

Preliminary observations

Note

The short time available, for response has meant that relatively high level responses have been provided.

The NSW Rural Fire Service would welcome the opportunity to provide any additional information or clarification that may be of assistance to the Commission in respect of the issues addressed below.

Annual hazard reduction works program

In accordance with the bush fire risk management planning framework in NSW, each fire authority, land manager and agency is responsible for implementing treatments recorded in bush fire risk management plans across parts of the State at risk from bush fire. As part of this process, agencies must submit an annual works program to the relevant Bush Fire Management Committee for approval and in accordance with the Bush Fire Coordinating Committee Policy 1/2008. The annual works program is a prioritised list of hazard reduction activities scheduled to be carried out in a financial year. The list is developed locally based on the experience of the relevant Bush Fire Management Committee and considers such things as bush fire risk identified in a bush fire risk management plan, likelihood of suitable weather conditions and the ability of the local land manager to plan and implement risk treatments. As a general rule, the works program comprises works identified in a bush fire risk management plan as addressing risks classified as 'extreme' or 'very high'.

Clearing of hazard reduction not requiring development consent

A range of environmental regulatory instruments apply within NSW that relate to the clearing of vegetation related to hazard reduction (not requiring development consent). Each of these instruments creates offences for matters such as damage or harm to certain protected environmental matters. These instruments also provide for a range of 'defences' to those offences. 'Defences' include exemptions to the offence, obtaining an approval under the relevant instrument, or an approval or approvals under other instruments.

In particular in relation to hazard reduction, the *Rural Fires Act 1997* provides for two mechanisms that operate to establish a defence to these offences:

- the Bush Fire Environmental Assessment Code (BFEAC); and
- the 10/50 Vegetation Clearing Code of Practice (10/50 Code).

There is no express requirement for any person, organisation or public authority to use the BFEAC or the 10/50 Code. Rather they exist as so as to create defences against an offence of the type outlined above. These two Codes were established to provide a focal point for 'approving' bush fire hazard reduction, but other instruments may equally provide for clearing that has bush fire hazard reduction outcomes.

Application of Commonwealth legislation

Undertaking bush fire hazard reduction in accordance with a Certificate issued under the BFEAC, or in accordance with the 10/50 Code (terms defined below), provides a defence against all relevant environmental regulatory instruments within NSW. However, the provisions of the *Environment Protection and Biodiversity*

Act 1999 (Cth) (**EPBC Act**) apply irrespective of whether landowners are operating in accordance with these Codes or not. The requirements of the EPBC Act are not addressed in this response.

Terminology

NSW uses the terminology "bush fire prone land" and Bush Fire Prone Land Maps rather than "bushfire risk overlay". Bush fire prone land is an area of land that is designated as such on a bush fire prone land map (s. 10.3 of the EP&A Act).

Abbreviations

The following abbreviations are used throughout this response:

- Annual Exceedance Probability (**AEP**)
- Asset protection zone (**APZ**) as described in 3.2 of PBP 2019
- Australian Standard AS 3959 Construction of Buildings in Bushfire Prone Areas (**AS 3959**)
- Bushfire Attack Level (**BAL**)
- SEPP Building Sustainability Index (**BASIX**)
- Bush Fire Coordinating Committee (**BFCC**)
- Bush Fire Hazard Reduction Certificate (**HRC**)
- Bush Fire Prone Land Map (**BFPLM**)
- Development Application (**DA**)
- NSW Department of Planning, Industry and Environment (**DPIE**)
- Deemed to Satisfy (**DTS**)
- Environment, Energy and Science, an office within DPIE (**EES**)
- Environmental Planning Instruments (**EPI**)
- Local Government Area (**LGA**)
- Native Vegetation Panel of NSW, an independent agency established under the LLS Act (**NV Panel**)
- NSW National Parks and Wildlife Service (**NPWS**)
- NSW Rural Fire Service (**NSW RFS**)
- Planning for Bush Fire Protection 2019 (**PBP 2019**)

Abbreviations of legislation, codes and instruments

- *Biodiversity Conservation Act 2016* (**BC Act**)
- *Biodiversity Offsets Scheme*, as established under Part 6 of the BC Act (**BOS**)
- *Bush Fire Environmental Assessment Code for NSW 2006* (**BFEAC**)
- *Environmental Planning and Assessment Act 1979* (**EP&A Act**)
- *Environmental Planning and Assessment Regulation 2000* (**EP&A Regulation**)

- *Local Land Services Act 2013 (LLS Act)*
- *Land Management (Native Vegetation) Code 2018 (NV Code)*
- *National Parks and Wildlife Act 1974 (NPW Act)*
- *National Parks and Wildlife Regulation 2019 (NPW Regulation)*
- *National Construction Code (NCC)*
- *Protection of the Environment Operations Act 1997 (POEO Act)*
- *Rural Fires Act 1997 (RF Act)*
- *Rural Fires Regulation 2013 (RF Regulation)*
- *Standard Instrument - Principal Local Environmental Plan (PLEP)*
- *State Environmental Planning Policy (Exempt and Complying Development) 2008 (Codes SEPP)*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*
- *10/50 Vegetation Clearing Code of Practice prepared under s 100Q of the RF Act (10/50 Code)*

Responses to factual scenarios

Scenario 1: The Homeowner

Physical/Environmental: Person H is a homeowner in a rural-urban interface area. H's property of 2000m² borders a forested bushland area. The property contains a single-level house of 200m² which was built in the 1970s and has not been assessed for natural hazard resilience. The property has a number of native plants and trees present between H's house and the edge of the property, to within 5m of the house.

Known regulatory overlays: The property is identified under a bush fire risk overlay.

Additional factors: One edge of the property borders a state forest. Another edge borders bushland of the same type on a private property.

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1. Describe, including with reference to relevant sections	Every land owner (or occupier) has an ongoing duty to take practicable steps to prevent bush fires	Residential development on bush fire prone land triggers two approval pathways depending on the bush fire	On the assumption that the building is located in the Flame Zone: <ul style="list-style-type: none"> • Flame Zone 	As per Activity B in relation to development applications assessed as local development, including as	In the context of hazard reduction activities undertaken by H on their own land:

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and provisions, the planning and environment laws and regulations that apply to the activities (excluding those that do not relate to natural hazard risk management)?	<p>occurring on their land and to minimise the danger of spread on or from their land under s. 63(2) of the RF Act.</p> <p>Under the RF Act, the BFCC may issue 'notified steps' with which the owner has a duty to comply: s. 63.</p> <p>Similarly, an owner must comply with any steps included in a bush fire risk management plan applying to the land: s. 63.</p> <p>Bush fire hazard reduction works authorised under the RF Act may be carried out without development consent: s.100C RF Act, cl. 5.11 PLEP.</p>	<p>risk:</p> <p>1) Complying development</p> <p>The development could be considered a "complying development" under the Codes SEPP.</p> <p>Complying development is permitted on bush fire prone land provided the development complies with the provisions of PBP 2019 and is not carried out on land of higher bush fire risk (ie in BAL 40 or the Flame Zone).</p> <p>A complying development certificate would need to be issued by a certifying authority, accompanied by a BAL certificate confirming the development is not BAL-40 or BAL-Flame Zone (1.19A Codes SEPP).</p> <p>The clearing of native vegetation for an APZ associated with complying development is a key consideration in this context: 5A.2 and 1.19 Codes SEPP. This clearing does not need assessment under the BC Act. However, a permit may</p>	<p>development is not deemed to satisfy (DTS) under the NCC as adopted by NSW.</p> <ul style="list-style-type: none"> Development consent is required to upgrade or rebuild in the Flame Zone. H cannot use the complying development pathway under the Codes SEPP. Proposed development in BAL Flame Zone triggers consultation with the NSW RFS under s. 4.14 of the EP&A Act. PBP 2019, specifically at section 7 contains the specifications and requirements regarding this type of residential development and AS 3959 is applied. The relevant consent authority must also consider APZ requirements (vegetation management and clearing requirements): Par. 7 BC Act. Development consent 	<p>they relate to the rebuild of the house.</p> <p>On the assumption that the building is not in the Flame Zone:</p> <ul style="list-style-type: none"> If H were to upgrade, H would need to either demonstrate a better bush fire outcome under 7.8 of the PBP 2019 (which may allow minor upgrades to improve the bush fire resilience of the property, achieving a more balanced holistic outcome) or comply with the NCC as adopted by NSW. If H proposes to rebuild the house, the best practice would be to seek to relocate it so that the separation between the house and the vegetation provides the best protection from exposure to bush fire: cl.1.1 PBP 2019. <p>If the rebuild or upgrade is replacing an existing habitable structure and existing APZs are maintained, no further</p>	<ul style="list-style-type: none"> Bush fire hazard reduction works authorised under the RF Act may be carried out without development consent: s.100C RF Act, 5.11 PLEP (this would include works under s. 63 of the RF Act). The RF Act provides environmental assessment and approval/exemption mechanisms as set out below. H may conduct the works under the: <ul style="list-style-type: none"> BFEAC; or 10/50 Code. <p>The available approvals/ exemptions provide for appropriate reduction of vegetation to reduce bush fire risk.</p> <p>Irrespective of which code is used the occurrence of certain environmental matters (such as the presence of threatened biodiversity) may result in conditions or limits on the clearing permitted.</p>

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		<p>be required where the Vegetation SEPP applies and the Council has rules around the type and extent of clearing vegetation in a relevant Council Development Control Plan.</p> <p>2) Local Development</p> <p>If complying development is not allowed, H will be required to prepare and lodge a DA with the consent authority (usually the LGA).</p> <p>Section 4.14 of the EP&A Act specifies that development consent may not be granted on bush fire prone land unless the consent authority is satisfied that:</p> <ul style="list-style-type: none"> a) the development conforms with the specifications and requirements of PBP 2019; or b) H provides a certificate from a bush fire risk assessment consultant recognised by the NSW RFS stating that the development complies with the specifications and requirements of 	<p>will generally contain conditions regarding the creation and ongoing maintenance of APZ's, landscaping, construction standards, services and access.</p> <p>As with B, clearing native vegetation may trigger consideration of an EPI.</p>	<p>approvals are required for clearing of vegetation.</p>	<p>There are other legislative pathways available which are not specific to hazard reduction, but which may achieve the same outcome through other regulations and instruments such as through the Vegetation SEPP.</p> <p>Clearing cannot be undertaken on neighbouring land without consent of the owner. H may lodge a bush fire hazard complaint under s. 74A of the RF Act to the NSW RFS. The NSW RFS will investigate the complaint and may take actions as specified in s.74E RF Act.</p>

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		<p>PBP 2019, or</p> <p>c) the consent authority has consulted with the NSW RFS.</p> <p>Section 1.4.1 of PBP 2019 refers to the specifications and requirements for development on bush fire prone land.</p> <p>Creation of an APZ will be considered as part of the DA and development consent will generally contain conditions regarding the creation and ongoing maintenance of APZs, landscaping, construction standards, water supplies, services and access.</p> <p>Clearing of native vegetation may trigger consideration of a number of EPIs if the property is in a council area or a particular zone covered by the EPI e.g. <i>State Environmental Planning Policy (Koala Habitat Protection) 2019</i> and BASIX. Clearing may also trigger assessment and offset under the NSW Biodiversity Offsets Scheme: ss. 7.2, 7.7 and 7.13 BC Act.</p>			

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2. Are there thresholds at which the activity does not trigger regulatory requirements or at which requirements vary?	Not applicable – no planned activity.	<p>If proposed developments are located on bush fire prone land then they are required to comply with the Codes SEPP or s. 4.14 of the EP&A Act depending on which approval pathway is taken. Consent authorities can also consider PBP 2019 if they invoke s. 4.15 of the EP&A Act.</p> <p>1) Complying development</p> <p>The complying development pathway is only available on bush fire prone land if the BAL is certified as other than BAL-40 or BAL-Flame Zone at the time a complying development certificate is issued: 1.19A(3) Codes SEPP.</p> <p>Any clearing associated with the complying development may still need a permit where the Vegetation SEPP applies and a council can include rules around the type and extent of clearing vegetation.</p> <p>Notwithstanding, there are a range of additional factors</p>	<p>As per Activity B.</p> <p>The relevant consent authority must also consider APZ requirements (vegetation management and clearing requirements): Part 7 BC Act.</p>	<p>As per Activity B.</p> <p>If the rebuild or upgrade is replacing an existing habitable structure and existing APZs are maintained, no further approvals are required for clearing</p>	<p>Clearing outside the scope of the BFEAC or 10/50 Code may trigger assessment and offset under the BOS through the Codes SEPP (for vegetation in non-rural areas).</p> <p>For example, the 10/50 Code excludes clearing of coastal wetlands, wetlands protected by the <i>Convention on Wetlands of International Importance</i> (commonly referred to as RAMSAR wetlands) and core koala habitat identified in a Koala Plan of Management developed pursuant to Part 3 of the <i>State Environmental Planning Policy (Koala Habitat Protection) 2019</i>.</p> <p>If the Vegetation SEPP applies then the BOS applies to highest risk biodiversity impacts, determined by a series of triggers: s. 7(2) of the Vegetation SEPP. Clearing below the Biodiversity Offset Scheme threshold does not require approval. Council may still require a permit.</p>

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		<p>that may preclude the development from being complying development (such as heritage items and environmentally sensitive areas).</p> <p>2) Local Development</p> <p>The BOS applies to highest risk biodiversity impacts, determined by a series of triggers. Impacts below the triggers will be assessed in line with local government requirements. If the triggers are met a Biodiversity Development Assessment Report and biodiversity offsets commensurate with the impacts and determined by the Biodiversity Assessment Method will be required (ss. 7.2, 7.7 and 7.13 of BC Act).</p>			
3. Which organisations or people will the person or business be required to contact during these processes?	The NSW RFS is the agency responsible for providing advice on hazard reduction.	<p>Where the Local Development pathway is followed, the consent authority (usually the LGA) determines compliance with PBP 2019.</p> <p>Depending on the development circumstances,</p>	As per Activity B.	As per Activity B.	<p>H should apply to the NSW RFS for an HRC.</p> <p>The NSW RFS website hosts an online assessment tool for the 10/50 Code which enables the land owner to determine whether they may undertake clearing under the Code, such as</p>

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		<p>those to contact will include:</p> <ul style="list-style-type: none"> • Consent authority (usually the LGA). • Certifying authority (this may be Council or private complying development certifier). • Bush fire risk consultant recognised by the NSW RFS. • If H is following the Local Development pathway under s. 4.14 of the EP&A Act, other bush fire risk consultants may be engaged as required to satisfy the provisions under section 4.15 of the EP&A Act and PBP 2019 (Appendix 2, ss.A2.2, A2.4). <p>Regarding the NSW Biodiversity Offset Scheme:</p> <ul style="list-style-type: none"> • where a test of significance (Scheme trigger) is indicated, the Threatened Species Test of Significance Guidelines recommend a suitably qualified person performs this 			<p>whether their property is in a 10/50 vegetation clearing entitlement area.</p> <p>Clearing outside of the BFEAC or 10/50 Code will require consultation with relevant authorities, for example, under the Vegetation SEPP:</p> <ul style="list-style-type: none"> • LGA. • LLS/Native Vegetation Panel if the BOS applies. • Accredited Assessor if the Scheme applies (s. 6.12 of BC Act). • Parties associated with meeting credit obligations if required. <p>H must contact the NSW RFS in relation to any bush fire hazard complaint.</p>

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		test – generally an ecologist. <ul style="list-style-type: none"> an accredited assessor to prepare a Biodiversity Development Assessment Report (s. 6.12 of BC Act) if the scheme applies. Parties associated with meeting credit obligations if required e.g. the Biodiversity Conservation Trust. 			
4. What prescribed form/s need to be completed during any of these processes?	Not applicable – no planned activity.	1) Complying Development <ul style="list-style-type: none"> Complying Development application form. BASIX Certificate (for extensions over \$50,000). 2) Local Development <ul style="list-style-type: none"> DA form and associated documentation. Common forms <ul style="list-style-type: none"> BASIX Certificate (for extensions over 	<ul style="list-style-type: none"> Council's Bushfire Attack Level form if council is the BAL certifier. DA form and associated documentation. BASIX Certificate (for replacement dwelling). 	As per Activity B.	Application Form – Bush Fire Hazard Reduction Certificate (if an HRC is sought - the NSW RFS undertakes the assessment). The land owner populates their address within the 10/50 online assessment tool on the NSW RFS website for the 10/50 Code. Otherwise, for example, under the Vegetation SEPP: <ul style="list-style-type: none"> Council permit application if a permit for vegetation clearing under a DCP is required (s. 7(1) of Vegetation

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		\$50,000). <ul style="list-style-type: none"> Council's Bushfire Attack Level Form if council is the BAL certifier. 			SEPP). <ul style="list-style-type: none"> Biodiversity Assessment Report if the Biodiversity Offset Scheme applies. There is no prescribed form for a bush fire hazard complaint, however a form which may be used is set out on the NSW RFS website ¹ .
5. What is the prescribed timeframe for providing decisions for the activity, where applicable? (Together with average processing times/possible ranges (shortest to longest) in practice).	Not applicable – no planned activity.	Up to 20 days to determine a complying development. 40 days to determine a development application (otherwise it is deemed a refusal) - timeframes vary depending on available council resources. For development applications where there is consultation with the NSW RFS under s. 4.14 of the EP & A Act, there is a service level agreement requiring that advice be provided within 14 days. Timeframes vary but the majority of requests are met within this	As per Activity B.	As per Activity B.	Within 7 days for an HRC or a longer period as agreed by the applicant. The land owner may use the 10/50 online tool at any time – no time frames apply to this process. Under the Vegetation SEPP: <ul style="list-style-type: none"> Timeframes vary depending on the council. 90 days if the NV Panel is the decision maker.

¹ <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

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		timeframe. Further detail as to timeframes cannot be answered in the time allowed to respond to this Notice.			
6. What costs will be incurred by the person or business in completing these processes?	H may incur costs in meeting duties under s. 63 of the RF Act.	<p>The following fees may apply:</p> <ul style="list-style-type: none"> Complying Development fees - vary between certifiers (can be council or private certifier). BAL fees- vary between councils (starting at \$300) and certifiers (who provide additional levels of service up to around \$2,000). DA fees- vary between councils (but maximum fees are set in Div. 1, Pt. 15 of the EP&A Regulation. For example, the maximum fee for development involving the erection of a building with an estimated cost of up to \$5K is \$110, whilst for a value of \$5001 to \$50K the fee is \$170 plus an additional \$3 for each 	<p>The following fees may apply:</p> <ul style="list-style-type: none"> DA fees- vary between councils but maximum fees are set in Div. 1, Pt. 15 of the EP&A Regulation and as identified for Activity B. Bush fire assessment and report typically in the range of approximately \$1,000 - \$3,000. Documentation to support DA e.g. survey approximately- \$2,000 - \$10,000. Architectural Plans starting from- \$5K. Other documentation approximately- \$5K. BASIX Fee- \$50. 	As per Activity B.	<p>There is no fee for obtaining an HRC or using the 10/50 online tool.</p> <p>Assistance in carrying out works may be available under Assist, Infirm, Disabled and Elderly Residents (AIDER) if H meets the criteria.</p> <p>For works not undertaken under the RF Act:</p> <ul style="list-style-type: none"> Permit fee- varies between councils. NV Panel approval - \$3,000 to \$9,000. Accredited assessor to prepare a Biodiversity Development Assessment report if required. These are undertaken by private consultancies and costs are commercial-in-confidence. Costs typically range from

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		<p>\$1K or part thereof).</p> <ul style="list-style-type: none"> Documentation to support a DA e.g. survey - approximately \$2,000. Architectural plans starting from- \$5K. BASIX Fee - \$25. If the DA requires NV Panel approval - \$3,000 to \$9,000. Accredited assessor to prepare a Biodiversity Development Assessment Report if required (expert and/or local government advice is required on whether the scheme is triggered. These are undertaken by private consultancies and costs are commercial-in-confidence. Costs typically range from \$5K to \$10K for small scale assessments). Cost of offset if required – determined by biodiversity offset market. 			<p>\$5,000 to \$10,000 for small scale assessments.</p> <ul style="list-style-type: none"> Cost of offset if required – determined by biodiversity offset market.

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		<ul style="list-style-type: none"> Bush fire assessment reports demonstrating compliance with PBP 2019 – \$400- \$3,000 (the higher end applies where development does not comply with the acceptable solutions provisions of PBP 2019 and a performance based solution is sought). 			
7. What are the costs and/or legal ramifications of non-compliance or mistakes?	<p>If H breaches the duty under s. 63 of the RF Act or a requirement of the applicable bush risk management plan, a notice can be issued under s. 66 to undertake hazard reduction works.</p> <p>If H failed to comply with the notice, there may be a penalty (50 penalty units or imprisonment for 12 months): s. 66(8) RF Act. The NSW RFS may also undertake the work and recoup costs from H.</p> <p>If H carries out the work, there may be costs associated with undertaking the work.</p>	<p>Penalties vary depending on the scale and type of illegal development. Remedies are available under the EP&A Act and Regulation and the POEO Act.</p> <p>Any person can bring enforcement proceedings under Div. 9.5 of the EP&A Act against a breach of conditions of consent. Councils and the DPIE have the power to give Orders to comply with conditions of development consent: s. 9.34 EP&A Act.</p> <p>Section 2.8 of the BC Act provides that a development consent constitutes a defence against offences in the BC Act. Penalties under</p>	As per Activity B.	As per Activity B.	<p>If hazard reduction activities comply with the 10/50 Code or HRC conditions, this constitutes a defence to some offences under other environmental regulatory instruments such as the EP&A Act, POEO Act and BC Act.</p> <p>Non-compliance may deprive H of the benefit of that defence and as such, they may be subject to any applicable penalties under the relevant environmental regulatory instruments.</p>

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		Pt. 2 Div. 1 of the BC Act There may be insurance implications if the dwelling is not constructed to the required standards and/or conditions of consent are not met.			
8. What guidance or other assistance is available to help navigate these processes?	NSW RFS can provide guidance including with a range of publications available on its website.	The following resources are available online: <ul style="list-style-type: none">• PBP 2019²• NSW RFS website.• DPIE DA Guide³• DPIE CDC Module.• NSW RFS Single Dwelling Kit (and other resources and fact sheets)⁴• Native vegetation clearing approvals pathway navigator• Biodiversity Values Map and Threshold Tool⁵• BOS guidance for	The following resources are available: <ul style="list-style-type: none">• LGA front desk support.• BASIX Hotline.• DPIE online CDC Module.• DPIE DA Guide.• Pre-DA process as described in Activity B.	As per Activity B	<ul style="list-style-type: none">• NSW RFS has a range of tools available to assist H applying for an HRC, including the BFEAC and a range of supporting documents and standards. The NSW RFS also undertakes site visits and provide general advice and assistance on bush fire risk management.• The 10/50 online assessment tool and the 10/50 Code along with FAQs. There is a 10/50 email address for users to ask questions.

² https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0005/130667/Planning-for-Bush-Fire-Protection-2019.pdf

³ <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Your-guide-to-the-DA-process>

⁴ <https://www.rfs.nsw.gov.au/resources/publications/building-in-a-bush-fire-area/general>

⁵ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements/biodiversity-values-map>

Question	Activity A: H is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: H would like to build a single-story extension of 50m ² onto their house.	Activity C: H would like to upgrade or rebuild their house to a 'flame zone' Bush fire Attack Level as defined under Australian Standards AS 3959.	Activity D: H would like to upgrade or rebuild their house but comply with only the minimum requirements under the applicable laws and regulations.	Activity E: H would like to clear vegetation and trees to create a break of 30 metres between their house and the bordering bushland to reduce bush fire risk.
		<p>developers⁶</p> <ul style="list-style-type: none"> BOS resources for local government⁷ and accredited assessors⁸ Register of accredited assessors⁹. <p>Assistance by phone is also available as follows:</p> <ul style="list-style-type: none"> LGA front desk support BASIX Hotline. <p>Guidance is also available through the NSW RFS pre-DA process which provides advice on compliance matters for larger and more complicated proposals¹⁰.</p> <p>The following agencies or parties may also provide assistance:</p> <ul style="list-style-type: none"> Consent authorities (including Councils). 			<ul style="list-style-type: none"> Councils and State agencies provide information on other (non-HR) pathways for clearing. For example, LLS and EES have FAQs and printed guides on their websites to assist with clearing in accordance with the Land Management Framework. Biodiversity Values Map and Threshold Tool. Native vegetation clearing approvals pathway navigator. Information about bush fire hazard complaints on the NSW RFS website¹¹. Alternatively H may contact his local Fire Control Centre in person, via email, mail,

⁶ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/how-it-works#developers>

⁷ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/local-government-resources>

⁸ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/accredited-assessors>

⁹ <https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>

¹⁰ See https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0008/77804/DAP-Pre-DA-Advice-Template-Information-Handout.PDF for more information

¹¹ <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

Question	Activity A: H is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: H would like to build a single-story extension of 50m ² onto their house.	Activity C: H would like to upgrade or rebuild their house to a 'flame zone' Bush fire Attack Level as defined under Australian Standards AS 3959.	Activity D: H would like to upgrade or rebuild their house but comply with only the minimum requirements under the applicable laws and regulations.	Activity E: H would like to clear vegetation and trees to create a break of 30 metres between their house and the bordering bushland to reduce bush fire risk.
		<ul style="list-style-type: none"> • The NSW RFS provides resources (including the single dwelling kit and online fact sheets). • Bush fire consultants and development industry practitioners. 			fax or phone.

Scenario 2: The Farmer

Physical/Environmental: Person F is a farmer in a rural area. F's property of 4,000 hectares is mainly grassland used for farming purposes, but also contains forested bushland. The property contains a multi-level farmhouse with some natural hazard mitigation measures that have not been built in consultation with any regulatory processes, and a number of sheds, fences and dams. The property does not have access to mains water. The area around the built assets, excluding the fencing, is well cleared.

Known regulatory overlays: The property is identified under both a bush fire risk overlay and a flood risk overlay.

Additional factors: Threatened flora and fauna is present on parts of the property. The property borders a national park on one side.

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
1. Describe, including with reference to relevant sections and provisions, the planning and environment laws and regulations that apply to the activities (excluding those that do not relate to natural hazard risk management)?	<p>Every land owner or occupier has an ongoing duty to take practicable steps to prevent bush fires occurring on and to minimise the danger of spread on or from their land under s. 63(2) of the RF Act.</p> <p>Under the RF Act, the BFCC may notify steps which the owner/occupier has a duty to comply with. Similarly, an owner/occupier must comply with any steps set out in a bush fire risk management plan applying to the land: s. 63.</p> <p>Bush fire hazard reduction works authorised under the RF Act may be carried out without development consent: s.100C RF Act, cl 5.11 PLEP.</p>	<p>If F chooses to carry out an area burn for hazard reduction purposes on their own land:</p> <ul style="list-style-type: none"> Bush fire hazard reduction works authorised under the RF Act may be carried out without development consent (this would include works under s. 63 of the RF Act): s.100C(1), cl 5.11 PLEP. F may seek approval for the burn under the BFEAC (with an HRC): s.100C(3) RF Act. Threatened species and other environmental matters are assessed and may be conditioned under the Code. The RF Act provides at s. 87 for a fire (safety) permit which is required during the bush fire danger period. 	<p>1) On F's property</p> <p>In the context of hazard reduction activities undertaken on F's own land:</p> <ul style="list-style-type: none"> Bush fire hazard reduction works authorised under the RF Act may be carried out without development consent (this would include works under s. 63 of the RF Act). The BFEAC provides for mechanical clearing to mitigate bush fire risk to certain assets, i.e. create mechanically cleared APZs around these assets. Threatened species and other environmental matters are assessed and may be the subject of conditions under the Code. Clearing can be undertaken alongside property boundary fencing 	<p>The grazing proposal in this scenario is not permissible as it is not consistent with:</p> <ul style="list-style-type: none"> the objects of s. 2A of the NPW Act, which are focused on the conservation of biodiversity, cultural heritage and fostering public enjoyment of nature, cultural heritage and their conservation; management principles for national parks set out in s. 30E of the NPW Act. <p>Grazing occurs in a limited number of NSW national parks, as follows:</p> <ul style="list-style-type: none"> Grazing that was already underway before the park was established and which may legally continue as an existing

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
		<p>The RF Act requires F to notify prescribed people: s.86 RF Act.</p>	<p>for a distance of up to 6 metres on either side with the consent of the respective landowners: BFEAC</p> <ul style="list-style-type: none"> As the rest of the assets on F's property are well cleared, there are no provisions for further mechanical clearing of the forested bushland for hazard reduction purposes. <p>The 10/50 Code may be applied to the protection of farm sheds however it is unlikely to apply in this scenario as the built assets are well cleared.</p> <p>There are other legislative pathways available to achieve the same outcome however these are not directed at hazard reduction and may be used to achieve other purposes.</p> <p>For example, mechanical clearing can be undertaken on land to which the LLS Act and NV Code applies (primarily to rural lands that are not covered by the Vegetation SEPP).</p> <p>The LLS Act splits land to which it applies into two primary categories:</p> <ul style="list-style-type: none"> Category 1 (exempt land) Category 2 which is further split as: <ul style="list-style-type: none"> Regulated Land Vulnerable Regulated Land Sensitive Regulated Land 	<p>interest (s. 39 NPW Act).</p> <ul style="list-style-type: none"> In three reserves (covering 0.003% of the NSW national park system) to support threatened species conservation and targeted fire risk reduction close to developed areas, as identified in the relevant park plan of management or statement of management intent (published on the agency website).

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			<p>If the land is category 1 land, vegetation clearing is not regulated.</p> <p>If the land is category 2 land, certain relevant clearing is allowed without approval (allowable activities) e.g. fire breaks of up to 100m can be cleared without approval in the Western Zone in certain vegetation types. Clearing to maintain fencing is also allowed without approval to prescribed distances. Limitations apply within areas mapped as vulnerable or sensitive.</p> <p>If the intended clearing does not meet the requirements of allowable activities or the NV Code the landholder may apply for a native vegetation clearing approval from the NV Panel but only if the clearing is for a purpose that is permitted without development consent.</p> <p>Applications for clearing approval must include:</p> <ul style="list-style-type: none"> • a biodiversity development assessment report (BDAR) of the proposed clearing developed by an accredited assessor using the Biodiversity Assessment Method. • an assessment of the impacts of the proposed clearing. This would include the social and economic impacts, as well as environmental impacts that are not addressed by the BDAR, such as soil erosion, salination, 	

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
			<p>acidification or other adverse land or water impacts.</p> <p>2) On National Park land</p> <p>Clearing of vegetation within a national park is prohibited under s. 156A of the NPW and cl. 21 of the NPW Regulation, unless consent is obtained from the NPWS.</p> <p>Any proposal to clear vegetation for fire management purposes needs to be consistent with:</p> <ul style="list-style-type: none"> • The objects in s. 2A of the NPW Act, which are focused on the conservation of biodiversity, cultural heritage and fostering public enjoyment of nature, cultural heritage and their conservation. • Management principles for national parks in s. 30E of the NPW Act. • The relevant Reserve Fire Management Strategy prepared by NPWS and the planned program of priority hazard reduction works for the park. • The relevant Bushfire Risk Management Plan prepared by the local Bush Fire Management Committee. • Any relevant environmental impact assessment requirements of the 	

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
			<p>EP&A Act.</p> <p>The Reserve Fire Management Strategy ("the Strategy") identified above is prepared by NPWS for each national park or reserve, including through engagement with neighbours, the NSW RFS and the Bush Fire Management Committees. The Strategy sets out APZs and hazard reduction activities, including the clearing of vegetation, for the national park.</p> <p>Ad hoc requests for consent to clear vegetation for fire management purposes would not typically be granted as hazard reduction priorities are identified in the Strategy. Works must then be carried out in accordance with all relevant environmental assessment and approval processes, including safety requirements.</p> <p><u>Hazard complaint under RF Act for national park land</u></p> <p>H may lodge a bush fire hazard complaint under s. 74A of the RF Act to the NSW RFS if he/she considers there is a bush fire hazard on the national park land. The NSW RFS will be investigate the complaint and may take actions as specified in s.74E RF Act.</p>	
2. Are there thresholds at which the activity does not trigger regulatory requirements or at which requirements	Not applicable – no planned activity.	Not applicable if F is conducting an area burn as the above approvals must be obtained.	Not applicable given the response to question 1.	Not applicable – activity prohibited.

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
vary?				
3. Which organisations or people will the person or business be required to contact during these processes?	F may contact the NSW RFS for advice on hazard reduction.	<ul style="list-style-type: none"> • NSW RFS for the HRC and any fire permit required under s.87 RF Act. • Fire & Rescue (if in a fire district) for any fire permit required under s.87 RF Act. • The RF Act at s.86 and the RF Regulation at cl.33 requires notifications regarding the burns to be sent to: <ul style="list-style-type: none"> ○ The NSW RFS (or Fire & Rescue if in a fire district) ○ Neighbouring land owners. 	<ul style="list-style-type: none"> • NSW RFS in relation to clearance along F's side of the fence line. • F may also contact the NPWS to seek clearance works on the National Park side of the fence line. <p>For works outside of the RF Act:</p> <ul style="list-style-type: none"> • NV Panel if approval is required. • An accredited assessor if approval from the NV Panel is required. • LLS. 	Not applicable – activity prohibited.
4. What prescribed form/s need to be completed during any of these processes?	Not applicable - no planned activity.	<ul style="list-style-type: none"> • Application form – Bush Fire Hazard Reduction Certificate. • NSW RFS can fill out a fire permit application upon request if required under s. 87 RF Act. • Notifications under s. 86 RF Act can be made orally or in writing (cl. 33 RF Regulation). 	<ul style="list-style-type: none"> • Application form – Bush Fire Hazard Reduction Certificate. <p>For works undertaken outside of the RF Act:</p> <ul style="list-style-type: none"> • Notification forms under the LLS Act depending on the land clearing activity being undertaken, if using the Code. • A biodiversity development assessment report if the BOS applies. <p>In relation to national park land, there is</p>	Not applicable – activity not permitted

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
			<p>no prescribed application form. If an environmental impact assessment is required under the EP&A Act, NPWS has published guidelines and templates for F.</p> <p>There is no prescribed form for a bush fire hazard complaint, however a form which may be used is set out on the NSW RFS website¹².</p>	
5. What is the prescribed timeframe for providing decisions for the activity, where applicable? (Together with average processing times/possible ranges (shortest to longest) in practice).	Not applicable - no planned activity.	<p>Within 7 days for an HRC or a longer period as agreed by the applicant.</p> <p>A fire permit would generally be issued within 14 days, although this depends on the availability of a NSW RFS Permit Issuing Officer to conduct an assessment of the property.</p>	<p>Within 7 days for an HRC or a longer period as agreed by the applicant.</p> <p>NV Panel approval must be made in 90 days.</p> <p>For national park land, there is no prescribed decision timeframe for granting consent. If an environmental impact assessment is required, NPWS guidelines state that it aims to determine fully completed Reviews of Environmental Factors within 40 calendar days.</p>	Not applicable – activity not permitted.
6. What costs will be incurred by the person or business in completing these processes?	F may incur costs in meeting their duties under s. 63 of the RF Act.	<p>There is no fee for obtaining an HRC and fire permit.</p> <p>F will incur costs in undertaking the burn on their property.</p> <p>NSW RFS brigades may be able to assist in conducting the burn, or alternatively may carry out the burn on behalf of F, depending on</p>	<p>There is no fee for obtaining an HRC.</p> <p>F may incur labour and machinery costs to undertake mechanical clearing.</p> <p>For works undertaken outside of the RF Act:</p> <ul style="list-style-type: none"> \$3000-\$9000 for NV Panel determination dependent on scale. 	Not applicable – activity not permitted

¹² <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
		availability and other circumstances.	<ul style="list-style-type: none"> Costs of accredited assessor to prepare a Biodiversity Development Assessment Report if required. These are undertaken by private consultancies and costs are commercial-in-confidence. Cost of offset if required – determined by biodiversity offset market. <p>For national park land, F would be responsible for any environmental impact assessment costs and if approved, costs associated with undertaking the clearing.</p>	
7. What are the costs and/or legal ramifications of non-compliance or mistakes?	<p>If F breaches his/her duty under s. 63 of the RF Act or a requirement of the applicable fire risk management plan, a notice can be issued under s. 66 of the RF Act to undertake hazard reduction works.</p> <p>If F fails to comply with the Notice, there may be a penalty (up to 50 penalty units or imprisonment for 12 months: s.66(8) RF Act).</p> <p>The NSW RFS may also undertake the required work and recoup its costs from F.</p>	<p>Penalties of up to 50 penalty units or imprisonment for 12 months, or both, may apply under:</p> <ul style="list-style-type: none"> s. 87 of the RF Act, if F undertakes a burn for the purpose of land clearance or creating a fire break in the bush fire danger period without a permit, or in contravention of the permit conditions, or irrespective of whether in the bush fire danger period or not, fails to comply with the notification requirements under s. 86 of the RF Act. <p>Non-compliance with an HRC may deprive F of a defence to offences under environmental regulatory instruments and F may be subject to</p>	<p>Non-compliance with an HRC may deprive F of a defence to offences under environmental regulatory instruments and as such, F may be subject to any applicable penalties under relevant environmental legislation.</p> <p>For works undertaken outside of the RF Act, vegetation clearing undertaken in accordance with the LLS Act provides a defence against offences in the BC Act (with limited exceptions). Penalties may otherwise apply for harm to animals, picking protected plants or damaging an area of outstanding biodiversity value or the habitat of threatened species or a threatened ecological community.</p> <p>Any unauthorised activities within national parks and reserves may result in the issuing of penalty notices or</p>	<p>Any unauthorised activities within national parks and reserves may result in the issuing of penalty notices or commencement of legal proceedings: see s. 156(A)(1) of the NPW Act and s. 21(1) of the NPW Regulation. The outcome of any such actions depends on the specific nature and scope of the alleged breach.</p>

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
		<p>any applicable penalties under relevant environmental legislation.</p> <p>Failure to take all possible steps to extinguish any unauthorised fire burning on F's land during a bush fire danger period and failure to notify immediately if the fire cannot be extinguished may give rise to a penalty of up to 20 penalty units or 6 months imprisonment, or both, under s.64 of the RF Act.</p> <p>F may be liable to third parties if an escaped hazard reduction burn causes property damage.</p>	<p>commencement of legal proceedings: see s. 156(A)(1) of the NPW Act and s. 21(1) of the NPW Regulation. The outcome of any such actions depends on the specific nature and scope of the alleged breach.</p>	
8. What guidance or other assistance is available to help navigate these processes?	NSW RFS can provide guidance.	<p>NSW RFS will inspect the site when assessing the proposed burn under the BFEAC.</p> <p>The NSW RFS, LLS and EES websites have a range of information to assist F to understand all the relevant processes.</p> <p>The NSW RFS will also provide advice and assistance on bush fire risk management.</p> <p>The NSW RFS brigades may assist in conducting the burn, or alternatively may conduct the burn on behalf of F, depending on availability and other circumstances.</p>	<p>NSW RFS will inspect the site when assessing the activity under the BFEAC.</p> <p>The NSW RFS, LLS and EES websites also have a range of information to assist landholders in understanding clearing of vegetation.</p> <p>Reserve Fire Management Strategies are published on the NPWS website, along with guidelines and templates to assist F to complete the required environmental impact assessment.</p> <p>The NSW RFS will also provide advice and assistance on bush fire risk management.</p> <p>If F is concerned about the management of fuel loads on national park land, he/she may speak to the NSW RFS or NPWS about those concerns and</p>	Not applicable – activity not permitted

Question	Activity A: F is not planning on altering their property. (I.e. are there any obligations on an individual in the absence of them making any changes to their property?)	Activity B: F would like to undertake hazard reduction burns on their property to minimise their bush fire risk.	Activity C: F would like to undertake mechanical clearing on their property and in the bordering national park to minimise bush fire risk.	Activity D: F would like to graze their livestock in the bordering national park, stating an intention to minimise bush fire risk.
			<p>ongoing bush fire management plans.</p> <p>NPWS commonly has Reserve Fire Management Plans and other relevant information on its website.</p> <p>Information about bush fire hazard complaints is on the NSW RFS website¹³. Alternatively H may contact his local Fire Control Centre in person, via email, mail, fax or phone.</p>	

¹³ <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

Scenario 3: The Property Developer

Physical/Environmental: Company D is a property developer which has purchased former farmland totalling 400 hectares on the rural-urban interface, with the intention of building a residential development of up to 500 houses. The land is mainly grassland, with some forested bushland and a small area of wetlands. There are around 10 existing buildings on the property that the developer plans on demolishing.

Known regulatory overlays: Part of the land area is within a bush fire overlay, and part is within a flood overlay. These overlays do not overlap.

Additional factors: The wetlands area borders a nationally threatened ecological community. Threatened fauna also cross from this area into the privately owned wetlands.

Question	Activity A: D would like to build up to 500 houses to comply with the minimum requirements relating to natural hazard risk.	Activity B: D would like to build up to 500 houses to comply with best practice relating to managing natural hazard risk.
1. Describe, including with reference to relevant sections and provisions, the planning and environment laws and regulations that apply to the activities (excluding those that do not relate to natural hazard risk management)?	<p>*This response assumes a planning proposal to rezone the land from rural to residential has already taken place.</p> <p>The broader relevant legislation and planning instruments for this scenario include:</p> <ul style="list-style-type: none"> • RF Act and Regulation. • BC Act. • EP&A Act and Regulation. • <i>Coastal Management Act 2016</i>. • Relevant Environmental Planning Instruments (State Environmental Planning Policies) including the: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Koala Habitat Protection) 2019 ○ State Environmental Planning Policy No 19—Bushland in Urban Areas. ○ Vegetation SEPP ○ State Environmental Planning Policy (Coastal Management) 2018 (for coastal wetlands and littoral rainforests) and ○ State Environmental Planning Policy (State and 	<p>See Activity A in relation to bush fire risk – PBP 2019 sets out best practice for development when followed through all stages of the development process.</p> <p>Floods:</p> <p>As per the information set out for floods in Activity A, plus the below.</p> <p>The Floodplain Development Manual (2005) addresses issues related to best practice consistent with ADR Handbook 7 – Managing the Floodplain. The Manual provides the floodplain risk management process for councils to apply to understand and make decisions on managing the full range of flood risk.</p> <p>To be able to apply the full risk based approach in land use planning councils need to consider Planning Circulate PS07/003. This requires councils to seek approval from the State government to apply residential development controls above the flood planning level, typically the 1% AEP flood plus 0.5m freeboard.</p> <p>This means some extra steps are required before Councils can apply effective risk based controls (in the circumstance where required) to address high consequences in low probability events in land use planning.</p>

	<p>Regional Development) 2011 (if regional development).</p> <ul style="list-style-type: none"> • Relevant Council's Local Environmental Plan (minimal lot size etc, other development standards). • Relevant Council's Development Control Plan(s). • Environmental assessment process under EP&A Act. • PBP 2019 (including if a planning proposal is required). • NCC. • AS 3959. • EP&A Act S9.1 Direction 4.3 Flood Prone Land • Planning circular PS07/003. • NSW Flood Prone Land Policy 2005. • Floodplain Management Manual 2005. • State Environmental Planning Policy Coastal Management 2018. • Development contributions under Councils Development Contributions Plan. <p>Fire</p> <p>PBP 2019 is the most relevant document in bush fire risk planning. It sets out principles and minimum standards for new developments across all stages of the development process, from strategic planning to construction. The standards set in PBP 2019 are regarded as best practice. They were developed based on consultation with industry and stakeholders as well as current research.</p> <p>All development on land which is identified on the applicable Bush Fire Prone Land Map is required to comply with the PBP 2019.</p> <p>1) Rezoning</p> <p>A rezoning process may be required to enable residential development:</p> <ul style="list-style-type: none"> • Section 4 of PBP 2019 sets out strategic principles to ensure land is suitable for development in the context of bush fire risk. 	<p>Regardless of an individual council's planning controls, a best practice approach means that the developer would need to consider the full range of flood constraints and the flood risk that flooding places on the land in the design of the subdivision to reduce the residual risks to the community.</p>
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- The EP&A Act allows the Minister to make directions (s. 9.1(2) of the EP&A Act) that must be considered as part of an amendment to an LEP. Direction 4.4 “Planning for Bushfire Protection” requires that a planning proposal must:
 - Have regard to PBP
 - Introduce controls that avoid placing inappropriate developments in hazardous areas, and
 - Ensure that bushfire hazard reduction is not prohibited within an Asset Protection Zone (APZ).

2) Subdivision

In order to subdivide the property:

- If any part of the property is identified on the applicable Bush Fire Prone Land Map, the applicant is required to obtain a Bush Fire Safety Authority from the NSW RFS under s. 100B of the RF Act.
- Section 100B of the RF Act triggers integrated development provisions under the EP&A Act. Council will refer the development application to the RFS for approval so that there is an integrated assessment of the proposal.
- Section 5 “Rural and Residential Subdivisions” of the PBP 2019 covers bush fire protection measures (APZs, access and services).
- The criteria requires it to be demonstrated that future development in subdivisions is not BAL 40 or the Flame Zone and is compliant with the residential provisions of PBP 2019.

3) Construction

House construction requirements are assessed when approval is sought for building out the subdivision:

- As noted above, subdivisions which have been assessed against the provisions of section 5 of PBP 2019 should achieve a BAL of 29 or lower and should comply with the residential provisions of PBP 2019.

- Subsequent construction may be complying developments.
- Where complying development is not applicable, local, regional or integrated development would apply.

Flood

The NSW Flood Prone Land Policy outlines that local government councils are primarily responsible for managing flood risk. The State Government through the Floodplain Management Program provides local councils with specialist flood risk management technical and policy support and financial assistance to undertake and implement floodplain risk management plans through the risk based floodplain risk management process outlined in the Floodplain Development Manual (current 2005, original 1986). The Manual is generally consistent with Australian Disaster Resilience Handbook 7 (2017) and its supporting guides. Councils receive a limited legal indemnity under s. 733 of the NSW *Local Government Act 1993* for making decisions and information provided where these are consistent with the Manual.

Council planning instruments and policies (Local Environmental Plans (LEPs) and Development Control Plans (DCPs)) need to consider State Government planning directions and relevant State and regional environmental strategies and plans. Development control plans typically provide more detailed and specific flood risk management controls which are used to guide assessment of individual developments and planning proposals.

1) Rezoning

A rezoning process may be required to enable residential development:

Section 9.1 of the EP&A Act allows the Minister to make directions that must be considered as part of an amendment to an LEP. This includes Direction 4.3 on Flood Prone Land (1 July 2009). This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

- The objectives of this direction are:
 - (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the

	<p>principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p> <ul style="list-style-type: none"> • This direction provides guidance on flood considerations in planning proposals which can limit the development of areas due to the impact the development will have on flood behaviour and the flood impacts on other properties, are likely to result in substantially increased requirements for government spending on flood mitigation measures, infrastructure and services. It also limits the development that can be carried out in the flood planning area without consent to some agricultural activities, roads or exempt development. • The direction limits the ability to place flood related development controls above the residential flood planning level (generally based on the 1% AEP flood plus a 0.5m freeboard) unless the Planning Secretary or nominated officer is satisfied by the local authority that this is justified. This is related to PS07/003 (31 January 2007). <p>Council LEPs generally include a Flood Planning Area clause based on a Model clause that provides requirements in relation to flooding. The flood planning area clause applies to areas that are either mapped in the LEP, mapped separate to the LEP or are not yet mapped but are below the flood planning level, generally based on the 1% AEP flood plus a freeboard of typically 0.5m.</p> <p>Some council LEPs also include a Flood Risk Management clause which provides the ability to place additional controls to deal with low probability (less than 1% AEP) high consequence events in areas outside the flood planning area). Where controls in these areas are to be applied to general residential development this needs agreement from State Government under Planning Circular 07/003 (note that PS07/003 is currently under review).</p> <p>Council's DCPs may provide additional advice on development requirements within the floodplain. These controls can vary between development types and the constraints that apply to flooding in the area.</p> <p>Applications for rezoning land LEP and DCP requirements may include the need to undertake an assessment of the flood impacts of the proposed development and the impacts of flooding on the proposed development so that these aspects can be considered in</p>	
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	<p>decisions to rezone the land for more intense purposes. These considerations are consistent with Section 9.1 Direction 4.3.</p> <p>Where rezoning is granted this may include flood related conditions that need to be considered in development of the land.</p> <p>2) Subdivision</p> <p>In order to subdivide the property the proponent is to:</p> <ul style="list-style-type: none"> • Meet the flood related conditions applied at the rezoning stage. This will generally include the need to undertake or update an assessment of the flood impacts of the proposed development and the impacts of flooding on the proposed development so that these aspects can be considered in subdivision design and implementation. • Meet the requirements of Councils LEPs and DCPs, which will generally provide minimum flood related development requirements considering the location and development type. <p>3) Construction</p> <p>House construction requirements are assessed when approval is sought for building on the site:</p> <ul style="list-style-type: none"> • The individual building would need to meet the relevant requirements of Council's LEP and DCP. <p>Where properties are outside the Flood planning area, subsequent construction may be complying development.</p>	
<p>2. Are there thresholds at which the activity does not trigger regulatory requirements or at which requirements vary?</p>	<p>The development would be regional development if it was in excess of \$30 million capital investment value for general development or in excess of \$5 million capital investment value for the purposes of affordable housing.</p> <p>If it is not regional development, the application would follow the local development pathway.</p> <p>The development would be considered integrated under the EP&A Act and would require a bush fire safety authority approval from the NSW RFS at the DA stage. The consent authority must include conditions relating to risk imposed by the NSW RFS or other relevant agencies in the general terms of approval.</p> <p>Section 10.3 of the EP&A Act requires certain LGAs to have maps that identify bush fire prone land. If proposed developments are</p>	<p>As per Activity A.</p>

located on bush fire prone land then they are required to comply with PBP, the integrated development provisions of the EP&A Act and s. 100B of the RF Act.

If houses are constructed on land identified as not being prone to bush fire or flooding then relevant regulations for these hazards may not be applied (although consent authorities may take hazards into account under s. 4.15 of the EP&A Act when granting approval even if the hazards are not mapped).

Some land is excluded from the requirement to obtain a Bush Fire Safety Authority (cl. 43 of *RF Regulation*).

If avoiding construction on wetlands or within 100 metres of these, the State Environmental Planning Policy (Coastal Management) 2018 may not apply. Each other EPI will outline whether it applies based on location of site.

At the subdivision stage, APZ's and the other bush fire protection measures are applied, meaning that at the dwelling construction stages the acceptable solutions of PBP can be met. Accordingly, subdivision proposals are required to provide acceptable thresholds for the subsequent stages of their development.

Developers are encouraged to avoid and minimise impact on biodiversity values when designing a subdivision and achieving bush fire protection measures such as APZ's. The BOS applies to highest risk biodiversity impacts determined by a series of triggers. Impacts below the triggers will be assessed as per any local government requirements. Impacts above the threshold will require preparation of a Biodiversity Development Assessment Report and likely biodiversity offsets.

Developers planning for future land use change can also seek biodiversity certification of the land to be developed, which requires preparation of a Biodiversity Certification Assessment Report.

Flood

There are several triggers which change requirements for floods.

One is the Flood Planning Level, typically the 1% AEP flood plus a 0.5m Freeboard. This is generally the extent of the flood planning area and therefore the area where the majority of flood related development controls apply, particularly to residential properties.

However Council's DCP can also have variations in the controls that apply due to the flood related constraints that apply to the land.

	These may relate to floodways and flood hazard among other flood related factors.	
3. Which organisations or people will the person or business be required to contact during these processes?	<p>D is required to contact:</p> <ul style="list-style-type: none"> • The consent authority for local and integrated development. • The relevant planning panel if it is a regional development. <p>D may also contact:</p> <ul style="list-style-type: none"> • The NSW RFS. • A bush Fire and/or a development consultant. • The relevant planning panel if it is a regional development. • In some cases, an ecological consultant to apply Biodiversity Offset Scheme triggers or conduct surveys for koalas. • Accredited Assessor if the Biodiversity Offset Scheme applies or biodiversity certification is sought. • EES if a biodiversity certification is sought. • Parties associated with meeting credit obligations if required e.g. the Biodiversity Conservation Trust. <p>Flood</p> <p>For floods, D should contact the consent authority which is generally the relevant local council.</p>	As per Activity A.
4. What prescribed form/s need to be completed during any of these processes?	<ul style="list-style-type: none"> • A standard DA form and associated supporting documents. • An application for Bush Fire Safety Authority providing the prescribed information under cl. 44 of the RF Regulation. These would usually be prepared by bush fire or development consultants. • In some cases a test of significance (offset scheme trigger). • A Biodiversity Development Assessment Report if the Biodiversity Offset Scheme applies. • A Biodiversity Certification Assessment Report if biodiversity certification is sought. <p>Flood</p> <p>Any standard forms required by the consent authority, generally the</p>	As per Activity A.

	relevant local council, and any flood related studies to support an application.	
5. What is the prescribed timeframe for providing decisions for the activity, where applicable? (Together with average processing times/possible ranges (shortest to longest) in practice)	<p>For the DA process, 60-90 days.</p> <p>If D elects to go through the integrated development process, the timeframe for the NSW RFS to provide General Terms of Approval is prescribed in the EP&A Act:</p> <ul style="list-style-type: none"> • 40 days to determine an application; • 21 days to request further information; and • 21 days to determine after additional information received. <p>In 2018/19 the NSW RFS dealt with 2,545 applications for a Bush Fire Safety Authority. Of these, 80% were dealt with within 40 days.</p> <p>There is no mandated time frame if the application for a Bush Fire Safety Authority is lodged directly with NSW RFS.</p> <p>In the case of biodiversity certification, typically 12 – 18 months has been the time required to process approvals.</p> <p>it is not possible to provide greater detail as to timeframes in the time available to respond to this Notice.</p> <p>Flood</p> <p>If flooding is not considered flood impacts could occur to the existing community and the new development could be placed at a higher degree of flood risk. This can lead to:</p> <ul style="list-style-type: none"> • Liability to government • Impacts on the existing community due to the development • Impacts of flooding on the new development and therefore land use, development controls and infrastructure that do not effectively consider flood risk • Increased insurance costs to property owners if new development does not appropriately consider the flood risk • Future pressure on the government to invest in flood mitigation works to address the legacy issues created by these decisions • Reduce the resilience of the community to flood risk, and • Increased recovery costs due to flooding. 	As per Activity A

<p>6. What costs will be incurred by the person or business in completing these processes?</p>	<ul style="list-style-type: none"> • As per Scenario 1. <p>In addition:</p> <ul style="list-style-type: none"> • DA fees – vary between councils but the maximum fees are set in the EP&A Regulation. For example, if D is subdividing for the 500 homes, the maximum fee for subdivision involving the opening of a public road is \$665 plus \$65 for each additional lot created. Should D also seek to construct the houses, additional fees will apply. For construction of a dwelling house with an estimated construction cost of \$100K or less, the maximum fee is \$455. • Integrated development fees set by the EP&A Regulation (\$320 approval fee plus \$140 processing fee to be paid to the consent authority). • Costs associated with bush fire consultant if one is hired (although engagement of a bush fire consultant is not mandatory). These could range from approximately \$2,000 to \$20,000 depending on the size and complexity of the subdivisions. • Development contributions under Councils Development Contributions Plan as applicable. • Accredited assessor to prepare a Biodiversity Development Assessment Report if required. These are undertaken by private consultants and costs are commercial-in-confidence. • Cost of offset if required – determined by biodiversity offset market. • In the case of biodiversity certification - for proposals over 100 hectares, \$6300 plus \$1050 for each 100 hectares that exceeds 100 hectares. 	<p>As per Activity A.</p>
<p>7. What are the costs and/or legal ramifications of non-compliance or mistakes?</p>	<p>As per Scenario 1.</p> <ul style="list-style-type: none"> • There are no penalties under the RF Act relating to a breach of general terms of approval. • Legal remedies such as penalties and court actions in accordance with the EP&A Act are available where conditions of consent (including GTA's) are not complied with or for failure to obtain integrated development or other approvals under the EP&A Act. 	<p>As per Activity A.</p>

<p>8. What guidance or other assistance is available to help navigate these processes?</p>	<p>The NSW RFS may provide guidance and assistance to D and also:</p> <ul style="list-style-type: none"> • Publishes the PBP 2019 setting out best practice. • Provides a pre-lodgement service which allows developers to obtain clarification or guidance on issues which might arise. • Provides information on the NSW RFS website. • Provides other materials such as Policy Notes and Fact Sheets. <p>NSW RFS is also able to offer advice to consent authorities where the land is not mapped as bush fire prone but there is a concern that there may be a bush fire hazard (s. 4.15 of the EP&A Act).</p> <p>DPIE may provide guidance and assistance to D on integrated development and regional development. Other tools, including online tools provided by DPIE are:</p> <ul style="list-style-type: none"> • Floodplain Development Manual 2005. • Native vegetation clearing approvals pathway navigator. • Biodiversity Values Map and Threshold Tool. • Biodiversity Offset Scheme guidance for developers. • BOS resources for local government. • BOS resources for accredited assessors. • Register of accredited assessors. 	<p>As per Activity A.</p>
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Scenario 4: The Public Infrastructure Agency

Physical/Environmental: Department P has been tasked to build public telecommunications infrastructure in a rural area. The site they are building is within forested bushland. There is currently no road access to this location and a road will have to be constructed.

Known regulatory overlays: The land is within a national park.

Additional factors: The land is within a national park.

Question	Activity A: P seeks to comply with the minimum requirements relating to natural hazard risk.	Activity B: P seeks to comply with the best practice relating to managing natural hazard risk.
1. Describe, including with reference to relevant sections and provisions, the planning and environment laws and regulations that apply to the activities (excluding those that do not relate to natural hazard risk management)?	<p>Under s. 153D of the NPW Act the Minister for the Environment may grant leases, licences or easements for the erection, use or maintenance of telecommunication facilities on any land reserved under the NPW Act.</p> <p>In determining whether to grant such a lease, licence or easement the Minister must be satisfied of a range of matters, including that “the proposed ... telecommunications facility is to be designed and constructed in such a manner as to minimise risk of damage to the facility from bushfires”: s. 153D(4)(c).</p> <p>A public infrastructure agency is required to apply for a lease, licence or easement under the NPW Act and provide an environmental impact assessment to address the matters set out in s. 153D of the NPW Act and to meet the environmental impact assessment requirements of Pt. 5 of the EP&A Act.</p> <p>NSW RFS approval is not required but it may be consulted by the consent authority. Guidance for providing telecommunications infrastructure in bush fire prone areas is found in:</p> <ul style="list-style-type: none"> • PBP 2019 section 8 (other development) at s.8.3.7 – NSW RFS should be consulted to determine the bush fire risk in relation to Telco towers. There should be a minimum APZ, with towers constructed from non-combustible materials and designed to resist embers and radiant heat. • See also Practice Note 1/11 <i>Telecommunications Towers in Bush Fire Prone Areas</i> 	<p>As per Activity A.</p>

2. Are there thresholds at which the activity does not trigger regulatory requirements or at which requirements vary?	No.	As per Activity A.
3. Which organisations or people will the person or business be required to contact during these processes?	NPWS NSW RFS	As per Activity A.
4. What prescribed form/s need to be completed during any of these processes?	There is no prescribed form for the Review of Environmental Factors under cl. 228 of the EP&A Regulation. However, matters set out in that clause must be addressed. There is no prescribed form for a bush fire hazard complaint, however a form which may be used is set out on the NSW RFS website ¹⁴ .	As per Activity A.
5. What is the prescribed timeframe for providing decisions for the activity, where applicable? (Together with average processing times/possible ranges (shortest to longest) in practice)	No prescribed timeframe. The NPWS guidelines state that the agency aims to determine fully completed Reviews of Environmental Factors within 40 calendar days.	As per Activity A.
6. What costs will be incurred by the person or business in completing these processes?	P is responsible for the preparation of the Review of Environmental Factors and any supporting environmental assessment documentation. If approved, the licence, lease or easement arrangements will specify relevant commercial fees based on guidance provided by the Independent Pricing and Regulatory Tribunal (IPART).	As per Activity A.
7. What are the costs and/or legal ramifications of non-compliance or mistakes?	Any unauthorised activities within national parks and reserves may result in the issuing of penalty notices or the commencement of legal proceedings (see s. 156(A)(1) of the NPW Act and s. 21(1) of the NPW Regulation). The outcome of any such actions depends on the specific nature and scope of the alleged breach.	As per Activity A.
8. What guidance or other assistance is available to help navigate these processes?	NPWS has published guidelines and templates to assist P complete the required environmental impact assessment. Information about bush fire hazard complaints is on the NSW RFS website ¹⁵ . Alternatively H may contact his local Fire Control Centre	As per Activity A.

¹⁴ <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

	in person, via email, mail, fax or phone.	
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Scenario 5: Roadside verges

Physical/Environmental: Person D is a land owner and has noticed vegetation growing up to the edge of a public road that runs through D's property, which has not been cleared for some time and D considers to be a bush fire risk.

Question	Activity A: D wishes to himself remove the vegetation growing up to the edge of the road, to address the bush fire risk.
1. Describe, including with reference to relevant sections and provisions, the planning and environment laws and regulations that apply to the activities (excluding those that do not relate to natural hazard risk management)?	<p>The response assumes that the road is a formed, trafficable road.</p> <p>D cannot clear land that is not his/her property, without approval/consent of the land owner.</p> <p>Approval from the land owner, in this scenario the public authority (which depending on the status of the public road is either the LGA or Transport for NSW), is required to remove the vegetation. Some councils may give approval to clear under certain circumstances. The public authority is required to obtain the appropriate consents, permits and approvals where these are required for the clearing.</p> <p>The public authority would normally undertake clearing of roadsides as an activity under the Part 5 of the EP&A Act or the State Environmental Planning Policy (Infrastructure) 2007, or any relevant exemptions.</p> <p>There may also be occupational, health and safety requirements to address for safe working on or along roads.</p> <p>If there is a boundary fence separating the public land and D's property, the BFEAC provides for mechanical clearing to mitigate bush fire risk to certain assets. This includes alongside property boundary fencing for a distance of up to 6 metres on either side with the consent of the respective landowners.</p> <p>The RF Act does, however provide that if F has cleared 6 metres along their side of the fence line and the adjoining landowner has not done the same, then the adjoining landowner would be liable to fix or replace the fence if it was damaged or destroyed by bush fire: s. 76 RF Act.</p> <p>H may also lodge a bush fire hazard complaint under s. 74A of the RF Act to the NSW RFS if he/she considers there is a bush fire hazard on the road verge. The NSW RFS will be investigate the complaint and may take actions as specified in s.74E RF Act.</p>
2. Are there thresholds at which the activity does not trigger regulatory requirements or at which requirements vary?	Not applicable.
3. Which organisations or people will the person or business be required to contact during these	D should contact the applicable public authority to raise the issue and enquire as to how his/her concerns might be

¹⁵ <https://www.rfs.nsw.gov.au/plan-and-prepare/know-your-risk/Bush-fire-hazards-and-your-property/reporting-a-bush-fire-hazard>

processes?	addressed.
4. What prescribed form/s need to be completed during any of these processes?	The applicable public authority may have complaint/report forms on its website.
5. What is the prescribed timeframe for providing decisions for the activity, where applicable? (Together with average processing times/possible ranges (shortest to longest) in practice)	Not applicable.
6. What costs will be incurred by the person or business in completing these processes?	Not applicable.
7. What are the costs and/or legal ramifications of non-compliance or mistakes?	D may be liable for trespass or damage if works are undertaken without approval from the public authority.
8. What guidance or other assistance is available to help navigate these processes?	<p>The relevant council (or other public authority) may have a roadside maintenance plan that guides their management regime, or will otherwise be able to provide guidance to D.</p> <p>Guidance may also be available from council's civil works team.</p> <p>Transport for NSW also has technical and implementation guidelines about managing vegetation on road sides.</p> <p>The NSW RFS may provide assistance to the council (or other public authority) where burning of the roadside is proposed. The NSW RFS can also allocate funding to public authorities based on priority bush fire hazard reduction works.</p> <p>The NSW RFS is available to discuss D's concerns in relation to bush fire management. The NSW RFS may provide assistance to the council and are available to discuss D's concerns in relation to bush fire management.</p>