

Policy

Asset Protection Zones on Public Land

Version 1.3

Adopted by Council at its meeting on 3 December 2020

Division:
Section:
File Reference:
Historical Reference:

General Manager
Development Assessment and Compliance
Council Policies/Procedures/Protocols
see Version Control

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Asset Protection Zones on Public Land

Policy Objective

This Policy will explain how Council will address requests associated with development applications for the use of Council owned or managed land for the purpose of meeting the Asset Protection Zone requirements of a proposed development.

Definitions

Asset manager: The asset manager is the person responsible for lifecycle planning, maintenance, financial planning and prioritisation of works for an asset.

Asset Protection Zone¹: A fuel-reduced area surrounding a built asset or structure which provides a buffer zone between a bush fire hazard and an asset. The APZ includes a defensible space within which firefighting operations can be carried out. The size of the required APZ varies with slope, vegetation and Forest Fire Danger Index.

Policy Background

Council receives requests for reliance on public land to meet the Asset Protection Zone (APZ) requirements of proposed development. This issue potentially affects a range of public land uses including operational land, parks and reserves, bushland reserves, road reserves and Council managed Crown land and applies to all forms of development including subdivision, infill, special fire protection and other development as per *Planning for Bushfire Protection 2019* (PBP 2019).

PBP 2019 is the key planning instrument in relation to this matter with the legislative requirement for bush fire prone land mapping and compliance with PBP 2019 established under the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act). Further, as a consent authority and as a land owner and manager, Council is also required to comply with the *Rural Fires Act 1997*.

The use of adjoining lands to meet APZ requirements is not supported by PBP 2019, which instead seeks to locate them wholly within the boundaries of the development site. PBP identifies a fundamental premise of APZs is that they are provided within the property in such a way that the owner/occupant will be able to maintain the area in perpetuity.

PBP 2019 emphasises that an APZ is but one of a suite of Bushfire Protection Measures (BPM) that need to be applied to achieve acceptable outcomes in terms of reducing the potential impact of a bush fire on human life and property. There are a range of acceptable solutions in addition to APZs available to development proponents to meet the requirements of PBP 2019. These additional BPM's include building construction, siting & design, landscaping, access, services and emergency and evacuation planning.

Whilst PBP 2019 does not support the use of adjoining lands for APZ's, it does not prevent their consideration as a performance based solution and so the application must be referred to the NSW RFS. The requirements that must be met as part of the performance based solution are identified in PBP 2019.

¹ Definition as per *Planning for Bushfire Protection 2019*

When considering requests for the establishment of an APZ on Council land, Council as the landholder affected must consider the in-perpetuity obligation to manage the land to the specified standard and the requirement for the establishment of a legally binding easement over the land.

Where an APZ is proposed on adjoining land, it will be considered as a 'performance based solution' (i.e. a method of complying with the PBP performance criteria other than by the 'acceptable solutions' which have been deemed to meet the specified performance criteria) and requires a guarantee that the land will be managed in perpetuity. In order to achieve this, the land should have an easement under the *Conveyancing Act 1919 s.88B*.

Plans of Management (PoM) are required where developments propose to establish APZs off site on lands belonging to Council or government where there is no guaranteed commitment to future management. Before APZs can be accepted for these types of situations, it must be demonstrated that a management regime is in place to ensure ongoing compliance with APZ requirements. Council is still required to acknowledge responsibility for the in-perpetuity management of the APZ in this circumstance.

In any situation where the development proponent is seeking to rely on adjoining land to meet their APZ requirements as a performance based solution, the written consent of the owner of the adjoining land for an easement must be provided with the development application.

This policy identifies Council's approach to the application of the relevant legislation and guidelines as it relates to council's roles as consent authority and/or land manager.

Policy

1. Council does not support the use of public land to meet the APZ requirements of adjoining development².
2. It is acknowledged that PBP 2019 provides for APZs on adjoining land to be considered as a performance based solution. In the situation where a development applicant proposes such a solution and secures the approval of the NSW RFS, the following process will be employed by council in considering whether to issue landholders consent:

2.1 The development application must include Council's written consent, a Deed of Indemnity and a Plan of Management with the application.

2.2 In order to consider the request for owners consent, the following procedure applies:

- a) Request directed to relevant asset manager
- b) Asset manager to consider the request, including with regard to:
 - i) ensuring that any easement or other binding agreement required to ensure the maintenance requirements for the life of the development are specified and agreed
 - ii) costs associated with establishing and monitoring compliance with any binding agreement required

² In accordance with the acceptable solutions of PBP 2019 Part 5 (Rural and Residential Subdivisions), Part 6 (Special Fire Protection Purpose Developments), Part 7 (Residential Infill Development) and Part 8 (Other Development)

- iii) available resourcing to maintain the land in accordance with the developments bushfire planning requirements for the life of the development
 - iv) any implications for the ongoing management and maintenance of adjoining public land
 - v) applications that relate to unformed road reserves require the applicant to apply to close the reserve and purchase the land from Council
 - vi) applications that relate to formed roads must be able to provide adequate setback such that Council is not required to maintain vegetation on Council land for bushfire protection purposes
- c) Asset manager makes recommendation to General Manager regarding provision of consent
- d) General Manger issues or denies owners consent

3. It is acknowledged that there may be situations in which the location of an APZ on Council owned or managed land has been identified as part of a subdivision approval prior to the adoption of this policy. Council will consider requests associated with development applications for the use of Council owned or managed land for the purpose of meeting the APZ requirements of a proposed development in this situation where:

- a) The land parcel on which the development is proposed formed part of a subdivision that was approved under Planning for Bushfire Protection 2006; and
- b) APZ were approved on public land as part of the residential subdivision approval; and
- c) An approved Plan of Management outlines the ongoing management of the APZ; and
- d) Council has funding to maintain the APZ; and
- e) The development application is consistent with section 2 above.

4. In situations identified at section 3 above, Council will typically not consider requests associated with development applications for the use of Council owned or managed land for the purpose of meeting the APZ requirements of a proposed development where:

- a) The development proposal results in an increase in residential density (including where zoning has been approved for the proposed use i.e. attached secondary dwelling), the secondary dwelling is sited closer to the bushfire hazard resulting in a request for the use of Council owned or managed land to meet APZ requirements at the expense of reduced bushfire construction standards of the dwelling. Such development is inconsistent with the strategic principles in PBP; and/or
- b) The development proposal seeks to rely on an APZ on Council land that is currently managed as a fuel reduced area, but where the adjoining development was approved prior to Planning for Bushfire Protection 2006. Council's justification for this is such an APZ may have been 'retrofitted' to provide some separation and therefore protection for the adjoining residential assets. However, it has not been approved to ensure consistency with APZ standards and environmental and site constraints have not been considered in its management.

5. It is acknowledged that there are existing APZs on public land approved under now superseded legislative provisions. These arrangements are not affected by the adoption of this policy.

Related Legislation

NSW *Environmental Planning and Assessment Act 1979*

NSW *Rural Fires Act 1997*

Planning for Bushfire Protection 2019

Planning for Bushfire Protection 2006

Compliance

Forms

Not applicable

Review Period

This policy will be reviewed within 12 months of the election of each new Council or more frequently in the event of any legislative changes or change in circumstances.

Useful Links

[Tweed Shire Council website](#)

[Office of Local Government](#)

Version Control:

Version History		
Version #	Summary of changes made	Date changes made
1.0	Policy creation	September 2019
1.1	Changes made as per internal stakeholder consultation	November 2019
1.2	Draft amended in accordance with the enactment of Planning for Bushfire 2019	May 2020
1.3	Version recommended for adoption after public exhibition	November 2020
1.3	Adopted by Council	3 December 2020