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**Bush Fire Control in NSW  
Commentary on the *Cabinet  
Committee on Bush Fire  
Management and Control Interim  
Report***

by

• **Rebekah Jenkin**

**Briefing Paper No 8/94**

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**ISSN 1325-5142**

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May 1997

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# 1 Introduction

As a result of the January 1994 bush fires, the New South Wales Government convened a special cabinet committee to inquire into matters pertaining to bush fire management and control. The Cabinet Committee has produced an interim report<sup>1</sup> containing 30 recommendations concerning bush fire management and control. This paper outlines those recommendations, discusses their origin and content and examines how the recommendations would change various aspects of bush fire management and control when compared to the current situation.

The paper commences with a brief section outlining the background to the legislative and administrative framework of bush fire control in New South Wales. Each recommendation of the Cabinet Committee Interim Report is then discussed in turn.

# 2 Background

The major piece of legislation relating to bush fire control in New South Wales is the *Bush Fires Act 1949*. The *Bush Fires Act* serves to "make provisions for the prevention, control and suppression of bush and other fires, and for the mitigation of dangers resulting from bush fires"<sup>2</sup>. On its introduction in 1949 the purpose of the Act was said to be "consolidate and modernise the law relating to the prevention, control and suppression of bush fires..."<sup>3</sup> by amalgamating the provisions contained in an number of acts into one Act conferring wider and fuller power on councils and other authorities. Several other statutes also contain provisions relevant to bush fire management and control, including the *Fire Brigades Act 1989*, the *National Parks and Wildlife Act 1974*, the *Environmental Planning and Assessment Act 1979*, the *Endangered Fauna (Interim Protection) Act 1991*, the *Forestry Act 1916*, the *Local Government Act 1919* and the *Clean Air Act 1961*.

Over the years, the *Bush Fires Act* has been widely amended and the Department of Bush Fire Services established to oversee and co-ordinate bush fire control throughout New South Wales. The Department of Bush Fire Services was established to assist the Minister for Police and Emergency Services in carrying out his duties under the Act and to "provide advice and guidance to other agencies..."<sup>4</sup>. The Department also provides secretariat services for the Bush Fire Council, the Co-ordinating Committee and the Finance Committee. The Director-General of the Department, Mr Phil Koperberg, is also the Commissioner for Bush Fire Services and the Chief Co-ordinating Officer. He sits on the Co-ordinating Committee, The Finance Committee and the Bush Fire Council as Chair.

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<sup>1</sup> NSW Cabinet, *Cabinet Committee on Bush Fire Management and Control*, Interim Report, March 1994.

<sup>2</sup> *Bush Fires Act 1949*, explanatory note.

<sup>3</sup> First Reading Speech, Legislative Assembly, 20 September, 1949, p3544.

<sup>4</sup> Department of Bush Fire Services, Annual Report, 1992 - 93, p8.

The bush fire control and management organisational hierarchy in New South Wales consists of the Minister, the Department of Bush Fire Services, local Councils, Fire Control Officers and Bush Fire Brigades. New South Wales has been divided into regions with staff from the Department stationed at regional offices throughout the State. Volunteer fire brigades operate within regions and are answerable to their local or District Fire Control Officer who is responsible to the local Council and the Department. Much of the hands-on responsibility for bush fire management and control lies with volunteer bush fire brigades, local Councils and land management agencies. Local Councils are responsible for fire prevention and control and rely heavily upon the services of the volunteer fire brigades. Funding for bush fire services, including the Department, comes from the New South Wales Bush Fire Fighting Fund which acquires compulsory contributions from the Government, local Councils and insurance companies.

### 3 Recommendations

#### (a) District Fire Committees

**Recommendation 1.** That the *Bush Fires Act* be amended to require each local Council whose boundaries contain an area declared under s.25 of the Act to be a bush fire district either to have its own District Fire Committee or to be linked with a District Fire Committee covering a number of local government areas. All District Fire Committees must be established under the auspices of the Bush Fire Co-ordinating Committee.

Section 25 of the *Bush Fires Act* states that "The Governor may, ...declare by proclamation ... the area of such council or part thereof to be a bush fire district..."

Such declarations may occur upon the recommendations of the Bush Fire Council or application from the council concerned. According to information provided by the Department of Bush Fire Services, there are approximately 143 local Councils who have declared Bush Fire Districts in New South Wales. All of these Districts have a bush fire brigade and all, except two - Lithgow Greater and Central Darling - have a Fire Control Officer. The Act requires that all councils of an area which, or part of which, constitutes a bush fire district appoint a fire control officer. Councils may also appoint a deputy fire Control Officer.<sup>5</sup> All such appointments must be approved by the Minister. Fire control officers have all the powers and immunities conferred upon a captain of a bush fire brigade under Part 3 of the *Bush Fires Act*.

There is, however, no requirement for local Councils who have declared bush fire districts to also have a District Fire Committee or to belong to a nearby District Fire Committee. District Fire Committees are constituted under the auspices of the Bush Fire Co-ordinating Committee<sup>6</sup>. Most District Fire Committees have members representative of local organisations including the local Council, State Forests,

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<sup>5</sup> The role, responsibilities and duties of Fire Control Officers are discussed in more detail under recommendation 24.

<sup>6</sup> *Bush Fires Act*, s.40.

National Parks and Wildlife Service, Police Service, conservation groups and local bush fire brigades. The Fire Control Officer for the District is also a member.

District Fire Committees are responsible for the preparation of plans setting out the procedures for fire fighting and control, hazard reduction and other functions conferred under the Act<sup>7</sup>. As there is no compulsion currently for Councils to belong to or constitute their own District Fire Committee, there is also no compulsion for Councils to develop s.41A plans.<sup>8</sup> Correcting this deficiency appears to be the major concern of the first recommendation.

**Recommendation 2. That the Minister for Police and Emergency Services give consideration to recommending to the Governor that those local government areas, or parts thereof, which were severely affected by the recent (Jan 1994) bush fires, and which have not previously been declared bush fire districts, be declared to be bush fire districts.**

The recent bush fires highlighted a number of difficulties with the current system of fire management and control in New South Wales. For example, the nature of the recent fires and the prevailing weather conditions resulted in the destruction of a number of areas which were not part of bush fire districts. Some of these areas, for example Lane Cove River Park, were within the Greater Sydney Metropolitan Area and thus procedures for fire control and management were thought to fall under the auspices of the relevant New South Wales Fire Brigade<sup>9</sup>. However, this supposition was proved to be inadequate in a number of cases as some metropolitan fire brigades had not considered these 'bushy' areas under their fire control management plans and also the reticular water supply upon which the New South Wales Fire Brigades rely for their fire-fighting efforts may not have been available. The aim of this recommendation therefore is to use the recent fires as a means of marking areas which should be considered as bush fire prone and thus declared as Bush Fire Districts.

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<sup>7</sup> *Bush Fires Act, s41A (1A-2).*

<sup>8</sup> Section 41A plans may be prepared by the Co-ordinating Committee in consultation with District Fire Committees. These plans detail information concerning the fire threat and risk for a bush fire district, measures which have and can be taken to mitigate that risk, resources for fire prevention and control, fire management strategies, fuel reduction strategies and generally any other information pertaining to the prevention, management and control of bush fires in that area. Section 41A plans were designed to be operational plans containing specific and detailed outlines of measures and actions to be taken for fire prevention, fire management and fire suppression. The idea behind these plans was that they would provide the major means of co-ordinating fire-fighting resources and a local plan of action that could be adjusted or considered on a regional or State-wide area. Plans were thus seen as a means of making local authorities aware of their fire management and control responsibilities and possible deficiencies whilst still maintaining local control and organisation of fire-fighting services.

<sup>9</sup> New South Wales Fire Brigades are constituted under the *Fire Brigades Act 1989*. These Brigades largely serve urban areas and differ from the Bush Fire Brigades in that the majority of the members are payed workers or are on a government retainer. Bush Fire Brigade members are volunteers and, with the exception of the District Fire Officer and deputy, are not paid.

However, there are a number of concerns raised by this recommendation. First, there may be other areas which were not burnt in the recent fires which also may have the same problem of falling between the two Fire Brigade Systems in terms of management and responsibility. Secondly, Bush Fire Districts and Bush Fire Brigades may not be appropriate in areas which are largely urban, on the one hand, or which may be sparsely populated, on the other, and thus unlikely to possess the resources to manage fire prevention and control adequately. Imposing fire management and control responsibilities on local Councils may thus place undue pressure on their personnel and financial resources.

## **(b) Section 41A plans**

**Recommendation 3.** That the Bush Fires Act be amended to require every District Fire Committee to: prepare plans under s.41A of the Act; submit its plans to the Bush Fire Co-ordinating Committee for approval; renew its plans every two years.

Essentially, as the *Bush Fires Act* currently stands, the Co-ordinating Committee<sup>10</sup> may, in consultation with the District Fire Committee, prepare a s.41A plan for fire management and control and hazard reduction.<sup>11</sup> Section 41A plans have statutory effect and bind all bush fire related organisations including those of the Crown. However, just as there is no compulsion for local Councils with a Bush Fire District declared in their area to have or belong to a District Fire Committee, there is also no requirement for the preparation of plans, although it is thought desirable by the Department of Bush Fire Services, and no provision requiring the regular review and updating of such plans. This recommendation seeks to make the preparation of s.41A plans mandatory and, in the first case, the responsibility of the District Fire

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<sup>10</sup> The role of the Co-ordinating Committee which is constituted in accordance with provisions set out in section 40 (3) of the *Bush Fires Act* is described in more detail under recommendation 28. Essentially, the Co-ordinating Committee has the primary role in setting policy relating to fire-fighting services and fire management and control.

<sup>11</sup> *Bush Fires Act*, s41A (2-2A). According to the Policy statement released by the Co-ordinating Committee in April 1993, "District Fire Committees are charged, as part of their duties, with the preparation of comprehensively based s41A plans, some of which will be in the form of Regional Plans for specific purposes." (Department of Bush Fire Services, *Co-ordinating Committee Policy Statement*, April 1993). There is, however, no specific provision in the *Bush Fires Act* requiring this duty of District Fire Committees. Rather it seems to be a policy position adopted by the Co-ordinating Committee and one which has practical appeal for both the Co-ordinating Committee and the District Fire Committee in that it permits local input with its concomitant load of knowledge and preferences, particularly concerning environmental matters, and because it permits the formation of plans at a local, regional and state level. This policy also reduces the workload on the Co-ordinating Committee and transfer some degree of autonomy, responsibility and control in terms of fire management and control to the Local Council.

Committees rather than the Co-ordinating Committee<sup>12</sup>. It also seeks to require that these plans are thoroughly reviewed and updated regularly. The recommendation also seeks to clarify the requirement that all such plans be approved by the Co-ordinating Committee.

**Recommendation 4.** That the Bush Fires Act be amended to give the Commissioner for Bush Fire Services power to prepare a s.41A plan in any local government area where the Bush Fire Co-ordinating Committee, by majority vote, decides that a plan prepared by a District Fire Committee is inadequate or where a District Fire Committee has failed to prepare a plan.

Any plan prepared by the Commissioner would have to be submitted to the Co-ordinating Committee for approval, in the normal way, and be subject to the dispute resolution procedures set out in s.41A (2B) of the Bush Fires Act, including the proposed amendments to that section set out in recommendation 10.

This recommendation follows directly from the previous one. Essentially it seeks to ensure that where District Fire Committees fail to produce adequate s.41A plans or where they fail to produce a plan at all, plans will be developed by the Commissioner for Bush Fire Services subject to Co-ordinating Committee approval. This recommendation is not as draconian as it might appear as there are specific and detailed provisions within the *Bush Fires Act* which set out mechanisms for dispute resolution which require ultimate Ministerial decision and which also require the involvement of other Ministers if the dispute involves an organisation within their jurisdiction. Thus it is unlikely that a s.41A plan developed by a District Fire Committee would be rejected without any consultation and an alternative plan imposed upon the local Council. It is also the case that historically the Co-ordinating Committee has tended to adopt a policy of sending plans back to District Fire Committees for re-working after consultation rather than imposing their authority and changing a plan accordingly.

**Recommendation 5.** That the Bush Fire Co-ordinating Committee develop model provisions for s.41A plans. These model provisions should include:

- \* analysis of threat/risk assessment
- \* regional and State wide fire management considerations
- \* access, including (where appropriate) roads, permanent fire trails and helipads
- \* detection systems
- \* fuel reduction planning
- \* mechanisms to ensure minimisation of environmental

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<sup>12</sup> The constitution, eligibility for membership of and functions of District Fire Committees are set out in Bush Fires Regulation 1992 - No. 473 which replaced the Bush Fires (District Committees and Fire Prevention Associations) Regulation 1989. There are, however, no provisions within the regulations detailing that the preparation of s41A plans are the primary responsibility of District Fire Committees. Thus, in order for this recommendation to take effect, the *Bush Fires Act* would need to be amended to make the preparation of s41A plans the primary responsibility of District Fire Committees and to make their preparation and review mandatory.



- \* damage in devising prevention and suppression strategies
- \* effective inter-agency communication

The Co-ordinating Committee produces a publication entitled "Guide to Preparing Fire Management Plans". This publication sets out the methods and standards for preparing comprehensive operational and fuel management plans and according to the Co-ordination Committee's policy statement "Fire management plans must generally be prepared in accordance with the Guide..."<sup>13</sup>. However, this publication is in the process of being superseded by model provisions for s.41A plans developed by the Department of Bush Fire Services. Model provisions for the operational side of s.41A plans are completed and have been distributed to District Fire Committees and model provisions for fuel management will be completed shortly. The model provisions for section 41A plans appear to fulfil all the requirements indicated in the Cabinet recommendation. It would appear therefore that the Department of Bush Fire Services has anticipated the need for model provisions for s.41A plans identified by Cabinet and that full implementation of this recommendation could proceed readily.

**Recommendation 6. That the Bush Fires Act be amended to: require local Councils to monitor hazard reduction work on private land; require local Councils to implement remedial action in accordance with the relevant s.41A plan; and, enable local Councils to charge the owner or occupier the cost of such work.**

Under section 13 of the *Bush Fires Act*, councils may issue written notices requiring owners or occupiers of land to establish fire breaks or carry out fire prevention activities through the removal, burning or destruction of inflammable material in accordance with the time and extent specifications contained within that notice. Councils may also require maintenance of those fire breaks thereafter. Notices issued by councils cannot require the removal or killing of any tree that is "reasonably necessary for shade, shelter, windbreak or fodder purposes"<sup>14</sup>. Councils may send in the fire control officer or any other authorised person to assess whether such measures are necessary and may also specify that the completion of fire prevention and fire breaks be carried out under the supervision of either a Fire Brigade or a Bush Fire Brigade<sup>15</sup>. Furthermore, in cases where there is no or partial (and therefore inadequate) compliance with the notice issued by council, council (or its servants or the fire or bush fire brigade) may enter the property and complete the activities required in the notice. The costs associated with such activities are the responsibility of the owner or occupier and may be recovered as a debt in court<sup>16</sup>.

The main difference between the role of council as currently required under the *Bush Fires Act* and that proposed by this recommendation is one of choice. Under current

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<sup>13</sup> Department of Bush Fire Services, April 1992, op cit, p17.

<sup>14</sup> *Bush Fires Act*, s13(2)(a).

<sup>15</sup> *Bush Fires Act*, s13(1A) and s13(4).

<sup>16</sup> *Bush Fires Act*, s14(1).

legislation, councils may be vigilant and monitor the need for hazard reduction or fire prevention on private properties or they may choose to ignore such issues. Put differently, some councils are proactive when it comes to fire control and management, others are inactive and the reasons for such variations are not always logistical or financial. The recommendation would, if its implementation was regulated, impose upon councils an obligation to monitor all properties in their area in terms of the need for fire prevention and fire breaks. Such a requirement could impose a considerable resource and expertise burden upon many councils, especially in areas where there were few residents and/or few resources. It is also likely that owners and occupiers would need to be made explicitly aware of their responsibilities under the Act for this recommendation to achieve its desired purpose.

**Recommendation 7. That the Local Government Act be amended to require local Councils to account for the discharge of their responsibilities under s.13 of the Bush Fires Act as part of their annual reporting process.**

This recommendation would simply expedite the monitoring of councils compliance with the amendments to the *Bush Fires Act* contained in recommendation six. Reporting the discharge of their responsibilities in annual reports would also make the information regarding fire management and control procedures carried out by local Councils available to the public. Currently there is no requirement for councils to detail what, if any, work they carry out in relation to fire management and control.

**Recommendation 8. That the Bush Fires Act be amended so that, where any property owner or occupier or Council fails to carry out hazard reduction in accordance with the relevant s.41A plan, the Commissioner for Bush Fire Services will be empowered to carry out the necessary work and charge the owner or occupier or Council (as the case may be) the cost of such work.**

Currently, there is no provision in the *Bush Fires Act* dealing with non-compliance of councils with their obligations to monitor and/or carry out fire management and control activities in relation to private land. In part this seems to be the result of the largely discretionary nature of the *Bush Fires Act*; rather than directing the various authorities to carry out certain duties, under the Act authorities are empowered to act if they consider it necessary or choose to do so. Thus, this amendment, and indeed many of the other amendments proposed by Cabinet, is partially aimed at making fire management and control mandatory rather than discretionary. On this basis, this recommendation would serve to provide a remedy in situations where there was non-compliance by council or private landowners with their obligations under the Act by permitting the Commissioner to carry out the necessary actions and charge the owner or council the costs of the work. This recommendation is really a fall-back position; primary responsibility for fire control and management rests with the private land owner and the council. The potential for failure of either to fulfil their duties thus requires a covering clause empowering an higher authority to step in and redeem the situation.

**Recommendation 9. That the Bush Fires Act be amended so that, where any public land manager fails to carry out hazard reduction in accordance with the relevant s.41A plan, the Commissioner for Bush Fire Services will be empowered, subject to the dispute resolution procedures set out in**

**recommendation 10, to carry out the necessary work and charge the relevant public land manager the cost of such work.**

The powers of local Councils and private landowners under s.13 of the *Bush Fires Act* do not extend to public land. Indeed, if councils or land owners intend to complete fire breaks or hazard reduction in any area within eight kilometres of any national forest, State forest or Flora reserve they are required to give written notice of such intentions. In addition, under s22A of the Act, any authorised person<sup>17</sup> may 'enter any land and ' establish fire breaks or carry out hazard reduction only with the permission of the appropriate party. For example, in the case of unoccupied Crown land, the appropriate authority is the council. In the case of land within a national park, the appropriate authority is the Director of National Parks and Wildlife.

Section 54 of the *Bush Fires Act* makes it clear that it is the duty of councils and public authorities 'to take all practicable steps<sup>18</sup> to prevent the occurrence of fires on and to minimise the danger of the spread of fires on or from ...' land vested in their control. Furthermore, section 41A plans for regions containing public land are developed by the Co-ordinating Committee or District Fire Committee in consultation with the appropriate public authority. However, there are currently no provisions within the Act dealing with either non-compliance of public authorities with their obligations under section 41A plans, for the resolution of any such conflicts or for deciding whether the steps taken by public authorities for fire management and control are adequate. This recommendation would go some way towards correcting this lapse as it would provide for the completion of hazard reduction on public lands by the Commissioner for Bush Fire Services in situations where there had been inadequate or no completion of such work. This recommendation does not, however, detail exactly how any conflict between the Commissioner for Bush Fire Services and a public authority would be resolved except to make it a matter for the Minister. Such a provision may not expedite the settling of such conflicts and may also render ineffective the conciliatory approach currently adopted by the Co-ordinating Committee in relation to s41A plans that it considers inadequate or inappropriately implemented.

**Recommendation 10. That s.41A (2B) of the Bush Fires Act be amended to extend the dispute resolution procedures set out in that section to include:**

- \* a dispute about the revision of a s.41A plan; and,
- \* a dispute about whether or not a particular plan has been implemented correctly.

Currently s.41A(2B) of the *Bush Fires Act* which details conflict resolution procedures relating to s.41A plans only applies to plans in preparation. This recommendation would extend the provision to include disputes concerning the

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<sup>17</sup> *Bush Fires Act*, s22A (1)(a-d); an authorised person is described as any officer of a bush fire brigade nominated by council, any person nominated by the Co-ordinating Committee and any person exercising functions under a plan of operations in force under s41A.

<sup>18</sup> "Practicable steps" are defined in section 54(3)(a-b) of the *Bush Fires Act* to include any steps deemed necessary by the Co-ordinating Committee and included under any plan in force under s41A.

revision and implementation of plans and thus would ensure that disputes concerning s.41A plans at any stage of life were subject to Ministerial adjudication.

### (c) Fire trails

**Recommendation 11. That all landowners, both private and public, review their fire trail networks and carry out any necessary upgrading work to the standard and frequency prescribed in the relevant s.41A plan.**

Fire trails are defined by the Co-ordinating Committee of the Department of Bush Fire Services as "formed tracks designed to provide access for firefighting and fuel management and which can be used as a starting point for backburning and other fire suppression measures."<sup>19</sup> The term "fire trails" as such is not defined in the legislation. Instead, the definition of fire breaks under both the *National Parks and Wildlife Act* and the *Bush Fires Act* is, by way of policy, taken to include fire trails by the Department of Bush Fires Services. Policy documents from both departments also reflect this assumption and the terms "fire trails" and "fire breaks" can be taken to be interchangeable for the purposes of this paper.

In New South Wales, fire trails are found on both public and private land and responsibility for the construction and maintenance of fire trails is generally the responsibility of the controlling authority. Under section 54 of the *Bush Fires Act*, local councils and public authorities have a duty to take all practicable steps to prevent fire and to minimise the danger of the spread of fire from lands under their authority. Section 13 of the *Bush Fires Act* also allows councils to require owners or occupiers to construct fire breaks and remove hazards. Both section 13 and section 54 also reflect the common law principle that persons or authorities responsible for a parcel of land are required to take steps to protect adjacent lands from fire<sup>20</sup>. Thus, as fire trails are considered to be fire breaks and essential works in the management and control of fire risk, all landowners or managers are required to maintain the fire trails traversing their lands.

There are specific provisions relating to fire trails in the *Bush Fires Act* which allow the Co-ordinating Committee to form or approve the formation of Fire Prevention Associations "for the purpose of constructing and maintaining fire trails..."<sup>21</sup>. According to the 'Guide to Preparing Fire Management Plans under section 41A of the *Bush Fires Act*' published by the Department of Bush Fire Services<sup>22</sup>, it is desirable for a register of fire trails, their condition and the last date access was checked to be included in section 41A fire management plans prepared at both local

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<sup>19</sup> Department of Bush Fire Services, *Co-ordinating Committee Policy on Funding of Regional Fire Association Works*, October 1993.

<sup>20</sup> Department of Bush Fire Services, 1993, op cit, p5.

<sup>21</sup> *Bush Fires Act*, s41B(h).

<sup>22</sup> Department of Bush Fire Services, *Guide to preparing fire management plans under s41A of the Bush Fires Act, 1949*, Co-ordinating Committee, Bush Fire Council of New South Wales, May 1990.

and regional levels. The inclusion of detailed maps showing the location of fire trails in Fire Management Plans is also recommended in the guide. Similar recommendations are also included in the model provisions for the development of s41A plans also produced by the Department of Bush Fire Services.

Fire Management Plans are reviewed and, ultimately, subject to approval by the Co-ordinating Committee. Thus, although hands on responsibility for the construction and maintenance of fire trails falls to the land owner or managing authority, the Co-ordinating Committee and the Department of Bush Fire Services fulfil an important overseeing role, by ensuring that adequate attention is given to fire trails in Fire Management Plans and by indicating to land owners and managers when they are not, in the Committee's opinion, fulfilling their fire management and control duties. This situation has its difficulties. In particular, the question of who meets the cost of constructing and maintaining fire trails continues to be a matter of some controversy. Fire trails are often difficult to construct and expensive to maintain. This is in part because of the necessity of having fire trails into areas where other means of access is not possible or is unlikely, and also because fire trails often run along ridges and thus are often subject to erosion. Advice from the National Parks and Wildlife Service indicates that ultimately sealing of some sections of fire trails would be desirable if long-term erosion problems are to be combated. However, such activities are costly and unlikely to occur in the near future. There are some funds available through the Co-ordinating Committee to local Councils, public authorities and private owners for ensuring the carrying out of adequate fire prevention and mitigation measures. Such measures may include the construction and maintenance of fire trails. However, such funds are severely limited, available in principle only to land owners or managers in areas where a comprehensive s41A plan is operational and allocated in accordance with the type and relative proportions of land contained within the regional fire area.<sup>23</sup> Furthermore, 'it is Co-ordinating Committee policy that, because of the limited availability of funds, priority will firstly be given to the

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<sup>23</sup> For the purposes of bush fire management and control, all land in New South Wales is categorised as follows:

**Category A** - any land that is not under the control of a public authority or trustees, is not held under lease or licence or is not privately owned. Such land is the responsibility of the State (responsibility in this context includes financial responsibility).

**Category B** - any land under the control of a public authority or trustees, which is set aside for some public purpose but not specifically managed to support that purpose, eg. Pasture Protection Board reserves, transmission line reserves, Lands Department subdivisions etc. This land is the responsibility of the public authority or trustees.

**Category C** - any land under the control of a public authority or trustees, set aside and specifically managed to support some public purpose, eg. Council reserves, commons, dedicated public roads etc. This land is the responsibility of the public authority or trustees.

**Category D** - any land set aside and specifically managed to support some public purpose by a public authority established, by law, for that purpose, eg. National Parks, State Forests etc. This land is the responsibility of the public authority.

**Category E** - any land leased by the Crown to private interests (NB. a distinction may be made between short term leases and long term leases based upon the likelihood of their return to the public estate). This land is the responsibility of the occupier.

**Category F** - any land in private ownership. Responsibility for this land lies with the owner or occupier.

protection of Category A lands and lastly to Category F lands...'.<sup>24</sup> For the purposes of safety and trafficability, the Department of Bush Fire Services also recommends that fire trails be constructed in accordance with guidelines published by the Soil Conservation Service of New South Wales.<sup>25</sup>

Two major issues therefore arise out of this Cabinet recommendation. Firstly, there is no comprehensive specific legislation pertaining to fire trails construction and management in New South Wales. The legislative basis for the Department of Bush Fires Services' policy concerning fire trails is largely indirect and could conceivably be challenged if private landowners or public authorities thought that the responsibility for fire trail management was too onerous. Secondly, there are already concerns regarding the lack of resources for the maintenance and construction of fire trails. Most public land authorities feel that their resources are already stretched to capacity, and, whilst they acknowledge the worth and necessity of fire trails, there is considerable concern that they are not compensated even partially for the associated expenses. A similar view may be adopted by private landowners as maintenance of fire trails on private land that are not Council constructed and therefore managed by a public authority or local Council, or which are not so-called reserved roads (and thus the responsibility of local Councils), is at the expense of these landowners and relies upon their goodwill.

**Recommendation 12. That the National Parks and Wildlife Act be amended to increase the maximum penalty for unauthorised entry onto fire trails from \$500 to \$1000.**

The question of access to, and use of, fire trails has long been a controversial one. Currently, the *National Parks and Wildlife (Land Management) Regulation 1987 under the National Parks and Wildlife Act 1974* in Part 2, section 5(1) and (2) states that 'the authority may designate places on the perimeter of a park as entrances for vehicles by notices affixed or set up at or near those places', and 'where notices have been so affixed or set up, a person shall not drive a vehicle into the park otherwise than at a place so designated as an entrance'. Entry to parks is thus confined to entrances designated as public access places. All other parks entrances are for management purposes only and use of management access is restricted to authorised authorities. Most fire trails are designated as management access and thus the gates to most fire trails in National Parks are sign posted clearly to indicate that public access is not permitted. However, these provisions have not been effective in deterring some members of the public who appreciate the ease of access to otherwise difficult to visit parts of parks given by fire trails. In addition, there is a vocal lobby group of 4WD drivers and trail bike riders who argue that their use of fire trails reduces the growth of scrub over trails and may act as a means of alerting authorities earlier to erosion in trails. Public authorities hold the converse view and also have grave reservations about the unsupervised use of parks permitted by fire trail access. The Cabinet recommendation would seek to increase the deterrent value of the fine associated with illegal fire trail use.

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<sup>24</sup> Department of Bush Fire Services, 1993, op cit, p6.

<sup>25</sup> Soil Conservation Service, *Guidelines for the planning, construction and maintenance of tracks*, Appendix 2 in the Department of Bush Fire Services' 'Planning for Bush Fire Protection Discussion Document', May 1991.

**Recommendation 13. That:**

- \* in order to achieve standardisation of locks, the Department of Bush Fire Services supply locks for fire trails on those public lands where the relevant manager determines that locks are necessary; and,
- \* keys to those locks be kept by the relevant local bush fire brigade and by the local manager of the public lands concerned.

The issue of locks on fire trail gates is also a contentious one because, as indicated in the discussion concerning recommendation 12, public exclusion from the use of fire trails is not universally accepted as welcome or necessary. In the opinion of fire management authorities, the use of locks increases fire trail security and thus is highly desirable. The problem, however, is in deciding who locks what and who holds the keys. Giving this responsibility to the Department of Bush Fire Services seems an effective solution, particularly when the fire trails are on land managed by public authorities. The real problem area, however, concerns locks on fire trails on privately owned land. Some such trails are constructed and maintained by councils, who would thus have the right to lock gates, and others are designated reserve roads and thus are ostensibly public thoroughfares which may only be locked at local Council's discretion. However, many such trails are largely maintained due to the goodwill of land owners. The provision of locks on these trails is thus at the landowners discretion and relies upon them appreciating the desirability of keeping out the public, a notion which is relatively unlikely to upset many private landholders. It should be noted, however, that many fire trails on private land are constructed in order to gain access to publicly owned land and thus there is particular impetus upon authorities to maintain good relations with these landowners. Access to fire trails through, or on, private land therefore relies heavily upon the goodwill of the individual landowner and as a result may be less reliable than desired depending upon the circumstances and/or the relationship between private landholders and local or public authorities.

**(d) Fire permits**

**Recommendation 14. That the Bush Fires Act be amended to remove the issuing of a permit under s.10 of that Act from the operation of Part 5 of the Environmental Planning and Assessment Act.**

Further that the Bush Fires Act be amended to provide that a fire permit issued under s.10 of that Act will remain in force for a period of 21 days after its issue, subject only to the proclamation of a total fire ban or the issuing of a "no-burn" notice. The permit holder would be required to advise the issuing authority of the date of the burn.

Further, that s.35A of the Fire Brigades Act be repealed and local Councils and their authorised agents given responsibility for issuing a s.10 permit in circumstances where previously the Fire Brigades would have issued a s.35A permit. The local Council would be required to notify the Fire Brigades immediately of its decision to issue a permit.



Section 10 of the *Bush Fires Act* details the requirements which must be complied with by persons lighting certain fires. Basically the section requires that permits must be obtained to light fires, the appropriate authorities must be notified of an intention to burn and the lighting of fires in certain areas and/or at certain times may be forbidden. There is no absolute requirement within this section that persons intending to light fires apply to do so in a manner which concurs with the requirements set out under part 5 of the *Environmental Planning and Assessment Act 1979*. This part of the Act details matters concerned with environmental assessment and defines 'activity' to include 'the carrying out of work in, on, over or under land'. However, some Councils have adopted a position of requiring applicants for permits to light fires to fulfil the requirements imposed by this part of the *Environmental Planning and Assessment Act* on the grounds that 'burning off' constitutes an activity as defined in this section. The Cabinet recommendation would clarify this situation by explicitly excluding this requirement.

Under current legislation, the duration of permits to light fires is at the discretion of the Council or issuing authority. Any permit so issued is valid for the period specified on the permit with two exceptions. First, if a total fire ban is declared on any day during the valid period of the permit, the permit is cancelled from that day and a new permit must be sought. Secondly, if a 'no-burn' notice is issued by the EPA<sup>26</sup>, the permit is suspended for the duration of that no-burn notice. The Cabinet recommendation would remove the discretionary power of issuing authorities and thus variability in duration of permits. Three weeks is thought to be a reasonable time period as fire conditions can change markedly in the face of prolonged hot, dry or wet spells, thus necessitating a reconsideration of the desirability of burning off.

Under section 10 (2(a)) of the *Bush Fires Act*, 'no person shall during a bush fire danger period light...any fire ...' without obtaining a permit. However, section 35A of the *Fire Brigades Act 1989* states that 'a person must not, without written permission from the officer in charge of the nearest fire station, light a fire in a fire district in circumstances in which to do so would be likely to be dangerous to a building'. This provision is, however, more narrow in its application than section 10 of the *Bush Fires Act* and thus only applies outside the bush fire danger period. Obtaining a section 10 permit therefore obviates the need to obtain a section 35A permit.

The Cabinet recommendation seeks to remove section 35A and replace it with a provision whereby local Councils would be authorised to issue fire permits in circumstances where Fire Brigades now issue them, ie. in the period outside bush fire danger periods and where lighting a fire would potentially endanger a building. Local Councils would be required to notify immediately Fire Brigades of the issuing of a permit, although this notification could be verbal or by fax. This recommendation does not therefore change the fact that two authorities may issue fire

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<sup>26</sup> A 'no-burn' notice is generally issued by the Environment Protection Agency when it is of the opinion that air pollution is too high. These notices are issued under sections 24 and 24A of the *Clean Air Act 1961* and prohibit the use of certain fuels and fuel burning equipment by industry, burning by open-fire and the use of incinerators. Notices issued under s24 and s24A can remain in effect for a period not exceeding seven days. Notification of these orders is by publication in a daily State-wide newspaper and by radio or television broadcast.



permits (although the section 10 permits would presumably remain wider) but merely changes the issuing authority from the Fire Brigade to the local Council. Currently, there appears to be no requirement that Fire Brigades notify local Councils when they issue a permit although this recommendation would make the reciprocal mandatory.

### **(e) Clean Air Act and Regulations**

**Recommendation 15.** That the Environment Protection Authority and the Department of Bush Fire Services review the Bush Fires Act and the Clean Air Act and Regulations, and propose any necessary amendments, to clarify that:

- \* hazard reduction burning is an approved purpose and that, therefore, hazard reduction burning is allowed under the Clean Air Act Regulations;
- \* control burning under a s.41A plan carried out with the authority of the Commissioner for Bush Fire Services is permissible unless the Environment Protection Authority has issued a "no-burn" notice to prevent significant air pollution;
- \* a "no-burn" notice will not affect hazard reduction work approved by the Commissioner for Bush Fire Services unless the Environment Protection Authority has previously consulted with the Department of Bush Fire Services about the particular "no-burn" notice which it intends to issue.

There have been ongoing problems concerning hazard reduction burning and regulations under the *Clean Air Act 1961*. The Department of Bush Fire Services has attempted to address these difficulties on a number of occasions and, most recently, negotiated with the Department of Planning to clarify the issue of hazard reduction under the *Environmental Planning and Assessment Act*<sup>27</sup>. As a result of these negotiations 'it is now accepted that hazard reduction responsibilities under the *Bush Fires Act* are exempted from the amendments to the *National Parks and Wildlife Act* (sections 98 and 99)' and that 'the amendments to the *Environmental Planning and Assessment Act* merely extend the considerations for assessing any potential environmental impact to include impact on endangered fauna and its habitat.'<sup>28</sup> The Department of Bush Fire Services subsequently issued a number of circulars clarifying these points<sup>29</sup>.

**Recommendation 16.** That the Environment Protection Authority and the

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<sup>27</sup> Department of Bush Fire Services, *Annual Report, 1991-92*, New South Wales Government, 1992, p13.

<sup>28</sup> *ibid*, p5.

<sup>29</sup> Circular 8/92 *Clean Air Legislation*, Circular 14/92 *Endangered Species Legislation* and Circular 31/92 *A Guide to Environmental Legislation and Hazard Reduction Planning*.

**Department of Bush Fire Services revise the existing guidelines relating to the Clean Air (Control of Refuse Burning) Regulation to make it clear that control burning carried out in accordance with the Bush Fires Act is not prohibited by the Regulation.**

Despite the activities of the Department of Bush Fire Services detailed above, there remain concerns, however, that some local Councils are not convinced that hazard reduction burning is permitted under the various pieces of legislation and the Cabinet therefore recommended that all the relevant acts be reviewed and, if necessary, amended to clarify this issue. In particular, the Cabinet recommendation concentrated upon the need to inform local Councils of their responsibilities both in terms of hazard reduction and in relation to pollution control with special emphasis on the impact of 'no-burn' notices issued by the Environment Protection Authority. The Cabinet recommendation also seeks to make it clear that the Environment Protection Authority has an obligation to consult with the Department of Bush Fire Services concerning 'no-burn' notices.

#### **(f) Tree Preservation Orders**

**Recommendation 17. That local Councils which have adopted tree preservation orders review those orders to take into account fire management practices, as determined by the Commissioner for Bush Fire Services.**

**Further, that a review of the model provisions relating to tree preservation orders be undertaken jointly by the Department of Bush Fire Services, the Department of Planning and the Department of Local Government.**

**Further, that following the review certain minimum statutory defences be inserted in the Environmental Planning and Assessment Regulation so as to ensure that any person may undertake bush fire hazard reduction without fear of prosecution under a tree preservation order.**

Tree preservation orders are issued by local Councils in accordance with the *Environmental Planning and Assessment Model Provisions 1980* authorised in section 33 of the *Environmental Planning and Assessment Act 1979*. Under section 33, environmental planning instruments may 'adopt wholly or partially any set of model provisions made by the Minister by order published in the Gazette'. *Environmental Planning and Assessment Model Provisions 1980* containing provision 8 'Preservation of trees' came into effect on 26 September 1980. As it stands, this provision provides for Councils to make an order prohibiting 'the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree or trees...'. The provision makes no specific reference to exemptions from the provision in relation to fire management practices, although the provision does not apply to trees in State forests or timber reserves<sup>30</sup> or in situations where trees need to be lopped in accordance with Regulation 38 or 39 of the *Overhead Line Construction and Maintenance Regulations, 1962*.

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<sup>30</sup> As specified within the meaning of the *Forestry Act, 1916*.

Concerns were expressed in submissions made to the Cabinet Committee that some Councils were enforcing or imposing tree preservation orders in a manner which was 'unreasonably stringent so far as bush fire hazard reduction is concerned'<sup>31</sup>. The Cabinet Committee did comment, however, that it was impossible to determine whether such attitudes contributed to the increased fire risk experienced in some areas. Nevertheless, the Cabinet felt that there was sufficient concern to warrant review of tree preservation orders both by Councils who currently impose them and by the Department of Bush Fire Services in conjunction with the Department of Planning and the Department of Local Government. In addition, the Cabinet Committee recommends that a statutory defence be inserted into the model provisions as they currently stand to enable property owners to defend themselves against prosecution in situations where they feel that bush fire hazard reduction is compromised by the tree preservation order. This statutory defence would be in addition to the one currently contained within the model provisions that permits a defence based on evidence that the tree was dead or dying or had become dangerous<sup>32</sup>.

### **(g) Building Code and Land Development**

**Recommendation 18.** That the Department of Local Government liaise with Standards Australia to develop a comprehensive version of AS 3959:1991 "Construction of Buildings in Bush Fire Prone Areas". When a comprehensive standard has been developed, the Minister for Local Government and Co-operatives should give consideration to that standard becoming the minimum standard in New South Wales.

There is currently no comprehensive standard in force in New South Wales pertaining to the construction of buildings in bush fire prone areas. Standards Australia did develop a standard AS 3959:1991 'Construction of Buildings in Bushfire-Prone Areas' based on research completed by the CSIRO after the Ash Wednesday fires in Victoria. However, this standard was not adopted in New South Wales as it was incomplete. Standards Australia also produced a handbook entitled "Building in Bushfire Prone Areas" which was intended to complement AS 3959:1991 which provides information on how to deal with various forms of fire attack. Research has shown that a number of factors, including construction materials, design, location and proximity and type of adjacent vegetation can affect the chances of a building surviving a bush fire. In the light of this evidence, the Cabinet Committee recommended that Standards Australia be approached to develop a complete version of Standard AS 3959:1991 and that when it has done so, consideration should be given to adopting this as a minimum building standard in New South Wales. Problems with this proposal include the possibility that any standard might increase the costs of building and the necessity for local Councils to develop procedures for stringently enforcing the standard. It also has to be acknowledged, that even with a comprehensive standard, other factors including luck will affect the likelihood that a building will survive a bush fire.

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<sup>31</sup> Cabinet Committee Interim Report, op cit, p25.

<sup>32</sup> Provision 8(6) of *Environmental Planning and Assessment Model Provisions 1980*.

**Recommendation 19. That relevant legislation be amended to ensure that bush fire hazard will be considered in all aspects of subdivision.**

One of the ongoing problems experienced in relation to development is the question of whether building should be permitted in areas where fire risk is high. In particular there is the question of development on the urban bushland fringe. Opinions on this topic tend to be wide ranging and often emotionally charged. *State Environmental Planning Policy No 19 - Bushland in Urban Areas* contains provisions dealing with plans of management for bushland zoned or reserved for public open space purposes. Included within this provision is the requirement that the plan of management specify measures to be taken to reduce hazard from bush fire<sup>33</sup>. The Department of Planning has also issued advice in the form of directive *G20 Planning in Bush Fire Prone Areas*<sup>34</sup> which applies to all environmental planning regions in New South Wales except the North Coast and Hunter Regions. These regions have regional environmental plans prepared by the Department of Planning in place and are not subject to the separate provisions contained in G20 because these plans contain planning provisions relating to building in bush fire prone areas.

Directive G20 requires councils to take into account whether land is subject to bushfire hazard in the preparation of draft local environmental plans. In areas where there is a bush fire hazard, councils are required to:

- (a) provide for the creation of a perimeter road or reserve which circumscribes the hazard site of the land intended for development;
- (b) provide for the creation of a fire radiation zone managed for hazard reduction and located on the bushland site of the perimeter road;
- (c) specify minimum residential lot depths for lots adjoining the perimeter road;
- (d) minimise the perimeter of the area of land which may be developed for urban purposes; and,
- (e) introduce controls which avoid placing inappropriate development in hazardous areas<sup>35</sup>

when preparing draft local environmental plans.

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<sup>33</sup> *State Environmental Planning Policy No 19 - Bushland in Urban Areas*, section 8 (4)(c)(iii).

<sup>34</sup> Directive G20 was issued under the auspices of s117(2) of the *Environmental Planning and Assessment Act* in Circular 74 on October 15, 1984 (Stein, P., et al., *Local Government Planning and Environment NSW*, Sydney: Butterworths, 1993). Reference is made in the *Cabinet Committee on Bush Fire Management and Control Interim Report* to Circular C10 issued by the Department of Planning. This circular is basically equivalent to Circular 74, except that circular 74 contains more information.

<sup>35</sup> Directive G20 *Planning in bushfire prone areas* issued under s117(2) of the *Environmental Planning and Assessment Act 1979*.

In situations where bush fire hazard is found and rural residential development is permitted, draft local environmental plans prepared by councils should provide for the creation of:

- (a) a road through that land to which individual access roads are linked; and,
- (b) fire trails which link with individual access roads and/or a through road.<sup>36</sup>

These documents are designed to ensure that local Councils properly identify bush fire hazard and make appropriate planning and development provisions. However, the advisory nature of these may not be appropriate especially in light of the lack of any express provisions requiring local Councils to take into account bush fire risk when considering subdivision applications. Subdivision is controlled by part 12 of the *Local Government Act 1919*<sup>37</sup>. Section 333 details subjects for consideration re subdivisions and does not include any provisions examining whether the land to be subdivided is prone to bush fire hazard. Subdivisions do, however, require development approval under section 90 of the *Environmental Planning and Assessment Act* and this section requires local Councils to take into account bush fire hazard. The Cabinet recommendation seeks to enforce consideration of bush fire hazard by local Councils when considering subdivision applications.

**Recommendation 20.** That a Regulation be made under the *Environmental Planning and Assessment Act* to require a consent authority to consider the guidelines set out in the Department of Bush Fire Services' publication "Planning for Bush Fire Protection" (once those guidelines are finalised) when determining an application for development in a bush fire prone area.

Further, that the Minister for Planning issue a revised direction under s.117 of the *Environmental Planning and Assessment Act* which will also require local Councils to take into account the Department of Bush Fire Services' publication "Planning for Bush Fire Protection" when exercising their responsibilities for the preparation of local environmental plans in areas prone to bush fires.

As mentioned, currently provisions for considering bush fire hazard in relation to development applications under the *Environmental Planning and Assessment Act* are advisory. This recommendation seeks to make consideration of bush fire hazards as defined and described in relation to planning and development by the Department of Bush Fire Services mandatory and in accordance with guidelines published by the Department. This recommendation would standardise the extent to which the Department of Bush Fire Services advice is followed and ensure consistent application of their advice in planning decisions.

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<sup>36</sup> ibid

<sup>37</sup> The *Local Government (Consequential Provisions) Act 1993* commencing on 1 July 1993 repeal the *Local Government Act 1919* except for part 12 - Subdivision Regulation.

## **(h) Hose boxes**

**Recommendation 21.** That the NSW Fire Brigades extend the hose box programme in appropriate areas.

The Hose Box programme was established to afford 'a measure of local protection to life and property in known bush fire areas.'<sup>38</sup> Hose boxes consist of a standpipe, lengths of hose and knapsacks valued at approximately \$3,500. The feasibility of installing a hose box post 'depends upon the existence of an enthusiastic and committed group of local residents who will attend drills and accept responsibility for using the equipment in times of need.'<sup>39</sup> Hose box posts are considered a form of auxiliary fire fighting services. Although the efficiency, care and maintenance of Hose Box Posts are the responsibility of the District Fire Officers, the use and effectiveness of the system is generally dependent upon the local residents who are so called 'reserve firefighters' unavailable for fire-fighting in other locations.

The establishment, disbandment, location and operation of hose box posts in fire districts is co-ordinated by the Bush Fire Officer with drill and instruction of hose box personnel carried out by local fire stations under the supervision of this officer in liaison with the District Fire Officer. Instruction is given at the hose box post location, usually bi-annually. Hose box post personnel are not paid and are not supplied with uniforms.

In the Sydney Fire District there are approximately 20 hose box posts in residential areas on the urban bushland fringe. The New South Wales Fire Brigades is currently conducting a survey of residential areas adjoining bushland to determine where new hose box posts may be warranted. Once such sites are agreed upon, the residents will be approached through the local Neighbourhood Watch or Progress Association groups to determine if there is sufficient community support to go ahead with installation.

## **(i) Co-ordination of bush fire fighting**

**Recommendation 22.** That co-ordination of bush fire fighting be enhanced by encouraging those Councils which remain outside the "Co-ordination Zone" to join the "Co-ordination Zone".

Schedule 3 of the *Bush Fires Act* contains a list of the cities, municipalities and shires of New South Wales which constitute the prescribed areas comprising the 'Co-ordination Zone'. Essentially these areas belong of regions 1 to 5 (Sydney, Highlands, Hunter, Southern and Northern) of the New South Wales bush fire regions with the actual Co-ordination Zone extending along the east coast from the New South Wales - Queensland border down to the Victorian - New South Wales border. The zone extends inland to include Guyra, Yass, Evans and Scone.

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<sup>38</sup> New South Wales Fire Brigades, *New South Wales Fire Brigades Policy on Hose Box Posts*, March 1989.

<sup>39</sup> New South Wales Fire Brigades, *Hose Box Posts*, 16 February, 1994.

Advice from the Department of Bush Fire Services indicates that a number of local government areas, for example Coolah, Cowra, Deniliquin, Murrurundi and Yallaroi, belonging to fire regions outside the Co-ordination Zone have opted to join the Co-ordination Zone. In some cases this has been an historical artefact resulting from the membership of certain local government areas to a bush fire region when the Act was amended in 1970 to include sections 41A - J to create the Co-ordination Zone and detail its functions and powers.

The main purpose of the Co-ordination Zone is the co-ordination of fire-fighting services and activities, particularly in difficult situations where fires are unable to be contained by local authorities. Such co-ordination ensures the most efficient and effective use of all fire-fighting resources. However, the Co-ordination Zone does not cover all of New South Wales, and as wildfires are renown for their lack of abidance with cartographic boundaries, the expansion of the Co-ordination Zone would enable these practices and planning to accommodate regions which are currently not included. Although the proposal to expand the Co-ordination Zone would seem logical, particularly in the wake of the recent bush fires, there are concerns as to the impact of such an expansion of the Co-ordination Zone on rural and smaller communities. In particular, regions or local government areas concerned that such an expansion of the Co-ordination Zone might leave them as "small fishes" in a much bigger "sea" and that as the Chief Co-ordination Officer<sup>40</sup> lives, and, by default, operates out of, Sydney, their local knowledge and concerns may not be given sufficient weight in decision making. Furthermore, given the concentration of population in the Co-ordination Zone, more remote and rural government areas are also concerned that membership of the Co-ordination Zone might see mobilization of services and resources, particularly in a crisis, away from their communities and towards the greater Sydney metropolitan area.

**Recommendation 23.** That the Bush Fires Act be amended to enable the Commissioner for Bush Fire Services to exercise power under s.41F outside the "Co-ordination Zone" in consultation with the relevant District Fire Committee for the purpose of appointing a fire control officer to take charge of fire fighting operations for any bush fire.

**In exercising this power, the Commissioner MUST appoint the fire control officer for the relevant local government area, but, if two or more local government areas are affected by a bush fire, the appointment will be at the Commissioner's discretion.**

The powers accorded to the Co-ordinating Committee within the Co-ordination Zone are detailed in section 41A - C of the *Bush Fires Act* and are limited to those areas listed in Schedule 3. The powers include the constitution of District Fire Committees, preparing section 41A plans, reduction of fire hazards on Crown lands, forming of arrangements with councils and public authorities for the reduction of fire hazards on their lands, acquisition of fire-fighting equipment and places for its storage, formation of Fire Prevention Associations, ensuring the adequate supply of information, training and equipment to members of bush fire brigades, furnishing a report to the Minister, requiring councils to exercise their powers under section 13 and requiring councils and other bodies to furnish information as deemed

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<sup>40</sup> The Chief Co-ordinating Officer is also the Commissioner for Bush Fire Services.



appropriate.

The appointment, functions and powers of the Chief Co-ordinator are set out in section 41D - F. The Chief Co-ordinator is responsible either directly, or through his delegated officers, to take charge of fire-fighting operations within the Co-ordination Zone in situations where the Chief Co-ordinator is of the opinion that the fire is too severe to be controlled or suppressed by the local fire fighting authority. The Chief Co-ordinating Officer is answerable to the Co-ordinating Committee. However, in emergency fire-fighting situations (as defined in section 41F (1) and (3)), the Chief Co-ordinating Officer is not subject to the control and direction of the Co-ordinating Committee. Currently, all powers invested in the Chief Co-ordination Officer and the Co-ordinating Committee are restricted to the Co-ordination Zone.

The Cabinet proposal would see expansion of these powers so that the expertise and planning capacity of the Chief Co-ordinating Officer and the Co-ordinating Committee could be utilised in areas outside the current Co-ordination Zone. Under section 41F of the *Bush Fires Act*, the Chief Co-ordinating Officer may "either personally or through regional officers, officers of the New South Wales Fire Brigades and the members of any permanent or volunteer fire brigade, officers of the Forestry Commission of New South Wales or other persons..."<sup>41</sup> take charge of fire-fighting operations and fire prevention services. Thus, currently, the Chief Co-ordinating Officer may delegate his authority within the Co-ordination Zone to virtually any suitable officer or member of a fire-fighting service. This provision enables the Chief Co-ordinating Officer to delegate his authority at a local, hands-on level whilst co-ordinating fire-fighting services at the Command centre.

The Cabinet proposal would extend the authority of the Chief Co-ordinating Officer to all areas of New South Wales. However, it is not clear in the proposal whether such an extension of powers would apply in all fire-fighting emergencies or be restricted to situations and times where fires cross out of the Co-ordination Zone or involve more than one fire region outside of the Co-ordination Zone. Furthermore, it is also not clear whether the proposal would apply to all lands or just lands under management by public authorities. Under section 51 (1-1E) of the *Bush Fires Act*, where fires are burning within 8 kilometres of a National Park, State Forest, timber reserve or flora reserve, any officer of the Forestry Commission or the National Parks and Wildlife Service, or an authorised representative of either may enter the land where the fire is burning with any such fire-fighting equipment or personnel as is deemed necessary to fight the fire. These provisions also apply in relation to land constituting catchment areas for public water supplies. Thus, fires which occur outside the Co-ordination Zone but which threaten public land are able to be fought by public authorities or bush fire brigades mobilized upon the authorities' order. It is not clear therefore whether the Cabinet proposal would impact upon this provision and, if so, in what manner.

It is also not clear whether the amendment to the *Bush Fires Act* sought by Cabinet, that is "the appointment of a fire control officer to take charge of fire-fighting operations", would not in fact extend the jurisdiction of all of the powers vested in the Chief Co-ordinating Officer across all of New South Wales.

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<sup>41</sup> *Bush Fires Act* s41F (1).



Another issue raised by this proposal is how it would affect or define the hierarchical relationship between the Chief Co-ordinating Officer, the District Fire Committees and the fire control officer if the authority of the Chief Co-ordinating Officer was extended beyond the Co-ordination Zone. District Fire Committees are already answerable to the Commissioner for Bush Fire Services and the Bush Fire Council. Thus even in areas where the Co-ordination Zone does not operate the District Fire Committees must comply with instructions given by the Bush Fire Council and the Commissioner for Bush Fire Services. Section 41 provisions apply in relation to all bush fire-fighting services which have a bearing on hazard reduction (and almost all aspects of fire-fighting services can be identified as impacting upon fire hazard reduction and control). However, the Co-ordination Zone provisions currently only apply in Schedule 3 areas. It is not clear therefore which set of provisions would have precedence and whether the imposition of section 41F provisions would have to be by publication of such a notice in the Government Gazette. Currently no public notification is required, and the delegation of the authority of the Chief Co-ordinating Officer is without restrictions, either in terms of areas of authority or duration. These matters would need to be clarified, especially in situations where the Chief Co-ordinating Officer was not obligated to appoint the local fire control officer because the fire involved more than one fire district.

In the past, the Commissioner for Bush Fire Services has not always chosen to appoint the local fire control officer as his delegate. Reasons for this have varied but are mainly determined by the experience and skills of the local fire control officer in relation to the emergency situation, and the availability of a good deputy fire control officer to take over the responsibilities and duties of the fire control officer, particularly in relation to the hands on functioning of the local bush fire brigade. Fire control officers delegated to be the Commissioner for Bush Fire Services' representative take on other onerous duties which would preclude them carrying out their previous functions and responsibilities. Furthermore, in areas where a fire crosses more than one fire region, one local fire control officer may not have adequate knowledge or experience of adjoining districts to function as the Commissioner's delegate, hence the decision to appoint another person as fire control officer. The Cabinet proposal would ratify this later discretionary power of the Commissioner for Bush Fire Services, but would take away the discretion where a fire threatened only one bush fire district. This position has some drawbacks, particularly because of its inconsistency, but also because it tends to usurp the Commissioner's overall right of control over all aspects of fire-fighting services and because it also may force more than one change in the controlling authority as an emergency situation develops.

#### **(j) Fire Control Officers**

**Recommendation 24.** That the Bush Fires Act be amended to grant fire control officers the right to call out bush fire brigades to all bush fires wherever they occur, subject only to limitations set out in the relevant s.41A plan.

Under section 27 (1) of the *Bush Fires Act*, an appointed fire control officer has all the powers and immunities conferred upon any captain of a bush fire brigade by Part 3 of the Act. These powers and immunities include the right to enter, or call out bush fire brigades to enter, any land or building for the purpose of the control or

suppression of a bush fire for or the protection of life or property from any existing or imminent bush fire danger...'<sup>42</sup> The rights and powers of a fire control officer are contained within the bush fire district which the fire control officer represents. Section 27 (2) details the powers a fire control officer has over and above those outlined in Part 3 and section 27 (3) defines a "bush fire district" to exclude:

- (a) a fire district constituted under the *Fire Brigades Act 1909*; or
- (b) a national forest, State forest, timber reserve or flora reserve under the *Forestry Act 1916*; or
- (c) a national park, historic site, state recreation area, nature reserve or state game reserve under the *National Parks and Wildlife Act 1974*; or
- (d) vested in, or under control of, the State Rail Authority.<sup>43</sup>

Thus under section 27, a fire control officer has the right to enter any land except that controlled by National Parks, the Forestry Commission or State Rail. However, section 27 (3) is overridden by section 51<sup>44</sup> and sections 41A and 41F. Section 51 (1D) states that "If a bush fire is burning on land in:

- (a) a national forest, State forest, timber reserve or flora reserve under the *Forestry Act 1916*; or
- (b) a catchment area within the meaning of any Act relating to the supply of water by a public authority; or
- (c) a national park, historic site, state recreation area, nature reserve or state game reserve under the *National Parks and Wildlife Act 1974*,

and the fire is within the appropriate distance from the territory of a bush fire brigade (8 kilometres), the bush fire brigade has the functions conferred by subsection 1E."

Subsection 1E gives bush fire brigades all the rights and powers conferred on the National Parks and Wildlife Service, the Forestry Commission and the Water Board under subsections 1 to 1C. These powers permit these authorities to enter any land within an 8 kilometre radius of land under their management and use such fire-fighting equipment and personnel as they deem fit to combat the fire. These

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<sup>42</sup> *Bush Fires Act* s22 (1).

<sup>43</sup> *Bush Fires Act* s27 (3).

<sup>44</sup> The precedence of section 51 is also detailed in section 22 (2) (a) which states that "the powers conferred by subsection 22 (1) may be exercised despite any other provisions of this Act except paragraph (b) [Naval, Military or Airforce base traffic] and sections 16, 17, 41A, 41F and 51 ...and land under the control of the State Rail Authority". Section 16 details prohibition of lighting fires during fire bans; section 17 details the appointment and powers of emergency fire control officers and deputy fire control officers.

authorities may also engage in such actions as hazard reduction, the use of earth moving equipment etc as they deem reasonable to extinguish the fire. Thus section 51 gives public authorities the right to go out and fight fires threatening their land even if the fire is burning on land outside their jurisdiction. Section 51 also gives bush fire brigades the reciprocal rights, that is, bush fire brigades can enter land managed by public authorities and fire fires if those fires occur within 8 kilometres of their bush fire district. The only land that bush fire brigades cannot enter under this provision is land controlled by the State Rail Authority.

Section 41A plans further clarify the right of bush fire brigades to enter land controlled by public authorities as many such plans have been developed and approved by the Bush Fire Council without imposing an 8 kilometre limit on fires 'of relevance' to a bush fire brigade. Thus, in a bush fire district where a section 41A plan is operational, bush fire brigades may fight fires on any land surrounding their bush fire district within the limits specified in the plan. In many plans no limit or a limit of more than 8 kilometres has been specified and holds precedence over all other provisions regarding where a bush fire brigade may enter land and fight fires. Section 41A plans may also contain provisions prohibiting or limiting the use of certain fire-fighting equipment or procedures, for example the use of earth moving equipment or fire retardant, in certain areas. Such provisions are most likely where plans cover districts including national parks or state forests and may also require that the use of such equipment or procedures occur only in consultation with, or upon the authority of, the relevant public land authority.

The capacity of bush fire brigades to enter land covered by the *Fire Brigades Act* is not covered by either section 41A plans or section 51. However, reciprocal operational procedures are in place in the Greater Sydney metropolitan area at least via the New South Wales Fire Brigades operating protocol.

The only change made by the Cabinet proposal therefore would be to remove the bar on bush fire brigades entering land under the control of the State Rail Authority and, perhaps, to legally clarify the operations of bush fire brigades and New South Wales Fire Brigades on land falling under the auspices of the reciprocal organisation.

**Recommendation 25. That the control of fire control officers remain with local Councils but that, as the Government is committed to upgrading the training, skills and operational efficiency of fire control officers, the Department of Bush Fire Services provide appropriate training at its own expense to fire control officers, to a standard approved by the Commissioner for Bush Fire Services.**

Fire control officers are appointed by local Councils. Appointments are, however, subject to approval by the Minister for Police and Emergency Services. Provisions governing the appointment and powers of fire control officers are detailed in Part 4 of the *Bush Fires Act*. Fire control officers are only appointed in councils which are part of a declared bush fire district. Part, full-time or honorary fire control officers may be appointed. Fire control officers are paid either in full by the councils, partly by the councils and the Department of Bush Fire Services or totally by the

Department of Bush Fire Services<sup>45</sup>. Where fire control officers are paid by the Department of Bush Fire Services, the money comes out of the Fire Fighting Fund.<sup>46</sup>

The accountability of, and liability for fire control officers remains a difficult issue. Currently fire control officers are essentially answerable to the councils which also have liability for the officers. This locus of control applies even though councils may not bear the primary financial responsibility for fire control officers. Furthermore, the Act explicitly states that (with consideration given to variations in circumstances {mutatis mutandis}), fire control officers, like bush fire brigade captains are not "deemed to be a servant of a Council or of the Minister ..." <sup>47</sup> merely because of the authority granted to exercise any powers or carry out any duties under the Act. Therefore, although Councils may pay fire control officers, they cannot treat the officers as if they were employees. The same provision does not apply, however, to the Department of Bush Fire Services or the Commissioner for Bush Fires, except when it or he is acting on behalf of the Minister.

The somewhat anomalous situation regarding the status of fire control officers is also reflected in their training and employment conditions. Currently fire control officers are trained by the Department of Bush Fire Services which has implemented a comprehensive and continuous training programme for these officers. The Department is also developing competency standards as one of the problems encountered in association with the appointment of fire control officers is the huge variability in skills, expertise and experience. For example, some officers may have extensive field experience but no administrative experience, with other officers the reverse situation applies. The Cabinet recommendation appears to build upon the direction already taken by the Department of Bush Fire Services, that is to standardise and upgrade the appointment, training and expertise of fire control officers. However, two points should be made in relation to the Cabinet's proposal. First, there are still no clear guidelines as to exactly who fire officers are accountable to. In 1993 the Minister put forward a proposal that fire officers be operationally accountable to the Department. This proposal was based upon both the need to implement and maintain uniform standards for fire control officers and a desire to clarify the current situation. Secondly, as the Act stands, fire control officers cannot be regarded as servants or employees of the councils. However, policy wise they are accountable to the councils despite the fact that their funding probably comes from the Department of Bush Fire Services. This leaves the Department financially responsible for fire control officers without any official means of regulating their actions and it leaves fire control officers in the unenviable

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<sup>45</sup> The option for Councils to opt completely out of paying Fire Control Officers has been relatively recent (1989). Understandably, many Councils have taken up this option and the majority of fire control officers are now paid by the Department of Bush Fire Services.

<sup>46</sup> Part 6 of the *Bush Fires Act* details provisions relating to contributions to the New South Wales Fire-Fighting Fund. A recent amendment to the Act (1993) has changed the contributions of the Treasurer (from 25 per cent to 14 per cent), Councils (from 25 per cent to 12.3 per cent) and insurance companies (from 50 per cent to 73.7 per cent).

<sup>47</sup> *Bush Fires Act* s23.

situation of receiving departmental directions (and being expected to follow them) but also having to give regard to council opinions which may well be in conflict with the Departmental position. This situation should be rectified. Equally, if the Department of Bush Fire Services is expected to increase funding for the appointment and training of fire control officers, the source of that funding must be outlined.

**Recommendation 26. That the Department of Bush Fire Services develop an industrial framework on a state-wide basis that will set appropriate employment standards for all fire control officers.**

As mentioned, the Department of Bush Fire Services has already commenced developing and implementing an employment framework for fire control officers. Such a framework could be expected to include competency standards and operating procedures and protocols. It should be noted, however, that if the Department is to assume such full responsibility for fire control officers as employees, the status of fire control officers in relation to councils would also need clarification.

**Recommendation 27. That, as a condition of Ministerial approval to the appointment of a fire control officer or a deputy fire control officer, a representative from the Department of Bush Fire Services sit on all selection panels for the selection of such officers.**

One of the problems currently encountered in the employment of fire control officers is competency. As fire control officers are appointed by councils, the selection of appropriately skilled and experienced officers remains outside the direct control of the Department of Bush Fire Services despite the responsibility the Department has for training and financing fire control officers. The Cabinet proposal would ensure that at the very least, the Department of Bush Fire Services has some input into the selection of fire control officers. However, the development of standard and substantial job descriptions and eligibility criteria would also ensure that the appointment of fire control officers occurred in a consistent manner.

#### **(k) Bush Fire Council**

**Recommendation 28. That the Bush Fires Act be amended to provide that the Bush Fire Council select from its membership three non-Government persons (at least one to be a private landholder) to be appointed, with the approval of the Minister for Police and Emergency Services, to the Co-ordinating Committee, for the duration of their five year terms as members of the Bush Fire Council.**

The Bush Fire Council is constituted under section 39 of the *Bush Fires Act*. This section was amended in December 1993 so that the Bush Fire Council now has a membership of 16 (previously it was 25). The 16 members are:

- four ex-officio members -
  - the Commissioner for Bush Fire Services (chair);
  - the Managing Director of State Forests;
  - the Director General of the National Parks and Wildlife Service;
  - the Director General of the NSW Fire Brigades;

- 12 persons appointed by the Minister -
  - four persons recommended by the bush fire brigades;
  - a person recommended by the Institute of Municipal Management;
  - a person recommended by the Shires Association;
  - a person recommended by the Insurance Council of Australia;
  - a person recommended by the NSW Farmers' Association;
  - a person recommended by fire control officers;
  - a person recommended by the Commissioner of Police;
  - a person recommended by the Minister for the Environment;
  - a person recommended by the Director General of the Department of Conservation and Land Management.<sup>48</sup>

The Co-ordinating Committee is constituted in accordance with section 40 (3) of the *Bush Fires Act*<sup>49</sup>. The members of the Co-ordinating Committee are:

- the Commissioner for Bush Fire Services;
- a person recommended by the Minister for Land and Water Management (who administers the *Forestry Act*);
- a person recommended by the minister for the Environment (who administers the *National Parks and Wildlife Act*);
- a person recommended by the Director-General of New South Fire Brigades; and,
- a person recommended jointly by the Local Government Association and the Shires' Association.

The latter four appointments are all made by the Minister administering the *Bush Fires Act* (the Minister for Police and Emergency Services).

The Cabinet Committee recommendation is that the Bush Fires Council nominate three non-government person from its membership, at least one of whom is a private landholder, to be appointed to the Co-ordinating Committee. Presumably the recommendation is for membership of the Co-ordinating Committee to be expanded. The rationale behind this proposal is that, as the Co-ordinating Committee plays the primary role in setting policy relating to bush fires and fire-fighting and as the majority of fire fighters are volunteer members of bush fire brigades, the expansion of the Committee to include members of the Bush Fire Council would ensure that the views, opinions and expertise of the volunteers were taken into account when the Co-ordinating Committee made bush fire policy. Whether or not this actually would occur is debatable as the bush fire council currently has at least nine non-Government members, any of whom could become members of the Co-ordinating Committee. As the Cabinet proposal stands there is no compulsion for the Minister to appoint any of the bush fire brigade representatives who are members of the Bush Fire Council to the Co-ordinating Committee. There is also the question of the resources and support available to non-Government members, particularly if they are also active members of the Bush Fire Council.

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<sup>48</sup> *Bush Fires Act* s39 (2).

<sup>49</sup> This section was also amended in December 1993. Formerly section 39B (1) dealt with the membership of the Co-ordinating Committee. The amendment to the Act expanded the Co-ordinating Committee membership to include a representative from the Local Government Association.

## (l) Bush Fires Act

**Recommendation 29.** That, following completion of the Coroner's report into the January 1994 fires and the passing of any amendments to the Bush Fires Act arising from the Coroner's report, the Minister for Police and Emergency Services arrange for the Act to be reviewed and re-enacted so as to make it easier to understand.

When the *Bush Fires Act 1949* was passed in 1949, there were approximately one thousand bush fire brigades in New South Wales doing much the same task as the 2400 brigades now. The intention of the original Act was to:

make provision for the prevention, control and suppression of bush and other fires, and for the mitigation of dangers resulting from bush fires<sup>50</sup>

The, then Minister for Housing and Assistant Treasurer, the Hon C Evatt, MLA, stated in his second reading speech that the bill was a bipartisan one, aimed at improving and modernising the law dealing with the prevention of bush fires and building up the organisation of the bush fire-fighting services while maintaining and strengthening the local autonomy which was valued by local Councils and brigades.<sup>51</sup> Then, as now, the State had suffered the ravages of recent fires and the bill was seen as a means of providing State-wide organisation of bush fire-fighting services whilst also passing into law the onus of fire prevention and management on property owners. Such was the nature of this Act and the degree of attention given to its drafting, that many of the original sections included in the Act are still in operation today and it is relevant to note that the discretionary rather than mandatory nature of many of the provisions relating to fire management and control were a characteristic of the Act as it was originally enacted. However, since 1949, there have literally been hundreds of amendments to the *Bush Fires Act*, with some sections, particularly those pertaining to the bush fire-fighting fund amended many times over the last fifty years.

Unfortunately many of the problems and issues canvassed in the 1949 parliamentary debates concerning bush fires are still valid today. Bush fires still wreak havoc across Australia and many rural and bushland areas, parks and Crown lands continue to suffer damage from fires. Public education is still a problem now, as it was in 1949 and in 1994 many fires still result from human negligence or criminal intention just as they did earlier this century. It is interesting to note, that the maximum fines and penalties imposed upon arsonists under the *Bush Fires Act 1949* in section 18, at £100 or imprisonment for up to twelve months, or both for a first offence and a fine of £200 or two years imprisonment or both for subsequent offences were considered "heavy" and aimed "at acts of criminal carelessness - the dropped match, the

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<sup>50</sup> First Reading Speech, op cit, p3544.

<sup>51</sup> Second Reading Speech, Legislative Assembly, 20 September 1949, p3698.

unextinguished campfire, and the common incendiarist."<sup>52</sup> Review of the *Bush Fires Act* as it stands now may prove useful in re-defining fire-fighting issues, and in clarifying a number of issues concerning the rights, responsibilities and powers of the various persons and bodies incorporated under the Act. However, due care should be taken that any such review does not undermine the substantial and important nature of the Act.

### **(m) Hose Couplings**

**Recommendation 30.** That the Minister for Police and Emergency Services approach the Australian Fire Authorities Council proposing that a joint technical committee be established to develop a suitable range of specially fabricated adaptors to facilitate inter-coupling of hoses.

This recommendation arose out of concerns that problems with lack of standardisation of fire-fighting equipment between states were jeopardising the successful utilisation of fire-fighting capacity across Australia. The New South Wales Fire Brigades "considers that there are six fundamentally incompatible water connection and inter-connection systems in use across Australia."<sup>53</sup> In situations where fire brigades operate away from their home state, this problem can become significant. In light of the intermittent severity of bush fires in Australia which necessitates an Australia-wide response, it would therefore seem appropriate to attempt to gain some uniformity in equipment used for fire-fighting, and failing that, ensure that some specially designed equipment which would adapt to all conditions and equipment encountered across Australia was developed.

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<sup>52</sup> Ibid, p3700.

<sup>53</sup> *Cabinet Committee Interim Report*, op cit, p39.



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