

SYDNEY COASTAL COUNCILS GROUP INC.

councils **caring** for the coastal environment

SUBMISSION

10/50 Vegetation Clearing Code of Practice

November 2014

25
YEARS
1989-2014

© SYDNEY COASTAL COUNCILS GROUP INC.
Level 20, 456 Kent Street
GPO Box 1591
Sydney NSW 2001
www.sydneycoastalcouncils.com.au

To: NSW Rural Fire Service
15 Carter Street
Lidcombe NSW 2141

Submitted via email: 10.50@rfs.nsw.gov.au

Prepared by: Sydney Coastal Councils Group Incorporated (SCCG)

Reference number: 250-14EN

Date: November 2014

Contact details: **Emma Norrie** | Coastal Projects Officer
Sydney Coastal Councils Group Inc.
councils **caring for the coastal environment**
Level 20, Town Hall House, 456 Kent Street
GPO Box 1591, SYDNEY NSW 2001
t: +61 2 9246 7702 | **f:** +61 2 9265 9660 |
e: emma@sydneycoastalcouncils.com.au

Introduction

We are a voluntary Regional Organisation of Councils (ROC) representing 15 Sydney coastal councils (www.sydneycostalouncils.com.au). We are the peak NSW ROC representing coastal councils and the third largest based upon population¹. We have 25 years' experience leading sustainable coastal management.

We harness the individual and collective knowledge of our Member Councils, a suite of technical and academic experts as well as other stakeholders. Engagement is undertaken through a range of communications including meetings, workshops, information sessions and publications. Accordingly, we are able to provide unique insights drawing upon the technical, experiential and local knowledge of our Members. The management of bushfire hazards is a key area of concern for our Member Councils and this submission draws upon their feedback and our experience.

We only make submissions where there is majority support amongst our Members on the issue of concern, however it should not be inferred that there is absolute consensus across all 15 Member Councils on the contents of this submission. In representing the majority position, we endeavour to maintain a regional, nonpartisan and long-term perspective on matters affecting our urban coastal environment.

General Comments

We support the need for effective bushfire hazard management, however we feel the 10/50 Code is unsupported by any solid evidence or rationale and undermines the good work already undertaken by the RFS in partnership with local and state government agencies to manage bushfire risk across the State. The Code represents a one-size-fits-all approach that is unsuited to urban coastal environments and disregards the sound knowledge we have about fire ecology, risk conditions and hazard reduction.

We are concerned about the environmental impacts the Code will have, particularly in relation to threatened species and ecological communities. We also fear that the Code may increase fire risk by undermining the protection that vegetation provides from wind, heat and ember attack and encouraging a false sense of security amongst landholders. Further, there is evidence that the Code is being misused by landholders seeking to enhance views and property values or eliminate nuisance factors such as leaf litter.

The Code was introduced hastily after a consultation period that was short in duration and limited in scope, with no recognition of consultation feedback. It contains no viable monitoring or enforcement mechanisms, thus precluding any assessment of its impacts and actual effectiveness at reducing bushfire hazard.

At our Annual General Meeting on 13 September 2014, Councillor delegates resolved to write to the RFS recommending:

- 1) A suspension of the 10/50 Code until a review is undertaken
- 2) Comprehensive mapping of the clearing entitlement areas be made publicly available, including the criteria for defining such areas (with all mapping being ground truthed)
- 3) A scientific review into the ecological impacts and actual bushfire hazard reduction benefits of these provisions, across urban and non-urban areas and/or local and regional scales
- 4) A process under which Councils can seek to opt out of some or all of the provisions of the 10/50 Code

¹ Gooding, A. 2012. *A Comparative Analysis of Regional Organisations of Councils in NSW and Western Australia*, Australian Centre of Excellence for Local Government, University of Technology Sydney.

- 5) A detailed public education process be undertaken to clarify what is and what is not permissible and associated consequences for illegal actions and other useful public compliance, management and further information details.

Accordingly a letter was sent to the RFS Commissioner on 14 October 2014 (Appendix 1).

Based on these concerns and those elaborated below, we call for an immediate suspension of the Code or, at the very least, amendments to the Code based on the recommendations contained in this submission.

Scope and structure of this submission

This submission focuses on the area in which we have specific knowledge and expertise, namely the urban coastal and estuarine environment. It collates feedback received from Member Councils in relation to the 10/50 Code. Feedback has been broken down into five key areas:

1. Evidence and rationale
2. Biodiversity and conservation
3. Application of the Code (entitlement area)
4. Monitoring, compliance and enforcement
5. Consultation and transparency

Each key area has a list of concerns, followed by recommendations to address them.

Issues and recommendations

1	Evidence and rationale
a.	Rationale
	<p>The RFS has provided no scientific or other evidence to demonstrate that the Code will provide for better bushfire hazard management than existing provisions. Though relying upon evidence from the 2009 Victorian Bushfires Royal Commission (in the absence of a NSW Commission of enquiry), the Code does not address key recommendations made by the Commission, which called for changes to planning and construction provisions to mitigate bushfire risk. It is unclear why vegetation removal is being targeted, when there are numerous other ways that houses can burn down, such as through bad building design, building maintenance and garden maintenance. Councils, State Government and the RFS expend considerable effort to mitigate and manage bush fire risk through development planning, community engagement and hazard reduction. Under <i>Planning for Bush Fire Protection (2006)</i> and <i>AS3959 Construction of buildings in bushfire-prone areas (2009)</i>, buildings in NSW since 2006 have been built to meet certain fire prevention standards. Asset Protection Zones around these houses also reduce the potential for fire to impact upon property. These initiatives are underpinned by thorough and open planning, robust methodologies and community engagement. The blanket overriding of these provisions by the Code portrays government as reckless and wasteful and discredits the substantial amount of expert advice and good will that has contributed to their development. If not suspended altogether, at the very least the Code should not apply to properties that have been certified to meet the requirements of <i>Planning For Bushfire Protection</i> and <i>AS3959 Construction of buildings in bushfire-prone areas</i>. In this regard the Code should only be available for properties built before 2006, following a similar system as Victoria.</p>
b.	Scientific evidence
	<p>The scientific basis for the Code is flawed. While it has been shown that 99% of properties lost in bushfires are within 300m of bushfire prone vegetation, the vast majority of these are due to ember attack (up to 90%)², for which vegetation can actually act as a buffer. The Code does not address the issue of</p>

² Bushfire CRC (2009) [Victorian 2009 Bushfire Research Response - Final Report October 2009](#)

ember attack and contradicts RFS guidelines which advise that removal of all vegetation can exacerbate fire hazard, as trees and plants can provide protection not only from embers, but also strong winds and intense heat.

c. Landholder complacency

Clearing of vegetation may create a false sense of security amongst landholders and indirectly work against effective bushfire planning by households living in proximity to bushland. Landholders implementing the Code may perceive increased safety in staying at home during a bushfire event.

d. Vegetation species

The Code does not distinguish between the species of vegetation being cleared, despite the fact that some species are more fire resistant than others. For example, some of the more common canopy trees in Sydney's foreshore areas are fire resistant, such as Port Jackson and Moreton Bay Figs, Black Bean Trees, Hills Fig and Lilly Pilly. These species can provide protection to properties from ember attack and radiant heat impacts, especially under the relatively low-intensity fires that would occur in small fragmented reserves typical of many urban areas in Sydney. Similarly, fire mitigating communities such as Sandstone Gallery Rainforest should be protected. Further, certain species can provide important post fire resources and make contributions to the ecology of the heath and woodlands, such as *Angophora hispida*, located only in parts of the Sydney Basin. Clearing these species may not only expose households to greater bushfire risk, but also encourage the growth of more fire enhancing species (for example, from rainforest to open sclerophyll forest or grassland vegetation).

e. Use of data

The Code is based on modelling that relies upon limited and outdated data sets provided largely by State Government agencies. Councils have more detailed maps available, including riparian zones, threatened species, local heritage items and slope, which may assist in refining the Code to better reflect local conditions. Further, all Councils should have LEP map layers identifying environmentally sensitive lands including riparian vegetation and items of landscape heritage.

Recommendations

- 1.1 Suspend the Code until an independent scientific review of bushfire hazard reduction is undertaken, taking account of existing hazard management provisions, fire ecology, the different causes of fire and appropriate response options, the vulnerability of different vegetation species and contextual factors (such as fire risk in urban vs rural landscapes).
- 1.2 At a minimum, the Code should not apply to properties that have been certified to meet the requirements of *Planning For Bushfire Protection* and AS3959 *Construction of buildings in bushfire-prone areas* (i.e. the Code should only be available for properties built before 2006).
- 1.3 Publish a notification on the 10/50 page of the RFS website warning landholders of the ongoing dangers of bushfire risk despite clearing and the need for ongoing bushfire planning.
- 1.4 Fund and implement regular high quality surveys of the urban fringe to promote strategic planning and integration of all relevant data sources, and investigate data sharing arrangements with Councils to ensure the most accurate and up-to-date data at appropriate scales is being used.

2	Biodiversity and environmental impacts
a.	Threatened species and ecological communities
	The Code poses a significant threat to critical natural habitats by overriding local and state protections for threatened species and ecological communities. Where there is 'imminent danger' OEH has maintained a policy that life and property are prioritised over threatened species and natural environment issues. However extending this policy to precautionary measures such as vegetation clearing presents a significant and unnecessary risk to critical biodiversity. Further, this provision contradicts the Bushfire Environmental Assessment Code , which prohibits clearing in critical habitats identified under the <i>Threatened Species Conservation Act 1995</i> (s 2.3(c)).
b.	Assessment of environmental impacts
	There has been no actual assessment or any ongoing assessment of the impacts of the Code on the natural environment. Further, the Code provides no recognition of the importance of urban bushland in providing biodiversity and wildlife habitat corridors. The existing Bushfire Environmental Assessment Code has created a streamlined environmental assessment process for bushfire hazard reduction works. This Code should be extended to any clearing undertaken as part of 10/50 to ensure environmental impacts are appropriately assessed and managed.
c.	Legal protections for vegetation
	The draft Code (released for consultation) included a condition that "vegetation may not be cleared if the owner of the land on which vegetation clearing works may be carried out is under a legal obligation to preserve that vegetation by agreement or otherwise." This was removed in the final version of the Code. Development conditions should be considered as a legally binding agreement, as they allow for appropriate assessment and conditioning of development. As such, the draft condition should be reinstated.
d.	Cumulative impacts
	The cumulative impact of vegetation removal by landholders will be exacerbated by the inability of Councils to provide for replacement planting or condition retention of trees and vegetation, potentially resulting in significant loss of natural vegetation. Victoria has an offsets policy to mitigate these impacts and ensure no net loss of vegetation. Both 'no net loss' and the 'maintain or enhance' tests relevant to other aspects of vegetation management in NSW should be applied in this context.
e.	Destabilisation of soils
	Clearing of slopes may result in increased landslide risk due to destabilisation of soils. Clearing in riparian areas may also result in changes to drainage dynamics, downstream sedimentation and impacts on water quality.
f.	Mangroves and salt marsh
	The Code prohibits clearing of mangroves and salt marsh on public land only, yet the ecological values of mangroves and salt marsh transcend legal property boundaries. The restriction to public land only is arbitrary and the prohibition should be extended to private land. Further, mangroves and salt marsh are highly unlikely to contribute to fire spread.
g.	Weed threats
	Over time, unless cleared areas are appropriately maintained, there may be increased weed invasion leading to increased 'edge effect' and negative impacts on native bushland. Further, accumulation of weeds may provide a source of fuel load and thus exacerbate fire risk as weeds often become more dense than the original bushland vegetation.
h.	Natural amenity
	The Code risks diminishing the natural amenity of many harbour side and foreshore areas that are not exposed to the same level of bushfire risk as other areas. This will have flow-on effects for our sense of identity, culture and place. It may also potentially undermine declared 'national landscapes', including the Sydney Harbour National Landscape, and hamper Councils' many urban vegetation plans and strategies.

i. Aboriginal and cultural heritage

The Code only covers Aboriginal and Cultural Heritage items which are identified by the OEH. However Councils often have more detailed data on heritage items and provide for greater protection through their LEPs.

Recommendations

- 2.1 Prohibit clearing of threatened species, ecological communities and their habitats and regulate clearing as per the [Bushfire Environmental Assessment Code](#).
- 2.2 Undertake and publish an assessment of predicted and actual environmental impacts of the Code.
- 2.3 Reinstate the condition that “vegetation may not be cleared if the owner of the land on which vegetation clearing works may be carried out is under a legal obligation to preserve that vegetation by agreement or otherwise.”
- 2.4 Require replacement planting or other offsets for cleared areas to ensure no net loss of vegetation, consistent with a ‘maintain or enhance’ provision.
- 2.5 Investigate methods to better manage risks to soil stability arising from vegetation clearing.
- 2.6 Prohibit clearing of mangroves and salt marsh on private as well as public lands.
- 2.7 Establish maintenance programs to minimise weed invasion in cleared areas.
- 2.8 Consider alternative hazard reduction methods in harbour side and foreshore areas, particularly those renowned for their natural amenity such as Sydney Harbour.
- 2.9 Protect all Aboriginal and cultural heritage items that appear in Council registers (in addition to OEH listed items).

3	Application of the Code (entitlement area)
a.	Accounting for local conditions
	There is no distinction between bushland and urban areas despite the fact that bushfire risk varies significantly depending on local conditions. Local factors that should be considered include the size and configuration of bushland areas (including slope and aspect), existing bushfire risk reduction measures, proximity to emergency services and rapid response, historical data on bushfire risk and relative flammability of species.
b.	Potential inaccuracies
	Use of bushfire prone lands maps for the purpose of designating 10/50 vegetation clearing entitlement areas is problematic, because it is extremely difficult to accurately map the exact edge of the bushfire hazard across an entire LGA. Potential inaccuracies mattered less when the maps were used for their original purpose - namely to trigger further investigation of bushfire risk to a proposed development - however their use to implement statutory clearing entitlement areas, without further assessment to determine whether a legitimate hazard exists, is inappropriate. In some instances measurement of the 350m buffer includes a distance across water bodies (such as Sawmillers Reserve in Waverton), suggesting ground-truthing is required to evaluate the actual risk of fire spread.
c.	Entitlement area
	Bushfire CRC reporting indicates that 50% of buildings are destroyed within 15-19m of bushland and 83-88% of buildings within 100m of bushland ³ , so on a risk management basis 350m is excessive. While trees and vegetation can contribute to fire spread in cases where direct flame, radiant heat and/or ember attack lead to ignition (particularly within the 15-19m zone), local and state agencies and the RFS currently manage this risk through a range of land-use planning and other provisions (as described earlier). The 350m buffer extends well beyond areas identified as being even a low bushfire risk under many Councils' <i>Bushfire Risk Management Plans</i> . These Plans are compiled by expert fire and land management agency representatives with local knowledge of conditions. The Code does not take this kind of detailed analysis into account. It also extends well beyond the risk areas identified using the <i>Neighbourhood Safer Places</i> parameters.
d.	Land parcels
	The Code applies to "parcels of land that contain land mapped as 10/50 vegetation clearing entitlement [VCE] land". Therefore, if only a section of a property is mapped as VCE land, clearing will be permitted across the entire property. For large land parcels in particular, this potentially represents a significant extension of the 350m buffer and will result in clearing beyond the original intentions of the Code. As such, the Code should be amended such that the entitlement area is contained within a spatially explicit area.
e.	Inconsistencies
	There is an inconsistency between properties affected by bushfire prone land maps and the 10/50 entitlement maps. Properties located within 100m of Category 1 Bushfire Prone Land and 30m of Category 2 Bushfire Prone Land have to conform to <i>Planning for Bushfire Protection</i> in any development applications. However properties outside these buffers, but still within the 10/50 entitlement areas do not. This is a contradiction that will serve to confuse and frustrate the community.
f.	Definitional issues
	The definition of a tree is inconsistent with Council definitions. This creates confusion for landholders, whereby there is one definition for the purposes of the 10/50 Code and a different definition for other Council purposes. Further, the definition in the Code is unreasonably narrow, protecting only taller, larger and single stemmed trees, while smaller and multi stemmed trees are not protected. Some species rarely achieve a circumference of 0.3 metres and a height of 1.3m even at maturity, while others may take a long time to grow to this size, yet still provide significant habitat and amenity value.

³ Bushfire CRC (2010) [Bushfire Penetration into Urban Areas in Australia: A Spatial Analysis](#)

<p>g. Riparian zones</p>
<p>The 10m riparian exclusion zones on either side of a prescribed stream contradict the 20m protection prescribed by OEH. Further, there are no prescribed streams in metropolitan areas but there are clearly riparian lands in most LGAs. Most Councils have these mapped and they should be included in the assessment tool.</p>
<p>h. Future development</p>
<p>The application of the Code is not limited to buildings existing prior to the introduction of the legislation (unlike Victoria). Therefore landholders will be able to remove trees and vegetation within their property around future buildings, even if they are designed and sited to comply with <i>Planning for Bushfire Protection</i>. Effectively this means that, in assessing development applications, Councils will now need to assume that vegetation (including threatened species and communities) could be removed for distances of up to 50m from future building envelopes. Further, if significant trees are to be retained on private property, lot sizes will need to be increased so that the trees are located more than 10 metres away from any future dwelling. Such restrictions may promote intensification of development in particular parcels or conversely, could reduce the development potential of the land. This was demonstrated recently when the Land and Environment Court refused to grant development consent to a developer proposing to build a house on land containing remnant Blue Gum High Forest (which is identified as a critically endangered ecological community under NSW law) because the proposal would have enabled the removal of Blue Gums within 10m of the building envelope under the 10/50 Code (<i>Johnson v Hornsby Shire Council</i> [2014] NSWLEC 1215).</p>
<p>i. Residential accommodation</p>
<p>There are no limitations on the placement of caravans in a caravan park. Caravans could simply be moved around the park to enable clearing under the Code without permanently being in the area where the vegetation has been cleared. Limitations on the definition should require that the residential accommodation be in a permanent location.</p>
<p>Recommendations</p> <p>3.1 Develop a methodology for determining clearing entitlement areas, taking account of local characteristics including:</p> <ul style="list-style-type: none"> a) the size and configuration of bushland areas, including slope and aspect b) existing bushfire risk reduction measures c) proximity to emergency services and rapid response d) historical data on bushfire risk e) relative flammability of species <p>3.2 Amend the Code such that the entitlement area is contained within a spatially explicit area (rather than based on land parcels).</p> <p>3.3 The definition of tree should be based on the Council's definition in the particular local area.</p> <p>3.4 Extend the riparian exclusion zones to 20m either side of streams and creeks, as identified by Councils.</p> <p>3.5 Limit application of the Code to buildings existing prior to the introduction of the Code.</p> <p>3.6 Limitations on the definition of residential accommodation should require that the accommodation be in a permanent location.</p>

4	Monitoring, compliance and enforcement
a.	Regulation of hazard reduction
	Prior to the introduction of the Code, bushfire hazard reduction work could only proceed if carried out in accordance with a bushfire risk management plan, bush fire hazard reduction certification or the Bush Fire Environmental Assessment Code (s100C(4) <i>Rural Fires Act 1997</i>). The 10/50 Code has no such requirements, meaning that vegetation clearing can proceed unregulated provided it is within an entitlement area. This significantly erodes the ability of agencies to monitor compliance or enforce the Code and also reduces opportunities for interaction and informed dialogue between landholders and fire experts.
b.	Reporting requirements
	There is no requirement for landholders to report clearing activities undertaken under the Code to their local Council or the RFS. This means that Councils either cannot monitor compliance or will have to expend significant resources attempting to track unreported clearing. Furthermore, without any reporting requirements there is no way to evaluate the impact of the Code and, in particular, its success or otherwise in reducing bushfire hazard. This is poor public policy. If residents were required to submit a notification form to Council then random inspections could be undertaken in a similar manner to Pile Burn Permits. Priority for inspections could be given to areas containing endangered ecological communities and threatened species.
c.	Self-assessment
	The ability to monitor compliance is limited as the scheme is self-assessed. The abandoning of a 'request and consent' approach to tree removal has opened up the risk of deliberate or unintended misinterpretation of the Code.
d.	Misuse of the Code
	In many urban areas, landholders have an incentive for clearing to increase views, improve property values and increase development potential, leading to misuse of the Code for reasons unrelated to bushfire risk. Since the introduction of the Code, Councils have collected substantial evidence showing removal of trees for reasons entirely unrelated to bushfire risk mitigation. For example, as at 27 October 2014 Mosman Council was aware of 101 significant trees removed, many of which were remnant (80+ years old) and 39 of which were endemic to Mosman. The reasons given for removal were development related (36%), nuisance (29%) and views (10%). Of the remaining 25% removed for other reasons (or unknown) none have been for bushfire risk. Seventy percent of trees removed were the subject of a previous tree permit application that was refused by Council or protected through a development application. This demonstrates circumvention of the legislative planning framework and is creating uncertainty in neighbourhoods.
e.	Map availability
	Despite the <i>Rural Fires Act 1997</i> referring explicitly to "a map [of the entitlement area] published on the NSW Rural Fire Service website" (s 100P), no such map has been made available. Overview mapping is necessary to assist with compliance and to ensure the public are clearly informed. Without clear mapping, an untrained person may incorrectly assess the entitlement area, particularly around prescribed streams.
f.	Identifying slopes
	The RFS online tool does not provide any indication of properties may be constrained by >18 degree slopes or proximity to a prescribed waterway. It is considered extremely unlikely that a resident will be able to determine if their land is >18 degrees in slope and therefore removal of trees on sloping land is likely to occur. The RFS must immediately identify slopes >18 degrees, as there is already evidence of clearing on steep slope land. Councils can provide an approximate 18 degree slope layer for use in the application tool.
g.	EPBC listed species or communities
	There is no advice to property owners about Environment Protection and Biodiversity Conservation (EPBC) Act listed threatened species or communities.

<p>h. Compliance monitoring</p>
<p>Monitoring and compliance responsibilities are unclear. It appears that compliance for the scheme falls to Councils by default because offences related to non-compliance with the 10/50 Code will in effect be breaches of Tree Preservation Orders or tree and vegetation Development Control Plans. This represents an imposition on Councils and Councils need support to monitor, document and enforce compliance with the Code.</p>
<p>i. Offence exemptions</p>
<p>Amendments to the <i>National Parks and Wildlife Act 1974</i> (s118D) that make vegetation clearing work conducted under the Code exempt from offences,⁴ were made on the proviso that this exemption would be subject to compliance with the Code, which was to “place limitations on the clearing of any such species, populations or communities” (as per the Explanatory Note to the Rural Fires Amendment (Vegetation Clearing) Bill 2014). However the Code contains no such limitations, nor any clear monitoring or enforcement provisions. Therefore those amendments were made under false pretences and it is questionable whether compliance will be able to be determined.</p>
<p>j. Liability and cost implications</p>
<p>There are potentially serious liability and cost implications for Councils. The Code has established a proxy minimum standard for bushfire protection, leading to pressure on Councils from residents adjoining bushland to implement the Code within their reserves. Councils have already received such requests from landholders neighbouring reserves and expect more to follow as the fire season progresses. Further, if the 10/50 area is interpreted as a declaration of the extent of bushfire hazard by the RFS, Council potentially has a significant liability in the way it manages trees and vegetation on private property and within road reserves and parks. The removal of trees on public land that may be perceived as presenting a risk to private property would impose a significant administrative and financial burden on Council. It is also unknown how the insurance industry will interpret and respond to the 10/50 entitlement area declaration and whether Councils may potentially be exposed to claims against them in the future if properties are damaged by bushfire. It is likely that pressure will also be applied between neighbours to clear their lands.</p>
<p>k. Arboriculture practices</p>
<p>There is already anecdotal evidence from Councils that the Code has led to increased activity of poor-standard arboriculture contractors and increased prevalence of illegal greenwaste dumping. This has led to an increase in the number instances of non-compliance with <i>AS 4373 Pruning of Amenity Trees</i> resulting in poorly pruned branches and spiked trunks, which can lead to future branch failure and potential fungal and insect attack. Further, there is a risk of arboriculture contractors pressuring residents into removing trees, as occurred following the 2013 Blue Mountains bushfires. In one case an elderly resident was charged \$24,000 to have trees removed from her property because she was told they were a fire hazard (see related NSW Government media release).</p>
<p>Recommendations</p> <ol style="list-style-type: none"> 4.1 Establish a regulatory framework to monitor activity under the Code and enforce compliance. At a minimum, landholders must be required to report any clearing work undertaken under the Code to their local Council and Councils should be empowered to verify that clearing undertaken was compliant with the Code. Ideally an approval process should be introduced whereby landholders are required to apply for approval from relevant authorities before undertaking any clearing work. Environmental impacts, both direct and indirect, must be considered in any approval process. 4.2 Publish a complete map of the entitlement area that is scalable to the property level and shows prescribed streams, areas affected by slope restrictions and areas with threatened or endangered species and communities (under state and federal law). 4.3 Clarify monitoring and compliance responsibilities and ensure relevant authorities are appropriately resourced to discharge these functions. 4.4 Commission legal advice as to any liability implications of the Code for Councils and other public land managers. 4.5 Review the regulatory arrangements for the arboriculture industry and consider increased penalties for illegal greenwaste dumping.

⁴ Offences including harming or picking, or damaging the habitat of threatened species, endangered populations or endangered ecological communities.

5	Consultation and transparency
a.	Consultation process
	Consultation on the draft Code was limited and insufficient. Minimal information regarding the Code's application was available during the consultation period and no briefing sessions were held by the RFS. Councils were not able to ascertain if the Code would apply in their LGA because the mapping tool was kept offline until the day after the closing date. The absence of information on entitlement areas hampered Councils' ability to make informed and considered submissions.
b.	Addressing consultation feedback
	There has been no recognition of consultation feedback by the RFS, despite legitimate and repeated concerns raised by respondents. The online mapping tool was released one day after consultations closed and the final Code was introduced ten business days later, with no significant changes since the draft version (some changes were introduced later on 30 September). This suggests the consultation was not genuine and demonstrates disregard for the opinions and concerns of informed stakeholders who have relevant local knowledge and for the principles of public participation that underpin our governance system.
c.	Transparency
	There has been no transparency in the development of the Code, with no details of the rationale or methodology used to designate the clearing entitlement area and no published maps showing its extent.
	Recommendations
5.1	Prepare a consultation report summarising feedback from the original consultation period as well as the current review process. The report should explicitly state whether and how feedback has been or will be taken into account and, where it has not, why this is the case.
5.2	Publish a report explaining the evidence, rationale and assumptions behind the Code.
5.3	Make all submissions publicly available.

Thank you in anticipation for considering our submission. We look forward to participating further in the review process and request your advice as to how our submission is taken into account.

Yours sincerely,



SYDNEY COASTAL COUNCILS GROUP INC.

Per: Cr. Geoff Stevenson
Chairperson



**SYDNEY COASTAL
COUNCILS GROUP**



Sydney Coastal Councils Group Inc.

councils **caring for the coastal environment**

Level 20, Town Hall House

456 Kent Street

GPO Box 1591

SYDNEY NSW 2001

t: +61 2 9246 7791

f: +61 2 9265 9660

e: info@sydneycoastalcouncils.com.au

w: www.sydneycoastalcouncils.com.au.com.au

SYDNEY COASTAL COUNCILS GROUP Inc.
C/- City of Sydney Council
Level 20, 456 Kent Street
GPO Box 1591, SYDNEY NSW 2001
Phone: (02) 9246 7791
Facsimile: (02) 9265 9660
Email: info@sydneycoastalcouncils.com.au
Internet: www.sydneycoastalcouncils.com.au
ABN: 39 638 876 538



239-14EN
14 October 2014

Mr Shane Fitzsimmons
Commissioner
NSW Rural Fire Service

CC Ms Carolyn McNally, Secretary, NSW Department of Planning and Environment
Mr Terry Bailey, Deputy Chief Executive, Regional Operations Group, Office of
Environment and Heritage

Dear Mr Fitzsimmons,

Re: 10/50 Vegetation Clearing Code of Practice

On behalf of the Sydney Coastal Councils Group (SCCG), I am writing to express our concerns about the *10/50 Vegetation Clearing Code of Practice* introduced on 1 August 2014. At our Annual General Meeting on 13 September 2014, Councillor delegates resolved to write to your agency recommending:

- 1) A suspension of the 10/50 Code until a review is undertaken
- 2) Comprehensive mapping of the clearing entitlement areas be made publicly available, including the criteria for defining such areas (with all mapping being ground truthed)
- 3) A scientific review into the ecological impacts and actual bushfire hazard reduction benefits of these provisions, across urban and non-urban areas and/or local and regional scales
- 4) A process under which Councils can seek to opt out of some of all of the provisions of the 10/50 Code
- 5) A detailed public education process be undertaken to clarify what is and what is not permissible and associated consequences for illegal actions and other useful public compliance, management and further information details.

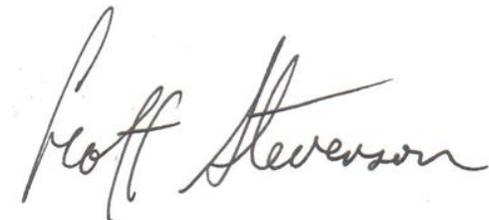
We acknowledge the changes to the Code announced on 30 September 2014 relating to the entitlement area for Category 2 Bush Fire Prone Land and Councils' ability to reclassify small parcels of land. We also acknowledge the review that commenced on 1 October 2014 and are in the process of preparing a submission in consultation with our Member Councils.

While we commend the RFS for these recent initiatives, we reiterate our request that the Code be suspended until a comprehensive scientific review is undertaken. Anecdotal evidence from Member Councils suggests there has already been significant clearing on private properties for reasons not directly related to bushfire risk and that critical remnant bushland is being affected.

We will consolidate Member Council concerns into a submission to the current review, however in the interim, we request a formal response from your agency addressing our recommendations above.

Thank you for your consideration of this request. If you have any questions or wish to discuss any aspect of the above, please do not hesitate to contact Geoff Withycombe, Executive Officer, on 9246 7791 or at geoff@sydneycoastalcouncils.com.au.

Yours sincerely,



Cr Geoff Stevenson
Chairperson



The SCCG is a Regional Organisation of Councils with 15 Member Councils in Sydney with marine and estuarine frontage. The Group was established in 1989 and aims to promote cooperation between, and coordination of actions by member councils in consultation with the broader community on issues of regional significance concerning the sustainable management of the urban coastal environment.