

GUIDANCE NOTE – SECTION 33 FIRE-BREAK NOTICES

The Western Australian Local Government Association (WALGA) and the Department of Fire and Emergency Services (DFES) have collaborated on this Guidance Note for Local Governments to support development of an effective and enforceable fire-break notice.

Under section 33 of the *Bush Fires Act 1954* (BF Act) Local Governments can require a land owner or occupier to maintain a fire-break to reduce fuel loads and provide access for firefighting appliances in the event of a bushfire. Fire-break notices can be served either:

- to individuals directly, or
- on all owners and occupiers of land by publishing the notice in the Government Gazette and a local newspaper.

The content and format of fire-break notices varies between Local Governments. Some are limited to section 33 requirements only; however, many contain additional information related to other provisions of the BF Act and the *Bush Fires Regulations 1954*, and general bushfire hazard and preparedness information. This Guidance Note aims to support Local Governments to ensure that the regulatory requirements within the fire-break notice are clear and thereby improve compliance by land owners and occupiers. It is the intent of the document to provide Local Governments with guidance on drafting of their fire-break notices and does not constitute specific legal advice.

Summary

It is recommended that a fire-break notice:

- Addresses enforceable activities under section 33 only. All other information beyond the scope of section 33 should be clearly separate from the fire-break notice, either in a separate section or separate page of the same document or in a separate document.
- Uses the language and terms as defined in the BF Act. Terms that are not defined in the BF Act may be defined in the notice to assist owners and occupiers in understanding and complying with the requirements of the notice.
- Clearly defines what is considered inflammable material on a property.
- Clearly states the dimensions of fire-breaks.
- Includes specific requirements or actions to prevent the potential outbreak, spread or extension of a bushfire.
- States that where a bushfire management plan is in place, owners and occupiers still need to comply with the requirements of the fire-break notice.
- Does not include blanket statements such as “permits to burn will not be issued”.
- References any variations (if relevant) to previously issued fire-break notices.

Guidance for Local Governments

The following guidance aims to support Local Governments to produce clear, consistent and enforceable fire-break notices.

1. INCLUDE ENFORCEABLE ACTIVITIES UNDER SECTION 33

Information outside of section 33 of the BF Act should be separated from enforceable fire-break requirements.

A fire-break notice should specify the criteria from section 33(1)(a) or (b) that are required to be completed by the owner or occupier. For example: 'plough cultivate, scarify, burn or otherwise clear' fire-breaks. Requirements should be set out in a clear manner that allows the land owners or occupiers to understand their obligations.

Information dealing with requirements in other sections of the BF Act, and other information or guidance that is not enforceable through section 33 should be clearly separated from the fire-break notice. If included in the same document it should be under a separate heading or on a separate page. This information should also be clearly labelled 'For information and advice only, does not form part of the fire-break notice'.

Other relevant sections of the BF Act with notification requirements are outlined in Appendix 2. Examples of information that should not be included in the fire-break notice are:

- × Section 24G(2) Local Government restrict burning of garden refuse.
- × Restricted or prohibited burning times.
- × Specifications for dress requirements when firefighting.
- × Water tank provisions.

These are not enforceable under section 33 of the BF Act and therefore it should be clear that these are advisory and should be presented separately from the enforceable fire-break requirements.

Where requirements outside of section 33 are included in supplementary material, the relevant legislative obligations should be referenced. Other relevant legislation may include *Aboriginal Cultural Heritage Act 2021*, *Planning and Development Act 2005*, *Environment Protection and Biodiversity Conservation Act 1999*, *Environmental Protection Act 1986*, *Country Areas Water Supply Act 1947* and *Biodiversity Conservation Act 2016*.

2. INCLUDE ACCURATE DEFINITIONS AND TERMINOLOGY

Where a term used in a fire-break notice is defined in the BF Act, the definition in the BF Act should be used.

A fire-break notice should use terms consistent with how they are defined in the BF Act. Definitions from other Acts cannot be used in place of the definition provided in the BF Act.

Terms that are not defined in the BF Act should be given their ordinary and natural meaning. In Australia, the Macquarie Dictionary is generally the first reference point to define words not defined in legislation.

3. USE UNAMBIGUOUS LANGUAGE

Fire-break notices should use unambiguous language so the requirements and obligations for land owners and occupiers are clear.

The use of the word 'should' is not synonymous with the word 'must' and may be seen as being advisory. The preferred terminology is 'shall' or 'must'. Section 56 of the *Interpretation Act 1984* states that in a written law the word 'shall' should be interpreted to mean that a function conferred on a person must be performed.

4. CLEARLY DEFINE WHAT IS CONSIDERED INFLAMMABLE MATERIAL ON A PROPERTY

When used in a fire-break notice the term inflammable should be defined by referring to the types of materials the Local Government requires to be managed to reduce the bushfire risk.

The term 'inflammable' is used in the BF Act, however it is not defined in the legislation and thereby open to interpretation. In practice inflammable is used in fire-break notices to refer to materials that must be removed from a property to reduce the risk of bushfire e.g. grass, dead vegetation, firewood, stored fuel or other specified materials that can easily be set on fire.

It is recommended that the term inflammable is defined in the fire-break notice with reference to specific inflammable materials. When the term inflammable is not defined with reference to the types of matter, its meaning could be taken to refer to everything upon the land which is easily set on fire. This could result in the situation where a land owner declares they could not comply with a notice, as it required the removal all things upon the land.

When defining the term inflammable, it is recommended that Local Governments avoid ambiguous statements such as "inflammable or flammable material does not include plants native to the region that are fire resistant". This introduces ambiguity and uncertainty as the land owner or occupier must determine if a plant is native to the region, and if it is fire resistant.

5. CLEARLY STATE THE DIMENSIONS OF FIRE-BREAKS

The dimensions for fire-breaks should be specified clearly in a way that is easy for owners and occupiers to understand and comply with the requirements.

Section 33(1)(a) of the BF Act allows a Local Government to require a fire-break to be cleared ‘...in such manner, at such places, of such dimensions, and to such number... as the Local Government may ... determine and as are specified in the notice...’. Local Governments should determine what is appropriate for their local area in setting out the dimensions of a fire-break. Fire-breaks can be required to be made traversable for access in the event of a bushfire.

The terms and conditions of the fire-break may exempt an owner or occupier from needing a permit to clear native vegetation under the *Environmental Protection Act 1986*. Local governments should be mindful of this and ensure that fire-break requirements do not enable inappropriate and excessive clearing to the detriment of the environment. Open ended or ambiguous conditions that could be interpreted to allow excessive clearing should be avoided.

6. INCLUDE SPECIFIC REQUIREMENTS OR ACTIONS TO PREVENT THE POTENTIAL OUTBREAK, SPREAD OR EXTENSION OF A BUSHFIRE

Fire-break notices can require a land owner or occupier to undertake additional actions to address anything identified as being conducive to the outbreak, spread or extension of a bushfire.

Section 33(1)(b) of the BF Act allows a Local Government or its authorised officer to require owners and occupiers to undertake an action or remove anything deemed to be conducive to the outbreak, spread or extension of a bushfire. While the BF Act is not prescriptive on these actions it could include keeping roofs, gutters and walls of buildings free of inflammable materials, separating large piles of firewood, and removing other bushfire risks identified by the Local Government.

7. BUSHFIRE MANAGEMENT PLANS

The fire-break notice should clearly state that where a property is subject to an approved Bushfire Management Plan (BMP), property owners must still comply with all the requirements of the fire-break notice issued under section 33 of the BF Act.

It is possible for Local Governments to impose a condition on a development approval to require ongoing compliance with a BMP which is enforceable under the *Planning and Development Act 2005*.

Whilst a BMP may contain requirements that are of a similar nature as those in a fire-break notice, any commentary should clearly state that the BMP requirements are separate to the section 33 requirements. Fire-break notices and BMPs are separate documents supported by different Acts. Consideration to existing BMPs should be given when issuing a fire-break notice. Complex interactions between BMPs and Fire-break notices can be resolved through variations to fire-break notices issued by the Local Government.

8. DO NOT INCLUDE BLANKET STATEMENTS THAT PERMITS TO BURN WILL NOT BE ISSUED

Information about issuing permits to burn during a Restricted Burning Time (RBT) should be clearly separate from the fire-break notice.

Information about 'permits to burn' not being issued during a RBT should not be included within the fire-break notice. Under the BF Act, there are provisions that enable a Local Government to consider a permit to burn, even during a RBT, and therefore this statement is not correct. If Local Governments want to discourage 'permits to burn' applications during RBTs then include this in supplementary bushfire information.

9. VARIATIONS TO A FIRE BREAK NOTICE SHOULD REFERENCE THE NOTICE THAT IS BEING VARIED, AS WELL AS THE VARIATION

Any variations to a fire-break notice should involve issuing a new notice to land owners or occupiers that references the previous notice.

Most Local Governments currently allow for the variation of notices by providing a letter stating that an application for variation has been accepted. Section 33(1) provides that a Local Government may 'at any time, and from time to time' give a notice to a land owner or occupier.

Whilst section 33 does not address how a notice may be varied, it is recommended that fire-break notice variations note the date of variation and reference the superseded notice. The newly varied notice should also clearly outline all parts of the previous notice and the variations that now apply. This will support Local Governments in the event of non-compliance by a land owner or occupier.

Compliance

Under section 33(4)(a) Local Governments may direct Bush Fire Control Officers or other Local Government officers to enter land of the owner or occupier to carry out the requirements of a fire-break notice that has not been met by the land owner or occupier. This includes any works people, contractors or vehicles and machinery required to undertake the works. The cost incurred for these activities to bring the land into compliance with the fire-break notice are recoverable and if the debt due to the Local Government remains unpaid, it may be pursued via court action under s.33(5).

A tax invoice received by a Local Government from a contractor engaged to perform the work is sufficient evidence of costs raised under section 33(8) and, if needed, the basis for the amount stated in the certificate prepared under section 33(5). A Local Government may commence debt recovery action in accordance with section 33(8) through the normal accounts receivable process and this may be a debt due against the land, a charge against the land, or recoverable in the same manner as rates.

Suggested Wording for Fire-break Notices

General service of notice

Pursuant to section 33(1) of the *Bush Fires Act 1954*, the [Shire/Town/City] of [NAME] gives notice that the owners and/or occupiers of land [or specify areas of land within the Local Government area] within the district are required to undertake the following works on land owned or occupied by them –

Specific service or variation content

Pursuant to section 33(1) of the *Bush Fires Act 1954*, the [Shire/Town/City] of [NAME] gives notice that the land owner (or occupier) of [ADDRESS] must undertake the following works on this property. The requirements of this notice supersede any requirements issued previous under a previous section 33 fire-break notice.

Notice requirements

The requirements of this notice are to be in place for the period between [Day Month to Day Month], inclusive.

The land owner (or occupier) is required to do the following:

- (a) Fire-breaks are to be installed so they are [Xm] wide, with a vertical clearance of [Xm]. They may be constructed by either ploughing/scarifying or other method) and are to be maintained and clear of inflammable matter.
- (b) In the opinion of the Local Government (or a duly authorised officer) the following things upon the land are considered to be conducive to the outbreak, spread or extension of a bushfire and the actions listed against them are to be carried out:
 - a. *Example* Wood piles – all wood piles are to be at least [Xm] away from any external part of any dwelling or building. They are to be no bigger than [Xm] x [Xm] in size and must be at least [Xm] from each other;
 - b. *Example* Leaves in gutters – all gutters of any dwelling or building are to be cleared of any leaves or other inflammable material;
 - c. *Example* Grass – all grass must be maintained to a height of less than [Xcm];
 - d. *Example* Trees – all trees shall be pruned so there are no branches within [Xm] of the ground;
 - e. *Example* Driveways – all driveways shall be maintained clear of inflammable matter (however defined) to a vertical height of [Xm] for the purpose of allowing access for firefighting vehicles.

Appendix 1 – Legislative Framework for Section 33

Bush Fires Act 1954

7. Terms Used

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(2) *Subject to section 33(9), a reference in this Act to an owner or occupier of land does not include a reference to a department of the Public Service that occupies land or a State agency or instrumentality that owns or occupies land.*

...

33. Local government may require occupier of land to plough or clear fire-break

(1) *Subject to subsection (2) a local government at any time, and from time to time, may, and if so required by the Minister shall, as a measure for preventing the outbreak of a bush fire, or for preventing the spread or extension of a bush fire which may occur, give notice in writing to an owner or occupier of land situate within the district of the local government or shall give notice 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 him or them as the case may be within a time specified in the notice to do or to commence to do at a time so specified all or any of the following things —*

(a) *to plough, cultivate, scarify, burn or otherwise clear upon the land fire-breaks in such manner, at such places, of such dimensions, and to such number, and whether in parallel or otherwise, as the local government may and is hereby empowered to determine and as are specified in the notice, and thereafter to maintain the fire-breaks clear of inflammable matter;*

(b) *to act as and when specified in the notice with respect to anything which is upon the land, and which in the opinion of the local government or its duly authorised officer, is or is likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire,*

and the notice may require the owner or occupier to do so —

(c) *as a separate operation, or in coordination with any other person, carrying out a similar operation on adjoining or neighbouring land; and*

(d) *in any event, to the satisfaction of either the local government or its duly authorised officer, according to which of them is specified in the notice.*

(2) *A notice in writing under subsection (1) may be given to an owner or occupier of land by posting it to him at his last postal address known to the local government and may be*

given to an owner of land by posting it to him at the address shown in the rate record kept by the local government pursuant to the Local Government Act 1995, as his address for the service of rate notices.

(2a) The provisions of subsection (2) are in addition to and not in derogation of those of sections 75 and 76 of the Interpretation Act 1984.

(3) The owner or occupier of land to whom a notice has been given under subsection (1) and who fails or neglects in any respect duly to comply with the requisitions of the notice is guilty of an offence.

Penalty: \$5 000.

(4) Where an owner or occupier of land who has received notice under subsection (1) fails or neglects to comply with the requisitions of the notice within the time specified in the notice —

(a) the local government may direct its bush fire control officer, or any other officer of the local government, to enter upon the land of the owner or occupier and to carry out the requisitions of the notice which have not been complied with; and

(b) the bush fire control officer or other officer may, in pursuance of the direction, enter upon the land of the owner or occupier with such servants, workmen, or contractors, and with such vehicles, machinery, and appliances as he deems fit, and may do such acts, matters and things as may be necessary to carry out the requisitions of the notice.

(5) The amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —

(a) shall be ascertained and fixed by the local government and a certificate signed by the mayor or president of the local government shall be prima facie evidence of the amount; and

(b) may be recovered by the local government in any court of competent jurisdiction as a debt due from the owner or occupier of land to the local government.

(5a) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the Local Government Act 1995 —

(a) requiring owners and occupiers of land in its district to clear fire-breaks in such manner, at such places, at such times, of such dimensions and to such number, and whether in parallel or otherwise, as are specified in the local laws and to maintain the fire-breaks clear of inflammable matter;

(b) providing that things required by the local laws to be done shall be done to the satisfaction of the local government or its duly authorised officer.

- (5b) *Where an owner or occupier of land fails or neglects in any respect to comply with the requirements of local laws made under subsection (5a) the provisions of subsections (3), (4) and (5) apply mutatis mutandis as if those requirements were the requisitions of a notice given under subsection (1).*
- (5c) *Nothing in subsection (5a) affects the power of a local government to give notice under subsection (1) nor its duty to do so if so required by the Minister.*
- (5d) *Where the provisions of local laws made under subsection (5a) are inconsistent with those of a notice given under subsection (1) or under section 34 or 35, the provisions of that notice shall, to the extent of the inconsistency, prevail.*
- (6) *A local government may, at the request of the owner or occupier of land within its district, carry out on the land, at the expense of the owner or occupier, any works for the removal or abatement of a fire danger, and the amount of the expense, if not paid on demand, may be recovered from the owner or occupier by the local government in a court of competent jurisdiction as a debt due from the owner or occupier to the local government.*
- (7) *Nothing in this section authorises a local government —*
- (a) *to set fire to the bush, or to require an owner or occupier of land to set fire to the bush, contrary to the provisions of section 17; or*
 - (b) *to make local laws authorising or requiring bush to be set on fire contrary to the provisions of section 17.*
- (8) *Any amount recoverable by a local government under this section as a debt due from the owner or occupier of land is, until paid in full —*
- (a) *a debt due from each subsequent owner in succession; and*
 - (b) *a charge against the land with the same consequences as if it were a charge under the Local Government Act 1995 for unpaid rates; and*
 - (c) *recoverable by the local government in the same manner as rates imposed in respect of the land are recoverable under that Act.*
- (9) *In this section —*

owner or occupier of land *includes a prescribed department of the Public Service that occupies land or a prescribed State agency or instrumentality that owns or occupies land.*

Appendix 2 – Other relevant sections of the *Bush Fires Act 1954* with notification requirements

Provision	Title	How notification is made to public	Relevant Information
s.17	Prohibited Burning Time	<i>Gazette</i> published (Minister/FES Commissioner) Local newspaper, wireless broadcast and notice boards in prominent location in district (LG)	Burning the Bush is prohibited from X/XX to X/XX annually within identified zones of the State.
s.18	Restricted Burning Time	<i>Gazette</i> published (Minister/FES Commissioner) Local newspaper, wireless broadcast and notice boards in prominent location in district (LG)	Burning the Bush is only permitted from X/XX to X/XX annually, within identified zones of the State, if a person has obtained a permit to burn from the local government (LG).
s.24G	Local Government Restrict Burning of Garden refuse	<i>Gazette</i> published (Minister/FES Commissioner) <i>Gazette</i> published and local newspaper (LG)	LG has prohibited or imposed restrictions on the burning of garden refuse within its district. Must specify the person or class of persons to whom; the area in which; and the period during which the notice applies.

s.25(1a)	Prohibit camping and cooking fires in the open air during the prohibited burning times	<i>Gazette</i> published and local newspaper	LG has prohibited camping and cooking fires in the open air during the prohibited burning times for the period of XX/X/XX to XX/X/XX.
s. 27(3)	Prohibit operation of a tractor or harvester that is not equipped with a fire extinguisher	Local newspaper, wireless broadcast and notice boards in prominent location in district	Shall have effect for such period during the prohibited burning times or the restricted burning times, or both, as is specified in the notice.
s.38	Appointment of Bush Fire Control Officers	Local newspaper	The LG has appointed the following persons as bush fire control officers.
s.38(8) & (10)	Appointment of Fire Weather Officers	Local newspaper and the FES Commissioner in the <i>Gazette</i>	The LG has appointed the following persons as fire weather officers (or deputies) to specified LGs.
r.15C	Prohibit burning during the Restricted Burning Times	Local newspaper	The LG has prohibited burning of the bush on Sundays or specified public holidays during the RBT.
r.38B	Operation of equipment powered by internal combustion engine on land in the district may constitute a fire hazard	Wireless broadcast, local newspaper or written notice or oral direction	Bush fire control officer can prohibit use of engine, or provide direction on firefighting equipment required at site, or fitment of spark arrester.

r.38C	Use of Harvesting machinery on a Sunday or public holiday	Local newspaper	LG may declare that use of harvesting machinery during PBT/RBT is prohibited on Sundays or public holidays.
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Appendix 3 – Other Useful Information

The below documents are available on the DFES website and may provide a useful starting point for developing the requirements to be included in a notice that is suitable for your area.

Bush Fire Risk Treatment Standards 2020:

<https://publications.dfes.wa.gov.au/publications/bush-fire-risk-treatment-standards-2020>

Guide for applying the Bush Fire Risk Treatment Standards:

<https://publications.dfes.wa.gov.au/publications/guide-for-applying-the-bush-fire-risk-treatment-standards>

A Guide to Constructing and Maintaining Fire-breaks:

<https://publications.dfes.wa.gov.au/publications/a-guide-to-constructing-and-maintaining-fire-breaks>

A Guide to Mechanical Bushfire Mitigation:

<https://publications.dfes.wa.gov.au/publications/guide-to-mechanical-bushfire-mitigation>

