

# DRAFT STATE PLANNING POLICY 3.7 BUSHFIRE AND PLANNING FOR BUSHFIRE GUIDELINES

## PUBLIC ENGAGEMENT OUTCOMES REPORT



May 2024

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Information session - Perth - 9 May 2023



Information session - Bunbury - 30 May 2023

## 1.0 Introduction

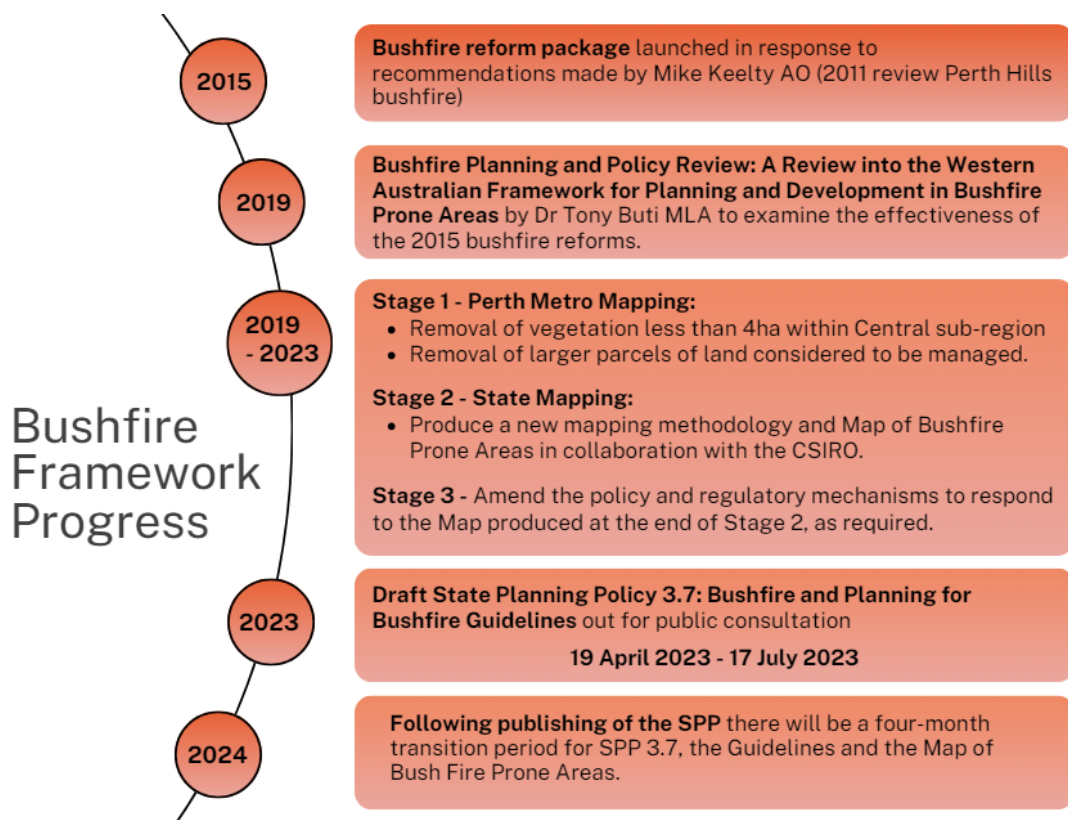
The purpose of the Public Engagement Outcomes Report (Report) is to provide a high-level summary of the feedback received on the draft State Planning Policy 3.7: Bushfire (SPP 3.7) and draft Planning for Bushfire Guidelines (the Guidelines) during the formal public consultation period. The Report sets out the feedback received on each of the elements and key themes associated with the draft SPP and the Guidelines, including a range of issues and concerns raised about the application of newly proposed provisions. The Report also outlines where further clarity on feedback was sought to ensure that the proposed changes addressed the issue raised.

This Report sets out the proposed policy responses to the issues raised by the submissions, which are categorised by theme.

## 2.0 Background

In July 2019, the Government announced a three-stage Action Plan for the review of the Bushfire Framework, informed by the review by the Hon. Dr Toni Buti. The finalisation of SPP 3.7 and the Guidelines will complete stage 3 of the government's action plan for the review of the bushfire framework. Figure 1 provides an overview of the bushfire Framework review progress.

**Figure 1: Overview of the Bushfire Framework Review**



### 3.0 Public advertising period

The draft SPP and Guidelines were released for public advertising on 19 April 2023. Submissions closed on 17 July 2023. Eight extensions were granted with the final written submissions received on 28 July 2023.

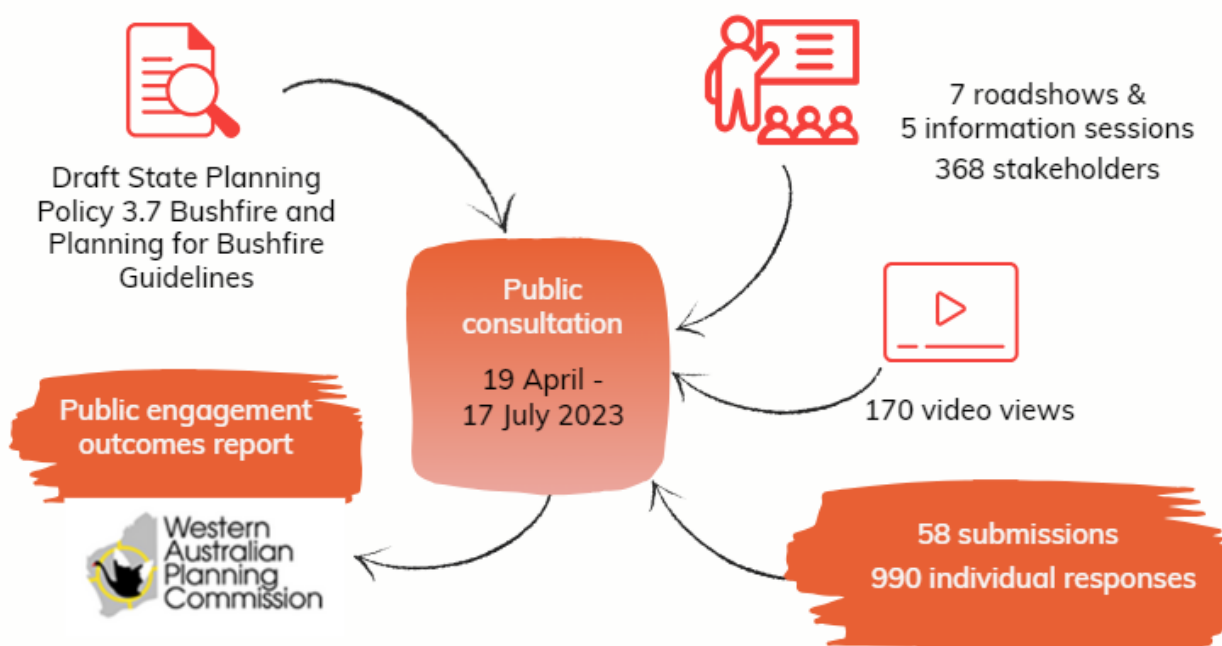
During the consultation period there were seven roadshows with industry and local government stakeholders. These sessions were aimed at informing industry and local government on the key policy changes, to enable informed submissions, as well as provide a platform for collaborative discussion and feedback. In addition to the roadshows targeted engagement with industry groups and media communications were undertaken.

Roadshow sessions		Other information sessions	
Geraldton	3 May 2023	WALGA	2 April 2023
Perth	9 May 2023	DPLH Staff	2 May 2023
Albany	24 May 2023	State Emergency Management Committee	10 May 2023
Bunbury	30 May 2023	UDIA	29 May 2023
Margaret River	31 May 2023	Development WA	3 July 2023
Broome	7 June 2023		
Perth (online)	8 June 2023		

A total of 368 people attended the sessions.

Other communications:

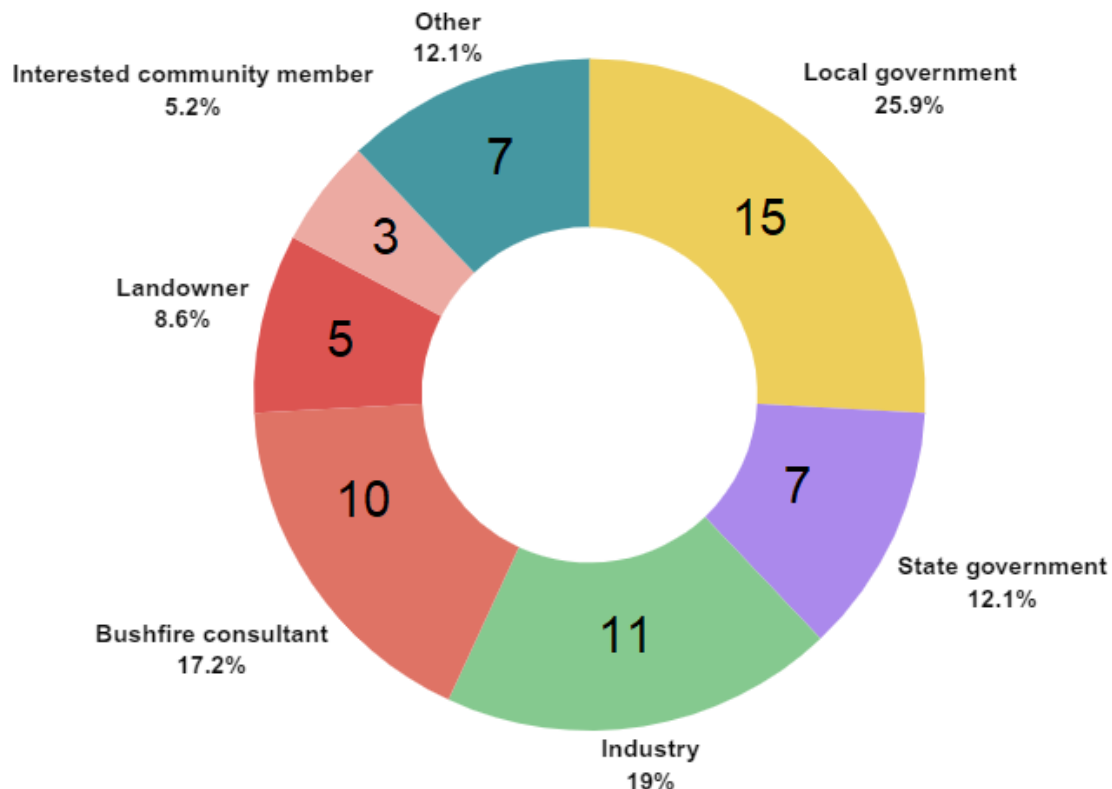
- Social media posts (Facebook and LinkedIn)
- Promotion on the Department's website
- Video of main changes
- Ministerial Media release 20 April 2023



## 4.0 Submission feedback

A total of 58 submissions were received from the following stakeholders, as shown in Figure 2 below:

**Figure 2 – Number and percentage of submissions received by stakeholder group**



21 submissions were received through the online Consultation Hub survey from members of the community, landowners, bushfire consultants and Local Governments.

The 37 written submissions, which did not use the online Consultation Hub survey, came from local governments, bushfire consultants, State Government agencies, peak industry bodies and planning consultants.

Appendix 1 provides the full list of submitters.

The two forms of submissions (written and online survey) generated 990 individual responses specific to a certain issue or section of the SPP and the Guidelines.

Any feedback received through the consultation period that pertained to the Department of Fire and Emergency Services (DFES) or Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), was forward to these agencies for their information and to respond if necessary. As such any comments raised in relation to the Map of Bush Fire Prone Areas or the construction standards are not incorporated into this report.

The overall key themes emerging from individual responses included the following:

#### Supported

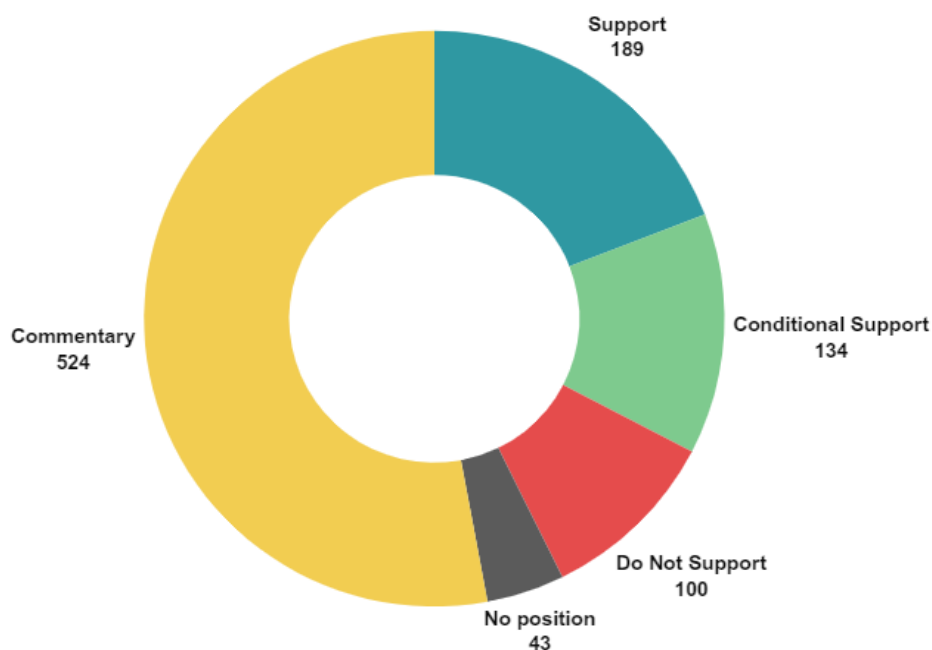
- new broader landscape assessment methodology to demonstrate compliance with Element 1: Location
- change from a performance principle-based approach assessment to an outcomes-based assessment approach
- policy provisions that reflect the different risk presented by those areas identified as Area 1 (urban) and the rest of the state being Area 2, within the Map of Bush Fire Prone Areas
- restructuring of the Guidelines into the planning stages.

#### Requested

- additional clarity in the methodology and criteria for the broader landscape assessment process
- clarity in the application of the policy to tourism land uses
- additional clarity on the definitions used within the document
- improvements to the wording contained in the Guidelines and alignment with existing bushfire definitions.

Figure 3 below outlines the types of responses received. Section 5 in this Report, provides more detail on the type of feedback received, the 'do not support' responses and the key changes proposed for the SPP and the Guidelines following this public consultation process.

**Figure 3 – Number and type of individual responses on the draft SPP and Guidelines**





**Figure 4 – Number of individual responses by topic**

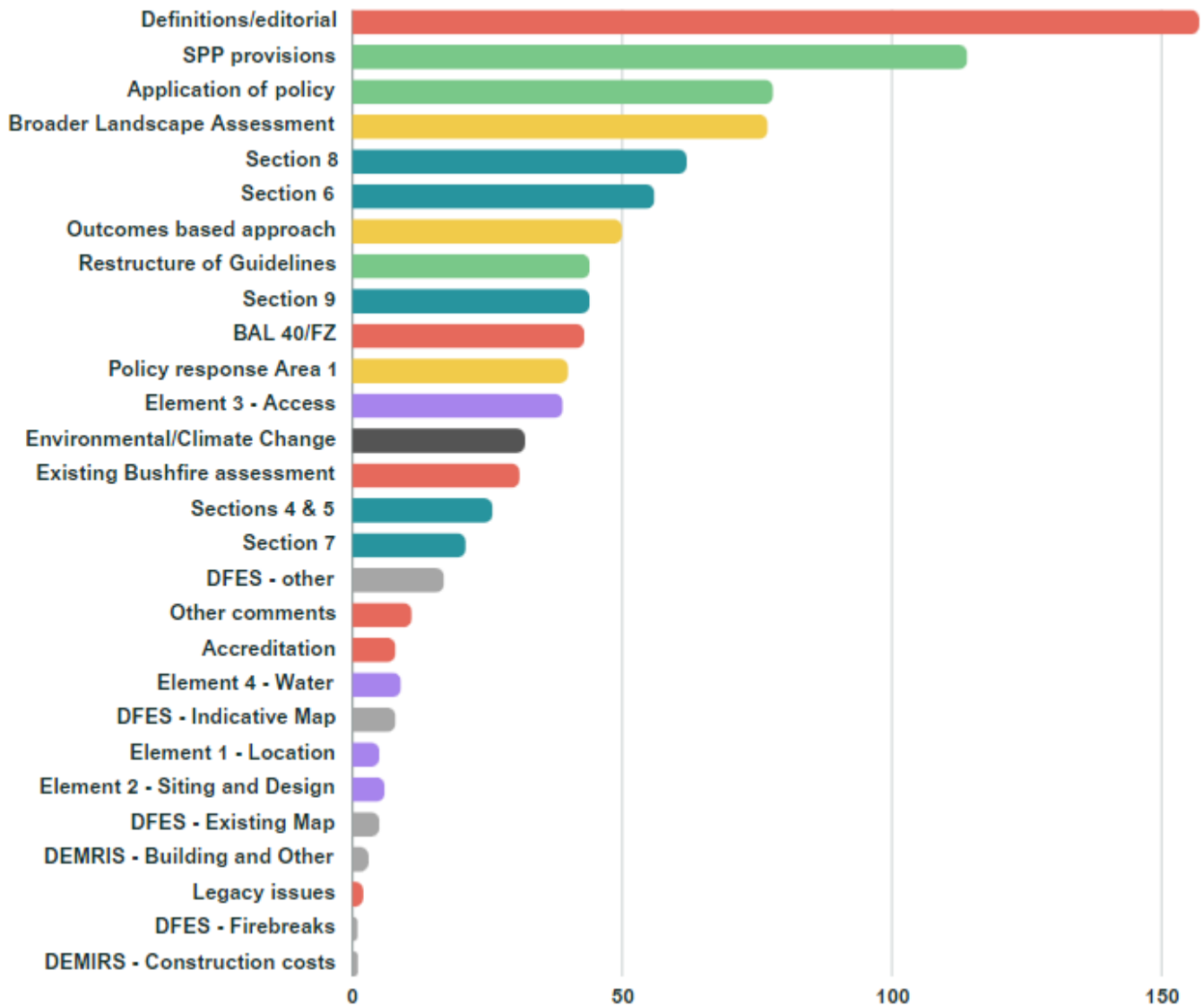
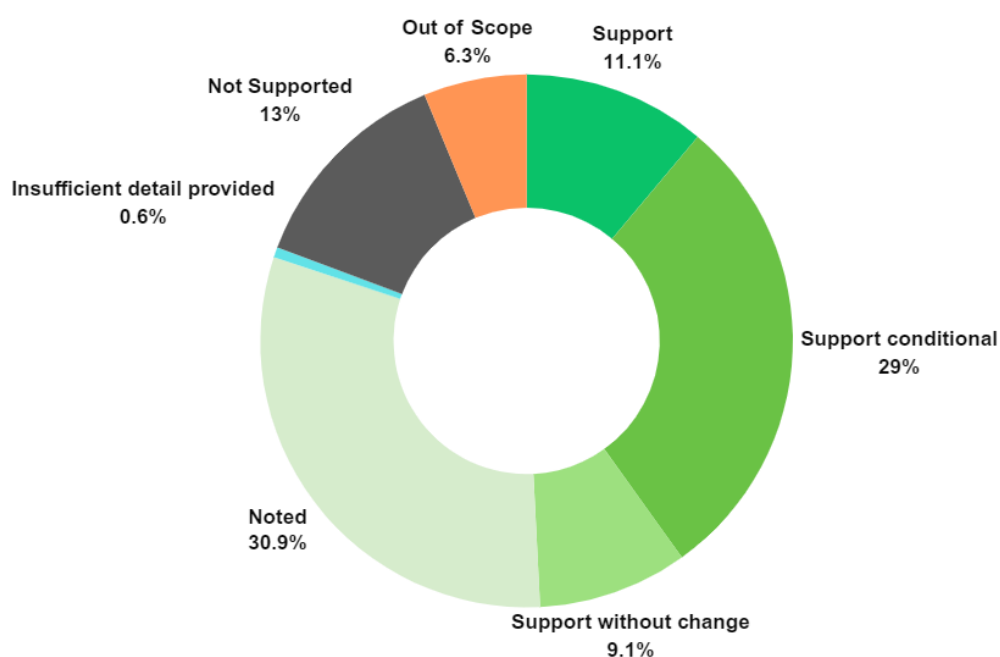


Figure 4 above, provides an outline of the number of responses received on specific sections of the SPP or Guidelines, or the responses from the question posed in the Consultation Hub. The majority of submissions related to editorial changes for improved clarity or changes to definitions followed by suggested amendment to the SPP provisions, which reflects the general high level of support for the policy and guideline content and direction.

All individual responses were reviewed and responded to in the following manner. The breakdown of DPLH responses are shown in Figure 5 below.

DPLH Response to submission	%	DPLH comment
Support	11.1%	110 of the 990 responses received were supported i.e., the commentary and any suggestion/edits have been accepted as submitted.
Support conditional	29%	287 of the 990 responses received were supported conditionally i.e., the response was supported, and the intent will be addressed through alternative edits than those proposed.
Support without change	9.1%	90 of the 990 responses received were supported without any change. The concept or commentary was supported however it was considered that the current content already addresses or incorporates the issue raised, or the matter is addressed elsewhere in the policy or within other policy documents.
Noted	30.9%	306 of the 990 responses received were supportive, complementing and/or acknowledging the improvement in the content. The submission provided information or a statement only i.e., no edit was suggested.
Insufficient detail provided	0.6%	6 of the 990 responses received were unclear on what was being commented on or unclear what the suggested changes where.
Not supported	13%	129 of the 990 responses received were not supported i.e., did not support the response and/or the suggested edit.
Out of Scope	6.3%	62 of the 990 responses received were considered 'out of scope' as they related to <ul style="list-style-type: none"> <li>- the Map of Bush Fire Prone areas</li> <li>- other legislative requirements</li> <li>- the operations of other agencies</li> <li>- land or bushfire management issues that are not part of the planning assessment process.</li> </ul>

**Figure 5 – DPLH response to feedback**





## 5.0 What you said and what we have changed

### 5.1 State Planning Policy Provisions

#### What you said

110 individual responses were received on the provisions within the SPP, with commentary made on the Objectives, Outcomes, Measures and other sections of the Policy.

Of the 110 responses commenting on the SPP

- 21 responses (19%) – Support
- 5 responses (14%) – Conditional support
- 21 responses (19%) – Do not support
- 53 responses (48%) – No position or commentary

The majority of responses sought further clarity or improvements to the provisions contained within Section 5 – Policy Objectives, Section 6 – Policy Outcomes, Section 7 - Policy Measures and Section 8 - Advice of State/relevant authority/ies for emergency services to be sought.

Of the 21 individual responses that did not support components of the SPP, most of these were acknowledged and resulted in changes. There were two objections to the pathway to allow development within areas of Bushfire Attack Level (BAL) - 40 or BAL- Flame Zone (FZ). This resulted in no change, as this pathway replaces the current pathway, which includes references to 'unavoidable development' and 'minor development'. Both terms have been removed as they have proven to be confusing and are being implemented inconsistently.

One response raised concern that the SPP is 'narrower in its application' than the current SPP, specifically at the strategic planning stage. The broader landscape assessment is a new assessment requirement for those areas mapped as Area 2 and it is only planning proposals within Area 1 that do not require a broader landscape assessment. Area 1 has been determined as having a lower risk of loss of life or loss of property from a bushfire given its urban context and this assessment removes the need for further strategic assessment of the risk.

#### What we have changed

- Provided greater clarity on when the SPP and Guidelines apply
- Revised Policy Objectives to be clearer
- Revised terminology to align with existing bushfire emergency definitions, the use of 'risk' terminology, and edits to improve the references to 'environmentally sensitive areas'
- Removed the current SPP Section 8 '*Advice of State/relevant authority/ies for emergency services to be sought*' as this information is contained within the Roles and responsibilities section of the Guidelines
- Removed precautionary principle from the SPP as it is a common law principle, and it is outlined within the Guiding Principles section of the Guidelines.

## 5.2 Broader Landscape Assessment

### What you said

77 individual responses were received on the inclusion of a broader landscape assessment methodology and the survey question - *Do the acceptable solutions and the broader landscape methodology provide enough information to make an informed assessment or decision?*

Of the 77 responses relating to the broader landscape assessment

- 17 responses (22%) – Support
- 21 responses (27%) – Conditional support
- 6 responses (8%) – Do not support
- 33 responses (43%) – No position or commentary

Overall, the feedback indicated support for the introduction of the new methodology to incorporate the two kilometres surrounding a subject site into the assessment process.

Clarity was sought on a range of matters, including:

- the availability of data on future structure plans or subdivision approvals
- access to vegetation and contour information
- the points-based table for determining the A, B, or C landscape Type
- improvements to diagrams in the Guidelines (Appendix B.1) to better reflect the requirements of the new broader landscape methodology
- additional clarity requested on the level of practitioner able to undertake these assessments.

A key issue raised was the need to have further guidance on how to assess the evacuation capacity of a proposed new development.

Of the six 'Do not support' responses, only two were not addressed through changes. One due to misinterpretation of the provisions, and the other response requested the acceptable solutions of the broader landscape assessment, to not apply to strategic documents. Given the intent of the broader landscape assessment is to shift development away from extreme bushfire risk areas, applying the assessment at the strategic level is the most beneficial and effective way of achieving this outcome.

### What we have changed

- Revised the broader landscape assessment methodology to provide greater clarity on its application particularly for tourism land uses and planning proposals submitted prior to 2015, which have not previously considered the bushfire policy framework
- Table 6 of the broader landscape methodology provided a points system to assess the bushfire hazards (vegetation extent), the broader road network, proximity to urban areas and suitable destinations for evacuation, to obtain a Type A, B or C landscape category. Refined the points within the Table 6 criteria, to differentiate between vast tracts of vegetation, vegetation within rural living precincts and cleared vegetation, and simplified the categories that can be achieved to either a Type A or a Type B.
- Clarified that a 'suitable destination' is a 'townsite' that should be able to provide emergency evacuation facilities
- Removed 'evacuation capacity' of the road network and referred to existing traffic impact assessment methodologies

- Removed the requirement to identify the 'slope', as this level of detail is not necessary for a broader landscape assessment and there is a lack of contour data available in rural areas to determine the effective slope
- New example diagrams provide WA vegetation and landforms, rather than examples from the east coast of Australia
- Significant revision of the assessment, including a simplified assessment for those applications that adjoin an urban area/townsite.

### 5.3 Application of the Policy

#### What you said

78 individual responses received on how to apply the Policy and in response to the Survey Question - *Do you support applying draft SPP 3.7 and the Guidelines only at the subdivision and structure plan stage to the proposed lots designated as bushfire prone?*

Of the 78 responses relating to the policies application

- 14 responses (18%) – Support
- 7 responses (9%) – Conditional support
- 19 responses (25%) – Do not support
- 38 responses (48%) – No position or commentary

The Survey Question was posed to outline the new approach to apply the SPP and Guidelines to only the section of the structure plan/subdivision affected by the bushfire prone vegetation rather than the entire development. The question attempted to link to the content in Section 6.3 and Figure 7 of the Guidelines, however, many of the responses received were critical of not applying the provisions at all planning stages, which was not the intent of the question nor the changes to the SPP. Other commentary related to how the various provisions, including the new broader landscape assessment methodology would be applied in practice.

11 of the 19 'Do not support' responses were due to a misinterpretation of the question that was provided in the Consultation Hub. Of the remaining eight 'Do not support' responses, four did not suggest any specific changes to the SPP and Guidelines.

One 'Do not support' response requested additional text to require consideration of any relevant local planning policies, however, section 138 of the Planning and Development Act does not include considerations of local planning policies in a subdivision application.

One 'Do not support' response requested separating the SPP and Guidelines into two parts, strategic level documents and another for subdivision and development, however, as there was a high level of support for the advertised restructured Guidelines, further change was not considered necessary.

One 'Do not support' response disagreed with the decision makers right to apply some, but not all measures of the SPP and Guidelines in instances where there are no habitable buildings proposed. For example, where there are large numbers of employees and/or visitors expected to be on-site, but there are no habitable buildings, the decision maker may require vehicular access in accordance with the SPP and Guidelines. Decision makers have the discretion to decide which provisions or measures are relevant for their assessment.

The final 'Do not support' response related to the application of the policy to areas not yet designated as bushfire prone, but those that are proposed to be developed in a way that introduces a bushfire hazard. This provision has not been utilised and creates ambiguity in relation to the application of the SPP and creates uncertainty for all parties and its removal is therefore recommended.

## What we have changed

- Included a new diagram to explain how the SPP, Guidelines and outcomes-based approach interacts
- Reviewed Part 10A Deemed Provisions to provide greater clarity on how to apply bushfire provisions to development applications (NB: this is a separate legislative process). New diagram included in the Guidelines to explain the provisions
- Re-included the previous flow charts to show how to apply the policy, for a single house and for all other development types
- Revised the terminology on 'How to apply the policy and Guidelines' to provide greater clarity on how the different provisions apply to planning proposals and more details on the types of applications where the Policy and Guidelines may not apply
- Reviewed Section 6.3, and Figures 7 and 8 (in the Guidelines) to improve clarity on how the policy is applied at the structure plan and subdivision stages
- New section on the role of the Bushfire Practitioner into Section 10 (of the Guidelines), to connect to the Bushfire Accreditation Framework which specifies the types of applications that can be assessed by the different BPAD practitioners
- Removed reference to applying the SPP and Guidelines to areas not yet designated as bushfire prone but those that are proposed to be developed in a way that introduces a bushfire hazard.

## 5.4 Outcomes-based approach

### What you said

50 individual responses were received on the inclusion of an outcomes-based approach and in response to the Survey Question - *Do you support the change from a performance-based approach to an outcomes-based approach?*

Of the 50 responses relating to the outcomes-based approach

- 21 responses (42%) – Support
- 11 responses (22%) – Conditional support
- 2 responses (4%) – Do not support
- 16 responses (32%) – No position or commentary

32 responses (64%) supported this new approach, to allow for a more nuanced solution to complex sites or situations. Clarity on the level of practitioner able to undertake this assessment was queried and the referral triggers to DFES were also questioned.

One response that did not support an outcomes-based approach incorrectly assumed this would over-ride *Australian Standard 3959 Building in Bushfire Prone Areas*. The second response of no support requested strengthening the word “should” in the context of “should be avoided” and “should be refused”. The SPP is a “due regard” policy and as such cannot prescribe or dictate decision outcomes.

## What we have changed

- The Bushfire Accreditation Framework is currently being reviewed, which will ensure clarity on the appropriate level of practitioner to undertake an outcomes-based approach
- Clarity provided on the types of applications that should be referred to DFES
- Further guidance on how and under what circumstances an outcomes-based approach could be used, to ensure consistency, has been provided

## 5.5 Restructure of the Guidelines

### What you said

44 individual responses were received on the restructure of the Guidelines to address different planning stages to improve useability, and in response to the Survey Question - *Do you support this change?*

Of the 44 responses relating to the proposed restructure of the Guidelines

- 26 responses (59%) – Support
- 3 responses (7%) – Conditional support
- 2 responses (4%) – Do not support
- 3 responses (30%) – No position or commentary

Of the two individual responses that did not support the restructure of the Guidelines, one response did not provide any alternative suggestion or rationale for the objection, therefore, this response was 'noted'. The second response requested the reinclusion of the commentary that the SPP and Guidelines are not to be applied retrospectively. This suggestion is supported, and the wording will be incorporated back into the Guidelines for clarity.

### What we have changed

- No major changes as most of the submissions supported the restructuring of the Guidelines
- Section 8 – Commercial, industrial and community uses (including vulnerable commercial and community uses) and Section 9 – Tourism land uses will be split into Section 8 – Commercial and industrial and Section 9 – Vulnerable land uses as some commercial uses are considered vulnerable and should be assessed against this section and include a bushfire emergency plan
- Up-dated flow charts to show how to apply the policy (i.e., the re-inclusion of similar Figures 8 and 9 from the current Guidelines version 1.4 – Application Process)

## 5.6 Development within BAL 40 and BAL Flame Zone

### What you said

43 individual responses received on the Survey Questions - *Do you support the provision of a planning pathway where development in Bushfire Attack Level (BAL) 40 and BAL Flame Zone may be acceptable?*

Of the 43 responses concerning development in BAL 40 BAL FZ

- 16 responses (37%) – Support
- 14 responses (32%) – Conditional support
- 5 responses (11%) – Do not support
- 8 responses (20%) – No position or commentary

30 individual responses (69%) supported the inclusion of provisions to guide where it may be acceptable to allow development within BAL-40 or BAL-FZ, where there are demonstrated site and/or environmental constraints and where the lot was created prior to the gazettal of SPP 3.7 in 2015.

Suggestions to clarify and improve the wording in Clause 7.2.2 were also received and several submissions requested further clarity on when these applications may be referred to DFES.

Of the five individual responses that did not support a development pathway in BAL-40 or BAL-FZ, four of these responses did not provide any alternative suggestion or rationale for the objection, therefore, these responses were 'noted'. One response advocated for the retention of vegetation within high-risk areas, which was 'supported without change', as allowing development within BAL-40 or BAL-FZ would essentially mean that clearing or modification would not be necessary. Edits throughout the SPP and Guidelines will emphasise the importance of the retention or restoration of vegetation for biodiversity conservation, environmental protection and landscape amenity purposes.

### What we have changed

- Reviewed the wording in the SPP relating to development within BAL-40 or BAL-FZ
- Clarity provided on the types of applications that should be referred to DFES

## 5.7 Section 6 Structure plan and subdivision

### What you said

56 individual responses received on Section 6.

Of the 56 responses regarding structure planning and subdivision

- 2 responses (3.5%) – Support
- 7 responses (12.5%) – Conditional support
- 5 responses (9%) – Do not support
- 42 responses (75%) – No position or commentary

39 of the responses was commentary (70%) which sought additional clarity on specific wording in this section and the application of the bushfire protection criteria to structure plans and subdivisions.

Nine responses were on the practicality of obtaining written support from the adjoining land manager of public open space, in order to maintain the vegetation as low threat in perpetuity.

All of the 'Do not support' responses were able to be resolved through changes to Section 6 or addressed through alternative edits.

### What we have changed

- Clarified when the written approval of the adjoining land manager will be required
- Reviewed Section 6.3, Figure 7 and Figure 8 to improve clarity on how the policy is applied at the structure plan and subdivision stage.



## 5.8 Section 8 - Development - Commercial, Industrial and Community uses

### What you said

62 individual responses received on the inclusion of a new section in the Guidelines for Commercial, Industrial and Community Uses and the Survey Question seeking support of this new information.

Of the 62 comments relating to Section 8 of the Guidelines

- 19 responses (30%) – Support
- 9 responses (14%) – Conditional support
- 4 responses (6%) – Do not support
- 30 responses (47%) – No position or commentary

Clarity was sought on how the provisions apply for the three different land uses, what would constitute a ‘vulnerable industrial land use’, how the provisions relate to the onsite storage of hazardous materials, and how the upcoming National Construction Code changes to Class 9 buildings will impact on these land uses.

All of the ‘Do not support’ responses were resolved through the reformatting of Section 8 and 9 and alternative edits.

### What we have changed

- Restructured this section and Section 9 Tourism land uses, to clearly distinguish between ‘vulnerable’ land uses and commercial and industrial land uses
- Reviewed wording for the storage of on-site hazardous, combustible and flammable materials
- Reviewed the National Construction Code wording with DEMIRS to acknowledge the delayed implementation of changes for Class 9 buildings
- Revised how to apply the policy to those commercial and industrial land uses in BAL-40/BAL-FZ in accordance with the *Local Planning Scheme Regulations*, rather than applying the policy to all developments above BAL-LOW.

## 5.9 Section 9 – Vulnerable Tourism land uses

### What you said

44 individual responses were received on Section 9 of the Guidelines, Vulnerable tourism land uses.

Of the 44 responses

- 5 responses (11%) – Support
- 4 responses (9%) – Conditional support
- 3 responses (7%) – Do not support
- 32 responses (72%) – No position or commentary

The majority of these provisions were released in Version 1.4 of the Guidelines in December 2021, therefore, the responses sought to clarify specific provisions and acceptable solutions within this section. Generally, the comments were supportive.



Further clarity was sought on

- why the maximum number of guests within a shelter on-site, as an acceptable solution, has been reduced from 100 to 50 people
- what type of buildings or structures e.g., Cabins, tents, caravan can be within BAL40/FZ and considered to be a 'tolerable loss'
- interaction between this policy and the *Caravan and Camping Grounds Act 1995*
- relationship with WAPC Position Statement on Short-Term Rental Accommodation.

One response did not support the flexibility provided to local government for tourism development. The SPP and Guidelines recognise that tourism plays an important, but very different role in each local government area and it is difficult for a state planning policy to address these differing needs. The SPP and Guidelines advocates local government consider their tourism needs within their local planning strategy or scheme or other similar planning framework.

### What we have changed

- Restructured this section and Section 8, to clearly identify separate 'vulnerable' land uses and how and why they should be treated differently
- Section edited to provide greater clarity on 'tolerable loss', development within BAL40/FZ and the interaction with the *Caravan and Camping Grounds Act 1995*
- Guidelines updated to ensure consistency with the WAPC Position Statement on Short-Term Rental Accommodation, which was finalised in November 2023
- Revised methodology for tourism land uses, to be more relevant and consider that many tourism land uses are remote and/or are 'nature-based' proposals
- Following discussions with Department of Health (DoH), who currently have a factsheet that relates to outdoor events such as festivals, this 'outdoor events' section revised and reference to the DoH factsheet included.

## **6.0 Finalisation of SPP 3.7 and the Guidelines**

This Public Engagement Outcomes Report was presented to the WAPC meeting on 29 May 2024.

The final SPP and Guidelines was also presented to 29 May 2024 WAPC meeting and then forwarded to the Minister for Planning for approval. Exerts from the Map of Bush Fire Prone Areas were presented to the WAPC, to explain the trigger context to the SPP and Guidelines.

The SPP 3.7 and Guidelines will come into effect once a notice is published in the Government Gazette.

## Appendix 1 - List of submitters

# STAKEHOLDERS

## INDUSTRY

- Two confidential submissions
- WA Local Government Association
- HIA
- UDIA
- Australian Institute of Architects
- Emerge Associates
- Urbaqua
- Tony Blackwell
- Matt Stuart
- Wespine Industries Pty Ltd

## STATE GOVERNMENT DEPARTMENT

- Department of Biodiversity Conservation and Attractions
- Department of Education
- Department of Fire and Emergency Services
- Department of Water and Environmental Regulation
- Development WA
- Main Roads WA
- Tourism WA

## BUSHFIRE CONSULTANTS

- Five confidential submissions
- Bushfire Prone Planning
- Daniel Panickar
- Geoffrey Lush
- JBS&G
- Anthony Rowe

## LOCAL GOVERNMENT

- City of Armadale
- City of Belmont
- City of Busselton
- City of Canning
- City of Cockburn
- City of Gosnells
- City of Joondalup
- City of Kwinana
- City of Rockingham
- City of Vincent
- City of Wanneroo
- Shire of Mundaring
- Shire of Northampton
- Shire of Serpentine Jarrahdale
- Town of Port Hedland

## LANDOWNER

- Three confidential submissions
- Henk and Deborah Dirks
- Duncan Gardner

## OTHER

- Gidgegannup Progress Association Inc.
- Nature Reserves Preservation Group of Kalamunda
- Save Perth Hills Inc
- Sven Ouzman
- Urban Bushland Council WA Inc
- Wilderness Society
- Wildflower Society of WA

## INTERESTED COMMUNITY MEMBER

- Warwick Boardman
- Barry Carbon
- Michelle Zimmer