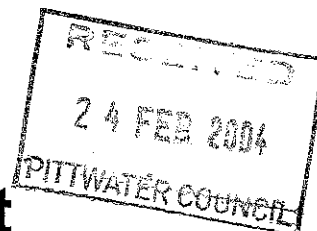


SUBMISSION
TO
PITTWATER COUNCIL

ON
PROPOSED
SUBDIVISION

OF LAND OWNED BY
DIPNR
and
The Uniting Church

AT
**Warriewood Escarpment
and
Mullet Creek, Elanora Heights**



Public Comment Response
20 February 2004



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EXECUTIVE SUMMARY

A **subdivision proposal** has been received for the upper Warriewood escarpment, being the Heydon Estate, and part of the Uniting Conference Centre.

1. **The land** is a mixture of pristine rainforest gully rising through heathland to dry small closed forest, generally found on the Heydon Estate. It also comprises some severely weed infested areas, generally found on the Uniting Church's land.
2. There are **two levels of analysis** which any discussion needs to examine:
 - A. the *long term environmental impacts* of development on the escarpment,
 - B. the *short and medium term amenity impacts* on the local community.
3. The PREFERRED OPTION is for **no development to occur** on either parcel of land, **with total bush regeneration** being carried out in the whole escarpment. For this to occur, both DIPNR and the Uniting Church need to fully investigate the reasoning behind their decisions to develop the land, and investigate other options if assets must be sold.
4. The ALTERNATIVE OPTION is to allow some **limited development to occur under strict conditions**:
 - A. that a reduced number of lots is approved for development;
 - B. that all weed infestation is removed within the subject land, and possibly adjoining land (see notes on Elanora Country Club responsibilities);
 - C. that current APZ requirements are relaxed to protect existing biota;
 - D. that current building fire resistance requirements (AS3959) are increased significantly to allow reduced APZs;
 - E. that specific building controls be imposed to cover such things as building height, materials, footprint area, water treatment systems, planting & landscaping, and that these be specific locality controls locked in with LEP level certainty, or by means of secure covenants;
 - F. that there be a plan of management which is binding on all future land owners and guarantees a predetermined standard of care for the site.
5. In any event, the two parcels of land should be treated as **separate subdivision applications**.
6. The EIS for both parcels should be carried out as **one coordinated study**, reviewed by an independent consultant not employed by the applicants.

Note - the body of this submission follows the order of the Executive Summary.

INTRODUCTION

The Warriewood Escarpment is a piece of land of extraordinary value - little understood and often passed over by the wider Sydney community. Pittwater Council's contribution to preserving the amazing geographical and ecological treasure trove there must be recognised at the outset of any process or discussion.

The process of protecting the remnant escarpment land is predictably affected by political and economic forces, but it should be recognised that these forces are not the primary driver, and that they must be kept under control at every step. That control must certainly recognise the reality that land has financial value, that landowners have a legal right to extract a return from their land, and that governments at both local and state level have a responsibility to serve all of their constituents, not just a select few. It must also recognise that future generations (and future governments and their constituents) have a right to the best possible future, not squandered by present generations in pursuit of immediate and short term returns.

This submission seeks to identify all of the forces and needs which affect the decision of Council, and to recommend the best balance between them, satisfying all the rights and responsibilities of those involved. It also recognises that any decision is an action - even if it was to be decided to do nothing and let the status quo remain: even that decision still has ramifications which must be weighed up.



MIDDLE FALL, MULLET CREEK SOUTH WEST BRANCH

1. DESCRIPTION OF THE LAND INVOLVED

The subject land is held in two parcels (DIPNR and the Uniting Church) which also very roughly divide along the lines of their ecological condition.

The DIPNR is largely pristine, with natural heath and rocky ledges, with steep slopes and virgin rainforest gullies below, and has relatively little weed infestation or other degradation. Vegetation types cover a broad spectrum of heath, rainforest, and dry casurina/eucalypt forest and scrub. It has extremely high natural values.

The Uniting Church land on the other hand is highly degraded, having been cleared in years gone by, with high levels of weed infestation (100% weed cover in many parts), some erosion, dumped rubbish, and the remnants of the Elanora Scout Hall and its surrounding clearing (the hall was razed by the 1994 bushfire, and has not been rebuilt).

Both parcels are part of the Mullet Creek catchment of the Warriewood Wetlands. The lower part of the creek is extremely degraded with massive weed infestation, in spite of recent efforts to reduce this. One of the primary causes of the re-infestation is the ongoing supply of seed from the Uniting Church land higher up the creek. Lantana, crofton weed, elephant ears, coral trees, willow, blackberry and cannas are at the top of the list of species found in both locations.

2. TWO LAYERS TO THE INVESTIGATION & DISCUSSION

It is our opinion that there are two distinct yet related layers to the investigation of the issues involved - one being the long term ecological effects, the other being the effects on the local community in the short to medium term. There are layers within layers, but it is useful to use those distinction to distinguish them.

A. LONG TERM ENVIRONMENTAL IMPACTS: STATE OF THE ENVIRONMENT 100 YEARS HENCE

The primary question to be answered is, what effect will any development of this part of the Warriewood escarpment and the Mullet Creek catchment have on the broader environment in the Pittwater region (and by inference, the wider environment in a more global sense) over a period of 20, 50 and 100 years?

The value of the escarpment has been analysed and described at some length by Council prior to the land swap on the Burrawang Estate and the Gowings Holdings land, and we refer to that here, rather than repeating it. The fact that a vast majority of Pittwater residents supported the collection of the special levy to fund that process bears testimony to the fact that its value is well understood locally, and that residents are prepared to do more than pay lip service to its protection.

There is no doubt that the bio-diversity of the region would be best served by preventing any development from occurring anywhere within the subject land parcels. But equally, allowing the current weed infestation to continue will not

benefit the environment in the long term either. There are also wider global issues to be considered here, being the continued population growth pressure on Sydney (currently standing at 50,000 per annum).

Pittwater could take a 'Lifeboat Pittwater' attitude and reject any role in sharing the burden of that growth pressure (much as Kuringai has tried to do). Or it may be seen that allowing development of the land will help carry the burden of growth. There are consequences to this at many levels, briefly being:

- consideration of the moral and equity issues involved;
- consideration of the existing infrastructure's ability to carry additional load, especially with regard to transport;
- consideration of the likely consequences of raising the ire of a state government not predisposed to treating local government kindly. [It should be noted here for the benefit of the casual reader, that local government in Australia has no constitutional place - it exists only by the grace of state Local Government Acts, and recent developments in Warringah and Sydney / South Sydney bear testament to the fate of councils who stand in the way of government agendas.]

Pittwater 21 DCP includes a specific intention to preserve bio-diversity, and so any discussion and analysis must address the issue.

There are greatly heightened risks of sediment pollution of Mullet Creek during such development - refer to the recent debacle with Elanora Country Club during their course reconstruction. Weed infiltration is also a high risk event, with construction traffic coming from other sites, or bringing fill or soil containing weeds or seeds. It is possible to manage these risks, but the techniques require intensive management on site, without which it will certainly occur.

B. SHORTER TERM COMMUNITY AMENITY IMPACTS: LOSS OF AMENITY vs. LAND OWNER RIGHTS

The secondary question needing discussion is the balance between the rights of a land owner to execute their permissible rights to subdivide, sell or otherwise develop their own land, with the rights of the surrounding community to enjoy an accepted or existing level of amenity.

Wesley and Foxall Streets were first settled in 1961/62, and the fact that there are a few of the original residents still living there, and that the area has a relatively low rate of owner turnover, backs up the anecdotal evidence of a particularly pleasant and stable neighbourhood, blessed with very quiet streets, and a balmy micro-climate. The view of the escarpment from many homes there is one of the primary reasons there was (anecdotally at least) 100% support for the escarpment levy. Some of the residents walk regularly through the area subject to the proposed subdivision (this writer included).

The loss of the bush as a lung, and as a respite from settlement and suburbia, would be keenly felt by these people. It should be noted that the proposal as it currently stands does include a walking track presumably open to the public. It should also be noted that development of the site under current regulations and using currently accepted building practice would necessarily require destruction of

the bushland - see notes below on alternatives.

The process of physically developing the site/s would necessitate some construction traffic and noise, with associated detriment to the neighbourhood, albeit for a limited period. Longer term traffic impacts should also be considered: although the likely traffic may not be as high as many other areas, the roadway in Wesley St is not wide, and there is an accepted culture of children using the streets as a de facto playground.

**3. PREFERRED OPTION:
RETURN THE WHOLE ESCARPMENT TO PUBLIC OWNERSHIP**

The best outcome would certainly be to return the whole escarpment to public ownership, including both the DIPNR and Uniting Church parcels of land. This may be unlikely to happen as an act of good will in the current environment of tight budgets and cost cutting. One possibility is to spend the remaining escarpment levy funds purchasing the church land, and to lobby the state government to sell its parcel on the basis of a long term low interest loan. Much political mileage would be gained by this, and while it is not our intention to sew seeds of political pork barrelling here, it must be flagged as a possibility. It is also possible for Council to extend the levy to cover the cost of either or both of these options.

A. DIPNR TO SELL OTHER LAND IN INGLESIDE, NOT THE HEYDON EST.

It is possible for DIPNR to sell some of its other assets in Ingleside in lieu of the Heydon Estate land. This would possibly require decision at Ministerial level, as it would necessarily deplete their balance sheet. DIPNR's contribution to the escarpment land swap deal was contingent upon it being revenue neutral, and for that reason it would require a lot of high level and community lobbying to change the departmental decision.

The political reality of achieving such a decision, given Pittwater's slightly difficult history with DIPNR is uncertain, but we recommend it as an option worth pursuing, especially in light of correspondence from DIPNR's Mr Bob Watson to the General Manager dated 22 December 2003, in which he stated that "if subdivision approval was not achieved on these preferred lots, then other selected lots in the ownership of the Department at Ingleside would be given consideration for rezoning approval."

While this contains the usual amount of bureaucratic slack necessary to allow future reinterpretation, it is well worth pursuing as a first option. If this proves fruitless, we suggest it is possible for DIPNR to recoup their outlay with some acceptable change but without destruction of the escarpment - see further notes below.

B. UNITING CHURCH MAY HAVE A MORAL OBLIGATION NOT TO SELL CONFERENCE CENTRE LAND

In the late 1950s much of Elanora Heights was subdivided and developed for housing by its previous owner, Sir Fredrick and Lady Stewart. Being devout Christians, it was their intention to use some of the land they felt they had been entrusted with to honour the God they believed had enabled them to profit from it. We understand that Lady Stewart is still alive, and if so, she would be able to confirm or deny this. Two parcels of land were bequeathed to the then Methodist Church for this purpose: the old church premises on Powderworks Road, and the Conference Centre land in Wesley St.

It should not be necessary to remind Council (or the Uniting Church) that the sale of assets to cover operational deficits is a very short term and unsustainable fiscal management policy, and is definitely not recommended by sound financial managers. It is also noted that there has been a suggestion (unconfirmed at this stage) from within the Uniting Church that the land in question be used for outdoor education (adventure) purposes, but increasing insurance costs made it unfinancial. We would suggest that the current insurance climate will not last forever, that market, legislative and community forces ultimately restore balance to the forces that have driven premiums out of reach of many.

We recommend that the Synod of the Uniting Church check any deeds of that bequest to ensure that they are not abusing its intention. If it is found that there is no conflict of legal or moral obligations, we suggest it is possible to realise useful capital and honour the notion of environmental stewardship without unduly compromising the escarpment - see further notes below.

C. WEED INFESTATION TO BE REMOVE & BUSH REGENERATED

All weed infestation should be removed from the subject land, in accordance with the best accepted methods. This affects the Uniting Church land mostly, but to have a lasting effect must be extended to all adjoining land, being that owned by Elanora Country Club (the dam and surrounds), the remaining section of the Elanora Conference Centre, and some small parts of the Heydon land and the properties above it.

The Country Club is already being forced to spend money cleaning up the sediment from the creek bed following a pollution offence earlier in 2003 - it would be effective to combine that process with ridding the upper creek of exotic trees and weeds. A suitable endemic and regenerated landscape be prepared and implemented prior to commencement of other works (access roads and building footprints excepted).

**4. ALTERNATIVE OPTION:
ANY DEVELOPMENT WHICH IS ULTIMATELY APPROVED MUST COMPLY
WITH EXTRAORDINARY CONDITIONS**

We acknowledge that political and commercial realities may make it impossible for Council to steer a course through the complexities of this situation without compromise. In the event that none of the above scenarios can be achieved, and subdivision - and by direct inference, development - of some or all of the proposed lots is applied for, it must only be considered and approved if certain extraordinary conditions are met. These essentially mean producing a development pattern which involves zero net depletions of the escarpment's biota, and absolutely zero pollutant inputs. The fact that it would be equivalent to current world's best practice should not be seen as an obstacle, but rather as an opportunity to set new standards.

Conditions of approval must be commensurate with the sensitivity of the site. We submit here the conditions upon which subdivision and development approval may be granted without compromising the ecological value and integrity of this section of the escarpment.

A. REDUCE THE NUMBER OF LOTS

A reduced number of lots should be approved - it would be possible to raise sufficient revenue from a 20% reduction in number, being: 5 lots in the DIPNR parcel, and 2 or 3 lots in the Uniting Church land. The current dwelling zones would remain as shown.

B. REMOVAL OF WEEDS AND REGENERATE LANDSCAPE

All weed infestation should be removed from the subject land, in accordance with the best accepted methods. This affects the Uniting Church land mostly, but to have a lasting effect must be extended to all adjoining land, being that owned by Elanora Country Club (the dam and surrounds), the remaining section of the Elanora Conference Centre, and some small parts of the Heydon land and the properties above it.

The Country Club is already being forced to spend money cleaning up the sediment from the creek bed following a pollution offence earlier in 2003 - it would be effective to combine that process with ridding the upper creek of exotic trees and weeds. A suitable endemic and regenerated landscape be prepared and implemented prior to commencement of other works (access roads and building footprints excepted).

C. RELAXED APZs

The current Asset Protection Zones required in Planning for Bushfire Protection would be relaxed, replaced by special building requirements, below. The current APZs would be devastating to the bio-diversity of the DIPNR land, and would prohibit best advantage being taken of the regenerated landscape on the UCC land. While separation from direct flame attack is essential, wide APZs were shown to be ineffective in the

Canberra fires.

CSIRO Bushfire Behaviour & Management is currently providing research material which will inform a review of PBP, and it would be premature and damaging to approve subdivision based on the current APZs. Reference should be made to the Discussion Paper prepared by BDA NSW on Planning for Bushfire Protection. A case study done in 2002 using the Conference Centre as a case study showed that PBP required an APZ of 85m in total. It can be seen that any such APZ when applied to this proposal would result in destruction of vast quantities of habitat and a large slice of the area's biota.

D. BUILDING DESIGN & MANAGEMENT FOR FIRE SURVIVAL

All construction would be required to meet specific requirements drawn up in consultation with CSIRO Bushfire Behaviour & Management upcoming suggestions for best practice in bushfire design. It should be noted that this will exceed AS3959 by a significant margin - like all Australian Standards, it has been a heavily compromised document, the detail being set in such a way that the mass housing market can cost effectively meet the requirements without attending to management in a fire event. Materials would be non-combustible, glazing would be protected by fire boards or mesh, drenching would be provided where necessary.

It is commonly agreed in bushfire management circles that a well managed and resourced property can be protected from fire even if it is constructed of combustible materials. Therefore it must be a requirement that every dwelling has a permanent fire fighting reserve water supply of adequate quantity, with a suitable pump and soaker hoses, compatible with Fire Brigade and RFS equipment. Owners would be required to undergo regular training from either NSW Fire Brigades or Rural Fire Services.

E. SEPARATE LOCALITY PLAN WITH SPECIAL BUILDING CONTROLS

A new and individual Locality Plan should be prepared for inclusion in the Pittwater 21 LEP (and DCP) with controls locked in at that level. This would set a precedent for any subsequent escarpment developments. Secure covenants could also be considered as a means of preventing later relaxation of controls.

The controls would be demonstrated in a Pattern Book, and place strict limits on the following features:

1. materials - to satisfy CSIRO BMM guidelines; and be of prescribed colours and profiles.
2. numeric controls on areas, form, and systems:
 - 2.1. footprint area - 250 sq.m of habitable gross floor area;
 - 2.2. building height - single story split level, 4m wall height, 6m overall height (above natural ground);
 - 2.3. external paved or lawn areas - 80 sq.m;

- 2.4. maximum 2 enclosed car spaces;
- 2.5. swimming pools limited to 50 sq.m;
- 2.6. all other site disturbance and structures maximum 60 sq.m (water tanks and waste treatment system excepted);
- 2.7. rainwater collection mandatory (subject to BASIX and the non-provision of mains water);
- 2.8. water treatment systems to treat whole of household waste to exceed above ground spraying standard; this could be done on an individual lot basis, or on a whole of development basis, or as part of a broader treatment plant for the whole northern sector of Elanora;
- 2.9. no planting allowed beyond Council published list of endemic species;
- 2.10. no structural landscaping allowed beyond providing immediate vehicular and pedestrian access from roadway, and providing 80 sq.m open space to a fall of not more than 1:20;
- 2.11. no further construction or structural landscaping work permitted after issue of Occupation Certificate.

These controls demand that these are compact houses and must be designed very well - no second chances, and ensure that they do not impinge more than a minimum on the land. They guarantee that no "McMansions" or production "Mini-Mansions" such as in Warriewood Valley can be built here.

The use of a Pattern Book may be seen as controversial, as it has been with SEPP65, but unlike that SEPP these controls are attempting to dictate style to a whole generation of buildings, just appropriate design principles to a select few in a particularly demanding environment.

F. A PLAN OF MANAGEMENT FOR THE FUTURE

There should be a Plan of Management for the whole site (both parcels of land) which contains actions binding on all future occupants (not just land owners), guaranteeing a minimum standard of care. This will be the proactive tool for education, resourcing and encouragement to the residents, which is then under girded by the provisions of the LEP etc as set out above. The detail of the Plan of Management would reflect the aims and controls as discussed, but are not detailed here.

5. SEPARATE SUBDIVISION APPLICATIONS

It is normal for subdivision applications to consider the proposed end use of the land, and it is noted that this has occurred, and that building platforms have been identified for each proposed lot.

There are two owners involved in this case, with two ecologically different parcels of

land, with different imperatives for the subdivision and sale thereof, and it is our recommendation these be treated separately. This ensures that all the issues which pertain to each proposal are not confused between the two.

The imperatives for each applicant differ significantly from the point of the public good:

A. Heydon Estate - the sale of this parcel was a precondition of the Gowings Estate land swap deal done with the assistance of DIPNR. It therefore has an element of inevitability which the Uniting Church land sale lacks.

B. Uniting Conference Centre - the land was bequeathed by Sir Frederick and Lady Stewart in the late 1950s for the purpose of training and recreation for young people. There may be a commercial imperative on the church's part, but there is no clear linkage to the public good in that. (see further discussion below)

To treat the applications as one is a clear muddying of the waters with regard to broad community interests, and should be avoided. It is however logical that they be considered concurrently.

The fact that the proposal has been produced as one at this stage carries no sign of impropriety, but it should be made clear to Council (and therefore the community) what the history of the relationship is, and how it came to be produced as one proposal. This would ensure probity and transparency on all sides.

6. ONE E.I.S. IN TWO PARTS FOR BOTH SITES

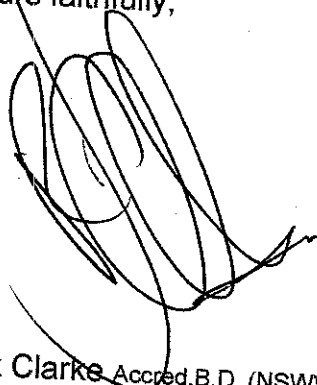
Because the proposal as a whole covers part of the one catchment, it is logical and necessary that there is one Environmental Impact Study which examines the whole area. To allow two separate studies by different consultants allows for discrepancies in the area around the boundary between the two sites. To require each applicant to provide an EIS covering both their own site and the other would in theory give the best result, but would likely be seen as unreasonable. In any case it is likely the two applicants would use the same consultant as a means of reducing costs.

The draft EIS done by the Uniting Church has identified foraging habitat of the Powerful Owl, which is on the threatened species list in both NSW and nationally. It is very likely that there is roosting habitat on the DIPNR land. It is critical that such things as this are not lost in the gap between different studies.

The sensitivity of the site demands that the EIS is reviewed by a suitable highly experienced and independent expert consultant, not in the employ of either applicant, to guarantee probity and the study's accuracy. This expert (individual or corporation) should not currently be or likely to be in the employ of either applicant.

We commend the content of this Submission to you, and encourage Council to continue to pursue the very best solutions to the development pressures being applied to Pittwater, especially with regard to the subdivision proposal addressed here.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Dick Clarke', written over a series of overlapping loops.

Dick Clarke, Accred. B.D. (NSW), MBDA
ENVIROTECTURE PROJECTS PTY LTD
Environment Director, Building Designers Association of Australia

ATTACHED FOR REFERENCE:

BDA NSW DISCUSSION PAPER ON *PLANNING FOR BUSHFIRE PROTECTION*
and the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*
dated October 2002



BDA NSW DISCUSSION PAPER

on

PLANNING FOR BUSHFIRE PROTECTION

And the

*Rural Fires and Environmental Assessment Legislation
Amendment Act 2002*

Revised Edition - October 2002

Note that for the purposes of this document, the word "Code" means the various applications of the "Planning for Bushfire Protection – A Guide for Councils, Planners, Fire Authorities, Developers and Home Owners" in its intended application with the Section 117 Direction G20 Advisory Note, and the relevant Fire Risk Maps. Attention is drawn to the August 2002 *Rural Fires and Environmental Assessment Legislation Amendment Act 2002* commences. This Act amends both the *Environmental Planning and Assessment Act 1979* and the *Rural Fires Act 1997*.

1. OVERVIEW:

BDA NSW wishes to encourage all stakeholders in bushfire protection and land management to revisit the issue of land clearing, fire management, and appropriate building design, as expressed in the Planning NSW document *PLANNING FOR BUSHFIRE PROTECTION* and associated documents and legislation.

The Code sets out a number of strategies covering a broad spectrum of responsibilities. The BDA considers that many aspects of the Code are accurate and laudable, but has concerns with some of the detailed contents and recommendations, especially as they are intended to form the basis of LEPs and DCPs, which would turn the recommendations into enforceable policy.

These concerns hinge upon the levels of clearing recommended in Asset Protection Zones and its effects on biodiversity, and the lack of emphasis given to fire resistant building design.

We call upon all stakeholders to revisit those issues and reassess the available data, and its interpreted application.

2. BACKGROUND:

The horrific bushfires across NSW after Christmas 2001, and similar fire events in previous years have brought the issue of appropriate fire design to the public eye. Knee-jerk planning reactions are not appropriate, however politically expedient they may seem at the time.

"It is too late to undertake general housekeeping when a bushfire approaches - do it early and keep it up!"

The Code, Chapter 6.1, p32

This quote speaks to us a whole community - and to State and Local Government - as much as it does to individual property owners.

Appropriate design and fire control must be seen in the wider context of total bush and forest management, overall urban development, and even the less easily controlled influences such as arson.

3. BIODIVERSITY & SUSTAINABILITY:

- 3.1 The increasingly desperate need to reduce our ecologically destructive impacts demands that any bushfire planning Codelines and associated development find ways to minimise ecological impacts, yet the Code pins more hope on heavy clearing of bush around developed areas than on making fire resistant buildings.

For bushland to maintain biodiversity (and this is a widely recognised component of sustainable human practice) it must retain a near-original cross-section of plant types and cover, for any given locality.

This necessarily means continuous tree cover and closed canopies, a certain amount of ground cover and mulching forest debris, and the varying types and degree of shrub cover in between may be appropriate, especially in the denser bushland areas of the Sydney basin, Blue Mountains, North, Central and South Coasts. It is these areas which have suffered the worst of fires in recent years.

These elements are essential to maintain original floral variety, and the faunal species variety which depends on them for food and habitat.

- 3.2 The Code recommends almost total clearing within an Asset Protection Zone, with the width (horizontal dimension to be cleared) being a highly variable factor. In some instances, this may extend to 100m beyond any development, and is commonly 70m within the regions mentioned above.

This is measured in the horizontal direction from the base of the building – not along (parallel) to the slope.

Any currently leafy suburb with an area of heavily cleared bush such as this - with most trees and shrubs removed - would be an ecological desert.

- 3.3 In an era when we are beginning to realise the value of biodiversity, greenspace, and oxygen production near to cities, it seems odd that we are encouraging the clearing of *more* bush rather than *less*.

BDA NSW suspects that these recommendations clash with the intent - if not the letter - of the Protection of the Environment Administration Act (NSW) 1991.

4. CONFLICT WITH OTHER LEGISLATION & CONTROLS:

- 4.1 The requirements set out in the Code may conflict with Council's Tree Preservation Orders or other vegetation management policies.

Tree Preservation Orders were established originally as a means of ensuring the visual amenity of the area, an essential by-product of which is the preservation of habitat and bio-diversity.

- 4.2 There will be difficulties for Council insofar as the need to control bushfire has a higher precedence in the authority of planning instruments than does tree preservation. The Rural Fire Service has the ability to override the Tree Preservation Order when it sees the need, and the Code predicates this.

All Development Applications in the subject areas (which is most of the land area of the state) are now subject to veto from the Fire Control Officer, acting on the requirements of the Code.

- 4.3 The potential for Land & Environment Court action by insistent developers (who may well just be desperate "mums and dads") has yet to be tested, although on current advice it seems unlikely that the L&E Court will over-rule the new Act.

Wider legal ramifications have not yet been fully explored by legal opinion, or by any court, in regard to the apparent conflict between the new and amended Acts (*Rural Fires and Environmental Assessment Legislation Amendment Act 2002* and the amended *Environmental Planning and Assessment Act 1979* and the *Rural Fires Act 1997*) and the *Protection of the Environment Administration Act (NSW) 1991*. If it does not conflict with the letter of this Act, it certainly conflicts with its intent, as follows:

PART 3—OBJECTIVES OF THE ENVIRONMENT PROTECTION AUTHORITY

Objectives of the Authority

6. (1) The objectives of the Authority are:

- (a) to protect, restore and enhance the quality of the environment in

New South Wales, having regard to the need to maintain ecologically sustainable development; and

...

- adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate;

...

- promoting community involvement in decisions about environmental matters;

...

- conducting public education and awareness programs about environmental matters.

- (2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:
- (a) The precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
 - (b) Inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
 - (c) Conservation of biological diversity and ecological integrity.

The draft Guide released in January 2002 was not subject to the usual public and industry consultation which is traditional for legislation in cases of monumental change.

Section of the Environment Protection Act (above) gives a clear message about the need for

- i. protection of bio-diversity
- ii. protection against environmental destruction
- iii. community involvement by way of education etc.

- 4.4 There is potential for the Code to have a de facto effect of preventing any development from occurring on certain lands. This may be seen as a desirable outcome in some instances, but raises certain difficulties in the process.

It is generally agreed that appropriate development is best controlled by dedicated planning controls, which address the issue of appropriateness up front, rather than limiting development by de facto means. A good example of this can be seen in the way many councils use selective controls on site coverage etc to prohibit or discourage unwanted medium density development. One common result of this is bad development and poor building design, dreamed up as a means of beating the rules.

One consequence of prohibiting development on private lands (or lands owned by other government or statutory bodies) is that compensation may be sought from either local or state government. This may occur as a result of individual legal actions, or where a government body or council recognizes the issue, by way of resumption or market purchase of the land.

In either case there is a significant financial burden to be carried, initially by the relevant authority, and ultimately by the whole community.

5. BUILDING DESIGN & SUSTAINABILITY:

- 5.1 If all buildings were totally fire resistant, then no clearing would be necessary at all. This is not practical in most situations, and so a compromise must be reached between the needs of the built environment and the needs of the natural environment. Existing development has rarely been designed with fire in mind, and most new development makes little allowance for it.

AS.3959-1999 sets out some basic design types, details and materials selections, but breaks no new ground in truly resistant fire design and detailing. The Code relies completely on this Standard for its information on building design.

This standard has recently come in for some criticism from the CSIRO, and most informed design practitioners agree it does not present current best practice.

- 5.2 BDA NSW believes there is both a large opportunity and responsibility resting upon the development industry to design and construct buildings - and especially homes on the urban fringe - which can resist bushfire, with appropriate management.

BDA NSW suggests that more responsibility can be carried by the building itself and its occupants, with less destruction of bushland as a result. A well managed property of poor design can be saved in severe fire conditions, if the preparation and systems are in place, as has been seen many times in the past. It would therefore be much easier if such buildings were designed to a high level of passive resistance.

- 5.3 **BDA NSW has called upon all NSW Councils to take the lead in seeking a balance between these conflicting needs.**

- 5.4 The use of fire resistant materials such as colorbond steel, masonry, dense FC sheeting, AAC and the like on exposed surfaces, or dressed plantation hardwood where absolutely necessary, and simplifying roof forms, are some of the simple and attractive steps which make it possible to have APZs a fraction of those required by the Code.

- 5.5 Additional mandatory requirements could include:

- fire boards on bush-facing glazing,
- annealed toughened glass to all windows,
- fire proof gutter leaf guards where gutters are fitted for rainwater harvesting,
- no gutters with ground level catchment where rainwater is not harvested,

- water storage based on a simple factor of floor area and exposure risk, but in any case a minimum of 400 litres (2 x 44 gallon drums),
- engine driven pumps drawing on stored water if over a 500 litre threshold.

5.6 Management is critical. Some of the above measures presume an amount of training on the part of the occupant, and certainly denies the old policy of enforced mass evacuations. Such training of volunteers already occurs at Community Fire Unit level, carried out by the NSW Fire Brigades. Rural Fire Services are also equipped to carry out such training where appropriate, and sufficient funding should be made available to enable this.

In urban areas, whole neighbourhoods can be trained in the basics quite cheaply. NSW Fire Brigades could undertake this on a twice annual basis, covering one to two hundred households in a session. Councils could provide the venues in local halls etc.

Community Fire Units should be encouraged, with more established. These are a very low cost means of getting reasonably trained volunteers who are influential in their local communities to both spread a greater understanding of the need for fire preparedness, and the means to achieve it. The 'back fence' is a very effective conduit for information exchange and motivation, and should be recognized.

In semi-rural and rural areas, the RFS already undertakes close community contact, and a significant number of residents are already members of their local volunteer brigade.

6. HOLISTIC FIRE AND BUSHLAND MANAGEMENT:

- 6.1 To complete the picture, we need to totally reevaluate the way we manage fire in our bushlands - crown land, state forest and national parks. Ancient practices have much to teach us here about regular cool burning of all but rainforests.

If our cities are destined to keep growing as state and federal governments indicate (no attempt is made to address the complexities of that issue in this document), we have a great responsibility to ensure we maintain as much of our natural heritage and ecological support systems as we possibly can on the fringes of that development.

- 6.2 Wide experience has been gained by the Australian National Parks Service in Kakadu National Park, and this can be compared to the experience of the Northern Territory Parks & Wildlife Service. These two organisations have access to viable remnants of existing traditional management practices, where all trace has vanished in NSW.

Although the landscape and ecology of NSW is markedly different from that of the Northern Territory, useful comparisons can be drawn with other historical information. A useful prompt in this regard is the recording of the heat wave of 1793, when Sydney Cove was a fledgling outpost in a land still occupied and managed fully by its traditional owners. In records made at the time we read of birds and flying foxes falling from the sky with heat exhaustion - this was heat the likes of which the Englishmen had never known - yet there is no record of bushfire.

This arguably indicates the presence of regular small mosaic burning practices, and the absence of arsonists. BDA NSW has no specific input with regard to arson, but suggests that a review of *Planning for Bushfire Protection* be carried out with inclusive input from the relevant experts in this field.

- 6.3 However, the BDA suggests that traditional bush management practices be investigated as fully as possible, as suggested above, with a view to embracing an holistic fire management and design regime.

7. FINAL RECOMMENDATION:

- 7.1 The BDA recommends that a summit of all stakeholders be called to further refine and develop the material presented and codified in *Planning for Bushfire Protection*.

This summit would include at the core level affected councils, NSW Rural Fire Service and NSW Fire Brigades; key conservation groups such as the Australian Conservation Foundation and Nature Conservation Council; peak building industry bodies such as the BDA, HIA and MBA; and Planning NSW.

The BDA will call the summit before the end of the 2002-03 fire risk season.

- 7.2 This discussion paper has been presented to
- the Minister for Planning, Dr Andrew Refshauge,
 - Planning NSW,
 - all NSW councils,
 - several industry organizations,
 - several conservation bodies,

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2002.