



Review of the 10/50 Vegetation Clearing Entitlement Scheme

August 2015

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Executive Summary

The 10/50 vegetation clearing scheme allows people to clear certain vegetation near their homes to improve protection from bush fires.

The scheme was introduced following the devastating 2013 NSW bush fires, including the fires which destroyed more than 200 homes in the Blue Mountains.

Since its introduction on 1 August 2014, a number of amendments have been made to the scheme.

On 1 October 2014, the NSW Rural Fire Service announced the planned review of the scheme would be fast-tracked, due to concerns that some landholders were abusing the scheme, by clearing vegetation for purposes other than bush fire protection.

On 14 November 2014 consultation closed, and 3,579 submissions were received from stakeholders including individuals, local councils and community groups. The contributions of all stakeholders have greatly assisted in the development of the review's recommendations.

This is the final report into the review of the scheme.

The review has found that the policy objectives of the scheme remain valid. However, a number of issues designed to improve the scheme, on both a legislative and non-legislative basis, have been identified.

Thirty recommendations have been made as a result of this review. These recommendations have been developed between the Department of Planning and Environment, the Office of Environment and Heritage and the NSW Rural Fire Service. This report outlines the proposed amendments which have been identified by the Review.

Timeline

1 August 2014

The 10/50 vegetation clearing scheme is introduced through an amendment to the *Rural Fires Act 1997*.

Under section 100R of the *Rural Fires Act 1997*, a person whose property is situated in a '10/50 vegetation clearing entitlement area' can clear:

- a. any vegetation, including trees or parts of trees, within 10 metres
- b. any vegetation excepting trees or parts of trees, within 50 metres

without any requirement for assessment or approval provided that clearing is undertaken in accordance with the 10/50 Vegetation Clearing Code of Practice ('the 10/50 Code').

The 10/50 Code was prepared by the NSW Rural Fire Service in partnership with the Department of Environment and Planning and the Office of Environment and Heritage, and commenced 1 August 2014 following consideration of public submissions.

30 September 2014

A number of changes were made to the scheme following consultation with councils, site inspections and community feedback.

The buffer for Category 2 vegetation (typically smaller areas of bushland) was reduced from 350 metres to 150 metres. The NSW RFS online tool was updated to reflect this change to ensure users had access to the latest information.

28 November 2014

Further changes were introduced to mitigate against instances of abuse of 10/50 while the review was conducted.

The buffer for Category 1 and Category 2 vegetation were set at 100 metres and 30 metres respectively. Again, the NSW RFS online tool was updated to reflect this change to ensure users had access to the latest information.

Working Group Recommendations

Recommendation 1 – exclude World Heritage and Ramsar wetlands

That clause 7.2 of the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) World Heritage areas and
- b) Ramsar wetlands

maps as provided by the Office of Environment and Heritage, from the operation of the 10/50 scheme.

Recommendation 2 – exclude core koala habitat in comprehensive Koala Plans of Management

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within mapped core koala habitats for comprehensive Koala Plans of Management as provided by the Department of Planning and Environment, from the operation of the 10/50 scheme.

Recommendation 3 – exclude certain critically endangered ecological communities, critically endangered plants and critical habitat

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) Agnes Bank woodland in the Sydney Basin region
Blue Gum High Forest in the Sydney Basin Bioregion
Cumberland Plain Woodland in the Sydney Basin Bioregion
Elderslie Banksia scrub forest
Hygrocybeae community of Lane Cove Bushland Park
Kincumber Scribbly Gum Forest
Shale Sandstone Transition Forest in the Sydney Basin Bioregion
Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion
- b) records of critically endangered plants and
- c) land mapped as critical habitats.

from the operation of the 10/50 scheme. These areas will be mapped in the 10/50 online tool based on information provided by the Office of Environment and Heritage

Recommendation 4 – exclude State Environmental Planning Policies 14 (Coastal Wetlands) and 26 (Littoral Rainforest), and wetlands in Sydney Regional Environmental Plans for Sydney Harbour and the Hawkesbury Nepean

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) State Environmental Planning Policy 14 (Coastal Wetlands) and wetlands mapped under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (No 2 – 1997), and
- b) State Environmental Planning Policy 26 (Littoral Rainforest)

maps as provided by the Department of Planning and Environment, from the operation of the 10/50 scheme.

Recommendation 5 – exclude vegetation identified as part of the bio-certification of the Sydney Region Growth Centres

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within mapped areas of high environmental significance identified as part of the bio-certification of the Sydney Region Growth Centres based on information provided by the Department of Planning and Environment from the operation of the 10/50 scheme.

Recommendation 6 – exclude land parcels within 100 metres of the coastline or estuaries

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude all parcels of land (lots) that are wholly or partly within 100 metres of:

- a) the NSW coastline map
- b) mapped estuaries

as provided by Land and Property Information from the operation of the 10/50 scheme.

Recommendation 7 – exclude mangroves and saltmarshes

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude all mangroves and saltmarshes from the operation of the 10/50 scheme, by removing the term 'public land' from the current clause.

Recommendation 8 – exclude Lord Howe Island

That Lord Howe Island be excluded from the operation of the 10/50 scheme.

Recommendation 9 – provide education on impacts to wildlife

That the 10/50 Vegetation Clearing Code of Practice and NSW Rural Fire Service Frequently Asked Questions be updated to provide advice to landowners on impacts which may occur to wildlife as a result of the 10/50 scheme.

Recommendation 10 - expand the definition of tree to limit clearing of multi-stemmed trees beyond 10 metres

That section 100P of the *Rural Fires Act 1997* be amended to state that a tree is a *perennial woody plant having one or more self supporting trunks and which is 3 or more metres in height and a trunk of which has a circumference of 1.3 metres above the ground of more than 0.3 metres*. Vines and shrubs will continue to be excluded from the definition.

Recommendation 11 – clarify the distance at which a tree may be removed

That the *Rural Fires Act 1997* be amended to clarify the distance for a tree to be removed is defined by the distance of the trunk from the residential accommodation or high risk facility, being any part of the trunk of the tree measured at 1.3 metres that is within 10 metres of a residential accommodation or high risk facility.

Recommendation 12 – provide advice on native versus non-native vegetation

That the NSW Rural Fire Service Frequently Asked Questions be updated to advise that the scheme applies to both native and non-native vegetation.

Recommendation 13 – protect riparian buffers by extending to more streams and wetlands

That:

- a) the Prescribed Stream layer be removed from the online tool, and replaced with a general requirement to exclude clearing of vegetation within 10 metres of wetlands and streams that are 2 metres or more in width between the highest banks of streams. This amendment will also be reflected in the 10/50 Vegetation Clearing Code of Practice
- b) That the 10/50 Vegetation Clearing Code of Practice be amended to include definitions of 'waterbody', 'wetland' and 'stream' to define what a riparian buffer relates to.

Recommendation 14 – improve soil erosion measures by amending conditions

That clause 7.5 of the 10/50 Vegetation Clearing Code of Practice be amended to clarify:

- a) that vegetation must not be removed below ground surface
- b) the requirement for ground cover to be retained
- c) the types of heavy machinery which cannot be used for this purpose.

Recommendation 15 – reduce landslip risks

That the 10/50 Vegetation Clearing Code of Practice be amended to clarify that landowners have a duty of care in the appropriate management of soil erosion and landslip risks when clearing vegetation under the 10/50 scheme.

Landowners will not be exempt from civil liability as a result of negligence or damage occurring during landslip and soil erosion as a result of their clearing.

Recommendation 16 – exclude Aboriginal Places

That clause 7.7 of the 10/50 Vegetation Clearing Code of Practice will be amended to provide that all land parcels that are wholly or partly within Aboriginal Places maps as provided by the Office of Environment and Heritage be excluded from the operation of the 10/50 scheme.

Recommendation 17 – protect Aboriginal culturally modified trees through new conditions

That:

- a) clause 7.7 of the 10/50 Vegetation Clearing Code of Practice will be amended to provide that all land parcels that are wholly or partly within maps identifying culturally modified trees as provided by the Office of Environment and Heritage contain requirements to be addressed by the landowner preventing the clearing of any culturally modified trees.
- b) if land is identified by the NSW Rural Fire Service on-line tool as containing culturally modified trees then the landowners be required to view the Office of Environment and Heritage's *Guide to Identify Culturally Modified Trees* to determine if the tree they wish to clear meets the required criteria.

Recommendation 18 – exclude local heritage trees

That clause 7.7 of the 10/50 Vegetation Clearing Code of Practice be amended to provide that all land parcels that are wholly or partly within areas mapped as Local Heritage, as provided by the Department of Planning and the Environment, be excluded from the operation of the 10/50 scheme. The NSW Rural Fire Service online tool will be updated to reflect this change.

Recommendation 19 – expand the re-classification of small bushland reserves for category 2 vegetation and exclude from the 10/50 vegetation clearing entitlement area

That:

- a) Category 2 vegetation be excluded from the operation of the 10/50 scheme.
- b) the *Guide to Bush Fire Prone Land Mapping* be amended to expand the classification of small bushland reserves made up of Category 1 vegetation to be classed as Category 2 vegetation.
- c) any re-classification of small urban bushland reserves from Category 1 to Category 2 vegetation be subject to a written justification by Councils for the approval of the Commissioner of the NSW Rural Fire Service. The justification must be able to substantiate the bush fire hazard requirements on which the re-classification is being sought.

Recommendation 20 – create a new Category 3 to provide a different buffer for grasslands and arid shrublands and retain current buffer distances for Category 1.

That a new Category – Category 3 be created to include grasslands, arid shrubland and other lower risk vegetation types. This category will have a 30 metre buffer and be subject to the 10/50 scheme. That the interim 100 metre buffer for Category 1 be maintained for the purposes of the 10/50 Vegetation Clearing entitlement area.

Recommendation 21 – exclude clearing adjacent to non combustible exempt developments

That non-combustible exempt developments such as decks which have been constructed according to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* be excluded from the definition of 'external wall'.

Recommendation 22 – clarify that ecotourism facilities are excluded from the scheme

That the NSW Rural Fire Service's Frequently Asked Questions be updated to make clear that ecotourism facilities are not captured under the 10/50 vegetation clearing entitlement scheme.

Recommendation 23 – clarify that clearing can only be undertaken once lawful authority for occupancy has been obtained

That the 10/50 Vegetation Clearing Code of Practice definition of 'habitable rooms' be amended to specify that it only applies to a building containing habitable rooms that has a lawful authority for occupancy for those rooms.

Recommendation 24 – expansion of the list of legal agreements/obligations that exclude 10/50

That clause 7.8 of the 10/50 Vegetation Clearing Code of Practice be amended to include the following agreements:

- a) covenants under section 88B of the *Conveyancing Act 1919*, which have been used to secure ‘offsets’ on land
- b) Enforcement instruments and any Court orders (e.g. local court, Land and Environment Court) to protect vegetation.

Recommendation 25 – prevent clearing of vegetation contrary to conditions of development consent

That clause 7.8 of the 10/50 Vegetation Clearing Code of Practice be amended to prevent clearing of vegetation contrary to development consent conditions attached to the land (e.g. development consents and complying certificates).

Recommendation 26 – landowners to obtain consent of their neighbour if using the distance from their neighbour’s building to clear

That section 100R of the *Rural Fires Act 1997* be amended to include a provision requiring landowners to obtain the written consent of all neighbours for which they are using the distance from those neighbour’s building to clear vegetation on their own property.

Recommendation 27 – extend the clearing entitlement to farm sheds

That section 100R(1) the *Rural Fires Act 1997* be amended to provide that the 10/50 scheme extends to the external wall of a building that comprises or is part of a farm shed.

Recommendation 28 – exclude clearing within national parks and nature reserves adjacent to buildings

That National Parks be excluded from the operation of the 10/50 scheme; national parks being inclusive of any land that is dedicated or reserved, or acquired for the purpose of dedication or reservation under the *National Parks and Wildlife Act 1974*.

Recommendation 29 – improve the NSW Rural Fire Service online tool

That adjustments be made to the NSW Rural Fire Service online tool to improve its functionality. The NSW Rural Fire Service will work with Land and Property Information in the conduct of this work.

Recommendation 30 – prepare practice notes to inform specific planning system interactions

That the Department of Planning and Environment work with the NSW Rural Fire Service and local councils in the development of practice notes to guide understanding on the relationship between the 10/50 vegetation clearing entitlement scheme and NSW planning system.

Introduction

Introduction to the *Rural Fires Act 1997*

The *Rural Fires Act 1997* establishes the legislative framework for the prevention, mitigation and suppression of rural fires in NSW. The objects of the Act are to provide for the:

- “(a) *prevention, mitigation and suppression of bush and other fires in local government areas and other parts of NSW (constituted as rural fire districts)*
- (b) *co-ordination of bush fire fighting and bush fire prevention throughout NSW*
- (c) *protection of persons from injury or death, and property from damage, arising from fires*
- (c1) *protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and*
- (d) *protection of the environment by requiring certain activities referred to in paragraphs (a)–(c1) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the Protection of the Environment Administration Act 1991.*”

These objects are achieved through various regulatory mechanisms for bush fire prevention and mitigation. For example, under the *Rural Fires Act 1997* landowners are responsible for carrying out hazard reduction activities to protect existing dwellings, major buildings and other assets susceptible to fire.

Under the Act, landowners can apply for a bush fire hazard reduction certificate to clear land for this purpose. Approval for hazard reduction work is granted by an issuing authority; this is usually the NSW Rural Fire Service but can sometimes be other authorities such as councils if the land is bush fire prone.

Other key provisions contained in the *Rural Fires Act 1997* include:

- the establishment of local Bush Fire Management Committees and the requirement for Bush Fire Risk Management Plans to be developed
- the introduction of Bush Fire Environmental Assessment Codes for land
- permit and notice requirements
- the issue of bush fire safety authorities for bush fire prone land that may be used for rural, residential or special fire protection purposes.

Division 9 Vegetation Clearing Work

On 1 August 2014 the *Rural Fires Amendment (Vegetation Clearing) Act 2014* came into effect. The Act amended the *Rural Fires Act 1997* by inserting a new Division to provide for the 10/50 vegetation clearing entitlement scheme. The principal sections of the Division which relate to the scheme are sections 100R and 100Q.

100R carrying out vegetation clearing work

Section 100R states:

- “(1) The owner of land situated within a 10/50 vegetation clearing entitlement area may carry out any of the following vegetation clearing work on that land despite any requirement for an approval, consent or other authorisation for the work made by the Native Vegetation Act 2003 or the Environmental Planning and Assessment Act 1979 or any other Act or instrument made under an Act:*
- (a) the removal, destruction (by means other than by fire) or pruning of any vegetation (including trees or parts of trees) within 10 metres,*
 - (b) the removal, destruction (by means other than by fire) or pruning of any vegetation, except for trees or parts of trees, within 50 metres,*
- of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility.*
- (2) Vegetation clearing work carried out pursuant to subsection (1) must be carried out in accordance with the 10/50 Vegetation Clearing Code of Practice.*
- (3) It does not matter whether the residential accommodation or high-risk facility is located on the owner’s land or on adjoining land.*
- (4) Vegetation clearing work on any land may only be carried out pursuant to subsection (1) by or with the authority of the owner of the land.*
- (5) This section does not apply to a building containing habitable rooms if there is no development consent or other lawful authority under the Environmental Planning and Assessment Act 1979 for the use of those rooms as habitable rooms.*
- (6) The Commissioner may prescribe in the 10/50 Vegetation Clearing Code of Practice whether particular rooms of a building are or are not habitable and what is or is not an external wall of a building.”*

The types of residential accommodation captured by the scheme include boarding houses, dwelling houses, hotels/motels, caravans installed in caravan parks, manufactured homes installed in manufactured home estates, and seniors housing. High risk facilities are schools, child care centres and hospitals.

A ‘10/50 vegetation clearing entitlement area’ is determined by the Commissioner of the NSW Rural Fire Service. Landowners can find out if their property falls within a 10/50 vegetation clearing entitlement area by accessing the NSW Rural Fire Services’ online tool at www.rfs.nsw.gov.au and entering an address or lot number to find out whether the 10/50 scheme applies to their property.

The online tool will also inform landowners whether any restrictions for clearing on their property apply.

100Q The 10/50 Vegetation Clearing Code of Practice

Section 100Q states:

- “(1) The Commissioner is to prepare a 10/50 Vegetation Clearing Code of Practice for the carrying out of vegetation clearing work on land situated within a 10/50 vegetation clearing entitlement area pursuant to section 100R. The Code of Practice must (without limitation) deal with the following:*
- (a) the type of vegetation that can and cannot be cleared, including the types of trees,*
 - (b) the circumstances in which vegetation should be pruned and not entirely removed,*
 - (c) use of herbicides,*
 - (d) managing soil erosion and landslip risks,*
 - (e) protection of riparian buffer zones,*
 - (f) protection of Aboriginal and other cultural heritage,*
 - (g) protection of vegetation that the owner of the land on which vegetation clearing work may be carried out is under a legal obligation to preserve by agreement or otherwise.*
- (2) The Commissioner may amend the 10/50 Vegetation Clearing Code of Practice from time to time.*
- (3) The 10/50 Vegetation Clearing Code of Practice prepared under this section, including any amendment of the Code:*
- (a) must be published in the Gazette, and*
 - (b) takes effect on the day on which it is published in the Gazette.*
- (4) The 10/50 Vegetation Clearing Code of Practice is to be made publicly available, as soon as practicable after publication in the Gazette:*
- (a) by publishing it on the NSW Rural Fire Service website, and*
 - (b) by providing it as a hardcopy, on request and without charge, to any owner of land situated within a 10/50 vegetation clearing entitlement area.”*

The 10/50 Vegetation Clearing Code of Practice was prepared in collaboration with the NSW Rural Fire Service, the Office of Environment and Heritage and the then Department of Planning. It is a living document which outlines how vegetation clearing within a 10/50 area is to be undertaken.

The Code addresses each of the requirements provided under section 100Q(1)(a)-(g) in detail. To illustrate, the Code explains that:

- all vegetation other than mangroves and salt marshes on public land may be cleared (section 100Q1(a))
- clearing of vegetation within 10 metres of a prescribed stream, as identified by the Office of Environment and Heritage is not permitted (section 100Q(1)(e))

- clearing may not be carried out in areas identified by the Office of Environment and Heritage as containing Aboriginal or other cultural heritage, unless in accordance with conditions provided by the Office of Environment and Heritage for that purpose (section 100Q(1)(f))
- clearing must not inconsistent with any land management agreements which may apply to a person's property (eg conservation agreements under Division 12, Part 4 of the *National Parks and Wildlife Act 1974*; section 100Q(1)(g)).

It is important to note that the types of matters which may be regulated by the 10/50 Vegetation Clearing Code of Practice is not limited to those matters provided at section 100Q(1). As it is currently worded, the section contains sufficient flexibility ('without limitation') to allow additional matters to be incorporated into the Code of Practice, if required. Section 100Q(2) is the mechanism which enables this to occur.

A person cannot use the 10/50 scheme to clear vegetation if their property is not located in a 10/50 vegetation clearing entitlement area. Similarly, an owner of land within a 10/50 area may not carry out vegetation clearing work contrary to the 10/50 Code. In these cases, where an authorisation, approval or consent for the clearing is actually required, and s/he conducts that work without those approvals, then offence provisions under relevant legislation will apply.

Both the 10/50 Vegetation Clearing Code of Practice and the legislative provisions for 10/50 scheme make it clear that vegetation clearing can only be conducted with the consent of the landowner. The Code of Practice recommends that evidence of consent be recorded.

Process for review

Section 100S of the *Rural Fires Act 1997* explains the process for the review of the 10/50 vegetation clearing entitlement scheme. In accordance with section 100S(1), the Minister is to review Division 9 to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives.

The review is to be undertaken as soon as possible after the period of 2 years from the date the Division commences. The outcome of the review is to be reported to the Premier as soon as practicable after the review is completed.

The statutory requirement has been met through this Review, which has been brought forward by a year.

Consultation

Consultation process

Initial consultation process

A number of concerns regarding the 10/50 vegetation clearing entitlement scheme were raised with the NSW Rural Fire Service following its introduction on 1 August 2014. These related to:

- the vegetation clearing entitlement area: the maps not being made available as part of the public exhibition process, and the extent of the buffers for the vegetation clearing entitlement area
- concerns regarding the timeframe of the public exhibition of the draft 10/50 Vegetation Clearing Code of Practice
- limited provision for the protection of the environment and general impacts of the 10/50 scheme.

The 10/50 vegetation clearing entitlement area

On 1 August 2002, the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002* amended the *Rural Fires Act 1997* and the *Environmental Planning and Assessment Act 1979* to provide significant improvements in bush fire safety. This included a requirement for the preparation of a bush fire prone land map identifying vegetation within local government areas that has the potential to support a bush fire.

The bush fire prone land map is the trigger for the consideration of bush fire protection measures for new development (*Planning for Bush Fire Protection* and *Australian Standard 3959-2009 – Construction of buildings in bush fire prone areas*).

The vegetation that councils map for the purpose of bush fire prone land maps is the vegetation that the NSW Rural Fire Service uses as the basis for determining a 10/50 vegetation clearing entitlement area. The vegetation in the bush fire prone land maps is identified as either Category 1 or Category 2 based on the bush fire risk of the vegetation.

Category 1 vegetation includes forest, woodlands, heath and forested wetlands greater than 1 hectare in size. This category is the most hazardous in terms of bush fire risk. Category 2 vegetation includes rainforest, shrubland, mallee, grasslands, freshwater wetlands and pockets of Category 1 vegetation less than 1 hectare within close proximity to other mapped vegetation. Category 2 vegetation poses less risk from bush fire than Category 1.

The buffers for the 10/50 vegetation clearing entitlement area were developed using national research which demonstrated that nearly 100 percent of homes lost during bush fires occurred within 350 metres of bushland. Accordingly, the 10/50 vegetation clearing entitlement area covered residential accommodation and high risk facilities within 350 metres of both Category 1 and Category 2 bush fire prone vegetation.

A number of councils and community groups expressed concerns about the application of the buffer, particularly to smaller parcels of land. Following discussions with councils, site inspections

and community feedback, amendments were made to the 10/50 vegetation clearing entitlement area to improve its operation.

On 30 September 2014, the size of the buffer for Category 2 vegetation was reduced from 350 metres to 150 metres. The buffer for Category 1 vegetation remained unchanged.

The NSW Rural Fire Service also refined the criteria for re-classifying smaller parcels of Category 1 vegetation to Category 2, and the criteria to exclude some parcels of vegetation entirely, such as narrow disconnected strips of vegetation. The re-classification was based on the reduced fire risk that these smaller parcels posed.

The NSW Rural Fire Service's *Guide for Bush Fire Prone Land Mapping* was also updated to reflect the change in classification. This gives councils the ability to re-classify the smaller parcels of vegetation where it is appropriate to do so.

The updated *Guide for Bush Fire Prone Land Mapping* is available at www.rfs.nsw.gov.au. Councils wanting to review their Bush Fire Prone Land maps can do so in line with the updated guide. Any updated maps are sent to the NSW Rural Fire Service for certification.

The 10/50 online mapping tool was also amended to reflect the certified changes to the Bush Fire Prone Land maps.

Review consultation process

On 1 October 2014 the NSW Rural Fire Service brought forward its formal review of the 10/50 scheme. This followed feedback which indicated that, in certain areas, the scheme was being used for purposes other than bush fire protection, concerns about environmental protection mechanisms and general impacts of the 10/50 Scheme.

There was general support for bringing the review forward. Submissions to the review were invited through 10.50@rfs.nsw.gov.au.

As a result, further measures were introduced to mitigate instances of abuse while the review was underway.

Since 28 November 2014, the buffers for Category 1 and Category 2 vegetation have been reduced to 100 metres and 30 metres respectively. This means that currently a property must be within 100 metres of Category 1 vegetation or 30 metres of Category 2 vegetation in order to remove trees and vegetation under the 10/50 scheme.

Submissions

At the close of public consultation on 14 November 2014 3,579 submissions had been received. Many of these were form letters, however around 1,000 were detailed submissions. Thirty six councils provided submissions to the review. Of these the vast majority were councils within the greater Sydney metropolitan area, followed by the North Coast, South Coast and the Hunter region. A small number of submissions were received from councils in western NSW.

Review process

The NSW Rural Fire Service, Office of Environment and Heritage and Department of Planning and Environment prepared the initial 10/50 Vegetation Clearing Code of Practice.

These agencies considered the submissions received, and continued to work with each other in the discussion and development of recommendations for the areas in which they have portfolio responsibility.

A number of themes emerged from a review of the submissions. These themes, and the resulting recommendations, are discussed in more detail in the following pages.

Findings of the Review

Administrative issues

Moratorium or repeal of the 10/50 scheme

The issue of a moratorium was raised in submissions to the Review. The request for a moratorium was to enable vegetation clearing work to be suspended while the Review was underway.

While a moratorium would have the effect of suspending any vegetation clearing work being undertaken under the 10/50 scheme, it would have failed to protect those parts of the community, which utilise the scheme for genuine fire protection purposes.

Similarly, many submissions to the Review suggested a complete repeal of the 10/50 scheme. The basis for repeal was similar to that proposed for the moratorium (i.e. abuse of the scheme for purposes other than bush fire protection).

The recommendations contained in the report are a direct response to issues of greatest concern to stakeholders. While concerns regarding the scheme may continue, these should be mitigated through the recommendations, which strike an appropriate balance between environmental and cultural concerns of the community, the ability for the scheme to better operate within the planning framework, and the protection of life and property from bush fire.

These revised arrangements will effectively address stakeholder concerns for which a moratorium or repeal was being sought. On that basis, moratorium or repeal of the scheme is not supported by the Review.

Approvals and Site Assessment

A number of submissions sought that the self-assessment process be replaced with an approval process that included a site assessment by government authorities. It was noted that the Bush Fire Environmental Assessment Code was a good model with Bush Fire Hazard Reduction Certificates issued by the NSW RFS in most cases along with local government in some cases.

The 10/50 Scheme was introduced by the Government to reduce red tape and provide for landowners to self-manage vegetation on their property in areas at risk from bush fire events. Establishing an approval process would not align with this intent. In addition, the NSW RFS is not resourced to operate to address requests by the residents of NSW to clear single trees.

The Review does not support the replacement of the self-assessment process with an approval process that includes a site assessment.

Landowners are still able to utilise the *Bush Fire Environmental Assessment Code* with bush fire hazard reduction certificates if they fall outside the 10/50 vegetation clearing entitlement area or wish to have a site assessment.

Environmental matters

Areas of international significance

The Convention on Wetlands of International Importance (the 'Ramsar Convention') is an intergovernmental treaty which establishes the framework for the conservation of wetlands and their resources. Australia has been a signatory to the Convention since 1975 and has 65 designated sites across Australia. It should be noted that the vast majority of areas of international significance are located on public land.

Submissions to the Review suggested that additional protections should be provided to Ramsar wetlands as well as World Heritage areas; stakeholders proposed that areas of international significance be excluded from the operation of the 10/50 scheme. This is supported by the Review.

Data provided by the Office of Environment and Heritage for World Heritage areas and Ramsar wetlands that are mapped in the NSW Rural Fire Service online tool will be excluded from the operation of the 10/50 scheme. Clause 7.2 of the 10/50 Vegetation Clearing Code of Practice will be amended to reflect this exclusion.

Recommendation 1 – exclude World Heritage and Ramsar wetlands

That clause 7.2 of the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) World Heritage areas and
- b) Ramsar wetlands

maps as provided by the Office of Environment and Heritage, from the operation of the 10/50 scheme.

Threatened biodiversity (species and ecological communities)

Significant feedback was received regarding the absence of protections for threatened species and endangered ecological communities within the 10/50 Vegetation Clearing Code of Practice.

Core koala habitats

Stakeholders also specifically suggested that core koala habitats be excluded from the operation of the 10/50 scheme. State Environmental Planning Policy 44 ('SEPP') is the principal planning instrument relating to core koala habitats; it seeks to encourage the proper conservation and management of areas of natural vegetation which provide a habitat for koalas by:

- (a) requiring plans of management to be prepared before any development consent can be granted in relation core koala habitat areas, and
- (b) encouraging the identification of core koala habitat areas, and
- (c) encouraging the inclusion of core koala habitat areas in environment protection zones.

Councils may prepare comprehensive Koala Plans of Management under SEPP 44 that include mapped core koala habitat. These maps have not been collated for NSW; they reside with the individual councils.

The Review agrees that additional protections for core Koala habitats be provided under the 10/50 scheme.

The Department of Planning and Environment has agreed to collate core koala habitat areas identified in comprehensive Koala Plans of Management for inclusion into the NSW Rural Fire Service online tool. Core koala habitat identified within site specific Koala Plans of Management will not be excluded from the operation of the 10/50 scheme. These sites have been subject to merit assessment and conserve core koala habitat by controlling subdivision and development through conditions of consent and other legal agreements.

This amendment will be achieved through an update to the 10/50 Vegetation Clearing Code of Practice and the NSW Rural Fire Service online tool.

Recommendation 2 – exclude core koala habitat in comprehensive Koala Plans of Management

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within mapped core koala habitats for comprehensive Koala Plans of Management as provided by the Department of Planning and Environment, from the operation of the 10/50 scheme.

Excluding threatened species, habitat or ecological communities from the operation of the 10/50 scheme is problematic as mapping for all threatened entities is not complete nor accurate at the property scale, particularly near homes on private properties. It is also of note that the intent of the 10/50 scheme is to provide for bush fire safety considerations, and that the operation of the scheme is close to homes, where habitat characteristics are likely to be highly managed environments.

The NSW Scientific Committee under the *Threatened Species Conservation Act 1995* determines listings of threatened species and ecological communities and decides on their level of risk, from the most at risk of extinction ('critically'), through to 'vulnerable'. Critically endangered plants, and (where appropriate mapping is available), critically endangered ecological communities could be excluded.

Critically endangered animals include mobile and often wide ranging species; as the existing mapping is not accurate at the site scale, it is not feasible to exclude all potential habitat areas from the 10/50 Code.

Areas where fine scale mapping is available for Critically Endangered Ecological Communities, along with records of Critically Endangered Plants could be used to exclude properties from the operation of the 10/50 scheme. These 10/50 excluded ecological communities are:

- a) Agnes Bank woodland in the Sydney Basin Bioregion
- b) Blue Gum High Forest in the Sydney Basin Bioregion

- c) Cumberland Plain Woodland in the Sydney Basin Bioregion
- d) Elderslie Banksia scrub forest
- e) Hygrocybeae community of Lane Cove Bushland Park
- f) Kincumber Scribbly Gum Forest
- g) Shale Sandstone Transition Forest in Sydney Basin Bioregion
- h) Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion.

Critically Endangered Ecological Communities for which fine scale maps do not exist will not be excluded from the operation of the 10/50 scheme. It should be noted that these are not located in densely populated areas.

Other Threatened Ecological Communities are generally not mapped at the fine scale.

Although identified areas will be excluded from 10/50 arrangements, landowners may still apply for a bush fire hazard reduction certificate where required.

The Review subsequently recommends that listed critically endangered ecological communities and records of critically endangered plants be excluded from the operation of the 10/50 scheme.

Critical habitat as mapped by the Office of Environment and Heritage will also be excluded from the operation of the 10/50 Code. This will be achieved through an amendment to clause 7.2 of the 10/50 Vegetation Clearing Code of Practice and an update to the NSW Rural Fire Service online tool.

Recommendation 3 – exclude certain critically endangered ecological communities, critically endangered plants and critical habitat

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) Agnes Bank woodland in the Sydney Basin region
 - Blue Gum High Forest in the Sydney Basin Bioregion
 - Cumberland Plain Woodland in the Sydney Basin Bioregion
 - Elderslie Banksia scrub forest
 - Hygrocybeae community of Lane Cove Bushland Park
 - Kincumber Scribbly Gum Forest
 - Shale Sandstone Transition Forest in the Sydney Basin Bioregion
 - Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion
- b) records of critically endangered plants and
- c) land mapped as critical habitats.

from the operation of the 10/50 scheme. These areas will be mapped in the 10/50 online tool based on information provided by the Office of Environment and Heritage.

A number of submissions raised the issue of protections for threatened animal species; these were typically confined to those species present in the local area. It was suggested that the 10/50 Vegetation Clearing Code of Practice be updated to exclude threatened animal species and their resource trees from the operation of the scheme.

In general individual threatened species, habitats and populations will not be excluded from the 10/50 scheme. Some threatened animals, for example, use common habitat elements such as flowering trees for foraging. Additionally, by the very nature of their mobility, threatened animals cannot generally be mapped in a way which would be useful for the application of the 10/50 scheme. Such a provision could exacerbate neighbour disputes and focus contention on highly mobile threatened animals.

It is noted that any conditions of consent relating to vegetation (including those regarding threatened species and threatened ecological communities), which may be attached to land title will prevail over the 10/50 scheme as identified in Recommendation 3.

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') establishes the legal framework for the protection and management of nationally and internationally important flora, fauna, ecological communities and heritage places ('Matters of National Environmental Significance'). Submissions to the Review suggested that greater consideration be given to the EPBC Act and its application to the 10/50 scheme.

The EPBC Act may require approval for impacts on threatened biodiversity listed under that Act. NSW cannot take on a role that sets conditions as to whether a landowner has, or has not, committed a breach of the EPBC Act.

The Commonwealth Department of Environment has advised that the EPBC Act is not about regulating day-to-day land management; fire prevention activities that are unlikely to require approval by the federal government may include, among other things, clearing of a defensible space around a home or rural asset in accordance with state/territory and local government requirements."

However, NSW can and does advise landowners of the requirements of the EPBC Act and how further information may be obtained. This guidance exists externally to the 10/50 scheme.

As the Review proposes to exclude various matters of national environmental significance such as critically endangered plants, critically endangered ecological communities, Ramsar wetlands, World Heritage, and vegetation protected by Commonwealth strategic approval of North West and South West Sydney Growth Centres (which will be discussed below) from the operation of the 10/50 scheme, no further changes are proposed.

The NSW Rural Fire Service will, however, continue to provide links to the Commonwealth Fact Sheet through its website.

Significant vegetation

SEPP 14 (Coastal Wetlands) seeks to ensure that the coastal wetlands in NSW are preserved and protected in the environmental and economic interests of the State. Under SEPP 14 more than 1,300 wetlands of what is called ‘high natural value’ have been identified. Wet vegetation communities can at times be dry and subject to extreme fire conditions.

Within the Sydney metropolitan area, wetlands are provided for by Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Regional Environmental Plan No 20 — Hawkesbury-Nepean River (No 2—1997).

Other key SEPPs include SEPP 26 (Littoral rainforest) which provides a mechanism for the consideration of development applications likely to have a significant impact on littoral forest areas.

A review of submissions and discussion with relevant agencies identified that all SEPP 14 Coastal Wetlands, and SEPP 26 Littoral Rainforest and wetlands mapped under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (No 2 – 1997) should be excluded from the operation of the 10/50 scheme. This is supported by the Review.

Recommendation 4 – exclude State Environmental Planning Policies 14 (Coastal Wetlands) and 26 (Littoral Rainforest), and wetlands in Sydney Regional Environmental Plans for Sydney Harbour and the Hawkesbury Nepean

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within:

- a) State Environmental Planning Policy 14 (Coastal Wetlands) and wetlands mapped under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (No 2 – 1997), and
- b) State Environmental Planning Policy 26 (Littoral Rainforest)

maps as provided by the Department of Planning and Environment, from the operation of the 10/50 scheme.

State Environmental Planning Policy (Sydney Region Growth Centres) 2006 co-ordinates the release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney Region. It contains areas of significant native vegetation and to balance urban growth with biodiversity conservation, the land has been bio-certified.

Biodiversity Certification has been granted over the Growth Centres SEPP, which addresses biodiversity issues upfront. One of the relevant biodiversity measures applying to the certification is the permanent protection of 2000 hectares of high quality vegetation within the Growth Centres. For precinct planned areas, this vegetation is identified on Native Vegetation Protection Maps as “existing native vegetation area” and “native vegetation retention area”. For areas yet to be precinct planned, this vegetation is identified as Environment Conservation, Public Recreation—Regional and Public Recreation—Local Zones and Additional High Conservation Value Vegetation (AHCVV), which are areas of vegetation which were found during groundtruthing, but was not originally identified on maps 4 and 5 of the draft Growth Centres Conservation Plan.

A review of submissions and discussion with agencies identified that all land associated with areas of high environmental significance identified as part of the bio-certification of the Sydney Growth Centres should be excluded from the operation of the 10/50 scheme. This is supported by the Review.

Recommendation 5 – exclude vegetation identified as part of the bio-certification of the Sydney Region Growth Centres

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude land parcels (lots) which are wholly or partly within mapped areas of high environmental significance identified as part of the bio-certification of the Sydney Region Growth Centres based on information provided by the Department of Planning and Environment from the operation of the 10/50 scheme.

State Environmental Planning Policy No 71—Coastal Protection applies to the NSW Coastal Zone and aims to foster a strategic and consistent approach to coastal planning and management.

A review of submissions and discussion with agencies identified that all land parcels (lots) that are wholly or partly within 100 metres of the NSW coastline (including all estuaries) should be excluded from the operation of the 10/50 scheme. This is supported by the Review.

To ensure that the visual amenity of the coast is protected, to protect and preserve beach environments and beach amenity, and to protect and preserve native coastal vegetation, removal of vegetation for bush fire risk management purposes would be more appropriate under existing hazard reduction and tree preservation assessment processes.

Recommendation 6 – exclude land parcels within 100 metres of the coastline or estuaries

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude all parcels of land (lots) that are wholly or partly within 100 metres of:

- a) the NSW coastline map
- b) mapped estuaries

as provided by Land and Property Information from the operation of the 10/50 scheme.

Stakeholders also considered that all mangroves and saltmarshes (estuarine habitats which support a variety of fish, birds and other animals) be excluded from the operation of the scheme. Mangroves and saltmarsh have high biodiversity value and present a low bush fire risk.

Based on advice from NSW Fisheries, mangroves and saltmarsh are expected to occur only on public land. Current state-wide mapping of these vegetation types is not at an extent that could inform mapping on a property scale. The Review understands that NSW Fisheries have mangrove and saltmarsh Fact Sheets available to the public to assist in the identification of these types of vegetation.

The exclusion of mangroves and saltmarshes from the 10/50 scheme is also supported by the Review. Clause 7.2 of the 10/50 Vegetation Clearing Code of Practice will be updated to reflect this amendment and any relevant mapping incorporated into the online tool.

Recommendation 7 – exclude mangroves and saltmarshes

That the 10/50 Vegetation Clearing Code of Practice be amended to exclude all mangroves and saltmarshes from the operation of the 10/50 scheme, by removing the term 'public land' from the current clause.

Lord Howe Island is an extremely sensitive environment. As such the Review recommends that the 10/50 scheme should not apply. The exclusion of Lord Howe Island will also address protection of the Critically Endangered Ecological Communities at this site.

Recommendation 8 – exclude Lord Howe Island

That Lord Howe Island be excluded from the operation of the 10/50 scheme.

An additional proposal put to the Review was for publicly funded restoration initiatives such as LandCare and BushCare to be excluded from the operation of the 10/50 scheme. Initiatives such as LandCare seek to manage the natural environment through sustainable practices.

There is no state-wide mapping, nor repository of data that can identify which sites have been funded under these projects. The Review notes that a significant amount of the restoration work occurs on public land and clearing cannot be undertaken on public land without the consent of the public land manager. The collation of such data would have a far broader application than that of the 10/50 scheme and is therefore not a matter to be pursued under the 10/50 Scheme. The Review does not recommend that publicly funded restoration initiatives be captured under the 10/50 scheme.

The Review does not recommend that publicly funded restoration initiatives be captured under the 10/50 scheme.

General biodiversity

A common theme emerging from the Review was the impact of the 10/50 vegetation clearing entitlement area upon common biodiversity; stakeholders expressed concern for harm to individual animals, the loss of wildlife habitat and habitat trees (such as tree hollows) and disruptions to the wildlife corridor.

In terms of any direct impact and harm to wildlife, it should be noted that accidental/incidental injury to wildlife is not a focus of compliance enforcement, consistent with the NSW Office of the Director of Public Prosecution's guidelines. Deliberate cruelty to animals however may be subject to prosecution under the *Prevention of Cruelty to Animals Act 1979*.

The Review understands that there is no simple mapping or method for determining wildlife habitat. The identification of whether particular trees have hollows is not something that landowners would be able to readily undertake.

It is noted that many of the recommendations contained in this report will decrease the impact on common biodiversity.

Nonetheless, the Review recommends that the 10/50 Vegetation Clearing Code of Practice and NSW Rural Fire Service Frequently Asked Questions be updated to provide advice to landowners on impacts which may occur to wildlife as a result of the 10/50 scheme.

Recommendation 9 – provide education on impacts to wildlife

That the 10/50 Vegetation Clearing Code of Practice and NSW Rural Fire Service Frequently Asked Questions be updated to provide advice to landowners on impacts which may occur to wildlife as a result of the 10/50 scheme.

Definition of ‘tree’

Section 100P of the *Rural Fires Act 1997* defines a tree as:

a perennial woody plant having a single stem or trunk and which is 3 or more metres in height and the trunk of which has a circumference at a height of 1.3 metres above the ground of more than 0.3 metres. Shrubs, woody plants with multiple stems or vines are excluded from the definition.

A number of stakeholders suggested that the definition of tree be amended incorporate trees with multiple stems. This recommendation is supported by the Review.

This could be achieved through an amendment to section 100P of the *Rural Fires Act 1997*. Vines and shrubs will continue to be excluded from the definition.

Recommendation 10 - expand the definition of tree to limit clearing of multi-stemmed trees beyond 10 metres

That section 100P of the *Rural Fires Act 1997* be amended to state that a tree is a *perennial woody plant having one or more self supporting trunks and which is 3 or more metres in height and a trunk of which has a circumference of 1.3 metres above the ground of more than 0.3 metres.* Vines and shrubs will continue to be excluded from the definition.

The location of trunks and the 10/50 rule

The Review believes that further clarity is required with respect to measuring the distance of a tree that can be removed under section 100R(1)(a). The wording currently provides for any part of the tree to be removed that is within 10 metres. This creates significant confusion for the landowner. The practical effect of this is that only part of a trunk may fall within 10 metres of a person's residence. Clarity is required to ensure that the landowner may remove the whole tree if a specified part of the trunk falls within 10 metres. This approach would reduce confusion and provide some legal clarity for landowners.

In order to resolve this it is proposed that the ‘tree’ distance provision be further refined to include reference to the distance from the trunk of a tree; being any part of the trunk of the tree at 1.3 metres that is within 10 metres of a residential accommodation or high risk facility. This is selected because the trunk/s of a tree are not commonly straight and it is difficult to describe in practical and legal terms where the trunk begins and ends.

The Review recommends that this should be addressed by amending the *Rural Fires Act 1997* to clarify the distance for a tree to be removed is further refined by the distance of the trunk from the residential accommodation or high risk facility, being any part of the trunk of the tree at 1.3 metres that is within 10 metres of a residential accommodation or high risk facility. This amendment should not restrict the pruning of any tree branches that occur within the 10 metre distance irrespective of the distance of the trunk.

Recommendation 11 – clarify the distance at which a tree may be removed

That the *Rural Fires Act 1997* be amended to clarify the distance for a tree to be removed is defined by the distance of the trunk from the residential accommodation or high risk facility, being any part of the trunk of the tree measured at 1.3 metres that is within 10 metres of a residential accommodation or high risk facility.

Native versus non-native vegetation

A number of submissions expressed uncertainty as to the application of the 10/50 scheme to native and non-native vegetation. The Review recommends that the NSW Rural Fire Service Frequently Asked Questions be updated to advise that the scheme applies to both vegetation types.

Recommendation 12 – provide advice on native versus non-native vegetation

That the NSW Rural Fire Service Frequently Asked Questions be updated to advise that the scheme applies to both native and non-native vegetation.

Riparian zones adjacent to waterbodies

The 10/50 Vegetation Clearing Code of Practice presently states that the clearing of vegetation is not permitted within 10 metres of a Prescribed Stream, as identified by the Office of Environment and Heritage.

The distance (metres) is measured from the highest bank or tidal limit if there is no defined high bank. This applies to either side of a Prescribed Stream.

However, for historical reasons, not all waterbodies are included in the Prescribed Stream list, such as the Parramatta River because the NV Act does not apply to all parts of NSW and because Prescribed Streams do not include minor waterbodies.

Some submissions raised issues about the Prescribed Streams layer, including that the maps were not clear enough, that some rivers and waterbodies were not included, and that the 10 metre buffer is not consistent with buffer distances under other regulatory regimes.

There is no single legislative mechanism that requires approval for the removal of riparian vegetation in NSW. Consequently, for the operation of the 10/50 Vegetation Clearing Code of Practice, the relevant other regulatory regimes are those which prohibit vegetation clearing. These are the NV Act and local Tree Preservation Orders.

A number of submissions suggested that riparian protection zones be aligned to the distances provided under the *Water Management Act 2000* ('the WM Act'). With respect to the WM Act, the Office of Water has advised that controlled activities comprising nothing more than the removal of vegetation in circumstances that would otherwise be lawful do not require a 'controlled activity approval'.

To fully address issues around riparian areas, a state-wide waterbodies map is required. A state-wide map of waterbodies is available from Land and Property Information (LPI). This is currently the best available waterbodies layer. However, there are a number of practical implementation

issues, including that the application of a 10 metre buffer on very minor streams would overly constrain the operation of the 10/50 scheme.

Very minor streams are often termed “first order” or “second order” streams. The LPI map would enable these very minor streams to be “switched off” from buffering requirements. However there is no practical means of separating those waterbodies that require a buffer and those that don’t to the landowner. Displaying the map of waterbodies highlights an imagery displacement issue as the waterbody from the map will be in a different location to the waterbody displayed on the Google imagery.

To ensure that all appropriate waterbodies are captured, it is proposed that the Prescribed Stream layer be removed from the online tool, and replaced with a general requirement to exclude clearing of vegetation within 10 metres of wetlands and streams that are 2 metres or more in width between the highest banks of streams. This amendment will also be reflected in the 10/50 Vegetation Clearing Code of Practice.

The Review notes that improvements to the 10/50 Vegetation Clearing Code of Practice could be facilitated in the future if a state-wide map of waterbodies was prepared with spatial mapping of the waterway boundary. The NSW Rural Fire Service will consult with Land and Property Information and government authorities to determine how this could be achieved. Such a map would also need to identify relative size differences (such as stream order) of those waterways such that very minor streams could be excluded.

The following definition will be inserted into the 10/50 Vegetation Clearing Code of Practice to define what a riparian buffer relates to:

water body means a natural water body, (whether or not artificially modified) and includes but is not limited to:

- a) a lake, lagoon, or wetland, or
- b) a stream.

wetland means any shallow body of water (such as marsh, billabong, swamp or sedgeland) that is inundated cyclically, intermittently or permanently with water.

stream means a natural or artificially enhanced channel down which surface water concentrates and flows that is classified as being perennial, intermittent or seasonal, or ephemeral where:

- a) perennial means a stream that flows continuously, these streams are generally associated with a water table in the localities through which they flow, and
- b) intermittent or seasonal means a stream that flows only in certain times of the year, and
- c) ephemeral means a stream that flows only in direct response to rainfall, and whose channel is mostly above the water table.

Recommendation 13 – protect riparian buffers by extending to more streams and wetlands

That:

- a) the Prescribed Stream layer be removed from the online tool, and replaced with a general requirement to exclude clearing of vegetation within 10 metres of wetlands and streams that are 2 metres or more in width between the highest banks of streams. This amendment will also be reflected in the 10/50 Vegetation Clearing Code of Practice
- b) That the 10/50 Vegetation Clearing Code of Practice be amended to include definitions of 'waterbody', 'wetland' and 'stream' to define what a riparian buffer relates to.

Soil erosion and land slip risks

Soil erosion

The 10/50 Vegetation Clearing Code of Practice presently requires soil erosion and landslip risks to be managed in the following ways:

- there is to be no disturbance of the soil surface
- all topsoil must remain on the soil surface, and
- the use of graders, ploughs and dozers to clear land is not permitted.

Tree removal on slopes greater than 18 degrees is not permitted under the Code unless it is in accordance with the conditions specified in a Geotechnical Engineer Assessment Report undertaken for that purpose. Pruning of trees on slopes greater than 18 degrees is only permitted provided least 75 per cent of the original canopy cover is retained (unless a Geotechnical Engineer Assessment Report states otherwise).

The Review has received considerable feedback regarding soil erosion (as a general issue) and slope assessment. Landowners have found it difficult to measure the slope and are unsure as to what is required in any Geotechnical Engineer Assessment Report. There is also confusion as to what area is being assessed (i.e. the slope of the land under the tree trunk, the tree canopy or the slope of the block).

The Review believes that there is merit in providing more information in the 10/50 Vegetation Clearing Code of Practice to clarify that vegetation must not be removed below ground surface; that ground cover must be maintained and that further advice should be provided as to heavy machinery types which cannot be used for the purpose of clearing. It is proposed that clause 7.5 of the 10/50 Vegetation Clearing Code of Practice be amended to reflect this change.

Recommendation 14 – improve soil erosion measures by amending conditions

That clause 7.5 of the 10/50 Vegetation Clearing Code of Practice be amended to clarify:

- a) that vegetation must not be removed below ground surface
- b) the requirement for ground cover to be retained
- c) the types of heavy machinery which cannot be used for this purpose.

Landslip risks

Vegetation removal on steep slopes is generally authorised by local councils in relation to Tree Preservation Orders and/or Local Land Services (and the Office of Environment and Heritage in relation to the *Native Vegetation Act 2003*).

There are no state-wide maps that could be constructed with accuracy for a property scale and to identify trees that pose a risk. Some councils have 'slope constraint maps' but it is understood that these are based on limitations for development rather than tree removal. These maps are likely to vary between councils. However, if there is an ability to create a state-wide map, this could be revisited.

Eighteen degrees is the gradient that is generally used to describe a steep slope.

Landowners who clear trees and vegetation under the 10/50 scheme are not exempt from civil action. Civil action may be pursued by a party that suffers as a result of a landslip due to the actions of another, such as inappropriate tree removal on slopes.

The application of the 18 degree slope conditions have been put in place to assist landowners in the management of vegetation with a degree of consideration. The measurement of slope is a matter for which the landowner should continue to have responsibility.

The Review recommends that the 10/50 Vegetation Clearing Code of Practice be amended to clarify that landowners have a duty of care in the appropriate management of soil erosion and landslip risks when clearing vegetation under the 10/50 scheme. These landowners will not be exempt from civil liability as a result of negligence or damage occurring during landslip and soil erosion as a result of their clearing.

Recommendation 15 – reduce landslip risks

That the 10/50 Vegetation Clearing Code of Practice be amended to clarify that landowners have a duty of care in the appropriate management of soil erosion and landslip risks when clearing vegetation under the 10/50 scheme.

Landowners will not be exempt from civil liability as a result of negligence or damage occurring during landslip and soil erosion as a result of their clearing.

Cultural heritage

Aboriginal and cultural heritage

Currently, under the 10/50 Vegetation Clearing Code of Practice clearing may not be carried out in areas identified by the Office of Environment and Heritage as containing Aboriginal or other cultural heritage, unless in accordance with conditions provided by the Office of Environment and Heritage for that purpose (section 100Q(1)(f)).

Part 6 of the *National Parks and Wildlife Act 1974* ('NPW Act') provides specific protection for Aboriginal objects and declared Aboriginal places through the establishment of various offences.

An Aboriginal Place is any place declared to be an Aboriginal Place pursuant to section 84 of the *National Parks and Wildlife Act 1974*.

An Aboriginal object is defined under the Act as *any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW being habitation before or concurrent with (or both) the occupation of that area by persons of non Aboriginal extraction, and includes Aboriginal remains.*

The term 'harm' is defined under the NPW Act as, amongst other things, any act or omission that destroys, defaces or damages the object or place or moving the object from the land on which it has been situated.

Submissions raised concern that the public may have difficulty in identifying Aboriginal objects such as culturally modified trees (known as 'scar trees') requiring protection.

The NSW Rural Fire Service on-line tool currently contains all records from the Office of Environment and Heritage's Aboriginal Heritage Information Management System (AHIMS).

AHIMS includes:

- a) information about Aboriginal objects that have been reported to the Secretary, Department of Premier and Cabinet
- b) information about Aboriginal Places which have been declared by the Minister for Environment which have special significance in terms of Aboriginal culture.

It is used by government, industry and heritage professionals who need the information for land-use planning, regulation and conservation management. It is also used by Aboriginal communities to help them manage, conserve and protect local sites and heritage.

The Review understands that only culturally modified trees and Aboriginal Places are substantially at risk from clearing under the 10/50 scheme because Aboriginal objects are generally embedded in the soil, and disturbance of soil is not permitted.

The continued protection of Aboriginal and cultural heritage is supported by the Review.

It is recommended that clause 7.7 of the 10/50 Vegetation Clearing Code of Practice will be amended to provide that all land parcels that are wholly or partly within Aboriginal Places maps as provided by the Office of Environment and Heritage be excluded from the operation of the 10/50 scheme. The NSW Rural Fire Service online tool will be updated to provide for this.

Recommendation 16 – exclude Aboriginal Places

That clause 7.7 of the 10/50 Vegetation Clearing Code of Practice will be amended to provide that all land parcels that are wholly or partly within Aboriginal Places maps as provided by the Office of Environment and Heritage be excluded from the operation of the 10/50 scheme.

It is also recommended that all land parcels that are wholly or partly within maps identifying culturally modified trees as provided by the Office of Environment and Heritage contain conditions to be addressed by the landowner preventing the clearing of any culturally modified trees.

As an additional resource, if land is identified by the NSW Rural Fire Service on-line tool as containing culturally modified trees then the landowners will be required to view the Office of

Environment and Heritage's *Guide to Identify Culturally Modified Trees* to determine if the tree they wish to clear meets the required criteria.

Note: the soil provisions at clause 7.5 will also apply; and development consent conditions may also capture this.

Recommendation 17 – protect Aboriginal culturally modified trees through new conditions

That:

- a) clause 7.7 of the 10/50 Vegetation Clearing Code of Practice will be amended to provide that all land parcels that are wholly or partly within maps identifying culturally modified trees as provided by the Office of Environment and Heritage contain requirements to be addressed by the landowner preventing the clearing of any culturally modified trees.
- b) if land is identified by the NSW Rural Fire Service on-line tool as containing culturally modified trees then the landowners be required to view the Office of Environment and Heritage's *Guide to Identify Culturally Modified Trees* to determine if the tree they wish to clear meets the required criteria.

Other cultural heritage

Local government has responsibility for the protection of local heritage through local environmental planning processes established under the *Environmental Planning and Assessment Act 1979*. This is largely achieved through environmental planning instruments such as regional and local environmental plans.

A number of submissions raised concern that the 10/50 Vegetation Clearing Code of Practice does not consider impacts on state and locally significant heritage such as trees and gardens. Additional protections were requested.

State Heritage is currently identified and excluded from the operation of the 10/50 scheme through the 10/50 Vegetation Clearing Code of Practice and the mapped layer which has been provided by the Office of Environment and Heritage and incorporated into the NSW Rural Fire Service online tool.

Local heritage is mapped by councils as part of their Local Environmental Plans and is provided to the Department of Planning and Environment; these could be collated and used to exclude Local Heritage from clearing under the scheme. Heritage clause 5.10 of the Standard Instrument – Principal Local Environmental Plan provides process by which the heritage impact of removing trees or other vegetation can be assessed.

The Review recommends that clause 7.7 of the 10/50 Vegetation Clearing Code of Practice be amended to provide that land parcels that are wholly or partly within areas mapped as Local Heritage, as provided by the Department of Planning and the Environment be excluded from the 10/50 scheme. The NSW Rural Fire Service online tool will be updated to reflect this change.

Recommendation 18 – exclude local heritage trees

That clause 7.7 of the 10/50 Vegetation Clearing Code of Practice be amended to provide that all land parcels that are wholly or partly within areas mapped as Local Heritage, as provided by the Department of Planning and the Environment, be excluded from the operation of the 10/50 scheme.

The NSW Rural Fire Service online tool will be updated to reflect this change.

10/50 vegetation clearing entitlement area

Bush fire prone land mapping

A key consideration for the review was the accuracy of bush fire prone land mapping; it was suggested that these maps be reviewed. A number of submissions also questioned whether all areas mapped under the bush fire prone land mapping (and buffer areas) were actually subject to bush fire risk. Most people thought the entitlement area was too large.

Since 28 November 2014, the buffers for Category 1 and Category 2 vegetation have been reduced to 100 metres and 30 metres respectively. This means that a property must be within 100 metres of Category 1 vegetation or 30 metres of Category 2 vegetation in order to remove trees and vegetation under the 10/50 scheme. The buffers for the 10/50 vegetation clearing entitlement area were reduced to mitigate instances of abuse while the Review was underway. Consequently, the buffers now align with the buffers used in bush fire prone land maps.

Any landowners whose properties are situated outside of a 10/50 vegetation clearing entitlement area may use existing approval processes such as the Bush Fire Environmental Assessment Code to clear vegetation from their property.

Bush fire risk

A number of submissions contended that the 10/50 scheme was not appropriate for urban areas, and that the entitlement area itself did not adequately represent bush fire risk. Stakeholders also said that the scheme does not distinguish between trees and vegetation which pose a bush fire hazard or recognises the roles that trees may play in protecting a person's property from ember attack. There was also a concern that the 10/50 Vegetation Clearing Code of Practice promotes a misconception that trees are a bush fire risk; the science behind the scheme was also questioned.

For significant stands of forest vegetation a buffer distance of 350 metres was originally adopted. This distance is based on research undertaken by Chen and McAneney (2010) (*Bushfire Penetration into Urban Areas in Australia: A Spatial Analysis*) which indicates that, historically, approximately 99 percent of house loss occurs within 350 metres from the bushland/urban interface. The research was based on 6 large historic fire events (the Marysville, Kinglake, Duffy, Como-Jannali, Otway Ranges and Hobart fires). These fires occurred in predominantly Category 1 vegetation.

Given the public response, which indicated that that the 99 percent house of house loss was too conservative, a buffer distance of 100 metres (for Category 1 vegetation) and 30 metres (for Category 2 vegetation) was adopted.

For Category 1 bushland this distance is based on the research above and accounts for approximately 85% of historical house loss. The Review considers that the current distances in the 10/50 Vegetation Clearing entitlement area are a pragmatic application that is available to the public in the absence of detailed site assessment and should be retained.

Removal of Category 2 vegetation from the 10/50 scheme

As Category 2 vegetation has a considerably lower bush fire risk, it is proposed that the operation of the 10/50 scheme will not apply in those areas (including the associated buffer).

The Review also recommends that councils have the ability propose the re-classification of small bushland reserves from Category 1 vegetation to Category 2 vegetation. To achieve this it is recommended that the Guide to Bush Fire Prone Land Mapping be amended to enable councils to re-classify small bushland reserves made up of Category 1 vegetation to be classed as Category 2 vegetation.

It is proposed that this re-classification be subject the requirement of a written justification by councils for the approval of the Commissioner of the NSW Rural Fire Service. The justification must be able to substantiate bush fire hazard requirements on which the re-classification is being sought.

Recommendation 19 – expand the re-classification of small bushland reserves for category 2 vegetation and exclude from the 10/50 vegetation clearing entitlement area

That:

- a) Category 2 vegetation be excluded from the operation of the 10/50 scheme.
- b) the *Guide to Bush Fire Prone Land Mapping* be amended to expand the classification of small urban bushland reserves made up of Category 1 vegetation to be classed as Category 2 vegetation.
- c) any re-classification of small urban bushland reserves from Category 1 to Category 2 vegetation be subject to a written justification by Councils for the approval of the Commissioner of the NSW Rural Fire Service. The justification must be able to substantiate the bush fire hazard requirements on which the re-classification is being sought.

As part of this amendment, a new category, Category 3 will be created which will contain grasslands and other vegetation such as arid shrubland and will have a 30 metre buffer. The map for Category 3 will be introduced initially as an interim map, solely for the purposes of 10/50, however it will be introduced into bush fire prone land mapping over a 3 year period as part of the standard re-certification process with councils.

Recommendation 20 – create a new Category 3 to provide a different buffer for grasslands and arid shrublands and retain current buffer distances for Category 1.

That a new Category – Category 3 be created to include grasslands, arid shrubland and other lower risk vegetation types. This category will have a 30 metre buffer and be subject to the 10/50 scheme.

That the interim 100 metre buffer for Category 1 be maintained for the purposes of the 10/50 Vegetation Clearing entitlement area.

Planning framework

State-wide application

Definition of 'external walls'

The 10/50 Vegetation Clearing Code of Practice presently states that the term 'external wall' refers to the external walls of a building containing habitable rooms. The definition includes permanent fixed structures such as decks and garages that are attached to the building.

Some submissions suggested that the term align with that used by a recognised source, such as the Building Code of Australia. This is not supported on the basis that the definition has been specifically tailored to the application of the 10/50 scheme.

The Review proposes that exempt developments such as decks which have been constructed according to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* be excluded from the definition of 'external wall'. This is because structures such as decks are required to be made of non-combustible material to be considered exempt development.

These structures are not to be used as a means of extending the development footprint to within 10 metres of a tree that the landowner wishes to remove under the 10/50 scheme.

Recommendation 21 – exclude clearing adjacent to non-combustible exempt developments

That non combustible exempt developments such as decks which have been constructed according to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* be excluded from the definition of 'external wall'.

Habitable rooms

The operation of the 10/50 vegetation clearing entitlement scheme is presently confined to:

- a) residential accommodation, tourist and visitor accommodation and caravans installed in caravan parks within the meaning of the *Standard Instrument – Local Environmental Plan*
- b) manufactured homes installed in manufactured home estates within the meaning of the *Local Government Act 1993*; and
- c) high risk facilities such as schools, child care centres and hospitals.

Non habitable rooms are not captured under the scheme. A number of submissions proposed that the scope of the 10/50 scheme be extended to include structures such as chapels, nursing homes and home based child care. Nursing homes and home based child care are already captured by the scheme; the proposal to extend the scheme's operation to chapels is not supported.

Ecotourism facilities

A number of submissions sought clarity as to whether ecotourism facilities were captured under the definition of 'residential accommodation'.

Ecotourism facilities provide accommodation located in natural areas that are environmentally sustainable. Due to the environmental constraints inherent in ecotourism facilities, special emphasis is given to emergency planning and management, and the provision of onsite sheltering as a last resort. These matters are addressed during the development consent process.

Ecotourism facilities were excluded from the operation of the 10/50 scheme when it was introduced on 1 August 2014 on the basis that their inclusion could potentially result in unintended clearing being undertaken in these areas. The Review recommends that the NSW Rural Fire Service Frequently Asked Questions (www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing) be updated to provide clarity that eco-tourism facilities are not captured under the 10/50 scheme.

Recommendation 22 – clarify that ecotourism facilities are excluded from the scheme

That the NSW Rural Fire Service’s Frequently Asked Questions be updated to make clear that ecotourism facilities are not captured under the 10/50 vegetation clearing entitlement scheme.

Approved dwellings

A number of submissions queried when a building would be considered to contain habitable rooms for the purpose of the 10/50 scheme.

Concerns were raised that the 10/50 Vegetation Clearing Code of Practice could be applied to buildings that were not yet complete, or illegally used for residential accommodation.

The 10/50 Vegetation Clearing Code of Practice presently states that it does not apply to a building containing habitable rooms if there is no development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979* for the use of those rooms as habitable rooms.

Therefore the 10/50 Code applies to a building containing habitable rooms that has development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979*.

For the purpose of clarity, it is proposed to amend the 10/50 Vegetation Clearing Code of Practice definition of habitable rooms to only apply to a building that has a lawful authority for occupancy for all rooms.

This means that any building or part of a building under construction will not be able to access use the 10/50 scheme until an occupation certificate has been issued. If that building is on bush fire prone land, the development approval process would have afforded appropriate bush fire development controls for construction, such as the creation of asset protection zones. Any building that is illegally occupied cannot make use of the 10/50 scheme. Any alterations or additions to a building, requires lawful authority for occupancy of those rooms prior to any clearing under the 10/50 Vegetation Clearing Code of Practice.

Recommendation 23 – clarify that clearing can only be undertaken once lawful authority for occupancy has been obtained

That the 10/50 Vegetation Clearing Code of Practice definition of ‘habitable rooms’ be amended to specify that it only applies to a building containing habitable rooms that has a lawful authority for occupancy for those rooms.

Legal agreements/obligations

A number of Acts provide for the biodiversity conservation through restricting the use of land via a management or legal agreement. Submissions raised concerns over the ability for clearing under the 10/50 Vegetation Clearing Code of Practice to override those agreements.

Clause 7.8 of the 10/50 Vegetation Clearing Code of Practice provides for the 'protection of vegetation to which a legal obligation exists to preserve that vegetation by agreement or otherwise'. It currently includes:

- a) any conservation agreement entered into under Division 12 of Part 4 of the *National Parks and Wildlife Act 1974*
- b) any Trust Agreement entered into under Part 3 of the *Nature Conservation Trust Act 2001*
- c) any property management plan approved by the Director-General of the NSW National Parks and Wildlife Service under section 91 of the *Threatened Species Conservation Act 1995*
- d) any Property Vegetation Plan agreement entered into under Part 4 of the *Native Vegetation Act 2003*
- e) any Biobanking Agreement entered into under Part 3 of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*.

As it currently stands, the 10/50 Vegetation Clearing Code of Practice can be used to override specific agreements within development consents that have been designed to balance the vegetation clearing required for the development whilst minimising environmental and social impacts of any clearing.

These specific agreements commonly have a long history of use by councils to ensure retention of important vegetation. Since 2002 (when *Planning for Bush Fire Protection* was first introduced), development consents in bush fire prone areas have had an assessment that provides measures for protection from bush fire. Such agreements include:

- a) covenants under section 88B of the *Conveyancing Act 1919*, which have been used to secure 'offsets' on land
- b) consents or other conditions attached to the land (e.g. development consent conditions and complying certificates).
- c) Enforcement instruments and any Court orders (e.g. local court, Land and Environment Court) to protect vegetation.

The Review proposes that Clause 7.8 of the 10/50 Vegetation Clearing Code of Practice be amended to include those agreements identified above.

The Review supports the need to exclude the range of Court Orders, Directions, and any other Orders which impose a restriction on the clearing of vegetation on a property. Only seek to exclude

those instruments that place restrictions on the property identified in the instrument. Not to exclude Orders that are applied broadly such as Tree Preservation Orders.

The onus will be on the landowner to determine whether any of the listed agreements apply to their property. The NSW Rural Fire Service online tool will provide guidance as to which authority to contact for information.

Recommendation 24 – expansion of the list of legal agreements/obligations that exclude 10/50

That clause 7.8 of the 10/50 Vegetation Clearing Code of Practice be amended to include the following agreements:

- a) covenants under section 88B of the *Conveyancing Act 1919*, which have been used to secure ‘offsets’ on land
- b) Enforcement instruments and any Court orders (e.g. local court, Land and Environment Court) to protect vegetation.

Recommendation 25 – prevent clearing of vegetation contrary to conditions of development consent

That clause 7.8 of the 10/50 Vegetation Clearing Code of Practice be amended to prevent clearing of vegetation contrary to development consent conditions attached to the land (e.g. development consents and complying certificates).

Other issues

Amenity

Concerns in terms of the effect of clearing on privacy and the roles of trees and vegetation in promoting suburban amenity and character were raised during the course of this Review.

It is recognised that trees and understorey vegetation contribute towards the overall character and amenity of residential and rural areas. Amenity value of trees and vegetation generally is often reflected in local government planning frameworks i.e. Local Environmental Plans, Development Control Plans instruments and policy.

A large proportion of submissions made general comment about the impact of the 10/50 Vegetation Clearing Code of Practice on the character of suburbs and the impact of the 10/50 Code upon privacy and quality of lifestyle associated with individual residences. While these concerns are acknowledged, as the intent of the scheme is to address bush fire risk, no further changes are proposed.

Landowners consent

A number of submissions sought that neighbours should obtain the consent of the adjoining landowner if they were seeking to clear vegetation on their land using the adjoining landowners residential accommodation or high risk facility.

Currently under section 100R(4) of the *Rural Fires Act 1997* vegetation clearing work on any land may only be carried out pursuant to subsection (1) by or with the authority of the owner of the land.

There is no requirement in Division 9 to require the consent of your neighbour to clear on your own land.

It is recommended that the *Rural Fires Act 1997* be amended to include a provision requiring the landowners to obtain the written consent of all neighbours for which they are using the distance from those neighbour's building to clear vegetation on their own property.

Recommendation 26 – landowners to obtain consent of their neighbour if using the distance from their neighbour's building to clear

That section 100R of the *Rural Fires Act 1997* be amended to include a provision requiring landowners to obtain the written consent of all neighbours for which they are using the distance from those neighbour's building to clear vegetation on their own property.

Resourcing

Other issues raised included the impact on councils as a result of greater demand for compliance relating to removal of trees, i.e. breaches of a Tree Preservation Order and checks for illegal dumping; greater demand on landfill and an increase in demand for councils in managing complaints from the public.

It is recognised that there will be a level of impact to councils and other agencies in relation to these matters. A way this could be addressed is through a co-ordinated approach between councils and regulatory agencies involving better awareness of the 10/50 Vegetation Clearing Code of Practice and the penalties for illegal dumping of materials.

Use of herbicides

A number of submissions expressed general concerns regarding the impacts of herbicide use (for example the impact of herbicides on waterbodies and riparian areas); there were some suggestions that the use of herbicides be excluded from the requirements of the 10/50 Vegetation Clearing Code of Practice.

The Department of Primary Industries provided advice on conditions for herbicide use when the 10/50 scheme came into effect; the provision contained in the 10/50 Vegetation Clearing Code of Practice does not differ from existing requirements for herbicide use. No further changes are proposed.

Dangerous trees

It was requested that the scope of the 10/50 scheme be extended to accommodate the removal of any tree that might fall as a result of a bush fire and damage residential accommodation, high risk facilities and a range of other infrastructure such as farm sheds, stock yards and fences.

For this to be achieved criteria would need to be established to enable landowners to determine what constitutes a dangerous tree. There is no known practical method for determining which trees might fall as a result of a bush fire.

The only method would be to provide for all trees to be removed that are the same height or less as the distance to any infrastructure. Such an approach would effectively substantially extend the distance of trees allowed to be cleared under 10/50 scheme.

Councils presently have a role in assessing dangerous trees under clause 5.9 of the Standard Instrument – Local Environmental Plan. Council officers are trained in assessing dangerous trees.

Rural areas covered by the *Native Vegetation Act 2003* have exemptions for landowners to clear trees under a range of routine agricultural management activities. The available exemptions vary by location and can be determined by any landholder using the Office of Environment and Heritage's Native Vegetation online tools www.environment.nsw.gov.au/vegetation/onlinetools.htm. The tool has significantly assisted the farming community; it aims to, and does, prevent technical breaches of the *Native Vegetation 2003*.

For example under section 22 of the *Native Vegetation Act 2003* clearing for routine agricultural management activities is permitted. Section 11(1)(a)(i) of the Act defines routine agricultural management activities as including the imminent risk, construction, operation and maintenance of rural infrastructure, including (subject to the regulations) buildings to the minimum extent necessary.

On this basis the Review does not support the inclusion of the removal of any tree that might fall as a result of a bush fire and damage residential accommodation, high risk facilities and a range of other infrastructure such as farm sheds, stock yards and fences in the 10/50 scheme.

Farm Sheds

Farm sheds are high value assets which should be included within the scope of the 10/50 scheme. This is consistent with the provisions afforded for routine agricultural management activities for this type of infrastructure.

There are no legislative definitions for a farm shed; while a definition of farm building is provided under the Standard Instrument Local Environmental Plan, that definition is too broad. The Review considers that Farm sheds could be structures that:

1. Occur on land zoned rural RU1, RU2, or RU4 but not RU 3 (i.e. Primary Production, Rural Landscape or Primary Production Small Lots);
2. That have a floor area size greater than 50m² (as per the maximum floor area for a cabana, cubby house, fernery, garden shed, gazebo or greenhouse in the Exempt and Complying Development Code 2008); and
3. Are used by a primary producer for the purpose of carrying on a primary production business of:
 - a. Cultivating or propagating plants, fungi or their products (including seeds, spores, fruits, grain, flowers, vegetables, tobacco, bulbs, oils and similar things; other than nurseries
 - b. Dairy farming, poultry and other bird farming, pig farming, bee keeping, or oyster or fish culture;

- c. A pastoralist undertaking the rearing or grazing of livestock such as horses, cattle, and sheep for the purpose of selling them or their bodily produce.

However it does not include processing facilities that do not obtain any produce input from the same land that the processing facility occurs on.

It is proposed that section 100R(1) the *Rural Fires Act 1997* be amended to provide that the 10/50 scheme extends to the external wall of a building that comprises or is part of a farm shed.

Recommendation 27 – extend the clearing entitlement to farm sheds

That section 100R(1) the *Rural Fires Act 1997* be amended to provide that the 10/50 scheme extends to the external wall of a building that comprises or is part of a farm shed.

National Parks

National Parks remain the cornerstone of biodiversity conservation in NSW and are managed for the purpose of conserving cultural and natural values. For national parks in NSW there is a pre-existing bush fire risk planning and management framework. There are also a range of approval mechanisms available to address vegetation clearing for bush fire hazard reduction on and around parks.

It is recommended that national parks be excluded from the operation of the 10/50 scheme by removal from the 10/50 Vegetation Clearing Entitlement Area. This removal will not remove any buffer (and therefore clearing entitlement) on adjoining land.

National parks are inclusive of any land that is dedicated or reserved, or acquired for the purpose of dedication or reservation under the *National Parks and Wildlife Act 1974* as mapped and provided by the Office of Environment and Heritage.

Recommendation 28 – exclude clearing within national parks and nature reserves adjacent to buildings

That National Parks be excluded from the operation of the 10/50 scheme; national parks being inclusive of any land that is dedicated or reserved, or acquired for the purpose of dedication or reservation under the *National Parks and Wildlife Act 1974*.

Online tool

As a general issue, submissions proposed that adjustments be made to the NSW Rural Fire Service on-line tool to improve its functionality and to ensure better correlation of data sources. This is supported by the Review. The NSW Rural Fire Service will work with Land and Property Information in the conduct of this work.

Recommendation 29 – improve the NSW Rural Fire Service on-line tool

That adjustments be made to the NSW Rural Fire Service online tool to improve its functionality. The NSW Rural Fire Service will work with Land and Property Information in the conduct of this work.

Practice Notes

Practice notes and planning circulars provide guidance from the Department of Planning and Environment to councils on issues relating to the implementation of the standard instrument, SEPPs, REPs, regional, metropolitan and draft subregional strategies.

It is proposed a series of practice notices be developed to guide understanding on the relationship between the 10/50 vegetation entitlement scheme and NSW planning system.

The Review recommends that the Department of Planning and Environment work with the NSW Rural Fire Service and local councils in the development of the practice notes.

Recommendation 30 – prepare practice notes to inform specific planning system interactions

That the Department of Planning and Environment work with the NSW Rural Fire Service and local councils in the development of practice notes to guide understanding on the relationship between the 10/50 vegetation clearing entitlement scheme and NSW planning system.

Clearing distances

Issues have been raised in relation to the allowable clearing distances of 10 metres for trees and 50 metres for vegetation. The Review noted that the 10/50 scheme could be amended to 30 metres of vegetation to align more closely with *Planning for Bushfire Protection* and the *Bush Fire Environmental Assessment Code*. A bush fire hazard reduction certificate allows for selective clearing of vegetation and trees up to 30 metres in distance, on a case by case basis.

Given that that these documents are for separate purposes, there does not appear to be a compelling reason to change.