



The General Manager  
Eurobodalla Shire Council  
PO Box 99  
MORUYA NSW 2537

Your Ref: E13.7173

Our Ref: LEP/0044

ATTENTION: Mark Hitchenson

4 December 2015

Dear Mark

## Draft Rural Lands Strategy

I refer to your letter dated 20 October 2015 consulting with the Rural Fire Service (RFS) regarding the Draft Rural Lands Strategy. The RFS have reviewed the submitted documentation in consideration of potential future legislative obligations under s117(2) 4.4 'Planning for Bush Fire Protection', and future obligations under s91 of the Environmental Planning and Assessment Act (EP& Act) 1979.

The NSW Rural Fire Service (RFS) notes that a number of the sites within the study area are identified as bush fire prone on the Eurobodalla Shire Bush Fire Prone Land Map.

As Council would be aware, future Planning Proposals near bush fire prone land are likely to be required to comply with the requirements of Section 117 (2) Direction 4.4 'Planning for Bushfire Protection' whilst development applications on bush fire prone lands will be required to comply with either Section 79BA of the Environmental Planning and Assessment Act 1979 or Section 100B of the Rural Fires Act 1997 depending upon the nature of the proposed development.

The Rural Fires Act 1997 provides the legislative framework in which the Rural Fire Service operates. Key relevant objects of The Rural Fires (RF) Act 1997 include:

- (c) for the protection of persons from injury or death, and property from damage, arising from fires, and*
- (c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and*
- (d) for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c1) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the Protection of the Environment Administration Act 1991.*

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The objectives of S117(2) 4.4 direction 'Planning for Bushfire Protection are copied below:

*(1) The objectives of this direction are:*

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*
- (b) to encourage sound management of bush fire prone areas.*

As noted above, protection of life, property and the environment are all considerations of the RFS in the carrying out of our legislated obligations and duties. The following comments are provided for the Council's consideration prior to progressing the Draft Rural Lands Strategy:

#### 1. Rezoning of High Conservation Value Land, reduction of Minimum Lot Size and removal of Environmental Overlays

The Draft Rural Lands Strategy (DRLS) seeks an increase in subdivision potential of some areas which the RFS are of the opinion are highly constrained and may be identified as isolated rural locations. Constraints such as steep slopes, heavily timbered land, limited access (i.e one way in one way out) and areas of high conservation value should not be subject to increased densities without first undertaking a thorough investigation of the likely impacts including matters of bush fire protection.

As Council is aware, providing a suitable suite of bushfire protection measures (BPM) for development usually includes the creation of Asset Protection Zones (APZs) and access roads, which in vegetated areas may require a significant amount of vegetation modification works. The level of impacts on vegetation usually increases as the level of risk increases (i.e risk from steep slopes, risk from vegetation types, increased APZs to mitigate non complying access requirements and risk associated with those more vulnerable members of the community such as tourists).

At the strategic rezoning stage and subdivision stage, in accordance with the objects of the Rural Fires Act 1977 and S117(2) 4.4 Direction, the RFS would not generally support the creation of APZs on land identified as being of high conservation value (HCV) and reasonably expects Council to apply land identified as HCV with the appropriate minimum lot sizes and commensurate environmental zoning.

It is noted that a number of comments in the DRLS Recommended Zoning and Lot Size Maps make statements such as "no additional development envisioned, given constraints of access, bushfire and biodiversity". The RFS is of the opinion that applying environmental zones to HCV land and restricting subdivision potential via the application of appropriate minimum lot size (MLS) are the appropriate tools within the NSW planning system to restrict such development. Furthermore, zoning HCV land as environmental provides zone objectives reflective of site values and may assist the community and landowners (including prospective landowners) to have realistic expectations of the development potential of land.

The RFS is of the opinion that an effective and appropriate tool in minimising potential conflict between the requirements for bushfire protection measures and managing impacts on HCV land for developments is the appropriate use of overlay maps and their supporting clauses within the Eurobodalla Local Environment Plan. The application of overlay maps and appropriate zonings where land is identified as HCV may reduce the scenario of landowner/developers lodging development applications (DA) for development (i.e a subdivision/tourist accommodation facility etc) on bush fire prone land only to discover (after possibly expending significant amounts of money and effort) that the required suite of bush fire protection measures may result in an unacceptable level of impacts on HCV land.

#### 2. Additional Land Use Permissibility's

Section 6.2.5 of the DRLS recommends that Council include additional land uses in rural zones. Of relevance to matters of bushfire protection are the proposed additional permitted uses 'function centres', 'places of public



worship' and 'education facilities/establishment' in RU1 and RU4 zones. The aforementioned uses may constitute a special fire protection purpose (SFPP) or may be considered as if they are a SFPP in accordance with Planning for Bushfire Protection 2006. Special fire protection purposes can require large APZs, access requirements and provision of relevant services. As such, Council should be satisfied prior to amending the land use tables (for RU1 in particular), that the establishment of such uses in rural areas (some of which are isolated rural areas) is not likely to result in unacceptable impacts on areas of HCV due to requirements for bushfire protection measures (APZs, accesses, services etc) and is not creating unrealistic expectations for current and future landowners.

### 3.Planning for Bushfire Protection 2006

Whilst the RFS notes that approximately 100 additional dwelling opportunities across the general rural area will result from the DRLS, the specific location of these additional lot yields is not clearly provided. As such, the following general comments are made in relation to those areas considered to be rural isolated locations in relation to the future requirements of Planning for Bushfire Protection 2006.

- a. Minimising the interface to the bush fire hazard is a key planning principle of Planning for Bushfire Protection (PBP) 2006 and Section 117(2) 4.4 Direction. This is most commonly achieved through the use of perimeter roads, something that is unlikely to be viable given the moderate lot yield of future subdivisions in each locality subject to the proposed reduced minimum lot sizes (MLS), the rural residential nature of the zoning and existing standard of road infrastructure in these areas.
- b.
  - (i) Planning for Bushfire Protection (PBP) 2006 has certain requirements for access to and from development. For example, the acceptable solutions for public roads in subdivisions require roads to be through roads. Dead end roads are not recommended, but where unavoidable, dead ends shall not be more than 200m in length. For property access roads, the acceptable solutions require that where a dwelling is located greater than 200 metres from a public through road, a secondary access road shall be provided. Where the acceptable solutions of PBP cannot be met, the development is considered under the "merit based provisions" and required to satisfy the intent of the relevant 'performance criteria'.
  - (ii) A preliminary overview of a number of locations included in the DRLS some sites may be unlikely to comply with the acceptable solutions for property access roads and public road access of PBP 2006. Therefore where applicable, future planning proposals and subdivisions within the site would need to demonstrate that they can satisfy the intent of the public road access 'performance criteria' that 'public road widths and design that allow safe access for firefighters while residents are evacuating an area' and the property access 'performance criteria' that 'road widths and design enable safe access for vehicles'.
  - (iii) At a future planning proposal stage, where it is determined that the acceptable solutions are unlikely to be satisfied, the RFS considers the relevant 'performance criteria', the existing subdivision potential of the land, the subdivision potential of the land sought under the proposal, in combination with the level of bushfire risk posed. These matters are considered to determine the likely ability that a suitable suite of bushfire protection measures could be provided, such that the proposal may be supported. This includes measures such as perimeter roads which, as discussed above, may be unlikely to be viable for future subdivisions in this area.
  - (iv) The RFS recommends that Council consider the strategic access of rural isolated localities within the DRLS as part of an overall assessment of bush fire protection measures. This includes considering provision of alternate accesses for relevant areas, which does not involve traversing areas of high bushfire risk such as heavily timbered vegetation and/or steep slopes.
- c. Planning for Bushfire Protection 2006 includes requirements for water, electricity and gas. Where appropriate a reticulated water supply should be provided.

d. Planning for Bushfire Protection (PBP) 2006 requires that future residential/rural residential subdivisions are able to achieve the required Asset Protection Zones (APZs) wholly within property boundaries and are required to achieve a radiant heat level not greater than 29kW/m<sup>2</sup> in accordance with Table A2.4 of PBP. A preliminary assessment provides that this is likely to be achievable given the large lot sizes proposed.

For any enquiries regarding this correspondence or to discuss the matters raised in this letter further please contact Martha Dotter on (02) 4472 0600.

Yours faithfully,



Amanda Moylan

Team Leader – Development Assessment and Planning