ii) clearing is limited to that which is reasonably necessary for the protection of public health and safety.

Responsibility for bush fire protection measures

The proponent is to meet the costs of installing and maintaining protection measures required in any development consent.

LPMA may continue to maintain any existing bush fire protection measures located on Crown land at its discretion.

Procedures

Initial inquiries from proponents wishing to undertake bush fire protection works on Crown land should be directed to the local LPMA office (locations on the LPMA website).

LPMA will identify the location, status and tenure of the subject Crown land; explain the process and implications of any

required tenure and positive covenant; and will prepare any required easement or public positive covenant, with costs borne by the proponent.

If the land is managed by a reserve trust or by others, LPMA will provide initial advice, and then direct subsequent inquiries to the reserve trust or other manager.

Fees

Normal LPMA fees relating to Crown land matters apply, including the cost of establishing and registering an easement.

Other LPMA owned or managed lands

LPMA owns and manages an extensive portfolio of other land through the State Property Authority, Office of Strategic Lands, Hunter Development Corporation, Lake Illawarra Authority and Festival Development Corporation. Contact should be made with these agencies in respect to bush fire management adjacent to land they manage.

Disclaimer

This fact sheet is not to be taken as legal advice. In preparing this fact sheet the Land and Property Management Authority has made every reasonable effort to provide accurate guidance on applicable legislation and other matters. However, the law is complex and constantly changing. The Land and Property Management Authority accepts no responsibility for any loss or damage caused as a result of reliance on information contained in or omitted from this fact sheet.

Further Information

LPMA Policy for the Issue of Landowner's Consent (2010)

LPMA fact sheet: *Development and Crown land* (2010)

LPMA fact sheet: *Crown land Asset Protection Zones* (APZ's on Crown land where established by LPMA) (2009)

Construction of buildings in bushfire-prone areas AS3959 (1999) (Standards Australia)

Living in Bushfire-prone areas Handbook HB 330-2009 (Standards Australia)

Planning for Bush Fire Protection 2006 (NSW Rural Fire Service)

Standards for Asset Protection Zones (NSW Rural Fire Service)

NSW Rural Fire Service website: www.rfs.nsw.gov.au

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