

THE HOUSE OF REPRESENTATIVES

HOUSE SELECT COMMITTEE

INQUIRY INTO THE RECENT AUSTRALIAN BUSHFIRES

The Secretary of the Committee
House of Representatives
Parliament House
Canberra ACT 2600

Reuss
06/0/03

Dear Sir

I seek to make a submission, partly from myself as an individual, and partly [because of the public interest factor involved here and with my involvement as Convenor of the local environmental group Friends of East Killara (FOEK)] on behalf of my organisation, to the Select Committee with specific regard to reference (f) of the Terms of Reference :

(f) the appropriateness of existing planning and building codes, particularly with respect to urban design and land use planning, in protecting life and property from bushfire attack. : and

(a)(c) and (d) of the terms of Reference :

(a) the extent and impact of the bushfires on the environment, private and public assets and local communities.

(c) the adequacy and economic and environmental impact of hazard reduction and other strategies for bushfire prevention, suppression and control ; and

(d) appropriate land management policies and practices to mitigate the damage caused by bushfires to the environment, property community facilities and infrastructure and the potential environmental impact of such policies and practices.

Summary of Main Points.

East Killara is located in the Local Government area of Ku-ring-gai, Sydney NSW, which is surrounded by national parkland, so that development consequently interfaces with one of three National Parks namely Ku-ring-gai, Lane Cove and Garigal.

East Killara is a series of developed ridgetops with some development on the associated steep escarpments projecting out into National Parkland in a manner incorrectly described locally as "peninsula ". Many properties therefore inter-face directly with either Garigal N.P. or heavily forested undeveloped Crown land, of strong national conservation value.

Appendix 1. Aerial photographs of a section of East Killara above Middle Harbour, demonstrating atypical canopy cover.

Mapping within Ku-ring-gai LGA in conjunction with the Rural Fire Service [RFS] was commissioned by the RFS in 21 November 2002 under legislative amendments to the Rural Fires Act 1997, which came into force on 1 August 2002.

Commissioner Koperberg accepted an invitation from FOEK and came here personally on 23 September 2002 to view local conditions first hand. We were able to successfully bring to his attention demonstrable problems with egress and ingress in the form of a single access along the top ridge for residents and emergency personnel alike. The Commissioner took note that wild-fire conditions would impact adversely on that one way in and out and further noted the location of a High School on that access route which would require evacuation of some 1200 children, teachers and ancillary staff. Evacuation of so many along a restricted access could complicate egress further under wildfire conditions.

East Killara was recognised as having special merit, which acknowledged bushfire evacuation risk and anticipated problems with water supply. Together with 5 further areas in the LGA with similar risk, this area was specially hatched on the above maps. SEPP 5 [Housing for Older People or People with a Disability] Exemption, for these areas was gazetted Number 262 on 18 December 2002.

In 1997 NSW Fire Brigade Officer George Irwin, who had personally commanded the fire fighting and emergency evacuation in Janalli during the fatal fires in 1994 and had been sent by the local Fire Command to report on local fire conditions, stood on our deck above the Kanowar / Saijala Valley [the aerial photograph in Appx 1] and said to my husband & I, and I quote in words to the effect

“ East Killara will burn 6 times harder and 6 times faster than Janalli, there will be more than 6 times the loss of property and I wouldn't care to even hazard a guess at the expected loss of life... ”

I refer the committee to Appx 3 Slope maps for the area & Appx 4 Aerial Map of Janalli devastation on the ridgetops 1994.

I seek to expand on the following points

1. Legislative change in NSW following through from amendments to the Rural Fire Act 1997 on 1 August 2002 focused directly on the recognised need to prioritise protection of life and property from bush-fire attack. In recognition of that need, and in acknowledgement of the extent of the devastation wrought by too frequent bushfire events recently in NSW, the Bill received bi- partisan support from Parliament.
2. The legislative amendment to associated Acts was substantial and though there has been recognition that some aspects may require more attention, it is widely held by the general public, that these measures, through implementation of strict construction methods, would reduce the impact of flame and ember attack and restrict the rate of spread in the immediate vicinity of the attack. This could achieve the dual objective of ensuring protection of residents, fire-fighters and emergency personnel firstly while protecting property as well.
3. Failure to implement the legislative changes is occurring at a local level .

1. The Objective of ‘ Planning for Bushfire Protection ‘

In producing the above document, a Rural Fire Service and Planning NSW combined venture, the principal consideration has been to provide for the protection of human life (including the safety of fire-fighters suppressing bushfire events) and property. PFBP Introduction -page 1.

2. Legislation in New South Wales.

The legislative requirements effective from 1 August 2002 included The Rural Fire and Environmental Assessment Amendment Legislation Act 2002, causing the insertion of s. 79 BA into the Environmental Protection & Assessment Act 1979, requiring compliance with the planning instrument *Planning for Bushfire Protection*. [PFBP]

The PFBP directly references AS 3959 and sets out how the Standard for Construction in Bushfire prone land is to be applied in NSW.

The document for PFBP was first introduced in NSW in 1991. The current upgrade applicable is 2001. The document was developed by the Rural Fire Service in close consultation and collaboration with Planning NSW. The document clearly sets out bushfire planning matters that must be considered as part of the planning process. This includes the matters to be considered in the preparation of local environmental plans, sub-division design and building construction stages.

The document sets out in Appendix 3 a methodology for the site assessment of the categories of bushfire attack at construction stage for building proposed within a designated bushfire- prone area. Categories of bushfire attack are determined in order that application of special building requirements in accordance with AS 3959 may be determined. These may be found in Section 3 of AS 3959.

The NSW Environmental Planning & Assessment Regulation 2000 requires all building work complies with the Building Code of Australia [BCA]

The BCA in turn directly references AS 3959 and in addition requires all construction in a designated bush-fire prone area to be designed and constructed to **reduce the risk of ignition from a bushfire front while the fire passes.**

The NSW Variations to Amendment 12 to the BCA provide Deemed to Satisfy Provisions to meet that requirement and ensure compliance with AS 3959 Construction in Bushfire Prone areas. The amendment to No 12 BCA became legally enforceable from 1 January 2003.

Section 2 of AS 3959 was replaced by the Assessment method provided in Appx.3 of PFBP. Pages 50 –53. This is the mandatory method of establishing the appropriate level of construction needed for each individual property in order to provide a safe level of protection from bushfire attack.

Hazard setbacks from the identified bushfire risk must occur on the site of the development. This has been upheld by various court rulings among them,

Scott Revay & Unn v. Ku-ring-gai Council 1994

Whilst recognising the problems associated with existing development and outer and inner protection areas, if these stipulations cannot be met because of existing conditions, even closer attention should be paid to the requirements of development / construction complying with the BCA and AS 3959, assessment techniques determined by Appendix 3 PFBP, slopes and distance from vegetation hazards to determine the fire-line intensity. This is essential in order to reduce the impact on the development site itself, as well as ensuring it reduce the impact on adjoining properties and the broader community assets as well. To ignore these legislative requirements is reckless indeed in areas designated as bush-fire prone.

2. Failure to implement Legislative Change at Grass Root Level.

Ku-ring-gai Council did meet the requirement to produce a Bush Fire Risk Management Plan [BFRMP] as required under The Rural Fires Act. I attach the Draft Bushfire Risk Management Plan : Hornsby / Ku-ring-gai Bushfire Management Committee 2000. Appendix 5

This involved mapping the fire hazard, identifying areas of high, medium, low and no hazard in conjunction with the Rural Fire Service. This was signed off by the Commissioner on 21 November 2002.

Mapping the bushfire hazard in three colours, laminating the map and pinning it to a wall in the Council public area, will not as an exercise in itself, save lives or property. Logically it requires the implementation of the legislation in its entirety to satisfy the intention of Parliament and the expectation [to survive a bushfire attack] of residents in fire-prone communities.

There is to date no specific LEP for bush-fire prone areas, either gazetted or as draft on exhibition. This in turn means that no specific planning controls exist or solely apply specifically to designated bushfire prone land.

Planning for Bushfire Protection states on page 6 that *"those areas that are mapped will therefore be excluded from exempt and complying development provisions "*.

The only DCP that can **in part** apply planning control in Ku-ring-gai LGA, is DCP 46 Exempt and Complying Development. The LEP 180 that anchors DCP 46 specifically prohibits any Complying Development in *"areas identified by Council as bushfire prone, ... "*

This LEP was put in place in 1999 to gain exemption from SEPP 60.

Planning NSW is partly responsible for refusing to issue KMC a section 65 certificate which would have allowed council to place the draft LEP 195 Bushfire prone areas on public exhibition earlier this year. I refer to a letter from planning nsw to KMC dated 12 February and I quote from Council's memorandum 28 Febr. 03 that as Council has a certified Bushfire Prone Lands Map the LEP process *"has become redundant "*

In our opinion they could have added that it was in three colours , laminated and on display at Council. I further draw to the Committee's attention that and I quote from that memorandum

"In addition to the advice in the letter, Planning NSW staff at the meeting on 31 Jan 2003 advised that DLEP 195 was not acceptable by virtue of the fact that it excluded SEPP 5 from significant areas which may be suitable for such housing and in their view the existing requirements under the Bushfire Planning guidelines provided appropriate measures for consideration of and protection against bushfire risk "

“by virtue of

In addition to Appendix 1 mentioned above, I attach the following appendices :-

Appendix 2. Letter from the Convenor Friends of East Killara to Commissioner Koperberg Rural Fire Service [limited distribution] dated 23 January 2002.

Appendix 3. KMC slope maps [2] of East Killara [matches aerial photograph provided] and Soil Landscapes Map.

Appendix 4. Aerial photograph of Jannalli circa 1994. demonstrating ridgetop spot fire devastation.

Appendix 5. Hornsby / Ku-ring-gai Bush Fire Management Committee Draft Bushfire Risk Management Plan circa 2000.

Appendix 6 Letter from Planning and Environment Services RFS to KMC dated 28 February 2002.

Appendix 7. Letter to FOEK from RFS re assessment 1 March 2002.

Appendix 8. A submission made by FOEK directly to the Minister Planning, re INCREASED POTENTIAL FOR LOSS OF LIFE AND PROPERTY FROM IDENTIFIED HIGH BUSHFIRE HAZARD dated 27 May 2002.

Appendix 9. Letter from RFS *Planning in Bushfire Prone Areas* 12 July 2002 and

Appendix 10. Letter from Commissioner Koperberg re hazard rating. No date, but from recollection, around September 2002.

Appendix 11. Letter from FOEK to the new General Manager Mr Brian Bell shortly after his appointment to Ku-ring-gai Municipal Council, dated 20 October 2002.

Appendix 12. Pge from Briefing note to councillors dated 19 December 2002

Appendix 13 Memorandum to Mayor and Councillors dated 28 February 2003..

Appendix 14 Attached letter dated 12 February 2003 from Planning NSW to KMC. allegedly refusing to accept the LEP 195 for bushfire prone areas

I further draw to the committees attention the provisions provided within Planning for Bushfire Protection, which encourage Councils to prepare a relevant LEP for designated bushfire prone land. In the final paragraph on page 6 of PfbP it actually states that Planning NSW encourages councils to identify bushfire –prone areas in their LEPs for their exclusion from exempt (except those made from non-combustible materials) and complying development.

The problem here appears that KMC had their exempt and complying LEP accepted and gazetted in 1999 to secure exemption from SEPP 60, the State policy on exempt & complying development. The objective of the LEP 180 & DCP 46 in 1999 was to be exempt from the requirements of the state environmental policy SEPP 60 Exempt & Complying Development. The fact remains that it would not have been accepted and gazetted unless it tended to satisfy the planning objectives of SEPP 60, namely the requirement to ensure that all exempt development would be in non – combustible material. Even though partially covered by the LEP 180, where there are non-compatible requirements, SEPP 60 is the over-riding legislation.

Ku-ring-gai had already mapped their bushfire areas using environmental consultants Conacher Travers to identify areas of bushfire hazard and to identify potential access problems [33] in Base Line Studies for the Residential Strategy [RDS] in March 2000. I attach Appendix 15. These maps demonstrate more areas of perceived access problems than the subsequent Rural Fire Service Map of 2002, which only hatched 6 areas not the thirty three mapped by Conacher Travers in 20000 as having egress difficulties and perceived problems such as lack of water for fire fighting.

These measures preceded the more precise and detailed mapping exercise of bushfire prone land, as required under the later amendments of the Rural Fires Act in August 2002.

Presumably the lack of egress to these areas has not been solved but still exists and includes areas in Ku-ring-gai that have historically been subjected to more frequent bushfires and property loss than others. Some in the community query whether the lack of equal acknowledgement of similar problems indicates that development remains the higher priority on an undisclosed agenda.

The draft LEP that identified further land as environmentally sensitive was also rejected in 2003 and refused a certificate to place the draft on public exemption legislation.

“ When Councils prepare their own LEP, they have some latitude in excluding exempt and complying development from land that they identify as environmentally sensitive areas. Planning nsw encourages councils to identify bushfire prone areas in their LEP's for their exclusion from exempt (except those made from non combustible materials) and complying development.

The suspicion that Council will, in reviewing their LEP 180 and the DCP 46 which they are currently undertaking, remove the provision that excludes undertaking Complying Development in bushfire prone areas is greeted with disbelief and mistrust by those who reside in such communities. Achieving any compliance with the new legislation is already proving very doubtful without removing further protective controls.

Environmentally sensitive areas and bushfire-prone areas in Ku-ring-gai need not necessarily mean the same thing. If fire prone lands are excluded from environmentally sensitive maps, then they will be over looked. Areas of environmental sensitivity could and will cover areas as diverse as the Pacific Highway and its environs, where no bush fire threat is contemplated.

As late as Friday 16 May 2003, the Manager Strategic Planning KMC informed me that the Council will re-submit the LEP for Environmentally Sensitive Areas, but have no plans to re-submit the LEP 195 for Bushfire areas. He stated “that there were sufficient controls provided by PfBP.” No strategic planning personnel is able to assure us that bushfire prone land will be included in the ESA project and / or LEP provided that it is environmentally sensitive. I refer to Appendix 12 Relevant page from Briefing Note to Councillors re Environmentally sensitive areas dated 19 December 2002

This may satisfy some political agenda, but it will not protect the lives and property in designated bushfire prone communities.

We submit, that the very opposite of “ sufficient controls “ is demonstrated on a daily basis.

The failure of the General Manager KMC, to administer the statutory requirements and to ensure

a) that as the individual with overall responsibility for Strategic Town Planning, Compliance and the Development Assessment Processes within council he, as the GM, should implement or cause to be implemented section 79 C EP&A Act in its full implied sense by providing, or causing his strategic Planning staff to provide, an LEP and DCP solely applying to designated bushfire prone land in the LGA. In addition, by complying with the advice from Planning NSW to persist in the Public Interest to gain approval from Planning NSW and get it out on draft exhibition for

public comment. The requirement to provide both LEP together with a DCP was advised in writing by Planning nsw in the letter dated 12 February 2003.

Further, it is his (the GM) responsibility to ensure

b) that his Development Assessment and Compliance staff were sufficiently acquainted with the legislative provisions, of PfbP, BCA and AS3959 in order to implement them and

c) were implementing those provisions, and

d) were complying fully with the document *Guiding Development – Better Outcomes* which is issued and updated by Planning nsw and contains the *Practice Notes* which govern decision making and assessment by Council practitioners.

It is ultimately the General Manager's responsibility to administer legislation that has been provided in the public interest. In this instance with the stated objective to preserve life and property . Council owes a legal and moral duty of care to residents and ratepayers within its local government area. This duty may be identified as in the Public Interest.

Appendix 16. Advice to residents affected by designated bushfire mapping.

The attached letter to residents from the General Manager KMC is regarded by many residents as "inadequate advice". This is regrettable, as it is a missed opportunity to inform residents of their situation regarding the bushfire hazard assessment rating and how it will personally affect their property and their families and the importance of routine maintenance and of providing well maintained protection zones on their own properties.

There appears to be a culture within Development Assessment and Compliance department of KMC which

- a) refuses to apply the new statutory provisions of the EP&A Act s 79BA or
- b) to comply with Appendix 3 PfbP in the mandatory assessment of sites to establish the appropriate level of construction required for any given site and / or
- c) as required by the EP&A Regulation 2000 to ensure compliance with the BCA which directly references AS 3959 Construction in Bushfire Areas and Planning for Bushfire Protection. And
- d) disregards with contempt, where it suits, the controls which govern the daily administration set down by Planning NSW for council practitioners in the *Practice Notes : Guiding Development – Better Outcomes*.

I would at this stage of the submission bring to the Committee's attention the submission from Mrs Helen Ferns of West Lindfield (also in the KMC municipality), which provides a well documented insight into the failure by staff to comprehend their role in administering or implementing the statutory requirements. The following letters are attached to be read in conjunction with the documentation provided by Mrs Ferns 115 Bradfield Rd. West Lindfield in her submission to the Inquiry.

This reflects our observations that "sufficient controls" are not implemented by Development Assessment and Compliance staff, at KMC. The referred to practice by Council staff of providing Building Certificates for work that has been commenced without consent or part finished without consent, is, according to the above referred to Practice Notes, illegal.

I attach Appendix 17. Letters to KMC over a period from 19 March 2003 to 27 May 2003 re development occurring on a neighbouring property and include the limited response from Council to date.

I am unable to understand how a Council can allow development to continue unchecked for three months on a daily basis without any development consent, in a designated bushfire area and in the absence of any confirmation to the contrary from KMC, construction that is not proved compliant with the BCA and AS 3959 requirements.

Apparently no methodology for the assessment of the category of bushfire attack, to establish the required level of construction was applied, or any compliance with the statutory provisions sought. The screen which was erected last December, tied to the rotting and disintegrating 35 year old fence within their property boundary, and run up to the roof [in the area of a huge hole in the sarking under the tiles] adds to the fire hazard and remained in place throughout the fire hazard period up to today, without any intervention by Council staff. Appendix 18 Photographs.

Letters alerting the Manager and General Manager have been ignored or fielded by a letter from the Acting Director advising me as to legislation, but not addressing the development issues raised with regard to the particular property in question. There is total disregard for the principles of bushfire planning involved here

- 1) controls on the placement of combustible material and failure to assert appropriate construction standards in both Inner and Outer Protection areas and
- 2) failure to prevent the potential loss of life and property due to bushfire attack by discouraging the establishment of incompatible and inappropriate development in hazardous areas and
- 3) failure to apply, as required by virtue of section 79 BA EP&A Act, the correct assessment methods to determine the appropriate level of construction and
- 4) failure to apply the principles set out in *Practice Notes: Guiding Development – Better Outcomes*, which provide for Councils to ensure that all construction, other than provided for specifically in Exempt provisions, has development consent. In addition complies with the BCA and amendment 12 to the BCA which has been legally enforceable since 1 January 2003 and through compliance with the BCA, directly ensures compliance with AS 3959. To put the case simply :
- 5) Failure to deal as required by the *Practice Notes*, firstly with the unauthorised construction at 41 Saiala Rd and
- 6) with the sub-set of non compliance with the legislative requirements dealing with construction and assessment in designated bushfire areas.

This process continues unabated because the only way to reverse these illegal practices is to take Court action. Council staff constantly challenge complainants in terms of “ go to court if you don't like it “ in the full knowledge that most individuals are not in a financial position to take on a Council, where Councils are using rate-payer funds to defend their illegal actions.

I quote from Stein J of the Land and Environment Court NSW in *Oshlack v. Richmond River Council and Iron Gates Development Propriety Ltd. Case 40090 [1993]* His Honour quoted as legal precedent from *Kent v. Cavanagh [1973]* where Fox J. sitting in the Supreme Court ACT said

“ It seems to me undesirable that responsible citizens with a reasonable grievance, who wish to challenge a Government action should only be able to do so at risk of paying costs to the government if they fail. They find themselves opposed to parties who are not personally at risk as to costs, and have available to them almost unlimited public funds. The inhibiting effect of the risk of paying costs is excessive and not in the Public Interest. “

Council staff take every advantage of this premise.

Council have demonstrated extraordinary indifference to the creation of a fire hazard on our neighbouring property and extraordinary indifference to the ember and flame significance of the increased areas of catchment of wooden decks and other constructions so close to the identified hazard of forest and woodland vegetation. The line of new development is separated from the council identified vegetation hazard of forest and woodland grading in and out of the area down slope, by the standard 6 metre road below the property.

I attached at Appendix 3 the slope maps for this area. How many of these and similar structures lacking in appropriate development controls, occur throughout the municipality in designated fire prone areas?

The lack of accountability that arises from the material provided in this submission to your committee raises serious questions. If fundamentally good legislation made by State Parliament, with the best intention to protect the lives and property of NSW citizens in bushfire prone areas, is not intended to be implemented at all but intentionally and unaccountably avoided by those who administer the legislation, was it merely intended in the first place to be cosmetic legislation?

Further does this attitude to the legislation occur in other municipalities in NSW with designated bushfire areas?

The Public Interest factor here is self evident. Further, I note that there is an overriding responsibility expressed in the *Practice Notes* that Council take into consideration in development consent assessment, the Public Interest factor as required in recent Land and Environment Court NSW judgements.

We believe that relevant authorities at state level should be held accountable for lack of implementation of the State legislation where maladministration gambles with the lives of citizens.

It is a particularly nasty form of betrayal of community trust. All I can realistically achieve, in NSW, is to store this submission in its entirety outside the local area in an area that will never be affected by bushfire hazard and await the inevitable.

I submit that the Committee may wish to establish whether or not the new legislation is working efficiently or not at all

A good indicator would be the planning progress of application 17 Redfield Rd. East Killara. This development application has been submitted by KMC to the Rural Fire Service allegedly on 12 February 2003 for comment.

Using the slope maps provided, at Appx. 3, the Committee will appreciate that this application is on a degree of slope combined with proximity to hazard, which exceeds the provision of Planning for Bushfire Protection. [The “weeds” in the vegetation assessment, referred to by the Consultant in the DA are, I am lead to believe, “Duffy’s Forest”, a community protected under the Threatened Species Conservation Act NSW. Schedule 2]

Exclusion of the development is also a viable option where the environmental constraints to the development and problems with it’s site access cannot be overcome and where the protective works required to reduce the threat to the development would incur too high a cost in terms of direct financial or environmental costs. Pf BP page 11

How the above Development Application is handled may provide an insight as to how the new legislation in NSW is realistically intended to work. For the benefit of developers or to the benefit of communities in bushfire prone areas?

This raft of new legislation was a prime opportunity “ to get it right.” to provide protective measures that if implemented would go some way to saving life and property. That these measures are not translating into positive outcomes for communities is as disappointing as it is disgusting.

That there is now community speculation that the new legislation is only being implemented in order to provide new areas for development / developer profit, under the guise of providing fire breaks is both alarming and distressing to many, not only environmentalists, in the community. Appendix 19 article from the Sydney Weekly is attached.

We would suggest that compliance with the BCA and AS 3959, which are planning instruments not under State control, should be strengthened in some manner to require greater compliance from local authority to a higher Federal authority with a Commonwealth authorised overriding power to demand accountability and compliance. This accountability is commonly lacking at state level.

The rumour that the document Planning for Bushfire Protection may be watered down and altered, follows from newspaper reports of planned meetings late last year between the NSW Planning Institute and RFS, to accommodate the development industry concerns that the current restrictions were too stringent. That such a meeting even took place presumably indicated that the best interests and profit margins of developers are deserving of more protection than the lives of residents and fire fighters. There were further media reports that the Planning Institute was “ happy with the outcome. “

We would draw to the Committee’s attention a comprehensive article in the Sydney Morning Herald Weekend edition 7-8 December 2002 which elicits some stated concerns from the Planning Institute

“ one planning consultant who asked not to be named , said a client had been refused a wooden deck around the pool even though it was well separated from the house. The client must now look at alternative materials that are non-combustible – and more expensive “ and a report that the Rural Fire Service

“ has already agreed to join a task force that will review the implementation of controversial new legislation “ and

“but, according to Planning NSW, the legislation is not up for grabs; only its administrative workings will be reviewed “

This newspaper article was impressive for its simple to comprehend diagrams on HEAT EFFECT and the effects of radiant heat flux on buildings and people.

The article was read by the majority of people who live in bushfire affected areas and was widely discussed in the broad community at that time.

In the stated public interest of protecting life and property, we believe that the State Government and the Rural Fire Service should be required to stand firm. There should be no watering down of any provisions which provide for construction to be in less expensive combustible material. All construction in designated bushfire areas should be in non-combustible material, even if it increases the initial costs to the developer, builder or home renovator. Because of the potential of combustible materials used in both building and landscaping alike, to facilitate the rate of spread of bushfire throughout neighbouring areas, the overall advantage of low ignitibility of materials to the community at large should be the overriding consideration by the certifying authority in upholding construction standards and determining development controls. That fences and landscaping are not required to be in non-combustible

material by the Australian Standards AS 3959 or designated in the BCA is regrettable, because these documents would clearly require more accountable compliance from Certifying Authorities than the provisions of Planning for Bushfire Protection alone.

I attached Appendix 5, to show that Council has been aware of the requirement to comply with the provisions of Planning for Bushfire Protection since early last year. Knowledge, is one thing and compliance another.

If the Committee could make some recommendation towards the mandatory inclusion of non-combustible fencing and landscaping provisions in the AS 3959 and BCA it would be helpful in that it would prevent variations in interpretation of PfBP at a local level by council practitioners.

Further, if the Committee could bring to the attention of NSW Minister of Planning that there has been an unfortunate oversight by his department to update the *Practice Notes : Guiding Development – Better Outcomes* so as to include corresponding practice notes [on applying much needed compliance with legislative changes re bushfire construction and assessment procedures] to council practitioners.

It may be outside the scope of Federal legislation, but a strongly worded recommendation to prohibit landscaping with cypresses in bushfire prone areas would be extremely helpful to protecting bushfire prone communities.. These varieties of trees were very fashionable around the time that the outer ridges in Ku-ring-gai were opened up for development. Numerous cypress grow along the streets, in gardens and on open Council land adjacent to bushland and are provided protection under Tree Preservation Order TPO.

Reports from residents on the western side of Ku-ring-gai, adjacent to Lane Cove National Park, after the 1994 fires were to the effect that the first some residents became aware there was a fire problem [spot fires] was when cypress on adjacent properties and front lawns turned into towering infernos lighting up the area.. These, more than any other species, appear responsible for the rapid spread of fire through suburbs in bushfire areas. Green they may well be on the outside but inside they are totally dead, tinder- dry, hazardous and extremely vulnerable to ember attack. Residents in adjoining properties to the Lane Cove fires in 1994 also reported that when they turned on taps not a drop of water came out. This must have been a terrifying experience.

It should become mandatory to prohibit the landscaping use of tan bark mulch in bushfire areas as these “missiles ‘ blow about lit, in high winds created by bushfires and have enormous potential to start neighbourhood spot fires. Large pebbles and gravel used in mulching and in the treatment of paths could achieve similar results, even though they are initially more expensive.

The question of whether it is suitable to use panels of glass in balcony fences should be approached by Australian Standards as there remains a question as to suitability in the way glass reacts to both radiant heat and in high winds created by the fire itself.

As any complaint to the Department of Local Government NSW produces the overall response of “ Councils these days are autonomous and do pretty much what they want. We have no staff these days at all” approach, we ask if there could be an overriding Federal Department which could conduct overall compliance matters through a National approach on all matters of planning and land use pertaining to bushfire areas. This process would restore focus to the protection of lives and property of citizens in designated bushfire areas.

Terms of Reference

(a) (c) (d) and (e)

While recognising the necessity to prioritise the protection of communities who live in bushfire prone areas, and not seeking to discount conventional means of hazard reduction within reason, we are firmly of the opinion that hazard reduction is not the panacea that some supporters in the wider community, would have us believe and rely on.

Media reports highlight the behaviour of fire fronts in recent fires, spot fires can occur up to 10 km ahead of a fire front. Fires burn through areas that were only hazard reduced several months earlier or, even more alarmingly, turn back and re-burn areas that they have just passed through earlier in the same fire.

The effects of regular hazard reduction could be supported if they provided some, even limited, protection but what has become increasingly evident is that it provides barely any protection from bushfire at all. What could be said is that it provides populist protection to politicians, who can be seen to “be doing something “ even if that is only destroying biodiversity.

Bushfire protection measures that are essential to the development must occur within the development site itself, not rely on promises from local politicians to burn and slash the adjoining bushland. It is the unacceptable face of modern society that many home owners choose to pursue profit on their sites by building to, and in excess of, the limits, ignoring the requirement to supply asset set-backs and protection zones within their own property. It has also become unacceptable that many residents so close to or adjoining bush, use that proximity to “ dump “ their rubbish and garden refuse in bushland. Persons in these categories are among the first to scream about the fire hazard and demand the removal of the bush. All too frequently the bush is National Park. In the case of East Killara it can be seen from the "slope maps “ provided “ that the bush or National parkland is on exceedingly steep escarpments. Fire travels faster up slopes and in addition the canopy fuels are more readily available to fire, cancelling out the advantage of having an Outer Protection Area. On land steeper than 18 degrees some management practices are impossible, and all become difficult. In addition, the environmental consequences of ground clearing [erosion] become unacceptable. I refer Committee to the Soil Landscapes Map at Appx 3.

Development abutting such slopes should be located so that both the Asset Protection Zone and the development are not located on slopes steeper than 18 degrees, and the measures for protection should be located within the development site. This has been supported in various Court rulings, including *Scott Revay & Unn v. Ku-ring-gai Municipal Council 1994*, *Williams v. Blue Mountains City Council 1995* and *Spargo v. Wollongong City Council 1997*.

Where infill development exists it is difficult to achieve some protection measures. Emphasis therefore should be placed on achieving protection through strict compliance with the Building Code Australia BCA [amendment 12], AS 3959 and Planning for Bushfire Protection. Maximum compliance should be applied and more not less emphasis on the requirements of siting principles, planning and construction standards.

Further, householders should be educated to understand that whether or not the house survives a bushfire attack depends on how well maintained each individual property has been. Not last minute preparation alone but maintenance provided throughout the year. There should be more community emphasis on educating the community to understand the principles involved on planting their properties with appropriate native fire retardant species of vegetation and fire retardant species of trees as fire breaks. It should be more common knowledge of the usefulness of certain trees planted to act as fire breaks, deflecting winds and protecting property by trapping embers and flying debris which would otherwise reach houses.

Constructing Radiant Heat Shields should be encouraged between houses and the hazards by Councils development controls and should be included in exempt provisions in hazard areas. Our local DCP 46 exempt development, restricts masonry walls to 600 mm in height and does not recognise the advantages of radiant heat shields as safety provision to both fire-fighting personell and residents who remain with their properties to put out spot fires.

It is unacceptable to build a fire hazard in a designated bush- fire area and then scream loudly for the bush to be removed. Some principles of planning should include not building at the top of ridges, at the tops of narrow gullies and valley's, on steep slopes and narrow ridge crests and appropriate assessment of the hazard impact on the site itself and proper consideration of the public interest involved.

We refer to our submissions to the Minister of Planning and to the Commissioner Rural Fire Service, Mr Phil Koperberg. Appendix 7 & 2.

I now attach as Appendix 20 the Final Determination by The Scientific Committee NSW to support a proposal to list **High Frequency Fire** on The Threatened Species Conservation Act as a **Key Threatening Process**. This process results in the disruption of life-cycle processes in plants and animals and loss of vegetation structure and composition. And

The Final Determination by the Scientific Committee NSW of Butterfly Hill Topping Sites as a Key Threatening Process under the Threatened Species Conservation Act.

I include the following information copied from our last submission to the Ministry of Land and Water Conservation Sydney Harbour Blueprint in order to place on record our local environmental status and the devastating impact that fire and other forms of land clearance would have on our environment.

CONSERVATION OF BIODIVERSITY AND CRITICAL HABITAT OF THREATENED SPECIES.

For the purpose of this submission we relied on the definition of critical habitat as provided in Dictionary: Schedule 5 of SEPP 53.

Critical habitat means an area or areas of land comprising the habitat of an endangered species, population or ecological community.

Ecological community.

Duffy's Forest. A remnant stand of Duffy's Forest in East Killara is located around the Koola shopping centre on community land. Further areas in band formation have been identified on outer ridges *and in vegetation around the Allan Small Oval.*

Duffy's Forest has been listed [affirmed] by the Scientific Committee for protection under Schedule 3 of the Threatened Species Conservation Act [TSCAct] NSW.

Sydney Coastal Estuary Swamp Forest Complex

Sydney Coastal Estuary Swamp Forest Complex was subject to a final determination to list it as an **endangered ecological community** on part 3 of Schedule 1 of the Threatened Species Conservation Act.TSCAct.

In Garigal National Park it is located upstream on the small areas of siliceous sands of Quaternary Alluvium, the alluvial soilscape that occurs only within the Sydney Basin Bio-region. Along the lower reaches of Deep Creek and Middle Creek and in East Killara along Gordon Creek before it drains to Middle Harbour, and Southern Creek, on both sides of the Kanowar and Saiala valley in narrow strips which are directly affected by stormwater drainage from developed areas in East Killara as well as the broader catchment area. This community was identified locally by Roger S Lembit of Gingra Ecological Surveys in his report *Vegetation Survey of Garigal National Park, Middle Harbour Creek and Bantry Bay.* 02 9787 9710

The Scientific determination highlighted the immediate need to conserve the remnant pockets of this rare and endangered community from factors threatening its survival or because of the small size of the remnant pockets it is in danger of becoming extinct. Such a community in the opinion of NPWS should never be burnt or hazard reduced by other means.

The time has come to draw a very strong line in the sand. Once bio-diversity is gone, it is gone for ever, robbing future generations of Australians and threatening the economic viability of the country.

Local Populations in our environment in East Killara

Gang-gang Cockatoo *Callocephalon fimbriatum* are irregularly sighted in a variety of local locations in East Killara . The last sighting we are aware of was winter 2001. These cockatoos have been listed under Schedule 2 of the TSCAct : NSW as a population facing **extinction** in the Hornsby Ku-ring-gai area and are probably attracted to local food sources.

Species.

Flora.

Deyeuxia Appressa E1 [facing extinction] TSCA NSW, & Endangered EPBCA Cmwth.

Eucalyptus Camfieldii V TSCAct NSW & EPBCA Cmwealth. This species is now considered very rare and following the recent National Audit, we understand from Environment Australia, will be re-classified as in serious danger of extinction. This species is presently waiting the committee determination as to listing. We understand the numbers to be below 20.

Tetratheca glandulosa V TSCAct NSW & EPBCA Cmwealth.

Angophora Crassifolia Regionally Threatened.

Local Species of Threatened Fauna.

Glossy Black Cockatoos *Calyptorhynchus latham i*

Barking Owl *Ninox connivens*

Powerful Owl *Ninox strenua*

Flying foxes.....*Pteropus poliocephalus*

Eastern pigmy possum..... *Cercartetus nanus*

Southern Brown Bandicoot... ..*Isoodon macrourus*
Broad Headed Snake *Hoplocephalus bungaroides*
 Heath Monitor *Varanus rosenbergi*
 Red – crowned Toadlet *Pseudophryne australis*
 Giant Dragonfly *Petalura gigantea*, possible habitat, records not confirmed.

The glossy black cockatoos number 13 as at present sighted in May 2002. [this number was updated this year 2003 to a flock of 50 odd seen in the Kanowar Valley April /May 2003. Presumably because of drought conditions elsewhere]
Pygmy possums have been confirmed locally [most brought in by cats] across the area, and we believe the area is potential habitat for **Spotted quolls** last captured in east Roseville in 1996 and reported this year, 2002 [New Year] in east Roseville. Their hunting range is large and the steep wooded escarpments down to water form the ideal hunting corridors for this species. A National Parks staffer confirmed [February 2002] that the **Southern Brown bandicoots** in East Killara were trapped , tagged and were part of an on going management recovery program for the species. Locals report frequent sightings and callings are recorded of the **Powerful Owls** [3] and **Barking Owls** are reportedly nesting at a precise site locally, their calls being frequently heard during the Winter. Mrs Karen Thumm [early 2002] identified **Red – crowned Toadlets** at several sites on the Kanowar Ridge and we believe these amphibians exist at several other locations, in the perched wetlands, on the western escarpments and across the area. It has been suggested that a proper survey for the Giant Burrowing Frog in the catchment tributaries especially Southern Creek might produce positive results. **Flying foxes** are frequently sighted feeding in local bushland during the night & early hours of the morning and locals report sightings [and hearings] of **a range of possums, bats, snakes, monitors and gliders**, including an amazing variety of bird life whose habitat relies on the continued viability of natural bushland. It is worth noting here that the **Swift parrot [an endangered bird] overwinters in the area and a reported sighting was recorded in the Gordon Creek area.** That area is just visible on the Appendix 1 map in the left hand corner. I finally attach 2 Threatened Species maps of Flora and Fauna from Garigal NPWS as **Appendix 21**

The overriding requirement for maintenance of habitat is appropriate fire management and water quality control.

I would like to thank the House of Representatives Committee for giving me this opportunity to raise our concerns for the protection of life, property and the environment from bushfire attack, through the means of this submission.

Mrs Freída Martin
 Convenor
 FRIENDS OF EAST KILLARA