NSW RURAL FIRE SERVICE

NSW GOVERNMENT

10/50 VEGETATION CLEARING CODE OF PRACTICE FOR NEW SOUTH WALES

4TH SEPTEMBER 2015

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The NSW Rural Fire Service acknowledges the participation of the NSW Office of Environment and Heritage, Department of Planning and Environment and the Department of Primary Industries in the preparation of this 10/50 Vegetation Clearing Code of Practice.

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1 Introduction

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 west of Sydney.

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 (NSW RFS) 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.

This Code of Practice is known as the '10/50 Vegetation Clearing Code of Practice for New South Wales (10/50 Code)' and has been prepared in accordance with Section 100Q of the *Rural Fires Act 1997*. The Code was developed in partnership with the Department of Planning and Environment and the Office of Environment and Heritage.

In accordance with the *Rural Fires Act 1997*, this 10/50 Code has been developed to provide for vegetation clearing work to be carried out in certain areas near residential accommodation, high-risk facilities or farm sheds to reduce the risk of bush fire.

The 10/50 Code permits landowners in the 10/50 Vegetation Clearing Entitlement Area to clear, on their own land, vegetation that is adjacent to an external wall of a building:

- containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility; or
- that comprises or is part of a farm shed.

The Commissioner of the NSW RFS may review this 10/50 Code at any time.

2 Definitions

Expressions defined in Part 4, Division 9 of the *Rural Fires Act 1997* have the same meaning for this 10/50 Code.

A definition within the *Rural Fires Act 1997* applies to this 10/50 Code, except where the terms defined in Division 9 of the *Rural Fires Act 1997* apply.

As per Division 9 of the *Rural Fires Act 1997* the following definitions apply:

- **10/50 Vegetation Clearing Code of Practice:** a code of practice under Section 100Q, in force from time to time, relating to the clearing of vegetation on land situated in a 10/50 Vegetation Clearing Entitlement Area.
- **10/50 Vegetation Clearing Entitlement Area:** land determined by the Commissioner of the NSW RFS to be a 10/50 Vegetation Clearing Entitlement Area, and is identified as such on a map published on the NSW RFS website.
- **Tree:** a perennial woody plant that is three or more metres in height and that has one or more self-supporting trunks (at least one of which has a circumference at a height of 1.3 metres above ground of more than 0.3 metres) but it does not include a woody plant that is:
  a. a shrub, which is a small, low growing, woody plant with multiple stems, or
  b. a vine, which is a woody plant that depends on an erect substrate to grow on.

The use of the term landowner in this 10/50 Code is taken to have the same meaning as the term 'owner of land' as defined in the dictionary of the *Rural Fires Act 1997*, as follows:

- **'Owner'** of land:
  a. in relation to Crown land, means the Crown and includes:
     i. a lessee of land from the Crown; and
     ii. a person to whom the Crown has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown; and
  b. in relation to land other than Crown land, includes:
     i. every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession; and
     ii. every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; and
     iii. in the case of land that is the subject of a strata scheme under the *Strata Schemes (Freehold Development) Act 1973*
     iv. or a leasehold strata scheme under the Strata Schemes (Leasehold Development) Act 1986, the owners corporation under that scheme; and
     v. in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the *Community Land Development Act 1989*, the association for the parcel; and
     vi. every person who by this Act is taken to be the owner; and
  c. in relation to land subject to a mining lease under the *Mining Act 1992*, the holder of the lease.
- **External wall**: see Section 6.1
- **Habitable room**: see Section 6.2

3 Links

The following Acts, Instruments or other documents are relevant to this 10/50 Code:

- Australian Standard AS 4373-2007 *Pruning of Amenity Trees*
- Bushfire Management and National Environment Law (Commonwealth Fact Sheet)
- *Children and Young Persons (Care and Protection) Act 1998*
- *Community Land Development Act 1989*
- *Conveyancing Act 1919*
- *Criminal Appeal Act 1912*
- *District Court Act 1973*
- *Environment Protection and Biodiversity Act 1999 (Cwlth)*
- *Education Act 1990*
- *Environmental Planning and Assessment Act 1979*
- *Field manual for Aboriginal scarred trees in New South Wales*
- *Fisheries Management Act 1994*
- *Land and Environment Court Act 1979*
- *Local Court Act 2007*
- *Local Government Act 1993*
- *Mining Act 1992*
- *National Parks and Wildlife Act 1974*
- *Native Vegetation Act 2003*
- *Nature Conservation Trust Act 2001*
- *NSW Department of Primary Industries Primefact 746 May 2008 – Mangroves*
- Pesticide and Veterinary Medicines Authority
- *Prevention of Cruelty to Animals Act 1979*

- *Pesticides Act 1999*
- *Primefact 1256 March 2013 – Coastal saltmarsh*
- *Road Transport Act 2013*
- *Rural Fires Act 1997*
- *SEPP 26 Littoral Rainforest*
- *Supreme Court Act 1970*
- *Sydney Region Growth Centres*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (No 2 – 1997)*
- Standard Instrument – Principal Local Environment Plan
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *Strata Schemes (Freehold Development) Act 1973*
- Strata Schemes (Leasehold Development) Act 1986
- *Threatened Species Conservation Act 1995*
- *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*

4 Access to the 10/50 Code of Practice

The 10/50 Code is available from the NSW RFS website at www.rfs.nsw.gov.au. A printed copy is available from a NSW RFS District Office at no charge, to any owner of land situated within the 10/50 Vegetation Clearing Entitlement Area.

5 The 10/50 Code

5.1 Compliance and enforcement

Vegetation clearing that is carried out in accordance with this 10/50 Code is considered to be authorised clearing under NSW legislation.

Any activity that is not expressly provided for by the 10/50 Code is not authorised by the 10/50 Code, such as dumping of vegetative waste. It is incumbent upon the landowner to determine whether such activities require approval under other legislative instruments.

In order to be afforded protection, any clearing must be in the 10/50 Vegetation Clearing Entitlement Area, and undertaken in accordance with the 10/50 Code, on the day that the clearing is undertaken.

*Note: The 10/50 Code does not provide an approval but rather a person is not guilty of an offence for clearing vegetation in accordance with the Code. This means that clearing that is **not** carried out in accordance with this 10/50 Code may, for example, constitute an offence under another Act or instrument. In these cases any clearing that is not in accordance with this 10/50 Code may be subject to enforcement by the relevant authority under the offended Act or instrument.*

It is important to be aware that dumping of waste vegetation (or other materials and substances) is illegal.

5.2 Application of land to the 10/50 Code

Vegetation clearing under this 10/50 Code may only be undertaken on parcels of land (cadastre lots) that contain land mapped as 10/50 vegetation clearing entitlement land.

5.3 Determining if your land is mapped as 10/50

An online assessment tool is available on the NSW RFS website at www.rfs.nsw.gov.au and allows a landowner to conduct a self-assessment as to whether their land falls within the 10/50 Vegetation Clearing Entitlement Area.

Clearing in accordance with the 10/50 Code may only be undertaken if the land is mapped in the 10/50 online tool as 10/50 Vegetation Clearing Entitlement Area on the day that the clearing is undertaken. It is the responsibility of the landowner to confirm that the 10/50 Vegetation Clearing Entitlement Area applies to the land on the day that the clearing is undertaken.

5.4 Landowners consent

The clearing of vegetation under this 10/50 Code can only be conducted with the consent of the landowner. It is not permissible to clear any land without the owner's consent. This means:

- Tenants must obtain approval from the landowner prior to commencing any clearing works.

Such consent must be obtained in writing prior to any clearing commencing. The landowner is the owner at the time the tree or vegetation is removed.

Where a single tree trunk occurs across two or more properties, the approval of all landowners is required for removal of the tree.

If a person does not have an external wall of a building on their own land and are relying on an external wall of a building on adjoining land to authorise the clearing of their land; then that person must obtain the written consent of each owner of adjoining land on which there is an external wall of a building that could be used to authorise the clearing (see Clause 7.1).

For example, a tree on a person's land that is more than 10 metres away from the person's home but which is within 10 metres of the homes of two neighbours could be removed under this section only if both of those neighbours provide written consent.

6 Buildings

This 10/50 Code applies to vegetation adjacent to external walls of:

a. a building containing habitable rooms that comprises, or is part of, residential accommodation or a high-risk facility; and
b. a building that comprises, or is part of, a farm shed.

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.

This section does not apply to a farm shed if there is no development consent or other lawful authority under the *Environmental Planning and Assessment Act 1979* for the use of the farm shed for the purpose it is being used.

6.1 External walls

With respect to residential accommodation or high risk facilities, external walls refer to the external walls of a building containing habitable rooms and include permanent fixed structures such as decks, verandahs, pergolas and garages that are attached to the building. Decks and verandahs are elevated platforms (either enclosed or unenclosed). External walls do not include constructions such as paved or concreted areas.

With respect to farm sheds, external walls refer to the external walls of a farm shed or the line between two support posts in the event that the farm shed does not have a wall.

Note: External wall excludes exempt development such as decks or verandahs which have been constructed according to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. This is because these structures are required to be made of non-combustible material.

6.2 Habitable rooms

A building containing habitable rooms requires that in all cases that there is a lawful authority for the occupancy for those rooms (such as an occupation certificate where relevant). In addition, a building is construed to contain habitable rooms as follows:

a. For the purpose of residential accommodation (including tourist and visitor accommodation, caravans and manufactured homes):
   - the building contains one or more rooms designated and approved as bedrooms for sleeping. Vegetation clearing is not provided under this 10/50 Code for associated adjoining buildings that do not contain habitable rooms.

b. For the purpose of a childcare centre:
   - the building contains one or more rooms designed and approved for the purpose of the supervision and care of children. Vegetation clearing is not provided under this 10/50 Code for associated adjoining buildings that do not accommodate children, such as external storerooms.

c. For the purpose of a school:
   - the building contains one or more rooms designed and approved for the purpose of accommodating children. Vegetation clearing is not provided for under this 10/50 Code for associated adjoining buildings that do not accommodate children, such as external restrooms or storerooms.

d. For the purpose of a hospital:
   - the building contains one or more rooms designed and approved for the purpose of accommodating patients, or providing sleeping facilities for hospital staff. Vegetation clearing is not provided for under this 10/50 Code for associated adjoining buildings that do not accommodate patients, such as cafeterias or ancillary hospital buildings such as maintenance storerooms.

6.3 Residential accommodation

For the application of this 10/50 Code residential accommodation is accommodation that includes:

- Residential accommodation
- Tourist and visitor accommodation
- Caravans installed or placed in caravan parks; and
- Manufactured homes installed in manufactured home estates

within the meaning of the *Standard Instrument – Principal Local Environment Plan*. Further information is located at Attachment A.

6.4 High–risk facility

For the purpose of this 10/50 Code a high-risk facility includes a:

- Childcare centre
- School; and
- Hospital

within the meaning of the *Standard Instrument – Principal Local Environment Plan*. Further information is located at Attachment A.

6.5 Farm Sheds

For the purpose of this 10/50 Code a farm shed means a building that:

a. is erected on land that is in one of the following land use zones (or in the case of land that is zoned under an environmental planning instrument made in the form of a standard instrument: a land use zone that, having regard for the purpose of the zone, has the substantial character of any of the following land use zones):

i. RU1 Primary Production
ii. RU2 Rural Landscape
iii. RU4 Primary Production Small Lots; and

b. has a floor area of more than 50 square metres; and
c. is used by a primary producer wholly or substantially for a purpose associated with carrying on one or more of the following primary production businesses:
   i. the cultivation or propagation of plants or fungi, or their products (including seeds, spores, fruits, grain, flowers, vegetables, tobacco, bulbs and oils); but not a plant nursery
   ii. bee keeping or aquaculture (within the meaning of the *Fisheries Management Act 1994*)
   iii. the rearing or grazing of livestock, including horses, cattle, sheep, pigs, goats or poultry or other birds, for the purpose of selling the livestock or products derived from the livestock, and
d. if it is used for processing products – the majority of those products are produced on the property on which the building is erected.

7 Vegetation clearing provisions

7.1 Clearing distance

In accordance with Part 4 Division 9 of the *Rural Fires Act 1997*, a landowner may carry out the following vegetation clearing work on their own land:

- the removal, destruction (by means other than fire) or pruning of any vegetation (including trees) within 10 metres; and
- the removal, destruction (by means other than fire) or pruning of any vegetation, (except for 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; or of an external wall of a building that comprises or is part of a farm shed.

The allowable distances apply irrespective of whether the residential accommodation, high-risk facility or farm shed is located on the owner's land or adjoining land.

Note: if, however, a person does not have an external wall of a building on their own land and is relying on an external wall of a building on adjoining land to authorise the clearing of their land; then that person must obtain the written consent of each owner of adjoining land on which there is an external wall of a building that could be used to authorise the clearing. Refer to Clause 5.4.

Trees may only be removed where the trunk (being any part of the trunk at a height of 1.3 metres above the ground) is within 10 metres of the residential accommodation, high-risk facility or farm shed. Vegetation clearing work must be carried out in accordance with the 10/50 Code.

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

The types of vegetation that cannot be cleared are separated into three categories based on the availability and accuracy of maps. The online tool is informed by maps provided to the NSW RFS by the relevant Government authority. In the event that a mapped layer held by the relevant authority is different to that on the online tool, it is the version on the online tool that applies to the 10/50 Code. These types of vegetation are:

a. Vegetation on land parcels (cadastre lots) which are wholly or partially within areas mapped in the 10/50 online tool as identified below are excluded from the 10/50 Code and may not be cleared. These types of vegetation are:
   - SEPP 14 Coastal Wetlands as mapped and provided by the Department of Planning and Environment;
   - Wetlands in the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as mapped and provided by the Department of Planning and Environment;
   - Wetlands in the *Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (No 2 – 1997)* as mapped and provided by the Department of Planning and Environment;

- *SEPP 26 Littoral Rainforest* (not including the 100 metre buffer) as mapped and provided to the NSW RFS by the Department of Planning and Environment,
- Specified Koala habitat mapped in Comprehensive Koala Plans of Management and as provided to the NSW RFS by the Department of Planning and Environment;
- Ramsar Wetlands;
- Within 100 metres of the coastline or estuaries of NSW;
- Lord Howe Island;
- Records of Critically Endangered Plants as mapped and provided by the Office of Environment and Heritage;
- Land mapped as Critical Habitat as mapped and provided to the NSW RFS by the Office of Environment and Heritage;
- The following Critically Endangered Ecological Communities, as mapped and provided by the Office of Environment and Heritage:
  - Agnes Bank Woodland in the Sydney Basin Bioregion
  - 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 in the Sydney Basin Bioregion
  - Kincumber Scribbly Gum Forest in the Sydney Basin Bioregion
  - Shale Sandstone Transition Forest in the Sydney Basin Bioregion
  - Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion; and
  - Or any other Critically Endangered Ecological Community, if mapped and provided by the Office of Environment and Heritage.

b. Vegetation on land parcels (cadastre lots) which are wholly or partially within areas mapped in the 10/50 online tool as identified below are excluded from the 10/50 Code and may not be cleared.

However, land parcels that do not contain any of the legal protection measures below (despite being mapped as one of those categories) are not excluded from the 10/50 Code. This situation may occur due to inaccuracies with the mapping that may result in your land parcel being wrongfully identified. The onus is on the landowner to demonstrate that their land parcel does not contain the identified legal protection measure. Advice as to how to determine whether your land contains the legal protection measure is provided in the online tool search results.

Note: For example:

- if a parcel of land is identified as being a National Park but is not National Park, then clearing is not excluded for that reason under the 10/50 Code; or
- if a land parcel is only partially affected by a local heritage listing then clearing under the 10/50 Code is excluded from the whole land parcel.

The protected categories are:

- 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,
- World Heritage as mapped and provided by the Office of Environment and Heritage,
- Vegetation of high environmental significance identified as part of the bio-certification of the *Sydney Region Growth Centres* as mapped and provided by the Department of Planning and Environment.

c. The vegetation identified below is not mapped in the 10/50 online tool and may not be cleared under the 10/50 Code:

- Mangroves and saltmarsh may not be cleared. Mangroves and coastal saltmarsh are as described in NSW Department of Primary Industries Primefact 746 May 2008 – Mangroves, and Primefact 1256 March 2013 – Coastal saltmarsh.

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

Vegetation which should be pruned and not entirely removed is:

- Any vegetation within 50 metres may be pruned (other than trees greater than 10 metres from the residence).
- Irrespective of the location of the tree trunk, any branches within 10 metres of a residence may be pruned.

Any pruning of trees must be undertaken in accordance with *AS 4373-2007 Pruning of Amenity Trees*. If the tree requires pruning beyond a distance of 10 metres from the building in order to conform with *AS 4373-2007 Pruning of Amenity Trees*, then the pruning may not be undertaken.

7.4 Use of herbicides

Herbicides may only be used in accordance with the following conditions:

- Only herbicides registered by the Australian Pesticide and Veterinary Medicines Authority may be used unless otherwise specified in a permit;
- Users must read the label on the herbicide each time before using;
- Users must not store, use or dispose of any herbicide that contravenes the instruction for that product;
- Users must adhere to instructions on the herbicide label, unless otherwise specified in a permit;
- Users must not, without a reasonable excuse, keep a herbicide in a container without an approved label attached to the container;
- Users must not use a herbicide in a manner which risks injury to any other person or the property of another person;
- Users must not use a herbicide in a manner which harms any non-target plant;
- Users must not dispose of herbicide waste in a manner that risks injury to the environment, including water bodies; and
- Users must not allow herbicides to leak, spill or otherwise escape in a manner that risks injury to the environment including water bodies.

7.5 Managing soil erosion and landslip risks

Landowners have a duty of care in the appropriate management of soil erosion and landslip risks when clearing trees and vegetation under the 10/50 Scheme. Landowners who clear trees and vegetation under the 10/50 Scheme are not exempt from liability. For example, action may be pursued by a party that suffers as a result of a landslip due to actions taken on your land.

It is the responsibility of landowners to seek expert advice in relation to these matters.

The conditions below have been put in place to assist landowners in the management of vegetation but operating in accordance with these conditions does not absolve the landowner from their responsibility for landslip and erosion issues.

To manage soil erosion and landslip risks:

- there is to be no disturbance of the soil;
- vegetation must not be removed below the soil surface;
- all topsoil must remain on the soil surface;
- retain a protective ground cover on the soil surface; and
- the use of graders, ploughs, bulldozers (or other types of heavy machinery that are designed to break the soil surface) to clear land under this 10/50 Code is not permitted.

In addition, tree removal is not permitted on slopes greater than 18 degrees except in accordance with conditions identified in a geotechnical engineer assessment report undertaken for that purpose. Pruning of trees is only permitted on slopes greater than 18 degrees provided at least 75 per cent of the original canopy cover is retained, except in accordance with conditions identified in a geotechnical engineer assessment report undertaken for that purpose.

7.6 Protection of riparian buffer zones

The clearing of vegetation including trees is not allowed within 10 metres of a lake, or a river that is two metres or more in width between the highest opposite banks.

The distance (metres) is measured from the highest bank or tidal limit if there is no defined high bank. This buffer applies to either side of the river, or around the lake.

'lake' includes:

a. a lake, a wetland, a lagoon, a saltmarsh and any collection of still water, whether perennial or intermittent and whether natural or a natural body of water artificially modified, and whether or not it also forms part of a river or estuary.

'river' includes:

a. any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially modified, and
b. any tributary, branch or other watercourse into or from which a watercourse referred to in paragraph (a) flows, and whether or not it also forms part of a lake or estuary.

7.7 Protection of Aboriginal and other cultural heritage

The types of vegetation that cannot be cleared are separated into three categories based on the availability and accuracy of maps. The online tool is informed by maps provided to the NSW RFS by the relevant Government authority. In the event that a mapped layer held by the relevant authority is different to that on the online tool, it is the version on the online tool that applies to the 10/50 Code. These types of vegetation are:

a. Vegetation on land parcels (cadastre lots) which are wholly or partially within areas mapped in the 10/50 online tool as identified below are excluded from the 10/50 Code and may not be cleared:
   - an Aboriginal Place as mapped and provided to the NSW RFS by the Office of Environment and Heritage.
b. Vegetation on land parcels (cadastre lots) which are wholly or partially within areas mapped in the 10/50 online tool as identified below are excluded from the 10/50 Code and may not be cleared.

   However, land parcels that do not contain any of the legal protection measures below (despite being mapped as one of those categories) are not excluded from the 10/50 Code. This situation may occur due to inaccuracies with the mapping that may result in your land parcel being wrongfully identified. The onus is on the landowner to demonstrate that their land parcel does not contain the identified legal protection measure. Advice as to how to determine whether your land contains the legal protection measure is provided in the online tool search results.

Note: For example:

- *if a parcel of land is identified as being a National Park but is not National Park, then clearing is not excluded for that reason under the 10/50 Code; or*
- *if a land parcel is only partially affected by a local heritage listing then clearing under the 10/50 Code is excluded from the whole land parcel.*

The protected categories are:

- NSW State heritage as mapped and provided to the NSW RFS by the Office of Environment and Heritage; and
- local heritage as mapped by councils and provided to the NSW RFS by the Department of Planning and Environment.

c. The vegetation identified below is mapped in the 10/50 online tool and may not be cleared under the 10/50 Code:

- Aboriginal heritage: culturally modified trees (also known as 'Aboriginal scarred trees'), as mapped and provided to the NSW RFS by the Office of Environment and Heritage.

  Landowners who are informed by the online tool that their land parcel may contain an Aboriginal scarred tree are required to determine if the tree/s they wish to clear meet the criteria of an Aboriginal scarred tree as described in the Office of Environment and Heritage's field manual for Aboriginal scarred trees in New South Wales. An Aboriginal scarred tree may not be cleared.

7.8 Protection of vegetation to which a legal obligation exists to preserve that vegetation by agreement or otherwise

Clearing under this 10/50 Code cannot be inconsistent with any of the following:

- any conservation agreement entered into under Division 12 of Part 4 of the *National Parks and Wildlife Act 1974*;
- any Trust Agreement entered into under Part 3 of the *Nature Conservation Trust Act 2001*;
- any property management plan approved by the Director-General of the NSW National Parks and Wildlife Service under Section 113B of the *Threatened Species Conservation Act 1995*; or
- any Property Vegetation Plan agreement entered into under Part 4 of *the Native Vegetation Act 2003*; or
- any Biobanking Agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995*.
- any condition of development consent or approval under *the Environmental Planning and Assessment Act 1979* that identifies and requires the retention and management of vegetation for conservation purposes.
- any instrument under Section 88B of the *Conveyancing Act 1919* that identifies and requires the retention and management of vegetation for conservation purposes
- any order under the following *Acts*:
  a. *Criminal Appeal Act 1912*
  b. *District Court Act 1973*
  c. *Land and Environment Court Act 1979*
  d. *Local Court Act 2007*
  e. *Supreme Court Act 1970*, or
  f. any order by a Court constituted under any of the above Acts.
- any Stop Work Order, Interim Protection Order or Remediation Direction under Part 6A of the *National Parks and Wildlife Act 1974*.

- any Stop Work Order under section 37 or Directions for Remedial Work under Section 38 of the *Native Vegetation Act 2003*.
- land subject to a conservation measure pursuant to an Order for Biodiversity Certification.

7.9 Harm to native and introduced animals

Landowners have a duty of care to avoid cruelty and harm to native, introduced or domestic animals when clearing trees and vegetation in accordance with the 10/50 Scheme. It is important that landowners are aware that clearing of trees and vegetation under the 10/50 Scheme can result in harm to native animals and loss of their natural habitat.

Landowners who clear trees and vegetation under the 10/50 Scheme are not exempt from prosecution under the *National Parks and Wildlife Act 1974* for harm to protected fauna, or for deliberate cruelty to animals under the *Prevention of Cruelty to Animals Act 1979*. Operating in accordance with the 10/50 Code does not absolve the landowner from their responsibility for avoiding harm to protected fauna or deliberate cruelty to animals. Note: 'protected fauna' is as defined in the *National Parks and Wildlife Act 1974*.

ATTACHMENT A

Additional information regarding residential accommodation and high-risk facilities

The following information is provided to assist users of this 10/50 Code to identify whether their particular building constitutes residential accommodation; tourist and visitor accommodation; caravan within a caravan park; manufactured home within a manufactured home estate; childcare centre school; or a hospital.

It is taken from the Dictionary of the *Standard Instrument – Principal Local Environment Plan* and is current for 1 July 2014. It is provided as a guide only and users should refer to the Instrument to ensure the information is the most current version.

This 10/50 Code applies to any building that contains habitable rooms within the following residential accommodation and high-risk facility types:

Residential accommodation includes:

1. Residential accommodation within the meaning of the *Standard Instrument – Principal Local Environment Plan* including:
   - attached dwellings
   - boarding houses
   - dual occupancies
   - dwelling houses
   - group homes
   - hostels
   - multi-dwelling housing
   - residential flat buildings
   - rural worker's dwellings
   - secondary dwellings
   - semi-detached dwellings
   - seniors housing; and
   - shop-top housing.
2. Tourist and visitor accommodation within the meaning of the *Standard Instrument – Principal Local Environment Plan* including:
   - backpacker accommodation
   - bed and breakfast accommodation
   - farm stay accommodation
   - hotel or motel accommodation; and
   - serviced apartments.
3. Caravans installed or placed in caravan parks within the meaning of the *Standard Instrument – Principal Local Environment Plan*.
4. Manufactured homes installed in manufactured home estates within the meaning of the *Local Government Act 1993* and defined as a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:
   - that comprises one or more major sections
   - that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013; and
   - includes any associated structures that form part of the dwelling.

High-risk facility includes:

1. Childcare centres within the meaning of the *Standard Instrument – Principal Local Environment Plan*, are defined as a building or place used for the supervision and care of children that:
   - provides long day care, pre-school care, occasional childcare or out-of-school-hours care, and
   - does not provide overnight accommodation for children other than those related to the owner or operator of the centre,

   but does not include:
   - a building or place used for home-based childcare;
   - an out-of-home care service provided by an agency or organisation accredited by the Children's Guardian;
   - a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned;
   - a service provided for fewer than five children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised;
   - a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility;
   - a service that is concerned primarily with the provision of:
     - lessons or coaching, or providing for participation in, a cultural, recreational, religious or sporting activity; or
     - private tutoring;
   - a school; or
   - a service provided at exempt premises (within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.
2. Schools within the meaning of the *Standard Instrument – Principal Local Environment Plan*, are defined as a government school or non-government school within the meaning of the *Education Act 1990*.
3. Hospitals within the meaning of the *Standard Instrument – Principal Local Environment Plan* are defined as a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, or counselling services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there), and includes ancillary facilities for (or that consist of) any of the following:
   - day surgery, day procedures or health consulting rooms;
   - accommodation for nurses or other health care workers;
   - accommodation for persons receiving health care or for their visitors;
   - shops, kiosks, restaurants or cafes or take away food and drink premises;
   - patient transport facilities, including helipads, ambulance facilities and car parking;
   - educational purposes or any other health-related use;
   - research purposes (whether or not carried out by hospital staff or health care workers or for commercial purposes);
   - chapels;
   - hospices; and
   - mortuaries.