

Update MOD statement as of 24-04-2025

### Current Construction Status

Construction at 239 Mccarrs Creek Road is currently underway in accordance with the approved Development Consent (DA20230919004137) and Construction Certificate (CC2024/0200)<sup>1</sup>. However, no modified construction related to the proposed BAL rating changes has been implemented. All construction to date has adhered to the originally approved BAL-FZ rating for all facades<sup>1</sup>.

### Nature of Modification

This application seeks approval to modify the BAL ratings of specific facades prior to their construction<sup>2</sup>. The modification proposes:

1. Downgrading south and west facades from BAL-FZ to BAL-40
2. Downgrading east facade to BAL-40 with non-combustible shutters
3. Retaining BAL-FZ construction for north facade and roof

This modification is sought based on updated Method 2 modeling demonstrating reduced radiant heat levels and changes to surrounding vegetation<sup>4</sup>.

### Referral to Rural Fire Service

Per conversation with RFS Officer Will Papon, this modification requires direct RFS assessment as it involves bushfire safety requirements on bush fire prone land<sup>35</sup>. Under the Environmental Planning and Assessment Regulation 2021 (Section 286), the appropriate pathway is:

1. Council to process this as a referral to the Rural Fire Service via the NSW Planning Portal
2. RFS to assess and provide technical advice on the proposed BAL rating changes
3. Implementation to occur only after RFS approval<sup>5</sup>

This aligns with the Development Referrals Guide which states: "The RFS may provide feedback in response to a referral request" regarding bush fire safety requirements<sup>5</sup>.

### Statutory Context

This application is made under Section 4.55 of the Environmental Planning and Assessment Act 1979, specifically as a modification that:

- Is substantially the same development as originally approved
- Requires technical assessment by the appropriate authority (RFS)
- Does not involve retrospective approval as no modified construction has occurred<sup>6</sup>

The council's role in this process is to facilitate the referral rather than determine the technical bushfire requirements, which fall under RFS jurisdiction<sup>5</sup>.

### **Modified Project Description**

**The development as modified remains substantially the same as originally approved, with identical:**

- **Building footprint, height, and volume**
- **Number of dwellings and use**
- **Overall site layout and landscaping**

**The only changes relate to construction standards for specific facades, which is a technical assessment matter for RFS that won't alter the development's appearance or function**

## **Modification Statement (MOD) for 239 Mccarrs Creek Road, Church Point**

### **Proposed Modifications**

The following modifications are sought to the original Development Consent (DA20230919004137) and Construction Certificate (CC2024/0200):

1. **Partial BAL Rating Downgrades:**
  - **South and West Facades:** Reduce construction requirements from BAL-FZ to BAL-40 due to reduced vegetation threat from recent southern developments<sup>1</sup>.
  - **East Facade:** Downgrade to BAL-40 based on Method 2 modeling showing radiant heat of 35.73 kW/m<sup>2</sup>.
  - **North Facade and Roof:** Retain BAL-FZ standards until Lot 32 is developed, after which shielding will permit future modifications.
2. **Asset Protection Zone (APZ) on Lot 32:** Formalize consent from the adjoining landowner to establish an APZ on the northern boundary.
3. **Future Shielding from Lot 32 Development:** Retain BAL-FZ-rated shutters on Level 3's north elevation until Lot 32's construction provides demonstrable shielding.

### **Departure from Original Consent**

The original consent mandated BAL-FZ construction for all facades. The modifications depart as follows:

- **Vegetation Changes:** Southern vegetation has been cleared, reducing fire risk<sup>1</sup>.
- **Method 2 Modeling:** Demonstrates BAL-40 compliance for eastern, western and southern aspects.
- **Interim BAL-FZ Retention:** Northern facade and roof remain BAL-FZ pending Lot 32's development.

### **Impact on Planning Controls**

1. **AS3959-2018 Compliance:**
  - BAL-40 construction for south, west, and east facades aligns with Section 8 of the standard.
  - BAL-FZ retention for the north and roof complies with Section 9.
2. **Planning for Bush Fire Protection (2019):**
  - APZ on Lot 32 satisfies Section 3.2.5.
  - Shielding from future Lot 32 development aligns with Section 4.3.3.
3. **Northern Beaches Council DCP:** Modifications maintain adherence to bushfire safety objectives.

### **Impact on Site and Adjoining Properties**

1. **Site Impacts:**
  - Reduced construction costs for BAL-40-compliant facades.

- Retaining walls(3.2 meters height) and partial hillside excavation provide full shielding on the east.

**2. Adjoining Properties:**

- Southern developments have already mitigated fire risk via 40m managed land.
- APZ on Lot 32 ensures ongoing fuel reduction without burdening the neighbour.
- Future Lot 32 development will further shield the north facade.

**Recommended Conditions**

**1. Construction Standards:**

- North facade and roof: BAL-FZ (AS3959-2018 Section 9).
- East, south, and west facades: BAL-40 (AS3959-2018 Section 8).

**2. Post-Construction Review:** Submit a Section 4.55 modification to remove northern shutters once Lot 32's shielding is operational.