



Greens NSW submission 10/50 Vegetation clearing rule

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Thank you for this opportunity to make a submission to the review of the 10/50 vegetation clearing code. The Greens NSW have a number of serious and ongoing concerns about the 10/50 code and its application across NSW. We believe these concerns are sufficient to warrant an immediate moratorium on the 10/50 code.

Rushed implementation

The rushed implementation of the code with only 2 weeks of consultation on the laws means many communities weren't given any opportunity to have a say before their neighbourhoods were included in the 10/50 zones. No local councils able to properly consider the draft code in this timeframe, let alone produce considered submissions.

The code does not reflect scientific consensus that ad hoc vegetation clearing is a rational way to reduce bushfire risk in NSW. Rather it appears that the implementation of the code was a calculated political move designed to play to certain political constituencies, regardless of the impact that its application would have across the whole of the State.

Not evidence based

The code is not scientifically based – there is no credible evidence that supports the blanket application of the rule to areas across NSW as a way of reducing the risks posed by bushfires. In particular the 350 metre clearing entitlement zone is arbitrary in the extreme and not based on historical precedent or any well-developed scientific understanding of how fires spread.

There is little credible evidence that chopping mature trees up to 350 metres from bushfire prone land will reduce the likelihood of houses being lost to ember attacks. Whilst there are some studies to show a tiny minority of ember attacks can extend up to 350 metre from a fire front, there is no evidence to show that that removing trees to this distance protects houses from ember attack.

Reports from across NSW have shown large numbers of trees being lost in areas that have no realistic risk of bushfires, and for reasons clearly related to enhancing the development potential of properties. These trees are not being removed as a part of a plan of management for bushfire risk and so in most cases will provide at best a false sense of security for homeowners.



Furthermore the 10/50 tool reduces contact with the Rural Fire Service, the experts on bushfire prevention, meaning that it could actually increase the risk posed by bushfires by moving away from comprehensive bushfire plans.

Maps not publicly available

The maps showing where the code applies have not to date been made public, making it hard for members of the public and policy makers to assess the reach of the code. Recent GIPA applications by my office have started to produce a more complete picture and show whole LGAs covered by the code, despite there being no historical or current risk of bushfire in those areas.

The maps that we have had released to us under GIPA clearly understate the impact of the code on areas across NSW. The maps show a 100 metre buffer when in fact the Rural Fire Service asserts that the buffer is 350 metres¹.

This is a substantial difference in the areas covered by the code and what the maps show, and it raises serious questions about exactly how it was determined what areas would be included, who made this decision, and on what basis.

Local communities and councils sidelined

Diverse areas across NSW are subject to the blanket application of the code, meaning many areas are already losing their character and neighbourhood trees. There is no power under the scheme for councils to represent the wishes of their residents and opt out or modify the scheme.

Furthermore we have already seen cases where otherwise acceptable planning decisions have had to be refused by councils because they can no longer protect any trees on blocks where there are residential properties.

For example a Land and Environment Court decision (Johnson v Hornsby Shire Council [2014] NSWLEC 1215) delivered on the 21 October 2014 has found what opponents of the 10/50 clearing code of practice have long held to be true: that it overrides local protections for endangered trees and can result in the removal of significant endangered ecological communities.² In this case Hornsby Shire Council refused a Development Application on the grounds that because of the existence of the 10/50 laws, they would be unable to put in place conditions to protect the remnant Blue Gum High Forest on the development site.

The brutal inflexibility of 10/50 means that any development that comes within 50 metres of important vegetation is next to unapprovable. While previously a council may have approved a development with a condition that the vegetation is to be protected, with 10/50 in force, those conditions now have no legal effect.

¹ For example in response to a question I asked in the House on 11 September 2014 to the Minister for Emergency Services: <http://davidshoebridge.org.au/2014/10/29/9559/>

² <http://www.austlii.edu.au/au/cases/nsw/NSWLEC/2014/1215.html>



This clearly unintended consequence is a result of rushed, unthinking and negligent lawmaking.

No protection for threatened species or heritage trees

As predicted the scheme has seen the loss of remnant bushland across the State. There are no exemptions under the scheme for land with Endangered Ecological Communities, and threatened species are not reflected in the 10/50 online tool which guides the application of the scheme. Similarly there is no recognition under the code of important habitat trees that might be lost.

The scheme explicitly overrides LEP protections that would otherwise protect trees of heritage significance, meaning these can essentially be cleared at will. With a single stroke decades of detailed and considered local heritage protections have been lost.

Impacts on endangered ecological communities have so far included the clearing of endangered remnant rainforest at Fingal Head.³

Case after case of additional tree butchering including century old blackbutts, swamp mahoganies and angophoras has been reported to my office and full details can be provided on request.

No monitoring of application of the code

There is no comprehensive monitoring of the use of the code, meaning that the Government has no way of assessing its effectiveness. Given the impact it is having on many communities across the State it is remarkable that there is no systematic oversight of what the outcomes are of allowing such unfettered clearing.

My office continues to receive reports from across NSW of trees being cut, and this is giving a picture of almost indiscriminate clearing in many areas. This kind of clearing can fundamentally change the character of a local area, and it will take decades for many of these shade and habitat trees to grow back, if they ever do.

Conclusion

While we believe the most appropriate outcome would be a moratorium on the scheme, consideration should also be given to allowing local communities to opt-out from the code and become 10/50 Free Zones. In addition environmental and heritage protections must be restored under the scheme.

I annex to this submission a copy of our submission on the "Clearing Code of Practice". Many of the concerns we expressed at this stage were also raised by many if not most other stakeholders regarding this proposal. It is worth noting that these concerns continue to apply to the code as it is currently operating.

³ More reporting on this is in the EchoNet daily: <http://www.echo.net.au/2014/08/tweed-wants-new-fire-code-suspended-wake-clearing/>



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Member of the NSW Legislative Council

**David Shoebridge MLC
SUBMISSION
19 November 2014**

Thank you for your consideration of these matters. If you have further questions or require more information please don't hesitate to contact my office on 9230 3030 or at david.shoebridge@parliament.nsw.gov.au

Kind regards,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

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RE: Rural Fire Service 10/50 Clearing Code of Practice

Thank you for considering this submission on the Rural Fire Service 10/50 Clearing Code of Practice.

At the outset we would like to note our substantial concerns with the legislation implementing vegetation clearing entitlement areas, as well as its implementation through the Vegetation Clearing Code of Practice.

Our concerns are fourfold:

1. Such a scheme does not address actual bushfire risk and will give landowners and occupiers a false sense of security that may ultimately put them at greater risk of bushfires.
2. It will reduce essential interaction between Rural Fire Service [RFS] personnel, who are the experts who can give the best advice, and landowners and occupiers.
3. It will create unacceptable damage to a large amount of environmentally sensitive bushland across the State with no substantial impact on safety or ongoing bushfire risk, and
4. It fails to give adequate guidance to landowners regarding the clearing of vegetation.

Addressing actual bushfire risk

The risk is that this new regime will give property owners a false sense of security about reducing their bushfire risk, and may lead to them not finding out about other measures that would help protect their property such as checking on their eaves and having a certain water supply as well as treatment of their house and surrounds.

The data shows that the greatest bushfire risk to property is living within 100 metres of a forest, not the proximity of a small number of trees closer to a house. That is because in many cases it is the ember attack, which travels up to 100 metres ahead of the fire front, that is responsible for spot fires in residential areas and for the loss of many residential homes. Even intensive clearing around homes will not alleviate this risk. It may however create a false sense of security in householders who have undertaken this clearing.



Reducing contact with the RFS

Fire-prone vegetation risks are best assessed by experts in the RFS, not landowners who may have no specific knowledge in this area, and may not understand the ecological impacts of the removal of trees and bushes.

Removing this point of contact between property owners and the RFS or land manager (e.g. local council) is likely to lead to greater uncertainty and higher levels of inappropriate clearing. The current Bush Fire Environmental Assessment Code provides an effective and evidence based model whereby property owners can engage with RFS officers to develop bushfire safety plans and suites of mitigation strategies. This new model is likely to substantially hamper this communication and hamper good fire management practices on the ground.

Application of code – uncertain drafting opens the prospect of large scale clearing

Clause 5.2 of the draft code is in the following terms:

Application of land to the 10/50 Code

5.2 Vegetation clearing under this 10/50 Code may only be undertaken on parcels of land that contain land mapped as 10/50 Vegetation Clearing Entitlement land. This may apply to public or private lands.

Certain parcels of land may have some land that is mapped as '10/50 Vegetation Clearing Entitlement land' and other land that is not. The poor drafting of this clause opens up the entirety of such parcels of land to clearing. This is surely not the intent of the drafters and must be remedied before any final document is promulgated.

Land clearing

The creation of such an entitlement without detailed education and monitoring plans in place is likely to result in substantial additional illegal clearing of land across the state, with a subsequent loss of biodiversity.

In the debate in Parliament it was asserted that the Vegetation Clearing Code of Practice that would cover the type of vegetation that can be cleared and when it should be pruned rather than removed. Unfortunately the final code does not provide any substantive guidance on any of these matters apart from clauses 7.2 and 7.3 that read:

The type of vegetation that can and cannot be cleared, including the types of trees

7.2 All types of vegetation may be cleared other than mangroves and salt marsh on public land.



The circumstances in which vegetation should be pruned and not entirely removed

7.3 Any vegetation may be pruned other than trees greater than 10 metres from the residence.

The pruning of trees must be undertaken in accordance with AS 4373-2007 Pruning of Amenity Trees.

This provides no protection at all for ecologically endangered vegetation types. It does not even provide a safeguard to retain endangered plant communities where proposed clearing would provide no substantive fire protection to the landowner.

If the code is to in any way meet the government's promise of a balance between environmental and political imperatives in the clearing of bushfire prone land, then surely additional safeguards must be established where ecologically endangered plant communities are known, or likely, to exist. In all such cases clearing or pruning should be, *at a minimum*, contingent on obtaining a certificate from the RFS that the clearing or pruning would *materially assist* in the protection of the property in question. With this being said, the Greens make it clear that a preferred solution would be to exempt all such land from the code.

While an additional prohibition is put in place for removing trees on slopes greater than 18° this is not considered a sufficient protection for broadscale clearing of hilly land and the impact this will have on erosion and water quality across the State. The idea that hillsides just a degree less steep can be cleared with impunity is illogical. Far more thought is required to address these matters

Failure to publish mapping

We further note that the code of practice will operate in 10/50 vegetation clearing entitlement areas, which will be determined by the commissioner on a map or maps published on the NSW Rural Fire Service website. These maps are not yet currently available, and in their absence it is impossible to assess what the impacts of the proposed code will be.

Consideration of what is currently considered "bushfire-prone land" across the State covers large swathes of extremely sensitive and valued bushland around the foreshores of Sydney, land throughout the Blue Mountains and adjoining the Blue Mountains National Park, and large swathes of highly valued coastal bushland along the coast as well as extremely important and valued scenic areas across the State, such as the Dorrigo Plateau. Extending the draft code to these areas would be environmental vandalism.



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Land clearing for purported amenity of neighbour should require neighbour's consent

The draft code states that clearing is permissible within 10 metres for trees or 50 metres for bush and scrub of the wall of any building with habitable rooms. Though "habitable" is the definition, there is no requirement that the rooms in fact be inhabited or that there be any plans that they are ever to be inhabited. The provision also allows clearing to be carried out where the building with the habitable room is on the neighbour's property, regardless if the neighbour themselves wants this clearing to occur. Apart from the ecological impacts, there will be circumstances where such clearing would involve substantial, and unwanted, loss of privacy and amenity for residents of adjoining properties.

If such a measure was to be retained, it surely should only be exercised with the express written permission of the adjoining property owner.

Conclusion

This legislation and the Code of Practice implementing it are a substantial attack on biodiversity in New South Wales and together they allow property holders excessive and unwarranted discretion to remove trees and vegetation, even where the vegetation is not contributing to bushfire risk.

Please do not hesitate to contact my office at david.shoebridge@parliament.nsw.gov.au or (02) 9230 3030 if you have any questions regarding this submission or require further information.

Regards,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

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