



Legislative Assembly

Rural Fires And Environmental Assessment Legislation Amendment

30/05/2002

Bill Hansard

Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [1.20 p.m.]: I move:

That this bill be now read a second time.

The main purpose of this bill is to reaffirm the Government's commitment to protect the community from bushfires and to refine procedures to ensure that fire prevention is integral to the State's planning laws. South-eastern Australia is arguably the most fire-prone region in the world, a fact we all witnessed over the Christmas-New Year period. The beauty of many of our city and coastal settlements derives from the fact that our suburbs nestle amongst bushland; but with this beauty comes danger. The fact is that much of the bushland around the wider Sydney basin is naturally fire prone. We cannot remove existing residential and other types of development near bushland, but one of the ways we can manage the future risk to life and property from bushfires is through appropriate residential planning strategies.

In January this year my colleague the Deputy Premier and I committed the Government to new measures to build on the Government's record funding of our emergency services. On that occasion we released an updated edition of the document "Planning for Bushfire Protection", a planning guideline to assist councils, town planners, developers and the community more generally with practical guidelines for the development of our bushland areas. This document is now widely used by councils, developers and the Land and Environment Court in determining developments in areas subject to bushfire attack.

The legislation I introduce today strengthens the role of the Commissioner of the Rural Fire Service in the development control process for new developments under the Environmental Planning and Assessment Act 1979. It does this in three ways. Firstly, the bill requires councils with areas which have bushfire risks to record land as being bushfire prone. This will be achieved through councils being required to consult with the Commissioner of the Rural Fire Service on those areas subject to bushfires, to map those areas and then have the commissioner certify that the identified areas of the map are correct. While the majority of councils have mapping resources at their disposal the Rural Fire Service will assist any council that has difficulty in preparing those maps.

In future section 149 certificates issued by councils will be required to identify such lands for intending purchasers so that they are aware of the fact that the land is bushfire prone. This will be achieved through an amendment to the Environmental Planning and Assessment Regulations. Secondly, the mapping of bushfire-prone lands will provide a trigger for the referral of new developments to the Commissioner of the Rural Fire Service where they do not meet the requirements of "Planning for Bushfire Protection". This will be a general referral requirement although councils, as consent authorities, should be able to determine whether developments meet the guideline specifications.

Thirdly, and more specifically, councils will be required to refer residential and rural subdivisions—and highly vulnerable developments requiring special protection—to the commissioner, who may issue a bushfire safety authorisation. This process will be a new form of integrated development and councils will not be able to approve such developments without the relevant authorisation, which may contain conditions related to bushfire safety. Again, any conditions will be mandatory on the development. The developments which are covered by this form of integrated development include schools, child care centres, nursing homes, tourist accommodation, hospitals, retirement homes, housing for aged person or persons with disabilities and group homes.

These requirements are contained in new section 100B of the bill and specifically require consideration of setbacks, provision of water supplies, and any other matters the commissioner thinks necessary for the protection of life, property and the environment from bushfires. For example, Ku-ring-gai Council has in recent times received a significant number of development proposals for State environmental planning policy [SEPP] 5 development at North Turramurra. These developments are principally housing for aged persons or persons with a disability. The Rural Fire Service has already been involved in a number of matters before the Land and Environment Court related to these developments. Council has been proactive in attempting to define bushfire-prone areas in conjunction with the Rural Fire Service.

SEPP 5 developments in these areas pose special problems because of their proximity to significant bushland areas, such as Ku-ring-gai National Park. Major issues include traffic and transportation of potentially vulnerable residents with poor mobility during major bushfires. In support of these measures, the Minister for Planning will issue

a revised section 117 direction under the Environmental Planning and Assessment Act 1979, directing that councils must consult with the Commissioner of the Rural Fire Service when preparing new local environment plans. They must also have regard to the planning principles referred to in the booklet "Planning for Bushfire Protection". These principles include the need to incorporate asset protection zones, provision for two-way access linking the road network to fire trails, the provision of suitable water and effective water supplies, and avoiding inappropriate development in bushfire hazard areas. The new section 117 direction will be issued to coincide with the proclamation of this bill.

At one stage it was envisaged that a State environmental planning policy would be needed to accomplish the necessary level of protection and planning for bushfire risk. However, the Government is taking a strong and streamlined approach by providing the protection in legislation rather than in subordinate legislation, such as a State environmental planning policy. This approach reflects the high priority that the Government has placed on protecting lives and property from the effects of bushfires. The Commissioner of the Rural Fire Service is charged with the responsibility for protecting life, property and the environment in the management of major bushfire operations. It is, therefore, critical that the commissioner has the opportunity to ensure that effective hazard reduction works are undertaken across all land tenures.

The commissioner presently has unrestricted power under the Rural Fires Act to carry out hazard reduction on private land which is covered by a bushfire risk management plan when owners or occupiers of the land have failed to do this work themselves. However, the commissioner's power is limited if a public land manager such as State Forests, the National Parks and Wildlife Service or the Department of Land and Water Conservation objects to the commissioner attempting to reduce hazards on their lands. The Act contains a cumbersome dispute resolution procedure which, in the first instance, involves relevant Ministers and, if they cannot agree, the Premier. It is inappropriate for the Premier to be asked to adjudicate on whether 40 hectares of bushfire-prone public land should be hazard reduced in accordance with a bushfire risk management plan.

Section 73 of the Rural Fires Act will be amended to expand the commissioner's authority to undertake hazard reduction across all land—whether public or private—at the manager's or owner's expense if it has not been carried out in accordance with a risk management plan or if in the opinion of the commissioner the duty to prevent a bushfire under section 63 has not been fulfilled. The bill also strengthens the reporting requirements on hazard reduction activities for local councils and public land managers. New section 74 of the Rural Fires Act will require councils to comprehensively report to the commissioner within three months of 30 June every year about hazard reduction activities within their areas for the preceding year.

Similar responsibilities will apply to public land managers. To ensure transparency this information will be included in the annual report of the Rural Fire Service. Apart from this routine reporting, new provisions have been included in schedule 2 to the bill to allow the commissioner to proactively monitor the carrying out of bushfire hazard reduction work by public land managers and local councils to ensure that the work is carried out. In this regard the commissioner will have the power to conduct performance audits on the implementation of bushfire risk management plans and for details of those audits to be included in the annual report.

In order to ensure that any concerns about bushfire hazards are properly addressed a formal complaints procedure has been included in this legislation. As a result of this initiative, if property owners believe that their property is at risk from a bushfire hazard they can write to their local council if the hazard is on private land, or to the Commissioner of the Rural Fire Service if the hazard is on public land such as a State forest, vacant Crown land or national park. The council and the commissioner must investigate the complaint as soon as practicable after it has been received. If a bushfire hazard is found to exist, then the council or the commissioner, as the case may be, can direct the owner or occupier of the land or the public land manager to carry out the work.

If they fail to do so within a reasonable time the work can be performed by the council if it relates to private land or by the Commissioner for Public Land, at the expense of the person or agency responsible. To ensure that accountability is achieved, the complainant must be notified about the result. As an additional safeguard, a complainant who is not satisfied with the actions of the local council can ask the commissioner to deal with the complaint.

A key reform introduced by this bill is the streamlining of the existing approval process for planned hazard reduction works. An interdepartmental committee comprising representatives of the fire services, the Department of Land and Water Conservation, local government, rural lands protection boards, the National Parks and Wildlife Service and the Department of Urban Affairs and Planning advised me late last year that there was some confusion about the process for having hazard reduction work approved. I am advised that this has been confirmed by some evidence presented to the parliamentary Joint Select Committee on Bushfires.

Presently a person seeking to undertake bushfire hazard reduction is required to determine whether a tree preservation order applies, what other provisions exist in a local environment plan, and whether the proposal is consistent with the Native Vegetation Conservation Act and the Threatened Species Conservation Act or requires some other form of approval. The interdepartmental committee also found that a planned hazard reduction activity might be affected by a combination of approvals depending on the mix of land tenures involved. For example, the conditions imposed by the National Parks and Wildlife Service may differ from those of the Department of Land and Water Conservation for a planned hazard reduction that crosses both estates.

These complexities clearly have the potential to delay co-ordinated bushfire mitigation arrangements when implementing an annual works program identified by a local bush fire management committee. It is not as though bushfire hazard reduction has not occurred across large areas, but the potential for delay has been identified and the interdepartmental committee recommended a process that clarifies and simplifies the environmental legislative

framework applying to bushfire hazard reduction work; provides a clear and streamlined environmental assessment process for proposed hazard reduction works conforming with a bushfire risk management plan; identifies a single approval body as a one-stop shop for private land-holders wishing to undertake bushfire hazard reduction; and applies the environmental assessment to each proposed hazard reduction rather than to each land tenure affected by the fuel reduction work.

The Government has accepted the interdepartmental committee's recommendations. This bill amends the Rural Fires Act to provide for a streamlined approval process for bushfire hazard reduction work, removing it from the operation of the Environmental Planning and Assessment Act, the Threatened Species Conservation Act, the Native Vegetation Conservation Act and other environmental legislation. In future, land-holders will simply apply to their local council for approval to undertake hazard reduction. That is admirably simple. The council will issue a bushfire hazard reduction certificate in place of all other approvals, consents or authorities currently required by law. These certificates will be issued free of charge and will be valid for a 12-month period during which the fuel reduction can be undertaken, provided it is consistent with a bushfire assessment code.

Under the new provisions, major land management agencies such as State Forests, the National Parks and Wildlife Service, the Department of Land and Water Conservation or councils wishing to undertake hazard reduction will use the streamlined approval process not only for the land they manage but in conjunction with neighbouring land-holders who also seek to reduce bushfire hazards on their land. These agencies will be able to certify their own fuel reduction works and any other works to reduce hazards on adjoining land.

For example, land-holders adjoining a national park will be able to request the implementation of an asset protection zone on their land and the park in accordance with the requirements of a bushfire risk management plan. In this circumstance the National Parks and Wildlife Service will be able to undertake the environmental assessment on behalf of both parties and any other land-holder who consent to be included in the proposed hazard reduction works. No applications will be required by the private land-holders and no further environmental assessment will be required.

This new streamlined approval process will not apply to areas of statewide significance such as SEPP 14 coastal wetlands and SEPP 26 littoral rainforests. Any proposal to hazard-reduce these areas will continue to require development consent under part 4 of the Environmental Planning and Assessment Act. Planning NSW has agreed to look at managing bushfire issues in SEPP 14 wetlands and to exhibit a discussion paper within the next month or so for public consultation. However, it is not considered necessary to amend SEPP 26, which presently allows the manual removal of fuels in rainforests.

The bushfire assessment code is a practical document that will assist councils in determining appropriate environmental conditions associated with bushfire hazard reduction. It will not be necessary to undertake an eight-part test under the Threatened Species Conservation Act; nor will a person require development consent. The code will be developed by the Commissioner of the Rural Fire Service in consultation with the key stakeholders identified within clause 100K of the bill.

In developing the code the commissioner must have regard to the principles of ecologically sustainable development and the considerations under section 111 of the Environmental Planning and Assessment Act 1979. This will allow for the proper consideration of threatened species, populations, communities and critical habitats, catchment protection and smoke management in relation to vulnerable members of the community, and even ensure that councils' noxious weed eradication programs are incorporated in the works. Prior to its finalisation the commissioner will exhibit the code for 42 days and consider any submissions.

I indicate that substantial work has already commenced on the development of the code and, in accordance with the legislation, a working group chaired by the Rural Fire Service will have representation from New South Wales Fire Brigades, Planning NSW, NSW Fisheries, State Forests, the National Parks and Wildlife Service, the Nature Conservation Council of New South Wales, the Local Government and Shires Association, NSW Farmers and the Department of Land and Water Conservation. I make it absolutely clear that hazard reduction approval will not be required for routine agricultural activities such as stubble burning, burning diseased crops, orchard pruning, and grazing.

The Government has already indicated its intention to provide additional resources to the Rural Fire Service to implement these initiatives. New positions will be established for a mitigation and compliance unit that will report directly to the commissioner on the implementation of bushfire risk management plans and the complaints process. Additional resources will also be made available for the production of the bushfire assessment code, the management of the new integrated development and approval scheme for developments in bushfire-prone areas as well as a new database system to reflect and report more accurately on the success of bushfire risk management strategies.

Other significant provisions of this bill arise from a commitment that I gave in the course of negotiating amendments to the Rural Fires Act in 2000, which resulted in the transfer of fire control staff from local government to State employment. At that time I agreed to a review of the current arrangements relating to the variation of the statutory bushfire danger period and the issuing of permits for lighting fires. A ministerial working party comprising representatives of the Rural Fire Service, the Local Government and Shires Associations, NSW Farmers, the National Parks and Wildlife Service and the Nature Conservation Council has recommended a number of changes to improve the effectiveness of these arrangements. They are reflected in the bill.

The bushfire danger period operates from 1 October to 31 March. Local councils may vary the danger period

depending on local weather patterns, and are required to notify the community through the local media of such variations. This arrangement can lead to inconsistencies at a regional level in the proper management of bushfire hazard reduction activities and the requirements for permits for the safe lighting of fires when adjoining local councils do not co-ordinate their bushfire danger periods. I have accepted the recommendation of the working party that variations to the bushfire danger period would be better managed if the relevant power rested with the Commissioner of the Rural Fire Service. The commissioner will determine the most appropriate period, after consultation with the relevant local fire authorities and local council representatives, for a variation to the danger period for a particular season, and with the local bush fire management committee when it is intended to extend the danger period on a more permanent basis. Appropriate amendments have been made in the bill to give effect to these changes.

The working party also concluded that the current provisions relating to the issuing of permits for the safe lighting of fires are inconsistent. Fire brigades presently issue permits throughout the year when fires are lit that may endanger a building in fire districts. Local councils may issue a permit during the bush fire danger period for the lighting of fires for land clearance or creating a fire-break. In most cases, the permit is issued by a rural fire brigade officer on the delegated authority of the council. In order to address this inconsistency the working party recommended that the authority to issue a permit should rest with the Commissioner of the Rural Fire Service for the lighting of fires on land within a rural fire district and with the Commissioner of the NSW Fire Brigades for the lighting of fires on land within a fire district. The bill amends the Act to reflect this.

Finally, the bill extends the current protection afforded to members of the Rural Fire Service to other fire fighting authorities when threatened species, populations and critical habitats are harmed during bushfire fighting operations. As a result, emergency firefighting activities carried out by the Rural Fire Service or any other firefighting authority—such as NSW Fire Brigades, State Forests and the National Parks and Wildlife Service—will clearly not be subject to various planning and licensing requirements. The package of reforms introduced today is part of the Government's response to the major bushfires during Christmas 2001. They also provide a practical scheme for the resolution of concerns expressed by witnesses to the Joint Select Committee on Bushfires.

This legislation provides opportunities for ensuring that inappropriate development proposals do not proceed in bushfire prone areas; informing intending purchasers of the potential risks they face in residing in bushfire prone areas; streamlining the environmental approval process for hazard reduction work; enhancing the powers of the commissioner to ensure that public land management agencies and private land-holders meet their community obligations to manage fuels and implement risk management plans in an effective and strategic way.

The legislation also imposes a clear obligation on the commissioner and local councils to investigate community concerns and complaints about bushfire hazards; provides for greater transparency of reporting on the implementation of bushfire risk management plans and hazard reduction activities, and removes any doubt about the capacity of fire fighting agencies to respond appropriately to bushfires without fear of prosecution or the need for an approval or licence under any law. It is likely to ensure that a future Minister for Emergency Services will not have to deal with so many confused complaints on talk-back radio in bushfire emergencies. I commend the bill to the House.