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Nature Conservation Saves for Tomorrow

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Submission to the NSW Rural Fire Service

Review of the 10/50 Vegetation Clearing Code of Practice for NSW

Summary

Blue Mountains Conservation Society supports the Review of the *10/50 Vegetation Clearing Code of Practice for New South Wales* by the NSW Rural Fire Service and the Minister for Emergency Services, Stuart Ayers, and encourages the rescinding of this policy. The Society considers that there are major problems associated with the implementation and operation of the present *Code* that need to be addressed. These include:

1. Lack of a demonstrated need for the *Code* and the absence of consideration of alternative property protection measures
2. Lack of proper process and transparency in the implementation of the *Code*
3. Complete disregard of World Heritage Listed Properties
4. The over-riding of existing Local Government Planning instruments and of State Legislation particularly the *Threatened Species Conservation Act 1995*, and the lack of compliance with Commonwealth Legislation
5. Ecological and environmental consequences resulting from the operation of the *Code* as applicable in the Blue Mountains
6. Misuse of the *Code* by property owners and commercial tree and land clearance contractors
7. Compliance and enforcement issues

Blue Mountains Conservation Society

The Blue Mountains Conservation Society is a long established environmental advocacy organisation with a membership of approximately 800 people. Most members of the Society reside within the Greater Blue Mountains and enjoy the benefits of living within urban bushland, and of being surrounded by the Greater Blue Mountains World Heritage area that has at its heart the evolution and diversity of species of *Eucalypts* and of ecological communities.

The Blue Mountains Conservation Society recognises the right of residents of the Blue Mountains and of the wider New South Wales community to property protection from fire. Members also however understand the ecological and environmental importance of regional bushland and the need to honour the protective management requirements of the Greater Blue Mountains World Heritage area.

Submission by the Blue Mountains Conservation Society

The Blue Mountains Conservation Society considers that there are major problems associated with the implementation and operation of the *10/50 Vegetation Clearing Code of Practice for New South Wales* that need to be urgently addressed. The Society's main concerns are:

1. The lack of a demonstrated need for the *10/50 Vegetation Clearing Code* and the absence of consideration of alternative property protection measures

- 1.1 On the 1st August 2014 the New South Wales Government through its agency the NSW Rural Fire Service, replaced a long standing fire hazard reduction system based on risk assessment by experts in the RFS with a self-assessment policy by individual landowners based on proximity to bushland and with reference to an on-line mapping guidance tool. In doing so a suite of environmental legislation including the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1995* have been overturned to allow clearing of land designated on the on-line map as high fire risk.
- 1.2 We understand that there is not a single proven case of property damage in NSW due to the refusal by the Rural Fire Service for vegetation clearing approval under the processes that were in place prior to the implementation of the *10/50 Vegetation Clearing Code*. Previous Bushfire Risk Assessments and the issuing of Hazard Reduction Certificates by the RFS have been satisfactory, had no cause to be replaced, and should therefore be reinstated.
- 1.3 Previously, Bushfire Prone Land has been mapped as that which is located within 100 metres of large bushland areas or within 50 metres of smaller bush remnants; anything else has been considered to be excessive except for areas of very steep slopes. Removal of trees and branches overhanging dwellings was already allowed in Bushfire Prone Land. We are unaware of the evidence used to change the status quo to 10 and 50 metre distance provisions for tree and understorey removal for properties within 350 metres of bushland. We have been informed that the policy was developed by a private Blue Mountains development consultant and released without any serious expert advice. We contend that any such policy should instead be based on rigorous scientific assessments and be subjected to transparent peer and public review.
- 1.4 The *10/50 Code* is a one-size-fits-all approach that fails to consider the bush fire risk associated with individual locations and is clearly inappropriate for many Council areas and for some vegetation types. Actual risk has been replaced with proximity. The level of fire risk however is not equal for every plant community and it is not equal for all properties across NSW regardless of distance from bushland. It is sensible and responsible for home owners of bushland acreages in high fire risk areas not to have trees overhanging rooflines and to put in place a reduced vegetation and litter-free fire break around the

house (in accordance with appropriate environmental legislation), but this may not be necessary in all bushland areas, nor for suburbia. Vegetation assessment should be returned to experts from the RFS to determine bush fire risk, and to provide recommendations that include evaluation of other bush fire protection measures. Self-assessment by inexperienced residents cannot substitute for the experience of RFS assessors.

- 1.5 The *10/50 Code* as currently legislated and implemented could provide a false sense of security for property owners living within the designated 350 metres of bushland. We understand that the *Code* is the response to a single fire event in the Blue Mountains in October 2014 that may have been started by sparking from above ground power lines. This fire spread equally through suburban streets, from house to house and garden to garden as it did through local bushland. The *Code* does not in fact say that it is just native trees and bushland that should be removed, though that is how it is being interpreted and implemented; rather it refers to ‘trees’ and other ‘vegetation’. In many suburban areas within the 350 metre distance requirement of bushland, gardens, often densely planted with shrubbery and introduced tree species constitute a significant fire hazard yet the *Code* says nothing about the specific reduction of built environment fire hazards, gardens and public place landscaping. The implication is that it is native trees and shrubs alone that are the problem and it is these that are being removed. The cutting down of a large Eucalypt or two from a suburban block while leaving dense non-native garden vegetation and unclean gutters will do little to reduce fire hazard.
- 1.6 **Scientific surveys highlight that ember attack is responsible for the majority of house losses during bushfires.** Embers can originate from any number of sources including existing burning houses, gardens, commercial properties, roadside landscaping of non-native plants as well as from bushland. Embers will travel over distances ranging from hundreds of metres to kilometres away (CSIRO). The removal of trees and bushland understoreys will not remove the threat of ember attack and there is some evidence to suggest that a reduction in the ember-blocking effect of trees in particular will actually increase the fire-proneness of unprotected houses. Greater RFS engagement with homeowners on ember-proofing of houses and on property maintenance would be beneficial. Greater emphasis should be placed on better management of potential ignition sources by such measures as the undergrounding of power lines in fire-prone environments, and on providing for greater penalties for accidental ignitions by, for example, irresponsible disposal of cigarette butts. The *Code* has nothing to say about these issues.
- 1.7 **Improvements in building design and construction, and on-going building and other property maintenance measures** are encouraged by fire researchers and authorities but again they make no appearance in the *Code* document. In a CSIRO on-line newsletter of 7th November 2013 it was announced that:

The NSW Rural Fire Service is using new android apps developed by the CSIRO to conduct a critical assessment of the recent bushfires ... and plan for future climate adaptation scenarios. The two android tablet apps are being used for the first time in the Blue Mountains towns of Winmalee, Lithgow and Mount Victoria. The developer of the app, Justin Leonard of the CSIRO, is investigating the design of buildings in bushfire prone areas to improve their survival prospects during extreme bushfire events, and providing understanding of infrastructure loss, relative risk and **design improvements for risk mitigation**. Mr Leonard says that CSIRO

research is contributing to improved community education initiatives about how to behave in bushfires. This includes ... a focus on **improved building controls and planning policies**.

Justin Leonard states that Australians should plan ahead to improve their prospects in a bushfire this summer. A good start is to understand the severity potential of bushfires in their area, as well as their homes. "Some of the things people can do to prepare for this summer is to **look very carefully at the maintenance level of their house**, look at all the detail about how much fuel has accumulated on and around their building and to really come to have a deeper understanding of what the unique vulnerabilities are for their house," he says.

Oasis Nursery Complex Yellow Rock

We provide as an example of the benefits of better building construction and property management, statements from an assessment by the consultant RM4C of the damage caused to the Oasis Nursery complex at Yellow Rock by the October 2013 fire. The Consultant considered that while the fire could not have been stopped from impacting on the western side of the property, measures could have been taken to provide greater fire resistance for existing buildings and structures. It is stated in the RM4C Bushfire Risk Assessment report (2014, p.8) that:

"Three of the five areas where damage occurred were as a direct result of adjacent fire load catching alight, such as external storage of combustible goods, or hedges. The remaining two areas were on the Western end of the site, most exposed to the fire front. The control of combustibles adjacent to buildings is therefore a key control recommendation."

RM4C have provided Oasis with detailed advice on site management such as more appropriate landscaping, removal of pine trees, better storage of combustibles and importantly how existing and new structures can be altered or built to comply with the requirements of AS3949.

1.8 Finally with regard to concerns about the demonstrated need for this *Code*, we understand that **no analysis has been undertaken of the effectiveness of similar rules in Victoria**. Any continuation of the *Code* in NSW must incorporate a commitment by the RFS to undertake a detailed assessment of its effectiveness following any bushfire. There must also be a commitment to rescind the *10/50* rule if bush fire protection benefits cannot be clearly demonstrated.

2. Lack of proper process and transparency around the introduction of the *10/50 Vegetation Clearing Code*

2.1 In NSW there are long established practices to ensure the proper review of plans, codes and environmental impact statements, and to provide opportunities for community consultation. The processes of public exhibition, submission time and review of the Draft *Vegetation Clearing Code* failed to meet the basic standards in the following ways:

2.1.1 Lack of Notification:

Widespread formal advertising of the exhibition period of the Draft *Code* and of details regarding the process for submitting comments did not occur. There were no formal notices advertising the Draft and asking for public comments in regional newspapers including the *Blue Mountains Gazette*. A single article appeared in that newspaper on 4 June 2014 (p.3) headed "Govt clears the way", in which the *Code* is presented as a fait accompli: *Blue Mountains Mayor Mark Greenhill has welcomed new laws introduced by Premier Mike Baird last week which allow residents to clear*

bush from around their homes. On 4 June however the *Code* was still only in Draft form and the article should have at least contained details about the public submission process. It is also usual for relevant advertising to appear in the Public Notices of regional newspapers but that did not occur to our knowledge.

In the 4 June article, Blue Mountains MP Roza Sage stated that the *intention is now for the Bill to be debated in the Lower House during the next session of Parliament, beginning on June 17 ... The 10/50 Vegetation Clearing Code of Practice will be put out for public comment for 21 days after the laws pass.* Not only was there **no given timetable for public comment** but the implication was that it was all over bar the shouting.

Further inadequacies of the process included the **lack of a published map** showing the area to which the *Code* applied, the difficulty of having to locate the Draft *Code* on the RFS website, the failure of the RFS to respond to emailed and website questions about finding the information, and the need to have computer and web access in the first place – a very discriminatory practice.

2.1.2 **Lack of adequate time for consideration of submissions**

Submissions for the *10/50 Vegetation Clearing Code* closed at the end of business on 21st July 2014. The *Code* became law as of 1st August 2014 allowing just 8 business days for consideration of comments and the meeting of formal approvals. The short time between the end of the exhibition period and the formal introduction of the *Code* did not, we believe, allow for adequate consideration of submissions and required alterations. This lack of apparent consideration is reflected in the paucity of any substantive changes (refer to 2.1.4 below). Was there any intention to undertake a genuine public consultation?

2.1.3 **Lack of transparency**

Most government agencies undertaking public consultation make all submissions publicly available unless privacy is requested. The Society has not been able to determine the views of, and recommendations about, the *Code* from any resident, community group, local council or other government agency.

2.1.4 **Lack of responsiveness**

The Society considers that the community consultation process was an exercise in name only as evidenced by the lack of changes from the Draft to the final *Code*. It appears that only two substantive changes were made to the Draft *Code*:

- i. The removal of a reference to the *Native Vegetation Conservation Act 1997* (p.4 of Draft and p.9 in Section 7.8). It is deleted as one of the statutes under which property agreements “cannot be inconsistent” with the *Code*
- ii. The prohibition in the final *Code* of tree removal on any land where slopes are greater than 18 degrees.

2.2 We acknowledge that there have been **recent amendments** to the *10/50 Code* in which the blanket 350m buffer zone from bushfire prone vegetation has been reduced to 150m in Category 2 areas where vegetation such as rainforest poses a reduced fire risk, and that

Councils will have the ability to reclassify smaller parcels of vegetation from Category 1 to Category 2. The RFS Media Release of the 30 September 2014 which listed these amendments provided no further detail for residents and there is little to no knowledge of these changes in the Blue Mountains community.

There is a brief mention of the above amendments on the RFS website but we cannot find reference to these amendments in the current version of the *Code* as available on-line. It is also of concern that the **map data contained in the RFS on-line tool for self-assessment** of applicability of the 10/50 *Code* to individual properties **does not appear to have been updated to accommodate these recent changes**. In a search for properties on the fringes of known rainforest in Mount Wilson including the famous Cathedral of Ferns and in Coachwood Glen in the Megalong Valley, the online assessment tool simply states that the *Code* applies. There are alerts to slope constraints and Aboriginal heritage as relevant but nothing to indicate that the entitlement area for clearing has been reduced from 350 metres to 150 metres because of the presence of rainforest.

3. Complete Disregard of World Heritage Listed Properties

3.1 Within New South Wales there are six properties that are listed as World Heritage by UNESCO, five of which are parks or reserves. There is however no mention of the need for protection of World Heritage properties in the *10/50 Vegetation Clearing Code* and at the time of writing we could find no reference to World Heritage in the Q&A section on the RFS website.

The NSW Department of Environment and Heritage describes the Greater Blue Mountains World Heritage Property that was formally listed on 29 November 2000 as *an area of one million hectares of vast, ancient and spectacular national park and wilderness, dominated by temperate eucalypt forest*. The *10/50 Clearance Code* manages however to ignore any potential impacts on any part of this million hectares, as it does the other World Heritage areas, and no safeguards have been instituted to protect the list values.

3.2 World Heritage is not isolated from the developed parts of the State. In the Blue Mountains it is the neighbour that sits on the other side of the fence wherever private landholdings border the Blue Mountains National Park. As such it will be affected by clearances allowed under the *10/50 Code* sometimes right to the property boundary, and certainly by edge effects and downstream consequences that will be further outlined below. It must also be understood that it is not just the impact of one landowner but the cumulative consequences of clearing by many property owners that will diminish World Heritage values.

3.3 As a 1974 signatory to the World Heritage Convention, the Commonwealth Government has a responsibility to protect its listed World Heritage areas from threatening processes. Australia's World Heritage properties are managed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which imposes substantial civil and criminal penalties on a person who takes any action that has, will have or is likely to have, a significant impact on the world heritage values of a declared World Heritage property. The EPBC Act sets out an environmental impact assessment process for proposed actions that will, or are likely to, have a significant impact on the world heritage values of a declared World Heritage property.

Given the potential cumulative effects of widespread clearance (see point 5 below) along a lengthy boundary between the urban and rural parts of the Blue Mountains and the Greater Blue Mountains World Heritage area, has the NSW Government through the RFS investigated whether assessment and approval for the implementation of the *10/50 Vegetation Clearing Code* is required? If not then why not?

3.4 Any diminution of World Heritage values and the media attention that would bring could also have serious commercial consequences for the Greater Blue Mountains (as well as for other regions with World Heritage listed properties) as a result of negative impacts on tourism. The long term and wider environmental and economic implications of the *10/50 Code* have clearly not been considered as they should have been.

4. **The over-riding of existing Local Government Planning instruments and of State Legislation, and the lack of compliance with Commonwealth Legislation**

4.1 The *10/50 Code* undermines existing **Local Government Planning** instruments designed to provide a degree of protection for native vegetation and threatened ecological communities. It over-rides development and planning controls and creates confusion and potential conflict for residents and local government staff. Consultation with Councils is needed to ensure that the *Code* is amended so that it does not erode existing legislative requirements and makes clear the role of Local Government officers in related processes.

4.2 The *10/50 Code* over-rides existing **State environmental legislation**. Unlike the previous fire hazard assessment process, and existing legislation, it allows residents to clear without permission Threatened Ecological Communities, Populations and Species that are listed under the NSW ***Threatened Species Conservation Act 1995 (TSC Act)***. This is clearly stated in the Q&A section about the *10/50 Code* on the RFS website. When accessed in late October 2014 the response to the question ‘Do I need to consider impacts on threatened species’ was that ‘the 10/50 rule does not require you to consider threatened species or ecological communities that would otherwise be protected under NSW laws’. This is appalling. Landowners are being granted official permission to carry out acts of potential environmental vandalism and to contribute to the potential extinction of communities and species.

The seriousness of the blatant disregard for existing legislation is demonstrated by the potential plight of the **Sun Valley Cabbage Gum Forest** that is listed as **Critically Endangered** under the *TSC Act 1995*. This community exists only in Sun Valley in the Lower Blue Mountains and has been reduced to 75% of its original limited size. It is the only known habitat in the Blue Mountains for the Squirrel Glider that is itself listed as a Vulnerable species (*TSC Act*). Much of what remains of the Forest occurs on private properties where houses are often nestled in amongst the Cabbage Gums (*Eucalyptus amplifolia*) that are now subject in part to uncontrolled removal. Understorey clearance from a distance of 50 metres around all sides of a dwelling, will not just destroy the shrub component of this Critically Endangered community, but will also eliminate the possibility of future eucalypt sapling replacement of dead trees in the 50 metre zone. The *10/50 Code* could push this unique community to extinction.

4.3 The Commonwealth Government’s ***Environment Protection and Biodiversity Conservation Act 1999*** takes precedent over State Legislation and therefore must over-ride

the *Code*. In the Q&A section of the RFS website related to threatened species (as noted above) it is stated that ‘... you need to be aware that clearing in accordance with the 10/50 Code of Practice does not provide you with an approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*’. However it is further stated that the ‘clearing of a defensible space around a home or rural asset in accordance with state/territory and local government requirements is unlikely to require approval by the federal government’. Then to add further complication, according to the RFS, the Commonwealth Department of Environment advises that ‘whether any particular activity will have a significant impact must be considered on a case-by-case basis.’ Property owners are advised to contact the Commonwealth Department of Environment if they need advice about the EPBC Act.

This is quite confusing and somewhat contradictory information. Do property owners have to consult the Commonwealth Department of Environment or not? There is furthermore no reference to the EPBC Act 1999 in the published *10/50 Code* so if that is all property owners read then they will have no knowledge of this possible restriction to clearing. Additionally **there are no web links to the Commonwealth Department of Environment for property owners to easily follow**. The provision of the Q&A material on the website occurred we understand on the 11th September 2014, some six weeks after the introduction of the *Code* and so was obviously not considered at the time of legislation. This advice will not be searched for by most property owners prior to tree and/or understorey removal nor would most bother to seek advice from the Commonwealth Department of the Environment. It is of concern that the **on-line assessment tool** provided for property owners to check on 10/50 areas and possible restrictions on clearing **does not incorporate information about EPBC Act restrictions** for their properties. This is a serious omission that could increase the threat to survival level of listed communities, populations and species.

Such incomplete and unsatisfactory advice and disregard of Commonwealth legislation could also leave the State open to substantial legal action from the Commonwealth in the event of significant damage being done to *EPBC Act* listed communities and species. Similarly the State could be open to action as a co-respondent or for contributory damages from any NSW citizen who is subject to action by the Commonwealth for breaches of its legislation.

- 4.4 The undermining of the State’s *Threatened Species Conservation Act 1995* and the virtual disregard of the Commonwealth Government’s *Environment Protection and Biodiversity Conservation Act 1999* is of particular concern in the Blue Mountains where on, or closely adjacent to the main Blue Mountains plateau, there are six Threatened Ecological Communities listed under the *TSC Act*, five of which are also listed under the *EPBC Act*, and a further community with a Commonwealth listing alone. There are additionally, populations of plants and animals, and a range of individual species that have had, prior to the implementation of the *Code*, protection under relevant legislation, but now do not.
- 4.5 **Clearing without approval or consideration of Threatened Ecological Communities** that are listed under both State and Commonwealth legislation is occurring in the Blue Mountains. Along Hawkesbury Road through Winmalee and Hawkesbury Heights, for example, residences are built within either remnants or in largely intact stands of the Endangered Ecological Community (EEC) *Shale/Sandstone Transition Forest* (*TSC Act*

1995 and EPBC Act 1999). Since 1 August 2014 all trees of this EEC have been removed from several properties with disregard for the 10m limit and on at least two large acreages all understorey plants of this EEC that were recovering from the September 2013 NPWS fire have been mechanically slashed without permits over a greater distance than 50 metres from residences.

- 4.6 It is of particular concern **that some Endangered Species and Populations occur only on private land** and may now therefore be subjected to **extinction pressure** as a result of the *10/50 Code*. This is the case of *Pultenaea villifera* for example, an understory plant that grows sporadically in the Blue Mountains in Shale/Sandstone Transition Forests outside of the Blue Mountains National Park. The above mentioned slashing on Hawkesbury Road properties may have eliminated members of this population which is found in that area. We will never know as no prior assessment was undertaken. Likewise there has been no assessment of the impact of vegetation clearance on *TSC Act* and *EPBC Act* protected fauna species and populations that include in the Springwood area, for example, Glossy Black-Cockatoos, Powerful Owls, Turquoise Parrot and Squirrel Gliders each of which is listed as Vulnerable in the *TSC Act*.
- 4.7 **How can the New South Wales Government be so environmentally irresponsible** as to allow uncontrolled clearing that prior to 1 August 2014 would not have been permitted under its own existing legislation? How can the New South Wales Government be allowed to put in place legislation that virtually countermands the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*?

5. Ecological and environmental consequences resulting from the operation of the *Code* as applicable in the Blue Mountains

5.1 On-site Impacts

The *10/50* clearance concept is a deceptive one. It conveys the impression that just 10 metres will be affected by tree clearance and a 50 metre zone by understorey removal. The actual area affected is much greater of course. If clearing was to be conducted around a single dwelling of 20m x 15m on a bushland property for example, the area impacted on by tree removal would be about 1500 sq metres, while the understorey clearance area would be some 1.35 hectares for just one property. Multiply that by many properties and the amount of vegetation removal is considerable. Such an extent of clearing could have any or all of the following consequences:

- **Loss of entire populations** of endangered species of plants or animals where those populations are small and limited to private land holdings (refer to the above example of *Pultenaea villifera*).
- Significant loss of area and quality of Threatened Ecological Communities. In the Blue Mountains, in addition to the examples given in (4) above concern must be expressed about **Blue Mountains Swamps** that are listed respectively as Vulnerable and Endangered under the *TSC Act 1995* and the *EPBC Act 1999*. While in theory they have Commonwealth legislative protection, in practice because most residents are unaware of this and since this detail does not appear on the RFS on-line self-assessment map, some swamps could be cleared especially where slopes are less than

18 degrees. Even if this did not occur, swamps only survive where their groundwater intake beds are protected. This may not occur if upslope trees and forest/woodland understorey are removed.

Groundwater alteration will not just affect the vegetation of Blue Mountains Swamps. Because of the hydrological importance of the Swamps groundwater changes will impact on water flows and flooding potential from local streams through to regional rivers. Additionally this community is the habitat of a number of faunal populations which are themselves listed under the *TSC Act 1995* and/or the *EPBC Act 1999* including the Blue Mountains Water Skink (listed under both Acts as Endangered) and the Giant Dragonfly (Endangered NSW). The Giant Dragonfly *Petalura gigantea* is an 'obligate, groundwater dependant, mire dwelling species' (Baird 2014) whose very existence would be threatened by the types of groundwater changes that could result from 10/50 clearing of swamps and/or of upslope woodland and forest.

- Loss of many fine remnant Eucalypts from suburban developments that will negatively impact on populations of birds and mammals and reduce or eliminate important arboreal wildlife corridors. Treed landscapes that have been valued by Blue Mountains residents since development first occurred in the region will be degraded forever.
- Loss of old trees that have Aboriginal heritage value. While it is stated in the *Code* that the Office of Environment and Heritage must be consulted about areas known to contain Aboriginal heritage, not all scarred trees have been found or recorded, and it is not apparent if anyone is actually checking anyway given the speed with which many trees are being removed.
- **Significant impacts on mallee Eucalypt species and on heathland.** We are concerned that the definition of a 'shrub' in the *10/50 Code* is a 'small low growing woody plant with multiple stems'. There is no actual height measurement given and the on-ground assessment of what is a shrub is being taken as anything that is not a tree (defined as 3m or more tall with a single trunk). Throughout the middle and upper Blue Mountains a range of mallee Eucalypts, some with very limited distributions such as *Eucalyptus cunninghamii* (Cliff Mallee Ash) and *E. multicaulis* (Whipstick Ash), could be totally cleared as shrubs within the 50 metre entitlement zone as could much of the associated heathland that is dominant near cliff edges and on windswept plateaus. As trees larger than 3 metres do not grow in heath that community could be totally eliminated from private property reducing significantly populations of the Blue Mountains Mallee, *E. stricta*. The consequences for habitats, biodiversity, migrating bird food chains, hydrology and soil and slope stability could be considerable.
- The preferred method of understorey clearing indicate on p.8 of the *Code* is by the use of **herbicides. It is inconceivable with the knowledge of the impact of chemicals on all forms of life, that such widespread use of herbicides would be being promoted today.** Advice received from an experienced Bush Regeneration contractor is that the herbicide of choice will be glyphosate. This kills nearly everything and will result in complete habitat removal, bare soil and erosion. It is alarming to consider the impact of this chemical over large areas if its widespread use as a herbicide is taken up by property owners in accordance with the current *10/50 Code*.

The Society calls for the use of herbicides to be banned in any future version of the Code. If understorey is to be removed it should be slashed, trittered or pruned to retain ground layer plants in accordance with a Hazard Reduction Certificate

- The area of understorey clearance will be subject to weed invasion. Instead of a diversity of healthy native shrubs and groundcovers, a suite of noxious and environmental weeds typical of disturbed areas of the Blue Mountains will establish and will undoubtedly necessitate continuous applications of herbicide.
- Temperatures and dryness will increase in the *10/50* zone from greater exposure to sunlight and wind. This will increase the fire-proneness of that zone counteracting the intention of the clearing unless bare earth is all that is maintained.
- An increased fire hazard also occurs from the propensity of residents to cut vegetation then leaving it to pile up and very slowly decompose over many years. There is no advice provided in the *Code* to discourage this action.
- Despite controls on soil disturbance indicated on p. 8 of the *Code*, the ground will be left bare after clearing, and soil erosion from both rain-splash impact and surface sheet flow is likely to occur in most soil types within the Blue Mountains. This will degrade the cleared land surface further and contribute to stream sedimentation and degradation, processes not limited to just Blue Mountains streams.
- There will be negative impacts on the numbers and diversity of various faunal populations as habitats are eliminated and food chains disrupted. Everything from soil and litter invertebrates, reptiles, mammals and birds will be affected by the loss of trees, understorey, increased sun and wind exposure and the heavy use of herbicides.
- Once an area of bushland is cleared there will be the temptation for property owners to extend built infrastructure or gardens into the *10/50* zone negating any value that might be gained from the clearing in the first place. At worst this zone could be used for grazing horses or become a dumping ground for discarded materials from household or other site activities which will themselves become hazardous.

5.2 Edge Effects and Downstream Impacts

5.2.1 **Edge effects** are negative consequences for the outer perimeter of bushland promoted by disturbance to its surroundings. Edge effects can result from opening out of the canopy or understorey by clearing for housing development, new fire trails, hazard reductions and certainly by the clearing of land under the a *10/50 Code*. Disturbances such as these increase exposure to sunlight and wind, and alter evaporation rates and runoff regimes. Recent research in the Blue Mountains (Smith and Smith 2010) indicated that edge effects can extend for up to 60 metres into bushland from the point of original disturbance.

In parts of the Blue Mountains development occurs almost to the boundary with the Blue Mountains National Park and therefore of the **Greater Blue Mountains World Heritage Property**. A 50 metre zone of clearance could mean that the 'edge' to be affected is World Heritage listed. But regardless of whether the neighbouring bushland is World Heritage, or consists of listed Threatened Communities or does not, the consequences are serious especially when the total possible affected area is

calculated. **It is the cumulative impact of individual actions that multiplies the degrading consequences.** Edge effects will include:

- Drying out of the remaining vegetation thereby increasing fire proneness
- Dieback of the remaining plant community, both tree canopy and understorey from wind and sunlight desiccation and from altered water flows.
- Weed invasion as already outlined
- Potential increase in bushland incursions by both feral and domestic cats and dogs with resulting declines in bushland inhabitant numbers especially birds, reptiles and small mammals. There is also the potential for increased fox predation.

5.2.2 Downstream Impacts result from the capacity of flowing water to transport hazardous chemicals, sediment and weed seed and vegetative propagules. There is no real limit to the distance over which these impacts can occur given enough time. As development mostly occurs on the central ridges of the Blue Mountains and that the Blue Mountains National Park and Greater Blue Mountains World Heritage Property occupy the remaining ridges and most of the valleys then it is inevitable that there will be negative consequences for World Heritage land. Some downstream impacts will include:

- Damage from the transport of herbicide in streams and through groundwater. While herbicide is not to be used within 10 metres of a Prescribed Stream, it can be used on intermittent 1st and 2nd order streams that feed into these larger water bodies and together with groundwater movement may have impacts well beyond the point of application.

Populations of the **Red-Crowned Toadlet** for example, a species listed as Vulnerable under the *TSC Act 1995* and found only in the Sydney Basin, may experience a drop in population numbers through both herbicide use and the actual clearing. This toadlet has a sporadic distribution throughout the Blue Mountains where it shelters on damp slopes and under deep leaf litter. Breeding congregations assemble in areas of dense vegetation in or near periodically wet drainage lines (that are not Prescribed Streams) but they will not breed where water is in the least polluted or changed from a narrow pH range. Chemical alterations to water as well as the impact of habitat clearing will be devastating for this amphibian as it will be for many other animals that are often unseen.

- Weed seed and vegetative propagules, that may have as their source the invasive growth that occurs on newly cleared 10/50 land or from non-native gardens developed on that land, can travel a great distance downstream as Society members can testify given the years of volunteer work that has gone into removing willows, broom, gorse and many other weeds from major rivers of the region including the Grose and the Colo.
- Erosion of cleared land that will inevitably occur will provide a source of sediment in streams. Amongst other problems excess sediment in stream channels reduces channel capacity promoting flooding, blankets stream habitats and clouds water diminishing the survival ability of native fish and water invertebrates.

5.3 Without a notification and reporting mechanism included in the *10/50 Code*, it is not possible for local fire managers and Councils to fully understand the extent of its uptake and the impacts that will result. Homeowners should at best be required to obtain a permit to carry out clearance, or at least have to formally notify the RFS and Council of an intention to clear vegetation. This would provide an up-dateable understanding of the extent of clearance for bush fire purposes and allow for the assessments of impacts.

6. Misuse of the *Code* by residents, commercial contractors and developers

6.1 One of the causes of misuse of a piece of legislation like the *10/50 Vegetation Clearing Code* is that the documentation whether on paper or web-based is not actually read or it is even intentionally ignored. Can we be guaranteed that this is not the case with the *10/50 Code*? It would appear that most land owners have only seen media reports that trees and undergrowth can now be cleared from properties without application to Local Council Tree Preservation Officers or the seeking of other forms of official approval. Where is the evidence that the *Code* is being accessed, read and followed? How do we know that the changes to the *Code* and important information in the Q&A section of the RFS website are sighted? How many land owners conduct a self-assessment of their property using the RFS on-line tool before cutting down trees or sending in a slasher to clear their property of undergrowth?

6.2 The reality is that it is open season on trees. Since its introduction media reports and observations of Society members indicate that the *10/50 Code* is being used to remove trees to improve views, facilitate development, build garden sheds and barbecues and other non-bushfire related purposes. At worst trees are being removed because residents don't like raking up leaves or just don't like trees. The sound of leaf blowers on a weekend has been replaced by the sound of chainsaws.

6.3 The specific requirements of the *Code*, especially the limit of tree removal to 10 metres from a dwelling, are being ignored. There are widespread reports of excessive tree removal occurring and where residents can get away with it trees are being cut down on neighbouring vacant blocks without permission. In one short street in Mount Riverview fifteen mature eucalypts were removed from several houses over a two week period and one property cleared almost all their Grey Gums (*Eucalyptus punctata*) which is an important bird and glider habitat tree (*Blue Mountains Gazette* 3 Sept 2014, p.4). The sound of chainsaws and chippers is constant from some parts of the Blue Mountains.

6.4 Land clearance is occurring over larger areas than a 50 metre radius from a dwelling. In the example given above of the clearing of several large acreage properties on Hawkesbury Road Winmalee/Hawkesbury Height, the area mechanically under-scrubbed exceeds the 50 metres allowed, and occurred in Commonwealth EPBC Act protected *Shale/Sandstone Transition Forest* without approval.

6.5 The *Code* is being taken advantage of by commercial tree and land clearing contractors and fly-by-night operators for their own commercial gain. Deals are being offered to residents according to the number of trees removed and neighbours are encouraged to join together to participate in this process at apparently reduced costs. There are reports from many

areas within the Blue Mountains of commercial operators letterboxing residents and groups of apparently unqualified tree fellers touting for business door-to-door.

The Society has not heard of a tree contractor refusing to remove a tree because it was more than the designated distance from a dwelling, nor have we heard of land clearers refusing to slash or tritter because of environmental legislation.

- 6.6 **A moratorium is needed immediately to stop these actions** before some streets and even large parts of suburbs have their character permanently changed and degraded for unproven protective gain and before another listed ecological community, population or species is mulched without the legislated processes of approval.

7. Compliance and enforcement issues

- 7.1 The *10/50 Vegetation Clearing Code* document does not provide for a **process of compliance** with the *Code*. Property owners and commercial contractors are expected to be self-policing. However self-assessable codes are not capable of being effectively monitored or enforced and so it is not possible to ensure that there is compliance, nor if environmental and amenity objectives are being met, or even if actions carried out under the *Code* provisions will prove to be effective in their objectives in the future.
- 7.2 There are no provisions for any means of **enforcement** of the *Code*. Early complaints by Blue Mountains residents about apparent breaches of it were met with at best confused, or at worse no responses from the RFS and the Blue Mountains City Council. We can find no penalties listed for non-compliance with the *Code* in the published document. It appears to be impossible to control or prosecute misuse of the scheme.
- 7.3 Any tree removal or land clearance policy must at the very least be regulated by Local Government with effective monitoring and enforcement provisions.
- 7.4 A system of fines for both the property owner and for the contractor is urgently needed if the *Code* continues to operate in either the present or in an amended form.
- 7.5 It is considered that the previous regulations related to tree removal and to native vegetation clearing were preferable to the current system and we encourage the return of Bushfire Risk Assessments and the issuing of Hazard Reduction Certificates by the RFS.

Conclusions and Recommendations

It is apparent that there are serious concerns about the development and operation of the *10/50 Vegetation Clearing Code of Practice for New South Wales* as implemented on the 1 August 2014. These concerns range from the lack of transparency in the processes related to legislation of the *Code*, to the disregard of existing environmental legislation through to misuse and lack of in-place procedures to ensure compliance. It is also apparent that the *Code* is already being altered and patched up ‘on the run’ which is a highly unsatisfactory and irregular situation that has arisen from inadequacies in the processes that should have been better involved in its initial legislation.

The Blue Mountains Conservation Society therefore:

1. Supports an urgent, genuine and visible review of all aspects of the *10/50 Vegetation Clearing Code of Practice for New South Wales*

2. Calls for a widely advertised and enforced moratorium on all tree removal and understorey clearances until that review occurs
3. Requests that immediate and widespread publicity be undertaken to ensure that no *10/50* actions be undertaken in areas where Threatened Ecological Communities, Populations and Species as listed under the Commonwealth Government's *Environment Protection and Biodiversity Conservation Act 1999* occur until a moratorium is put in place and a review of the *Code* is conducted
4. Requests that during the review process serious consideration be given to fully rescinding the *Code* and reverting to the former systems of tree inspections and permits for removal by Local Council Tree Preservation Officers and the issuing of Hazard Reduction Certificates by the Rural Fire Service.

If you have any questions regarding this submission, please contact me on 4784 1704 or email president@bluemountains.org.au

Yours sincerely

A handwritten signature in black ink, appearing to be 'AP', written in a cursive style.

Alan Page
President Blue Mountains Conservation Society