Minutes
Stakeholder Reference Group Meeting

SUBJECT: Permit Review Project: Stakeholder Reference Group Meeting No. 5
DATE: Monday 27 February 2017, 12:30pm
LOCATION: Second Floor, Cockburn ESC and Teleconference facility

Attendees:
Tim McNAUGHT Executive Manager, OBRM (Chair)
George STORER Northern Agricultural Zone Working Group Chair
Ashley STEWART Mining & Pastoral Zone Working Group Chair
Todd RIDLEY Southern Agricultural & Forest Zone Working Group Chair
Grant PIPE Kimberley Working Group Chair (via teleconference)
Bruce TELFER OBRM Analysis & Reporting Manager (Executive Officer/Observer)
John LANE WALGA (Observer)
Michelle SMITH DFES Legal & Legislation Services (Observer)

Apologies:
David EDWARDS Volunteer Representative (Observer)
Brian WATKINS Metropolitan Zone Working Group Chair
Morgwn JONES Pilbara Gascoyne Working Group Zone Chair

1. Welcome: Chair.
2. Housekeeping: Chair.

Overview of the legislative framework.
ACTION: (30 May 2016): Working Groups to review the framework and provide feedback to the EO by 25 July 2016.
Metro Working Group provided feedback as agreed. SRG Chair to follow up further with Kimberley WG Chair. SRG Chair followed up with Kimberley WG Chair and WG delegate. Kimberley WG Chair advised they will await outcomes of the SRG and integrate appropriate elements to their processes but had no further detail to add to the legislative review. Completed. Action closed.

Options papers
ACTION: WG Chairs to provide completed options papers to EO by 3 October 2016. Roll over to one week prior to late February meeting. No additional options papers were submitted Completed. Action closed.

5.6 Mining and Pastoral: Conferred by phone with other members. WG members considered that the scope of the Legislative overview may be too broad. The WG anticipate developing a draft permit template for the Mining and Pastoral zone for use during the Autumn Restricted Burning Time.
ACTION: EO to identify those additional issues which are out-of-scope of the original eleven items provided in the options papers and distribute to the Working Groups. No out-of-scope issues were identified. Completed. Action closed.

6. Review of legislative and regulatory framework

*Bush Fires Act 1954*

18 (5B) – *(LG power to shorten or suspend the RBT)* DFES Legal and Legislative Services (DFES LLS) comments re: the issues raised by Southern Agricultural and Forest (SAF) and Mining and Pastoral (MP) Working Groups. There is misinformation being provided in regards to what a LG can do in relation to extending or shortening the PBT and what the FES Commissioner is required to do. LLS advised that if necessary this could be amended as part of the Legislation Review process. LLS are able to draft an information sheet for publication that explains the processes and obligations relating to the extension or shortening of the PBT. WALGA have the capacity to include a LLS information sheet in their Information note to LG CEOs, the EM newsletter and the Western Councillor.

ACTION: DFES LLS to draft information sheet for publication explaining the processes required for the extension or shortening of the PBT. Information sheet to be provided to WALGA for inclusion in their newsletters. Action closed.

ACTION: SRG Chair and EO to list legislative items arising from this project for consideration in the legislative review and forward to LLS. SRG Chair provided Briefing Note to Director LLS 6 December 2016. DFES LLS provided comments and integrated appropriate considerations into legislative review. DFES LLS drafting legislation related to Total Fire Ban for new government so intending to have amendments provided in this process. Action closed. See Appendix 1 - Review of Legislative Items Arising from Local Government Permit to Burn Project (Appendix 1).

18 (6) – *(Provides for requirement of permit)*

A permit is required to be signed by an authorised Bush Fire Control Officer (BFCO). A Certificate of Appointment for BFCO may contain conditions relating to training and other limitations of the appointment such as restricting activities to a specific brigade area. Regulation 15A requires a BFCO to act as directed by the local government in relation to the issuing of permits to burn. The SRG determined that Regulation 15A needs to be strengthened and changed to require CEOs to comply with the directions of local government as well as BFCOs.

ACTION: DFES LLS to work with SRG Chair and EO to draft and liaise with the Minister's Office to strengthen Regulation 15A to extend to chief executive officers being compliant with LG Council Policy and follow the LG's directions insofar as they relate to the issuing of permits. Action covered off in DFES LLS legislation being drafted for new government. Action closed. See Appendix 1.

18 (11) – *(Recovery of bush fire brigade costs)* Explore DFES LLS comments on issues raised by City of Swan and City of Mandurah. Discuss relevance of this issue for other LGs in WG zones.

- As this relates to recovery of costs it does not limit opportunity for a civil claim.
- SRG Recommendation: Change - Increase substantially to $150,000 as a contemporary equivalent.

ACTION: DFES LLS to work with SRG Chair and EO to liaise with Minister's Office about increasing the threshold and report on progress at next meeting. These will be considered in the consolidation of the Emergency Management legislation. Action closed. See Appendix 1.

18 (12) – *(Subsection establishes an offence)* Determine if there is an SRG consensus on the scaling of fines based on number of offences.

- Potential to use Penalty units which can accommodate increases linked to CPI. Requires a change to the Act.
- SRG Recommendation: Keep as dollar value for now but include with the legislation review.
- SRG Recommendation: $10,000 for first offence and $20,000 for subsequent offences.

ACTION: DFES LLS to work with SRG Chair and EO to liaise with Minister's Office about increasing the fine and report on progress at next meeting. Completed and disseminated to members for comment. Action closed. See Appendix 1.
Bush Fires Regulations 1954

15B (1) – (Compliance with conditions established by this regulation)
- Discussion on how to include conditions in a permit document. Options of:
  o Determining minimum standards and tailoring a permit that is fit for purpose in a local context.
  o Publishing specific sets of choices depending on burning complexity.
  o Adding or deleting conditions from a “standard” permit document as required by each LG or by the type of burn to be conducted.
  o Retain details as per Form 3 in the Regulation Appendix.
  o Setting minimum standards in the Regulations.
  o On line templates on a site hosted by DFES.

ACTION: SRG Chair and EO to develop options out of session and circulate to WG Chairs before next meeting. Action covered off in DFES LLS legislation being drafted for new government. Action closed. See Item 7 and Appendix 1.

15B (2) – (Permit holder to give notice) DFES legal perspective of terminology changes.
- SRG Recommendation: Amend ‘forest land’ to a description that includes all Parks and Wildlife managed estate.
- SRG Recommendation: Amend ‘forest officer’ to CALM Act officer.

ACTION: DFES LLS to investigate possible amendments to Regulation 15B (2) to ensure that notification is provided to a CALM Act officer when the burn is to be conducted within 3km of P&W managed estate. Action closed. See Appendix 1.

15B (6) – (Requirements to be met before and after burning)
- More flexible options are able to be included if the permit issuing officer is able to set conditions rather than being prescribed in the Regulations.
- Potential to establish generic conditions as standards that reflect all existing elements i.e. the number of able bodied people/resources, fire break width.
- SRG Recommendation: Amend Regulation 15B (6) to enable FCOs to set conditions within a permit that are appropriate for individual burns.

ACTION: DEFS LLS to liaise with the Minister’s Office to amend regulation 15B (6) to make the conditions more generic and enable FCOs to set conditions within a permit rather than the conditions being prescribed. DFES LLS confirmed the legislation currently permits this. Action closed. See Item 7 and Appendix 1.

ACTION: EO to integrate generic conditions within the draft permit for SRG consideration that prompt permit issuing officer in defining permit specific conditions. Action closed. See Item 7 and Appendix 1.

Form 3 – (Details included on permit)
- Further consideration of removing actual form from the Regulations Appendix and develop a generic reference to DFES published templates that LG’s can source/vary and stamp as their own (development of fit for purpose templates).
- Investigate printing and on-line download options.
- Establishing standards and essential conditions for inclusion in a permit document.

ACTION: DFES LLS to work with SRG Chair and EO to draft amendments to Regulations and liaise with the Minister’s Office and report on progress at next meeting. Action covered off in DFES LLS legislation being drafted for new government. Action closed. See Item 7 and Appendix 1.
7.1 (10 October 2016) Chair of Northern Agricultural WG will provide the EO with new options under consideration.

ACTION: EO to contact Northern Agricultural Zone WG Chair and include new options in Consolidated Options spreadsheet and distribute to other WGs as per Item 5.6 Completed. Action closed.

5. Working Group activity summary.
Activity summaries were provided by the Working Group members present.

6. Presentation of Mining and Pastoral Zone draft Permit for Trial
The draft Permit for the Mining and Pastoral Zone was tabled. The Permit document will be trialled in the zone later in 2017. The Chair of the Mining and Pastoral Zone Working Group will further explore the option of a local on-line Permit application process.

7. On-line Permit design system.
The DFES LLS provided feedback in relation to amending the Form 3 contained in the Bush Fires Regulations.

"Section 74 of the Interpretation Act 1984 provides deviation from a prescribed form that does not materially affect the substance of the form does not invalidate the form used. It could be possible that instead of a form, that we prescribe matters that must be covered in a form, but that would not be that different from the current situation where the current form can be adapted. That is, that Form 3 is replaced with a "Schedule" that prescribes the minimum components of a form.

At the moment, the permit issuer can include anything they believe is necessary and relative to the burning. There does not appear to be the need to be a generic reference in the regulations to DFES templates. If the permit issuer only wishes to use the current documents as guidance for conditions they can at the moment."

The concept for establishing an on-line design template that will allow LGs to design their own permit documents was presented to the meeting. The concept allows for identifying the permit elements that are ‘mandatory’ and ensure that they do not “materially affect the substance of the form” and the elements that may be modified to suit each LG’s context.

The Chair advised that a quote to develop the on-line design templates had been obtained. However, further quotes are needed and the funding source to pay for the development of the system has not yet been established. The members agreed that it was worth pursuing.

ACTION: EO to obtain additional quotes for the development of an on-line permit template design system.

ACTION: SRG Chair to explore funding options for the development of an on-line permit template design system.

8. Other Business.
OBRM conducted a survey in January 2017 to ascertain how LGs currently manage the ordering, distribution, and recall of permit books. The survey also sought to determine if LGs were interested in pursuing an on-line system which would enable them to design a Permit template that was suitable for their local use. The survey was sent to 120 LGs and 72 responses including general feedback were received from 58 LGs.

ACTION: EO to distribute a summary of the survey findings to the SRG members out of session.

A review of the Summary of Working Group Options papers is required so that the issues can be categorised. Items that may require consideration in the future will be retained by OBRM.

ACTION: Chair and EO to review the Summary of the Options Papers and provide out-of-session advice of the status of the items to the SRG members.
7. **Next meeting.**
   The requirement for a future meeting of the SRG will be determined in consultation with the members.

8. **Meeting Closure**
   The meeting closed at 2:40pm.
APPENDIX 1

REVIEW OF LEGISLATIVE ITEMS FOR CONSIDERATION ARISING FROM LOCAL GOVERNMENT PERMIT TO BURN PROJECT

BACKGROUND

On 6 December 2016 a Briefing Note was provided by the Chair of the Stakeholder Reference Group to the DFES Director, Legal and Legislative Services (LLS). The Briefing Note provided background to seven considerations made by the Stakeholder Reference Group (SRG) in respect to legislative and regulatory elements that are associated with the management of ‘Permits to Burn’ under the Bush Fires Act 1954 (BF Act) and Bush Fires Regulation 1954 (BF Regulation).

The Manager, LLS subsequently provided feedback on the considerations. These are summarised below.

REVIEW

SRG consideration

<table>
<thead>
<tr>
<th>Provision</th>
<th>Purpose</th>
<th>Condition or Form</th>
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<tbody>
<tr>
<td>Bush Fires Act Sections 18(1) to 18(5), 18(5C and 5D)</td>
<td>Provide for the setting and variation of the Restricted Burning Times (RBTs).</td>
<td></td>
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<tr>
<td>Bush Fires Act Section 18(5B)</td>
<td>Provide for the setting and variation of the RBTs.</td>
<td>Limited to effect of no more than 14 successive days.</td>
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The SRG members highlighted that there is misinformation being provided in regards to what a LG can do in relation to extending or shortening the Prohibited Burning Time (PBT) and what the Fire and Emergency Services Commissioner (FES Commissioner) is required to do.

The SRG recommended clarifying these conditions as part of the legislative review. This option may consider:

- The FES Commissioner to maintain a register.
- Local Governments to publish the ‘fixed’ PBT dates annually.
- Local Governments to publish/broadcast seasonal variations to their PBT.

The SRG agreed with the LLS proposed publication of an information sheet explaining the processes required for the extension or shortening of the PBT. The information sheet could be provided to WALGA for inclusion in their newsletter to LG Chief Executive Officer’s (CEO’s).

LLS feedback

- A register is maintained by LLS.
- Most local governments publish their RBT and PBT in their annual firebreak notices and/or in local newspapers.
- There is a requirement to publish seasonal variations. LLS maintains a register of the variations. The main issue is that of compliance. There are occasions when local governments do not provide DFES with changes to RBT/PBT dates.
## SRG consideration

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<tr>
<td><strong>Bush Fires Act Section 18(6)</strong></td>
<td>No setting fire to the bush. Section provides for permit to set fire to the bush and for permit to be in writing.</td>
<td>To do so, a person needs to:</td>
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<td>• obtain a written permit from the local government’s BFCO or, only when a BFCO is not available, a permit from the CEO; and</td>
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<td>• comply with the prescribed conditions.</td>
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<td>Permit is not valid during prohibited burning times and only applies for burning during RBTs.</td>
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<td>Land to be situated in the local government district.</td>
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<tr>
<td><strong>Bush Fires Regulation 15A</strong></td>
<td>Conditions must align with any local government directions in relation to permits.</td>
<td>Directions relating to the issue of permits or conditions within permits.</td>
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The SRG understand that:

- An authorised officer must sign a permit.
- A Certificate of Appointment for authorised officers may contain conditions relating to training and other limitations of the appointment such as restricting activities to a specific brigade area.
- A Certificate of Appointment obliges the appointee (including CEOs) to act as directed by the local government in accordance with these sections of the BF Act and BF Regulations.
- BF Regulation 15A needs to be strengthened and more explicit to ensure clarity and consistency to authorities to issue permits and compliance with local laws.

## LLS Feedback

For any local government officer (including the CEO) to act as directed by a local government then that directive must first exist. It would be necessary for Council to set the delegations and standards. It would be difficult to establish by regulation the requirement for all local governments to establish and maintain such directives and standards.
SRG consideration

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<tr>
<td>Bush Fires Act Section 18(11)</td>
<td>Recovery of bush fire brigade costs.</td>
<td>Conditional upon:</td>
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<td>• fire started by a person (not necessarily the permit holder);</td>
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<td>• fire escapes from the land for which the permit has been granted, or</td>
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<td>• fire is out of control (in the opinion of the CBFCO);</td>
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<td>• request from local government to that person;</td>
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<td>• recovery of costs incurred by bush fire brigade of that local government;</td>
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<td>• maximum limit $10,000 in expenses incurred by the brigade in preventing spread or</td>
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<td>extinguishing fire; and recoverable in a court of competent jurisdiction.</td>
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The SRG recommend a change to the maximum limit to $150,000 as a contemporary equivalent.

LLS Feedback

This was amended to $10,000 dollars in 2002 along with a number of other penalties. It would be necessary to calculate the CPI on $10,000 from then until now. It also relates to s28 of the BF Act which is about recovery of costs for fires that are not pursuant to a permit burn. Recommend to retain as is.

SRG Consideration

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<tr>
<td>Bush Fires Act Section 18(12)</td>
<td>Subsection establishes an offence.</td>
<td>Provides penalties for first, second or subsequent offences.</td>
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</tbody>
</table>

The SRG understand that there is the potential to use penalty units that accommodates increases linked to Consumer Price Index. This will entail a change to the BF Act.

The SRG recommend that the stated penalty remain as a dollar value for now but consider a change to penalty units in the legislation review. The SRG also recommend that the financial penalty is amended to $10,000 for a first offence and $20,000 for subsequent offences.

LLS Feedback

This is something that will happen as part of the consolidation of the Emergency Management Legislation.
SRG Consideration

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<tr>
<td>Bush Fires Regulation 15B(2)</td>
<td>Permit holder to give notice of intention to burn.</td>
<td>Notice to be provided to all of the following:</td>
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<td>• CBFCO or CEO of the local government;</td>
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<td>• owners or occupiers of all adjoining land;</td>
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<td>• a forest officer if the bush to be burnt is less than 3kms from forest land; and</td>
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<td>• an officer or employee who is apparently authorised to accept notice on behalf of a notifiable authority, defined as being any government department or instrumentality with adjoining land.</td>
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The SRG recommended that the term ‘forest land’ is amended to become a description that includes all Parks and Wildlife managed estate and, that the term ‘forest officer’ is amended to ‘CALM Act officer.’

LLS Feedback

Section 7 of the BF Act lists the “terms used”. This incorporates ‘forest land’. This is also defined in s131 of the CALM Act.

There is inconsistency with the use of the terms ‘forest officer’ and ‘CALM Act officer’. The BF Act also refers to ‘Authorised CALM Act officers’. In the context of the management of Permits to Burn there is the requirement to notify a CALM Act officer. However the regulations do not specify if the notification is to be made directly to a CALM Act officer. In practice, notification would be made to any person in the nearest P&W District or Regional office. However that does not imply that the notification was made inappropriately. LLS will approach the Parliamentary Counsel Officer to consider amendments that broaden the definition of CALM Act officer and to ensure consistency in the legislation and regulations.
SRG Consideration.

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<tr>
<td><em>Bush Fires Regulation 15B(6)</em></td>
<td>Requirements to be met prior to (and after) burning.</td>
<td>Requirements are as follows:</td>
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<td>• at least 3 able-bodied persons to be arranged and provided;</td>
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<td>• those persons to be constantly in attendance from time fire is lit until no burning or smouldering fuel remains less than 30 metres of the perimeter of the firebreak surrounding the burnt area or 30 metres from the perimeter of burnt area where no firebreak is provided.</td>
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<td>• presumably, where smouldering fuel remains at a distance greater than 30 metres, there is no requirement for those persons to remain in attendance after burning has ceased.</td>
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</table>

The SRG agreed that flexibility was required for the permit issuing officer to set conditions rather than them prescribed in the BF Regulations. There is the opportunity to establish generic conditions as standards that reflect all existing elements i.e. number of able bodied people/resources and fire break width.

**LLS Feedback**

*Section 18(7) of the BF Act currently allows for conditions to be added, modified or dispensed with as required by the person issuing the permit. No further amendment required.*
SRG Consideration.

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<tr>
<td>Bush Fire Regulations Appendix Form 3</td>
<td>Permit to include name and address of permit holder, location of property on which burning is to be conducted and the date on which the burning is permitted.</td>
<td>Note: there is no requirement to include an end date by which burning must be concluded.</td>
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</table>

The SRG agreed that further consideration be given to removing Form 3 from the BF Regulations Appendix and to develop a generic reference to DFES published standards and templates enabling LGs to source, vary and label as their own (i.e. Develop fit for purpose templates).

LLS Feedback

Section 74 of the Interpretation Act 1984 provides deviation from a prescribed form that does not materially affect the substance of the form and does not invalidate the form used. It could be possible that instead of a form, that we prescribe matters that must be covered in a form, but that would not be that different from the current situation where the current form can be adapted. That is, that Form 3 is replaced with a ‘Schedule’ that prescribes the minimum components of a form.

At the moment, the permit issuer can include anything they believe is necessary and relative to the burning. (See feedback for 15B(6) above). There does not appear to be the need to be a generic reference in the regulations to DFES templates. If the permit issuer only wishes to use the current documents as guidance for conditions they can at the moment.