

Submission to the NSW Rural Fire Service on the Review of the 10/50 Vegetation Clearing Code of Practice

November 2014

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Opening:

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 to the review of the *10/50 Vegetation Clearing Code of Practice* (10/50 Code). LGNSW recognises the need for improved bushfire management practice, however we have received significant feedback from councils indicating that the 10/50 Code has created a range of unintended negative impacts that require prompt resolution.

Purpose:

This submission to the 10/50 Code review provides information on the issues impacting councils and the community. It calls for immediate suspension of the 10/50 Code and a scientific review. There is broad view that the 10/50 Code should be suspended until the issues are resolved, and that, amendments arising from the review need to be supported by sound evidence.

The LGNSW Board recently adopted an Annual Conference motion that called for:

- A. An immediate suspension of the new provisions.
- B. An urgent scientific review into the ecological impacts and actual bushfire hazard reduction benefits of these provisions.

LGNSW thank the RFS for recently amending the Code and implementing this review. It is acknowledged that these actions provide a path for resolving many of the concerns raised by councils. However, the need to do so may have been avoided if there had been effective consultation in drafting the legislation and the 10/50 Code.

Comments and Recommendations:

A. Immediate Suspension of the 10/50 Code

Inadequate consultation in the development of the 10/50 Legislation and Code

The Rural Fires (Vegetation Clearing) Amendment Bill 2014 was not developed in consultation with all relevant stakeholders. This has resulted in unintended consequences that could have been avoided by stakeholder consultation prior to the legislation being enacted. Similarly, the consultation period for development of the draft Code left limited time for review and amendment before the Code took effect.

10/50 Vegetation Clearing Entitlement Area

As highlighted in the LGNSW submission on the draft 10/50 Code and reiterated in subsequent representations, councils require the RFS to provide 10/50 Vegetation Clearing Entitlement Maps on a Local Government Area (LGA) wide basis. The current system of providing information on a single address by address basis is cumbersome and ineffective for providing

councils with comprehensive information for land use planning, land management, and compliance activities.

Impacts on Land Use Planning

The 10/50 Code unnecessarily overrides plans and policies governing land use planning and development at both state and local levels, in particular:

- ***Councils' plans and codes covering the management of the natural environment.*** The Code impacts local controls and provisions contained within Local Environment Plans (LEPs), Development Control Plans (DCPs), conditions of development consent, vegetation management plans, tree preservation orders, biodiversity strategies and urban tree policies. These plans have been based on rigorous community consultation processes and are the accepted local controls for each area. The 10/50 code overrides these provisions indiscriminately.
- ***State Environmental Planning Policies (SEPPs).*** These include SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests), SEPP 44 (Koala Habitat) and SEPP 19 (Urban Bushland). These state wide policies have been well applied for years and now are overridden by the 10/50 Code provisions.
- ***Current practice surrounding the application of the RFS's 'Planning for Bushfire Protection' (PBP).*** The new rules undermine the relevance and effectiveness of the Planning for Bushfire Protection (PBP), as they bring the purpose of assessing a DA against PBP provisions into question. By comparison, changes to Victoria's 10/50 and 10/30 rules now only apply to buildings built prior to the bushfire resilient building code standards (similar to NSW PBP). This appears to be a more considered approach than that taken in NSW. There have been some calls for the 10/50 Code to be amended to exclude houses built since PBP came into effect. The merits of this option require further consideration and stakeholder input.
- ***Secondary Dwellings.*** The new rules create concerns regarding private certifiers approving single and secondary dwellings in areas under BAL 40, but ineligible 10/50 clearing locations - this needs further consultation with stakeholders, particularly councils. Private certifiers are not able to consider the impacts of 10/50 clearing on vegetation of value, when issuing development approvals.
- ***Complying Development.*** The potential impact of these changes on the newly emerging complying development process is also of concern to Local Government. Over the last few years applicants have been able to seek approval for new houses, alteration and addition to houses, within low risk bush fire areas. Standard conditions are applied to these properties to manage risk. How the new rules will affect this process is unclear.

10/50 Online Assessment Tool

Councils have highlighted that the 10/50 Online Assessment Tool has incomplete data for prescribed streams, Aboriginal heritage and cultural heritage. LGNSW have received reports that this is leading to the assessment indicating eligibility for clearing in ineligible locations.

Many councils have relevant GIS data that, where available, could be provided for the RFS 10/50 Online Assessment Tool. This includes information on gradients, local heritage, EPBC

species, and waterways, allowing the RFS to provide more accurate 10/50 eligibility assessment information.

Councils have expressed the view that the 10/50 Online Assessment Tool is too simplistic and does not take advantage of the opportunity to directly educate at-risk residents about effective alternative bushfire mitigation measures they can undertake. There are concerns that the public will become complacent to bushfire risk once trees are removed under the 10/50 Code.

The 10/50 Online Assessment Tool lacks any accountability or proof of compliance, nor records where 10/50 clearing has occurred. LGNSW recommends some simple modifications to the tool that would improve compliance, provide a proof of eligibility through a 10/50 Clearing Certificate and record location of 10/50 clearing. These are outlined below:

- **Improve Compliance** – As part of the online tool require residents to check ‘yes’ or ‘no’ compliance questions for location to streams, under 18 degree slope, etc. Have these answers included in the 10/50 Clearing Certificate to avoid residents incorrectly/illegally clearing under 10/50, and to assist councils’ compliance activities.
- **10/50 Clearing Certificate** – As changes to 10/50 eligibility evolves either by the area reduction to Category 2 vegetation, improved Bushfire Prone Land Maps, or as part of this review, residents need to be able to prove that the clearing occurred during the time of eligibility. When the RFS 10/50 Online Assessment Tool determines an address eligible for 10/50 clearing, a 10/50 Clearing Certificate for that address should be provided for the resident’s records.
- **Recording 10/50 Clearing** – LGNSW held discussions with Municipal Association of Victoria regarding the Victorian experience with 10/50 & 10/30 Rules. The absence of records has emerged as a problem when it comes to monitoring the impact of vegetation clearance or the effectiveness of compliance activities. There are currently no records in 10/50 vegetation clearance in NSW, yet this could be easily resolved by the RFS recording the addresses where a 10/50 Clearing Certificate was issued and providing the information onto councils.

Bush Fire Management Considerations

There has been criticism that the 10/50 Code focuses on proximity of property to bushland rather than on actual bushfire risk. The 10/50 Code is at odds with existing and well established bushfire protection frameworks centred on bushfire risk including: Bush Fire Prone Land Maps, Bush Fire Risk Management Plans, Planning for Bushfire Protection, Bushfire Attack Levels, Asset Protection Zones, Bushfire Hazard Complaint Assessments, etc. The disconnected and contradictory relationship between the 10/50 Code and existing frameworks is creating confusion within the sector and the public.

Several councils have recommended that 10/50 clearing entitlement should be issued after an onsite inspection similar to the process for Hazard Complaints and Hazard Reductions.

Trees and Pruning

The public has limited understanding of the AS4373-2007 Pruning of Amenity Trees standard that has to be purchased. The incorrect pruning of trees can lead to creating hazards and liability issues. The RFS needs to provide greater information to the public on appropriate pruning and clearing practices under 10/50.

The 10/50 Code has unfortunately encouraged some unscrupulous tree removal operators to become active in the market. LGNSW has been advised of instances where operators have illegally dumped vegetation, conducted unsafe work practices, used intimidation tactics, falsely advertised trees must be removed under 10/50 and not adhered to the pruning standard. It is suggested the RFS provide information to the public via the Online Tool to encourage them to use a reputable arborist.

Erosion and Slope

The public is unlikely to have the skills required to assess an 18 degree slope. The RFS should provide better information to the public on meeting this requirement and how to assess gradients. Alternatively, this issue could be resolved by onsite 10/50 assessments or including council gradient GIS data when available into the 10/50 online tool.

Landslip concerns have been raised with the removal of trees, especially if the trees are located on a small bench on a steep slope. If a tree is located on a small flat bench it would be eligible for clearing under 10/50, but its removal could create a landslip issue for the surrounding slope.

Aboriginal and Cultural Heritage

Serious concerns have been raised that the database used for the 10/50 Online Tool is inadequate for identifying Aboriginal and cultural heritage and vegetation which is at risk of being permanently lost by clearing under 10/50.

Most Aboriginal heritage is not included in the AHIMS database the RFS is using in the 10/50 online tool for determining 10/50 eligibility. Trees of Aboriginal significance including scarred trees, meeting place trees, boundary trees, burial trees, etc. are at risk of being cleared. The RFS needs to work closely with Aboriginal Land Councils to ensure Aboriginal heritage trees are protected from 10/50 clearing.

The OEH database the RFS is using in the 10/50 online tool is incomplete and lacks locally identified heritage. Examples of local heritage not included in the OEH database are historical gardens and local trees of historic relevance. Locally identified heritage is commonly included in LEP schedules and could be provided to the RFS for inclusion into the online assessment tool to improve accuracy of heritage data.

Riparian Buffers

Councils have advised LGNSW that the prescribed stream database in the 10/50 online tool is incomplete and too limited. In many cases councils can provide more comprehensive GIS data on relevant waterways for inclusion in the online tool assessment.

Waste Vegetation

Councils have advised LGNSW of increased illegal vegetation dumping since the implementation of the 10/50 Code. This is causing a resource burden for councils in clearing illegally dumped waste and compliance activities.

Council Managed Lands

Since the implementation of the 10/50 Code councils have received community pressure to clear vegetation on council managed lands within 10 and 50 metres of houses eligible under 10/50. The relationship interface between councils' responsibilities to manage vegetation in accordance to Bush Fire Risk Management Plans (BFRMPs) and clearing land in accordance

to 10/50 raises a number of questions for councils. For example, what is councils' liability if 10/50 clearing is not undertaken? Will 10/50 areas be included in future BFRMPs?

Compliance

Given the public confusion, inappropriate clearing and incomplete data in the online tool, councils have received increased community complaints regarding clearing in neighbourhoods and have had to increase their compliance activities, which is an additional burden on their resources. As suggested a system for issuing a 10/50 Clearing Certificate would assist in compliance investigations.

Insurance

Concerns have been raised that insurance companies may now extend bushfire prone insurance type premiums to 10/50 areas.

Additional Comments

LGNSW notes that the NSW 10/50 Code was developed based on the Victorian 10/50 and 10/30 Rules. We also note that the Victorian model differs to NSW by only applying the Rules to buildings built or approved prior to 10 September 2009, excludes 21 metropolitan municipalities, and does not over ride existing vegetation protection legal agreements or covenants.

B. Urgent Scientific Review of 10/50 Code Impacts and Benefits

Since the implementation of the 10/50 Code, the RFS has provided the verbal explanation that 10/50 eligibility was determined by extending the perimeter of 350 metres from category 1 and 2 vegetation. This was apparently based on historical analysis of the distance of the housing losses from bushfire fronts. Given the wide reaching and significant impacts of the 10/50 Code discussed above, the analysis based solely on the distance of houses would appear to be inadequate. The amended 10/50 Code needs be developed based on sound evidence and comprehensive research.

Conclusion

This submission has provided an overview of Local Government's concerns about the many issues impacting councils as a result of the introduction of the 10/50 Code. LGNSW calls for immediate suspension of the 10/50 Code and recommends that a thorough scientific review be undertaken to inform the any further amendments before the Code is re-introduced.

For further information, please contact Liz Gemes by phone 9242 4063 or email liz.gemes@lgnsw.org.au.