

Draft

**Submission on the draft *Bush Fire
Environmental Assessment Code* and
draft *Bush Fire Protection for Existing
Developments Guideline***

July 2017

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft Bush Fire Environmental Assessment Code and related documents, which together form a bush fire hazard reduction planning and assessment framework under the *Rural Fires Act 1997*.

Councils are issuing and certifying authorities under the *Rural Fires Act 1997*, and they also use the framework in their capacity as planning consent authorities and when implementing hazard reduction activities on land they manage. A clear and accessible framework is paramount for councils and others needing to implement the framework.

This submission is provided as a draft, pending consideration by the LGNSW Board in August. We will advise of any changes to the submission at that time.

Purpose

The draft Revised Bush Fire Environmental Assessment Code (draft Code) is on public exhibition along with the following new or amended supporting documents:

- Draft Bush Fire Protection for Existing Development Guidelines
- Application Form - Bush Fire Hazard Reduction Certificate
- Application Instructions - Bush Fire Hazard Reduction Certificate
- Table of Certifying Authorities and Applicable Land
- Rules and Notes for the Application of Soil Erosion Risk for the Bush Fire Environmental Assessment Code
- Rules and Notes for Implementation of the Threatened Species Hazard Reduction List for the Bush Fire Environmental Assessment Code
- Threatened Species Hazard Reduction List: Part 4 – Aquatic Biodiversity
- Conditions for Hazard Reduction and Aboriginal Heritage
- Fire Intervals for SFAZs and LMZs
- Fire Trail Standards (under development)
- Powerlines and Prescribed Burn Guidelines (subject to development)
- Fire and Weed Management Guidelines (subject to development)

Given the quantity of information on exhibition amongst a range of other consultation processes, this submission will focus on the draft Code and draft Bush Fire Protection for Existing Development Guidelines (BFPED). LGNSW acknowledges and appreciates the 3 week extension to the original 6 week consultation period.

We note that the draft Planning for Bush Fire Protection Guideline is also on public exhibition. LGNSW has made a separate submission on that document.

General comments

Councils have expressed concern that there are a large number of documents exhibited for comment and that some of these documents are incomplete (e.g. Fire and Weed Management Guidelines, Fire Trail Standards).

Councils have also expressed concern that the draft Bush Fire Protection for Existing Development Guideline has significant implications for all public land managers, and therefore it warrants more detailed and widespread consultation than as an adjunct to consultation on the draft Code.

The draft Code and other exhibited documents refer to a number of NSW Acts, policies and terminology that are no longer current or will cease to be relevant pending proposed legislative changes. For example the *Biosecurity Act 2015* commenced operation on 1 July 2017, replacing the *Noxious Weeds Act 1993*, and therefore removing the definition of noxious weeds.

Given the complexity of the framework and the need for land managers to be across a wide range of documents to implement it appropriately, LGNSW strongly recommends that training on the Code, planning guides and electronic systems (BRIMS, or Guardian when it is rolled out) be made available to councils and other public land managers.

The draft Code relies on a raft of guidelines, practice notes, tables and other reference documents. To assist implementation, it is strongly recommended that the Code be produced in electronic format with all references hyper-linked to enable easy access. The structure and format of the Code is somewhat repetitive, and the document could better incorporate design elements to distinguish sections more clearly, and also make more use of tables, checklists, flow charts.

Recommendations:

1. Undertake more detailed, specific consultation on the draft Bush Fire Protection for Existing Development Guideline.
2. Update references to superseded legislation and policies which appear in the Code and related documents.
3. Make training on the Code, planning guides and electronic systems (BRIMS, or Guardian when it rolled out) available to councils and other public land managers.
4. Produce the Code in an electronic format, with all references hyper-linked to enable easy access. Accessibility can also be improved by incorporating design elements to distinguish sections more clearly. Consider making more use of tables, checklists and flow charts.

Specific comments

Bush Fire Environmental Assessment Code

LGNSW supports the intent of the Code, which is to streamline the process and guidance relating to the environmental assessment and approval for bush fire hazard reduction work.

Section 2.5 outlines activities to which the Code does not apply, including “burning for bush regeneration or ecological purposes” and “burning for cultural purposes”. A number of council practitioners are of the view that these types of burns should be able to be assessed using the Code.

Section 2.5 identifies that a certificate will not be issued for “the construction of a track or road other than a fire trail or control line”. Section 3.1 also excludes construction of a track or road from the definition of bush fire hazard reduction works. In practice there may be Asset

Protection Zones (APZs) that do not have existing access tracks to enable maintenance of the zone. Therefore establishing an access track would require a separate assessment and approval process for that required for the APZ. LGNSW recommends that sections 2.5 and 3.1 be broadened to cover fire trails, control lines *and APZ access tracks*.

Section 3.2.1 provides that the maximum extent of permissible works for an Asset Protection Zone (APZ) as 6 metres. This distance may be appropriate for buildings however there are instances where a 6 metre buffer results in excessive vegetation clearing, for example 6 metres along either side of a boundary fence.

Section 3.2.2 sets out the work activities permissible for the creation and maintenance of an APZ. There are additional methods that could be used as part of an integrated approach to APZ maintenance, including herbicide application and controlled grazing, particularly in rural areas. Consider expanding the permissible works to include other methods.

Section 3.3 describes Strategic Fire Advantage Zones (SFAZs) and the types of works permissible for their creation and maintenance being prescribed burning, pile burning and windrow burning. In practice, some mechanical works are required e.g. to accumulate material for pile burning or the management of woody weeds. We suggest mechanical works be permissible in SFAZs when the work is carried out in conjunction with a hazard reduction burn, but is limited to hand tools or hand-held machinery.

Section 4.1, Table 2, refers to vegetation classes to which mechanical works do not apply. Vegetation formations and classes are named in the table, however we must look to the dictionary to find that the reference is 'Keith 2004'. Table 2 should include a reference to Keith 2004 and provide a web link to where these classes and formations are defined and described.

Section 4.4 sets out the standards for the protection of trees, including criteria that apply to tree removal / pruning works. This section (on page 30) should reference section 4.5.1 which covers the requirements for determining the presence of threatened species, populations or ecological communities, and sections 4.6 and 4.7 in relation to cultural heritage. Trees of significant ecological or cultural value should be prioritised for protection.

Section 4.5.2 states that where threatened species, populations or ecological communities are identified as present at a site then the management conditions from the Threatened Species Hazard Reduction List must be imposed as a condition of the certificate. However it goes on to say that these actions do not need to be met if a site inspection indicates that the species of concern or their habitat are not likely to occur at the site. Rather than impose conditions that do not need to be complied with (and potentially create confusion), it would be preferable to undertake a site inspection first to determine whether the management conditions need to be imposed. This issue also arises with respect to section 5.3.2.

Sections 4.9 and 5.12 outline the standards relating to weeds, referring to the *Noxious Weeds Act 1993*. This legislation was replaced by the *Biosecurity Act 2015* on 1 July 2017. Given this change in legislation, this section also requires further information and guidance for practitioners around what weeds are of regional and state-significance under the biosecurity framework e.g. reference to regional weed management plans.

Similarly, the reference to the Noxious Weeds Act in the last dot points at 4.9.1 and 5.12.1 need to be updated to refer to the *Biosecurity Act 2015*.

Section 4.9.1 states that “herbicides can only be used in this Code for controlling weeds”. This should be broadened to allow herbicides to be used as part of hazard reduction activities, for example for poisoning stumps of native species following mechanical works.

Section 5.2 states that a certificate ‘..may not be issued for high intensity prescribed burning..’. LGNSW understands that the RFS intention is that certificates ‘will not’ be issued, rather than the usual interpretation of ‘may not’ ie, there is some possibility it may/may not occur. LGNSW recommends that the wording of Section 5.2 be amended to state ‘will not’ if that is the intent.

Section 5.6.6 provides conditions for burns that are conducted in the vicinity of significant bat colonies but ‘significant’ has not been defined. LGNSW recommends that section 5.6.6 simply refer to bat colonies i.e. that ‘significant’ be removed.

Draft Bush Fire Protection for Existing Development Guideline

LGNSW does not have the capacity to comment on the technical aspects of the document e.g. suitability of APZ distances or radiant heat targets. The following comments relate to the policy and strategic aspects of the document.

Section 1.1 states that “whilst maintaining separation between assets and bush fire hazards is an important treatment, it must be coupled with appropriate building improvements in order to protect against embers and effectively reduce the bush fire risk”. There needs to be clarity surrounding the resourcing of these additional treatments (by building owners) and support tools are also needed to assist owners and compliance bodies such as councils to identify the most efficient treatments for the circumstance.

Section 1.8 of the Guideline provides that it will be reviewed after the first 12 months of implementation, and then every 5 years. This is supported, particularly given the Guideline is new and there are bound to be unforeseen practical issues that arise during implementation in relation to existing development.

Section 2.1 provides matrices of “how the bush fire risk treatments detailed in the acceptable and alternate approaches improve level of property protection for existing residential and SFPP assets”. The acceptable and alternate approaches are outlined in sections 4 and 5, but it unclear how the matrices in section 2.1 are to be used.

Section 3.2 states that “Vegetation that meets the definition of an ‘exclusion’ as per the RFS document Guide for Bush Fire Prone Land Mapping (v5b Nov 2015) is considered to be low threat...”. At a minimum the section where this definition occurs should be provided (section 7.1.2) and ideally the BFPED should provide hyperlinks to other documents. The above example demonstrates how complex and inter-related many of the documents are, making them difficult to navigate. This same section refers to the ‘Short Fire Run Practice Note 2016’ which was not available on the RFS web site until councils requested it towards the end of the consultation phase.

Conclusion

LGNSW values the opportunity to provide input to the draft Bush Fire Environmental Assessment Code and the draft Bush Fire Protection for Existing Development Guideline.

Key recommendations include:

- Consider simplifying or streamlining the framework to reduce complexity of the documentation

- Consider further consultation on the draft Bush Fire Protection for Existing Development guideline
- Provide training to councils and other land managers to enable consistent application.

To clarify or further discuss the issues raised in this submission, please contact Susy Cenedese at LGNSW on 9242 4080 or susy.cenedese@lgnsw.org.au.