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Dear Mr van der Wallen

Draft 10/50 Vegetation Clearing Code of Practice

Local Government NSW (LGNSW) is the peak body for NSW Local Government, representing all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council. Local Government NSW is a credible, professional organisation representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW.

LGNSW welcomes the opportunity to comment on the Draft *10/50 Vegetation Clearing Code of Practice*. LGNSW recognises the need for improved bushfire management practices and supports the broader objectives of the general objectives of the *Rural Fires Amendment (Vegetation Clearing) Act 2014* and the Draft Code. However, the feedback we have received from councils commonly indicate that the Draft Code requires considerably further development.

The concerns raised by councils indicate that there are many details that require clarification and there is still significant work to do to avoid any unintended consequences before this Draft Code can be finalised and take effect.

Our comments are limited to the broader policy implications of the Draft Code and are limited to the key areas of concern for councils; we do not address the detailed technical and regulatory aspects and implications of the code, as this is best left to councils who are dealing with the day to day operation of such regulations and controls. LGNSW therefore respectfully urges the NSW Rural Fire Service (RFS) to review and take into account the practical ramifications and technical questions raised by the many individual councils in their responses.

1. General Comments /Issues

As an overall observation, the Draft Code in its current form suggests a lack of rigour and adequate detail. While we appreciate that it has been written for property owners to easily understand, we consider that refining and clarifying these aspects would improve perceptions about the validity of, and confidence in, the laws.

Councils have raised many significant questions about the Draft Code in its current form (e.g. inconsistencies, lack of clarity, unclear or absent definitions) as well as expressing a number of concerns about the possible unintended consequences of the code in areas such as local planning (e.g. tree preservation, development assessment, heritage preservation) and the potential loss of bushland.

Some councils have queried the definitions in the Draft Code (e.g. the lack of a definition for “authorised clearing” in section 5.1 or the need for a clearer definition (e.g. for the definition of a “tree”, as discussed under Environmental Implications below)).

In addition, there appear to be some inconsistencies between the Draft Code and other related documents. For example, some councils have highlighted the following:

- There are inconsistencies between the Draft Code and the Frequently Asked Questions on the RFS website, in relation to details about additional restrictions and approvals that may apply (e.g. the draft code makes no reference to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) yet this is referred to in the FAQs).
- Exclusions relating to the type of vegetation that can or cannot be cleared on private and public land are inconsistent. The Draft Code states that mangroves and salt marsh on public land cannot be cleared. Should this restriction apply to all land (i.e. both public and private?).
- It is understood that future development consent within bushfire prone areas will still trigger consent requirements in accordance with *Planning for Bushfire Protection* (2006) (PBP) and that clearing entitlements would only apply under the Draft Code once a dwelling has been constructed. Bushfire planning controls under the Draft Code are inconsistent with PBP despite apparently applying to the same areas.

Without access to the promised 10/50 Vegetation Clearing Entitlement Area Map that is to accompany the 10/50 Code, stakeholders reviewing the code are unable to understand fully the likely implications and be in a position to submit fully informed feedback. This is a criticism which has been consistently raised by councils; the absence of the mapping of the affected areas makes it difficult to understand the extent to which the Code would apply within each Local Government area (LGA) and to assess how broad the potential local impacts will be.

Will the mapping be based on existing Bush Fire Prone Land Mapping, and/or will the buffer be extended further into residential/urban areas? The extent of possible canopy, Endangered Ecological Communities (EEC) and threatened species loss has the potential to be broad and far-reaching, but the full extent of potential loss cannot be ascertained until the 10/50 Vegetation Clearing Entitlement Area has been determined.

We would therefore recommend that the NSW RFS consider extending the exhibition period and provide the accompanying Vegetation Clearing Entitlement Area Map to enable all stakeholders to provide fully informed feedback.

2. Other Considerations for Local Government

Risk management - Some councils have pointed out that the 10/50 Code could lead to a false sense of security for people who in turn perceive the risk of bushfire as less and thus fail to adequately prepare. The Draft Code therefore needs to emphasise the role of existing bushfire management practices (hazard reduction burns, asset protection zones (APZs) etc.) but also acknowledge that these techniques alone will not stop bushfires or prevent loss of lives or property. It is also that the Draft 10/50 Code is supported by a strong education program.

Resourcing considerations - The Draft Code may have implications for councils’ budgets and resourcing relating to maintenance, regulation and compliance. For example, there is the potential that the Draft 10/50 Code could create an expectation that councils will undertake clearing of vegetation on public land that is within 50m of a dwelling.

Environmental considerations - Councils have indicated concerns that the Draft Code may have implications for loss of canopy, endangered ecological communities, threatened species, heritage, soil erosion and riparian systems. For example, according to the definition of “trees” in the draft code, immature trees and saplings less than three metres in height are considered to be understorey species which can be cleared to 50 metres. If this is the case, the logical extension of application of the code is that there will be no natural replacement of dead and

dying trees within the 50 metre zone. With no provisions to replace trees, over the long term this may result in a treeless landscape. In relation to riparian buffer zones, the Draft Code only provides protection to “prescribed streams” (i.e. only major/mapped streams).

Planning and development considerations - Councils have raised the following questions and comments in relation to the relationship between the Draft Code and local planning provisions:

- What is the relationship with the 10/50 Code and provisions under the *Environmental Planning and Assessment (EP&A) Act 1979*? Will EP&A Act requirements (e.g. development application conditions of consent, Koala Plans of Management, Vegetation management Plans) be preserved if these are inconsistent with the 10/50 rule?
- The draft code should include reference to the following State Environmental Planning Policies (SEPPs):
 - SEPP 44 Koala Habitat
 - SEPP 19 Urban Bushland
- The Draft 10/50 Rule could also threaten some councils’ biodiversity objectives contained in their Local Environment Plan (LEP).

Regulation/compliance and monitoring considerations - Many councils have queried what compliance mechanisms will be in place to support the draft code. There is no information in the Code regarding responsibilities for monitoring the compliance process and the role of councils in this process, raising the following questions:

- Who will be responsible for checking that a dwelling is approved prior to vegetation clearing?
- Is any sort of audit or checking system proposed?
- Who will be responsible for compliance action for incidents of illegal clearing?
- What role, if any, will councils be expected to have for enforcement action?

It can be reasonably expected that members of the public will mistakenly breach the Code and others will deliberately abuse the Code (for e.g. to improve views). Effective regulation will prove to be very resource intensive and it is unclear how this will be funded..

It is recommended that the NSW RFS clarifies a system of regulation, compliance and monitoring, supported by legislation, for the operation of the 10/50 Code.

Conclusions and Recommendations

As reflected in this submission, and in those of some of our member councils, LGNSW believe that refining and clarifying a number of the details in the draft code and clarifying outstanding questions would improve its validity and operational effectiveness. LGNSW commends the submissions of individual councils to the NSW RFS to identify the practical ramifications and technical questions that need to be addressed in the draft code. In addition, as many councils have indicated that they cannot provide fully considered feedback in the absence of the relevant mapping, we also recommend that NSW RFS consider extending the exhibition period and provide the accompanying Vegetation Clearing Entitlement Area Map to enable all stakeholders to provide fully informed feedback.

For further information, please contact Shaun McBride by phone 9242 4000 or email shaun.mcbride@lgnsw.org.au.

Yours sincerely



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