

21 April 2020

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Joint Chairs,

PIA Submission to the NSW Independent Bushfire Inquiry

The Planning Institute of Australia (PIA) is the national body representing planning and the planning profession. We engage with over 10,000 practitioners each year through events, education and training and represent over 5,600 members with almost a third in NSW.

Planners have an acute interest in strengthening our state and nation’s resilience to bushfire. It is a fundamental objective of our planning systems to provide for human safety and improved resilience to hazards.

The role of planning is underpinned by an acknowledgement that global heating and climate change are increasing bushfire hazard. PIA has adopted [Planning in a Changing Climate](#) (national policy) and [Climate Change and Biodiversity Loss](#) (NSW policy) that recognise the need for urgent and deep reductions in greenhouse gas emissions and the need for complementary mitigation and adaptation strategies for reducing and managing the risks presented by climate change.

PIA supports a cultural shift to embed bushfire (and natural hazard risk management generally) in every layer of strategic planning policy and guidance - so that it becomes ‘business as usual’. PIA’s key messages are that:

- A. Planning should shape what is meant by ‘build back better’.
- B. Planning for risk avoidance is a valid planning strategy.
- C. Strategic planning for bushfire protection should be given stronger effect – by:
 - integration of climate and disaster resilience into planning decisions;
 - strengthening the statutory basis for implementation of bushfire planning guidelines; and
 - ensuring all values are considered - including biodiversity.
- D. Planning should enable communities to lead adaption and management.

- E. Planning should seek a stronger role for indigenous communities and an expression of their knowledge.

Our attached submission focusses on a subset of the inquiry's [terms of reference](#) dealing with the role of strategic planning and development assessment in strengthening resilience to bushfire (ToR Nos. 5 & 6) and community and ecosystem adaptation to future bushfire risks (ToR No. 7). Our submission also promotes the application of indigenous fire knowledge (ToR No. 6).

PIA's specific recommendations for reform are collated in the following table - and included separately under the relevant sections in our attached submission.

Please do not hesitate to contact john.brockhoff@planning.org.au (0400 953 025) if you would like further information. PIA welcomes the opportunity to provide this submission and would appreciate an opportunity to address the Inquiry.

Yours sincerely



Juliet Grant
NSW President
Planning Institute of Australia

PIA Recommendations to NSW Bushfire Inquiry

Planning to 'build back better'

1. Establish proportionate development pathways for rapid rebuild in suitable areas.
2. Resource the bushfire planning referral capacity within RFS to ensure timely and senior feedback in proportion to the implicit threat of the development or plan being refused.
3. Resource RFS / expert capacity to provide revised Bushfire Attack Levels (BAL) to properties suffering fire damage to help owners appreciate the rebuild standard going forward.
4. Re-evaluate physical infrastructure affected by fire before being rebuilding like for like – this means building back more resilient infrastructure by making budgetary provision for re-evaluation and re-location.
5. Establish a framework for enabling temporary flexibility for certain planning controls for crisis accommodation, demolition and storage during recovery
6. Ensuring systems (ie lists / referrals processes/ simple procurement processes) are ready to enable planners to volunteer or make available commercial services in recovering communities recently affected by fire – administered via Local Government.

Planning for risk avoidance

7. Adopt a model decision making framework for approving (new and rebuild) development in areas with extreme bushfire threat – so that any decisions to refuse or prohibit building are transparent and based on statewide principles / criteria.
8. Adopt a set of principles to determine whether refusal / prohibition of development due to extreme bushfire threat extinguishes development expectations to such an extent that voluntary compensation / acquisition measures become a consideration (subject to the means and resourcing being available via State Government).

Stronger strategic planning

9. Elevate the role of strategic planning for bushfire protection by inserting a new object into the EP&A Act -to shift planning culture so that addressing natural hazards upfront becomes 'business as usual' and so that development results in a more resilient community and natural environment.
10. Strengthen the statutory force behind implementation of *Planning for Bushfire Protection* guidelines in strategic planning by: inserting a more explicit Ministerial Direction to ensure hazards are considered before planning proposals pass 'gateway' and before any strategy is adopted (ie Local/ District/ Regional/ SEPP); and refining the Standard Instrument LEP (SILEP) to reference key bushfire planning terms as they relate to permissible uses in zones.
11. Require more explicit consideration of bushfire threat to settlement (based on mapping and evidence) in regional and district strategies (and Local Strategic Planning Statements) – via revised guidance notes.
12. Integrate strategic planning for bushfire with all other natural hazards in an overall 'resilience strategy' as a key input to strategic planning work. This must recognise that hazards need to be identified in a longer-term context of a hotter and drier climate, and the assessment of hazards should be reviewed on an ongoing basis, having regard to ongoing research on event occurrence and intensity.
13. Resource bushfire mapping and assessment studies as input to strategic plans according to new benchmarks (to be prepared) for a 'Strategic Bushfire Study'.
14. Require bushfire hazard consideration in urban greening proposals by reference to PBP guidelines.

15. Ensure that hazard reduction is not a condition of consent that could impact on the ecological values of adjoining public or private property. If the fire hazard reduction necessary to reduce risk to a satisfactory level diminishes natural and cultural values to an unacceptable level then the proposed development should be reconsidered.
16. Undertake a review of biodiversity conservation policy (and offsetting) in recognition that many threatened communities are now at even greater risk post black summer fires – and climate change will increase pressure.

Planning for communities to lead adaptation and management

17. Prepare a model framework (and statutory basis) for community adaptive management plans addressing local fire threat, incorporating obligations for maintenance; ongoing implementation of conditions of consent regarding bushfire protection; community participation in landscape management – including vegetation plantings; participation of aboriginal fire managers; and advice on local priorities for firefighting protection in consultation with RFS.

Stronger role for Aboriginal people and their knowledge

18. Prepare a model framework for Local Government (in collaboration with RFS) engaging with Aboriginal knowledge keepers (if willing) on means to apply Aboriginal fire knowledge and practices to achieve shared objectives for land management. This would be undertaken in the context of a community adaptation and management plan.

PIA Submission to the NSW Independent Bushfire Inquiry

A. PIA POSITION

PIA's position, which is built around strategic settlement planning, strengthening community resilience and capacity building, is summarised as follows:

- Planning provides a critical role to integrate spatial, physical and environmental systems with societal systems that address community strengthening and resilience.
- Planning must continue to improve our settlements and systems so that bushfires are events that can be managed, and that communities are not significantly impacted on an ongoing basis.
- Hazards must be identified in a longer-term context of a hotter and drier climate, and the assessment of hazards should be reviewed on an ongoing basis, having regard to ongoing research on event occurrence and intensity.
- The level of risk in any given location should continue to be understood through the application of the 'risk triangle', that assesses the three interactive elements of hazard, exposure and vulnerability in mapping to ensure that risk to a location is informed by the characteristics of the bushfire hazard itself, exposure of humans, and the level and type of vulnerability.

Our position is informed by the contributions of practicing planners to our national position [Planning in a Changing Climate](#) and NSW position [Climate Change and Biodiversity Loss](#). Both recognise the need for urgent and deep reductions in greenhouse gas emissions as well as the need for complementary adaptation strategies for reducing and managing the risks presented by climate change to human settlement and the natural environment.

B. PLANNING TO 'BUILD BACK BETTER' (ToR 5 & 6)

PIA is concerned that rapid rebuilding is being branded 'building back better'. While rapid recovery is highly desirable it must result in a more resilient community¹ which is housed in settings and structures that respond to the evolving bushfire threat.

The concept of 'build back better' is based on UNISDR work supporting the UN Sendai Framework for Disaster Reduction 2015-30. It is understood to be *'The use of the recovery, rehabilitation and reconstruction phases after a disaster to increase resilience...through integrating disaster risk reduction measures into the restoration of physical infrastructure and societal systems, and into the revitalization of livelihoods, economies, and the environment'* (UNISDR 2017¹).

¹ With regard to insurance, risk/potential cost for local, state and federal government, business continuity, for individuals and all aspects of what makes a community resilient.

'Building back better' should mean that resilience to future hazards is improved for housing, property, infrastructure and communities.

This is carried through to the NSW State Emergency and Rescue Management Act and other state based legislation, where definitions of disaster recovery include restoration and enhancement, and consider the full social, economic, environmental and cultural wellbeing of communities, not just rebuilding structures.

Under this definition, rebuilding burnt homes in the same place with higher building standards (eg bushfire attack level) is not automatically 'building back better'². It requires a more holistic consideration of how defensible a home is in relation to its access, location and setting and the resilience of its supporting infrastructure (including community infrastructure).

A useful test would be if rebuilding results in a situation that is more resilient to future shocks; is safer - and does not compromise the safety or wellbeing of others; and does not lead to unacceptable damage to the environment. The planning dimensions of 'building back better' include:

- **Ensuring planning controls are fit for purpose – for this recovery and for future events**
 - They should avoid rebuilding in inappropriate settings - based on community wide master-planning.
 - Ensure development assessment consider criteria on the suitability of the site for the development...particularly considering the risk of natural hazards, safety of emergency management personnel and the economic and social resilience and wellbeing of the wider community.
 - Ensure that hazard reduction around immediate property and around communities are simple, efficient and effective and can be maintained in perpetuity by communities with limited resources - but ensure that property owners can make reasonable modification to the bushfire hazard on their land to enhance the resilience of structures to bushfire.
 - Ensure a community approach is taken wherever possible - and ensure that active bushfire management committees run by Councils, RFS and other agencies are resourced and accountable for decision making and proactive management of risk.
- **Enabling housing to rebuild rapidly where appropriate**
 - Proportionate development pathways for rapid rebuild in suitable areas.
 - Rapid advice on changing bushfire attack levels (and broader site risk assessment).
 - Adequacy and resourcing of a rapid referrals process (via fire services).

² It is acknowledged that if there are multiple reductions in BAL across a settlement then in the aggregate a community would be better protected.

- Early consideration of whether complying development codes can be used to approve development on property with a high bushfire hazard.
- Compliance and enforcement / incentives for bushfire management consent conditions.
- Ensure compliance mechanisms are fit for purpose to manage the ongoing risk from bushfire to communities, recognising that bushfire is highly dependent on on-going landowner actions through the life of a development.
- Development of guidance for rebuilding, landscaping and hazard management, with real life examples, to assist residents and authorities in decision making for rebuilding.
- **Building back better infrastructure**
 - Physical infrastructure affected by fire should be re-evaluated before being rebuilt like for like.
 - Opportunities for alternative and lower risk infrastructure alignments, locations or materials must be available (eg for road/ bridge/ facilities/ fences/ signs).
 - Opportunities for improved access in and out of settlements (not just one road in).
 - Green infrastructure, including vegetated corridors, should incorporate bushfire planning guidance.
 - Budgetary provision should be made not simply for replacement in situ – but taking a longer term value perspective – and negotiating access to funding that respects this proposition.
- **Making flexible provision for temporary crisis and recovery measures**
 - In order to help individuals and families to recover in their communities, it is important that planning controls do not force residents who have lost accommodation and facilities to fire to move away from the district.
 - Planning controls that limit staying in temporary accommodation such as caravans or using storage containers on site should be able to be rapidly suspended – but only as a temporary measure so that vulnerable accommodation does not become entrenched.
 - These provisions should sit within the planning framework, to be invoked following a disaster declaration in relevant areas.

PIA Recommendations : Planning to 'build back better'

1. Establish proportionate development pathways for rapid rebuild in suitable areas.
2. Resource the bushfire planning referral capacity within RFS to ensure timely and senior feedback in proportion to the implicit threat of the development or plan being refused.
3. Resource RFS / expert capacity to provide revised Bushfire Attack Levels (BAL) to properties suffering fire damage to help owners appreciate the rebuild standard going forward.
4. Re-evaluate physical infrastructure affected by fire before being rebuilt like for like – this means building back more resilient infrastructure by making budgetary provision for re-evaluation and re-location.
5. Establish a framework for enabling temporary flexibility for certain planning controls for crisis accommodation, demolition and storage during recovery

6. Ensure systems (ie lists / referrals processes/ simple procurement processes) are ready to assist planners to volunteer or make available commercial services in recovering communities recently affected by fire – administered via Local Government.

C. PLANNING FOR RISK AVOIDANCE IS A VALID PLANNING STRATEGY (ToR 5 & 6)

The experience of Victoria's Black Saturday Bush Fire Royal Commission included a finding that any credible risk based system must have risk 'avoidance' as an available strategy. The key means through which life safety is given effect is to avoid development in areas that are too dangerous to develop.

The implications for planning systems are clear. That where a new development in for example a paper subdivision would result in unacceptable and unavoidable risks to life safety then that development is unsustainable, and rebuilding would not result in a situation that is more resilient to future shocks.

Where this situation occurs then a range of concerns arise that should be addressed according to the following considerations (to be refined):

- **Whether there are practical alternatives** for:
 - the location of a dwelling;
 - the location and standard of access and egress arrangements; and
 - key utilities connections.
- **Whether bushfire fuel can be managed appropriately on site** without impacting other values on site and in the vicinity (eg biodiversity / landscape / heritage).
- **Whether firefighting operations (and evacuation) can be conducted safely** in an emergency.
- **Whether specific measures for the safety of residents can be maintained over time.**
- **Whether the proposal increases the fire threat to other property.**
- **Whether providing for a dwelling is an overriding goal** under the planning scheme and zoning objectives with respect to the site.

Where the answer to these considerations is 'no' – then a case for refusal of development or prohibition of a land use is clear. Isolated and small bush blocks with single access are a particular concern. The above considerations should be the basis of a decision making framework for build / no build.

However, where there is a strong expectation (or entitlement) for development – then compensation / non-compulsory acquisition may become an issue.

This is more likely to be the case if an entitlement is entirely extinguished, and the intended uses of the land under the planning scheme cannot be met. Further investigation is needed to determine at what point this occurs. However, avoiding compensation/acquisition liabilities

should not be an incentive for a council or state agency to approve unsafe development. This is why a sustainable hazard management system needs government to make provision for compensation in certain circumstances.

PIA urges consideration of mechanisms for this to occur and we support recommendations below of the Victorian Black Saturday Royal Commission (2009)ⁱⁱ on this matter.

“The Commission (2009) therefore proposes that the Victoria Planning Provisions relating to bushfire and the CFA guidelines for assessing permit applications in areas of high bushfire risk be amended in order to give priority to protecting human life and to ensure that development does not occur in areas in which either the bushfire risk or the environmental cost of making people safe is too high. The effectiveness of these controls should be reviewed at a later stage to determine whether the objective of substantially limiting the construction of homes in areas of high bushfire risk has been achieved. If not, more prescriptive controls should be introduced.”

The Victorian Royal Commission went further also recommending *“that action be taken to help people move away from those areas where other bushfire risk-mitigation measures are not viable. In particular, the State should develop and implement a voluntary retreat and resettlement strategy—including non-compulsory land acquisition—for existing developments in areas at unacceptably high bushfire risk.”*

The Victorian initiative of applying a ‘restructure overlay’ is worthy of close examination. This involved rearrangement of inappropriate subdivisions. This forced review of potential house locations on vulnerable property and extinguishing some untenable development expectations/rights in extremely high hazard areas.

PIA Recommendations : Planning for risk avoidance

7. Adopt a model decision making framework for approving (new and rebuild) development in areas with extreme bushfire threat – so that any decisions to refuse or prohibit building are transparent and based on statewide principles / criteria.
8. Adopt a set of principles to determine whether refusal / prohibition of development due to extreme bushfire threat extinguishes development expectations to such an extent that voluntary compensation / acquisition measures become a consideration (subject to the means and resourcing being available via State Government).

D. STRONGER STRATEGIC PLANNING FOR BUSHFIRE PROTECTION (ToR 5 & 6)

PIA urges a stronger cultural shift to embed bushfire (and natural hazard risk management generally) in every layer of strategic planning policy and guidance so it becomes ‘business as usual’.

The protection of human life *should always be the overriding objective of our planning controls*. Ticking off measures that protect property and structures does not necessarily result in adequately protecting human life. This has been recognised in updated strategic planning guidelines in every state. The updated NSW Planning for Bushfire Protection (PBP) Guideline (RFS 2020)ⁱⁱⁱ (notes that *“strategic planning must ensure that future land uses are in appropriate locations to minimise the risk to life and property from bush fire attack. Services and infrastructure that facilitate effective suppression of bush fires also need to be provided for at the earliest stages of planning.”*)

Strategic planning principles are supported that relate to the exclusion of inappropriate development in certain bushfire prone areas and the matching of the level of fire hazard information required to support land use decision making at different scales and in different settings. Examples of these are provided in Section 4.1 of PBP (NSW RFS 2020).

Enhanced bushfire planning integration to regional and local strategic plans

- Ensure Regional Plans include provisions to ensure land use decisions are informed by natural hazard and climate change considerations at the earliest phase of thinking about where growth and development should occur.
- Ensure local plans or their equivalent, include provisions as relevant to:
 - Update mapping and identify natural hazards.
 - Ensure the identification of bushfire hazard is based on the best available science; and
 - statutory controls are consistently applied by State Governments through streamlined implementation measures.

Preparation of resilience strategies

- Ensure integration of climate and disaster resilience into all planning policies or instruments.
- Undertake Council (or region) Resilience Strategies (including for infrastructure, settlement patterns, and social, economic, environmental considerations) and /or embed considerations for disaster resilient communities into local growth management strategies.

Adequate resourcing of bushfire planning agency referrals

- Integrated strategic land use and bushfire hazard planning can only occur where there is adequate resourcing of bushfire planners to do the mapping and hazard assessment work. Low capacity in several states have resulted in both property development risks being overlooked in the assessment process and strategic plans not being adequately informed of the nature and severity of bushfire threat.

Strengthening the statutory basis for stronger and clearer implementation of best practice bushfire guidelines

- Bushfire planning guidelines for strategic planning should be given effect in zoning and development decisions via stronger Ministerial Directions, State Policies or their equivalent.

- Enhance the effect of the relevant statutory 'hook' – to give greater weight to the strategic risk assessment / bushfire planning guidelines / overlays - which would improve the consideration of rezoning proposals.
- Determine if objects of each state and territory's planning legislation are fit for purpose and promote the management of natural hazards to create a state/territory that is safer and more resilient to disasters.

Ensuring biodiversity, landscape and heritage values considered

- In addition to human safety and property/livelihood protection – other values must be balanced for the community in relation to biodiversity, landscape and heritage.
- If the fire hazard reduction necessary to reduce risk to a satisfactory level diminishes natural and cultural values to an unacceptable level then the proposed development should be reconsidered.
- The Black Summer fires have been so widespread that a review of biodiversity conservation policy (and offsetting) settings should be undertaken in recognition that so many threatened communities are now at even greater risk – and climate change will increase pressure.
- The habitat changes post fire will make biodiversity studies difficult – this should not be used as an excuse to discount biodiversity values of recently burnt areas. in the context of the significant ecological effects of fire, natural hazards and climate change.
- Biodiversity protection on public land should not be compromised by clearing or other hazard reduction on public land which is specifically to protect assets on adjoining private land.
- The synergies between biodiversity/greener cities policies and bush fire risk also need careful review. Biodiversity and bushfire safety standards need to be considered and reviewed together to ensure that their outcomes align.
- Isabelle Connolly and Catherine Ryland recently published an article that addressed the integration of planning for greener urban landscapes and improved bushfire protection – PIA commends this work ([link](#)) and supports the principles they include to guide urban greening plans, policies and strategies. PIA also acknowledges the insights included in Catherine Ryland's individual submission to the Inquiry.

PIA Recommendations : Stronger strategic planning

9. Elevate the role of strategic planning for bushfire protection by inserting a new object into the EP&A Act -to shift planning culture so that addressing natural hazards upfront becomes 'business as usual' and so that development results in a more resilient community and natural environment.
10. Strengthen the statutory force behind implementation of *Planning for Bushfire Protection* guidelines in strategic planning by: inserting a more explicit Ministerial Direction to ensure hazards are considered before planning proposals pass 'gateway' and before any strategy is adopted (ie Local/ District/ Regional/ SEPP); and refining the Standard Instrument LEP (SILEP) to reference key bushfire planning terms as they relate to permissible uses in zones.

11. Require more explicit consideration of bushfire threat to settlement (based on mapping and evidence) in regional and district strategies (and Local Strategic Planning Statements) – via revised guidance notes.
12. Integrate strategic planning for bushfire with all other natural hazards in an overall 'resilience strategy' as a key input to strategic planning work. This must recognise that hazards need to be identified in a longer-term context of a hotter and drier climate, and the assessment of hazards should be reviewed on an ongoing basis, having regard to ongoing research on event occurrence and intensity.
13. Resource bushfire mapping and assessment studies as input to strategic plans according to new benchmarks (to be prepared) for a 'Strategic Bushfire Study'.
14. Require bushfire hazard consideration in urban greening proposals by reference to PBP guidelines.
15. Ensure hazard reduction is not conditioned that impacts ecological values on adjoining public or private property. If the fire hazard reduction necessary to reduce risk to a satisfactory level diminishes natural and cultural values to an unacceptable level then the proposed development should be reconsidered.
16. Undertake a review of biodiversity conservation policy (and offsetting) in recognition that many threatened communities are now at even greater risk post black summer fires – and climate change will increase pressure.

E. ENABLING COMMUNITIES TO LEAD THEIR ADAPTION AND MANAGEMENT (ToR 7)

As the Victorian Bushfires Royal Commission (2009) noted: *"Even when bushfire safety is embedded in planning and building decisions it can be difficult to ensure that the standards that applied at the time of subdivision or construction are maintained."* There is a need for mechanisms designed to ensure that bushfire safety continues to be a priority for building owners. The Victorian Commission put forward a range of proposals supported by PIA aimed at facilitating continued maintenance of standards—including requiring that vendor statements include information that will help potential buyers understand the bushfire risk of a property before they finalise the purchase".

PIA understands that the planning system is effective at the point at which development is approved with conditions that relate to building standards, design and site layout. The ability to enforce conditions requiring ongoing maintenance of fire management measures is much weaker.

PIA urges the Inquiry to consider a role for community adaptive management plans – linked to the planning system. These could be council facilitated agreements among landowners, residents and fire authorities (particularly local brigades) which set the priority areas to be managed and how they will be defended. They would set out the mutual obligations for maintenance and outline the implicit compact among all parties. PIA would see these as empowering local communities to manage their destiny during and beyond a crisis. These plans could be given status and recognised under the planning system when considering conditions of consent or when considering rezoning proposals.

PIA Recommendations : Planning for communities to lead adaptation and management

17. Prepare a model framework (and statutory basis) for community adaptive management plans addressing local fire threat – incorporating: obligations for maintenance – including ongoing implementation of conditions of consent regarding bushfire protection; community participation in landscape management – including vegetation plantings; participation of aboriginal fire managers; and advice on local priorities for firefighting protection in consultation with RFS.

F. STRONGER ROLE FOR ABORIGINAL PEOPLES AND THEIR KNOWLEDGE (ToR 5)

While the disastrous fire season we have just experienced was a horrific experience for many, fire was and is an integral part of Aboriginal land management. Pascoe (2014) found that ‘almost all early European visitors to Australia remarked on the frequency of small-scale burning’ and that ‘the crucial difference between the use of fire prior to the colonial period and since, is the intensity of fire and available fuel loads’. He concludes that the Aboriginal approach to fire works on five principles:

- The majority of the agricultural lands were fired on a rotating mosaic which controlled intensity and allowed plants and animals to survive in refuges.
- The time of the year when fires were lit depended on the type of country to be burnt and the condition of the bush at the time.
- The prevailing weather was crucial to the timing of the burn.
- Neighbouring clans were advised of all fire activity.
- The growing season of particular plants was avoided at all costs.

Gammage also argues convincingly, with extensive research, that aboriginals use of fire made the Australian landscape up to 1788, and it was very different to what it is today. His argument is built on 3 key tenets:

- Australian plants need fire – knowing how and when and how much to burn is an art and a science.
- Grazing animals can then be shepherded using fire. Only in Australia could this be done, due to no real predators apart from humans.
- There was no real wilderness. Just like in Britain, the landscape was managed, with rare pockets untouched by humans. Aboriginal law compelled people to care for country.

While the development of infrastructure, houses, fences, outbuildings, power lines and roads might complicate the adoption of aboriginal methods of fire management, they do not necessarily prevent it. PIA agrees with Pascoe (2014), ‘We just have to think differently about country’. He makes the point that acknowledging ‘the history of the country and the social, agricultural and philosophical achievements of the Aboriginal and Torres Strait Islander peoples does not put the economy at risk’. Indeed, we have much to learn from the Aboriginal and Torres

Strait Islander peoples, along with farmers and others that live on the land today. PIA therefore recommends that we listen to the voices of the Aboriginal peoples as to how we should go about managing country, and especially when to burn and not to burn. PIA also recommends that:

- Indigenous approaches to land management across different landscapes be seen as a high priority in the next National Environmental Science Program (NESP2).
- State and local governments actively engage with Aboriginal and Torres Strait Islander peoples in preparing their fire management plans and enable them to participate in the implementation of those plans with and as the community.
- State and Local Governments seek and apply Aboriginal fire management knowledge in the development of strategic land use plans.
- The impact of the bushfires on the Indigenous peoples living in the affected areas be examined by the Inquiry, including the recognition of their diverse and extensive rights, interests and responsibilities in those areas, and how recovery measures need to be inclusive of and tailored to meeting the needs of Traditional Owners.³
- Address cultural burns in the *Rural Fires Act 1997* – This Act is currently silent on indigenous cultural burns and the role they play in hazard reduction. Cultural burns can fall within the definition of ‘bush fire hazard reduction work’ as defined under the *Rural Fires Act 1997*⁴. Cultural Burns are more than an activity to reduce fuel load. Cultural burns are also an activity with a deep cultural meaning that enhances connection to the land and promotes environmental health. A separate definition for a cultural burn may be warranted under the *Rural Fires Act* and a cultural burn could also be included under the definition of fire hazard reduction work.
- Given the documented success of indigenous cultural burns (Firesticks 2020) in reducing fuel loads, promoting less fire loving plants and environmental health, following typically ‘cool burns’, local and state government land managers should include cultural burning in reserve plans of management and Bush Fire Risk Management Plans where possible.

Attachment B considers the role for indigenous communities and their knowledge of fire management in greater depth.

PIA Recommendations : Stronger role for indigenous people and their knowledge

18. Prepare a model framework for Local Government (in collaboration with RFS) engaging with Aboriginal knowledge keepers (if willing) on means to apply Aboriginal fire knowledge and practices to achieve shared objectives for land management.

³ The term Traditional Owner is used in this submission to include a wide range of legal rights and interests in land, including cultural heritage, legal land interests recognised by State, Commonwealth or common law, and others who have rights and interests according to Aboriginal law that may not be formally recognised by any Government.

⁴ Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent. Hazard reduction certificates are required before any hazard reduction burn occurs, following an assessment under the Bush Fire Environmental Assessment Code.

ATTACHMENT A: Terms of Reference - NSW Independent Inquiry

The Inquiry is to consider, and report to the Premier on, the following matters.

1. The causes of, and factors contributing to, the frequency, intensity, timing and location of, bushfires in NSW in the 2019-20 bushfire season, including consideration of any role of weather, drought, climate change, fuel loads and human activity.
2. The preparation and planning by agencies, government, other entities and the community for bushfires in NSW, including current laws, practices and strategies, and building standards and their application and effect.
3. Responses to bushfires, particularly measures to control the spread of the fires and to protect life, property and the environment, including:
 - o immediate management, including the issuing of public warnings
 - o resourcing, coordination and deployment
 - o equipment and communication systems.
4. Any other matters that the inquiry deems appropriate in relation to bushfires. And to make recommendations arising from the Inquiry as considered appropriate, including on:
- 5. Preparation and planning for future bushfire threats and risks. other hazard reduction, zoning, and any appropriate use of indigenous practices.**
- 6. Land use planning and management and building standards, including appropriate clearing and**
- 7. Appropriate action to adapt to future bushfire risks to communities and ecosystems.**
8. Emergency responses to bushfires, including overall human and capital resourcing.
9. Coordination and collaboration by the NSW Government with the Australian Government, other state and territory governments and local governments.
10. Safety of first responders.
11. Public communication and advice systems and strategies.

(NB. The PIA NSW Submission focuses on the bold highlighted items 5,6 and 7)

ATTACHMENT B: Role for indigenous peoples and their knowledge of fire management – in depth

The Terms of Reference require the NSW Inquiry to have regard to, among other matters, '...any appropriate use of indigenous practices.' (ToR No.6).

While PIA is unable to speak directly for Aboriginal and Torres Strait Islander peoples and their Indigenous ecological knowledge (IEK) and land management practices, we do want to say a few words in support of a better understanding and application of their knowledge of land management in NSW and throughout Australia.

The Aboriginal and Torres Strait Islander peoples of Australia have owned and occupied these lands sustainably for over 65,000 years (Yunupingu, 1997:1), and in SE Australia for at least 25,000 years. They are continuing to do so (albeit hampered by our intrusion). In recent decades, many non-academic scholars have concluded that they have the oldest living culture on Earth (Flood, 2006:133); they have the oldest continuing system of land tenure in the world (Reynolds, 1999:217); and, in all likelihood, they also have the oldest continuing system of land use planning and management in the world (Wensing, 2019:2).

The Aboriginal and Torres Strait Islander peoples of Australia have always had a crucial and legitimate stake in the use and occupancy of their traditional lands for many thousands of years. Before the British arrived to colonise Australia, the Aboriginal peoples of Australia developed and applied three important principles in caring for their ancestral 'Country'. The three principles are:

- a deep understanding of the exhaustibility of resources relative to the level of use,
- sensitivity to long term ecological damage; and
- respect for the form in which subsequent generations will receive the land. These ideas have been with them for thousands of years (Wensing, 2019:159).

As Tom Trevor, a Ngarrindjeri Elder, states in the Murray Darling Basin Plan:

'Our traditional management plan was: don't be greedy, don't take more than you need and respect everything around you. That's the management plan – it's such a simple management plan, but so hard for people to carry out' (Trevor, 2010a).

And as Irene Watson, a Tanganekald, Meintangk Boandik First Nations People of the Coorong and the south east of South Australia, states:

'We live as a part of the natural world; we are in the natural world. The natural world is us. We take no more from the environment than is necessary to sustain life; we nurture ruwe⁵ as we do our self.' (I. Watson, 2015:15)

And:

⁵ I. Watson (2015:10, note 23): 'Ruwe means the territories of First Nations Peoples' in Ngarrindjeri language.

'The First Nations relationship to ruwe was not recognised, understood or respected by the muldarbi when they first arrived on our shores, so the colonisers lost the opportunity to learn about another way, an ancient way, a way their own ancestors had perhaps known at a time in their own history but from which they had departed' (I. Watson, 2015:35).

These statements by Tom Trevorrow and Irene Watson reflect a deeper understanding of a duty and 'the necessity of being responsible for something greater than oneself, that is, the earth itself' (Nichols, 2017:11).

The principles are also reflected by Bill Gammage in his book, *'The Biggest Estate on Earth'* (2011:4)

'Ensure that all life flourishes. Make plants and animals abundant, convenient and predictable. Think universal, act local.' (Gammage, 2011:4).

Gammage (2011: 4,5) also notes that the rules imposed a strict ecological discipline on every person and that local knowledge was crucial.

Gammage (2002) maintains that fire was used:

'To shape the land... It was a major totem, a friend. People knew when to use it and when not to. They knew if they released it according to universal law and local practice it would do what they wanted. If it did not then they, not it, had offended... Like songlines, fire unified Australia. It locked the landscape into a long-term widespread patterns, because neighbours obeyed the same law, and coordinated their burning or non-burning.'

Bruce Pascoe in his book, *Dark Emu* (2014) writes that the use of fire has always had a central place in Australia. While the disastrous fire season we have just experienced was a horrific experience for many, fire was an integral part of Aboriginal land management. Pascoe found that 'almost all early European visitors to Australia remarked on the frequency of small-scale burning' (2014:116) and that 'the crucial difference between the use of fire prior to the colonial period and since, is the intensity of fire and available fuel loads' (2014:118).

Pascoe (2014:118) concludes that the Aboriginal approach to fire works on five principles:

1. The majority of the agricultural lands were fired on a rotating mosaic which controlled intensity and allowed plants and animals to survive in refuges.
2. The time of the year when fires were lit depended on the type of country to be burnt and the condition of the bush at the time.
3. The prevailing weather was crucial to the timing of the burn.
4. Neighbouring clans were advised of all fire activity.
5. The growing season of particular plants was avoided at all costs.

Pascoe (2014:118) maintains this was evident in advice given by Aboriginal people to Europeans 'when it became obvious Europeans were using fire too infrequently and in the wrong conditions.'

While the development of infrastructure, houses, fences, outbuildings, power lines and roads might complicate the adoption of simpler methods of regular burning, they do not necessarily prevent it. PIA agrees with Pascoe (2014:123), 'We just have to think differently about country'.

Pascoe (2014:155) makes the point that acknowledging 'the history of the country and the social, agricultural and philosophical achievements of the Aboriginal and Torres Strait Islander peoples does not put the economy at risk'. Indeed, we have much to learn from the Aboriginal and Torres Strait Islander peoples.

PIA therefore recommends that we listen to the voices of the Aboriginal peoples as to how we should go about managing country, and especially when to burn and not to burn. As Victor Steffensen, a descendent of the Tagalaka people from the Gulf Country of north Queensland, states in his recent book '*Fire Country*' (2020:94) 'Aboriginal people are a sharing and caring race with values that are not based on fear, domination and greed. Most Aboriginal people want to help, because it is a beautiful part of resilience within all Indigenous cultures'.

PIA recognises that the Indigenous peoples of Australia have also been significantly impacted in the fire affected areas, as documented by Williamson *et al* (2020). Aboriginal⁶ peoples hold significant legal rights and interests in the affected areas. As Williamson *et al* (2020:9) notes, this includes both Aboriginal peoples who have some rights and interests in land recognised by state, Commonwealth or common law, and others who have rights and interests according to Aboriginal law that are not formally recognised by any government. PIA acknowledges that the entirety of the fire-affected area is Country belonging to Aboriginal peoples according to Indigenous law.

Unfortunately, past inquiries into major bushfire events did not include adequate consideration of the impact of the fires on Aboriginal peoples and their rights and interests and they were excluded from key forums and decision-making roles about recovery, even though they held distinct legal responsibilities in the affected areas. This continues the torment of Indigenous powerlessness, as the framers of the Uluru Statement from the Heart put it. We agree with Williamson *et al*'s (2020:16-17) conclusions that this shortcoming needs to be urgently addressed by this Inquiry and the National Royal Commission.

PIA recommends the following resources:

- This edition of Insight with Jenny Brockie on SBS in 2014 (https://www.youtube.com/watch?time_continue=128&v=hqkj1_igY&feature=emb_title) in which she interviews Victor Steffensen, a descendent of the Tagalaka people from the Gulf Country of north Queensland.
- This article on 5 January 2020 by Lorena Allum, a descendant of the Gamilaraay and Yawalaraay nations of north west NSW and the Guardian's Indigenous affairs editor in the Guardian (<https://www.theguardian.com/commentisfree/2020/jan/06/for-first-nations-people-the-bushfires-bring-a-particular-grief-burning-what-makes-us-who-we-are>) in

⁶ The term 'Aboriginal peoples' is used here, reflecting the preference of many Aboriginal people in the fire-affected areas.

which Ms Allum wrote "Our memories, our sacred places, we are losing what forever connects us to a place in the landscape. But we can help."

- And this on the ABC South Coast of NSW on 18 September 2018: Indigenous fire methods protect land before and after the Tathra bushfire (<https://www.abc.net.au/news/2018-09-18/indigenous-burning-before-and-after-tathra-bushfire/10258140>).
- Australian Story, 13 April 2020: 'Fighting fire with fire. Passed on through the generations, could Indigenous cultural burning save Australia's landscape from another catastrophic bushfire season?' Video version here: <https://www.abc.net.au/austory/fighting-fire-with-fire/12134242>. And a transcript here: <https://www.abc.net.au/news/2020-04-13/how-victor-steffensen-is-fighting-fire-with-fire/11866478>
- Williamson, B, Markham, F & Weir, JK (2020) *Aboriginal Peoples and the response to the 2019-2020 bushfires*, Working Paper No. 134/2020, Centre for Aboriginal Economic Policy Research, ANU.
https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/3/CAEPR_WP_no_134_2020_Williamson_Markham_Weir.pdf

PIA also recommends that:

- Indigenous approaches to land management, including the use of fire and when to burn and not to burn on different types of landscapes across Australia, be seen as a high priority in future research in NSW as well as the next iteration of the National Environmental Science Program (NESP2).
- State and local governments actively engage with Aboriginal and Torres Strait Islander peoples in preparing their fire management plans and enable them to participate in the implementation of those plans.

The impact of the bushfires on the Indigenous peoples living in the affected areas be examined by the Inquiry, including the recognition of their diverse and extensive rights, interests and responsibilities in those areas, and how recovery measures need to be inclusive of and tailored to meeting the needs of Traditional Owners.

We must learn to look after country, the way Aboriginal and Torres Strait Islander people did for many thousands of years before we, the colonisers, arrived. This will require some big changes to the way we manage country, but surely, the damage wrecked upon Australia in the summer of 2019-20 has taught us that we must make some fundamental changes.

PIA acknowledges Ed Wensing and Ian Wood Bradley for their contributions to this section.

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