REGULATION REVIEW COMMITTEE

PARLIAMENT OF NEW SOUTH WALES

REPORT OF THE REGULATION REVIEW COMMITTEE ARISING OUT OF AN INQUIRY INTO THE SYDNEY WATER CORPORATION LIMITED (CATCHMENT MANAGEMENT) REGULATION 1995: (I) AS TO REPRESENTATIONS MADE TO THE COMMITTEE BY CERTAIN ENVIRONMENT GROUPS; AND (II) AS TO COMPLIANCE WITH THE SUBORDINATE LEGISLATION ACT 1989

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REGULATION REVIEW COMMITTEE

MEMBERS

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Mr D Beattie, Research Officer
Ms M Brown, Assistant Committee Officer

FUNCTIONS OF REGULATION REVIEW COMMITTEE

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament.

In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following :-

(a) that the regulation trespasses unduly on personal rights and liberties;

(b) that the regulation may have an adverse impact on the business community;

(c) that the regulation may not have been within the general objects of the legislation under which it was made;

(d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;

(e) that the objective of the regulation could have been achieved by alternative and more effective means;

(f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;

(g) that the form or intention of the regulation calls for elucidation; or

(h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

SYDNEY WATER CORPORATION LIMITED (CATCHMENT MANAGEMENT) REGULATION 1995

(GOVERNMENT GAZETTE OF 25 AUGUST 1995 AT PAGE 4858)

1) OBJECTIVES OF REGULATION

The objective of this regulation is to repeal and remake, in substantially the same form, the Water Board (Special Areas) Regulation 1989, which was continued in force by the Water Board (Corporatisation) Act 1994. The Regulation governs access to and conduct in 'special areas' and 'controlled areas' administered by Sydney Water. The Regulation and associated regulatory impact statement is contained respectively in Appendix 1 and Appendix 2 to this Report.

2) ISSUES RAISED BY THE ENVIRONMENT GROUP

When the Committee first considered the regulation at its meeting of 7 September 1995, it met, at their request, with a group of representatives of the Colong Foundation for Wilderness, the National Parks Association of New South Wales, the Confederation of Bushwalking Clubs (NSW) Inc, The Total Environment Centre and the Kowmung Committee.

i) General Issues

The general issue raised by the group was that the regulation imposed a blanket prohibition on camping, swimming and the lighting of camp fires in 300,000 hectares of national parks in the Warragamba Catchment Area. They considered that the regulatory impact statement and public consultation process did not meet the spirit of the Subordinate Legislation Act.

ii) Specific Issues

- The group recommended disallowance of Schedule 1 Clause (a) to delete a misdescription and recommended the disallowance of the words "swim, row, sail or paddle" in Clause 19 to enable swimming and canoeing in areas of the Catchment which would not be adversely affected by these activities.

- The group recommended disallowance of part of Clause 20, which prohibits camping in Schedule 2 lands and disallowance of the word "enter" in Clause 14, which would allow people to traverse inner catchments.

- The group recommended that the regulations should be reviewed when the plan of management is developed for the catchment as required under Section 86 of the Act. They also stated their view that a proposal for developing generic permits would not be lawful under the Act.

The Group did not call for the disallowance of the whole regulation but only what they saw as the 'key inconsistencies in it'.

3) LETTER TO MINISTER FOR URBAN AFFAIRS AND PLANNING DATED 11 OCTOBER 1995

On 11 October 1995 the Committee wrote to the Minister for Urban Affairs and Planning seeking his views on the following matters arising out of the Environment Group's representations:

- Sydney Water is required to develop a plan of management as required for special areas under Section 86 of the Act, but this plan of management will only apply to areas within National Parks or those lands directly controlled by Sydney Water. Other Crown lands and private lands would not be covered by the plan of management. The plan of management may therefore not be an adequate way of addressing the regulatory management of the whole catchment. The Committee asked the Minister and Sydney Water to address this issue.

- The Committee also noted that the Regulation contained a clause 8(4) permitting Sydney Water to direct landowners in a special area to remove any buildings or works if it has reasonable grounds for believing this direction was necessary to prevent or minimise pollution. This type of regulation was disallowed by Parliament in 1990 on the grounds that it made no provision for procedural fairness, appeals or compensation. The Committee requested the Minister to repeal this provision.

- On 8 September 1995 Sydney Water provided the Committee with notes on a special briefing session given to the Environment Groups by Sydney Water and Ministerial staff on the regulation on 29 August 1995. This briefing occurred after the regulation was made.

  It would appear from this briefing note that further dialogue would be undertaken to clarify matters of concern arising from the regulation and other general catchment issues. This supported the view that the RIS did not properly assess these issues before the Regulation was made and that adequate consultation did not take place before the regulation was made. The Minister was asked to examine this matter. (A copy of this letter is set out in Appendix No 3 to this report).

4) DEBATE ON DISALLOWANCE MOTION

On 12 October 1995 the Member for Gosford, Mr Hartcher MP, on behalf of the opposition, moved disallowance of the entire Catchment Management Regulation. This disallowance motion was lost.

Mr Hartcher said that the grounds on which he moved disallowance were as follows:

- The regulation is unduly restrictive of citizens' rights.
- The recent breach of the regulation by the Premier illustrated the importance to the Legislative Assembly and to the community of New South Wales of equality before the law.
- There was no community consultation or any demonstrated scientific reasoning behind the extension of the old regulations.
- No evidence had been adduced by the Minister or Sydney Water Corporation that minimal use by responsible bushwalkers had endangered the water supply or the Sydney catchment areas.
- There is a great deal of private lands including in-holdings, within the national park which will not be affected by the regulation. Activities that are not controlled by this regulation will continue to take place on these lands that might be argued to be deleterious to the water catchment.

MR KNOWLES, Minister for Urban Affairs, Planning and Housing, in reply, raised the following issues:

- Disallowing this regulation would remove the protection of the catchment areas for Sydney's water supply.
- Disallowance of the regulation will have serious economic consequences if the quality of drinking water is diminished and the cost of water treatment increases because of the diminished quality of our bulk water supplies. It would result in higher costs for Sydney Water customers and a lower economic return to the people of Sydney.
- Disallowance will put pressure on Sydney Water as a landowner to fall back on its legal rights to control trespassing through lengthy and costly court processes. If the regulation is disallowed, additional pressure will be placed on the National Parks and Wildlife Service to stretch its resources even further to cover those areas Sydney Water will no longer be permitted to cover.
- Disallowance will open up unprotected catchments to access for everyone, not just bushwalkers, but also four-wheel drivers, shooters, water skiers, horse riders and land clearers, all of whom have legitimate needs and wishes but whose interests are obviously in conflict with protecting Sydney's water supply.

MR LONGLEY MP supported the motion for disallowance. He said the catchment management regulation should be disallowed for a number of reasons:

- It actively restricts the activities of bushwalkers, campers, swimmers and those who enjoy our environmental heritage safely and responsibly.

- These activities do not damage the environment. In other words, it unnecessarily restricts the activities of the majority of the people of New South Wales.

- With regard to water activities, it may be that motor powered boats and such vehicles should be prohibited. However, activities such as sailing and canoeing do not pollute the water, so there is no need to prohibit them from certain areas within part 4 lands.

- Mr Longley then referred to the Environment Groups submission to the Regulation Review Committee and said that the Ministers arguments that there will be severe economic consequences and that there will be open access to all sorts of people who want to cause environmental damage were hollow arguments and as such they forced the House not be selective in its disallowance and amendment process but disallow the whole regulation. He said that the coalition is moving this disallowance because there is no other option.

MS ALLAN, Minister for the Environment, endorsed and supported the Minister's arguments.

DR MACDONALD MP

- Dr Macdonald said that we would not be facing difficulties in debate about appropriate use, access and protection if a plan of management was already in place. He said that preparation of such a plan of management is likely to take up to two years and that the under Subordinate Legislation Act these regulations had to be gazetted. There is an argument that the old regulations could have been rolled over. There is now a new set of regulation, the drafts of which were fairly draconian.

- He said that the Environment Groups put the case that some aspects of the regulations are too onerous in terms of access into schedule 1 areas. We will not know whether that is true until the plan of management is developed. However, a clear analysis of the environmental impact is needed. He hoped the Regulation Review Committee would consider this aspect.

- If it proves that the regulations are too tough flowing on from the plan of management, he will call on the Minister to give a commitment to reconsider those aspects of the regulations.

- Dr Macdonald said his concerns relate to the transfer of these lands into a corporation; the protection of catchments; and the commitment that they should never leave public control, and that if they ever change hands control should go to the National Parks and Wildlife Service with the areas being subject to the plan of management. This will be considered by the Regulation Review Committee.

- Dr Macdonald concluded his comments by saying:

  "I would say to those crossbench members in the upper House who are concerned, as I am about catchment lands, that we should not do anything rash. We should take the precautionary measure of protecting the land and keeping the pressure on the Minister and on Sydney Water to develop plans of management. The Regulation Review Committee should consider some aspects that have been raised in debate. The regulation should certainly not be disallowed; it could open up a hornet's nest."

MR GAUDRY MP supported the Minister and **MR DEBNAM MP** supported the disallowance. The Committee Chairman, **MR DOUG SHEDDEN MP**, outlined the action the Committee had taken and said:

> *"The last date for disallowance of this regulation or any part of it in this House is 21 November 1995. The Committee is awaiting the Minister's reply to determine the finite attitude to the regulation in its current form. The motion at this stage is premature and I oppose it."*

MR HARTCHER MP, in his reply, said:

> *"The point is that decisions are being made about environmental protection that do not take into account any community consultation; there was none in this instance. That has an injurious effect on the lives of thousands of ordinary citizens. I could instance many examples of that but the obvious one is of bushwalkers no longer being permitted to go into an area to which they have been accustomed to visiting, with no evidence at all having been adduced to justify the regulation. The honourable member for Manly asked what is the point. They are the points. They are the points the honourable member for Manly was not prepared to address in his speech. He was only prepared to talk about the due process of the Parliament and to suggest we should wait for the report from the Regulation Review Committee.*
>
> *The role of the Regulation Review Committee is separate from the role of the House. The role of the House is to pass judgment on legislation and regulations as they impact upon the people of New South Wales; not simply to be sidetracked on whether every T has been crossed or every I has been dotted in the making of a regulation. That is the role of the Regulation Review Committee, in the various processes it follows. The role of the House is to protect the interests of the people. That is why it is quite legitimate to debate this issue now rather than wait for the report of a committee that may be narrowly focused."*

5) MINISTER'S RESPONSE TO COMMITTEE'S LETTER OF 20 OCTOBER 1995

The Minister for Urban Affairs and Planning and Minister for Housing responded to the Committee in a letter dated 20 October 1995. (A copy of this letter is set out in Appendix No 4 to this report).

6) SUBMISSION TO THE COMMITTEE BY THE MEMBER FOR MANLY, DR P MACDONALD MP

The Member for Manly, Dr Peter Macdonald, made a submission to the Committee dated 25 October 1995. (A copy of this submission is contained in Appendix No 5 to this report).

7) COMMITTEE INQUIRY

It is a function of the Regulation Review Committee to consider all regulations while they are subject to disallowance by Parliament. Part of this function is to determine whether there has been compliance by the Minister and his administration with the Subordinate Legislation Act 1989 which requires the assessment of the costs and benefits of regulatory proposals. The Committee is also to have regard to the other matters set out in section 9 of the Regulation Review Act 1987.

On 19 October 1995 the Committee resolved to invite relevant parties to give formal evidence to the Committee so that it could further inform itself and determine whether it should make a report to Parliament on the matter.

The inquiry was held on Thursday 26 October 1995 in Room 1108 at Parliament House from 9.00 am to 1.00 pm.

The Committee took evidence in relation to this regulation from the following persons:

Mr Steven Baxter,
Personal staff to Minister for Urban Affairs and Planning and Minister for Housing

Mr Kevin Shanahan,
Sydney Water (Environmental Scientist)

Mr Anthony Swan,
Sydney Water (Regulatory Adviser, Corporate Services)

Mr David Hale,
Sydney Water (Executive Officer to Managing Director)

Mr Kelvin O'Keefe,
Sydney Water (Legal Adviser, Bulk Water and Waste Water Business)

Mr David Joy,
Sydney Water (Catchment Services Manager)

Mr Keith Muir,
Director, Colong Foundation for Wilderness; also representing the Kowmung Committee, the Total Environment Centre; and the Australian Conservation Foundation.'

Mr Grahame Douglas,

Director, National Parks Association of NSW Inc.

The transcript of the Inquiry appears in Appendix No 11 to this Report.

8) CONSULTATION

It is a requirement of section 5 of the Subordinate Legislation Act that before a principal statutory rule is made the responsible Minister ensures that consultation takes place with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule. The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are to be commensurate with the impact likely to arise for consumers, the

public, relevant interest groups, and any sectors of industry or commerce from the making of the statutory rule.

Sydney Water, in the documents submitted to the Committee, advised that it placed notices in the Sydney Morning Herald on 7 July 1995, 8 July 1995 and 10 July 1995 stating the objects of the proposed regulation and inviting comments by 31 July 1995. Copies of the draft regulation and the associated regulatory impact statement were available to the public.

Appendix No 6 to this Report contains a copy of the notice and the persons to whom Sydney Water advised, they distributed copies of the regulatory impact statement at the beginning of the consultation period. Also listed in that appendix are persons who subsequently requested and were sent copies of the RIS by Sydney Water.

Consultation on the regulation between Sydney Water and the Environmental Groups was held in a special briefing session on 29 August 1995. The briefing note, which was prepared for the Minister by the Managing Director, states as follows:

> *"I wish to inform you that in response to several submissions from various catchment user groups concerned at the impact of the catchment Management Regulation 1995, officers of Sydney Water and representatives of several user groups met on Tuesday 29 August 1995. Representatives of the National Parks Association (Graham Douglas), The Confederation of Bushwalking Clubs (Andy McQueen and Morris Smith), The Total Environment Centre (Milo Dunphy and Alex Colley), and The Kowmung Committee (Keith Muir) attended the meeting.*
>
> *The meeting provided for a wide ranging discussion and exchange of views. While there was general agreement on the impact and direction of substantial parts of the regulation, as gazetted, it was agreed that there was a need for further dialogue to clarify some parts of the new regulation by both Sydney water officers and catchment users.*
>
> *The main outcome of the meeting was an agreement to commence discussions with a view to clarify matters of concern arising from the regulations and other general catchment access issues. All those present are considering what other groups should be involved in discussions so that feedback can be gathered from a*

given to the community on catchment access issues.

Should you wish, I will report to you on these ongoing discussions."

In the course of the inquiry Mr Swan, the Regulatory Adviser to Sydney Water, was asked why consultation was happening after the regulation had been gazetted.

MR SWAN:

"The way that the regulation has been drafted is that it sets up principles for catchment management, and allows us in particular discretions to give approval to certain activities around those principles. So, our process of consultation at the moment is to work out the administrative arrangements on how best to facilitate recreational uses, such as bushwalking, in line with those principles. What Dave will be describing through that process is a whole range of outcomes that we now have to improve things such as signage in the catchments, dissemination of information on access - what is permitted and what is not - and looking at negotiating, potentially, extra corridors to facilitate bushwalkers in the areas that they now like to walk in. So it is actually a very active process, and a constructive one to date."

MEMBER OF COMMITTEE:

"But, when you talk about administration, are you purely talking about administration, or are you talking about possible amendments to regulations? Would amendments be required to increase or change corridors or signage or things like that, or could you do those things as a management tool?"

MR SWAN:

"None of the proposals that we have agreed to, to date, involve changes to the regulation. We are very happy with the bushwalking fraternity coming to us and for us to have got together this dialogue to work out together the best way to facilitate their uses."

This response from Sydney Water - that the consultation was to allow supportive arrangements to be worked out in line with the regulation - is somewhat contradicted by the changes that Sydney Water are now considering to the regulations. These are the direct result of consultation. In fact, during the course of the inquiry, considerable debate took place directly between the parties in an effort to reach agreement on proposed modifications to the wording of the regulation. The detailed nature of this debate led the Chairman to remark that the Committee was witnessing a discussion between the parties that should have preceded the making of the regulation.

The fact that detailed consultation is still taking place on the meaning of the regulation after its gazettal, and that guidelines are seen as necessary to interpret it, strongly suggests that adequate time had not been given to the finalisation, including consultation, of the regulation before its gazettal. **The Committee recommends that Sydney Water should develop arrangements to ensure adequate consultation takes place with relevant interest groups on future regulatory proposals.**

9) ADEQUACY OF THE REGULATORY IMPACT STATEMENT

Part 2 of the Subordinate Legislation Act contains the requirements that govern the making of regulations. These came into force on 1 July, 1990 and require, in the case of a principal statutory rule, the preparation of a regulatory impact statement.

The essential features of a regulatory impact statement are an identification of the objectives of the regulatory proposal, the alternative options for achieving those objectives, an assessment of the economic and social costs and benefits of the proposal and of the alternative options, details of the program to ensure compliance with the regulation and finally a statement of the consultation program undertaken with the public and relevant interest groups. These requirements are set out in Schedule 2 of the Subordinate Legislation Act.

The scale of the regulatory impact statement will depend on the importance of the regulation it covers, its priority and the resources available to carry it out. A major purpose of it is to provide a comparison of all costs and benefits associated with the proposed regulation and of the alternatives to it.

The Committee is of the opinion that the regulatory impact statement prepared in connection with the Sydney Water Corporation Limited (Catchment Management) Regulation 1995 does not adequately comply with the requirements of the Subordinate Legislation Act 1989. In the Minister's letter to the Committee dated 20 October 1995 and at various times during the inquiry, Sydney Water referred to the difficulty of carrying out a formal cost benefit assessment of the regulation. However, at the conclusion of the inquiry, Mr Baxter, on behalf of the Minister, attested to the willingness of Sydney Water to attempt the task. He said:

MR BAXTER:

> *"As to the issue of the cost-benefit analysis, as a person who used to earn a living doing that, I can say that I think it is going to be extremely difficult to formulate a cost-benefit analysis which has an effective comparison of the positions. Quite frankly, I think what you will end up finding is that the nature of the information that is available - and this is just a question that, historically, organisation and not just the then Water Board, did not collect rigorously the sort of information which will ground the positions - is not going to be able to adequately distinguish the positions in terms of cost-benefit impact. But let's give it a go. Let's test it and see whether it can."*

An extensive amount of relevant information was made available by Sydney Water at the inquiry and subsequently to the Committee. That information should have been used in the preparation of the regulatory impact statement so as to provide the public with a more adequate and informative appraisal of the regulation. Insufficient effort was put into the preparation of the regulatory impact statement by Sydney Water.

The Committee recommends that a formal cost-benefit assessment of the regulation be carried out by Sydney Water and that this be conducted in conjunction with the preparation of the management plan for the special areas covered by the regulation.

(i) Options

- The regulatory impact statement considers only three options: to introduce the proposed catchment management regulation program; retain the existing special areas regulation; or make no regulation at all. Instead of these general options, the regulatory impact assessment should have made an examination of each of the substantive provisions of the regulation. Options should have been prepared in the context of those substantive provisions.

- The impact assessment of options 1 and 2 are considered jointly, and there is no quantification of their costs and benefits except in respect of a proposal for on-the-spot fines which was not proceeded with. There has been no consideration of the specific impact of restricting access to the catchment. The overall assessment contains no quantified comparison of the respective options.

(ii) Control of pollution in special areas - Clause 8

This clause, which is a substantive provision, was not examined in the regulatory impact statement. It prohibits any person, except with the approval of Sydney Water, bringing any pollutant into a special area. The townships of Oakdale, Warragamba and Yerranderie are in special areas. This clause would appear to impose unintended restrictions on businesses in these townships.

Clause 8 also contains a sub-clause permitting the Corporation to direct landowners in a special area to remove any buildings or works if the Corporation has reasonable grounds for believing this direction is necessary to prevent or minimise pollution. This type of regulation was disallowed by Parliament in 1990 on the grounds that it made no provision for procedural fairness, appeals or compensation. The disallowance took place on the motion of the Chairman of the Regulation Review Committee (Report No 7 May 1990). In correspondence with the Minister, the Committee suggested the repeal of subclause 8 (4). In his response dated 20 October 1995, the Minister advised that the staff of Sydney Water had been requested to review the need for this provision.

The Committee recommends that Clause 8 of the Regulation be referred to the Parliamentary Counsel for review because of its lack of procedural fairness.

(iii) Entry to Schedule 1 areas - clauses 13, 14 and 15.

At the inquiry Sydney Water Officers illustrated, by diagram, the need to preserve the inner-catchment areas from any direct threat to the quality of the water supply. They indicated that while water is treated at the Warragamba Dam itself, international best practice requires Sydney Water to protect the inner-catchment Schedule 1 areas. This means that recreational activities such as swimming, bushwalking and camping would not be permitted in those areas. Mr Joy, from Sydney Water, advised the Committee that the Corporation had an obligation under the terms of its Operating Licence to comply with the Guidelines for Drinking Water Quality in Australia of the National Health and Medical Research Council 1987. These require, in the case of protected catchments such as Schedule 1 areas, strict precautions to ensure the risk of faecal contamination from human and certain other animal sources is minimised.

Accordingly, Sydney Water argued strict protection was needed in the Schedule 1 foreshore areas immediately surrounding Warragamba Dam inner-catchment but Schedule 2 areas, which surround this inner-catchment area did not require that protection. After the inquiry Sydney Water supplied additional supporting details to substantiate the Schedule 1 restrictions. These are contained in Appendix No 10.

On being questioned with respect to the impact of coal mines and other developments in the outer-catchments, Sydney Water Officers reiterated that these impacts did not pose as great a threat to water quality as activities within the Schedule 1 areas. Mr Joy, from Sydney Water, advised the Committee that the Corporation had an obligation under the terms of its Operating Licence to comply with the Guidelines for Drinking Water Quality in Australia of the National Health and Medical Research Council 1987. These required, in the case of protected catchments such as Schedule 1 areas, strict precautions to ensure the risk of faecal contamination from human and certain other animal resources is minimised.

They indicated in response to a question from the Committee that they have 8 - 10 monitoring points within the catchment and have regular water quality monitoring. They network with other agencies with respect to the quality of water in the outer-catchments. The key reason Schedule 1 areas needed immediate protection was that Cryptosporidium and Giardia were two major threats to the quality of the water supply. These diseases are most easily spread by point contacts at the inner-catchment and are far less likely to emerge from pollution further up stream in the outer-catchment areas. The officers emphasised that two things were increasing in the area: the demand for water supply, and the demand for land for recreational use. It was the Officers' belief that the quality of the water supply should come first. Mr Joy gave the following evidence:

MR JOY:

> "Could I return to the board to reply. I think it is important to note that, in describing what may or may not happen to this body of stored water, it is essentially a matter of the loss of its biological health. I have done some reading of the national and international literature on organisms, and two of those, Cryptosporidium and Giardia, are particularly significant. Perhaps I should explain the significance of Cryptosporidium and Giardia to the health of the water supply. They are two particularly nasty gastroenteritic bugs; in other words, they affect the digestive tract and result in quite severe bouts of diarrhoea. They can result in the death of individuals who are very young, very old, and those who are immunodeficient.".......
>
> ....
>
> ...... "Could I add one additional piece of information. In describing these catchment areas, I did, I think, give you a rough idea of scale. The entire Warragamba hydrological catchment was 9,050 square kilometres. The combined schedule 1 and schedule 2 special area is 2,500 square kilometres, which is just little more than a quarter of it. But, importantly, the schedule 1 area is approximately 500 square kilometres. So, in terms of the total catchment, this 3 kilometre zone represents a very small amount.
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> I would also like to add that the storage of Warragamba has some major

tracts of national park, Blue Mountains, Kanangra Boyd, Nattai, Burragorang, and perhaps the greater amount to the west of the dam rather than to the east, but those national parks encompass an area of 400,000 square kilometres. They just come in and overlap us on the edge of schedule 1. Certainly, a lot of our schedule 2 land is national park, and certainly beyond there is national park. But that was to give you a sense of scale. So the 3 kilometre zone is a relatively small area in the whole picture."

The Environment Group's submission was that clauses 13, 14 and 15 should be amended to allow people to traverse Schedule 1 Special Area catchments so long as they did not remain on these areas. At the Inquiry Mr Douglas, Vice-President of the National Parks Association, said:

MR DOUGLAS:

"Our view is that people should not be allowed to camp in inner catchment areas, but people should be able to traverse through those areas - and not necessarily through the two single corridors at the moment, one of which is a very awkward, inconvenient and in fact ineffectual bypass route that people do not use anyway at the moment. We would be looking to producing some evidence in relation to that if the Committee has the time. I have reviewed and commented on the issue of entry into part 3 land. Our view is that people should be able to enter for the purposes of passing through it, but not remaining."

Mr Douglas took this issue up again later:

MR DOUGLAS:

"If I may, Mr Chairman. The particular issue that we are trying to address relates to issues under part 3 and part 4 of the regulation. Under part 3 of the regulation, clause 14 indicates that a person not enter or remain on part 3 land except with the corporation's approval and in compliance with any conditions. We are seeking to have a provision where that person must not remain except with approval. So we are not saying that we would remove the approval process. We are saying that a person should not remain. The existing provision in relation to entry would stay. We are making it tighter by saying that a person should not remain on the land."

This proposal was strongly opposed by Sydney Water and by the Adviser to the Minister for Planning:

MR SWAN:

"There were two provisions, I understand, raised by the environmental groups today. One was clause 20, seeking clarification of what that means, and that we can take on board. The other one - and I am not quite sure which clause they are looking at - but my understanding is that they want to remove, for their purposes - and correct me if I am wrong here - restrictions on access to schedule 1 areas. Now, that strikes at the heart of what this catchment management regulation is about. It is about excluding activity directly on the water so that, as David mentioned, the protozoa cysts do not get into it and subsequently into the drinking water. That, as a matter of Government policy, I

understand, and as a matter of our mandate under the Corporatisation Act, is not what was the intent of this review.

What we were aiming to do, as I said *earlier, was to bring into balance the legitimate use of bushwalking in these pristine areas. We have no problem with that. We are negotiating additional access routes and so on, with the proviso that we know where those access routes are, so that we can have our staff out there checking on the maintenance of the tracks and so on. What the Colong Foundation and National Parks Association are looking for is unfettered access throughout schedule 1 areas, so that they can walk not just within corridors - so that we know where they are and look after the maintenance of those areas and look at degradation and so - but so that they can walk anywhere. As a catchment manager trying to preserve water quality around the storage, that is a scenario within which we cannot operate. So that is the key contention there.*

Also, if we gave unfettered access to schedule 1, we are not talking about bushwalkers - and, yes, bushwalkers are low impact, by their codes - but we are looking at 4-wheel drivers and a whole range of other potential users who may want to come into these areas."

CHAIRMAN:

"Steven Baxter, the senior policy adviser to the Minister, would like to make a statement."

MR BAXTER:

"On the last point that Graham Douglas was referring to, I would like to put on record the Minister's position on this, and I will be as categorical as I can so that it is clear. The Minister is absolutely opposed to that change - absolutely. The reason for that is that, in effect, it would do two things. One is to give a clear message that it is okay for a larger number of people than are presently on schedule1 lands to be on schedule 1 lands, and that is not an acceptable message.

The second point is that I would ask each of you individually to consider what the word "remain" means. If you are saying that people shall not remain on the land, do they remain there for two hours, six hours, half a day, one day, two days, three days? When are they "remaining" and when are they traversing? Of course, there is no point made there about what it is that they are doing whilst they are remaining or traversing.

So, for both of those reasons, and perhaps for others, the general message that that proposed change would give is one that the Minister is quite categorically opposed to. What I would say is that it seems to me that there are a number of clauses - such as clause 20, but I think also perhaps 14, 19 and 21 - where most of the argument, a word I use advisedly, is about the fact that the wording that has been proposed is unclear and is open to the sort of interpretation where, for instance, Graham would say "This means X" and Sydney Water would say "No, this does not mean X; it actually means Y."

I think, if we can address each of those clauses, we could probably get some agreement, as I think we just gained with clause 20, that this is what the intent is meant to be. Let us get some wording that actually says what it is meant to say, as opposed to what, with

respect, we are interpreting it to mean at the moment.

So, on those issues, I think it would be a matter of fairly readily reaching agreement. But, on the point of changing that clause which relates generally to access to schedule 1 land, I think the Minister's position has been enunciated fairly clearly in the House and it is quite categorical."

At the Inquiry, Mr Douglas was asked whether a cost-benefit assessment had been conducted in relation to the proposal by the Environment Group for access to Schedule 1 areas. He was asked whether those studies had looked at the cumulative effect of bushwalking and other activities contributing to pollution. Mr Douglas advised the Committee that no such studies had been made but that neither had they been done by Sydney Water in their regulatory impact statement. It seems to the Committee that this correctly states the position. An absence of an appropriate impact statement clearly undermines the case put by the Environment Group for greater public access to Schedule 1 areas. In the maintenance of these restrictions Sydney Water relies on its obligation under the Act and Operating Licence to comply with the National Health and Medical Research Council Guidelines for Drinking Water Quality.

The Committee recommends that the existing controls on access to Schedule 1 special areas should not be materially relaxed unless it is demonstrated, after an appropriate impact study, that it is practicable to do so without compromising the obligations of Sydney Water to protect the quality of stored water.

(iv) Entry to Schedule 2 areas - clauses 16, 19, 20 and 21.

The regulatory impact statement does not examine these substantive provisions. It makes the general comment that the regulation broadly involves restrictions on performance of activities in Special Areas and total prohibition of entry to sensitive Special Areas.

The submission by the Environment Groups claimed these provisions to be unclear and inconsistent. They considered swimming in Schedule 2 Special Areas caused no harm and that canoeing should be allowed. They claimed that the provisions in Clause 20 regarding camping were unclear.

At the inquiry Mr Joy, on behalf of Sydney Water, outlined the acceptable recreational activities within Schedule 2 areas:

"Let me define for you what we see as being quite acceptable with the Schedule 2 areas. There is no problem with bushwalking, there is no problem with camping, and there is no problem with swimming in the streams that are still yet to flow in and join the reservoir, and so that is an acceptable use. That same use, but nearer to the water, we believe that is not acceptable because we would be losing our second barrier in the process of ensuring the health of Sydney's water supply."

An examination of the relevant clauses of the regulation shows that these unobjectionable activities have, in fact, been prohibited unless authorised by Sydney Water. Clause 19 prohibits, except with the Corporation's approval, swimming in Schedule 2 areas (other than private lands). Similarly, Clause 20 prohibits camping on Schedule 2 lands except on

such areas as may be designated by the Corporation.

This supports the view of the Environment Group that these provisions are unclear and in conflict with Mr Joy's evidence.

The Committee recommends that these Clauses 16, 19, 20 and 21 be amended to properly reflect the permissible recreational activities that Sydney Water agreed, during the course of the inquiry, could be carried on in Schedule 2 areas.

(v) Recreational restrictions in other New South Wales Catchment Areas and in other States

The Committee would have expected the regulatory impact statement to examine the nature of restrictions applied in other NSW Catchment areas. However, it does not do so. Such an examination would have been informative as different approaches may have been taken by other boards. The regulatory impact statement also failed to mention the extent to which recreational activities are permitted in water catchment areas in other States of Australia.

(vi) Overlap with other Acts or Regulations

The regulatory impact statement does not examine the relationship of the Catchment Management Regulation with the National Parks and Wildlife (Land Management) Regulation 1995. Both were gazetted on 25 August 1995. The National Parks Regulation authorises certain activities that the Catchment Management Regulation prohibits. For example, Part 5 of the National Parks Regulation contains various exemptions in favour of the exercise of traditional rights by Aborigines. Clause 39 (1) exempts Aborigines from the provisions of Section 117 (1) of the National Parks & Wildlife Act 1974 which prohibits the picking of native plants in national parks. This exemption is in conflict with or overridden by Clause 24 of the Catchment Management Regulation, which prohibits, without the Corporation's approval, the picking of any plants on Crown owned Schedule 1 or 2 lands.

A close examination of both sets of regulations would no doubt bring to light a number of other potentially overlapping provisions such as those giving both authorities power to charge fees for entry to the same lands. It would seem that these regulations may have been drafted in isolation to each other. The National Parks and Wildlife Regulation clearly should have had some provision alerting the public to the need for it to be read subject to the Catchment Management Regulation. **The Committee recommends that a provision be included in the National Parks & Wildlife (Land Management) Regulation 1995 to alert the public to the need to read its provisions as being subject to the Sydney Water Corporation Limited (Catchment Management) Regulation 1995.**

(vii) Program to Promote Compliance with the Regulation

This section of the regulatory impact statement should cover the methods of administering and monitoring compliance with the proposed regulation and the penalties for non-compliance. All agencies required to be involved should be consulted, and penalties should be examined to see that they are appropriate. The regulatory impact

statement was inadequate in this respect. It dealt solely with the administrative savings arising from the introduction of "On the Spot Fines", a proposal omitted from the final regulation. It was only at the inquiry that a description was given of management's approach to the enforcement and implementation of the regulatory controls.

In response to a question from the Committee, the Officers indicated that regular prosecutions weren't brought in respect of breaches of the Act and Regulation. The officers were asked as follows:

CHAIRMAN:

> "Gentlemen, we have been talking about concerns associated with catchment management. Do you have any knowledge of the number of breaches under the old regulation associated with schedule 1 areas?"

MR O'KEEFE:

> "Just this week there were a number of prosecutions at Picton Local Court which were conducted by an agent for Sydney Water. I have not received official confirmation of the outcome of those. There were several prosecutions at Picton Local Court earlier this year, as I recall prosecutions against four individuals."

MR HALE:

> "It needs to be said that catchment management is not just about policing. It is about a whole range of other measures. I mean, speeding on our roads is not controlled by policemen who are standing on our corners. It is addressed by community education and a whole range of matters. In the case of bushwalkers in particular, we rely on community education and the dissemination of information, often through the bushwalking organisations themselves. Those responsible bushwalking organisations are often self-policing. They go through the bush destroying old camp fires and so on. So we rely on that sort of activity by responsible bushwalkers, probably more than we rely on policing because we are not in a position to have a policemen in every corner of our bushland."

CHAIRMAN:

> "We understand that you would be policing issues such as dumping and so on, but there has been concern over a period of time as to access for bushwalkers and people who have breached the regulations."

MR SWAN:

> "Kel reminds me that our practice is not so much to prosecute bushwalkers, but we do keep records of cautions that have been sent out to them."

They emphasised, that their main object was to educate members of the public seeking

Section 78 requires a consent authority within a special area to give Sydney Water notice of a development application or building application that would:

(a) increase the demand for water supplied by the Corporation; or

(b) increase the amount of waste water that is to be removed by the Corporation; or

(c) damage or interfere with the Corporation's works; or

(d) adversely affect the Corporation's operations; or

(e) adversely affect the quality of the water from which the Corporation draws its supply of water in a special area.

Section 78 (3) requires Sydney Water to issue guidelines to assist consent authorities to determine which matters should be the subject of notice.

The consent authority must take into account any submissions made by the Corporation in relation to a development or building application that is the subject of a notice. The consent authority may also impose a condition that the developer obtain a compliance certificate from the Corporation.

In order to clarify the practical operation of these legislative controls, the Committee wrote to the Minister's office on 3 November 1995 asking for an indication of the amount of private land in Schedule 1 and 2 areas and the range of activities that will be permitted on private lands without Sydney Water's approval. The Committee asked whether the regulation, as it currently stands, would permit Sydney Water to control on private lands in Schedule 1 and 2, the various types of illegal activities shown in the photographs put into evidence in the course of the inquiry. These further details had not been made available at the date of this report.

In their evidence, with respect to Clause 20 of the regulation, the Environment Groups indicated that as the regulation stands, bushwalking will be prohibited in the Schedule 1 areas but that one million tonnes of sediment from Wollondilly and another million from the Cox's River will be produced by activities in the outer-catchment areas. These figures, they said, were based on a six year study. This gross impact on the catchment would not be added to by bushwalkers in their view. They said that Sydney Water was not active in controlling these activities in the outer-catchment areas. Again they indicated that urban development in the outer-catchment posed a far greater threat than bushwalking. They cited the fact that under proposals for expansion in the upper-catchment of townships, 1500 extra unserviced persons will be living in the Blue Mountains within the next few years. **These claims and recommendations should be examined by Sydney Water in the context of the recommendations of this report.**

The Committee recommends that Sydney Water carry out an examination of the impact on stored waters of activities conducted on private lands within Schedule 1 and 2 special areas and an appraisal of the effectiveness of existing planning controls in regulating, where necessary, those activities.

11) DEVELOPMENT OF THE REGULATION IN CONJUNCTION WITH A PLAN OF MANAGEMENT

Section 86 of the Water Board (Corporatisation) Act 1994 requires the joint sponsors to jointly cause a plan of management to be prepared for each special area. The "joint sponsors" are the Director General of National Parks and Wildlife and Sydney Water Corporation Limited. Section 86 (2) requires a plan of management for existing special areas to be prepared within 24 months of the commencement of that section (1 January 1995) which means that the plan of management for the special areas covered by the regulation must be prepared by 31 December 1996.

A main issue in submissions to the Minister and at the inquiry was whether the making of the regulation should have been postponed under Section 11 of the Subordinate Legislation Act so as to allow the development of the regulation concurrently with the preparation of the management plan.

In evidence before the inquiry Messrs Swan and O'Keefe, on behalf of Sydney Water, acknowledged this was an option but opposed it on 3 grounds. The first was that there were some provisions in the old regulation which did not suit anyone and which needed to be modernised. Mr Swan gave one example as a provision that prevented people gardening in Silverdale. If there was merit in postponing the regulation the Committee does not believe the existence of some anomalous provisions is really significant, particularly as Attachment 1 to the Minister's Briefing Notes states these restrictions were not being enforced. The second point was that preliminary consultation by Sydney Water with the Cabinet Office showed postponement was not a favoured option. This point refers to the number of other regulations that were also subject to the staged repeal or sunsetting provisions of the Subordinate Legislation Act. In May 1993 the Premier issued a Memorandum to all Ministers which contained guidelines relating to the staged repeal process. The Committee has examined that Memorandum and it cannot see where

the Guidelines would have excluded the postponement of the regulation on the basis of a need to prepare it in conjunction with the management plan for special areas.

The third point, put forward by Mr O'Keefe, was the uncertain time frame for the introduction of the plan of management. Mr O'Keefe said that although the joint sponsors were obliged to draw up a management plan within 2 years the actual promulgation of it was in the hands of the Minister. Later in his evidence Mr O'Keefe made a further point concerning the function of the plan of management:

MR O'KEEFE:

> *"There is one further point I wish to make, and that is that much has been made of the corporation's pre-empting, or failing to wait for, the outcome of the plan of management process. I wish to point out to this Committee that the plan of management is not a regulatory instrument in the strict sense. It is essentially an administrative document for use by the respective agencies, that is, Sydney Water and National Parks, as a planning aid. Sydney Water still requires a regulation to properly discharge its management requirements and meet the obligations imposed on it by the Water Board Corporatisation Act and by the operating licence and to meet the onerous obligations of catchment management*

imposed by the guidelines referred to by Mr Jefferis this morning."

The joint sponsors have already had 1 year to prepare the management plan and one would have expected that it would have been well advanced even at the date of gazettal of the present regulation (25 August 1995). However, no mention was made of the state of preparedness of the plan either in Sydney Water's evidence or supporting papers. The tenor of some of Sydney Water's evidence, particularly that of Mr O'Keefe, seemed directed towards playing down the significance of the management plan.

Under Section 87 a plan of management for a special area must be given effect to by Sydney Water. No operations can legally be undertaken by Sydney Water in relation to those special areas unless the operations are in accordance with the plan. The present regulations have been brought in to support the functions and obligations of Sydney Water in matters relating to interference with water, pollution and disease control on special areas and controlled areas. Special areas are central to the operations of Sydney Water as they are areas whose control is certified by the Minister to be necessary for protecting the quality of stored water and maintaining the ecological integrity of an area consistent with the corporation's obligations to provide, operate and manage water storages.

In the Committee's view the role of these regulations is crucial to the effective operations of Sydney Water. The regulations therefore have a corresponding relevance to the management plan. Mr O'Keefe conceded this connection in his evidence. The Committee can see no reason, if the opportunity was present, why these regulations should not have been developed at the same time as the management plan.

The remaining concern against this course put forward on behalf of Sydney Water was the uncertainty of the date at which the Minister would adopt the plan prepared by the joint sponsors. It would seem to the Committee that the Minister, in deciding when to adopt a management plan, would have regard to the obvious intent of Parliament that it be done expeditiously. That intent is clear from the important reasons requiring a declaration of a special area under Section 81 and the maximum time limit of 24 months allowed under Section 86 for the preparation by the sponsors of a management plan in regard to existing special areas. **The Committee has reached the conclusion that there existed a justified case for the postponement of repeal of this regulation so that the new regulation could be prepared concurrently with the management plan. Although this opportunity has been lost, the existing regulation should, in the Committee's opinion, be the subject of review in accordance with the recommendations in this report.**

12) RECOMMENDATIONS OF COMMITTEE

(1) **The Committee recommends that Sydney Water Corporation Limited should develop arrangements to ensure adequate consultation takes place with relevant interest groups on future regulatory proposals.**

(2) **The Committee recommends that a formal cost-benefit assessment of the Sydney Water Corporation Limited (Catchment Management)**

Regulation 1995 be carried out by Sydney Water Corporation Limited and that this be conducted in conjunction with the preparation of the management plan for the special areas covered by the regulation.

(3) The Committee recommends that clause 8 of the regulation be referred to the Parliamentary Counsel for review because of its lack of procedural fairness.

(4) The Committee recommends that the existing controls on access to Schedule 1 Special Areas should not be materially relaxed unless it is demonstrated, after an appropriate impact study, that it is practicable to do so without compromising the obligations of Sydney Water Corporation Limited to protect the quality of stored water.

(5) The Committee recommends that Clauses 16, 19, 20 and 21 be amended to properly reflect the permissible recreational activities that Sydney Water Corporation Limited agreed, during the course of the inquiry, could be carried on in Schedule 2 areas.

(6) The Committee recommends that a provision be included in the National Parks & Wildlife (Land Management) Regulation 1995 to alert the public to the need to read its provisions as being subject to the Sydney Water Corporation Limited (Catchment Management) Regulation 1995.

(7) The Committee recommends that the joint sponsors prepare a detailed strategy to promote compliance with the Sydney Water Corporation Limited (Catchment Management) Regulation 1995 if this has not already been done. This should be carried out in conjunction with a review of the regulations and development of the management plan.

(8) The Committee recommends that Sydney Water Corporation Limited carry out an examination of the impact on stored waters of activities conducted on private lands within Schedule 1 and 2 special areas and an appraisal of the effectiveness of existing planning controls in regulating, where necessary, those activities.

D J Shedden, MP
Chairman
Regulation Review Committee

Dated: 16 November 1995

WATER BOARD (CORPORATISATION) ACT 1994—REGULATION

(Sydney Water Corporation Limited (Catchment Management) Regulation 1995)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Water Board (Corporatisation) Act 1994, has been pleased to make the Regulation set forth hereunder.

CRAIG KNOWLES, M.P.,
Minister for Urban Affairs and Planning.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Sydney Water Corporation Limited (Catchment Management) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

"authorised person" means any of the following:

(a) an employee of the Corporation;

(b) an officer of the National Parks and Wildlife Service;

(c) a person authorised in writing by the Corporation;

(d) a police officer;

"Corporation" means Sydney Water Corporation Limited;

"Corporation land" means land owned by or vested in the Corporation;

"Crown land" means:

(a) Crown land within the meaning of the Crown Lands Act 1989; or

(b) land reserved as a national park under section 33 of the National Parks and Wildlife Act 1974;

"herbicide" means any substance capable of destroying, or preventing the spread of, any plants;

"pesticide" has the same meaning as in the Pesticides Act 1978;

"pollutant" has the same meaning as in the Clean Waters Act 1970;

"private land" means land other than:

(a) Corporation land; or

(b) Crown land; or

(c) Crown lands within the meaning of the National Parks and Wildlife Act 1974;

"**the Act**" means the Water Board (Corporatisation) Act 1994;

"**vehicle**" includes:

(a) any apparatus drawn or propelled wholly or partly by an animal, volatile spirit, steam, gas, oil, electricity or wind and which is wholly or partly used for the conveyance of persons or things;

(b) any trailer or caravan, whether or not it is in the course of being towed;

(c) any motor vehicle, motor carriage or motor cycle; and

(d) any cycle;

"**waste**" has the same meaning as in the Waste Disposal Act 1970.

Notes

4. Notes do not form part of this Regulation.

PART 2—REGULATION OF CONDUCT GENERALLY IN SPECIAL AREAS AND CONTROLLED AREAS

Application of Part 2

5. This Part (clause 11 excepted) applies to all special areas and controlled areas and to any part of a special area or controlled area.

Interference with water prohibited unless approved

6. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval, dam, divert or take any water from which the Corporation draws its supply or that is available for supply by the Corporation, if that water is in a special area or a controlled area.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Certain forestry operations prohibited unless approved

7. (1) A person must not, except with the Corporation's approval and in compliance with any conditions of the approval, carry out any forestry operations that are likely to pollute or contaminate waters or land in a special area or a controlled area.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

(2) Subclause (1) does not apply to land in respect of which there is in force a consent to a development application made under the Environmental Planning and Assessment Act 1979 for consent to carry out development involving the forestry operations concerned if the consent was granted:

(a) by the Corporation as consent authority under that Act; or

(b) with the concurrence of the Corporation pursuant to section 30 of that Act.

(3) In this clause, "**forestry operations**" include arboriculture, silviculture, forest protection, the cutting, dressing and preparation, other than in a sawmill, of wood and other forest products and the establishment of roads required for the removal of wood and forest products and for forest protection.

Control of pollution and disease in special areas and controlled areas

8. **(1)** A person must not, except with the Corporation's approval and in compliance with any conditions of the approval, bring into or leave in a special area or a controlled area any pollutant or waste.

(2) The owner or occupier of land in a special area or a controlled area must not erect, install or operate any sewage collection, treatment or disposal system on the land unless:

(a) the system complies with any standards for such systems approved by the Corporation and notified to the person; and

(b) the system is erected, installed or operated in compliance with any conditions imposed by the Corporation in respect of the system or of such systems in general.

(3) A person must comply with any direction given by the Corporation or an authorised person for:

(a) the disposal of any pollutant or waste in a special area or a controlled area, or of any other substance that is in a special area or a controlled area and that the Corporation considers may detrimentally affect any water in the area; or

(b) the removal of any such pollutant, waste or other substance from a special area or a controlled area.

Maximum penalty (subclauses (1), (2) and (3)): 100 penalty units in the case of a corporation, 10 penalty units in any other case.

(4) The Corporation may give to the owner of land in a special area or a controlled area a direction in writing requiring the owner to remove any building or works on the land to such place, and by such date, as the Corporation may direct if the Corporation has reasonable grounds for believing that the direction is necessary to prevent or minimise pollution of water to be supplied by the Corporation.

(5) The owner must comply with any such direction.

Maximum penalty (subclause (5)): 100 penalty units in the case of a corporation, 10 penalty units in any other case.

(6) A person (including a body corporate) who becomes aware that any person, animal or property in a special area or a controlled area is carrying, infected with or affected by any water-borne infectious disease must notify the Corporation of that fact within 24 hours after first becoming so aware.

Maximum penalty (subclause (6)): 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Stock control in special areas and controlled areas

9. **(1)** The owner or person in charge of any stock must ensure that the stock does not enter any Crown land, or Corporation land, in a special area or a controlled area unless the Corporation has approved the entry of the stock to the land concerned.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

(2) An authorised person may take any of the following actions if stock enters any such land without the Corporation's approval:

(a) drive the stock away, or remove the stock, from the land;

(b) impound, sell, destroy or otherwise dispose of the stock.

(3) If an authorised person takes any such action:

(a) the owner and person in charge of the stock are jointly and severally liable to the Corporation for all costs incurred by the Corporation as a result of the action being taken; and

(b) the Corporation may recover the amount of those costs from the owner or person in charge as a debt due to the Corporation.

Information requested by authorised person

10. A person must not give to an authorised person any false or misleading information, knowing it to be false or misleading, in response to a request for information by the authorised person in the course of exercising the functions of an authorised person in relation to a special area or a controlled area.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Investigation of suspected contraventions

11. (1) This clause applies to all land (other than private land) in a special area or a controlled area.

(2) An authorised person who has reason to believe that a person on land to which this clause applies has in his or her possession or control, in contravention or because of a contravention or intended contravention of this Regulation, any matter or thing may direct the person:

(a) to surrender the matter or thing into the authorised person's possession and control; or

(b) to make any vehicle or receptacle in the person's possession or control available for inspection by the authorised person for the purpose of investigating the suspected contravention or intended contravention.

(3) A person given a direction referred to in subclause (2) must comply with it.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Fees and charges

12. (1) The Corporation may from time to time determine the fees or charges payable in respect of the entry by persons or vehicles on such Corporation land as constitutes a special area or a controlled area or any part of a special area or controlled area.

(2) A person who is liable to pay fees or charges so determined may be denied entry to the land concerned unless the fees or charges are paid on request by an authorised person.

(3) An authorised person may direct a person who has entered such land without paying the relevant fees or charges to leave the land.

(4) A person given a direction referred to in subclause (3) must comply with it.

Maximum penalty: 2 penalty units.

PART 3—ADDITIONAL REGULATION OF CONDUCT IN PORTIONS OF CERTAIN SPECIAL AREAS

Application of Part 3

13. **(1)** This Part applies only to the parts of the land identified in Schedule 1 that are not private land.

(2) In this Part, the land to which the Part applies is referred to as "Part 3 land".

(3) This Part does not limit the operation of any other provision of this Regulation in the provision's application to any Part 3 land.

Entry on Part 3 land

14. A person must not enter or remain on Part 3 land except:

(a) with the Corporation's approval; and

(b) in compliance with any conditions of the approval.

Maximum penalty for an offence under paragraph (a): 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Maximum penalty for an offence under paragraph (b): 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Fishing on Part 3 land

15. A person must not fish in any water on Part 3 land.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

PART 4—ADDITIONAL REGULATION OF CONDUCT IN SPECIFIED SPECIAL AREAS

Application of Part 4

16. **(1)** This Part applies only to the parts of the land identified in Schedule 1 or Schedule 2 that are not private land, except as otherwise provided in this Part.

(2) In this Part, the land to which the Part applies is referred to as "Part 4 land".

(3) This Part does not limit the operation of any other provision of this Regulation in the provision's application to any Part 4 land.

Conduct prohibited on Part 4 land unless authorised

17. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:

(a) drive or ride any vehicle or ride or lead any animal onto or on Part 4 land; or

(b) bring onto or have in the person's possession on Part 4 land any plant or part of a plant, or any animal, that is not native to the special area concerned; or

(c) bring onto or have in the person's possession on Part 4 land any firearm or prohibited weapon (within the meaning of the National Parks and Wildlife Act 1974) unless the person is a police officer acting in connection with the performance of that person's duties as such an officer; or

(d) land any aircraft (including an ultra-light aircraft, hang-glider and balloon) on Part 4 land; or

(e) sell or offer for sale any goods on or by any public road on Part 4 land.

Maximum penalty for an offence under paragraph (a), (b), (c) or (d): 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Maximum penalty for an offence under paragraph (e): 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Gates to Part 4 land not to be opened

18. A person must not open any gate, or remove any barrier to entrance, to any Part 4 land except:

(a) with the Corporation's approval; and

(b) in compliance with any conditions of the approval.

Maximum penalty for an offence involving the opening of a gate: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

Maximum penalty for an offence involving the removal of a barrier to entrance: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Swimming and sailing on Part 4 land

19. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:

(a) swim or wash in or cause any animal, animal matter, plant or plant matter to enter or remain in any water on Part 4 land; or

(b) drive, row, sail or paddle any boat or other water-borne craft on any such water.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Camping on Part 4 land

20. (1) The Corporation may, by means of signs displayed on or adjacent to any portion of Part 4 land, designate the portion as land available for camping.

(2) The Corporation may impose conditions, not inconsistent with the Act or this Regulation, subject to which a person may:

(a) camp on a portion of Part 4 land designated as land available for camping; or

(b) camp on any Part 4 land identified in Schedule 2 that is not so designated.

(3) A person must not camp on Part 4 land unless:

(a) the land concerned:

(i) is land identified in Schedule 2; or

(ii) is land designated in accordance with subclause (1) as land available for camping; and

(b) the person complies with any conditions imposed pursuant to subclause (2); and

(c) in the case of land designated as land available for camping—the person pays the charges (if any) payable in respect of the person's camping on the land.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

(4) In this clause, **"camp"** means reside temporarily, whether or not in a tent, caravan, cabin or other structure.

Fires on Part 4 land

21. A person must not:

(a) light any fire on Part 4 land elsewhere than in a fire place approved by the Corporation; or

(b) do anything on Part 4 land that may cause a fire to be on that land elsewhere than in a fire place approved by the Corporation,

unless the fire is lit, or the thing is done, with the Corporation's approval and in compliance with any conditions of the approval.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Fires on certain private land

22. (1) This clause applies to those parts of the land identified in Schedule 1 or Schedule 2 that are private land.

(2) The occupier of any land to which this clause applies must not burn any bush, stubble, timber, trees, grass or other material on the land for the purpose of clearing the land or burning a fire break unless the occupier has given the Corporation at least 24 hours' notice of the proposed burning.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Pesticides and pest control on Part 4 land

23. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:

(a) bring onto, or use or keep on, Part 4 land any pesticide or herbicide; or

(b) take steps to control or eradicate by the use of pesticides or herbicides any feral animal, animal pest or noxious weed on Part 4 land.

Maximum penalty: 50 penalty units in the case of a corporation, 5 penalty units in any other case.

No interference with flora and fauna on Part 4 land

24. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:

(a) damage any tree or part of a tree on Part 4 land or remove any tree or part of a tree from such land; or

(b) damage or pick any plant (including a shrub) or part of a plant on Part 4 land or remove any plant or part of a plant from such land; or

(c) remove any rock, soil, sand, stone or similar substance within or from Part 4 land; or

(d) destroy, capture, injure, annoy or interfere with any animal, or interfere with the habitat of any animal, in Part 4 land.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

Animal husbandry on Part 4 land

25. (1) This clause applies to all land identified in Schedule 1 or Schedule 2 (including private land).

(2) A person must not, within 100 metres of any stream, reservoir or water course on land to which this clause applies, erect, maintain or use any cow yard, poultry house, animal feed lot, stockyard or stable.

(3) A person must not, on land to which this clause applies, maintain, use or erect any structures for any intensive animal feed lot, intensive poultry operation, trout farm or other concentrated agricultural activity identified by the Corporation by publication of a notice in the Gazette as a hazard to water to be supplied by the Corporation unless:

(a) with the Corporation's approval; and

(b) in compliance with any conditions of the approval.

Maximum penalty: 100 penalty units in the case of a corporation, 10 penalty units in any other case.

PART 5—MISCELLANEOUS

Notice by public agencies

26. For the purposes of section 84 (1) of the Act, notice given to the Corporation:

(a) must be in writing; and

(b) must be served (by post or by lodging it at an office of the Corporation) on the Corporation; and

(c) must contain a full description of the proposed activity and a statement of the objectives of the proposed activity; and

(d) must give at least 28 days' notice of the commencement of the proposed activity.

Repeal

27. (1) The Water Board (Special Areas) Regulation 1989 is repealed.

(2) Any act, matter or thing that was done for the purposes of or, immediately before the repeal of the Water Board (Special Areas) Regulation 1989, had effect under that Regulation is taken to have been done for the purposes of or to have effect under this Regulation.

SCHEDULE 1

(Cll. 13, 16, 22 and 25)

Special Areas

The following special areas, being portions of land, as shown coloured pink on the map marked "Schedule 1 Areas" deposited at the offices of the Corporation:

(a) such portions of special areas as the Corporation may determine from time to time and notify by signs erected on the portions concerned;

(b) the area of land surrounding the stored water in Lake Burragorang extending from the full supply level of the Lake for a distance of 3 kilometres;

(c) the catchment areas of Broughton's Pass Weir, Pheasant's Nest Weir and Woronora Dam to the extent that they are not contained in the proclamations referred to in paragraphs (d) and (e);

(d) Metropolitan Catchment Area as proclaimed in Gazette No. 79 of 13 July 1923 and amended by proclamation published in Gazette No. 79 of 26 May 1933;

(e) Woronora Catchment Area as proclaimed in Gazette No. 37 of 21 March 1941;

(f) Wingecarribee Catchment Area as proclaimed in Gazette No. 156 of 14 December 1973;

(g) Blackheath Special Area proclaimed 6 March 1991;

(h) Katoomba Special Area proclaimed 6 March 1991;

(i) Woodford Special Area proclaimed 6 March 1991.

Prospect Reservoir

Prospect reservoir and the area of land surrounding the reservoir, as shown coloured red on the map marked "Prospect Reservoir—Schedule 1 Area" deposited at the offices of the Corporation.

Controlled Areas

Such of the Corporation's land as contains water transfer structures (being canals, tunnels, pipelines, water mains or drainage channels) (being controlled areas).

Note

Section 88 (3) of the Water Board (Corporatisation) Act 1994 provides as follows:

(3) The lands referred to in Schedule 1 to the Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this section (but excluding the lands referred to in the first paragraph, including paragraphs (a)-(c), and the second paragraph of that Schedule) are taken to be the subject of an order declaring them to be a controlled area, despite anything in section 81 (3).

Schedule 1 to the Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of section 88 provides as follows:

The following portions of land, as shown coloured pink on the map marked "Schedule 1 Areas" deposited at the offices of the Board:

(a) such portions of special areas as the Board may determine from time to time and notify by signs erected on the portions concerned;

(b) the area of land surrounding the stored water in Lake Burragorang extending from the full supply level of the Lake for a distance of 3 kilometres;

(c) the catchment areas of Broughton's Pass Weir, Pheasant's Nest Weir and Woronora Dam.

Prospect reservoir and the area of land surrounding the reservoir, as shown coloured red on the map marked "Prospect Reservoir—Schedule 1 Area" deposited at the offices of the Board.

Water transfer structures (being canals, tunnels, pipelines, water mains or drainage channels) on Board land.

SCHEDULE 2

(Cll. 16, 20, 22 and 25)

Special Areas

The following special areas:

(a) Fitzroy Falls Catchment Area as proclaimed in Gazette No. 11 of 4 February 1977;

(b) O'Hares Creek Catchment Area as proclaimed in Gazette No. 51 of 14 April 1927 and amended by proclamation published in Gazette No. 178 of 21 September 1934;

(c) Richmond Catchment Area as proclaimed in Gazette No. 113 of 8 October 1971;

(d) Shoalhaven Catchment Area as proclaimed in Gazette No. 13 of 8 February 1974;

(e) Warragamba Catchment Area as proclaimed in Gazette No. 122 of 4 September 1942 and amended by proclamations published in Gazettes Nos. 1 of 1 January 1944 and 77 of 4 August 1944,

except the parts of those areas that are listed in Schedule 1.

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SCHEDULE 1
SCHEDULE 2

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, in substantially the same form, the Water Board (Special Areas) Regulation 1989 (which was continued in force by the Water Board (Corporatisation) Act 1994).

The new Regulation deals with the following matters:

(a) the regulation of conduct generally in special areas and controlled areas (Part 2);

(b) the additional regulation of conduct in parts of certain special areas (Part 3 and Schedule 1);

(c) the regulation of conduct in specified special areas (Part 4 and Schedule 2);

(d) other minor, consequential or ancillary matters (Parts 1 and 5).

This Regulation is made under the Water Board (Corporatisation) Act 1994, including sections 85 (Regulations concerning special areas), 89 (Regulations concerning controlled areas) and 106 (the general regulation-making power) and Schedule 9 (Savings, transitional and other provisions).

This Regulation is also made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

APPENDIX 2

Proposed Regulations under the Water Board (Corporatisation) Act 1994

Catchment Management

July, 1995

Sydney
WATER

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draft regulation 11

INTRODUCTION

Sydney Water proposes to renew a number of regulations under the Water Board (Corporatisation) Act 1994. The need to renew these regulations stems from the statutory obligation imposed by the New South Wales Subordinate Legislation Act, which requires all regulations in New South Wales to be reviewed every five years.

The current regulations involved in this mandatory review process are the Water Board (Special Areas) Regulation 1989; Water Board (Finance) Regulation 1988 Part 1, clauses 11 and 12 of Part 2, and Part 4; and Water Board (Plumbing and Drainage) Regulation 1989, Parts 1 and 2 and clause 24.

It is proposed to remake these regulations as the Sydney Water Corporation Limited (Catchment Management) Regulation 1995, Sydney Water Corporation Limited (Finance) Regulation 1995 and Sydney Water Corporation Limited (Plumbing and Drainage) Regulation 1995 respectively in substantially similar terms.

A 21-day public consultation period is required by the Subordinate Legislation Act for making this regulation. Enclosed is both a copy of the proposed regulation and a Regulatory Impact Statement drawn-up in terms required by that Act. If you would like your views considered, or if you have any questions about the proposed regulation, please write to:

Reply Paid 147
Government Relations
Sydney Water
Level 22
115 - 123 Bathurst St
Sydney NSW 2000
(No stamp is required)

To ensure that your views are considered before the regulation is made, please ensure we receive your feedback by Monday 31 July 1995.

the supply of drinking water to its customers and other members of the public in accordance with an operating licence.

Section 81 of that Act in particular makes clear that the purpose of Special Areas is to: (a) protect the quality of stored waters, whether intended for use for drinking or other purposes; and (b) to maintain the ecological integrity of the special area in a manner that is consistent with the Corporation's obligations to provide, construct, operate, manage and maintain storages under any operating licence. Section 84 gives the Corporation the statutory right to be consulted in relation to proposed activities by public agencies in special areas, including approvals by Councils to developments, while section 86 requires the Corporation to enter into joint plans of management with the National Parks and Wildlife Service concerning the special areas. Clause 5.3 of Sydney Water's Operating Licence further required it to regularly review plans of management to ensure that the objectives for special areas are maintained.

- The purpose of making regulations as proposed is to complement the statutory powers of the Corporation to review activities occuring in the special areas, and to give effect to its obligations to ensure the quality of stored waters and ecological integrity of these areas. Unlike the statutory review powers and plans of management effected by the Act, the proposed regulation permits the Corporation to particularly manage the activities of individuals in the catchments, rather than the planning and approval processes of other government agencies. This is of particular advantage in managing day-to-day activities.

The proposed regulation broadly involves restrictions on performance of activities in Special Areas and total prohibition of entry to sensitive Special Areas (being small catchment areas e.g. Woronora and/or part of Special Areas close to stored waters e.g. within 3 km of Lake Burragorong).

The proposed regulations are broadly similar to the existing regulations. The chief differences are:

- a refinement of application to cut down on unnecessary regulation of lands not owned by Sydney Water or National Parks to reflect the community's primary expectation that the Corporation should be mainly concerned with management of its catchments. Land Use regulation of land not owned by the Corporation is controlled by local government authorities and other agencies. Sydney Water has a direct statutory input into the decisions of those agencies in relation to water quality.

- Inclusion of small Blue Mountain Catchments, Blackheath, Katoomba and Woodford and the Wingecarribee Catchment as Schedule 1 Special Areas. This will have the effect of more tightly restricting entry and activity in the immediate vicinity of these storages. The Blue Mountains Catchment is the predominant source of Upper Blue Mountains supply.

  The Wingecarribee Special Area is the sole source of Bowral's water supply. They are small in area (Blackheath 7 kms, Katoomba 5 kms, Woodford 9 sq kms and

Wingecarribee 7 sq kms) and are abutted by residential lands or small rural holdings. Professional advice from Catchment Managers is that the lack of buffering for these areas dictates a strongly exclusionary management policy.

- Introduction of $100.00 "On the Spot Fines" for offences against the Regulation. This will make administration of the regulation more cost effective for the community. The administrative cost of the alternative - to proceed in court - is around $1,200 per summons. The regulation is proposed to apply over a five year period which is the maximum period allowed by the Subordinate Legislation Act, 1989.

Option 1 and Option 2 are nearly identical in cost. The direct financial cost to Sydney Water and the community of these options is indicated by the current cost of catchment management to the Corporation, which was approximately $2.2 million in 1994/95. The introduction of "On the Spot Fines" as per Option 1 will reduce enforcement costs otherwise associated with Option 2, with prosecution costs of around $1,200 for each Summons issued in the Local Court rather than by direct fine as proposed in Option 1. Catchment Managers advise that incursions into Special Areas are increasing. The immediate deterrent effect of "On the Spot Fines" is therefore considered a necessary management tool. Option 1 is favoured over Option 2 as it will lessen Regulatory Impact on privately owned land and place a sharper focus on effective management of pristine catchments.

Options 1 and 2 satisfy Sydney Water's statutory obligations under the Water Board (Corporatisation) Act 1994 (sections 21, 22, 81, 84 and 86) and Operating Licence (clause 5.3)

6. Impact assessment of Option 3 - allow current regulation to lapse

Generally speaking, the poorer the water quality the more expensive it is to treat it to a level which conforms with drinking water quality standards. Existing strict levels of protection, particularly in the immediate vicinity of the storages within Schedule 1 areas has secured an availability of a supply of a quality which few major urban systems in the world could better.

Option 3 (no regulation) still carries a significant compliance cost if exclusionary policies are to be maintained on Sydney Water's lands. The costs of all three options basically reflect the cost of selective fencing of special areas and maintaining security, minimising pests and ensuring bushfire protection by means of regular patrols. While the cost of these current functions carried out under regulation are indicated by the order of costs for Options 1 and 2 at approximately $2.2 million per annum, Option 3 would be anticipated to carry a signficantly greater cost to accommodate the greater rate of incursion into the catchment areas and additional co-ordination required of different agencies and catchment managers. Option 3 would also entail the community cost of the deterioration in raw water quality due to lax catchment protection and an escalation in compensating water treatment costs.

APPENDIX 3

Regulation Review Committee

PARLIAMENT OF NEW SOUTH WALES

Parliament House
Macquarie Street
Sydney, NSW 2000
Tel. (02) 230 3050
Fax (02) 230 3052

Our Ref: 2351

The Hon C J Knowles, MP
Minister for Urban Affairs and Planning
and Minister for Housing
12th Floor, Westfield Towers
100 William Street
SYDNEY NSW 2000

11 OCT 1995

Dear Mr Knowles

Water Board Corporatisation Act 1994 -
Sydney Water Corporatisation Limited (Catchment Management) Regulation 1995

My Committee recently considered the above regulation, the object of which is to repeal and remake the Water Board Special Areas Regulation 1989. My Committee met with representatives of the Colong Foundation, the National Parks Association and the Confederation of Bushwalking Clubs, at their request, at the Committee's meeting of 7 September 1995 to discuss this regulation. A copy of their submissions are attached. My Committee seeks your views on the issues raised in these submissions. You will note that one of the major issues raised in the submission is the need for a plan of management.

It is understood that the Board will be developing the plan of management as required for special areas under Section 86 of the Act, this plan of management will only apply to areas within National Parks or those lands directly controlled by the Board. Other Crown lands and private lands would not be covered by the plan of management. If this is the case then the plan of management may not be an adequate way of addressing the regulatory management of the whole catchment as envisaged by the above group. This would mean that the regulatory management of Board and National Parks lands will be pursued along different lines to other areas for which no plan of management can be prepared under the Act. The Board might also address this issue.

My Committee has also noted some press commentary to the effect that the Managing Director was seeking legal advice on the illegality of residents using roads. My Committee would welcome a copy of such advice.

It is noted that the Regulation contains a clause 8(4) permitting the Corporation to direct landowners in a special area to remove any buildings or works if the Corporation has reasonable grounds for believing this direction is necessary to prevent or minimise pollution.

This type of regulation was disallowed by Parliament in 1990 on the grounds that it made no provision for procedural fairness, appeals or compensation. The disallowance took place on the motion of the Chairman of the Regulation Review Committee (Report No 7 May 1990). My Committee would accordingly request its repeal.

My Committee has also considered the regulatory impact statement for the regulation which assesses only three options: to introduce the proposed catchment management regulation program, retain the existing special areas regulation, or make no regulation at all. Instead of these general options the substantive provisions of the regulation itself should have been assessed in the RIS. For example provisions such as clause 14 which are likely to have a significant impact on persons who wish to cross the catchment areas should have been assessed. My Committee also notes that the first two options are assessed jointly, and that there is no quantification of their costs and benefits except in respect of the proposal for on-the-spot fines which was not proceeded with. There has been no consideration of the specific impact of restricting access to the catchment. The overall assessment contains no quantified comparison of the respective options.

On Friday 8 September 1995 Sydney Water provided the Committee with the Regulatory Impact Statement and submissions on it together with details of the consideration of those submissions. The material included a briefing note on a special briefing session by Sydney Water and Ministerial staff on the regulation on 29 August 1995. The briefing note, which was prepared for the Minister by the Managing Director, states as follows:

> *"I wish to inform you that in response to several submissions from various catchment user groups concerned at the impact of the Catchment Management Regulation 1995, officers of Sydney Water and representatives of several user groups met on Tuesday 29 August 1995. Representatives of the National Parks Association (Graham Douglas), The Confederation of Bushwalking Clubs (Andy McQueen and Morris Smith), the Total Environment Centre (Milo Dunphy and Alex Colley), and the Kowmung Committee (Keith Muir) attended the meeting.*
>
> *The meeting provided for a wide ranging discussion and exchange of views. While there was general agreement on the impact and direction of substantial parts of the regulation, as gazetted, it was agreed that there was a need for further dialogue to clarify some parts of the regulation and to develop guidelines for interpretation of the new regulation by both Sydney Water officers and catchment users.*
>
> *The main outcome of the meeting was an agreement to commence discussions with a view to clarifying matters of concern arising from the regulations and other general catchment access issues. All those present are considering what other groups should be involved in discussions so that feedback can be gathered from and given to the community on catchment access issues.*

Should you wish I will report to you on these ongoing discussions."

It would appear from this briefing note that further dialogue will be undertaken to clarify some parts of the regulation and develop guidelines for interpretation of the new regulation. This suggests the terms of the regulation may not be sufficiently clear for the purposes of Sydney Water officers and the general public. This seems to attest to the hurried preparation of the regulation. You may wish to arrange for administrative procedures to be put in place so that adequate time can in future be given to the finalisation, including consultation, of those regulations affected by the staged repeal process.

Yours sincerely

Mr Doug Shedden, MP
Chairman

APPENDIX 4

MINISTER FOR URBAN AFFAIRS AND PLANNING

MINISTER FOR HOUSING

Level 33 Governor Macquarie Tower
1 Farrer Place
SYDNEY 2000

Phone: (02) 228 4499
Fax: (02) 228 3717

YOUR REF:

OUR REF:

20 October 1995

Mr Doug Shedden MP
Chairman, Regulation Review Committee
Parliament of New South Wales
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Mr Shedden

Water Board (Corporatisation) Act 1994 - Catchment Management Regulation

Thank you for your recent advice about Sydney Water's Catchment Management Regulation. I provide some preliminary information below to assist your deliberations, and as has been discussed with your office, representatives from Sydney Water will attend a meeting with you on Thursday 26 October 1995 to clarify the issues with you further.

Plans of Management

You raised the issue whether the proposed Joint Plans of Management between Sydney Water and the National Parks and Wildlife Service ("the joint sponsors") under section 86 of the Act will only apply to Corporation and Service land, and not other land in the special areas, and the possibility that the Catchment Regulation will be in danger of instituting a different management approach to these other lands.

Under the Act, the Joint Plans of Management have no legal force to affect land in the catchments other than the joint sponsors otherwise have under their respective Act and regulations. In the case of Sydney Water, this means its powers of referral and approval of developments and activities proposed in the special areas under Division 10 of Part 6 of the Water Board (Corporatisation) Act plus the Catchment Management Regulation itself. NP&WS will presumably contribute to the joint plan its powers under the National Parks and Wildlife Act and regulations thereunder.

The powers that each joint sponsor has available to it in the catchments accordingly affect land either owned by them, and to the extent determined in relevant legislation and regulations, other land in the catchments. The Joint Plans of Management, therefore, will operate as an integrated strategic management plan, which will draw on the relevant powers that the Corporation and Service have as private land owners and as bodies endowed with specific statutory powers. The Plans of Management, however, will not act as a substitute for either the Catchment Management Regulation nor any other enabling powers that the joint sponsors will need to draw on to give effect to the plans.

The use of roads by residents

You have sought Sydney Water's legal advice of the Regulation's impact on the use of roads in the special areas by private residents. I am advised that the Regulation does not affect the use of public roads in the special areas which are outside the definition of Crown Lands. Of course, private roads such as those maintained on freehold land owned by the Corporation or other land holders are subject to the normal rules of common law and are subject to the Catchment Management Regulation.

Directions to remove buildings, etc on private land

You raised the issue that clause 8(4) of the Regulation, which permits the Corporation to direct land owners in a special area to remove any building or work if the Corporation has reasonable grounds for believing this direction is necessary to prevent or minimise pollution, should provide for procedural fairness, appeals or compensation. Your Committee requests repeal of this provision.

I have requested Sydney Water staff to review this provision and provide me with advice as to the need for this provision in terms of the public interest and options for giving effect to the policy intent in line with Sydney Water's status as a corporatised operator of water related services.

Assessment of the regulatory impact of substantive provisions

You raised a range of issues about the drafting of the Regulatory Impact Statement and the assessment of the proposed regulatory rule versus retention of the pre-existing Special Areas Regulation with consideration of the specific impact of restricting access to the catchment.

It is important to consider in the context of assessing the Regulatory Impact Statement, particularly the differentiation of Option 1, the proposed rule, with Option 2, retention of the pre-existing regulation, that the proposal was essentially one to renew the pre-existing regulation, with as minor modification as possible to bring it up-to-date with current management practices and accepted norms in the community for the conduct of a water corporation. The finer assessment of costs and benefits between options 1 and 2 was obscured by the inability to assess the application of such regulations afresh or in the absence of any such regulatory intervention in the past.

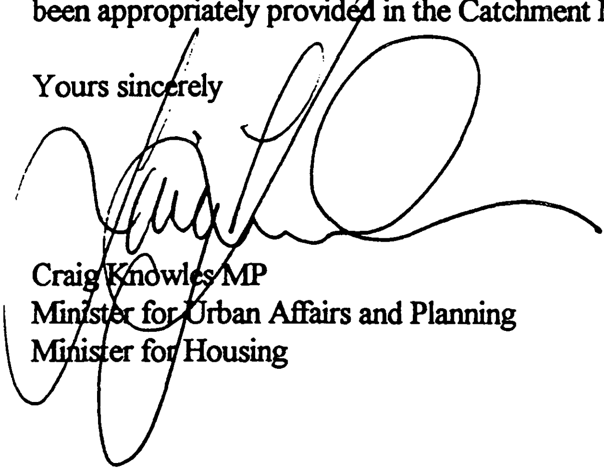
The assessment of the need for restricting access to the catchment was described upfront in the Statement, in-line with the previous regulation's intent, as giving effect to the Corporation's obligations to ensure the quality of stored waters and ecological integrity of these areas. This fundamental purpose has not changed. The impact on specific users of the catchment, such as bushwalkers, has also remained unchanged in the largest special area -- the Warragamba area -- and detailed discussions are proceeding to improve administrative arrangements such as signage of access conditions.

Clarity of purpose and procedures

You suggested that the terms of the regulation may not be sufficiently clear for the purposes of Sydney Water staff and the general public as to administrative procedures.

While the regulation does not spell-out all arrangements of an administrative nature, it is appropriate that these matters be left to development and modification in parallel to the regulation itself. The Catchment Management Regulation specifically contemplates the need for the principles contained in it to be defined in terms of administrative arrangements through the inclusion of discretions on the Corporation. This is so as to reflect the fact that not all cases of administrative application of the regulation may be able to be determined in advance, and that a flexible approach must be adopted to permit the appropriate application of the regulatory principles. This responsive form of regulation has been appropriately provided in the Catchment Management Regulation.

Yours sincerely



Craig Knowles MP
Minister for Urban Affairs and Planning
Minister for Housing

APPENDIX 5

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

MEMBER FOR MANLY

DR PETER MACDONALD

Electorate Office
35 Sydney Road
Manly 2095
Tel: (02) 97C 2773
Fax: (02) 97L 2993
Parliament House
Tel: (02) 230 2073
Fax: (02) 230 2945

25 October 1995

Doug Shedden, Chairman
Regulation Review Committee
NSW Parliament House
Macquarie Street
SYDNEY 2000

Dear Chairman,

Sydney Water Corporation Limited (Catchment Management) Regulation

I have been invited to make a submission on the above regulation. Unfortunately, debate on this regulation has been clouded by misinformation and political point scoring.

Contrary to the statements of the Minister in the House the regulation was not mandated by the Water Board (Corporatisation) Act 1994 rather it was required by the Subordinate Legislation Act. I informed the Minister of this before he addressed the House when I met with him to discuss the disallowance.

The corporatisation legislation does however refer to the making of plans of management for the catchment areas. These are to be prepared, in conjunction with the NPWS, by 1 January 1997. My public comments on this matter have been clear and can be summarised as follows:

1. The draft regulation represented a shift in regulatory emphasis that relaxed controls on private lands whilst imposing a more stringent regulatory regime on activities in public lands within the special areas (specifically by advocating on the spot fines);
2. I firmly believe that regulations for these areas should be considered a subset of the overall plan of management. Any regulation should be made contingent upon the preparation of the plans of management;
3. I am not convinced by arguments that the relaxation of controls on private lands is justified because activities are controlled by planning instruments, there are many activities private landholders can undertake without approval that might affect the catchment - the case for relaxation in these areas was not fully made out;
4. Whilst it may well be the case that bushwalking activities are of minimal relative impact, I believe that such determinations should be made during discussions on a plan of management. The precautionary principle should be applied until the environmental pros and cons can be publicly debated;
5. The motion for disallowance was premature, the member for Gosford should have awaited the deliberations of your committee.

In my view the committee should do what it can to ensure that this regulation is revisited during the management planning process, this could be done via insertion of a sunset clause. In the meantime the Minister has given an undertaking to consult with bushwalking groups about the regulation and I believe this is proper in the short term.

A copy of my letter to the Minister on the draft regulation is attached.

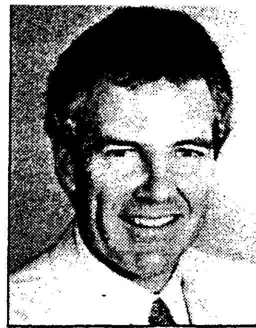
Yours sincerely

Dr Peter Macdonald
INDEPENDENT MP FOR MANLY

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

MEMBER FOR MANLY

DR PETER MACDONALD



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Our Ref: JC5387

9 August 1995

Hon. Craig Knowles
Minister for Urban Affairs and Planning
Level 33 Governor Macquarie Tower
1 Farrer Place
SYDNEY 2000

Dear Minister,

Sydney Water Corporation (Catchment Management) Regulation 1995

I am concerned both by the timing and detail of the above draft regulation.

Firstly, I do not see the necessity for this new regulation to precede the preparation of joint plans of management by Sydney Water and the National Parks and Wildlife Service. Surely the regulatory regime affecting the catchment should be developed as a necessary subset of overall catchment management.

The plans of management must be developed by end of next year and must undergo public scrutiny. I believe any change to the regulatory regime should be considered at this time.

Secondly, the regulation clearly represents a shift of regulatory emphasis focussing more on lands controlled by Sydney Water. I do not believe that, given the obligation of Sydney Water to protect the ecological integrity of catchments imposed by ss.21 and 81, Sydney Water should relax its control on land use activities within areas not owned by the Corporation.

It is true that Councils need to consult with Sydney Water in relation to applications for development approvals. Reliance on this power alone, however, will not allow for control of the myriad of activities permissible without development consent. I do not see how the suggested approach can be reconciled with a tougher attitude to similar activities within Sydney Water controlled lands.

Finally, a number of groups have complained to me about the lack of adequate consultation on this Regulatory Impact Statement citing both the short time for submissions and the lack of information justifying the shifts in regulatory emphasis. They believe, as I do, that a new regulation should await the preparation of a plan of management for the areas.

As such, I ask that you defer the gazetting of this regulation.

Yours sincerely,

Dr Peter Macdonald MP
INDEPENDENT MEMBER FOR MANLY

APPENDIX 6

Summary of the public consultation process

Consultation process for the Catchment Management Regulation

Advertisements were placed in the Sydney Morning Herald on Friday 7 July, Saturday 8 July and Monday 10 July, with the period for comment ending on 31 July. A copy of the advertisement is enclosed for reference.

Copies of the Regulatory Impact Statement were distributed to the following stakeholders at the beginning of the consultation period in accordance with the proposed plan stated in the Regulatory Impact Statement:

1. Director-General, National Parks and Wildlife Service
2. Shire Clerk, Wingecarribee Shire Council
3. General Manager, Shoalhaven Shire Council
4. General Manager, Blue Mountains City Council
5. Shire Clerk, Wollondilly Shire Council
6. General Manager, Wollongong City Council
7. General Manager, Hawkesbury City Council
8. Shire Clerk, Sutherland Shire Council
9. Chairman, Government Pricing Tribunal of NSW
10. General Manager, Mulwaree Shire Council
11. General Manager, Penrith City Council
12. General Manager, Fairfield City Council
13. Shire Clerk, Oberon Shire Council
14. General Manager, Blacktown City Council
15. General Manager, Campbelltown City Council
16. Chairperson, Australian Conservation Foundation
17. Chairperson, The Conservation and Wildlife Society
18. Ms Brigit Dowsett, Australian Conservation Foundation
19. Mr Paul Cruickshank, Executive Director, Greening Australia (NSW) Inc
20. Mr Keith Muir, Total Environment Centre and Kowmung Committee
21. Chairperson, Western Sydney Network of Environment Organisations
22. Dr David Hughes, Coalition of Hawkesbury Nepean Groups for the Environment
23. Mr Sid Walker, Executive Officer, Nature Conservation Council of NSW
24. Mr Tim Tapsell, Australian Conservation Foundation
25. Mr Graeme Carrad, Co-ordinator, The Wilderness Society, Blue Mountains Branch
26. Mr Phil Foster, President, National Parks Association of NSW, Blue Mountains Branch
27. Mr Tom Fink, Chairperson, National Parks Association of NSW
28. Mr Michael Bland, Greenpeace

Additional copies were made available for inspection and collection at Sydney Water's 16 Customer Centres and Wastewater Source Control offices across the Sydney, Illawarra and Blue Mountains area. A central phone number, which appeared in the newspaper advertisements and Regulatory Impact Statements, was made available for members of the public to obtain additional copies. The following persons requested and were sent copies in this way:

29. R Creichton, Centre for Local Government, University of Technology Sydney
30. JL Morris, Westleigh
31. Mr Keith Muir, Colong Foundation

32. AD Ross, Camden
33. Dr D Day, Oyster Bay
34. Mr Fernance, Illawong
35. Mrs Myers, Kingsford
36. D Sheehan, Maroubra
37. P Gatward, Clayton Utz Solicitors
38. T McLaughlin, Friends of the Earth
39. J Scott, Georges Hall
40. I Glendenning, Kurringai Council
41. G Mackay, Environmental Services, Pacific Power
42. R Irvine, Department of Local Government
43. P Tuft, West Pymble
44. Dr P Nicholl, Australian National Audit Office
45. D Johnston, Newtown
46. Malcolm Hughes, Hawkesbury-Nepean Catchment Management Trust
47. J Cassells, Cowley Herne Solicitors, North Sydney
48. Chris Hartcher, Gosford
49. D Thurston, Haberfield
50. R Harvey, Engadine
51. J Wrigley, Camden
52. G Douglas, Narellan
53. K Price, Dulwich Hill
54. P Brownscombe, Epping
55. Forbes Rigby Pty Ltd, Wollongong
56. F Miller, Wingello
57. Michael Mobbs, Chippendale
58. J Stokes, Killara
59. R Bennett, Coledale
60. B Duvine, Lane Cove
61. Mr Kaapro, Austrlian Turf Grass Research Institute
62. G Hopkins, Dept of Urban Affairs and Planning
63. Dr B Hooper, Centre for Water Policy Research, University of New England
64. D Bock, Drummoyne
65. B Glass, Symonds Travers Morgan Consultants
66. Ms L Agersti, Bondi Beach
67. E Roka, Land Planning & Property, Landcom
68. G Taylor, South Australian Water Corporation
69. A&S Bushcare Services, Katoomba
70. I Sinclair, Wollondilly Shire Council
71. Mr Colquhoun, East Hills
72. Mr N Mani, Liverpool
73. K Holding, Eastwood
74. Craig Johnston, Public Interest Advocacy Centre
75. J Niland, Eastwood
76. Ms J Martin, Woodward Clyde, St Leondards
77. Mr R Chambers, St Ives
78. Mr Kashibrasad, Hornsby
79. S Cliffe, Thirroul

80. Mr F Mino, Schofields
81. Ms L Gett, Ashfield
82. Mr B O'Laughlin, Amco Pty Ltd
83. Dr Sharon Beder, Austinmer
84. Martins & Associates, Bondi Junction
85. Ms F Thorn, Eastwood
86. Mr D Wiggins, Haberfield
87. Jay Scott, Georges Hall
88. Yoland Stone, Mosman
89. Mr J Stening, ICI
90. Mr S Barnham, Sutherland
91. Dr G Roberts, City Rail
92. A Timmons, Dames & Moore, Nth Sydney
93. Ms H Spreadbough, Mosman
94. Dept of Public Works, Picton
95. Mr Murray, Wentworthville
96. Mr D Moss, Lane Cove
97. Mr P Coad, Hornsby Shire Council
98. Mr E Irvine, Picton
99. Ms J Whittaker, Dept of Land & Water Conservation
100. Mrs J Baker, Sydney Institute of Technology
101. Ms L Campion, Pendle Hill
102. Mr P Stewart, Cammeray
103. Mr R Armadh, Kinhill Metcalf & Eddy
104. Dr Liz Kernahan, Member for Badgery's Creek

Overleaf are details of submissions received from the public. In addition to receipt of submissions, the following persons attended a special briefing session with Sydney Water and Ministerial staff on the Regulation on 29 August 1995:

Grahame Douglas, National Parks Association
Andy MacQueen and Morris Smith, The Confederation of Bushwalking Clubs
Milo Dunphy and Alex Colley, Total Environment Centre
Keith Muir, Kowmung Committee

A copy of a briefing note on this meeting from the Managing Director to the Minister for Urban Affairs and Planning is attached for reference

Sydney
WATER

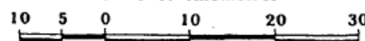
APPENDIX 7

WATER CATCHMENT LANDS

Special Areas covered by the Catchment Management Regulation

Lands described within Schedule 1 of the Catchment Management Regulation

Scale of Kilometres



APPENDIX 8

Briefing note on the proposed Sydney Water Corporation Limited (Catchment Management) Regulation 1995

Purpose of the Regulation

The Water Board (Special Areas) Regulation 1989, which regulates activities, conduct and access in water catchment areas, is due to be repealed on 1 September 1995 under the Subordinate Legislation Act.

Sydney Water proposes to renew this Regulation in line with sections 78-89 of the Water Board (Corporatisation) Act (WBC Act), clause 5.3 of the Operating Licence and objectives 21-26 of the Environment Plan.

The provisions of the current Special Areas Regulation are by and large rolled over into the proposed Catchment Management Regulation. The proposed Regulation will remove existing anomalies, strengthen some provisions in line with current catchment management practice and clarify some confusions in categorisation.

The proposed changes are described in more detail below and summarised in attachment 1.

The July 1995 discussion document *Proposed Regulations under the Water Board (Corporatisation) Act 1994 - Catchment Management* contains the proposed Regulation in full. A copy is attached.

Also attached, as attachment 2, is a table showing the amendments Sydney Water will make to the proposed Regulation as a result of submissions received.

Attachment 3 is a list of key comments on the proposed Regulation from green groups. Sydney Water received 10 submissions in all, but the most significant comments came from the green groups.

Legislative context

The WBC Act and Operating Licence contain specific provisions to ensure the water quality and ecological integrity of the catchments is preserved.

Sections 78-89 of the WBC Act, along with clause 5.3 of the Operating Licence and objectives 21-26 of the Environment Plan specifically commit Sydney Water to manage the catchment lands owned by it so as to preserve water quality and ensure the ecological integrity of the area.

Section 86 of the WBC Act requires Sydney Water and the National Parks and Wildlife Service to enter Joint Plans of Management for the Special Areas within 24 months after the commencement of the Act.

Section 82 (1) restricts alienation of land owned by the Corporation. Such land can only be sold to the Minister responsible for the National Parks and Wildlife Service or in other ways as authorised by an Act of Parliament. Additionally, the special areas cannot be expanded or contracted unless authorised by an Act of Parliament - s81(6).

In addition to the Corporation's right to comment on proposed activities and developments in the near vicinity of storages, a limited referral power was enshrined for the outer reaches of the catchments, which extend to the urban centres of Lithgow, Goulburn and Braidwood. Under section 78 of the WBC Act, councils will continue to be required to ensure that developers and building applicants refer their proposals to Sydney Water where there is potential for impact on Sydney Water's services or management of water storages in the catchments. Additionally, the Department of Urban Affairs and Planning will be issuing guidelines to councils in the urban and water catchment areas to ensure the consistent application of rules for notifying Sydney Water of potential impacts.

Importance of restricted access to water supply catchments

Sydney Water restricts access to its direct water supply storages in order to protect the health of the water supply for customers.

The storages and the immediate catchments surrounding them act as barriers against the ready transmission of water borne diseases. Bacterial, viral and protozoal diseases are capable of surviving in the supply system and infecting individuals where transmission duration is minimal. In particular, *giardia sp* and *cryptospiridium sp*, which are resistant to conventional treatment, pose a significant risk to the health of the community.

Water borne disease outbreaks have been experienced in the United States and Europe where 'closed' water supply catchments do not exist. In addition, lower levels of 'inner' catchment protection translate to a need for higher levels of raw water treatment to produce potable supplies. There is a commercial incentive to invest in catchment protection and keep treatment costs down.

In the interests of fair and equitable management, Sydney Water cannot allow certain individuals or groups the right of access to protected catchments while denying access to others. Furthermore, Sydney Water has a legislated obligation to manage these areas to ensure their continued ecological integrity. While no single activity may be problematic in its own right, the cumulative impact of a range of activities will result in the measurable degradation of these virtually pristine areas of bushland.

Sydney Water has learnt by hard won experience that selective or random approval to certain recreational groups to enter these areas results in further demands from like groups for equivalent rights. In addition, past experience with the Metropolitan catchments (ie Cataract, Cordeaux, Avon and Nepean) has shown that opportunistic illegal access increased wherever an approved access or activity was observable.

The 3km water quality protection zone around the stored waters of Lake Burragorang (Warragamba catchment area) is necessary to protect the integrity of the water supply. Ownership and management of the immediate water storage foreshore zone (where such an opportunity exists) is a practice commonly adopted by water supply authorities throughout the world.

Sydney Water has undertaken to preserve the right of access for bushwalkers through the water quality protection zone via the Mt Mouin - Mt Cookem and Yerranderie - Belloon Pass walking tracks. The proposed Regulation does nothing to restrict that access as it continues to be approved administratively by Sydney Water. The Mt Mouin - Mt Cookem route was originally selected to ensure that bushwalkers had only minimal contact with bodies of water within the water quality protection zone, as well as to discourage activities such as camping and swimming which are specifically prohibited within the zone.

Concerns about catchment protection raised by the coalition of green, consumer and welfare groups during the corporatisation process

Prior to the passage of the corporatisation legislation, the then Water Board undertook an extensive program of community consultation, particularly with members of a coalition of green, consumer and welfare groups.

One of the major concerns raised by the coalition was the future ownership, management and protection of the catchments. Keith Muir of the Colong Foundation for Wilderness was a member of this coalition and a strong proponent of the catchment protection provisions now contained in the WBC Act, Operating Licence and Environment Plan. Mr Muir advocated that the catchments should not, under any circumstances, be opened up or sold and that strict measures should be implemented to maintain the catchments in a pristine condition. The concerns now raised by Mr Muir over the proposed Catchment Management Regulation are at odds with the provisions which he and other environmentalists advocated.

Proposed key changes to the current Regulation

Application of Parts 3 and 4 to Crown land and Corporation land only, not private land

The proposed Regulation does not include private land in the application of Parts 3 and 4 to Schedule 1 and Schedule 2 lands. Applying these restrictions to private property had the effect of prohibiting gardening and other legitimate functions, for example, the current clause 6 (b) - (e) which states that a person must not:

(b) damage any tree or part of a tree in a special area or remove any tree or part of a tree from a special area; or

(c) damage or pick any plant (including a shrub) or part of a plant in a special area or remove any plant or part of a plant from a special area; or

(d) remove any rock, soil, sand, stone or similar substance within or from a special area; or

(e) destroy, capture, injure, annoy or interfere with any animal, or interfere with the habitat of any animal, in a special area.

Many of the restrictions on private property are draconian and not enforced.

Sydney Water, through section 78 of the WBC Act, has been given statutory input into the development approval process. Sydney Water considers these powers are sufficient over private land. Catchment management functions can be picked up at the planning level.

This amendment reflects current catchment management practice.

Inclusion of Wingecarribee Catchment Area and three Blue Mountains Special Areas (Blackheath, Katoomba and Woodford) in Schedule 1

The Wingecarribee Catchment Area is listed in Schedule 2 of the current Regulation. It provides a direct water supply to Bowral. There is a small fenced off picnic area in this catchment area.

The three Blue Mountains Special Areas are included in Part 2 of the current Regulation. They are direct offtakes for water supply to the Blackheath, Katoomba and Woodford townships. These special areas are currently fenced off and have signs which deny entry.

Listing of these four areas in Schedule 1 will bring them into line with other water supply catchments and reflect current catchment management practice.

Unauthorised incursions are being made over the fences into these catchments. Tighter restrictions are necessary to prevent these incursions. Including them as Schedule 1 lands means that bushwalking will be subject to Sydney Water approval.

Removal of Devines Weir, Penrith and Windsor Catchment Areas from Schedule 2

Sydney Water is aiming for consistency in amending the current Regulation. As the four catchment areas described above should be included in Schedule 1 because they are direct offtakes for water supply, so should these three catchment areas be removed from Schedule 2 because their offtake points are disused and Sydney Water has no plans to restore them

These lands will continue as special areas and be subject to Part 2 of the Regulation. An Act of Parliament is necessary to deproclaim any special area.

Inclusion of a general prohibition on 'forestry' operations without Sydney Water's consent

In this case, 'forestry' is to have the same meaning as in the Environmental Planning and Assessment Model Provisions. This inclusion will allow Sydney Water to have some control over large scale clearing of special areas, a potentially major threat to water quality.

Summary of key provisions in the proposed Regulation

Part 2

Part 2 of the proposed Regulation applies to all special areas and:

- prohibits unauthorised damming, diverting or taking away of water from a Sydney Water water supply
- prohibits unauthorised bringing in or leaving of any pollutant or waste
- prohibits erecting, installing or operating a sewage system unless it complies with Sydney Water standards
- prohibits unauthorised entry of stock on Crown or Corporation land.

Part 3

Part 3 of the proposed Regulation applies to Schedule 1 Crown and Corporation land only and:

- prohibits unauthorised pedestrian entry
- prohibits fishing.

Part 4

Part 4 of the proposed Regulation applies to both Schedule 1 and 2 Crown and Corporation lands and:

- prohibits unauthorised interference with flora and fauna
- prohibits unauthorised vehicles, aircraft, firearms, non native plants and animals
- prohibits roadside selling

- provides for camping and picnicking in reserved areas only
- prohibits unauthorised fires
- prohibits unauthorised use of pesticides and herbicides
- prohibits unauthorised animal husbandry.

Summary and implications of proposed changes to the current Regulation

Current Regulation	Proposed Regulation	Implication
Clauses 6 (b) - (e) in Part 2 state that a person must not: • damage or remove a tree • damage or pick or remove a plant • remove any rock, soil, sand etc • destroy, capture, injure etc any animal or its habitat in a special area without the Corporation's approval.	These clauses will be transferred to Part 4 [Clauses 15 (a) - (d)].	This transfer has the effect of applying these restrictions to Crown lands and Corporation lands only, **not private property.** The current application of the restrictions to private property prohibits gardening and other legitimate functions. The restrictions are draconian and not enforced. Catchment management functions can be discharged at the planning level.
Wingecarribee Catchment Area is listed in Schedule 2.	Wingecarribee Catchment Area is listed in Schedule 1.	The Wingecarribee Catchment Area provides a direct water supply to Bowral. Listing in Schedule 1 will bring it in line with other water supply areas.
Three Blue Mountains Special Areas (Blackheath, Katoomba and Woodford) are currently covered under Part 2.	Inclusion of these Special Areas in Schedule 1.	These catchments are adjacent to settled areas with direct offtakes supplying water to urban centres. Listing in Schedule 1 will bring them in line with other water supply areas. Unauthorised incursions are currently being made into these catchments and tighter regulations are required.
Devines Weir, Penrith and Windsor Catchment Areas are listed in Schedule 2.	Removal of these catchment areas from Schedule 2.	These are small catchment areas whose offtake points are disused with no plans to restore them. They are no longer used as water supply areas.

Proposed amendments to the proposed Regulation (generally as a result of submissions received)

Original proposal	Amended proposal
Clauses 15 (a) - (d) included in Part 3	These clauses are to be included in Part 4. This was a drafting mistake.
Not included in original proposal	Inclusion of a general prohibition on 'forestry' operations without Sydney Water's consent ('forestry' to have the same meaning as in the Environmental Planning and Assessment Model Provisions). Parliamentary Counsel will be asked to include this. This will allow some control of a potentially major threat to water quality - large scale clearing of special areas.
Definition of 'authorised person' included: • Sydney Water employees • police officers • people authorised by Sydney Water.	This will be expanded to include National Parks and Wildlife Service officers.
Introduction of $100 on the spot fines for offences against the Regulation.	On the spot fines will not now be included. They were to be introduced for administrative ease (to avoid lengthy legal processes). They would, however, have given Sydney Water a policing role inconsistent with its operating role.
Clause 23 - animal husbandry on Part 4 land - did not apply to private land.	This will be amended to apply to private land.
The Regulation did not include objectives which clearly identified its function.	Parliamentary Counsel will be asked to consider this issue.

Current Regulation	Proposed Regulation	Implication
		The lands will continue as special areas and be subject to Part 2 of the Regulation. An Act of Parliament is necessary to deproclaim any special area.
The Metropolitan, Woronora and Warragamba (within the 3km zone) Catchment Areas are covered by both Schedule 2 and Schedule 1.	The discrete proclamations of the Metropolitan and Woronora Catchment Areas have been transferred to Schedule 1. Part 3 of the Regulation has been preserved as applying to only Schedule 1 lands. Part 4 of the Regulation will now apply to both Schedule 1 and 2 lands.	There has been no change to the level of catchment protection. This redrafting will make the scope of the Regulation clearer.
Clause 13 - fees and charges. The Corporation may determine fees or charges for entry into a special area. This entry may be denied if the fees or charges are not paid.	Clause 11 - fees and charges. As before, but with the provision that an authorised person may direct a person who has not paid the relevant fee or charge to leave the land.	This additional provision is a logical extension of the current clause.

APPENDIX 9

SUBMISSION TO THE REGULATION REVIEW COMMITTEE REGARDING THE SYDNEY WATER CORPORATION (CATCHMENT MANAGEMENT) REGULATION 1995

Thursday 7 September, 1995

By Colong Foundation for Wilderness,
National Parks Association of NSW
the Confederation of Bushwalking Clubs (NSW) Inc
Total Environment Centre and
Kowmung Committee

General

The abovementioned Joint Group having examined the regulatory impact statement are of the view that the statement and public consultation processes did not meet the spirit of the Subordinate Legislation Act, 1989.

Having reviewed the new regulation and discussed our concerns at length with Sydney Water we consider that the Catchment Management Regulation imposes unwarranted restriction of camping, swimming and the lighting of camp fires in about 300,000 hectares of national parks in the Warragamba Catchment Area.

At the moment, a blanket prohibition regarding the abovementioned activities is understood to apply, although we dispute that the regulation, as written, prohibits camping.

The Joint Group seeks to remove by disallowance by Parliament, as recommended by this Committee, some of the key inconsistencies in the regulation. We consider the removal of these inconsistencies will improve catchment management.

There are other matters that cannot be addressed by the disallowance procedure. These matters should be reviewed at a later date by catchment plans of management and by amendment of the catchment management regulation.

Matters proposed for disallowance

The Regulation Review Committee might consider raising the following issues with the Minister for Urban affairs and Planning or recommend disallowance as outlined below.

Schedule 1, subclause Special Areas:

> *(a) such portions of special areas as the Corporation may determine from time to time and notify by signs erected on the portions concerned;*

Subclause (a) on page 4866 of the Government Gazette of 25 August, 1995 was, according to our understanding, supposed to apply to Controlled Areas but was mistakenly placed in the wrong section of the regulation (i.e. We understand that Sydney Water wanted the power to readily create Controlled Areas for new canals, tunnels, pipelines and water mains but does not want that power to prohibit access to other catchment areas).

The Committee could, in addition to the disallowance of the abovementioned subclause, recommend to the Minister for Urban Affairs and Planning, the inclusion of a similar subclause so as to govern the creation of new Controlled Areas when water transfer structures are built from time to time.

The purpose of the proposed disallowance and/or amendment would be to stop the Corporation prohibiting access to additional catchment areas without the regulatory review processes laid down in the Subordinate Legislation Act, 1989. The subclause is considered too discretionary and could affect other areas without due public consultation which is contrary to Subordinate Legislation Act that seeks to remove unnecessary and unaccountable regulation.

Swimming and sailing on Part 4 land

The Joint Group suggests that the Committee consider recommending the disallowance of the words *swim or* in subclause 19 (a). The clause would then read as follows:

> *19. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:*
>
> *(a) wash in or cause any animal, animal matter, plant or plant matter to enter or remain in any water on Part 4 land; or*

The Joint Group considers that swimming in Schedule 2 Special Area catchments causes no harm. The streams in many of these catchments are polluted with sewage discharged from Sydney Water's treatment works, as well as urban stormwater runoff and by the activities of coal mining. There is no

reasonable justification why swimming should be so regulated in the light of the activities already permitted in these catchment areas.

The Joint Group also requests that your Committee consider recommending disallowance of the words *row, sail or paddle* from subclause 19 (b). The subclause would then read:

> *19. A person must not, except with the Corporation's approval and in compliance with any conditions of the approval:*
>
> *(b) drive any boat or other water-borne craft on any such water.*

The purpose of this suggested disallowance is to permit current canoeing activities on Tallowa Dam on the Shoalhaven River. Sydney Water has provided no reason why these secondary storages should continue to be unavailable for water sports which do not involve contact with the water or that do not cause potential water pollution.

Powered water craft that can be driven, as opposed to craft that can be sailed or paddled, have the potential to pollute water storages with oils and other petroleum products. Such powered water craft can cause significant bank erosion through generation of substantial bow waves and should not be allowed on secondary storages (ie those in Schedule 2 Special Area catchments).

The Committee may also consider recommending to the Minister an amendment to achieve the same end. Amendment of Clause 19 of the Catchment Management Regulation so as to allow use of non-motorised boats and other water craft on waters within Schedule 2 Special Area Catchments would be a more straight forward means of allowing non-motorised recreation on these storages.

Camping on Part 4 land

The Joint Group suggests that the Committee might like to recommend disallowance of the following subclauses and parts of subclauses within Clause 20.

> *20. (1) The Corporation may, by means of signs displayed on or adjacent to any portion of Part 4 land, designate the portion as land available for camping.*
>
> *(2) (a) camp on a portion of Part 4 land, designate the portion as land available for camping; or*
>
> *(b) --- that is not so designated.*
>
> *(3) (a) (i) or*
>
> *(ii) is land designated in accordance with subclause (1) as land available for camping;*

(c) in the case of land designated as land available for camping the person pays the charges (if any) payable in respect of the person's camping on the land.

By the above disallowance, clause 20 would then become:

20. (2) The Corporation may impose conditions, not inconsistent with the Act or the Regulations, subject to which a person may:

(b) camp on any Part 4 land identified in Schedule 2.

(3) A person must not camp on Part 4 land unless:

(a) the land concerned:

(i) is land identified in Schedule 2; and

(b) the person complies with any conditions imposed pursuant to subclause (2); and

(the rest of the clause would be unchanged by this proposal).

The purpose of this proposed disallowance is to prohibit camping in Schedule 1 lands and to clarify and simplify this clause. The disallowance would permit camping on Schedule 2 lands and regulate such camping in an appropriate manner.

The Joint Group requests that charging of camping fees be deleted from the regulation. The Joint Group opposes the charging of fees for camping on Crown lands, including national parks.

Entry on Part 3 land

The Joint Group suggests that the Committee consider recommending to Parliament the disallowance from Clause 14 in the regulation the words *enter or*.

The clause would then read:

14. A person must not remain on Part 3 land except:

(a) with the Corporation's approval; and

(b) in compliance with any conditions of the approval.

The purpose of this proposed disallowance is to allow people to traverse inner catchments (Schedule 1 Special Area catchments), as long as they do not remain on these areas. This proposed disallowance could be run as a trial, and if the arrangement proved unsatisfactory, it could be adjusted through the introduction of plans of management. Such plans are required to be introduced twenty four months after the Water Board (Corporatisation) Act, 1994.

The townships of Woodford, Medlow Bath and Warragamba are within Schedule 1 Special Areas. Persons within these towns can be subject to the very severe financial penalties that can be imposed when a person does not comply with the regulation, such as when they walk in the bushlands that adjoin their homes or even take a walk on the footpath.

This clause in the regulation may not apply equally and to all people. Sydney Water apparently intends to 'turn a blind eye' to activities such as walking the dog on the public lands within these towns and prosecute people for walking in bushland elsewhere. A magistrate would be placed in a very difficult position if the regulation is applied inconsistently.

The proposed disallowance will ensure that magistrates can consistently enforce the regulation.

Alternatively, the Committee might like to recommend an amendment of the regulation to overcome the anomaly, such as removing the Blackhealth, Medlow Bath and Woodford catchments from Schedule 1 and placing these catchments in Schedule 2 of the regulation.

Matters to be addressed by catchment plans of management

Sydney Water and the National Parks and Wildlife Service must prepare, in accordance with section 86 of the Water Board (Corporatisation) Act, 1994 a plan of management for each catchment within 24 months since the making of this legislation.

Accordingly, Sydney Water's catchment management is in a transition phase from the command and control regulation to catchment management plans.

The preparation of catchment management plans should be supportive of the National Parks and Wildlife Service park plans of management where these exist.

The Joint Group requests that this Committee recommend to the Minister for Urban Affairs and Planning the establishment of a steering committee to oversee the preparation of catchment management plans, including representatives of non-government environment groups, bushwalking clubs and officers of the National Parks and Wildlife Service. The steering committee would help to ensure better consideration of all relevant matters prior to the release for public comment of the catchment plans of management.

The current regulations should only remain in place until the catchment plans of management come into force. The regulations should then be amended so as to support and give force to the intentions of the catchment plans of management. The co-operative approach to management developed jointly by the National Parks and Wildlife Service and Sydney Water should be expressed by these plans of management and be the amended regulations.

The Joint Group suggests that this Committee may wish to recommend to the Minister for Urban Affairs and Planning that the current catchment area regulations be reviewed when the catchment plans of management are made. The draft regulations should then be exhibited with the catchment plans of management. These plans of management should be completed within the twenty four month period specified in the Sydney Water (Corporatisation) Act, 1994.

Catchment management in the interim period

Sydney Water has suggested developing a system of generic permits for the interim period before the catchment plans of management come into force to permit the lighting of camp fires (as well as on some other matters for which the Joint Group seek disallowance). This approach may be unsatisfactory.

Preliminary legal advice received by the Joint Group suggests that a generic permission cannot be granted for the lighting of camp fires. The wording of clause 21 appears to indicate that issue of a generic permit for the lighting of camp fires may defeat the purpose of the clause. For a permit to be lawful, we understand that permission would need to be for a particular event and/or be given to an individual or group for a specified time.

The lighting of fires, and the control of human activity, is best regulated by a catchment plans of management. The Joint Group already supports the minimal impact bushwalking code that helps to educate bushwalkers about the use of camp stoves, camp fires and other matters. Involving representatives of the Joint Group in the development of catchment plans of management would assist in further understanding and education of catchment users.

In the interim period before the catchment plans of management are made, the Joint Group suggests that the Committee may wish to recommend to the Minister for Urban Affairs and Planning an amendment to the regulation permitting the lighting of camp fires on Part 4 land, except when the Corporation determines that a person must not light a camp fire.

This would be an appropriate regulation given that the lighting of camp fires is more dangerous under certain climatic conditions than in other times.

Consideration should also be given to regulations providing fuel stove only areas or fuel stove only seasons that are more fire prone. Such a fuel stove area amendment, however, may be too soon as these considerations are best left to the development of the catchment plans of management.

APPENDIX 10

Briefing Note

Substantiation of Continued Catchment Management Regulation with Restrictions on Access and Activity

Defining the Issue

The recent enactment of the Sydney Water Corporation (Catchment Management) Regulation 1995 as subordinate legislation to provide Sydney Water with a continued regulatory framework to manage its inner catchment areas has drawn an unfavourable response from the bushwalking fraternity.

Overall, bushwalkers comprise a minority in the Sydney, Illawarra and Blue Mountains population but their avid reaction to the passing of what they see as an unduly restrictive regulation, in lobbying politicians directly and through the media may put the continuance of the Regulation at risk. Between now and mid November there is a possibility the Upper House of the NSW parliament or the Regulatory Review Committee may disallow the Regulation.

The Bushwalkers claimed concerns relate to restrictions to access for bushwalking and restrictions on lighting of fires, camping and swimming in Catchment Special Areas, particularly Schedule 1 areas. The right to enter and undertake similar activities in Schedule 2 Special Areas is able to be resolved administratively by Sydney Water by granting approval for these activities by signage at appropriate geographic locations.

It is worthy of note that many of the bushwalkers representatives who have met with the Corporation seemed unaware of the existence and greater restriction placed on their activities by the antecedent Water Board (Special Areas) Regulation 1989 that expired only 1 September this year or for that matter By-law 13 under the MWS&DB Act 1924 that had similar restrictions, effecting Warragamba and other catchments from 1945 onwards.

It should also be noted that the content and proposed implementation of this new Regulation was aimed at recognising and reasonably accommodating bushwalking and associated activities within the Schedule 2 Special Areas.

Should the new Regulations be disallowed, Sydney Water would lack a regulatory framework to manage activities in the Schedule 1 water quality protection zones in the Woronora, Cataract, Cordeaux, Avon, Nepean and Warragamba (3km) catchments.

As Sydney Water owns in freehold much of the land described above its only management option would be the same as any freehold landholder ie. deny access to its lands and sue for trespass.

Having resolved the misunderstanding by the bushwalkers as to Sydney Water's intention of maintaining previously agreed access corridors through the Warragamba Schedule 1 (3km) zone, having agreed to negotiate an appropriate additional corridor and to be no more restrictive on the nature and extent of activities that are associated with bushwalking (camping, swimming etc) than is consistent with the areas future Declared Wilderness status, it now appears the bushwalkers want more.

Their ambit claim is for unrestricted access and activity rights to Schedule 1 areas and the transfer of Sydney Water Corporation's freehold lands to the national park estate.

This briefing note summarises the justification for retaining Schedule 1 lands and associated restrictions.

Justification for Schedule 1 Special Areas and their Associated Restrictions on Access and Activity

In summarising the key reasons for continuing with Schedule 1 Special Areas and applying the associated restrictions on access and activity it must be stressed that these restrictions are needed primarily to protect the **health** of the water supply rather than the **quality**.

A great many organic and chemical substances can enter water storages both from undisturbed as well as highly developed catchments. High levels of iron and manganese can be yielded from closed forested catchments on sandstone geology whilst elevated levels of phosphorus and nitrogen can be a feature of catchments with urban and/or agricultural development.

The Schedule 1 lands and associated restrictions **are not** in place to prevent this form of contamination from outer catchment areas. They may provide some improvement to the quality of these inflows by yielding higher quality, localised inflows to a water storage thus diluting some of the contaminants from developed outer catchments.

The physical, chemical or organic contamination of the water storages by activities such as coal mining or major road transportation throughout the catchments, whilst of concern, is not an issue in the argument for continuing to restrict public access to Schedule 1 lands.

Rather, the Schedule 1 lands were put in place to provide the first barrier to biological contamination of the water supply by such waterborne diseases as Giardia and Cryptosporidium.

Thus, when engaging in any debate about the need or otherwise for Schedule 1 levels of catchment protection, the protection sought is a barrier against contamination of stored water by protozoal diseases such as Giardia and Cryptosporidium rather than prevention of physical, chemical or organic contamination.

The issue of the impact of sewerage treatment plants and domesticated livestock grazing in the distant outer catchment areas has been specifically referred to in item 1 (Scientific Basis), refuting the argument that their presence negates any benefit of a near storage restricted public access zone.

In supporting the case for Schedule 1 levels of protection the following arguments are germane.

1. SCIENTIFIC BASIS

The Control of Water-Borne Infection

Some of the major advances in public health over the last century have resulted from better management of water supplies from catchment to tap. The major public health problems caused by endemic and epidemic cholera and typhoid early in this century have been greatly reduced but problems have still occurred in Yugoslavia (1964), South Africa (1981) and Peru (1991). However diseases resulting from contaminated drinking water remain a constant threat even to communities whose drinking water supplies are treated by filtration and disinfection.

The major groups of pathogens which present a serious risk of water-borne disease are:

- Excreted pathogens – these include salmonella, shigella, enterovirulent escherichia coli, vibrio cholera, yersinia enterocolitica, campylobacter jejuni and campylobacter coli.

- Pathogens growing in water supplies - pseudomonas, klebsiella, aeromonas and legionella pneumophilia.

- Enteric protozoa - found in water after direct or indirect contamination with human or animal faeces - includes giardia, cryptosporidium and entamoeba histolytica.

- Free living protozoa - naegleria and acanthomoeba.

- Viruses - includes human enteric viruses which occur in water largely as a result of contamination with sewage and human excreta.

- Cyanobacteria - often called blue green algae, blooms are caused by increased nutrients, temperature and low flows. Cyanobacteria can produce toxins which damage either liver or nerve cells or can cause gastroenteritis.

Of these, the level of occurrence in drinking water of excreted pathogens, enteric protozoa, viruses and to some extent cyanobacteria would be affected by a relaxation of catchment management control measures.

Some issues worthy of mention are:

(i) Salmonella has previously been identified in Sydney Water's storages. The source was suspected as overflows from septic tanks and the problem was overcome by converting the septic systems to a pump out type of operation.

(ii) Giardia - often called "backpackers disease". Monitoring shows that its occurrence at present in Sydney's storages is extremely rare. Levels recorded at sewage treatment plans however are relatively high. Has been found to occur in drinking water after treatment.

(iii) Cryptosporidium - has become the most important new contaminant for control in drinking water. There have been five documented outbreaks of cryptosporidiosis in drinking water supplies in the USA and eight in the UK. Treatment by filtration and disinfection dramatically decreases the risk of this water-borne disease but will not completely remove the risk. Of the 14 reported incidents 6 were on treated water supplies. Failure on these supplies was due to sub optimal performance of the treatment process. In Milwaukee USA which is a treated water supply over 400,000 people were adversely affected by a cryptosporidium outbreak in 1993. Cryptosporidium has been identified in Sydney's water storages but is known to be at much higher levels in sewage effluents.

(iv) Oocysts can survive in human and animal faeces. The faecal material apparently protects the oocyst from desiccation, prolonging its viable state in the environment during the interim between hosts. Once in the receiving body of water (ie. river water), the die-off rates increase dramatically. The rapid rate of die-off appears to be associated with the movement of water in a river. Die-off rates in still water bodies such as water storages appears slower.

This feature accounts for the significantly low levels of microbiological contamination of Warragamba Dam storage at the inflows of the Wollondilly and Coxs Rivers, despite these rivers receiving treated effluent from Lithgow and Southern Highlands sewerage treatment plants and extensive livestock grazing activities within these outer catchment areas. NB. Goulburn's treated effluent is spray irrigated onto pasture rather than pipe discharge to local streams.

A loss of strict control over access to the inner-most zone of land immediately associated with stored waters brings with it then a risk of direct contamination of those waters. With water filtration plants shown to have a real risk of failure in the removal of oocysts, the prudent approach is to reduce the risk of direct contamination in the first place.

2. POLICY BASIS

The following extract from the Managing Directors report of 16 March 1993 to elected members of the then Sydney Water Board encapsulates the current policy and operating philosophy of Sydney Water with regard to ensuring the health of its water supply system.

"WATER QUALITY OBJECTIVES AND STRATEGIES"

"The Board's operations and management strategies for its water supply system ensure that water supplied to the Sydney, Illawarra and Blue Mountains areas is safe for consumers. With some relatively rare exceptions, water is delivered to customers at a quality appropriate for human consumption. These water quality guidelines are prescribed by the National Health and Medical Research Council (NHMRC) after consideration of long term and short term health issues. The Board seeks to comply with these NHMRC guidelines and has staged programs of work to achieve these. Aesthetic quality also is prescribed by the NHMRC, but this is also a customer satisfaction issue where there is close communication between the Board and its customers.

The Board's water management, from catchment to customer, is premised on optimisation of the performance of the whole system. Water quality is managed by a series of strategies which are progressively implemented from the time the water, in the form of rainfall, hits the ground until it is delivered to customers.

The first, and most basic and natural of these strategies, is catchment management. The maintenance of high quality water from the catchments into the dams mitigates the need for expensive chemical and filtration treatment later in the delivery process. Experience, and customer expectations, world wide show that it is preferable to keep pollutants out of the water resource rather than attempt to extract those impurities later by mechanical and chemical means. The most difficult of the pathogenic pollutants to treat are cryptosporidium and giardia. These are best treated by keeping them out of the system at catchment level (refer Review of Giardia and Cryptosporidium by Aquatech Pty Ltd, August 1992, p iv).

Storage reservoir management is the next important strategy in management of water quality. As a result of long detention times in the major storages, and the nature of the storages as deep cold water bodies, naturally occurring chemicals under certain climatic conditions can have an adverse effect on the quality of water taken from storage into the delivery system. Storages have to be operated and managed in a way which minimises the qualitative and economic impacts of certain adverse water quality occurrences.

While catchment and storage management are the preferred, most cost effective and least chemically dependent strategies, water treatment works nevertheless are needed to deal with problems of water quality which, in the Board's case, are occurring because of the demands on the system and the consequent need improve disinfection and to meet other health requirements.

The final strategy is the maintenance of a clean distribution system. This strategy aims to prevent accidental contamination of the treated water later in the distribution system and to sustain a high quality water throughout the distribution system.

In this context, the Board's policies for its water supply catchments, it water storages, its water treatment and its distribution systems together all provide strong management of the quality of water supplied to the community."

This "multiple barrier" operating philosophy was further legitimised in the Determination Reports prepared for the Prospect, Macarthur and Illawarra Water Filtration Plants' Environmental Impact Statements.

These three reports all acknowledge the fundamental, complementary role of sound catchment management as the first barrier to biological contamination of the water supply.

3. HISTORIC BASIS

The exclusion of humans and animals from the source of a community's water supply is not new.

History records that there were stringent regulations within the immediate environs of the Tank Stream in order to protect the health of Sydney's first water supply.

Notwithstanding these regulations and their application history records that the Tank Stream became polluted and unsafe for consumption and various replacement supplies were piped into Sydney from undeveloped and less contaminated catchments.

Fortuitously, as the early settlers sought lands suitable for agricultural production they bypassed the steep rugged terrain of the Woronora Plateau, the Nepean Ram and the Illawarra Escarpment. Whilst some logging may have occurred, the precipitous terrain and poor soils made these areas unattractive for agricultural pursuits.

Consequently, when in the first half of this century, the then Metropolitan Water Sewerage and Drainage Board (MWS&DB) built dams on the Woronora, Cataract, Cordeaux, Avon and Nepean Rivers it was able to assume management responsibility for catchment lands that were in near–to–pristine state.

Some colliery pit–top activities occur within the catchments, supporting underground mining of the Illawarra coal measures but these are rigidly regulated by the Department of Mineral Resources, Environment Protection Authority and Sydney Water by way of its Special Area Regulations.

It should be noted that an antecedent version of the current Special Areas Regulation existed as By–Law 13 under the Metropolitan Water, Sewerage and Drainage Act, 1924.

By–Law 13 was passed in 1945 and was applied to the Woronora, Metropolitan and Warragamba catchment areas as well as a range of other major and minor catchment areas or points of water abstraction.

Prior to the making of By–Law 13 in 1945, Sections 55, 56 and 56a of the Metropolitan Water Sewerage and Drainage Act protected the Woronora, Cataract, Cordeaux and Nepean catchments from pollution from 1924 onwards.

There has therefore been continuously some form of regulatory protection of the Sydney, Illawarra and Blue Mountains water supply catchments for more than 70 years.

The nature and extent of these Regulations has not changed markedly over this time and the effect sought today is as valid at that sought 70 years ago.

4. THE BASIS FOR MORE THAN ONE BARRIER TO MICROBIOLOGICAL CONTAMINATION OF A WATER SUPPLY

Section 1.7 of the draft 1995 Australian Drinking Water Guidelines sets out steps that can and should be taken to guarantee the safety of water supplies. These include:

- the use of effective barriers to prevent the contamination of the water supply system
- control of industrial, mining, forestry, agricultural and human activities within catchment boundaries.

In Section 2.5 barriers are discussed in more detail with the following statements being made:

> "Ensuring the microbiological safety of a water supply entails a wide-ranging program of protection, treatment and monitoring, with barriers to the entry and transmission of pathogens throughout the system". It is noted that barriers should include **"at least most of the following measures"** one of which is:
>
> > "The water sources selected should be protected from contamination by human or animal faeces, and an active protection program maintained."

US SURFACE WATER TREATMENT RULE

The US Surface Water Treatment Rule (SWTR) promulgated in 1989 recognised the need for multiple barriers for the supply of good quality drinking water with a low risk of giardia occurrence. Filtration could be avoided if strict criteria for coliforms, turbidity, disinfection watershed control measures etc. were met.

It has been recognised since that time that the requirement for a 3 log removal/inactivation of giardia and 4 log/inactivation of viruses contained in the SWTR may be inadequate when a utility is supplied with a source water of poor quality. This has become more apparent with outbreaks of cryptosporidiosis over the last 5 years on filtered water supplies. Revisions are currently being addressed in an Enhanced Surface Water Treatment Rule which will modify requirements for protozoan cyst removal depending on their concentration in the source water.

With the introduction of filtration, Sydney's supply systems will have the capability in conjunction with disinfection for a 3 log removal of giardia and cryptosporidium. This would appear to be a reasonable public health risk minimisation criteria given our protected inner catchments **but might not be reasonable if catchment control measures were relaxed.** If further removal was considered to be appropriate then extra treatment processes such as ozonation and granular activated carbon would be required.

5. SURVEY OF EXISTING AND POTENTIAL RECREATIONAL USE OF CATCHMENT LANDS

In a 1986 report for the then Water Board, the consultants Longworth and McKenzie Pty Limited undertook surveys in conjunction with ANOP which confirmed the community view that water quality in the Board's catchment Special Areas and storages must always be maintained and that major additional costs which would result in an increase in water rates to allow only for increased recreation **would not be acceptable.**

6. OPTIMISATION OF CATCHMENT MANAGEMENT/TREATMENT COST

Improved treatment processes to deal with poor quality source water would most likely be modification of filtration plants to ozonation and granular activated carbon or the introduction of microfiltration. The latter is the least expensive and would result in the following approximate costs:

Capital	$120M
Operating Costs	$12M per annum

7. THE RISK MANAGEMENT BASIS FOR CONTINUED PUBLIC EXCLUSION FROM CRITICAL CATCHMENT SPECIAL AREAS (Schedule 1 lands)

Relaxation of catchment management control practices can result in the following increased risks:

- Higher levels of pathogenic micro-organisms affecting public health.
- Increased bushfire risk - Melbourne Water have reported that 6 out of 12 of their last bushfires on catchment were the result of human error. Bushfires on catchment followed by heavy rainfall present a worst possible scenario for water quality.
- Increased risk of algal blooms and consequent potential problems of taste and odour in the water supply and/or toxins.
- Increased risk of accidental contamination - chemicals.
- Increased risk of intentional contamination - sabotage.
- Changes in fauna on catchment due to human presence - in Melbourne catchments where public have been given access kangaroo population has increased in density from 60-100/km^2 to 300-400/km^2.

8. INCREASED PUBLIC LIABILITY

Currently, Sydney Water provides a range of recreational facilities for the general public, mainly by way of picnic facilities at its major water storage dams. The Corporation accepts the liability risk associated with public usage of these facilities.

The areas are generally small in size, are generally well designed and maintained and public behaviour is discreetly observed by Sydney Water staff to circumvent any unacceptable behaviour.

The issue of allowing the public access to the more remote and rugged areas of Sydney Water owned catchment lands raises an entirely different order of risk and liability to those associated with the picnic grounds.

Whilst it is generally acknowledged that long-distance, remote area bushwalking carries a higher order of risk than many other day to day activities the community undertake the issue is who should accept the liability for the death, injury or property loss that, from time to time is associated with this type of activity.

In view of most bushwalker's desire to be unfettered by rules, regulations and overt supervision it is unrealistic to ask Sydney Water to accept such liability.

As the Schedule 1 catchment Special Areas, which are in the majority Sydney Water freehold lands, would only add a further relatively small area to the existing large national park estate surrounding Sydney, Illawarra and the Blue Mountains regions it would seem an unnecessary liability risk for the Corporation to allow bushwalkers access to these lands particularly when this issue is viewed conjunctively with the greater issue of water health protection.

CONCLUSION

In summary, there has been a long history of protecting the health of the Sydney, Illawarra and Blue Mountains water supply by preventing human access and activity in the catchment lands surrounding the water storages.

In earlier times the impounded water required little more than screening and light disinfection before supply. The rigorous management of the 'inner' catchment areas, including restrictions on public access, contributed greatly to Sydney Water and its antecedents' ability to successfully apply such a low order of water treatment before supply.

Notwithstanding the incorporation of new water filtration plants into the water supply system there is a continued need to support these plant's finite ability to remove microbiological contaminants such as cryptosporidium and giardia by rigorous 'inner' catchment management.

Whilst these plants have a very broad ranging capacity to deal with physical, chemical and organic contamination from both undisturbed and developed catchment lands, prevailing international wisdom dictates that they should not be the only 'barrier' to microbiological contamination of the water supply.

In conclusion there is a logical and cogent argument for the retention of restricted public access to critical 'inner' catchments (Schedule 1 Special Areas) to ensure the health of Sydney, Illawarra and the Blue Mountains' water supplies.

The loss of the newly legislated Sydney Water Corporation Limited (Catchment Management) Regulation 1995 would seriously weaken Sydney Water's ability to effectively manage public access to these critical areas.

The penalties would be a higher order of water treatment costs and an increased level of risk that consumers would suffer an outbreak of waterborne disease.

David Joy
Catchment Services Manager
12-10-95

APPENDIX 11

REPORT OF PROCEEDINGS BEFORE

REGULATION REVIEW COMMITTEE

....

INQUIRY INTO THE SYDNEY WATER CORPORATION LIMITED
(CATCHMENT MANAGEMENT) REGULATION 1995

....

At Sydney on Thursday, 26 October 1995

The Committee met at 9.00 a.m.

PRESENT

Mr D. Shedden (Chairman)

Legislative Council

The Hon. J. F. Ryan
The Hon. Janelle Saffin

Legislative Assembly

Ms D. Beamer
Mr A. J. Cruickshank
Ms J. G. Hall
Mr R. J. W. Harrison
Mr B. W. Rixon

STEVEN BAXTER, Senior Adviser to Minister for Planning, of 5/16 Lamrock Avenue, Bondi Beach,

KELVIN O'KEEFE, Legal Adviser, Bulk Water Business, Sydney Water Corporation Limited, of 6 Farnell Street, Hunters Hill,

ANTHONY SWAN, Regulatory Adviser, Sydney Water Corporation Limited, of 43/22 Mosman Street, Mosman,

DAVID JOY, Catchment Services Manager, Sydney Water Corporation Limited, of 30 Mills Avenue, Asquith, sworn and examined:

KEVIN SHANAHAN, Environmental Scientist, Sydney Water Corporation Limited, of 28 Westbourne Street, Carlton,

DAVID JOHN HALE, Executive Officer to Manager Director, Sydney Water Corporation Limited, of 111 Otford Road, Otford, affirmed and examined:

CHAIRMAN: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

ALL WITNESSES: Yes, I did.

CHAIRMAN: Gentlemen, do you wish the Minister's letter of 20 October 1995 to be included as part of your sworn evidence?

ALL WITNESSES: Yes, we do.

CHAIRMAN: Do you wish to add to or elaborate on the Minister's response to the Committee?

Mr BAXTER: What we have is a presentation structured around the manner in which we have structured the response from the Minister, which enables us to elaborate on some of the points that may bear slightly greater detail. Anthony Swan will lead off for us, followed by David and Kel.

Mr SWAN: I want to acknowledge the important role of the Committee this morning. I know from the recent debate on the disallowance motion that a number of members of the House spoke on the importance and significance of the issue in asking the Committee to feed back to them information from today's review. So, on behalf of Sydney Water, we are happy to be here to lead you through catchment management, and how this regulation has come about, in elaborating on the Minister's letter.

This has been a very exciting project. For Kel and I, who were intimately involved in the corporatisation last year, this feels like round two; after getting the Act through, now we have got to get the regulation through. Certainly, when we saw that

article in the *Sydney Morning Herald*, the famous one which splashed across the pages about how much of our national park was being locked up by Sydney Water - which was a very courageous assertion at the time, we thought - it certainly signalled that this was going to be a very interesting project.

What Kel, David, our other advisers and I are going to do today is basically lead you through why we have catchment management at all, our approach to that, and how the regulation fits in with that. We will talk about the process of how it came about that we have the regulation in its current form. The basic premise of what we are putting across today is that there is really no argument about the need to have safe drinking water - and, certainly, our catchment management fits into that strategy - but what is the real issue today is how to permit legitimate access by recreational users into the catchments.

So, for us, we see this very much as a balancing exercise. On the one hand is preserving strong catchment management, which is the mandate that Parliament gave us in the Corporatisation Act, and certainly that is Government policy. On the other hand is balancing that with the needs of recreational users. That is what we will mainly be talking about this morning.

Firstly, the corporatisation process is a good starting point to look at this. As I mentioned, the strong mandate that we got from Parliament last year was really quite underscored by a number of amendments or changes to the previous Water Board Act which were made in the House. I have made a quick list to reiterate those. Restrictions on alienation of land - which put into our Act a restriction on selling land that we own in the catchments, was not there before. The joint plans, requiring us to enter into joint plans with the National Parks two years down the track, which was new and recognises the historical fact that the National Parks and Wildlife Service and Sydney Water manage lands conjointly.

We have had preserved our concurrence role in local environment plans in the catchments. What this means is our role to actually say yea or nae to development applications that councils see that could impact on water quality. And, to give you some context, that role for us was removed for all other areas that we operate in except the catchments. So, for the catchments, this is really a continuing role for us, and an important one.

Further, we were given power in the outer catchments - the sorts of areas that extend beyond the schedule 1 and schedule 2 areas, that go right to Goulburn, to Lithgow, and down to Braidwood. It is quite an extensive area. We have a referral power in relation to these area. What that means is that if councils perceive that a development application could impact on water quality, they need to refer it to us so that we can provide our special expertise in advising how to go about putting on special conditions that they want to put on the application.

That power was added to the Act too. So you can see that, rather drawing back on catchment management, and our role in that, what was confirmed for us was

actually an underscoring and expansion of that role. So it is that theme that was brought out in the corporatisation Act that we felt obliged to bring through into the regulation itself, as a sort of second tier of taking the Corporation from being the statutory body that it was last year into being a commercial operator which has a distinct responsibility for managing catchment areas.

What this regulation effectively represents is an almost broken line of this style of managing catchments and regulation to underpin that. Since 1924 in the Sydney area we have managed catchment areas - Warragamba only came on line in the 1960s - but we have managed catchments areas of this kind in this way since that time. Rather than this regulation being seen as a bit of old bureaucracy that is hanging over from the early part of the century, what our experience in managing Warragamba and the Shoalhaven areas in the 1970s and 1960s confirmed for us - and, certainly, international literature underlines this - is that there is a continuing need for restrictions. David will, this morning, be running us through how we go about managing the catchments and the impact studies that we have come across, as well as literature, and comparisons with how other States do this as well. You will see a lot of similarities and consistency in the way that we go about this in Sydney.

We have made some improvement in the regulation compared with the form it was in prior to 30 September. What we have done is consolidated the changes into a single-page table for you. I know that in our submission, following gazettal, together with the regulatory impact statement, we provided you with a briefing note that we had given to our Minister, setting out in tabular form the changes that have been made successively from the initially proposed regulation to the way it was remoulded, and so on. We have brought that together on one page to make it convenient. What I would like to do is pass that round now, and I will lead you through what in effect has happened there.

The aim of giving this level of detail to you early in the meeting is not to bamboozle us all with a white-wall of technical information. The column that I want you to focus on is the third one to the right. What it shows are the practical implication of the changes that we have made. What you will see is that we have amended the regulation to facilitate the introduction of the joint plans. That shows in the first row.

Coming down, we have got rid of some bozo provisions in the old regulation about private land. Before 30 September we literally had the power to stop people from mowing their lawns and cutting their flowers and tending their gardens within the special areas - Llandilo, Silverdale and so on. That was a power we have never used, so we got rid of that.

We have made further amendments, in the third row down, to facilitate joint plans, so that the National Parks officers can co-administer the regulation. Going down another row, we have made some changes to basically facilitate the sorts of requests that we have received from the bushwalking fraternity surround camping. We have made it easier and given our discretion to allow fires in terms of camp stayers and

those sorts of things to be used when people are camping in the schedule 2 areas. That is actually a bit of a bonus.

The last three, you will see, show that we have simply taken the declarations of special areas and shuffled them around to make sure that the level of restrictions are consistent with the way they are actually used now. You will see that the only ones that have changed are the three in the small catchment areas of Katoomba, Woodford and Blackheath, where we have changed it from a schedule 2 classification to a schedule 1 classification. What you effectively have there in respect of the catchment of Warragamba, the one that the *Sydney Morning Herald* article was blasting on about, is that nothing has changed. What you see from all of this is that, basically, nothing has changed. In fact, what we have done is remove restrictions.

Certainly, if we had rolled over the previous regulation as it was, we would have more restrictions now, as well as some nutty provisions being able to prohibit gardening. So what we think we have done in this review is improve the regulation. Adding to this, the other thing that has not changed is the set of administration arrangements, particularly the access for people to walk through the schedule 1 areas. We have two access corridors which we negotiated with the bushwalking fraternity back in the 1960s, when Warragamba was first built. That allows people, basically, to get from the eastern to the western sides of the catchment and back again. We have preserved those. So, basically, there has been no change really.

CHAIRMAN: This document that you have passed around, do you want to submit that as part of your evidence?

Mr SWAN: Yes. I would like to submit that as part of the proceedings.

CHAIRMAN: It has been handed around to members. Do you have any objections to that being done?

Mr SWAN: No, I have no objections to that. Basically, what we have done in the consultation process is accommodate the submissions that have been referred back to us to the extent possible, while preserving the core tenet of this regulation, which is to preserve strong catchment management processes for these areas. We have still got some administrative arrangements to work out. We are now engaged in ongoing discussions with members of the Colong Foundation, the National Parks Association, and the Bushwalkers Association of New South Wales. In fact, we are planning a field inspection at the end of next month, that is, taking them out to the catchments so that they can show what sort of extra arrangements would facilitate access by their members. So there is still a process there to be followed through, and David will be talking a little bit more about the nuts and bolts of what has been agreed to date and where we are still moving towards.

So, just to sum up, rather than this regulation being a heavy-handed approach to preserving our rights in the catchments and setting up some arbitrary range of exclusions of activities, what we have got is what we feel is a balance between strong

catchment management, the mandate we were given by Parliament to follow through into reviewing these regulations, as well as facilitating the legitimate recreational uses, such as bushwalking, which was the subject of a submission that you have received.

What I would like to do is get David to run through our approach to catchment management; how our approach in the schedule 1 and schedule 2 areas is part of the overall framework for ensuring drinking water quality for Sydney; and then we will get Kel to talk about the legal process of formulating the regulation, the drafting of the regulatory impact statement, and so on.

CHAIRMAN: Before you give us a further submission on that, the members may like to ask some questions on the evidence you have so far submitted.

Mr JEFFERIS: Was the review process hurried because of the Subordinate Legislation Act?

Mr SWAN: The review process was not hurried. The consultation period was exactly as allowed by the Subordinate Legislation Act. I will be asking Kel later to explain the process that we followed for drafting the regulatory impact statement. It was in accordance with the Act. So we do not feel it was hurried in any way. What was new for us was the degree of concern that we got from a particular sector of the environmental movement about these regulations. As I mentioned earlier, the context for us in coming up with these regulations was that we had been given a very strong mandate during corporatisation. In fact, the environmental movement had been key leaders in introducing a lot of the amendments to the Act that I mentioned - the restrictions, the alienation, joint plans, and so on - as well as amendments to our operating licence.

Those amendments were put forward through us, and through the Government, by the peak environmental groups which represented the Colong Foundation and the National Parks Association, who have authored the submission to you. So our frame of references, in our minds, when doing the regulation was that the environmentalists very much want these areas to continue to be strongly managed. But, as I have described, we have now been going through the process of engaging in consultation with these groups, and we will be talking about that in a few moments.

The Hon. JANELLE SAFFIN: I have a few questions. What is the purpose of your consultation, given that you have actually formulated the regulation, and you have done the regulatory impact statement? How is that the consultation is happening afterwards?

Mr SWAN: The way that the regulation has been drafted is that it sets up principles for catchment management, and allows us in particular discretions to give approval to certain activities around those principles. So, our process of consultation at the moment is to work out the administrative arrangements on how best to facilitate recreational uses, such as bushwalking, in line with those principles. What Dave will

be describing through that process is a whole range of outcomes that we now have to improve things such as signage in the catchments, dissemination of information on access - what is permitted and what is not - and looking at negotiating, potentially, extra corridors to facilitate bushwalkers in the areas that they now like to walk in. So it is actually a very active process, and a constructive one to date.

The Hon. JANELLE SAFFIN: But, when you talk about administration, are you purely talking about administration, or are you talking about possible amendments to regulations? Would amendments be required to increase or change corridors or signage or things like that, or could you do those things as a management tool?

Mr SWAN: None of the proposals that we have agreed to to date involve changes to the regulation. We are very happy with the bushwalking fraternity coming to us and for us to have got together this dialogue to work out together the best way to facilitate their uses.

Mr CRUICKSHANK: Surely the principle is laid down first and then you talk about it? Your department would be prescribing the principles first?

Mr SWAN: Sydney Water, yes. The Government's regulation contains the framework for management of catchments. Then, as part of the submission we received from various environmental groups, we made some changes to the regulation themselves to facilitate that. But now we are in the process of consultation around administrative management practices.

Mr O'KEEFE: There was a two-stage process. There was consultation prior to the regulation going to ExCo, when a draft regulation was made available, and there were some amendments made to the draft regulation.

Mr CRUICKSHANK: Made available to whom?

Mr O'KEEFE: This document that was forwarded to the Committee is not paginated, unfortunately, but is entitled "Summary of the Public Consultation Process". It lists 28 organisations and individuals to whom copies of the regulatory impact statements were sent. It lists a further 86 individuals and organisations who contacted Sydney Water and requested and received copies of the regulatory impact statement. So there was that consultation prior to the making of the regulation.

Subsequent to the making of the regulation, consultation has continued - Sydney Water would say it is extensive consultation - which revolves around the exercise of administrative discretions that Sydney Water has under the regulation to permit activities within special areas, activities which are not inconsistent with Sydney Water's obligations under its operating licence and statutory responsibilities, to ensure a safe supply of water.

Mr HARRISON: I want to ask about the Water Board (Special Areas) Regulation that was made only in 1989. Why could not this regulation have been

postponed until at least after the plan of management had been prepared so that it would be consistent with the plan of management in regulating the catchment? The other possible alternative would have been that the old regulation be postponed under the staged repeal program and Subordinate Legislation Act in terms of section 11 of that Act. That makes it a key issue. Have you any explanation for that?

Mr SWAN: Kel and I will do a bit of a Dad-and-Dave on this one. Really, it was an option to preserve the old regulation, but we had to go through a consultation process. There are some geriatric clauses in there which really did not suit anyone - the one preventing people gardening in Silverdale was one of those - as well as the need to modernise and bring into line the management of particular catchment areas with the way they are now undertaken. So that is the first point.

The second point is that we engaged in preliminary consultations with the Cabinet Office around deferring the repeal. The advice we received was that that was not really a favoured option from their perspective, to advise the Premier, simply because of the great rush of a number of departments and government agencies in seeking that route. Really, I think, all round, we were very keen to put this regulation out to consultation and have everyone put their input in, simply because this would be the first opportunity for the community to take a look at it; and then, in the light of corporatisation, over which we were involved in an extensive consultation process around the Act, to then take the regulations out and get a similar level of consultation, which was pretty much key for us.

Mr O'KEEFE: There is one further point, and that revolves around the time frame for the plan of management. There is a statutory requirement that a plan of management be available to the Minister within two years of the granting of the operating licence. The promulgation of the plan of management is in the hands of the Minister. To defer the regulation on the basis of what might be an uncertain introduction of a plan of management was not considered to be wise. Sydney Water also took into account what it considered were comparatively minor changes to the regulation which were to be effected by the new regulation. So there were those two further issues taken into account.

Mr JOY: Having listened to Anthony's detailed presentation and expansion on the presentation, it is now my role to take those words and explain to this Committee what these things mean on the ground. With your approval, Mr Chairman, I would like to go to the whiteboard. I think if I could quickly sketch a representative plan, it would help this Committee understand the different levels of catchment management that we undertake.

CHAIRMAN: For the purpose of the record, at the whiteboard David Joy will explain, with the aid of a sketch, part of his submission. Are you able to give us a replica of this sketch on paper at a later date as part of your submission?

Mr JOY: I could. It will be a freehand sketch, but I am sure I can recreate that for you, perhaps on a smaller scale. As manager of Sydney water supply catchments, I

would now like to explain to you what the rules and regulations mean on the ground. To do that I will use the Warragamba catchment as a representative catchment, to show the differing levels of involvement that we have with catchment management. Before I start to draw the sketch, I would expand on that. Nearer to the body of stored water, nearer to the reservoir, we generally take a more direct and more involved and hands-on level of management. The more distant you are from a major storage of water, such as Warragamba, the more likely it is to be a negotiated role in management.

Perhaps I could do a quick sketch of Warragamba, marking in the river systems. Here is the wall of Warragamba dam, that is the Coxs River, and this is the Wollondilly River. I will dot in the approximate location of the stored water. I would like to give the Committee a few facts and features of this catchment. The catchment rises to the west of Lithgow and to the south of Goulburn. It actually encompasses an area of 9,050 square kilometres.

As you would be well aware, in these more distant areas there are a range of activities occurring. In Lithgow, there is coal mining, power generation, and other forms of industry. In Goulburn, there is a strong agricultural regional centre, with normal agricultural production, such as cattle and sheep. It has a regional area that supports those industrial activities, to the extent of wool scours and cattle sale yards and abattoirs.

Having said that, there is a need to appreciate the strong relationship between land use and water quality in a reservoir. It is patently obvious that the activities that can occur up in here [indicates Goulburn and Lithgow] can have an impact, over time, on the quality of the water in that reservoir. But it is not a direct relationship that bad quality water here, in Goulburn and Lithgow, equals exactly the same bad quality water here, in the reservoir. The regulations that we are talking about today and presenting to you do not affect the entire hydrological catchment. The catchment special area for Warragamba catchment is in fact 2,500 square kilometres, which is a little more than a quarter of the entire catchment, and that encompasses an area of the order of that [map marked].

In due course, if you study the regulations, you will find that the Warragamba special area is further broken up into two ares - schedule 1 and schedule 2. Therein, there are also some differences. The schedule 1 area is what is often called the 3-kilometre zone around Lake Burragorang. Having given you that diagrammatic representation, let me explain the differences.

In these outer catchment areas that are not affected by this regulation, Sydney Water does not have a regulatory role. It has a consultative role, and it also goes into a negotiating role with a range of other agencies to secure, by negotiation, the best possible level of catchment management that we can. Common fora for this would be direct meetings with local government, with their local environmental plans and other town planning instruments; it would be through the State's network of total catchment management committees; and it may well be one-to-one meetings with representatives

of other government agencies, such as the Department of Land and Water Conservation, the Environment Protection Authority, DUAP and similar agencies.

As you move nearer to the stored water, so the level of concentration of management effort changes, and increases - and there is good reason for that. When you come into this part of the special area, the schedule 2, there are some restrictions on what can and cannot be done in that area. Those restrictions are not particularly onerous. But, as you move from schedule 2 to schedule 1 and come into the immediate foreshore area, if you will, of Lake Burragorang, then we find that we must apply a more rigorous form of management. The reasons for that are as follows.

If you need to ensure the health of a community's water supply, you must have more than one method of ensuring that. This Committee, and others, would be well aware that over time Sydney Water has moved to a greater or increased amount of treatment of its water supply before provision to our customers. In some instances, that is to reflect some of the difficulties that we are having in these outer catchments, and in other instances it reflects the natural geology of a catchment. If you are talking about high levels of iron or high levels of manganese, they will occur and be yielded from naturally forested catchments on sandstone geology. So, some of the tasks of the water filtration plants are in fact to deal with what would be a naturally occurring contamination of a water supply. Equally, part of the role of the water filtration plant is to ensure the health of the water, and that is by filtering out either organisms or contaminants that could cause illness in the community that consumes that water.

It is best international practice not to rely on only barrier, or method, of ensuring the health of the water supply. In my reading of the literature - and there is a considerable amount of literature available, such as scientific papers - it is considered international best practice to complement, and I stress "complement", any water filtration or any mechanical way of improving or ensuring the quality of the water with a second barrier. And the second barrier is prudent catchment management and prudent water storage management, and you add together as one unit the catchment management and storage management. This is what we seek to do.

From reading some of the press articles and being involved in discussions regarding the appropriateness of our approach to managing, for example, Warragamba catchment, we hear claims that: Well, you have got Lithgow, a major township and a sewage treatment plant, as you have with Goulburn, what are the consequences here? Again, in reviewing, reading and absorbing the scientific literature on the behaviour of contaminants, when you are dealing with a contamination source in a distant area like this [indicates Goulburn], if we are dealing with a physical contaminant such as soil material, or a chemical contaminant such as phosphorus or nitrogen, there is in scientific language a process of assimilation.

So that whilst there might be a point source of a contaminant at a site such as Lithgow, as it traverses down the river some of nutrient is actually taken up by plants, some of the sediments may well be deposited in various little pockets along the streams, so that as to the quality of the water that leaves Lithgow, versus the quality of

the water that reaches the inflow, versus the quality of the water that is ultimately extracted here [points to Warragamba Dam offtake], there is a continuous improvement process because of time, distance and natural processes.

So there is a rectification or improvement process occurring, particularly with physical contamination and with chemical contamination. There can also be a process of improvement in respect of what we call biological contamination. This is really what the regulations are all about. We are really setting out to ensure the health of the water that we supply. Those of you who have travelled overseas and suffered what could variously called Montezuma's revenge, Bali belly and packpacker's disease will be aware of the rather disabling forms of diarrhoea that can occur if you ingest various forms of biological contamination.

Now, recognising that you do have discharges of human waste up in the centres of Lithgow and Goulburn, there is also the need to appreciate that, again, there is a natural rectification process that occurs as that water slowly makes its way down the Coxs River, and also as it sits for quite a considerable time in the storage. If you recognise how much water we do store for Sydney, and theoretically how long it takes for a molecule of water that flows in here [indicates] to finally make its way down to here [indicates], you can appreciate that the water is in the dam for quite a while before it is actually consumed.

Because those natural processes are working for us, and because the quality of the inflows is improved from its source, the final concern we have is that then, with our stored water, no further contamination should occur. The sources of contamination can be from human faeces, and they can be from domestic animal faeces. To avoid that situation, and to avoid, if you like, losing the game right at the last stage, we seek to have fairly rigorous and restrictive catchment management practices, supported by regulation, in this near shore zone, or in this 3-kilometre zone, as we call it. It is areas like this that we would quite responsibility seek to not have public access.

But equally, having said that for the 3-kilometre zone, the schedule 1 areas, we do appreciate and understand that limited human entry and limited human activity can occur in these schedule 2 areas. And it is within this area that, having calculated the risk of the water supply process, we do believe that we can reasonably sustain a reasonable amount of human access and relatively passive human activity in those areas.

Let me define for you what we see as being quite acceptable with the schedule 2 areas. There is no problem with bushwalking, there is no problem with camping, and there is no problem with swimming in the streams that are still yet to flow in and join the reservoir, and so that is an acceptable use. That same use, but nearer to the water, we believe that is not acceptable because we would be losing our second barrier in the process of ensuring the health of Sydney's water supply.

Having established the importance of schedule 1 and schedule 2 outer catchments, the process that we have been through - and I stress that this is a

continuation of a similar level of protection, and I think Anthony made reference to the fact that it has been on our books since the 1924 MWS&D Act, and the 1987 Act - we have sought to continue with that same level of protection. The rather interesting thing is that my predecessors as catchment managers did not fully understand the microbiology of why they were doing it. But, again, a quick look at history of water supply in the Sydney settlement from our establish days reveals that the very thing that ultimately destroyed the Tank Stream was contamination by humans. There was then a need to move out to a further water supply, which in turn became too small and contaminated.

We have reached the point where at this stage we really have nowhere else to go. In this modern day and age, with community attitudes to building large storages and flooding lands, there are not too many more opportunities to go out into a pristine area and create another water storage and gather quality water. So we must protect what we have.

Essentially, that is the background to the regulations. That is what it means to me and my staff as a catchment manager. I would like to leave it at that, if I may. I believe I will have a second opportunity later. Perhaps we might now go on to the next part of our presentation.

Mr HARRISON: Mr Chairman, I would like to commend the previous speaker for his excellent explanation of the function of the corporation to make sure that we have safe drinking water. His explanation was enlightening and was very well done.

CHAIRMAN: David, you will send a sketch of that in due course?

Mr JOY: I promise to recreate that sketch.

CHAIRMAN: We will go on to questions on your presentation, David.

Mr JEFFERIS: Are the schedule 1 areas equivalent to what is referred to as protected catchments in the Drinking Water Quality in Australia guidelines that are applied to the operating licence? Those protected catchments are defined in this document as catchments whose primary purpose is to supply high quality water for drinking purposes and for which strict precautions are taken to ensure that the risk of faecal contamination from humans and certain other animal sources is minimised. It says:

> " In such catchments human habitation, camping and domestic animals are generally excluded. Public access is excluded, or strictly controlled to low levels, away from the water and there are no water-based activities permitted in the rivers and reservoirs. "

Does that provision for catchment control in the protected catchments place an obligation, through this operating licence, on Sydney Water to control those schedule 1 areas in that way?

Mr JOY: Yes, we do have that obligation.

Mr JEFFERIS: So are the schedule 1 areas protected catchments in terms of that guideline?

Mr JOY: Yes.

Mr O'KEEFE: The level of protection, we would say, accords with the guidelines. The long-established, pre-existing policy of Sydney Water reflects those guidelines, which were developed whilst this policy was in place.

Mr JEFFERIS: So all of those catchments that fall within schedule 1 you would see as reflecting an obligation on you to protect them in that fashion?

Mr O'KEEFE: Yes. That is the distinguishing characteristic, and that was one of the motivations for classifying the small Blue Mountains catchments as schedule 1 catchments. Those catchments have what Sydney Water describes as direct offtake points in them. David might be able to explain that a bit more clearly.

Mr JEFFERIS: So you would not have a discretion to allow camping and swimming in those areas?

Mr O'KEEFE: No.

Mr JEFFERIS: If you had to comply with that as per the requirement in the operating licence that says that as from your corporatisation you have to comply immediately with this desirable quality for drinking water standard, is it your view that you would not really have a discretion to minimise those requirements in those schedule 1 areas?

Mr JOY: That is correct. And we cannot afford to compromise them for that reason. We cannot in any way lessen the rigour of those regulations.

Mr HOGG: Perhaps I could use the diagram to illustrate my point. There are a lot of polluted catchments throughout the world, and I am sure a lot of stored waters are used for drinking purposes even though they are beyond tolerable limits as far as pollutants. My question is this: At what stage will this catchment reach the position where the swimming or carrying out of recreational activities such as camping, etc., in this area [indicates] has no additional effect on the quality of the water as compared with these other activities here [indicates] that you illustrated?

Mr RIXON: You are making it hard for the reporter. If you would use names.

Mr HOGG: In the upper catchment areas of Lithgow and Goulburn, for example, surely there must be a cut-off stage reached where that process of improvement that you mentioned ceases to operate and it starts to go backwards, so that instead of the water becoming better downstream, towards the dam, it becomes

worse because you get these greater concentrations of pollutants coming in through the waters. Surely there must be a stage where nothing that will happen in here [indicates] in terms of recreational activities will have any additional effect on water compared with these other activities in the head of the catchment.

Mr JOY: Could I return to the board to reply. I think it is important to note that, in describing what may or may not happen to this body of stored water, it is essentially a matter of the loss of its biological health. I have done some reading of the national and international literature on organisms, and two of those, Cryptosporidium and Giardia, are particularly significant. Perhaps I should explain the significance of Cryptosporidium and Giardia to the health of the water supply. They are two particularly nasty gastroenteritic bugs; in other words, they affect the digestive tract and result in quite severe bouts of diarrhoea. They can result in the death of individuals who are very young, very old, and those who are immunodeficient.

The other, rather interesting, thing with these two bugs compared with the many others that are in the water is that they are very resistant to any currently known process of disinfection. Where there are a range of other gut infection contaminants that can come in, they will respond to disinfection with chlorine, ozone and other such products, at very low doses. We know that we can achieve a kill. It is known - and this is supported by world-wide literature - that Cryptosporidium and Giardia are not effectively killed by chlorination or any other currently known process. This is why we must ensure that there is no fresh seeding of Cryptosporidium and Giardia cysts, or oocysts - and I apologise for the technical language, but I cannot avoid it because there is no easy way of explaining it otherwise.

My understanding, from reading the literature, is that it takes only spore or cyst of either Cryptosporidium or Giardia to effectively give you the illness, whereas with other bacteria and other protozoa that can invade the human intestine it is more likely to be a count of so many units of tens or hundreds per millilitre or litre of water, whatever count you want to use. So it is fairly critical that (a) our filtration plants do not happily cope with them; and (b), it only takes one cyst to be ingested by one human being to get one bout of diarrhoea. Now, that is putting it in very simple language.

So, recognising that we could talk about a theoretical storage time of up to five years for water first flowing in here, and recognising that as well as having a correction process in the rivers, the actual storage of water is a further correction process and that these cysts do die over time as a result of exposure to water. The live quite happily in the excrement of cows and human beings. So the cysts are actually protected by the cow pat.

Mr RIXON: For how long?

Mr JOY: I cannot easily answer that, but you are talking about months. But if those cow pats are then washed off the land surface and the Cryptosporidium or Giardia are freed of the cow pat and are dropped into the water, then over time you

get a die-off, graphically. So it is really critical that we do not keep getting a re-infection or a re-loading in these critical areas.

CHAIRMAN: You have spoken about the sewerage systems at Lithgow and Goulburn. Can you elaborate on the small towns between Lithgow and Goulburn towards the main water storage area and as to their expansion and as to concerns associated with sewage and, as well as that, mining activities in those areas.

Mr JOY: Yes, I can. Let me deal first with the question of the expansion of the towns. We are concerned about further development within what we describe as outer catchments. It is of concern to us. That is why we seek to negotiate, and seek to have major development proposals referred to us, to allow us to at least comment. As I have explained, we do not have a regulatory power in respect of those outer areas, so that we cannot, if you like, fail to concur.

So that, if a developer lodges an application in respect of a residential subdivision or a major development in the inner areas, these are referred to us, and we have the right to "not concur" in the interests of protecting water quality. We do not have that right in the outer areas, such as Lithgow and Goulburn. So further development is of concern, and we will continue to negotiate quite rigorously with government and DUAP and any other agency to ensure that the rate of development does not exceed our ability to manage the health of that water supply.

CHAIRMAN: In the past, what effect have you had on those developments about which you were concerned?

Mr JOY: One of the things that we have been particularly effective in is that as councils such as Lithgow City Council or Goulburn City Council or Wingecarribee Shire, which is in the Southern Highlands area, have sought to develop what are called local environmental plans (LEPs), we have asked for the opportunity, firstly, to review, secondly, to comment and, thirdly, to actually have input. By taking a reasoned and negotiated stance, we have found that the councils have been prepared to take into consideration our concerns.

It may not be that it actually physically limits the development, but it may be a conditioning process where, if development is to occur, then certain things must be done. So we often achieve a very good result through what are called development control plans, which are an adjunct to a local environmental plan.

If I could now come to the point of mining. The interesting thing to note is that with mining activities - for example, at Lithgow - the activities of mining come under several other government agencies. The first is the Department of Mineral Resources. Secondly, if a mining activity has any sort of discharge of water from its site, that discharge must be licensed by the Environment Protection Authority, and the licence will contain quality criteria as to what quality of water can be discharged.

Recognise that the discharge from a mine site is more likely to be physical

contamination in terms of coal fines, or soil material. There may be some chemical contamination from leachings from the coal waste. There could a pH problem in that the water is somewhat acid. But, again, these criteria are set by the Environment Protection Authority. If we have any concerns, we are prepared to go and negotiate these issues.

In terms of a discharge of human effluent from a coal mine, a coal mine will have to satisfy the same sorts of rigorous requirements through the Environment Protection Authority, unless it can hook into an existing sewerage system, and then its own on-site effluent disposal system will require licensing and there will be standards set.

Could I add one additional piece of information. In describing these catchment areas, I did give you a rough idea of scale. The entire Warragamba hydrological catchment was 9,050 square kilometres. The combined schedule 1 and schedule 2 special area is 2,500 square kilometres, which is just little more than a quarter of it. But, importantly, the schedule 1 area is approximately 500 square kilometres. So, in terms of the total catchment, this 3-kilometre zone represents a very small amount.

I would also like to add that the storage of Warragamba has some major tracts of national park, Blue Mountains, Kanangra Boyd, Nattai, Burragorang, and perhaps the greater amount to the west of the dam rather than to the east, but those national parks encompass an area of 400,000 square kilometres. They just come in and overlap us on the edge of schedule 1. Certainly, a lot of our schedule 2 land is national park, and certainly beyond that there is national park. But that was to give you a sense of scale. So the 3-kilometre zone is a relatively small area in the whole picture.

Mr RIXON: One of the things I noted in your comments was that you spoke about your readings from overseas and elsewhere. What continuous testing, or what spot testing, have you done along those rivers so that you would know what is actually happening along the rivers by way of improvement or diminution of the quality of water?

Mr JOY: We have a regular water quality monitoring program for a suite of water quality criteria, and that can include the physical contaminants, chemical contaminants, and the physical state of the water in terms of pH, salinity etc. That is ongoing.

Mr RIXON: Are they at random testing sites?

Mr JOY: No.

Mr RIXON: Have you got a number of regular testing sites along each river? And, if so, how many?

Mr JOY: Regular testing sites we have at what we call the major inflows. There is certainly one on the Coxs and there is certainly one on the Wollondilly. But

equally - and I have not shown it on this drawing - there are other major streams entering, such as the Nattai from the Southern Highlands area. I do not have the figure clearly in my mind, but we have something of the order of between eight and ten regular monitoring points.

Mr RIXON: The point I was getting at is that if you have only got one on a river you cannot tell whether that river water is improving or getting worse along its stretch?

Mr JOY: No.

Mr RIXON: Have you got more than one testing site along any particular watercourse?

Mr JOY: Yes, we do, particularly on the Wollondilly. We have one right at the inflow, and then where the Nattai and Wingecarribee come in there are additional points. That is because what we want to differentiate is whether the problem, if there is a problem, is stemming from Goulburn, or from Mittagong, or from Moss Vale, or wherever. We want to be able to differentiate.

Mr RIXON: The obvious thing, from what you are saying, is that there ought to be some testing stations just below Goulburn, for instance, and then others many kilometres below Goulburn to test your theories.

Mr JOY: I appreciate your point. Could I offer, by way of explanation to the Committee, that the process of water testing regularly is a very, very expensive process. It is critical to us. However, what we have set out to do is network with other agencies and we exchange data. We are finding that a very cost-effective way of getting the same amount of data without an unnecessary duplication.

Our colleagues in what was the Department of Water Resources, now the Department of Land and Water Conservation, have monitoring sites. We have set out to link up with them, because most of their monitoring sites and monitoring is towards flow rather than quality. Flow is important information to us, but so is quality. So we have combined with them, and many of our sampling points are associated with Land and Water Conservation's flow monitoring stations.

Equally, the cities of Lithgow and Goulburn do their own monitoring for their discharge purposes, and the Environment Protection Authority do spot monitoring. Again, we are able to utilise other organisations' data. There is a data exchange because of the very, very high cost of water quality sampling.

The Hon. J. F. RYAN: As I understand it, what has caused the problem here is that you had a regulation not dissimilar to the one you have been talking about and gazetted, and it existed for seven years but was largely unenforced. The question to be asked is: Whilst you have explained all these possible disasters that could happen, what scientific data have you given to the Minister to tell him that the situation has changed

sufficiently that you now have to remake the regulation and enforce it, given that whilst the regulation has been in existence it appears that it has been honoured more in the breach than in practice.

Mr JOY: In seeking to reply to that I would like to make two points. I do not believe the statement that it has been honoured in the breach rather than the practice is correct.

The Hon. J. F. RYAN: The Premier breached it himself.

Mr JOY: That may well be an incident, and I accept that comment, but ---

The Hon. J. F. RYAN: I am not taking that up against the Premier. All I am saying is that it must have been sufficiently common for people to do that.

Mr RIXON: Perhaps a better way of putting it would be to say it was simply not enforced, rather than worry about whether there was a breach.

Mr JOY: In terms of enforcement in schedule 1 areas, the regulation has always been enforced, and rigorously enforced, and it will continue to be so because that is so vital. In the schedule 2 areas, there was always, with approval, the opportunity for people to bushwalk, camp, swim, -----

Mr O'KEEFE: Pedestrian entry to schedule 2 areas does not require approval.

Mr JOY: That is correct. So I do not believe it has been observed in the breach. If you look at our records on prosecution - and my colleague Kel could probably advise as to the processes that we have gone through - where people have been found trespassing in this schedule 1 area, I believe the records would support my statement that I do not believe it is fair to say that it has been observed in the breach. I believe it has been supported and well sustained.

In terms of the scientific evidence you seek, it is an emerging science and picture. Throughout the world, from my reading of the literature, the Cryptosporidium and Giardia issue is an issue which, if you were going to go back into the literature of five or ten years ago, you would have heard very little about. If you go through the scientific scanning process now, you will find any amount of research and concern throughout the world.

There was a recent instance in the United States where 400,000 people went down with an attack of protozoa disease, the Milwaukee problem. There have been other problems in the United Kingdom, and it shows up in other parts of the world. I have an array of literature that I could happily pass on.

The Hon. J. F. RYAN: That is true, and I accept that that is true. I must say that I have been on the Water Board Committee within the last Parliament, so I am familiar with that. Cryptosporidium and Giardia appear to be the two demons that the

Water Board drag out frequently to get them out of problems, in my view, because they were in fact the demons that justified the fairly significant cost of the water filtration plants. I guess what some of the groups who want to use these areas will say is that you are going to spend millions of dollars on water filtration plants when there has not been in Sydney a significant outbreak of problems with Giardia or Cryptosporidium up till now, while those people have been using those areas, when the board has not had these water filtration plants and the regulation has not been strictly enforced. You are now going to have double protection, if you like, when there does not appear to have been any evidence that Sydney Water can point to that something significant that has happened to justify this fairly significant change in enforcement, if not in need for new regulation.

Mr JOY: I disagree because what has happened is not necessarily an incident in our own backyard but an international incident where there is a better understanding of the microbiology and the issues associated with these two protozoal diseases. We do not have all the knowledge at any one point in our working lives. We are dealing with an emerging issue, and I think that point is critical.

As prudent managers of the water supply, international best practice says that you do not rely on one barrier. If you study the literature of what happened in Milwaukee and what has happened at various points in the United Kingdom, the reason that people have become sick is that the water filtration process effectively broke down - and it broke down, not because of a mechanical fault through a pump stopping or something like that; it broke down because the number of cysts in the raw water supply were such that as they came through the filtration process the filters could not cope, and you got what is technically called filter breakthrough.

Now, that is an operational problem, and it is a very hard one to understand. There is a lot of work being done on filter breakthrough and how you can manage it. An issue that may come out of this in years to come is that the filters are run a lot harder; in other words, there is a great increase in the cost of operating what is called a filter run, that is, the time from when you backwash a filter once and you need to backwash it again. That time may contract quite seriously. It may also require the use of an additional chemical to knock off the cysts. Currently, international best practice is that you do not rely on one system or the other; you have a complementary two-barrier arrangement.

The Hon. J. F. RYAN: But you would concede that up till now we have had about half a barrier? We are now about to have two.

Mr JOY: I am sorry, but I do not quite understand the point of that.

The Hon. J. F. RYAN: You have had a regulation which has not been strictly enforced, so that -----

Mr JOY: I would challenge that.

The Hon. J. F. RYAN: I must say I would question the fact that you would give me information to that effect. We have had an inadequate barrier and we will soon have two. That is a large change to the level of protection. You have not been able to show the Committee, in my view, that there has been a significant increase in the risk.

Mr SWAN: If I could add a few comments here, Mr Chairman. What is important is that the fact that we have not had a risk in the past demonstrates the effectiveness of the catchment management processes. The filtration plants are really aiming to improve water quality.

The Hon. J. F. RYAN: But you could also demonstrate that the catchment management you have got has been almost not required.

Mr SWAN: I do not agree. And I do not agree with your comment that we have not enforced these regulations. I think the member for Manly mentioned in the debate on the disallowance motion the precautionary principles. I am reminded by our environmental scientists here today about that and how that is linked in with our approach to construction of these water filtration plants.

CHAIRMAN: I would like to mention that we will have a quick break and then move on, because as much as we need this information we also need to press on.

Mr SHANAHAN: I would pick up on two points that have been raised, one in relation to the water filtration plants. Certainly the issues of Giardia and Cryptosporidium are important for those water filtration plants; there is no doubt about that. And they do represent an additional barrier. What has been shown, overseas in particular, is that there has been a real risk of breakthrough of Cryptosporidium and Giardia in water filtration plants. Water filtration plant were as much driven by those points which David made earlier - and I am not sure if Mr Ryan was present at the time when David was indicating the issues associated with the potential contaminants of the raw water, as it is termed.

The geology, as David explained it, in this area is largely Hawkesbury sandstone, and it will deliver into the raw water itself a variety of elements, but two in particular that are critical are iron and manganese. Neither of those is health-related. They are delivered naturally from Hawkesbury sandstone and they cause significant problems for us at various times. Of all the complaints we receive on water quality, iron and manganese probably represent the two greatest.

The Hon. J. F. RYAN: They stain washing.

Mr SHANAHAN: They stain washing and they cause significant problems for our own operations. They develop slimes within our pipeworks and require us to do a lot of expensive cleaning of our pipework. We are also driven by two increasing issues: the demand of our customers for a safe water supply and an increase in the quality of that water supply. You only have to look at the inroads that have been made

by the bottled water companies into the building up of a picture that Sydney's water supply is not safe, that it is not as good as it should be, and the like, encouraging people to buy bottled water at a very much accelerated rate.

The other issue is that of the increasing standards that are being set by our peak health and water quality agencies and regulators, like the National Health and Medical Research Council. Those standards are reviewed every five years. We have a new draft set out now. As we keep up with international best practice set by the World Health Organisation or others in terms of the requirements to meet water quality guidelines, as they are in Australia at the moment, the acceptable levels or concentrations of substances like iron and manganese within the water supply become lower and lower.

What drove us in Sydney Water, the then Water Board, into the issues of water filtration plants was an inability for good catchment management alone to meet all of the water quality criteria that were being set by the NH&MRC. A variety of things have driven that, as well as the geology of the catchment. We have an increase in demand for our water supply. We have to draw water out of our storages at a much greater rate. Prospect reservoir, for example - a key supplier component within our system -

The Hon. J. F. RYAN: What it used to use in five months it now uses in three.

Mr SHANAHAN: Yes, that is right.

CHAIRMAN: This is interesting information, but much of it is not really relevant to the regulation.

Mr SHANAHAN: I guess what I am saying is that the regulation is there to support the process of delivering quality water. As David has said, neither water filtration plants nor catchment management alone has proven to be sufficient; we require both. I guess what I was trying to do, Mr Chairman, was deal with the issues raised regarding water filtration plants and the demands on the water supply from pressures of population increase and the like.

The only other comment I would like to make is the proportioning principle that was raised in the parliamentary debate. The other component that comes into our regulations and catchment management is that that provides a degree of "due diligence" for us. Due diligence is an important component written into our operating licence under the Protection of the Environment Administration Act and the Environment Offences and Penalties Act. It is part of the process of Sydney Water's due diligence in supplying quality water that we have both good catchment management and strict controls over the 3-kilometre zone as well as the water filtration plant component. That is all I would like to say, Mr Chairman.

CHAIRMAN: Gentlemen, we have been talking about concerns associated with

catchment management. Do you have any knowledge of the number of breaches under the old regulation associated with schedule 1 areas?

Mr O'KEEFE: Just this week there were a number of prosecutions at Picton Local Court which were conducted by an agent for Sydney Water. I have not received official confirmation of the outcome of those. There is a matter set down for prosecution in the Wollongong Local Court on 6 November. There were several prosecutions at Picton Local Court earlier in the year, as I recall in February or March. Just before Christmas last year there were about 12 prosecutions against four individuals.

The Hon. J. F. RYAN: Are those against bushwalkers?

Mr O'KEEFE: No, they are not. Characteristically, they are not against bushwalkers, as far as I am aware.

Mr RIXON: Well, what sort of things have they done?

Mr JOY: Mr Chairman, I would like to respond to that. I have brought along a photographic library, if you like, of the sorts of other activities that occur. With your approval, I would either pass it around or table it. I think those photographs will give a quick reply to the question just asked.

Mr RIXON: It would be helpful to us to have data on how many charges were laid for somebody dumping material and how many were laid for someone tip-toeing through the bushes. It would be interesting to have a breakdown of what the charges were.

Mr CRUICKSHANK: I thought they principally related to people backing up with a 20-tonne tip truck and dumping material.

Mr RIXON: That is what I would like to know.

The Hon. J. F. RYAN: Trail bike riding is one of the common problems.

CHAIRMAN: Before we go on, would you like to table that, David?

Mr JOY: I am happy to table that, Mr Chairman.

CHAIRMAN: Could you make a short comment on some of the offences.

Mr JOY: The types of offences, we find, relate to people going in to dump any sort of rubbish. It could be garden clippings or it could be industrial waste, and there is photographic evidence of that. We had a situation where packaged meat from a freezer works was dumped in the catchment. So the bushland is very often seen as a very convenient place to get rid of waste.

CHAIRMAN: But very little breakdown in respect of entry of people for bushwalking activities?

Mr JOY: That is correct. We get all sorts of material dumped. We have stolen cars. We have had people going in to grow drug plants. We have had them going in to fish, which is not approved. We have people going in after bush rock and native plants, cutting down trees. Almost any activity that you could imagine that people may find convenient to undertake in any area of bushland can be repeated in those catchment areas.

Mr HALE: It needs to be said that catchment management is not just about policing. It is about a whole range of other measures. I mean, speeding on our roads is not controlled by policemen who are standing on our corners. It is addressed by community education and a whole range of matters. In the case of bushwalkers in particular, we rely on community education and the dissemination of information, often through the bushwalking organisations themselves. Those responsible bushwalking organisations are often self-policing. They go through the bush destroying old camp fires and so on. So we rely on that sort of activity by responsible bushwalkers, probably more than we rely on policing because we are not in a position to have a policemen in every corner of our bushland.

CHAIRMAN: We understand that you would be policing issues such as dumping and so on, but there has been concern over a period of time as to access for bushwalkers and people who have breached the regulations.

Mr SWAN: Kel reminds me that our practice is not so much to prosecute bushwalkers, but we do keep records of cautions that have been sent out to them.

Mr O'KEEFE: My understanding is that if there were repeat offenders related solely to pedestrian entry to these restricted areas, Sydney Water would consider prosecution action. Prosecution action has been directed at what you might describe as the more blatant offences, where persons have been found in vehicles near stored waters, often where a lock or gate has been interfered with or smashed. Persons found fishing or embarking on some other form of active recreational activity close to the stored waters do not seem to enjoy much favour from the Corporation.

CHAIRMAN: Janelle Saffin has a question on breaches, and then we must press on with further evidence.

The Hon. JANELLE SAFFIN: I am sure you have got a register of proven breaches and breaches in respect of which you issued a caution. It would be helpful to the Committee if that sort of information could be provided quickly. I am sure it would give information about the time period in which these things happened. Would you be able to get that information?

Mr SWAN: Yes.

Mr RIXON: That is an issue in which I am specially interested. Bureaucracies can be seen as overbearing, with no heart or brain, or they can be seen as organisations that sensibly administer the regulations that they are working under. So that record of charges and action could well illustrate the history of this regulation.

Mr HALE: Could I suggest that the proof of the success of the regulation is the health record of Sydney's water and not the record of prosecutions.

Mr RIXON: We are talking about how the regulation is administered, whether sensibly or not, and whether or not the regulation itself is even sensible.

Mr JOY: I believe we can furnish that. In my office I have a computer record of the letters of caution. Unless it was quite an extraordinary act of vandalism resulting in considerable damage, we would not seek to engage in prosecution immediately. We have a standard letter that we issue. Quite often, the people we are apprehending are young children.

Mr RIXON: Can you give us a list of those cautions as well, numerically?

Mr JOY: I believe that is critical. I think we need to demonstrate that there are probably far more cautioning letters go out than there are prosecutions mounted.

CHAIRMAN: Could I mention that we all appreciate the issue of water quality, and I think most of us are proud of that. But we are dealing with the public and we have to be responsive to the concerns of the community, and that is why we are cutting into issues that you may believe are not of significant relevance in respect of your concerns about water quality. We will have an open business general discussion session at the end of the evidence to be given by the environmental groups, but first we will have a short break before we will move on to the next presentation.

(Short adjournment)

Mr BAXTER: Bearing in mind the time question, Anthony will quickly deal with the position to date and then Kel will take five minutes or so, and we will wrap up within ten minutes.

Mr SWAN: To date, we have got a program of management of catchments which fits into a whole framework of strategies to look after these areas. We have the regulation itself. Our involvement as a corporation is primarily with the area right around the lake itself, the 3-kilometre zone. As you go further out, the processes we rely on to ensure catchment management and that water quality is preserved become more networked with other government agencies.

So, as we go further out, the interaction is with National Parks, with councils, and of course we have the joint plans coming up within about 18 months. The joint plans are critical. Where we are moving towards with these regulations is to ensure that we have the legal underpinning that make sure that our plans will have some legal

force. This is something that I will ask Kel now to pick up on, as well as looking at the regulatory impact statement process.

Mr O'KEEFE: I see my role as providing a recap of evidence that Anthony gave earlier in the morning and on some of my earlier evidence. Sydney Water's view is that it did comply with the provisions of the Subordinate Legislation Act; that the consultation was embarked upon in accordance with the requirements of the regulation; and a regulatory impact statement was prepared, with reference to guidelines that were prepared by the Regulation Review Unit attached to the Cabinet Office, and an advertisement was duly published.

The review of what was then the special areas regulation, renamed the Catchment Management Regulation, was done in concert with a review of other regulations - a review of the plumbing and drainage regulation, which was retained in amended form, and a review of the finance regulation.

In relation to the review of the special areas regulation, 28 individuals - including Mr Muir, who is present at this Committee this morning - were identified and forwarded copies of the regulatory impact statement. A further 86 individuals requested copies and were supplied with copies. When a draft regulation was available, it was made available, and consultations with the corporation did occur. Ten formal submissions were received from individuals. This was not the greatest number of submissions in relation to the review of the regulations; the greatest number of submissions received by the corporation were on the plumbing and drainage regulations. Some 30-odd submissions were received in relation to those.

The corporation has continued the consultation process. The requirements of the Subordinate Legislation Act, in the corporation's view, required it to take some action. We have gone through that this morning. The two options appear to have been rolling over or saving the regulation in its present form, or proceeding with the making of a new regulation. The corporation chose the latter course for the reasons which I have already indicated in my evidence earlier this morning. That is, that the plan of management process has an uncertain outcome as to when it will be formally adopted by the corporation and National Parks. In the corporation's view, the thrust of catchment management practice was unaltered by the new catchment management regulation.

There is one further point I wish to make, and that is that much has been made of the corporation's pre-empting, or failing to wait for, the outcome of the plan of management process. I wish to point out to this Committee that the plan of management is not a regulatory instrument in the strict sense. It is essentially an administrative document for use by the respective agencies, that is, Sydney Water and National Parks, as a planning aid. Sydney Water still requires a regulation to properly discharge its management requirements and meet the obligations imposed on it by the Water Board (Corporatisation) Act and by the operating licence and to meet the onerous obligations of catchment management imposed by the guidelines referred to by Mr Jefferis this morning.

Mr SWAN: I will quickly recap on the consultations we have had with the bushwalking community. As Kel mentioned, we receive quite a number of requests, as well as sending out regulatory impact statements to peak environmental groups, and bushwalking groups were among those. What we have engaged in now is going through a range of discussions with them. As I have said, we are having a field trip with them at the end of November, going out to the site and seeing what additional access arrangements they think are appropriate.

What we have come to to date - and David will correct me if I am wrong - is that we have agreed to swimming in the schedule 2 areas, and to camping, to the use of fuel stoves associated with camping in schedule 2 areas. These access arrangements are identical to the wilderness declarations administered by National Parks, and after the meeting I can table documents from National Parks to show that our access arrangements are identical with Wilderness and Kosciusko National Park's works.

We are also in the process of reviewing walking corridors through the schedule 1 areas, because we realise that bushwalkers accessing schedule 2 need to get from the east or west or vice versa. So we are reviewing what is the best way for that to happen. We have agreed to use the advice and expertise of the bushwalkers in reviewing the signage for the area. So we are planning to put signs at the access heads of these areas and review the whole wording of the whole set-up with that with the bushwalking fraternity, who are key users who can facilitate the way we go about that.

Mr O'KEEFE: Can I reopen my submission to put into evidence a pro forma letter prepared by the corporation. It goes out under under a hand on behalf of the Managing Director. It sets out the corporation's current position in relation to access arrangements within the Warragamba catchment.

CHAIRMAN: That is being submitted as an exhibit?

Mr O'KEEFE: Yes, it is. It deals with the earlier point of the responsible administration of the regulation. It is a pro forma letter but it does not have the signature on it.

Mr SWAN: It is a standard letter which is sent to all people who have inquired about the catchment regulation during this consultation process, and it sets out the exact access arrangements.

CHAIRMAN: Is that the last of your presentation?

Mr SWAN: Yes, it is.

CHAIRMAN: I thank you very much for your contributions. After we take evidence from the environmental groups, we will throw the meeting open for general discussion, so you might like to remain with us. For the record, I now invite representatives of the Colong Foundation for Wilderness, the National Parks Association of New South Wales, the Australian Conservation Foundation, the Total

Environment Centre and the Kowmung Committee to give evidence.

GRAHAM BRUCE DOUGLAS, Vice-President of National Parks Association of New South Wales, of level 4, Imperial Arcade, Sydney, and

KEITH WILLIAM MUIR, Director, Colong Foundation for Wilderness, Senior Campaign Officer, Total Environment Centre, and Vice-President, Kowmung Committee, of 61 Egan Street, Newtown, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

WITNESSES: I did.

CHAIRMAN: Is it your wish that your submission dated 7 September 1995 be included as part of your sworn evidence?

Mr DOUGLAS: Yes.

CHAIRMAN: Do you wish to add to or elaborate upon that?

Mr DOUGLAS: We would like to make some elaborations in addition to that written submission. We would like to present the evidence in two ways. First of all, I would like to talk about the consultative process and how as a community sector have perceived the consultative process, its adequacy and the mechanisms for trying to resolve these issues. Keith also will elaborate on some of the issues about catchment management about which you have heard already.

Can I state for the record here and now that the conservation movement and those organisations which we represent here today do not seek the disallowance of the whole of the regulation. What we are all here about is what we see as an inappropriate process with an inappropriate outcome, and we would like to see an improved outcome for the community as a whole.

In relation to the process, first of all I would like to refer to the document "Regulatory Impact Statement for the Proposed Regulations under the Water Board Corporatisation Act 1994 - Catchment Management", dated July 1995. As you will recall, the regulation was gazetted so that it met the 1 September time frame under the Subordinate Legislation Act. The document is in fact, with the exclusion of the regulation and the blank pages in it, a total of four pages in length. For a regulatory impact statement, we believe that this is inadequate and inappropriate.

The Subordinate Legislation Act in fact makes reference, in schedule 1, to the guidelines for the preparation of a statutory rule. There are a number of issues which fall within that framework that we think have not been adequately addressed. Some of those include, for example, under clause 2(e), that there will be "no overlapping of or duplication of or conflict with Acts, statutory rules or stated government policies administered by the other Authority." We will deal with that in more detail shortly, but

our submission is that there is already substantially a framework for dealing with the catchment management issues, particularly in some of the catchments, and we refer specifically to Warragamba, in relation to the National Parks and Wildlife regulations.

There is also there a process which is sought. Again I refer to the regulatory impact statement at page 10 in which it says: "In accordance with the Subordinate Legislation Act, submissions will be invited from the public during the period 7 July to 31 July 1995 and will be considered by Sydney Water. Additionally, the views of the following specific stakeholders will be sought during this period: National Parks and Wildlife Service, local government authorities whose areas include special areas, and interest groups with special concerns in the special areas."

Our submission is that the interest groups referred to were not specifically addressed. What happened was that the interest groups saw an advertisement, sought the information, and had to make their submissions purely in the light of this document, and that the consultation that should have taken part in the spirit, if not the letter, of this requirement in our view was not fulfilled.

On the specifics of the regulation, our view is that you have already been provided with evidence by Sydney Water which indicates that in the outer catchment, or schedule 2, areas they do not object to camping; they do not object to swimming; they do not object to the bushwalking issues; and they will even permit fire using fuel stoves. We will address the fire with fuel stoves issue in a moment. However, the submission that we presented to you previously seeks to actually rectify some of those issues. Our submission is that, by some disallowance of parts of the regulation, we can give effect to some of those issues. Also, our submission to you previously puts the position that people should not remain within the inner catchment areas; but they should be able to enter and pass through. That would tighten the regulatory framework for the inner catchment area that was referred to earlier.

Mr Chairman, I presume that people are familiar with our submission and that therefore I may not need to go into that again in detail. However, I would make only one other comment about the process and what we see as the framework in which these issues should be considered. I specifically refer to schedule 1 and the subclause under "Special Areas" which is marked (a), which states that, in terms of schedule 1 areas, "such portions of special areas as the Corporation may determine from time to time and notify by signs erected on the portions concerned;". Our view is that that is highly discretionary and that it in fact subverts the intention of the Subordinate Legislation Act, which is to provide a consultative and review mechanism in relation to areas that might form special areas. As such, the implications of the regulations under which other areas that could, at the corporation's discretion, be called into that framework, is far too wide. Our submission is that that is a very serious issue.

In relation to swimming and sailing, we have indicated to you what we believe are issues that can be addressed in the context, specifically, of what is called part 4 areas, which cover both schedule 1 and schedule 2. Our submission is that, whilst we will disagree - at least in part - on the swimming issue within the inner catchment, there

appears to be no disagreement in terms of the outer catchment, yet that part of the regulation prevents it. We believe that is a very serious issue.

On the issue of sailing, or rowing, or paddling or lie-lowing, which was indicated earlier, where again they have no problems in terms of the outer catchment, the regulation prevents those activities. Our view is that in fact in the inner catchment some of those activities may also not be too adverse, but there are ways that the regulation could have addressed that issue, and it has not done so.

Similarly, in relation to camping, our view is that people should not be allowed to camp in inner catchment areas, but people should be able to traverse through those areas - and not necessarily through the two single corridors at the moment, one of which is a very awkward, inconvenient and in fact ineffectual bypass route that people do not use anyway at the moment. We would be looking to producing some evidence in relation to that if the Committee has the time. I have reviewed and commented on the issue of entry into part 3 land. Our view is that people should be able to enter for the purposes of passing through it, but not remaining.

Finally, on the catchment management plans, we are not in a position to provide you with a legal interpretation on the roles of catchment management plans versus the regulations. We are not lawyers, and we are not trying to put ourselves forward as such. But what we do say is this. The catchment management plans, which the community groups and the environmental groups negotiated with the former Government, were based upon ensuring that the catchment management plans would be the basic framework for the regulation of activities in the catchment. Our view is that there should be basic regulations that control activities in the catchments, but that the details of those need to be dealt with in the framework of catchment management plans and that those would be produced jointly by the National Parks and Wildlife Services (in terms of their ecological issues and also their recreational issues) as well as the catchment issues from Sydney Water Corporation.

Our view is that the process has been handled badly, that it could have been done better; that the regulatory impact statement, even if it does comply with the Act, does not comply with the spirit of the Act; and that Sydney Water should be given a clear message, because if this is what other government agencies see as a way of getting round it - and I have reviewed very many regulatory impact statements which give far more detail than this - then it is a message to other government departments that the extent of information that you must do for a regulatory impact statement will be very minimal to get it through. I think that is an issue that this Committee should think about in terms of the future for the Subordinate Legislation Act and its effectiveness.

I would like to ask Keith to deal with some of the specific catchment management issues on that.

CHAIRMAN: Before we do that, we may have questions associated with your submission.

Mr JEFFERIS: Mr Douglas, you virtually said that Mr Swan had stated in his address that Sydney Water had no objection to swimming and bushwalking in certain areas of these catchments but that the regulation in fact prohibited the very activities that he said are allowed. Can you point to the part of the regulation that you say prohibits what you say Mr Swan said should be allowed?

Mr DOUGLAS: Yes, Mr Jefferis. Mr Chairman, I think there has actually been confusion initially by Sydney Water in relation to that particular matter. Clause 20, which refers to camping, we addressed in our very first meeting with Sydney Water after the regulation had virtually been put in place. We had read that and interpreted it as providing the capacity for camping in the schedule 2 areas. However, at that meeting it was suggested to us that in fact it did not allow that, except where it was sign-posted and designated. At the subsequent meeting to that Sydney Water indicated that, no, in fact you can camp in the schedule 2 areas.

However, if you look at the clause, to be quite honest, it is highly confusing, and it could be very much simpler in its expression, and it could tighten up and prevent camping in the other areas. Remember, part 4 refers to both schedule 1 and schedule 2 areas, clause 20(2) of the regulation says: "The Corporation may, by means of signs displayed on or adjacent to any portion of Part 4 land, designate the portion as land available for camping." So it can designate any area within the catchment as available for camping.

It further states: "The Corporation may impose conditions, not inconsistent with the Act or this Regulation, subject to which a person may: (a) camp on a portion of Part 4 land designated as land available for camping; or (b) camp on any Part 4 land identified in Schedule 2 that is not so designated." Clause 20(3) goes on to say: "A person must not camp on Part 4 land unless: (a) the land concerned (i) is land identified in Schedule 2; or (ii) is land designated in accordance with subclause (1) as land available for camping; and (b) the person complies with any conditions imposed pursuant to subclause (2)."

Mr RIXON: What does that mean?

Mr DOUGLAS: Exactly. For people to interpret that clearly I believe is very difficult. By the disallowance that we have before you, we believe that the regulation could read much simpler, making it very clear what the intention is. That could be: "20.2(2) The Corporation may impose conditions, not inconsistent with the Act or this Regulation, subject to which a person may: (b) camp on any Part 4 land identified in Schedule 2." Then it says: "(3) A person must not camp on Part 4 land unless: (a) the land concerned: (i) is land identified in Schedule 2; and (b) the person complies with any conditions imposed pursuant to subclause (2)." That is simpler and easier to understand: people can camp in the outer catchment but not in the inner catchment.

Mr JEFFERIS: Mr Douglas, why have you taken seven years to bring forward this point when the other regulation was in the same terms?

Mr DOUGLAS: Through you, Mr Chairman. The answer is that the regulatory impact statement did not come out until July 1995. Our understanding of the Subordinate Legislation Act and its operation is that it is to present to the community regulations that are up for review, and that at that point of time the community has the opportunity for input to the process. The fact that we have had a bad regulation before does not mean we should have a bad regulation again.

What we are trying to say to the Committee is that, in the context of the this, the form of regulation was not really enforced in detail; people could not, in all honesty, be prosecuted for simply walking through an area that they had walked through for many years, in most cases having no knowledge of the regulation. And, just because we had a bad regulation before does not mean we should have a bad regulation now. The fact that it existed does not mean that it is at the front of the community's mind. The regulatory impact statement process, through the Subordinate Legislation Act, in our view is intended to bring these things to the attention of the community so that they can comment on them.

Mr HOGG: Is it your contention, then, that the reason for the fact that the regulation was not expressed in plain English was not important because, in your view, it was not being strictly enforced?

Mr DOUGLAS: That is our view. Also, I think the confusion in the wording of the previous regulation has been carried over into the new regulation. What we have set before this Committee is, I consider, very reasonable. On the one hand, we are saying tighten up the controls in particular areas, so that people do not abuse those areas, but, on the other hand, we are saying that, in accordance with the principles that we have heard here this morning, let us be reasonable in terms of the people who use that catchment. That is our basic submission.

Mr HOGG: It was a more important issue when in fact there was a proposal for on-the-spot fines in the draft regulation, when the regulatory impact statement went out.

Mr DOUGLAS: That is right.

Mr HOGG: Do you think it is now less of a problem because that provision has been dropped?

Mr DOUGLAS: Through you, Mr Chairman. What I would say is that we made submissions in relation to the on-the-spot fines and that, to the corporation's credit, they took that on board, and removed that. So, if that means there is an improvement, yes, we take that on board. However, in our view they did not take further the submissions we made in relation to those issues and those activities. It is true that we are in negotiations with the corporation at the moment. We have had two meetings, and we are likely to have a third.

Mr HOGG: Do you believe those negotiations will lead to amendments to the

regulation, rather than to the merely administrative provisions, as referred to by Sydney Water?

Mr DOUGLAS: No, I do not. Mr Chairman, my view is that the negotiations and discussions that we have had to date are not on the basis that the regulation will be changed. They are on the basis of the way in which, through administrative arrangements, the corporation will deal with the bushwalking fraternity. That is why we have made our submission to this Committee. We will continue, and have no problems with, negotiating and consulting with Sydney Water. However, as a community group, we are not in a position of power to dictate to government or otherwise the regulation. All we can do is suggest how that might be administered. I think the corporation has not, to my knowledge, indicated to the meetings to date that it is prepared to amend the regulations per se, at any time.

Mr Chairman, I would like to make one final point about consultation, and Keith will be making comment on this. The National Parks Association and the Total Environment Centre, during 1993 and the latter part of 1993, were associated with Sydney Water to undertake a project through what was then called the peak environmental non-government organisations (PENGO) under which the Clean Waterways Program was funding a number of projects.

At that time we made a submission for studies of the impact of various activities in the catchments of Warragamba in particular so that we could determine the impact of those various activities, including bushwalking. Sydney Water at that time would not fund or assist us in that project, when they had funded every other one. In that case, the position was put to us that the catchment management framework which was already in operation would deal with the issue. So we tried. We came to them and we actually said, "We would like to have a look at the impact and how the catchments are managed properly." That opportunity was not provided. Sure, it was their money, and they have got a right to say how it is spent. However, they did it in every other area but this.

CHAIRMAN: Thank you. We will now move to Keith Muir's side of the submission.

Mr MUIR: With respect, Mr Chairman, my submission deals with the issue of cumulative impact and goes to the heart of whether the regulation is appropriate, excessive and therefore not reasonable, based on the evidence we have been able to obtain in the last couple of days. The submission that we have just heard from Mr Douglas outlined why, in some part, his submission is limited because Sydney Water rejected that element of the PENGO project which funded many thousands of dollars worth of environmental studies except for the headwater catchment studies. I would like to lay on the table a letter from Sydney Water to a Mr Peter Prineas, refusing an application and giving a description of the application and the project, so that this Committee can understand the nature of our endeavours in trying to understand the environmental effects of catchment management.

Mr RIXON: Can I ask a very nasty question. Is part of the reason that you are pursuing this matter so vigorously that you were slighted because they would not fund your project?

Mr MUIR: Not at all.

Mr DOUGLAS: Not at all, Mr Chairman. The answer is that we are not slighted in that sense. What we are trying to demonstrate is that we have made previous endeavours to actually address this issue and often they have come from our side.

Mr MUIR: Thank you for that question. In reply, on oath, I gained knowledge of this issue yesterday when examining the files in relation to this matter of the PENGO project, that is the project funded by Sydney Water in regard to its environmental responsibilities. I have some notes from a Mr Jeff Angel in a response he noted when an application for this section of the project, of several hundred thousand, in excess of which $52,000 was for this part, to do with the headwater catchments. He noted, "The real problem is the lack of trust by the catchments manager. Need for cultural change."

I return to this issue of cumulative impact. I now table a Letter to the Editor by, basically, the Department of Resource Engineering at the University of New England at Armidale, New South Wales, which is signed by Emeritus Professor John Burton, who was the foundation professor of the faculty of natural resources and the architect of the concept of multiple use planning for catchments. He described the regulation as a "narrow minded and punitive proposal that cannot be justified in terms of modern catchment management." I table that letter.

The concept of catchment management needs to address the most burning issues. A study done by a CSIRO scientist, Dr David Fredericks, has revealed to readers of the *Sydney Morning Herald* on 30 May the most burning issue with regard to the Lake Burragorang, (which is the Warragamba dam impoundment is the increasing eutrophication of the dam. The term eutrophication means that as dams age they fill up with sediments and also with nutrients, and the nature of the stored water body changes through time. They can age very slowly, or very quickly, depending on the amount of nutrient and sediment going into those dams.

The Hon. J. F. RYAN: And the volume coming out.

Mr MUIR: The volume coming out is, in terms of nutrients, very small, and in terms of sediments it is virtually zero, because the dam itself can be seen as a giant stored water or retention pond which contains all sediments. There are 1,000,000 tonnes of sediment a year received by the dam from the Wollondilly River. There are 700,000 tonnes of sediments and other waste received per annum from the Coxs River.

Mr RIXON: How accurate are those figures?

Mr MUIR: I will address the question. There are 330,000 tonnes per annum of sediment received from the Nattai River. These figures were determined using nuclear tracing techniques, in a six-year study funded by the Water Board, or Sydney Water as it now is, the CSIRO, the National Soil Conservation program and the Soil Conservation Service. This is the most important issue confronting the catchment management of Warragamba dam. It is ageing the dam rapidly.

In reply to these concerns raised on 30 May in the *Sydney Morning Herald*, a spokesman of Sydney Water said that the organisation was closely monitoring Lake Burragorang and its entire catchment area and that Sydney Water had spent $360,000 a year to help farmers prevent soil erosion. I table this as evidence that it is the most burning issue. Bear in mind that this is the gross impact, over which is overlaid any contributory impact by bushwalkers in an area which will soon be declared wilderness in the case of Kanangra Wilderness and is declared wilderness in the case of the Nattai.

My third point follows from that. That is that Sydney Water has not been active enough in addressing the most damaging agencies that are threatening both the life of the dam and its health and condition now. This is not something that is of recent occurrence. I would like to table a copy of a permit to enter Warragamba catchment area No. 625. It is dated 27 March 1972, and is a permit for Mr Jim Somerville and four others to enter the Colong Caves area. I table that document.

Mr RIXON: For what purpose?

Mr MUIR: We will come to that. This is a permit under previous catchment management regulations. The battle that was ensuing, and why Mr Jim Somerville was so interested in gaining access to the Colong Caves in 1972, was to prevent a giant limestone mine being constructed at Mount Armour, above Colong Caves, and the construction of a giant coffer dam and the construction of a slurry pipeline from Mount Armour to a small place called Marulan, where there is now a giant cement factory.

This proposal would have caused tremendous impact upon water quality, increased sedimentation, and damage to the health of the Kowmung River and the Nattai and Wollondilli rivers, through which the pipeline would pass. The point here is that Sydney Water was not of great assistance in preventing this. It was virtually silent. It was left up to the Colong Foundation, through its voluntary efforts, unfunded by government - as it always has been - to prevent the construction of this dam.

The subsequent major development that was proposed nearby in the Kanangaroo State Forest upon Boyd Plateau would have led to the clearing of a large area of Boyd Plateau and its planting to pine. Such an activity would have caused tremendous sedimentation of the Coxs and Kowmung River also. Again the Colong Foundation launched into a very vigorous to secure the integrity of the inner catchment, and was successful in doing so. The point is that those were spoiling agencies that were stopped by the Colong Foundation in its efforts to secure the area as a national park.

Sydney Water has invested, and is continuing to invest, about $120 million in a waste transfer scheme for the Blue Mountains and upgrades for the Winmalee sewage treatment plant. When fully implemented, this sewage treatment plant will provide for the treatment of sewage from a population projected at 80,500 people at its full upgrade in 1998. The current situation in the Blue Mountains is that there are 74,000 people resident there, and that sewerage services are provided to 60,000 people, and therefore there are 14,000 people without services for sewage reticulation.

The projected 2021 population, without any amendment of the LEP under existing zonings, would be 103,000 people; and the Blue Mountains City Council has a proposal for a planning scheme which will reduce the population from 103,000 to 95,000 people. The difference in capacity between the waste transfer scheme and the projected population, if the Blue Mountains City Council is successful in winding back the capacity of the urban and other zonings, is 15,000. That means that 1,000 more people will be unserviced after the waste transfer scheme than before it!

These are very relevant facts. I circulate this very large map. You do not have to open it all to see that the Blue Mountains City Council area is captured partly by the township. I will table the evidence in relation to the population figures I have just outlined.

The Blue Mountain City Council's draft Blue Mountains planning strategy, on page 70, states: "Sydney Water have advised Council that they will service all urban consolidation development within existing zoning structure. However, their sewerage systems are clearly without capacity to achieve appropriate treatment and release to the environment." Further, on page 71, "At the moment Sydney Water will allow dual occupancy development in an area even if the sewerage pumping station and treatment plant is at capacity."

I am quoting from a Blue Mountains City Council document: "This is increasing risk of environmental pollution and why Council needs to take more control. Sydney Water's sewer backlog scheme does not propose the extension of a reticulated sewer to all residents in the city within the next decade. The major benefit of Sydney Water's strategy for improvements are aimed at the long term, the effects of which will only be felt many years down the track, and only if the State Government commits and provides adequate funds for the scheme's full inception. This situation, however, is now more uncertain since Sydney Water is corporatised. It appears they will only now carry out such work if it is economically viable." That is what I would wish to table in regard to the planning strategy.

CHAIRMAN: Have you got much more?

Mr MUIR: I will just table this information, seeing that time is running short.

CHAIRMAN: I do not want to hurry you along, but if there is anything that you can table without going into detail about, please do so.

Mr RIXON: I got the impression that the point you are trying to make is that you and I bushwalking and washing our feet in the river will not cause near the problems that all of those other activities cause. I think you are going the long way round of putting that.

Mr MUIR: I am doing this thoroughly because I want you to comprehend that there is an $120 million investment in environmental services that were initiated by the former Labor Government and carried through by Tim Moore in the time of the coalition Government, and that we then had all these services and now they are at risk.

The Colong Foundation, at Bob Debus' environmental summit, decided to take action again. We have secured pledges for future donations from about 36 people totalling over $1,000 to commission a Mr Tim Robertson to provide advice on what legal instruments would be necessary to stop the inappropriate, third-world development of residential areas in unserviced parts of the Blue Mountains continuing. We will be pursuing this both on a state and local government level, and with the support of the community.

It is ridiculous that Sydney Water has allowed, in the Warragamba catchment, dual occupancies to be connected to inadequate sewer, with shoddy arrangements such as off-peak pumping at night into over-full sewers that are at capacity. This is how they are approving developments in the Mountains at the moment. They are building storage tanks for new residential houses, and at night after those storage tanks have received the sewage wastes from those residents are then pumped to the sewer main.

Mr CRUICKSHANK: Untreated?

Mr MUIR: No. Then it goes into the sewer main. But it is at capacity. This are is slipshod, third-world, unserviced, inadequate developments. At the back of the document I have circulated, in study area 1, is Medlow Bath. I would like to mention Medlow Bath in particular because the unsewered area of Medlow Bath is about 1 kilometre from stored water. There are about 200 residents in an unsewered, septic tank area, in a schedule 1 area; but, remember, the private land was excised from schedule 1 areas. There are within one kilometre 200 houses with septic effluent flows from those residence into the storage at Blackheath. That is the situation. We would like to circulate the map.

Ms HALL: At the bottom of the page it has "EMP-2 Study Area 1". What document is this from?

Mr MUIR: There are three documents which I am referring to and which I have tabled. One is the draft Blue Mountains planning strategy of August 1995, prepared by the Blue Mountains City Council, and I have tabled two of five volumes of the local environmental study of the Blue Mountains City Council area which is described as "Planning Report EMP - Stage 2", which is also dated August 1995.

The Hon. JANELLE SAFFIN: What you were describing was serious

environmental degradation or consequences as you saw that. Were you saying that all of that was somehow under the power of Sydney Water?

Mr MUIR: Yes.

Mr RIXON: What you are saying is that they are not doing the job on this big issue, yet they are using a sledge-hammer on a flea in this other area?

Mr MUIR: Yes. I am dealing with it in detail.

CHAIRMAN: I think you have made that point fairly strongly.

Mr MUIR: Sydney Water had an opportunity to provide great detail about how good the catchment management was. I now want to provide a few facts as to some of the concerns. The Carr Government in its budget allocated $15 million over three years for storm water ponds in the Blue Mountains area. There is very little point in undertaking such works whilst the projected population shows that 15,000 extra people will be unserviced in the Blue Mountains. Unless you can contain the population or service the population, then you have a major problem continuing, regardless of the efforts of the Government to solve it. That is why we need the catchment management studies, which were refused by Sydney Water.

I am very near the end of this part of the submission. I will just recap. Millions of tonnes of sediment and some unknown amount of sewage sludge pouring into Lake Burragorang each year. The failure of Sydney Water to protect its investments in the Blue Mountains, and the $120 million investment in the Blue Mountains. The Colong Foundation's effort in the past in regard to the Boyd and in regard to Colong Caves, and our efforts now in trying to stop the unserviced urban growth in the Blue Mountains. That demonstrates our commitment absolutely to catchment protection in the Blue Mountains. They are the relevant and significant burning issues in catchment management.

I would like to address some of the issues raised in Mr David Joy's submission. In respect of the schedule 1 areas, he said that schedule 1 applied to the immediate foreshore areas. That is incorrect. There is a map here which indicates that the immediate foreshore area extends, in some cases, to the 3-kilometre boundary around the dam. It varies at some points.

Mr RIXON: On a point of clarification. I understood David Joy to say the foreshore area was the 3-kilometre zone. What are you picking up there?

Mr MUIR: The immediate foreshore area, I understood from what Mr David Joy was presenting, was a small area. He made the submission that it was 50,000 hectares.

CHAIRMAN: I will seek clarification from David Joy on that.

Mr JOY: Thank you, Mr Chairman. I have used two terms: I said "foreshore area" and I said "3-kilometre zone". To me, they are synonymous; there is no difference. When you look at the overall extent of the land, in proportionate language, it is not unreasonable to describe it as the foreshore zone.

Mr CRUICKSHANK: You described it as a small area.

Mr JOY: A small area of some -----

Mr RIXON: Proportionately small.

Mr JOY: Proportionately small, that is right.

Mr RIXON: But still a big area.

CHAIRMAN: Keith, have you got much more?

Mr MUIR: No. It is all right. It is only 60 percent of the submission length of Sydney Water. Fifty thousand hectares is the inner catchment. The National Parks are 400,000 hectares. So it is one-eighth of the parks that are in the exclusion area. The arrangements for easements are technically unworkable in the area from White Dog Mountain, down to Coxs River, up to Mount Cookum and along the Scott's Main Range. Fit and hardy people can do that, but most bushwalkers, in fact I would imagine almost all of them, do the most obvious and logical thing after descending the 1200 metres to the Cox River; they walk along the rivers, upstream up the Coxs and upstream up the Kowmung to a camp site outside the restricted area. That is what they do, but the regulation says you cannot. It says that, even though it is nice and hot, you have to go up another 800 or 900 metres up Mount Cookem and then walk down the Scott's Main Range, do a long road bash, and then descend a ridge to the Kowmung.

Mr RIXON: What is the difference in distance?

Mr MUIR: The critical difference is in the elevation. You are looking at maybe 2,000 metres -----

Mr RIXON: I got that point, but I was looking for the difference in distance as well.

Mr MUIR: The extra distance may be only 2 kilometres. But there are 2 kilometres horizontally and 2 kilometres almost vertically. In distance it is probably 4 kilometres, two of which are probably very arduous. The calculated risk is very difficult to quantify.

The second-last point I would like to make in regard to the operating licence was in respect of the catchment area. If I recall how it has been read out in evidence by Mr Jefferis, it did not specifically exclude all people from the inner catchment areas;

it just said it was generally the case that access was restricted. Of course, that is what the wilderness zonings will do in this area. The last point is a point in regard to the use of fuel stoves in the wilderness. That is opposed by the Colong Foundation and the Total Environment Centre.

Mr RIXON: Could you define this fuel stove issue.

Mr MUIR: A fuel stove can be a metho stove -----

Mr DOUGLAS: A small camping stove that you bring along with you and bring your own fuel, as opposed to using local wood.

Mr MUIR: The last point is that Kosciusko National Park is an alpine park, and it is totally appropriate that above the timber line you do not allow people to snap off shrubs and make fires out of them. That is a totally inappropriate use of a national park, damaging very sensitive foliage. The Blue Mountains area has no shortage of wood, and there is no ecological reason for the banning of fires. Of course, there is a need for fire ban days, and there are of course fire ban days in the national parks. And, of course, the National Parks and Wildlife Service have their own fire regulations. I might add that our disallowance does not seek to disallow the fire issues. So that the powers would not be affected by our proposed disallowances, because we recognise the limitations of what you can do with the disallowance.

Mr CRUICKSHANK: So you want to ban the use of fuel stoves?

Mr DOUGLAS: No. Through you, Mr Chairman, if I can clarify the point. What we are saying is that it may be quite appropriate if people want to bring fuel stoves with them in relation to camping, but in many cases in these areas it is an extra load for camping that in this context is unnecessary. We are not saying that fire should be rampant, or that the allowance of them should go overboard. There should be enforcement of the manner in which fire is used. But to suggest that on all occasions you cannot get a few twigs and leaves and get a fire going to boil the billy when you are camping - which we are saying the provision is - is unreasonable.

Whilst we have recommended to this Committee changes to the regulation dealing with those issues that we feel can be addressed by disallowance, our recommendation to the Committee is also that the taking of water and the lighting of fires for the purposes of boiling a billy - which are now prohibited through the regulations - actually need to be addressed. We are not saying that the whole regulation should be thrown out. We are saying that we can fix some of the problems at the moment, but there are two problems that we could not fix by partial disallowances, and they relate to fire and, basically, boiling the billy.

Mr MUIR: I have one point to make on private land which was excluded. I submit to the Committee that the reason for that was more to do with the difficulties of bringing in the new schedule 1 areas in the Blue Mountains catchments of Woodford, Blackheath and Katoomba than it had to do with the need for dealing with arcane

catchment management. I tabled the *Sydney Morning Herald* article about the sediment input to the dam. It is actually the clearing and agricultural uses which really needed to be regulated, and in the special areas you should be regulating land clearance.

Clearing in those areas close to the dam are of great concern. Yet, what has been done is that private land clearing powers have to some extent been uplifted by the removal of those responsibilities, apart from forestry, from the regulation. So you could still undertake development of pastoral activity without regulation, and that is not appropriate.

You have the ludicrous situation in the Blue Mountains catchments which should perhaps have been dealt with by variation of the schedule 1 areas, or the proposed schedule 1 areas, by changing the boundaries of them to excise the townships, and in that way you could have retained the influence or power in uncleared bushland, where you might want to use the power. There is not very much purpose to using the regulation in an urban area, but there certainly is in, say, the Bindook Highlands, which are part of the Warragamba catchment.

Lastly, I will table the clauses and subclauses and parts of subclauses for disallowance which may be of assistance to the Committee in understanding how the disallowance would work and how the regulations would read if the disallowances were implemented. Thank you.

CHAIRMAN: Is that the same as the original document?

Mr MUIR: It is the same, but I have taken out all the verbage between the sections that dealt with the disallowance, and condensed it to the disallowance and the consequent regulation from the disallowance.

CHAIRMAN: I intend now that Committee members will ask questions of Keith or Graham, and then we will go to general discussion between the peak groups, Sydney Water and the Committee as much as we can, bearing in mind time limitations.

Ms HALL: Do you know whether a cost-benefit assessment has been conducted for these proposals? If so, what are the respective economic and social cost benefits? Did those studies look at the cumulative effect of bushwalking and other activities contributing to pollution?

Mr DOUGLAS: The answer is no, we did not do an extensive cost-benefit analysis in relation to the study. But I would put the proposition to you that neither did this document, the regulatory impact statement produced by Sydney Water.

Mr CRUICKSHANK: The proposed regulations?

Mr DOUGLAS: Yes, the regulations proposed at that time. They were then proposed. So it is the regulatory impact statement for the proposed regulations.

Mr MUIR: In my submission I have addressed the issue of the cumulative impact, and I endeavoured to assist the Committee in understanding the degree and significance of the impact of bushwalking in relation to the other impacts.

Mr DOUGLAS: We are not saying that the bushwalking per see can be totally removed from conditions, etc. All we are saying is that at the moment it is being dealt with in the regulation in a way that is confusing and in a way that it does not need to be regulated, and yet at the same time we can improve those cumulative impacts by a greater level of restriction in inner catchment areas.

Ms HALL: The Committee notes that in the debate in the Parliament, when the disallowance of the whole regulation was moved, it was said that disallowing the regulation would remove the protection of the catchment area for Sydney's water supply and that we would have serious economic consequences if the quality of water was diminished and the cost of water treatment increased. It was said that diminishing quality of our bulk water supplies would lead to high costs to Sydney Water customers and low economic returns to the people of Sydney. What are your views on that proposition?

Mr MUIR: Our view is that there should be no disallowance of the whole regulation. Our view is that there are a number of matters for which partial disallowance could be implemented to give effect to a clearer understanding of those issues. We are as concerned as the Government, the Opposition, cross-bencher members of this Parliament in relation to the security of Sydney's water supply. There is no debate or argument about that. We want the highest quality of water and integrity in our catchments. However, what we are saying is that the bushwalking issues that we have brought before you do not challenge that integrity. We are not seeking disallowance of the whole of the regulation. I make that very clear.

Mr MUIR: Further to that. I have outlined how the Colong Foundation has protected the integrity of the catchment in the past, which must have saved consumers from suffering an environmental disbenefit; and, secondly, how we intend to secure the $120 million investment in the Blue Mountains in the waste transfer scheme and upgrade of Winmalee sewage treatment plant. So we are securing and protecting those investments and providing a benefit to the community by our non government unfunded activities.

Ms HALL: Would it not be unsafe for the Regulation Review Committee to proceed with a recommendation of disallowance of the parts of the regulation referred to in the submission of the environment groups without a cost-benefit assessment, including social, economic and environmental costs of those proposals?

Mr DOUGLAS: As I addressed earlier, my view is that the true cost-benefits in relation to the current regulation have not been presented in context. My view is that while a few figures have been thrown around, and that options 1 and 2 might cost the same, and things like that, the real meat of what a cost-benefit analysis means has not been presented. Our view is that if you want to look at both the social and cost-benefit

framework, the tightening of the regulations in relation to inner catchments would provide a clear cost benefit and a benefit in terms of environmental outcomes, and that the impact in relation to what it has now been determined the regulation actually says for the outer catchment areas indicates that there would be no additional costs whatsoever; that it would in fact make the process easier to understand from the community's point of view, and that we do not believe there is a cost associated with that. So our view is that that process really is not needed.

Ms HALL: Do you not think it might be a better course for the current regulation to be properly assessed as it presently stands, taking into account the social, economic and environmental costs and benefits of its provision, as well as relevant alternatives to its substantive provision in order to determine which alternative provides the greatest net benefit or the least net benefit to the community?

Mr DOUGLAS: Our view is that that is what the process to get to here has been about and that -----

Ms HALL: Picking up on what you have said earlier, I feel you may be saying that you feel that process has been flawed and maybe that should have been done initially.

Mr DOUGLAS: Our view is that the reason it has been put out for exhibition, comment and consultation and all the rest of it is that we can get to the position where we are now - actually considering the implications of that. We are presenting, I believe, evidence before this Committee which demonstrates that the cost-benefit analysis in relation to much bigger catchment management issues needs to be addressed.

The impact on the costs in relation to the amendments that we are recommending are in fact inconsequential, but they make a dramatic difference in terms of the appropriate use of the catchments. We do not believe that the costs can be demonstrably put to this Committee in a way that demonstrates that there will be any real benefit, other than that there will be improvements in one context - because camping is not going to be allowed in certain areas but yet it will be allowed in other areas under set conditions.

We are not asking that people be allowed to remain or to camp in inner catchment areas. What we are saying is that they should be allowed to pass through. In fact, in our view it would simplify the administrative costs associated with the operation of Sydney Water. We have got here - and we could show this to members of the Committee, and it could be photocopied by someone if necessary - a map marked with a number of tracks that people are already using. Why should people who think they are doing the right thing be put into a situation where they are seen as breaching a regulation when in fact Sydney Water's evidence this morning is indicating that they do not prosecute in relation to this but if people breach it they will then give them notices and warnings and they will deal with it in this way? This is an additional burden.

Ms HALL: I would like to ask Sydney Water people the same question, about looking at assessing the social, economic and environmental benefit of the provision. Do you think that has been adequately covered?

Mr SWAN: The situation, as the Minister pointed out in his letter to the Committee, is that we are not dealing with a greenfield situation. There has been management in areas for many years, and in terms of coming up with a final cost-benefit, you could say pre-regulation where you have got nothing happening this is the cost benefit but -----

Ms HALL: But is that not a requirement of a regulatory impact statement? Is it not a requirement that a cost-benefit analysis be completed?

Mr SWAN: To the extent possible, the regulatory impact statement actually contains a cost-benefit analysis. We have produced figures that we have historically about the resources required to administer those areas. That was included. We itemised the benefits in terms of the public interest as to having clean water.

Mr CRUICKSHANK: You said there were no historical figures.

Mr O'KEEFE: This was a difficulty that was uppermost in our minds when we were framing the regulatory impact statement. It is actually flagged in the document. The advice from expert catchment management staff of Sydney Water is that it is difficult to do a proper cost-benefit analysis of catchment management practices because of the long lead time associated with improvements.

Mr CRUICKSHANK: I do not understand that at all.

Ms HALL: I will frame the question a different way. With regard to the assessment of the substantive provisions of the regulation in the regulatory impact statement, the Minister said in his response on 20 October 1995 that the "finer assessment of costs and benefits between options one and two was obscured by the inability to assess the application of such regulations afresh, or in the absence of any such regulatory intervention in the past." Does this mean that Sydney Water was unable to asses the impact of the old regulation, and is equally unable to asses the impact of the new one?

Mr SWAN: That is not correct. Option one was the adoption of the new regulation, the one we are going to have. Option two was retaining the old one. In terms of looking at the impacts of this, we basically saw the impacts of those two options as identical, because what we were doing was basically rolling over the management process from the old regulation to the new, making those modifications that I mentioned earlier today, to basically remove provisions which were redundant as well as removing some of the restrictions which, if we had them today, would mean we would not be able to facilitate so easily the joint plans, etc.

Ms HALL: I understand that, but the requirement of the regulatory impact

statement has to be complied with.

Mr SWAN: And in the regulatory impact statement you will find the cost benefits of those options presented, as I mentioned, the figures of the resources required and the public interest.

Mr DOUGLAS: In relation to schedule 1 of the Subordinate Legislation Act, page 8, clause 2, subclause (e), the guidelines for preparation of statutory rules state that if the statutory rule would impinge on or may affect the area of responsibility of another authority, consultation must take place with a view to ensuring in advance certain things. The second point is that there will be overlapping or duplication of, or conflict with, statutory rules and stated government policies administered by the other authority.

Mr JOY: I have been patiently waiting, Mr Chairman.

CHAIRMAN: You will have your opportunity.

Mr DOUGLAS: Now, in regard to the National Parks and Wildlife Act, the regulations which overlay on this Act are more or less the same. So, in regard to the regulatory impact, you have a duplication. There is a means of resolving all this, and that is to change the culture, start looking at plans of management, and, as Kel has described, giving force to those through the regulation. We need to change the regulation if you have a plan of management. I think I have made my point.

Mr CRUICKSHANK: Does that not rest on consultation?

Mr DOUGLAS: It does.

Mr RIXON: I want to ask a very direct question. Assuming that long dissertation was encapsulated in your changes to the regulation, which presumably will simplify the situation, which seems to me eminently sensible, have you had discussions with Sydney Water about those particular changes? And what was their reaction to those changes? Be as brief as you can. Three words will be better than four.

Mr DOUGLAS: The answer is, yes, we did raise those issues in the two meetings that we had subsequent to the regulation, and in fact prior to that. We have got to date in those meetings no indication of movement in relation to changing the regulation. In the evidence that has been provided here this morning we heard them say that they have no problem with camping or swimming in schedule 2 areas. Now, the regulation currently says that you cannot swim in a schedule 2 area because it is in part 4 land; and, whilst it does say we can camp in that schedule 2 area, the way that it is expressed is, quite frankly, confusing. We have sought to simplify it. We have put that proposition to them. They are prepared to look at this down the track, but they have not indicated that they would support the issues that we have got.

Mr RIXON: Mr Chairman, I purposely asked the question of the environmental

people first so that the people from Sydney Water would understand the message that has been conveyed, whether it was intentional or not. Have you discussed these changes with these people, and are they or are they not in part or in whole acceptable?

Mr SWAN: We have discussed the changes. The changes they want do not require changes to the regulation, they involve administrative processes. And in respect of the many we have agreed with - the camping in schedule 2, the access, the swimming, all those things can be done in relation to -----

Mr RIXON: Wait on. I want you to refer to the changes in the regulation. Are you prepared to agree to those changes or not?

Mr SWAN: The regulation changes they want are to reword clause 20 as regards camping. True, it could be simplified from the wording that Parliamentary Counsel gave us, but changing the wording does not change the practical effect.

Mr RIXON: I am not interested in the practical effect. I am asking you whether you are prepared to change the regulation to what the environmental people suggest?

Mr SWAN: I cannot speak for the Minister.

Mr CRUICKSHANK: Oh yes you can.

Mr RIXON: From what you have said, changing the wording would not change the operation of the regulation. Can you see any good reason why the regulation should not be changed in respect of that wording?

Mr SWAN: It could be simplified.

Mr BAXTER: On behalf of the Minister, let me answer that. The answer is, no, we have absolutely no problem with changing the wording of the regulation so that it is simpler, so long as it preserves the existing meaning.

CHAIRMAN: David, you have been patiently waiting.

Mr JOY: Thank you. I noted discussion earlier about what can and cannot be done in special areas in the inner catchments and outer catchments. Could I make a plea that right around this table in discussion we stick to the very clear terminology, because otherwise, when we move forward to perhaps give some effect to the ultimate deliberations of this Committee, we are going to be confused. The terms "inner catchment" and "outer catchment" are used. This regulation -----

The Hon. JANELLE SAFFIN: With due respect, we are not confused.

Mr RIXON: The inner catchment, you are saying, is within the 3-kilometre zone, and the outer catchment is outside the 3-kilometre zone.

Mr JOY: No. That is exactly my point. The outer catchments are the very distant areas.

CHAIRMAN: We were unable to hear that. Could you repeat that last bit.

Mr JOY: I would like to see, if we could, the Committee use the expressions "schedule 1" and "schedule 2" special areas, and not use the expressions "inner catchment" and "outer catchment". They are two quite different things. We will have some difficulties when we try to move forward if that is the case.

Mr RIXON: Define the schedules again for me.

Mr JOY: The regulations apply to an area known as a special area. Within those special areas -----

Mr RIXON: Talk about schedule 1 and schedule 2.

Mr JOY: I have got to lead into that. The special area can be further subdivided into schedule 1 and schedule 2 lands. In the case of schedule 2 catchment, schedule 1 land is that area that is generally around the lake and is generally that 3-kilometre zone. Schedule 2 is outside that and taking up the balance of the catchment special area.

Mr HOGG: I wish to follow up on the earlier questioning concerning the amendments. I think we had a statement that the Minister would be prepared to consider amendments along the lines recommended by the environmental groups. Would the Minister also be agreeable to doing a full cost-benefit assessment of those amendments? Given the fact that there has been a lot of contention over whether a proper regulatory impact statement was done for the original and principal regulation, would the Minister be prepared to do now a proper regulatory impact statement taking into account the amendments and the regulation generally?

Mr BAXTER: My specific statement was in relation to clause 20. My point was that the Minister has no problems with rewording clause 20 so that its intent is clear, so long as we are not changing the intent of clause 20.

Mr HOGG: There were a number of other clauses, though.

Mr BAXTER: I was talking about clause 20 only.

Mr HOGG: Perhaps we could go through the clauses that are in the submission and you could give an indication as to whether the Minister would be prepared to consider their amendment.

Mr BAXTER: That was the specific question that was asked. I think it is fair that Anthony put the Sydney Water view in relationship to that.

Mr SWAN: There were two provisions, I understand, raised by the

environmental groups today. One was clause.20, seeking clarification of what that means, and that we can take on board. The other one - and I am not quite sure which clause they are looking at - but my understanding is that they want to remove, for their purposes - and correct me if I am wrong here - restrictions on access to schedule 1 areas. Now, that strikes at the heart of what this catchment management regulation is about. It is about excluding activity directly on the water so that, as David mentioned, the protozoa cysts do not get into it and subsequently into the drinking water. That, as a matter of Government policy, I understand, and as a matter of our mandate under the corporatisation Act, is not what was the intent of this review.

What we were aiming to do, as I said earlier, was to bring into balance the legitimate use of bushwalking in these pristine areas. We have no problem with that. We are negotiating additional access routes and so on, with the proviso that we know where those access routes are, so that we can have our staff out there checking on the maintenance of the tracks and so on. What the Colong Foundation and National Parks Association are looking for is unfettered access throughout schedule 1 areas, so that they can walk not just within corridors - so that we know where they are and look after the maintenance of those areas and look at degradation and so - but so that they can walk anywhere. As a catchment manager trying to preserve water quality around the storage, that is a scenario within which we cannot operate. So that is the key contention there.

Also, if we gave unfettered access to schedule 1, we are not talking about bushwalkers - and, yes, bushwalkers are low impact, by their codes - but we are looking at 4-wheel drivers and a whole range of other potential users who may want to come into these areas.

Mr CRUICKSHANK: I did not get the message that they wanted unfettered access to schedule 1 areas.

Mr DOUGLAS: If I may, Mr Chairman. The particular issue that we are trying to address relates to issues under part 3 and part 4 of the regulation. Under part 3 of the regulation, clause 14 indicates that a person not enter or remain on part 3 land except with the corporation's approval and in compliance with any conditions. We are seeking to have a provision where that person must not remain except with approval. So we are not saying that we would remove the approval process. We are saying that a person should not remain. The existing provision in relation to entry would stay. We are making it tighter by saying that a person should not remain on the land.

The Hon. J. F. RYAN: You do not want people camping.

Mr DOUGLAS: We do not want people camping. Secondly, I would like to address the issue of unfettered access. In other aspects of the regulation, under part 4, which refers to both schedule 1 and schedule 2 lands, there are separate clauses in the regulation which address motorised access, opening of gates, and all that sort of thing. We do not want to remove any of those provisions. We want to leave the existing provision in relation to gates, so that people cannot open them and do what they will

with them.

We do not want to change the provisions in relation to motorised access, or have vehicles getting into the area. They are not the issues that go to the heart of our submission. We are saying that schedule 1 should be tighter, but we are saying in respect of schedule 2 that people need to be able to traverse natural tracks, boundaries, existing fire trails and things like that, so that they can cross the catchment to get from one side to the other.

Mr CRUICKSHANK: Going through schedule 1 areas.

Mr DOUGLAS: Going through schedule 1 area. So that they may still have to get the approval, but we are saying that in getting the approval they can cross them, but they just cannot remain; they cannot camp. We are saying: make that tighter.

CHAIRMAN: If the evidence today shows that neither party has carried out a sufficiently detailed cost-benefit study to its position, what would you like to put forward to this Committee as an acceptable way of taking account of all the issues so that a proper management plan and revised regulation can be considered? We will have a short break before dealing with that question.

(Short adjournment)

CHAIRMAN: Steven Baxter, the senior policy adviser to the Minister, would like to make a statement.

Mr BAXTER: On the last point that Graham Douglas was referring to, I would like to put on record the Minister's position on this, and I will be as categorical as I can so that it is clear. The Minister is absolutely opposed to that change - absolutely. The reason for that is that, in effect, it would do two things. One is to give a clear message that it is okay for a larger number of people than are presently on schedule 1 lands to be on schedule 1 lands, and that is not an acceptable message.

The second point is that I would ask each of you individually to consider what the word "remain" means. If you are saying that people shall not remain on the land, do they remain there for two hours, six hours, half a day, one day, two days, three days? When are they "remaining" and when are they traversing? Of course, there is not point made there about what it is that they are doing whilst they are remaining or traversing.

So, for both of those reasons, and perhaps for others, the general message that that proposed change would give is one that the Minister is quite categorically opposed to. What I would say is that it seems to me that there are a number of clauses - such as clause 20, but I think also perhaps 14, 19 and 21 - where most of the argument, a word I use advisedly, is about the fact that the wording that has been proposed is unclear and is open to the sort of interpretation where, for instance, Graham would say "This means X" and Sydney Water would say "No, this does not

mean X; it actually means Y."

I think, if we can address each of those clauses, we could probably get some agreement, as I think we just gained with clause 20, that this is what the intent is meant to be. Let us get some wording that actually says what it is meant to say, as opposed to what, with respect, we are interpreting it to mean at the moment.

So, on those issues, I think it would be a matter of fairly readily reaching agreement. But, on the point of changing that clause which relates generally to access to schedule 1 land, I think the Minister's position has been enunciated fairly clearly in the House and it is quite categorical.

Mr MUIR: Will the Minister then excise the urban areas from the schedule 1 lands to make your statement consistent?

Mr BAXTER: Yes.

Mr MUIR: Because there is a problem with having unsewered lands in a schedule 1 area. It is a ludicrous arrangement. Those could be removed , but you still have a problem. The whole issue in this debate is a matter of degree. Even with the most quantitative studies, it still comes back to a matter of judgment. Our judgment is that removing "enter" from the relevant clause in respect of part 3 lands, schedule 1 lands, would not have the significant effect that has been claimed.

Mr BAXTER: Are you referring to clause 8?

The Hon. JANELLE SAFFIN: Clause 13 deals with entry to part 3 lands.

Mr MUIR: Clause 14.

Mr SWAN: To clarify it. Clause 14 applies to land in schedule 1 which is not private land. That is what clause 13 says up the top. Part 3 land is only land which is not private land. So you want to take out private land?

Mr MUIR: The point I make is that the schedules at the back of the document from which you are reading refer to special areas mapped as schedule 1 areas. They are Woodford, Blackheath and Katoomba catchments. Now, they can include urban areas, as I have suggested. There is an inconsistency. What you have done with words has removed the private land. As I have tried to explain in my submission, it is the bushlands in Warragamba catchment, and perhaps others, that are private lands, which you need to regulate and which you now have removed -----

Mr SWAN: Are you talking about Warragamba or Blackheath or Woodford?

Mr MUIR: That is how your -----

Mr DOUGLAS: Mr Chairman, could I -----

CHAIRMAN: It is a pity that we are here today listening to debate of the type that is taking place now when that should have taken place originally.

Mr CRUICKSHANK: Is there any formal way in which these people can discuss with Sydney Water these sorts of matters, apart from you calling for submissions and so on? I am talking about discussions on a regular, formalised basis. For bushwalkers, 4-wheel drivers, horse riders, Sydney City Council, etc., is there a formal way in which they can approach Sydney Water to discuss matters of contention or concern?

Mr HALE: There are some formal mechanisms, and they include the Corporate Customer Council, which has a representative of the Australian Conservation Foundation on it, and there are regional customer councils that they can take these matters to. Also, there are a series of discussions that we have implemented to discuss administrative arrangements for bushwalkers and other groups. So that there is that avenue as well.

Mr CRUICKSHANK: If I may say, Mr Chairman, these customer councils are nice sounding in name, but I am talking about people in peak organisations being able to talk to people at ministerial level or just under that level, at the ministerial officers level. If they are not talking to you then they are talking to nobody, nobody at all. There should be a formalised arrangement whereby they can approach Sydney Water and speak about all these matters of concern. It seems to me, from the way this discussion is going, that that sort of arrangement has not existed in the past and that nobody has made any attempt to do that.

Mr SWAN: The mechanism does exist. The Customer Council has representatives of the Australian Conservation Foundation, and they are attended by the relevant general managers.

Mr CRUICKSHANK: But they do not have the ability to make decisions. Here we have before the Committee somebody saying, "I am speaking for the Minister." When you get below that, I am telling you, you are really in the dark.

The Hon. J. F. RYAN: All you do is restate policy.

Mr CRUICKSHANK: That is right.

CHAIRMAN: I think it has reached the stage of the Committee having to say: What are you going to do in respect of putting forward something that will overcome the issues that confront us at the present time?

Mr SWAN: Our approach is, as Steven mentioned on behalf of the Minister, to take the specific clauses that are unclear in their policy intent and clarify them. We can certainly do that by the end of the disallowance period for the current regulations. So they can be drafted by Parliamentary Counsel, discussed with the bushwalkers, and we can get them into the gazette so that the regulation is understandable by all.

CHAIRMAN: The assessment is a bit of a problem, is it not?

Mr O'KEEFE: A formal cost-benefit assessment, yes, I would have to concede that that would be a problem. If that can be done practically, given the problems that we have and given the longevity of the pre-existing regime, yes, it would be a problem.

The Hon. J. F. RYAN: Presuming that the standing orders of either House permit it, is there likely to be an objection to the Regulation Review Committee ensuring that there is adequate time to take action by moving a protective notice in the House so that the clock stops on time ticking away for disallowance? Is there any problem with that? If you have a genuine intent to carry out this process, and all that seems to be the obstacle is time, would it not be useful for us to extend the time by moving protective notice?

Mr BAXTER: One of the points that has come up is that there probably are - my interpretation is that there are - a number of clauses where we could probably change the wording to reflect the meaning. I do not think we are all that far apart with our positions. It is a question of what the wording says. I think there is a significant difference about that one particular clause we were referring to.

As to the issue of the cost-benefit analysis, as a person who used to earn a living doing that, I can say that I think it is going to be extremely difficult to formulate a cost-benefit analysis which has an effective comparison of the positions. Quite frankly, I think what you will end up finding is that the nature of the information that is available - and this is just a question that, historically, organisation and not just the then Water Board, did not collect rigorously the sort of information which will ground the positions - is not going to be able to adequately distinguish the positions in terms of cost-benefit impact. But let's give it a go. Let's test it and see whether it can.

Mr CRUICKSHANK: At least if you start now you will have some basis on which to work for the future.

The Hon. J. F. RYAN: I am left frozen by statements about cost-benefit analyses. You have already advertised fairly extensively about this. The matter has been aired on the front pages of the *Sydney Morning Herald*, and questions have been asked in Parliament. It would have to be said that any group that has a concern about this issue has probably already put its hand up.

Mr BAXTER: I think that is true.

The Hon. J. F. RYAN: If this is all that we are left with, it seems to me that if there is a decent conclusion to the negotiations between those groups, I suspect all the other bureaucratic niceties are not necessary.

CHAIRMAN: I believe that we should have full assessment of the regulation, and that includes the management plan and everything else. We are touching on a few things now, but there are many more issues involved.

Mr O'KEEFE: Mr Chairman, I am not sure what you mean by the management plan. The management plan under the corporatisation Act is one which will not be

ready until the end of next year because of the legislative requirements; and, even then, it has to be adopted by the Minister. There is no time obligation on the Minister to adopt that plan.

Ms HALL: But everything is interconnected.

Mr O'KEEFE: Yes, it is. We concede that. We have always said that they are interconnected. In terms of work on the management plan, I think Mr Joy would agree with me when I say that we are working towards that. But, to tie it to this regulation I think is not possible in the context of that time limit.

Mr JEFFERIS: Why cannot you do a management plan? Why cannot you do a proper assessment? You have a 4-page document, and Mr Swan took about 20 minutes to just lay the groundwork. Your stuff is a bit light. If you went through all the substantive provisions of that regulation, you would not find a lot of discussion of them in your regulatory impact statement. What would be wrong with doing a regulatory impact statement to assist the management plan, to assist a subsequent review of the regulation, and to allow these other parties to have a co-operative arrangement?

Mr SWAN: I think what we can do - and I think it has become clear to me from listening to the discussions and taking on board the submissions - we have put forward information that clarifies where exactly our regulation fits in and where all the other arrangements in the world leave off: national parks regulation, joint plans, the whole lot. There is a gap. It is clear in my head what the situation is, but what we need to do is put that on paper for you. So we can do that.

In terms of going through the regulation stepwise, the Committee has already talked about the clause to do with us pulling down sheds or telling people to pull down buildings and so on, which I must admit we skipped. It was bizarre. We can look through this and clarify step by step what the policy intent of each clause is.

Mr CRUICKSHANK: Might I just say that all the instructions on how to go about preparing a regulatory impact statement are in the Act. Every one of those is listed, and all you have got to do is read the Act and you will find out what you have got to do in preparing a regulatory impact statement.

CHAIRMAN: Steven, do you have any further comment?

Mr BAXTER: No, other than that, in terms of the redrafting of the specific clauses, given what I have heard suggested as to whether the positions is amenable, I do not know whether Graham Douglas and Keith Muir would agree that there is a sense of participating in the examination of the specific wording to ensure that it reflects the intent of those four clauses. I think it is more of a question of the way to deliver a particular outcome. I do not think they are all that far apart.

CHAIRMAN: Is there any comment from the environmental people?

Mr DOUGLAS: Yes, if I may, Mr Chairman. First of all, on the basis of what Mr Ryan has put to us in relation to stopping the clock so that we can actually go through the process, with that in train it would certainly take the nervousness off us in that we could go back and talk to Sydney Water about the wording that might resolve

those clauses that have been put on the table. We do not have a problem with going through that.

I would like to offer two other points that I think need to be examined by Sydney Water in relation to process. We can deal with these four, but we are worried about what the next problem is down the track as well. There needs to be some sort of formalised advisory process which involves, from our point of view, ourselves and Sydney Water in a way that has been described previously, so that Paul Broad and the decision-makers have actually got and are listening to the process and are not distant as bureaucrats from what people are saying.

The second thing is that there really is a need - and I do not know exactly who should do this - to carry out the intent of the studies that we carried out in 1993. In our view, they have not been carried out. There was a reluctance on the part of Sydney Water at that time to do that work, which would look at the whole management framework for catchments and the nature of activities and how those matters should be resolved. We are happy to have discussion about the wording on the basis of stopping the clock, so to speak.

Can I also put the proposition to you that in our submission we have dealt with those four clauses plus we have identified within the schedule the (a) subclause which give very broad discretionary powers for Sydney Water to impose other areas in the future.

The Hon. JANELLE SAFFIN: Are you talking about schedule 1, subclause (a)?

Mr DOUGLAS: In schedule 1, subclause (a). So we would certainly like that on the table as part of the process, because we feel that that would be far too discretionary in the framework that we have been talking about to date.

In relation to the debate on clause 14, I would indicate that private land is excluded. However, people in those metropolitan areas walk on public land, that is, technically they have to get approval to cross the catchment on what is a public street. It needs to be seen in context - as Keith has tried to impress - that the catchments need to be looked at in their entirety, as is what is happening in the catchments, but the rights of the private people not only in their homes and on their private property but in their normal activities have to be addressed in the regulatory framework.

We should not have a regulation which, unfairly in my view, restricts - even if administratively they are not enforcing it. I think that is an issue that needed to be thought about prior to getting here. If we had those advisory processes and studies in place, we could have done it.

CHAIRMAN: Time is running short. Are there any quick questions?

The Hon. J. F. RYAN: Mr Chairman, could I move a motion that the Committee staff draft an appropriate notice of motion which will enable the clock to be stopped, for that motion to be circulated to the Committee, and that it be sent to the Minister with a view to the Minister moving it the lower House and the moving of it by the Minister's representative in the upper House?

CHAIRMAN: We will conclude the evidence. I thank you gentlemen for your attendance.

(The Committee adjourned at 12.55 p.m.)