



APPENDIX B OF ADDENDUM TO PLANNING FOR BUSH FIRE PROTECTION 2019

Practice Note

6 May 2024

1. Introduction

This practice note provides guidance on the application of Appendix B of the November 2022 Addendum (**PBP Addendum**) to *Planning for Bush Fire Protection 2019* (**PBP 2019**).

Section 6.8 of PBP 2019 identifies bush fire protection measures (**BPM**) for special fire protection purpose (**SFPP**) development. Appendix B of the PBP Addendum sets out specific requirements for particular kinds of SFPP.

The PBP Addendum does not operate in isolation. Section 3 of the *Rural Fires Regulation 2022* (**RF Regulation**) defines “Planning for Bush Fire Protection” as the document prescribed by section 271 of the *Environmental Planning and Assessment Regulation 2021*. This prescribed document is PBP 2019 as amended by the PBP Addendum.

2. Development Assessment

2.1. RFS Role

Section 100B(3) of the *Rural Fires Act 1997* (**RF Act**) provides that a person must obtain a bush fire safety authority (**BFSA**) before developing bush fire prone land for a SFPP, subject to limited exceptions set out in the RF Act and RF Regulation.

Section 45(2)(h) of the RF Regulation requires an application for a BFSA to include (among other matters) an assessment of the extent to which the proposed development conforms with or deviates from “Planning for Bush Fire Protection” (i.e., PBP 2019 as amended by the PBP Addendum). The RFS will assess the proposed development against the requirements of “Planning for Bush Fire Protection” as part of its consideration of whether to issue a BFSA.

SFPP development that requires a BFSA is “integrated development” under section 4.46 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Before it can grant consent to a

development application for such development, the consent authority must obtain the general terms of approval (**GTA**) for any BFSA proposed to be granted by the RFS.

The procedure for a consent authority to seek GTA and for an approval body to notify its decision about those terms (including whether it will grant an approval) is governed by Part 3, Division 3 of the *Environmental Planning and Assessment Regulation 2021*.

Any consent granted by the consent authority to an SFPP development that requires a BFSA must be consistent with the GTA proposed by the RFS and of which the consent authority is informed.

2.2. Certifier Role

Section 6.7(1) of the EP&A Act provides that a construction certificate is required for the erection of a building in accordance with a development consent. A certifier has the function of issuing construction certificates for building work: section 6.5(1)(a) of the EP&A Act. A certifier means a council or a registered certifier as per the definition in section 6.1 of the EP&A Act.

A certifier must not issue a construction certificate for building work unless the design and construction of the building is consistent with the development consent and the building will comply with the relevant requirements of the “Building Code of Australia” as in force on the relevant date: section 19(1) of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

The Building Code of Australia comprises Volumes 1 and 2 of *National Construction Code 2022 (NCC 2022)* and any amendments approved from time to time by the Australian Building Codes Board in relation to NSW. NCC 2022 commenced on 1 May 2023.

In considering a construction certificate application for building work, it is a matter for the certifier to be satisfied whether the building will comply with the relevant development consent (including conditions therein reflecting any general terms GTA) and NCC 2022.

It is not the role of the RFS to advise on compliance with NCC 2022.

2.3. Appendix B and NCC 2022

NCC 2022 includes technical provisions relating to the design and construction of buildings that operate in conjunction with the BPM in “Planning for Bush Fire Protection”.

Relevantly, Part G5 of NCC 2022 sets out additional construction, separation and access requirements for certain Class 9 buildings that accommodate vulnerable occupants on bush fire prone land. Class 9 buildings include some SFPP developments under section 100B of the RF Act, such as a Class 9a health-care building, Class 9b early childhood centre, Class 9b primary or secondary school and Class 9c residential care building.

Clause G5D4 of NCC 2022 is a deemed-to-satisfy (**DTS**) provision applicable to scenarios where the bush fire attack level (**BAL**) does not exceed BAL 12.5. It provides that in a designated bush fire prone area, a Class 9 building that is a SFPP, or a Class 10a building or deck immediately adjacent or connected to such a building or part, must comply with:

- (a) for a Class 9 building that is special fire protection purpose, Specification 43 except as amended by Planning for Bush Fire Protection;
- (b) for a Class 10a building or deck immediately adjacent or connected to a Class 9 building that is a SFPP:

- (i) AS 3959 except as amended by Planning for Bush Fire Protection; and
 - (ii) S43C13; or
- (c) the requirements of (a) or (b) above as modified by the development consent with a BFSA issued under section 100B of the RF Act for the purposes of integrated development.

Specification 43 sets out BPM for buildings described in clause G5D4. Aside from the scope provision (S43C1), twelve provisions of Specification 43 apply in NSW.

As outlined in Table 1 below, Appendix B of the PBP Addendum contains specific requirements for SFPP Class 9 buildings that reflect the measures the subject of S43C10, S43C11 and S43C14 of Specification 43. Appendix B of the PBP Addendum does not address the other measures in Specification 43.

Table 1: Relationship between NCC 2022 Specification 43 and Appendix B of PBP Addendum

Specification 43 measures addressed by Appendix B	Specification 43 measures not addressed by Appendix B
S43C10 Building envelope	S43C3 Separation between buildings
S43C11 Supply of water for fire-fighting purposes	S43C4 Separation from allotment boundaries and car parking areas
S43C14 Vehicular access	S43C5 Separation from hazards (such as liquefied petroleum gas bottles, fuel storage, storage of combustible materials, waste bins, vehicles, machinery, and the like)
	S43C6 Non-combustible path around building
	S43C7 Access pathways
	S43C8 Exposed external areas
	S43C9 Internal tenability
	S43C12 Emergency power supply
	S43C13 Signage

S43C2 (Separation from classified vegetation) does not apply in NSW. The minimum asset protection zones for SFPP development must be determined in accordance with Table A1.12.1 of Appendix 1 of PBP 2019.

Where the DTS provision in clause G5D4 of NCC 2022 applies to a Class 9 building that is a SFPP development, the building must comply with Specification 43 except as amended by “Planning for Bush Fire Protection” or as modified by the development consent with a BFSA.

Clause G5D4 enables Specification 43 requirements to be modified by a development consent with a BFSA. However, clause G5D4 does not contemplate that a BFSA can provide a general exemption from all Specification 43 requirements.

On a case-by-case basis and having regard to the circumstances of a particular development and site, the RFS may consider issuing a BFSA on terms that differ from the acceptable solutions in Appendix B of the PBP Addendum. However, any request by an applicant will need to demonstrate that relevant performance criteria in “Planning for Bush Fire Protection” are satisfied.

For further information regarding this Practice Note, please contact the Development Planning and Policy team emailing development.policy@rfs.nsw.gov.au

