



# Nature Conservation Council

The voice for nature in NSW

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## **Submission to Draft 10/50 Vegetation Clearing Code of Practice**

The Nature Conservation Council of NSW (NCC) welcomes the opportunity to provide comment on the Draft 10/50 Vegetation Clearing Code of Practice currently on public exhibition.

NCC has long supported policies and procedures that aim for ecologically sustainable bush fire management in NSW. In our letter to the Minister for Police and Emergency Services dated 18<sup>th</sup> December 2013 and copied to the Commissioner of the NSW Rural Fire Service (RFS), NCC detailed its concerns in regard to the proposed 10/50 vegetation clearance rules. A copy of that letter is attached.

As well as concerns with the design of the draft 10/50 Vegetation Clearing Code of Practice, NCC has previously highlighted issues with the way in which the Code of Practice has been introduced. The proposal to allow vegetation clearance without approval was not based on advice from the government's own expert Independent Hazard Reduction Audit Panel, which undertook an exhaustive review of hazard reduction in NSW. It has long been acknowledged by stakeholders in bush fire management in NSW that the most effective way of mitigating bush fire risk is to have a landscape based risk assessment approach that utilises local knowledge of hazards, topography, and likely fire behaviour to ascertain the risk to assets, and assigns treatments according to the level of risk. The ill-considered introduction of new rules that have no procedural or evidence-based integrity undermines confidence in the collaborative arrangements that have been shown to work well over time.

The public release of the draft Code of Practice confirms our initial concerns. Following on from the announcement after the Blue Mountains fires in October 2013 of the proposal for new vegetation clearing rules, which involved no collaboration with stakeholders in bush fire management in NSW, the drafting of the Rural Fires Amendment (Vegetation Clearing) Bill 2014 and the draft 10/50 Code of Practice have regrettably also been marked by a lack of liaison with stakeholders.

Following are our primary concerns with the draft 10/50 Vegetation Clearing Code of Practice:

### **1. Unavailability of the 10/50 Vegetation Clearing Entitlement Area maps**

Access to the maps that delineate the 10/50 Vegetation Clearing Entitlement Areas is essential for a proper understanding of the extent of the impact of the Code of Practice. Currently these maps are not available, nor is there any specific information that indicates the land to which these maps will apply. The RFS proposes to make available an online mapping tool that describes the entitlement areas only after the Code of Practice is finalised. This timeframe means that the full extent of the Code of Practice's impact will not be known until after the public submission period is complete. Without such information, NCC cannot agree that an

informed and adequate assessment can be made of the true impact of the proposed Code of Practice upon existing environmental values or its supposed benefits to residents in high risk bush fire areas.

With the maps the only measure by which bush fire risk is gauged, it is also important to know the criteria by which the 10/50 Vegetation Entitlement Areas are determined. NCC requests that the public consultation period be extended until the maps are available. The criteria for preparing the 10/50 Vegetation Entitlement Area maps should also be released. It is not acceptable for the Code of Practice to be finalised without an understanding of the full extent of its impact.

## **2. Reduced advisory role of the RFS**

The RFS needs to retain its important role in undertaking whole-of-property assessment of bush fire mitigation measures and providing advice that is tailored to the circumstances of individual properties. Promoting vegetation clearance for hazard reduction purposes without simultaneously encouraging other mitigation measures such as building upgrades, property maintenance, access and water supply infrastructure, may well lead to residents believing that vegetation clearance is the sole solution to achieving bush fire safety. Divesting responsibility for assessment and approval of vegetation clearance for hazard reduction outcomes to a self-assessable process undertaken by residents will inevitably lead to a reduced level of contact for the community with the RFS.

The current assessment process that enables the issue of Hazard Reduction Certificates by the RFS provides valuable opportunities for the RFS to provide additional advice on other hazard reduction measures. Vegetation clearance is of little use without regular follow-up maintenance and integration with other mitigation measures, and these messages are much less likely to be disseminated under a self-assessable Code of Practice.

## **3. Inconsistent application of environmental assessments for hazard reduction**

The Bush Fire Environmental Assessment Code is currently the code by which all mechanical and prescribed burn hazard reduction works can be assessed. In preparing that Code under the *Rural Fires Act 1997*, the principles of ecological sustainable development and considerations under section 111 of the *Environmental Planning & Assessment Act 1979* had to be taken into account.

The draft 10/50 Vegetation Clearing Code of Practice has no such requirements under the Rural Fires Amendment (Vegetation Clearing) Act 2014, exemplified by Schedule 2 of the Act that expands the exemptions under the *National Parks and Wildlife Act 1974* to enable threatened species and their habitat and Endangered Ecological Communities to be cleared where they occur in Vegetation Clearing Entitlement Areas. Clearing will be subject to compliance with the 10/50 Vegetation Clearing Code of Practice, but the draft Code places no protections on threatened species or threatened species habitat. In fact, unless protected by a specific conservation agreement, apart from mangroves and salt marsh on public lands, there are no limitations on the removal of vegetation under the draft Code of Practice other than trees further than 10 metres from any residential accommodation or high risk facility.

Highlighting this inconsistency, the requirements of the existing *Rural Fires Act 1997* means that clearing proposals outside a Vegetation Clearing Entitlement Area will still be required to undergo assessment by a qualified RFS officer to enable the issue of a Hazard Reduction Certificate approving vegetation clearance. However, for residents with land within a Vegetation Clearing Entitlement Area, self-assessment under the 10/50 Vegetation Clearing Code of Practice will suffice, with no need to take threatened species or their habitat into account, and no approval required.

In effect there will be a two-tier assessment system in place. On land mapped as Vegetation Clearing Entitlement Areas an uncertain self-assessment of environmental matters by the landholder will be sufficient and likely result in residents in those communities most at risk having fewer opportunities to engage directly with the RFS and receive their expert advice. Vegetation clearing proposed for hazard management on land external to the Vegetation Clearing Entitlement Areas will require an appropriately rigorous and independent assessment of environmental matters by the RFS. The on-site inspections required for such proposals will provide these residents with more opportunities to receive expert advice on bush fire protection from RFS officers.

The delineation between Vegetation Clearing Entitlement Areas and non-entitlement areas may also lead to residents not entitled to clear under the 10/50 Code of Practice observing clearance sanctioned under the Code by their neighbours and unwittingly believing they too are allowed to clear vegetation on their properties without approval.

### **3. Potential for unnecessary environmental harm**

The Bush Fire Environmental Assessment Code aims to ensure that unnecessary environmental and cultural harm is avoided by considering factors such as soil instability, threatened species and ecological communities and sites of cultural heritage. Under the draft Vegetation Clearing Code of Practice a number of environmental matters are outlined for consideration. However, self-assessment of these matters is likely to result in environmental and cultural considerations being either disregarded or inadequately assessed by landholders. Under the self-assessment process homeowners are unlikely to have adequate training or knowledge to apply the environmental standards required under the draft Code of Practice that are currently being achieved under the Bush Fire Environmental Assessment Code.

Although the draft Code of Practice includes provisions that override most NSW environmental legislation, including statewide planning instruments such as *SEPP 44 Koala Habitat Protection* and *SEPP 26 Littoral Rainforests*, it does not override the need to meet requirements under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. This suggests that for vegetation clearance that involves matters of national environmental significance, such as listed threatened species and ecological communities, landholders will need to consider whether the Commonwealth should be consulted. As well as offering inadequate environmental protection for species listed for their vulnerability, it also creates inconsistency and potential confusion for landholders.

#### **4. Over-reliance on vegetation clearance**

The draft Code of Practice does not discriminate between different types of vegetation, with less flammable vegetation such as rainforest and mangrove vegetation able to be cleared on private lands to the same level as more highly flammable types. The draft Code will rely on the initial mapping process to assume that the risk posed by vegetation in all Vegetation Clearing Entitlement Areas will be at or above a certain level, regardless of the circumstances of individual properties.

With most house losses in major bush fires due to ember attack, and with embers able to travel several kilometres under severe bush fire weather conditions, the maintenance of properties and preparedness to extinguish spot fires in and around dwellings is very important. Contrary to the understanding of many residents, during extreme fire weather conditions increasing the amount of vegetation cleared around homes may not provide the protection they expect. This trust that the vegetation clearance undertaken will provide an anticipated level of protection could lead to residents incorrectly choosing to stay and defend properties that are not adequately prepared. The lack of engagement and advice by the RFS prior to vegetation clearing activities is likely to result in the unwise clearing of vegetation that can help in providing bush fire protection and lead to an increased vulnerability for some properties.

#### **5. Lack of compliance or enforcement**

The Rural Fires Amendment (Vegetation Clearing) Act 2014 instructs that vegetation clearing work carried out in a 10/50 Vegetation Clearing Entitlement Area must be in accordance with the 10/50 Vegetation Clearing Code of Practice. The Draft Code of Practice states that clearing can only be undertaken on land mapped as 10/50 Vegetation Clearing Entitlement Land and that any unauthorised clearance work will result in the application of offence provisions or remedies.

The “Compliance and enforcement” section of the draft Code identifies that if a landowner carries out vegetation clearing that is not in accordance with the 10/50 Code of Practice, then “offence provisions and any available remedies will apply, under relevant legislation”. This would mean that Government agencies administering relevant legislation would need to investigate if any vegetation clearing that contravened that legislation was actually legal because it had been undertaken as per the Code of Practice, and would then need to determine whether the clearing had been carried out in accordance with the 10/50 Code. This will have the effect of placing an additional monitoring and compliance burden on other Government agencies to monitor clearance under the Code of Practice, or will result in no monitoring of vegetation clearance on private properties by those agencies and therefore no enforcement of the 10/50 Code requirements.

With no notification, compliance or assessment processes identified in the draft 10/50 Code, it is not clear how any clearing of vegetation is to be monitored or how unlawful clearing is to be detected, particularly if officers from Government agencies other than the RFS are required to investigate potential breaches. NCC acknowledges that vegetation clearance may already occur that breaches legislation, but is very concerned that the 10/50 Code of Practice as

proposed, with no compliance process or specific penalty provisions set up as part of it, will further encourage landholders to disregard environmental legislation.

Much more appropriate is the system in place under the existing Bush Fire Environmental Assessment Code, with all issued certificates recorded and provisions in place for certificate holders to report on completed works. NCC believes that at a minimum, landowners should be required to notify of vegetation clearance proposed or undertaken and the extent of that clearance. Without any notification process, Councils and fire authorities will not have an up-to-date understanding of the clearance undertaken, and it will not be possible to evaluate the effectiveness of the Code of Practice.

#### **6. Inappropriate use of the 10/50 Code of Practice**

The 10/50 Vegetation Clearing Code of Practice is being implemented under the Rural Fires Amendment (Vegetation Clearing) Act 2014. The stated purpose for its development is to provide for vegetation clearing to be carried out near residential accommodation and high risk facilities to reduce the risk of bushfire.

However, as a self-assessable code there appears an apparent lack of oversight regarding on-ground use of the Code, how it will be implemented and how compliance with it can be enforced. Relying as it does on the 10/50 Vegetation Clearing Entitlement Area maps as the only guideline for the assessment of bush fire risk, there is a lack of focus otherwise on risk management. Supposedly to be used as a measure to reduce bush fire risk, it is likely that the Code of Practice will be used for purposes other than reducing well-identified bush fire risks.

In particular, even though the agreement of neighbouring landholders is required for clearing of vegetation on their land under the draft Code of Practice, it is likely that public land managers and private landholders with bushland will feel pressured to clear vegetation to satisfy their neighbours. Other circumstances may occur where the Code of Practice is used to clear vegetation to facilitate development activities or simply to raise the land value of adjacent properties or improve views for nearby beneficiaries. In particular, the Code of Practice will increase the likelihood that lands set aside for conservation and recreation purposes will come under further pressure to be cleared to meet the 50 metres clearance that neighbours may come to expect is necessary for bush fire safety reasons.

### **CONCLUSION**

In our view, the Draft 10/50 Vegetation Clearing Code of Practice has significant deficiencies and will open the door to considerable clearance of vegetation, loss of habitats and reduced protection of native plants and animals, including threatened species and ecologically endangered communities, with little basis to show there will be worthwhile gains in bush fire risk management.

Our comments highlight the inherent difficulties with a self-assessable code, and specific concerns with its introduction, namely:

- The lack of consultation in the introduction of the draft Code of Practice and its replacement in part of an existing code that has an established assessment and approval process, undermines the collaborative system of bush fire management in NSW
- The implementation of a self-assessable code does not place sufficient importance in a rigorous assessment of risk that identifies vegetation clearance that will clearly result in high risk management benefits
- The Vegetation Clearing Entitlement Area maps need to be publicly available prior to finalisation of the Code of Practice
- Encouragement of landholders to use the self-assessable code will reduce engagement by the RFS with high-risk community members, and remove the basis for on-site assessments that result in the provision of whole-of-property advice to residents
- A self-assessable code of practice will create a two-tier system to assess the clearing of vegetation for bush fire risk management, creating confusion between and within communities
- Environmental and cultural values will be disregarded or inadequately assessed by landholders lacking the ability to apply required environmental standards
- A notification and reporting process needs to be included to enable understanding of the scale of vegetation clearance undertaken
- Enforcement of penalties for non-compliance should not rely on legislation that is otherwise exempt under the Code of Practice, and provisions should be included in the amended *Rural Fires Act 1997*
- Inappropriate use of the self-assessable code for reasons other than bush fire risk is likely to be widespread

We do not support the draft 10/50 Vegetation Clearing Code of Practice in its current form as it will create unnecessary environmental harm and will not improve bush fire protection outcomes for high risk communities.

NCC believes that the assessment of vegetation clearance for hazard reduction on private lands should be assessed and approved by people appropriately trained to consider all aspects of bush fire management. The high likelihood of more intense and more frequent bush fires in the future means that residents in high bush fire prone areas should be encouraged to increase their understanding and knowledge about bush fires, based on scientific evidence and operational knowledge. The introduction of self-assessable codes such as the 10/50 Vegetation Clearing Code of Practice does not encourage residents to consider all aspects of bush fire protection or to properly consider the role of fire in the Australian environment. NCC considers that vegetation clearance for bush fire hazard reduction purposes should continue to be assessed and approved under the jurisdiction of the RFS.

Thank you for taking the time to consider our submission. If you require any further information, please contact me on 02 9516 1488 or email: [ncc@nature.org.au](mailto:ncc@nature.org.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kate Smolski', with a large, sweeping flourish at the end.

Kate Smolski

Chief Executive Officer