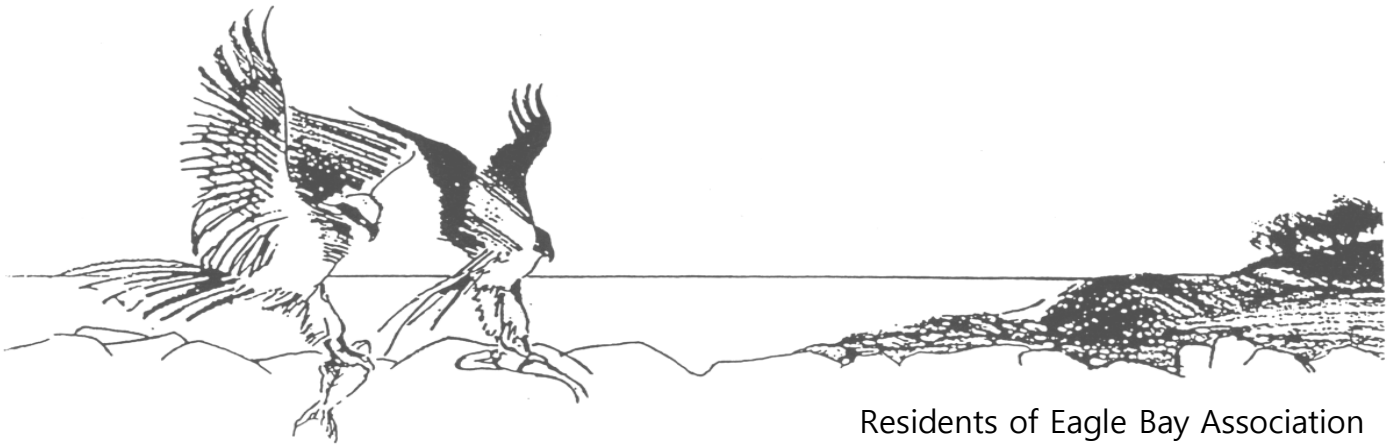


Residents of Eagle Bay Association
PO Box 64
Dunsborough WA 6281

31 May 2021

To:
City of Busselton
38 Peel Terrace
Busselton WA 6280

Attention: Mike Archer
cc. Paul Needham

Re : Public Comments Submission on the Proposed new Bushfire Notice Regulations

The Residents of Eagle Bay Association (REBA) wish to thank the City for extending the initial public consultation period through to the end of May. We also thank the City for the delay in making a decision with regard to adopting this proposal. This will provide suitable time for proper consideration of the issues at stake and the implications with regard to implementation.

REBA very strongly suggests the whole process of consultation be reviewed and workshopped with the community as our Members have expressed a wide range of concerns on the draft. It would potentially have many adverse impacts on the community if implemented in its current form.

The Objects of our Association include, *inter alia*:

- *Fostering awareness of fire prevention and maintaining the security of the area.*

And also include:

- *Fostering awareness of the fragility of our environment and maintaining and conserving the natural features and tranquillity of Eagle Bay and Cape Naturaliste.*

Where there may be a conflict between different Objects, we endeavour to consider which Object represents the highest priority, importance and risk, or significance to the community, whilst aiming to seek a path that best suits all Objects.

In conversation with our local community, including mailouts, emails received in response and feedback received at a public meeting held on Sunday 25 April, we have reviewed and respond to the proposed Bushfire Notice as per the following submission.

We should note that REBA is shocked at these proposed changes, given that they run directly at odds with both the Eagle Bay Special Area Character Plan and also with the clear intent of most of the recently adopted and currently proposed State planning directives that apply to the built environment, which very strongly favour the retention of vegetation and establishment of substantive tree canopy coverage. Nevertheless, REBA has undertaken considerable research into the various documents and makes this submission in a constructive process that will hopefully be favourably considered by Council.

1.0 The Consultation Process

At the Council meeting held on 11 March 2020 (Item 12.3) Council officers put forward a recommendation that a draft of a revised Bushfire Notice be issued for consultation purposes. This proposed draft was provided to the meeting as Attachments I and J to Item 12.3 of the meeting agenda.

The Council adopted the motion that the draft consisting of two Attachments be issued as the draft for public consultation purposes.

It should be noted that the two Attachments as noted above (with a covering summary document noting the proposed changes in comparison to the existing Bushfire Notice) is what was submitted to the City's Bushfire Advisory Committee (BFAC) on10th March with a request for their comments.

However what was issued to the public for consultation purposes was NOT what was presented and approved by the Council motion. It did not include the draft as per Appendix I or the map as Appendix J. Instead of the map the briefing information referred ratepayers and interested parties to the Council's intramaps site for the specific information on their property. Many ratepayers would simply struggle to navigate their way around the intramaps software. Further the survey notice advised that on the intramaps system a ratepayer could reference their current and also the proposed new bushfire category. This was not the case and the Intramaps application only displays the current bushfire category.

Contrary to the detail provided in the Appendix I draft wording (as adopted by the Council resolution) the half page information overview provided on the City's website for the public consultation significantly reduced the level of background information provided. It stated that State level regulations had had changed since 2015, but failed to mention that those regulations were in regard to State Planning Policy and not in regard to the State Bushfire Act, which is the legislative document related to the Bushfire Regulations.

The Appendix I wording was quite clear on how existing BMP's would be managed under the proposed new regulations. Again in the wording of the briefing information provided for the public consultation some uncertainty was introduced with the wording "may prevail" in certain parts of the briefing. Many people commented that they felt they had been left in limbo on this subject with the feeling being that all BMP's could be up for re-negotiation with Council.

2.0 The Consultation Submissions

The public consultation information was provided to ratepayer via the "Your say Busselton" and ratepayers were requested to provide their comments via the survey

form provided within the "Your Say Busselton" app on the City's website. The feedback we received from the community regarding the survey questions was that there were few questions that were directly relevant to the subject of the proposed Bushfire Notice. They noted that they felt some questions were of a personal nature that they felt irrelevant to the subject of the Bushfire Notice and might be used to weigh the relevance of their responses to other questions. Unfortunately the survey gives no option to "not" answer a specific question and still allow a person to proceed to the next questions.

It is obviously relevant to provide a name email address and property address so it can be established if the submission is being made by a ratepayer or other. Putting those three questions aside there appeared to then be only 3 remaining **relevant** questions on the Bushfire regulations, out of the other twelve questions in the survey.

Perhaps the most telling question was question 8 which asked "do you think the proposed controls are". The only choices that could be provided in answer to this question were "more appropriate" or "less appropriate" or "about the same". What about the obvious missing answer options of "very appropriate" or "very inappropriate".

How can any sensible conclusion be drawn from this type of survey where the person completing the survey is only able to provide a predetermined range of answers selected by others.

The obvious question that was missing from the survey was "Do you feel that the existing Bushfire Regulations adequately address the bushfire mitigation obligations of individual landowners"

To try and illustrate how "dumbed down" this survey is in terms of providing useful information on the actual subject of the "proposed Bushfire Regulations" we have attached a summary of the questions and the "allowable" answers as Attachment 1 to this submission.

The general consensus from feedback REBA received was that the survey was simply a "tick box" exercise so that Council officers could say that the proposed new regulations had been subject to a public consultation process.

Interestingly when public awareness started to spread (by word of mouth) across the shire and Councillors sensibly directed that the public consultation period should be extended by 3 weeks, Council officers hastily advertised three online Zoom session to provide further background briefing information and listen to concerns raised by people that logged into these online meetings.

These however were more along the lines of public awareness sessions and should not be construed as a formal public consultation process.

For an issue as important as the Bushfire Notice, that affects every landowner across the shire (and in terms of potential significant downstream impacts and consequences) the public consultation process should include workshops where all potential stakeholders can share expertise on the issues and provide answers to relevant question on potential impacts and consequences, in a common public forum.

3.0 Inadequacy of the Level of Information provided for the Public Consultation Process

We were rather surprised at the lack of background briefing information that was provided on the "Your Say" section of the City's website for a subject that has such a significant impact both environmentally and financially across a significant area of the

shire. The key factors driving the proposed rewriting of the existing Bushfire Notice regulations was provided as three, one line dot points. Hardly adequate briefing information for this level of consultation. This caused us to delve deeper and go back to the Minutes of the Council meeting on the 11th March (Item 12.3) and the Appendices I & J. This provided an improved level of understanding of the perceived drivers for revising the Bushfire Notice. On further delving we went back to the briefing information provided to the BFAC committee meeting on 10th March 2021. In the Minutes of that meeting there was a 3 page briefing document which had been provided by Council officers. This information was much more enlightening in terms of rational for the proposed changes to the Bushfire Notice and potential impacts on ratepayers/landowners.
It was rather surprising that this 3 page briefing document was not also provided in the Agenda information for Item 12.3 at the Council meeting the following day.

As this 3 page briefing paper provided information on all the relevant issues that we would have expected should be covered in a true public consultation process we have attached this document as Attachment 2. In this Attachment we have provided, in red text, comments/feedback that we feel should be considered as part of the current public consultation process.

3.0 Perceived Dangers of Trying to Establish Cross Referencing Between Bushfire Regulations and WAPC Planning Policy

In Item E of the Proposed Notice as submitted to the Council Meeting on the 11 March 2020 (Appendix I) it is proposed that cross references to State planning policies be introduced into the Bushfire Notice. (This desire is very clearly expressed in the briefing paper provided to the BFAC on 10th March 2021).

We have been advised that as the Bushfire Notice is issued by COB under the powers provided to COB under the Bush Fire Act (1954) there would be complications if the Bushfire Notice is cross linked to other policy requirements of other legislation that is controlled/managed by state entities other than COB. The core difference being that planning policies are developed for guidance purposes whereas the Bushfire Notice is developed for regulatory control.

The danger is that if there is a change to State planning policies (guidance documents) there may well be an unintentional and undesirable, automatic flow on effect to the Bushfire Notice regulations (the regulatory control document).

It also provides a complication that the Bushfire Notice regulation is not a self-contained document that is straight forward and relatively easy for a landowner to determine their bush fire clearing obligations, without having to try and cross relate sections to other policies that are likely subject to progressive change.

(For instance, State planning policy (as a guideline document) tends to be a continuously evolving process with many complications in terms of interpretations under varying circumstances.)

If sections of external policies are desired to be included in the Bushfire Notice then the relevant wording should be embodied in the Bushfire Notice and not deemed to be included by cross referencing other external legislation or policies.

A good example of the benefits of a standalone document is that the current City's Bushfire Notice regulation has been able to continue unchanged for 10 years, regardless of all the fluctuations that have occurred in many other external policies/legislation and state planning policies over that period of time.

If there is a desire to have ratepayers/landowners understand their bush fire clearing obligations then they need to be spelled out clearly in the wording (and possible diagrams or maps) in the Notice document and subject to as little change over time as possible from one year to the next.

The current Bushfire Notice is a standalone document with no cross referencing to other external documents. Why change this format as it has proved the test of time.

Undoubtedly there will be the need to do updates over time (maybe every 5 years or so) but the changes should be embodied in the wording of the Notice and not by implied cross reference to other external legislation or policies.

4.0 Proposed Retrospective Imposition of Obligations on Landowners in Order to Meet Compliance with Current Day Planning Policy Directions.

One of the major complications and downfalls of the proposed new Bushfire Regulations is the attempt to tie the Regulations into planning policy considerations and requirements.

The SPP3.7 planning policy requirements are obligations to be considered at the time a development application is made to council (for a home, a structure plan, a scheme amendment, etc). Once a development application is approved then the requirements of SPP3.7 become irrelevant and of no effect further effect for that specific development.

The fact that Council is proposing to "lift" the requirements of SPP3.7 and include these in the requirements of the Bushfire Notice regulations and then enforce them via a separate regulatory process is of extreme concern. As noted in Item 3 above Planning policies are generally guideline documents whereas the Bushfire Notice regulations are a regulatory control document, hence the two documents have different purposes in terms of local government..

If Council was to attempt to force retrospective compliance of SPP3.7 requirements on landowners on an ongoing basis via the Bushfire Notice regulations then Council should be prepared to expect an avalanche of legal challenges from landowners.

Although, as stated above REBA don't believe that Planning Policy considerations have a part to play in the Bushfire regulations we did note that one of the four key Objectives of the SPP3.7 policy is to:

"*5.4 Achieve an appropriate balance between bushfire risk management measures and, biodiversity conservation values, environmental protection and biodiversity management and landscape amenity, with consideration of the potential impacts of climate change.*"

What demonstrable consideration has the Council given to this Objective in the landowner bush clearing obligations proposed in the new Bushfire Notice regulations?

5.0 Concept of Introducing Suburban and Urban Designations into the Categories defined in the Bushfire Notice

In the draft Bushfire Notice issued for public comment it is proposed to use the terminology "bushfire prone" to define the level of bushfire risk within the Busselton Shire. This definition was developed for the purposes of planning policy regulations and is extremely broad. For instance the whole of the Busselton shire, other than the townships of Busselton and Dunsborough is classified as "bushfire prone". In fact pretty much of the whole southwest of WA other than some coastal townships is designated as "bushfire prone".

Within this very broadly defined “bushfire prone” zone there are many areas of varying bushfire risk. Hence the use of Categories, as per the current Bushfire Notice, allows more flexibility in identifying areas of very high risk, medium risk and low risk and defining appropriate fire break and fuel hazard reduction requirements accordingly.

For instance in the suburban areas of the Busselton and Dunsborough townships there is very low risk of an uncontrollable tree canopy fire situation occurring. There is also a significant road network grid that provides separation of individual groups of properties and safe access for fire crew and fire trucks. Hence it would seem appropriate to allocate a low bushfire risk allocation to these areas (apart perhaps for some properties on fringe areas that abut dense tree vegetation areas such as large public reserves).

Then move out to what could perhaps be called “Urban Residential”. This could cover established smaller township areas such as Yallingup, Eagle Bay, Vasse, etc. (This category could also include residential areas on the fringe of the major suburban areas, where there is an increased fire risk exposure.)

These Urban areas tend to have larger block sizes than Suburban areas with block sizes ranging from around 800m2 up to 5,000m2. However they are still broken down into smaller sub-areas by a bitumen road network that allow safe access for fire crews and fire trucks. These “Urban Residential” areas are often surrounded, to varying degrees, by native bush land or farm land. This increases their bushfire risk over that of the “Suburban” category and hence these areas could be considered in the medium bushfire risk category. (Strategic firebreaks could also be considered for the boundaries of these “Urban Residential” categories to assist with bushfire risk mitigation.)

At the high end of the bushfire risk exposure would be the “Rural Residential”. The size of these blocks are larger than the “Urban Residential” category and hence generally have larger areas of native bushland/tree growth with reduced access to the properties via sealed roads or wide and well cleared strategic firebreaks. The current Bushfire Notice regulations require these types of properties to have a cleared Building Protection Zone (BPZ) in order to reduce the intensity of a bushfire in the vicinity of buildings to improve the likelihood of property assets surviving a bushfire incident.

The above noted staged identification of bushfire risk through low, medium and high (and associated mitigation obligations) seems to be a logical approach and something that can be readily comprehendible to landowners.

We would therefore like to suggest that if there is a desire to update the current Bushfire notice then the proposed following Categories might provide a guideline to something that would be logical and easily understood by landowners.

Category 1 – Suburban (Busselton/Dunsborough townships)

Category 2 – Urban Residential (Designated townships/hamlets – such as Yallingup, Vasse, Eagle Bay, etc)

Category 3 – Rural Residential

Category 4 – Rural

Category 5 - Plantations

Category 6 - Protea Plantations/Vineyards

This suggestion would reduce the current 8 categories to 6 but still allow some flexibility in allowing risk versus risk mitigation requirements to be determined via each category.

The areas associated with Categories 1 to 3 could be shown on a map as an overview document (as already suggested by Council officers in the Appendix J that was provided for the Council meeting in March 2020) and Categories 1 to 8 on a property by property basis in the City's Intramaps database. (For illustrative purposes we have provided an Attachment 3 where we have marked-up, on the Firebreak Categories map, the suggested new categories of Suburban, Urban and Rural Residential – obviously this would need more refinement if this concept was to be adopted. Just indicative at this stage for consideration purposes.)

6.0 Proposed New Firebreak Requirements

The proposed draft of the new Bushfire Notice also introduces a requirement for boundary firebreaks to all Rural Residential properties. This seems to be regardless of whether a specific Rural Residential subdivision had an overall Fire Management Plan approved at the time that the subdivision occurred, that provided for approved alternatives to a firebreak being required on all property boundaries.

The primary area affected by this proposed change within Eagle Bay is the Rural Residential subdivision on the west side of the township, that was established around 2004. This subdivision was planned and approved specifically with the inclusion of an overall strategic firebreak, specifically to avoid the need for individual firebreaks and resultant loss of natural vegetation to each lot. This approach was endorsed by the Western Australian Planning Commission and the City's planning department. At the time of the issue of titles for these Lots all titles were encumbered by a Restrictive Covenant that prevents the land owner clearing vegetation, unless it is provided for in the subdivision Vegetation Management Plan and lodged with the City at the time of the subdivision approval.(It should be noted that the enforcing agent for these Restrictive Covenants is the City of Busselton hence the City is likely to have some conflict if boundary fire breaks were to be retrospectively imposed. Has this been considered?)

The requirement of such individual boundary firebreaks for all Rural Residential landowners across the shire, regardless of any existing Strategic Firebreak Network and with no reference to the current Firebreak Variation system, will result in significant additional clearing of native bush. The obvious flow on effects of this are the unnecessary loss of biodiversity and wildlife habitat, plus potential drainage and erosion problems on properties with steep terrain or high rainfall run-off areas.

The requirement for this proposed change, according to the 11 March 2020 Council Agenda briefing report, was a statement that "*many of the strategic firebreak networks established in this way are not considered to be sufficiently effective*". No commentary was provided as to where this statement originated or what professional advice had been obtained to support the statement. Our preliminary enquiries with professional and certified bushfire risk consultants do not support this statement. The advice that we received from professional consultants was that correctly designed and located strategic firebreaks are a very powerful tool for reducing bushfire risks and assisting to allow fire crews to safely bring bushfires under control. This is assuming of course that the strategic firebreaks are regularly maintained. We were also advised that a bushfire incident controller would not risk sending fire trucks or fire crews along a narrow unsealed firebreak in a bushfire situation. If this is the case what purpose would be served by individual boundary fire breaks to all properties in a Rural Residential subdivision that are already serviced by strategic fire breaks?

7.0 Unacceptable Destruction of Visual Amenity

Under the proposed new Bushfire regulations it is proposed to retrospectively introduce an asset protection zone (APZ) on all properties that fall into the proposed new “Bushfire Prone” category. As noted in section 5.0 above the “bushfire prone” is a terminology that has been developed for planning policy purposes and not for specific use under Bushfire legislation. An arbitrary 25m radius from walls of buildings has been proposed regardless of block sizes. (Under current regulations an APZ (or BPZ) is only required on a Rural Residential block which are normally in the 1.5 hectare (15,000 m2 size range) and upwards.

The impact of a 25m APZ zone on smaller blocks will be devastating with regards to the level of native vegetation that will allowed to remain on the block.

As an example if we assume that the average house and adjacent outbuildings such as a garage would cover an average 15m to 20m square. Working with the 20m building dimension we then need to add an additional 25m each side to determine the required APZ zone size. Assuming the house is located relatively central to the block then the area of the house and the APZ will be 70m x 70m giving an area of 4,900 m2. Hence generally speaking on any block of 5,000 m2 or less the APZ will be the whole area of the block.

Looking at the proposed requirements of the APZ, the canopy cover of trees should be less than 15% of the APZ area and tree canopies at maturity at least 5 m apart so as not to form a continuous canopy.

Currently almost all the blocks in the Eagle Bay township are on blocks less than 5,000 m2 (other than the Rural residential blocks on the west western corner of Eagle Bay). Hence under the proposed new regulations every block would be limited to 15% tree canopy coverage. Taking into account the area of roads that obviously have no tree vegetation, the tree canopy coverage in the Eagle Bay township would be reduced to around 10% of the total area. The final consequence would be that Eagle Bay would be reduced to looking like a very large farm land cleared area with very visible houses and sheds dotted across the relatively bare landscape.

This would basically mean decimation of a special character area that is currently recognised and promoted for its visual amenity. Therefore the fire risk assessment and mitigation obligations on landowners, currently being proposed under the proposed new Bushfire Notice, is way out of line with what the community considers to be acceptable and significant pushback can be expected.

This is just one example and this situation is likely to be replicated across many of the urban residential areas across the shire.

This level of clearing would have a devastating impact on landowners, who in some cases have spent years and considerable cost landscaping and nurturing the visual amenity of their individual properties.

Considering the above noted impacts of applying the proposed 25m APZ’s to smaller lot sizes, we believe that an appropriate balance between bushfire risk management measures and landscape amenity is not achievable with the proposed APZ scenario.

It terms of the proposed 25 m arbitrary APZ’s being applied to the larger Rural Residential lots this; will impose a retrospective obligation on landowners who developed their properties prior to November 2011. It the case of a property approved for development prior to 2011, many would have used the 20m BPZ, as was applicable at that time, to position houses and out-houses such as to preserve

vegetation of significance or similar. The retrospective application of a 25m APZ zones may now mean that they will have to destroy the trees and vegetation they made special efforts and compromises to protect. There seems to be little fairness or justice in this approach.

7.0 Unacceptable Destruction of the Environment and Native Wildlife Habitat

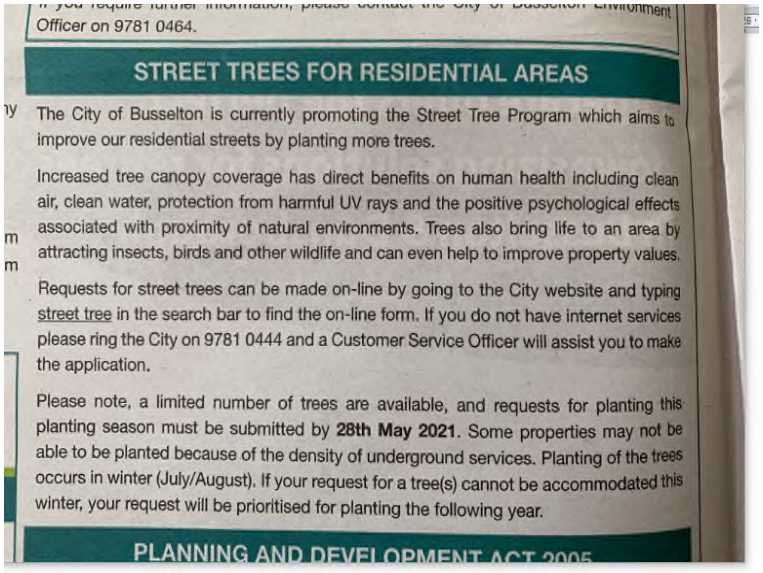
The clearing of trees that would be required to achieve the APZ requirements on urban sized blocks (as noted in item 6.0 above) would destroy a very vibrant habitat that currently exists for native wildlife and bird life. Most shade would be lost and this again would severely impact the wildlife habitat parameters plus the habitat parameters of landowners**.**

It would therefore seem that an appropriate balance between bushfire risk management measures and, biodiversity conservation values, environmental protection and biodiversity management cannot be achieved with the application of an APZ to smaller lot sizes.

8.0 Inconsistencies

The messages and directions that come from Council can be very confusing at times. The proposed imposition of APZ's on Urban landholding and a blanket firebreak requirement on Rural Residential landholding will cause a huge loss of tree canopy and native vegetation across many residential areas across the shire.

On the other hand Council is promoting the life style and wellbeing benefits of increased tree canopy coverage and encouraging ratepayers to pursue this goal of increased canopy cover, as highlighted in the recent public advertisement below.



Officer on 9781 0464.

STREET TREES FOR RESIDENTIAL AREAS

The City of Busselton is currently promoting the Street Tree Program which aims to improve our residential streets by planting more trees.

Increased tree canopy coverage has direct benefits on human health including clean air, clean water, protection from harmful UV rays and the positive psychological effects associated with proximity of natural environments. Trees also bring life to an area by attracting insects, birds and other wildlife and can even help to improve property values.

Requests for street trees can be made on-line by going to the City website and typing street tree in the search bar to find the on-line form. If you do not have internet services please ring the City on 9781 0444 and a Customer Service Officer will assist you to make the application.

Please note, a limited number of trees are available, and requests for planting this planting season must be submitted by **28th May 2021**. Some properties may not be able to be planted because of the density of underground services. Planting of the trees occurs in winter (July/August). If your request for a tree(s) cannot be accommodated this winter, your request will be prioritised for planting the following year.

PLANNING AND DEVELOPMENT ACT 2005

8.0 Other Negative Impacts

If the proposed APZ requirements to Urban properties and the Firebreak requirements were implemented this would apply a significant bush clearing cost burden to land owners (could easily be in the order of $20,000).

In addition there would be hundreds of truckloads of cleared vegetation to be disposed of and nowhere near enough clearing contractors available within the shire to undertake the work.

Have these impacts been considered as an outcome of implementing the proposed changes to the Bushfire Regulations

10.0 Suggested Conclusion/Way Forward

Following evaluation of the feedback from the current consultation process, if Council is still of the view that an update needs to be made to the Bushfire Notice then recommence an open and well publicised consultation process. Perhaps a consultant bushfire management expert could be engaged on a short term basis to manage a series of public workshops (with representation of all likely stakeholders being in attendance at the workshops). Then based on the workshop outcomes that consultant could develop a draft of suggested changes that would meet the expectations of the community, balancing the risk mitigation benefits with the potential community impacts.

We trust that due consideration will be given to the contents of this submission in determining the way forward on the Bushfire Notice Regulations issue.

Yours sincerely

Don Best
President of the Residents of Eagle Bay Association

Enclosed
Attachment 1 – Consultation Survey Questions
Attachment 2 – Briefing Paper Provided to BFAC – 10 March 2020
Attachment 3 – Bushfire Category Map

Attachment 1

Summary of Questions in the "Have your Say" Public Comment Survey

Question No	Question	Allowable Answer choices
1	Full Name	
2	Emails Address	
3	Age	
4	Gender	
5	Are you a	Full time resident/Part-time resident/Absentee land owner
6	Suburb (within Busselton Shire)	
7	Please select category in which your property is in	From Category 1 to 4
8	Do you think the proposed controls are	More appropriate/less appropriate/about the same
9	Why	Text box provided for comments
10	Are you a member of a volunteer bush fire brigade	yes/no
11	Are you a member of the bush fire action group	yes/no
12	Do you have a fire plan	yes/no
13	The City is reviewing the communication of Harvest and Vehicle Movement Ban notices with the view to possible SMS messaging. If you live in a Rural-Residential or Rural Bushfire Prone area and would like to register for SMS alerts in the future, please indicate Yes and provide your mobile number below	yes/no
	How did we do questions	
14	What value do you put on being able to provide feedback on this issue	Low/medium/high
15	How easy did you find this survey to complete	Difficult/somewhat easy/easy

Questions highlighted in yellow are the only ones that seem relevant to the subject of the survey

Attachment 2
Briefing Paper provided to the BFAC Meeting on 10 March 2020

The highlighting in yellow and the text in red has been inserted as REBA comments on the relevant subjects.

BFAC 10 MARCH 2020

Attachment 8.2 Draft Revised Bushfire Notice for Consultation with BFAC

REPORTING AGENCY: City of Busselton
REPORTING OFFICERS: Director, Planning and Development – Paul Needham
Coordinator, Ranger and Emergency Services – Ian McDowell
ATTACHMENTS: Attachment A Existing Notice
Attachment B Draft Proposed Bushfire Notice
Attachment C Bushfire Notice (Map)
Attachment D Analysis of Provisions of Existing Notice

Background

The City has undertaken work to review and draft a revised 'Bushfire Notice' (sometimes referred to as the 'firebreak notice'). A copy of the existing notice is provided as Attachment A, and the draft Proposed Notice is provided as Attachment B (and the associated map as Attachment C).

The key aims of the review have been to rationalise and clarify the requirements of the notice, as well as seeking to better align the notice with town planning and building control regulation. **(A clear declaration here that a key driver for the revised Bushfire Notice is to tie the Bushfire notice to the Planning Policies. REBA does not agree with that proposition. Bushfire regulations should driven by specific bushfire risk assesements applicable to the various areas that exist across the shire of Busselton, rather than Planning Policies that are developed to be guidelines across the whole of the state for the assessment of Development Applications.)**

The draft Proposed Notice is being presented to the BFAC for comment before being presented to Council for formal adoption. Consultation will also be undertaken with DFES, bushfire consultants working in the District, and some targeted consultation with landowners where there may be more substantiative change impacting them as a result of the proposed notice**.(The whole of the Busselton shire is classified as a fire prone area – other than the suburban areas of the Busselton township and Dunsborough township – hence most other residential areas in the shire are going to be substantially affected and should hence be involved in the fullworkshop and consultation process.)**

Whereas the Existing Notice is drafted to serve both formal/legal and community/landowner education purposes, the Proposed Notice has been drafted for formal/legal purposes only. The intention is that the Proposed Notice, once finalised, will be supplemented by more user-friendly guidance for the community (which it is envisaged will be developed only once the formal notice has been finalised).

In preparing the Proposed Notice, officers have reviewed the bushfire notices of a range of other local governments, but have not found any examples which could readily be adapted to properly meet the City's purposes. **(Perhaps the reason for this is that all the other surrounding local government bodys' realise the legal complications and the ongoing and never ending problems that will arise if the requirements of a Bushfire Notice get tangled up and interrelated with planning policies guidelines.)** The City has also sought advice from DFES who we believe have been doing some work on a template or similar for a notice, but had not received any substantive advice at the time of writing this report.

Officer Comment

There is seen to be a need to align the bushfire notice with the town planning and building control decisions that the City makes **(this could be a potential source of never ending complications and landowner disputes with the City administration**) – and that has been a major focus in developing the Proposed Notice. As already noted the intention is that the Proposed Notice, once finalised, will be supplemented by more user-friendly guidance for the community (which it is envisaged will be developed only once the formal notice has been finalised) – and that the Notice itself in a formal sense is limited in its scope to what actually has to be included in a Notice adopted under the Bushfire Act – whereas a substantial portion of the Existing Notice simply reiterates requirements that are set out in other controls/legislation. **(This is a rather misleading statement. Other than dates for the start and end of the various restriction periods the existing Bushfire Notice is completely self-contained and does not cross over or reiterate other controls/legislation)**
As a result, the Proposed Notice is considerably shorter, in terms of the total amount of text. An analysis of the provisions in the Existing Notice (other than those relating to Asset Protection Zones (APZs) and firebreaks or similar) is provided as Attachment D, and clearly illustrates that much of the content of the Existing Notice is redundant, as it is merely reiterating controls that already apply through other means (but is content that would be included in the more user-friendly guidance for the community it is envisaged will be developed to sit alongside the formal notice). **(REBA does not agree with this statement. The current notice is all encompassing and a very usable, landowner, reference tool defining in simple terms the landowner bush fire clearing obligation to be undertaken each year before the commencement of the fire season. The current Notice is a one page brochure that can easily be attached to the fridge door or a pin up board for regular reference**.)
The aim is for the new notice to be finalised and in place leading into the 2020/21 fire season. With this in mind, and taking into account the quarterly meeting schedule for BFAC, the draft Proposed Notice is presented to BFAC for noting at this meeting with individual members invited to provide written feedback, via email, to the City's Coordinator Ranger and Emergency Services Coordinator within two weeks of the date of this meeting (by 25 March 2020). Please note that, if it is considered necessary, a further BFAC 'out of session' meeting may be convened to discuss the Proposed Notice.

Key Changes

The following is a summary of the key changes:

- Existing Notice drafted to serve both formal/legal and community/landowner education purposes. Proposes Notice drafted for formal/legal purposes only (**to be supplemented with user-friendly guidelines ! The current Bushfire Notice is already user friendly so why the need to create a separate formal/legal and a separate community /landowner version when the proof of time has shown that one document fills the requirments ? Why complicated something that is currently very straight forward.**

- Proposed Notice sets out that it prevails over a Bushfire Management Plan (BMP), unless the BMP was endorsed after contemporary planning controls came into place in December 2015, or compliance with the Notice would leave the landowner in breach of environmental laws. **(this is applying retrospectivity to the applicability of BMP's. Many people with special conditions on their properties such as areas at risk of high erosion (if vegetation is removed), or steep country that machinery can't access, etc, etc, may have expended considerable money to get BMP's developed to determine a sensible and workable**

compromise between conservation and fire risk management. Many of these may predate December 2015. Are they going to have to start from scratch again with more expense and bureaucracy, although nothing has changed in terms of the issues relating to their properties, the fire risk and their special conditions/situations.

Reduction of the number of land categories from eight to four (urban, urban bush fire prone, rural-residential, and rural). **(The reduction in the number of categories would reduce the flexibility of the Bushfire Notice to have conditions that suit varying situations that are bound to occur across the length and breadth of the shire. A reduction in categories would simply place a much higher work load on Council administration staff with many more people applying for exceptions or variations to suit special circumstances. It might be sensible to redefine or modify some of the eight categories that currently exist but the more categories available the better chance of a property fitting into one of the existing categories without have to apply for special consideration.)**

- The use of a map, **(the map is a good and easy reference and a good idea, however if a map was to be included in the Bushfire Notice then the Council's Intramaps data base would need to be reviewed and updated so that the Categories shown in the database aligned with that shown on the map. Otherwise conflicts will prevail.**) formally adopted by the Council and Gazetted on an annual basis to delineate land categories (**why the need for annual updates of the map, other than possibly to include new subdivisions. The longer the rules for Bushfire clearing remain consistent over time the more likelihood of general compliance**). Except:

    - If the subject Lot is greater than 10 hectares in area, and zoned rural-residential, it shall be considered to be in the rural category

    - If the subject lot is identified on the map as being in the Urban category is designated bush fire prone (subject to an order made under section 18P of the *Fire and Emergency Services Act 1998*), it shall be considered to be in the urban - bush fire prone category

- All vegetation on the land within 25 metres of the wall of any 'habitable' buildings (rather than all buildings) or any other building, where the wall of that building is within 6 metres of any habitable building, meets the APZ standard

- APZs to be accommodated within the 'lot' rather than on/across the 'land' (to avoid landowners having to maintain an APZ to protect a habitable building on a neighboring site.

- Strategic firebreak networks established in a way that are not considered to be sufficiently effective. **(Independent enquiries with fire risk assessors, that have experience in the Busselton shire, do not necessary support this statement. Without some public consultation workshops being undertaken, with all stakeholders in attendance, how can an acceptable general consensus be confirmed on these types of statements.)** As a result under the Proposed Notice, boundary firebreaks are required on rural-residential category, even where there are strategic firebreak networks, unless there is a more recent BMP (i.e. on or after 7 December 2015)

Note - There is a similar inconsistency between independent professional advice and what has been stated by Council officers in their recommendations in regards to individual fire breaks around the boundaries of lots. Council officers have stated that

the firebreaks, under the proposed new Bushfire regulations, are required for the access for fire vehicles. Advice received from independent fire professionals states that no bushfire incident controller would allow a fire truck (either large or small) or a fire crew to put themselves at risk by entering a narrow bare earth track in a bushfire situation.)

Statutory Framework

The statutory framework for the bushfire notice is set out in the *Bush Fires Act 1954* (Bushfire Act), specifically Section 33(1), which states that, *inter alia* -

> *(1) Subject to subsection (2) a local government...may,...as a measure for preventing the outbreak of a bush fire, or for preventing the spread...of a bush fire...give notice in writing...to all owners or occupiers of land in its district by publishing a notice in the Government Gazette and in a newspaper circulating in the area requiring...them...to do...all or any of the following things —*
>
> (a) *to...clear upon the land fire-breaks in such manner... as are specified in the notice, and thereafter to maintain the fire-breaks...;*

Attachment 3

Indicative Example of Suggested Alternative Category Designation shown in Map Form

