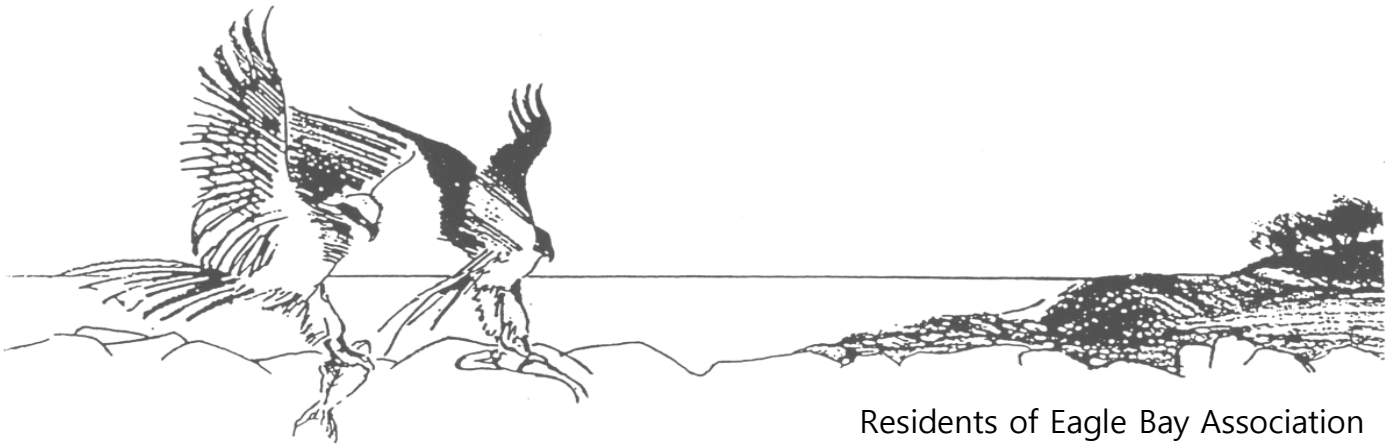


Residents of Eagle Bay Association
PO Box 64
Dunsborough WA 6281

10 June 2021

To:
The Mayor and Councillors – City of Busselton

Re : Proposed new Bushfire Notice Regulations

We would like to bring to the attention of Councillors some significant community concerns with regards to the Proposed new Bushfire Notice Regulations, for which the public consultation process has just ended.

The proposed new regulations will have little impact on property owners within the suburban townships of Busselton and Dunsborough but will have very substantial consequences (perhaps devastating affects) on property owners within the Shire, located outside of these suburban township areas.

With community input, REBA has made a submission to Council in response to the recently closed public consultation process. This submission is very critical of the development process for the proposed new Bushfire Notice and the inappropriate manner the draft of the proposal public consultation document was developed. The draft Bushfire Notice, that was approved by Councillors at the 29th March 2020 Council meeting (Refer to Item 12.3, Attachments I & J), was completely different to the document that was actually put out for the "Have Your Say" public comment period in April 2021. They bare little resemblance. (Refer to Items 1,2 & 3 of the attached public submission letter for details of this specific issue.)

We feel that many of the issues raised in our submission made to Council officers, in the public consultation process, will not get through to Councillors due to the flawed process. Hence this letter, where we have summarised the key items, in regards to the proposed new regulations, that the community consider very concerning. As the REBA formal public submission is a lengthy and rather detailed document we have provided this as an attachment to this letter for reference purposes.

Our key, high level concerns are noted as follows

1. It has been stated, in the public comment documentation, that a driver for the need to update the current Bushfire Notice are changes in State level legislation. What is not stated is that those changes have occurred in WAPC Planning Policy regulations and not in the Bushfires Act 1954 (WA). The Bushfires Act is the governing legislation for the current City of Busselton's Bushfire Notice regulations.

2. Currently there are no links (or cross references) in the existing Bushfire Notice regulations to Planning Policies. We believe that this is for a very good reason. Planning policies are an ever evolving set of guidelines to try and ensure consistency of planning regulations across the whole state. Local government entities need to consider these guidelines in developing their own local planning policies, but are able to make variations to suit specific local considerations. Councillors would be aware of the Omnibus Amendments that are made to local planning policy regulations, in order to keep these in line with the ever changing State wide policies. The last thing the City needs is similar and ongoing regular requirements for amendments to the Bushfire Notice regulations. It has been stated in the public consultation information that the Bushfire Notice regulations have not been changed in over 10 years. Surely this is a good thing, in that landowners have a stable definition of bushfire fuel reduction measures that they need to undertake each year. One would expect that this would also simplify the annual inspection regime for Council officers.

3. It seems that a significant driver of the proposed new Bushfire Notice regulations is to attempt to insert links and cross references to Planning Policies. This in turn is creating the drive to <u>retrospectively</u> implement Asset Protection Zones (APZ) standards and boundary firebreak requirements. If these are introduced,it will require massive destruction to natural vegetation, wildlife habitat and visual amenity to all residential areas in the Shire, other than the suburban areas within Busselton and Dunsborough. These natural assets (environment and visual amenity) are the greatest attractions of the region to landowners and tourists alike.

   Based on our enquiries we have not been able to find any other local government entity that has links in their Bushfire regulations to planning policy regulations. Most likely for good reason, as they perceive the complications this would create. Hence one has to question whether the current push to change the existing City of Busselton bushfire regulations has been driven by planning considerations or bushfire risk mitigation measures.
   A concerned landowner/ratepayer has actually sought legal advice on this issue and the following is an extract from the advice he received from Clayton Utz
   "In our view, in the absence of specialist advice (based on sophisticated analysis and a rigorous testing regime) that the current standards are in some way inadequate, and in circumstances where the existing notices are effective, there is no reason, and no obligation, for the City to make the proposed changes.
   Indeed, in the absence of such advice, we consider that the proposed new Bushfire Notice is legally problematic, and if implemented, may be invalid."

4. As a community we are very concerned at the lack of information that has been provided in regards to actual consultation processes that have been undertaken with relevant stakeholders (like ratepayers, landowners, wildlife and environmental conservation entities, etc) and the absence of professional advisors with relevant expertise on bushfire risk mitigation and environmental impacts.
   The only reference we could find in the information provided, to date, to Councillors and the public in regards to assessment of likely environmental impacts is a one line statement saying "*the city has been conscious of a range of considerations in addition to bushfire risk, including the environment and visual amenity". (*It would appear very limited consultation has been taken in this regard)
   This one line statement is hardly reassuring when we have applied examples of the proposed new regulations to specific locations within the shire and found that whole Urban townships could be reduced to less than 15% tree foliage coverage. This would be devastating ! (Please refer to Item 7.0 of the attached public submission letter where an example case is provided.)

Council officers have also made statements that they have consulted with professional bushfire risk assessors in developing the proposed new regulations. They have also made statements during Zoom presentations that "*strategic firebreaks are a 10 year old concept that are now not considered to be a very effective bushfire risk mitigation option*". Also that "*boundary fire breaks to properties are considered necessary for fire truck access."*

We have made contact with a number of certified bushfire risk assessors that operate within the Shire and none of them support these statements made by Council officers. In fact the feedback we obtained was that properly maintained, and sufficiently wide, strategic firebreaks are a key tool as a buffer zone to reduce a bushfires intensity and allow fire crews to get safe access to control a fire.

They also stated that property boundary firebreaks were of very limited benefit in a bushfire situation and that no "incident controller" would allow a fire truck or crew to access a narrow dirt track in a bushfire situation, as the risks would be too great.

This then raises the question of just how much consultation was really undertaken and with whom .

5. Community Public Relations and Compliance – Following a community organised public meeting, to raise awareness of the proposed changes to the Bushfire Notice regulations, REBA has had a lot of feedback from many community groups and individual landowners from across the Shire.

   The first reaction is how could a final draft of proposed new Bushfire Notice regulations have got to such an advanced stage of development without significant input from landowners/ratepayers (and other affected stakeholders) during the early development phases.

   Secondly how could Council possibly consider trying to retrospectively impose clearing works and costs on landowners who have complied with all the requirements in terms of bushfire mitigation obligations, as per their original planning approvals issued at the time they developed their properties.

   A significant number of landowners also advised that if the new Bushfire regulations came into existence, which required them to undertake significant clearing works, over and above what was required in their original development approval, they will simply refuse to undertake the work. If Council then issues an infringement notice they will take this to a legal challenge.

   Considering the number of landowners that would be affected the City's legal costs could be considerable, not to mention the additional administration work load on Council staff.

The communities' biggest concern is that at the end of the evaluation process of all the public submissions ,Council Officers will try and blunder on with the currently proposed and very flawed changes to the Bushfire Notice with just applying patchwork modifications to address some very, very major concerns voiced by the community.

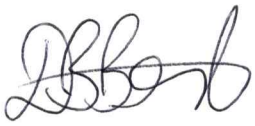
We would hope that Councillors fully understand the communities' concerns that will undoubtedly have been expressed in the public submissions on this issue, and will instruct Council officers that the consultation process needs to go back to square one and be recommenced.

We would suggest that the logical starting point for a new consultation process would be an open workshop (with all relevant stakeholders in attendance at the same workshop) to determine whether the existing Bushfire Notice regulations are adequate for purpose.

If the consensus outcome from the workshopping is that the Bushfire Notice needs review and updating then the shortfalls in the current regulations can be documented and a pathway forward to address these shortfalls can be defined.

Thank you for taking the time to consider the contents of this letter. We cannot over emphasise the growing concerns and anger being raised by the local communities over this issue.

Yours sincerely



Don Best
President of the Residents of Eagle Bay Association

Enclosed
Attachment 1 – REBA Public Comments Submission on the proposed new Bushfire Notice Regulations – Dated 13 May 2021