

Bush fire related clearing and the *Biodiversity Conservation Act 2016*

Bushfire Asset Protection Zones must be considered when determining whether a biodiversity development assessment report is required

For the purposes of deciding whether a biodiversity development assessment report is required, the entire bushfire Asset Protection Zone (APZ) must be included in the development footprint when applying the biodiversity offsets scheme threshold. The biodiversity impacts associated with establishing the APZ must also be considered when applying the test of significance outlined in section 7.3 of the *Biodiversity Conservation Act 2016* (BC Act) and considering impact on areas of outstanding biodiversity value.

A clearing entitlement under the 10/50 Vegetation Clearing Code of Practice may be created with the approval of certain buildings and structures

In areas where the 10/50 Vegetation Clearing Code of Practice applies, a clearing entitlement will be created by the approval of certain buildings and structures. An APZ approved in association with the development may be larger or smaller than the 10/50 clearing entitlement. Regardless, an approved APZ will not extinguish the 10/50 entitlement. However, clearing under the 10/50 Code cannot be inconsistent with a condition of development consent that identifies and requires the retention and management of vegetation for conservation purposes.

To take this clearing entitlement into account in biodiversity assessments and approvals, Council could:

- Apply a 50 metre buffer around eligible buildings where the 10/50 Vegetation Clearing Code of Practice applies for the purposes of determining whether a biodiversity development assessment report is required; or
- Apply the appropriate APZ for the purposes of determining whether a biodiversity development assessment report is required and then apply a condition of consent to protect vegetation beyond the APZ that identifies and requires the retention and management of vegetation for conservation purposes.

The 10/50 Vegetation Clearing Code of Practice allows people who own a parcel of land within an identified 10/50 vegetation clearing entitlement area to:

- Clear trees on their property within 10 metres of a home, without seeking approval; and
- Clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

Clearing must be in accordance with the restrictions in the 10/50 Clearing Code of Practice. For example, some types of vegetation cannot be cleared. For details see section 7.2 of the Code.

Further information is available at <https://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

The Biodiversity Assessment Method can assess different vegetation management regimes

If a biodiversity development assessment report is required, the Biodiversity Assessment Method can consider different vegetation management regimes in assessing biodiversity impacts. For example, an inner APZ can be treated as a complete loss of vegetation, whereas outer APZs may be treated as the removal of under and mid-storey species only.

Bush fire related clearing entitlements associated with a neighbour's buildings will be considered differently to those associated with the landowner's own buildings

If a landowner has an approved APZ or a 10/50 clearing entitlement relating to an existing building, approved clearing in these areas does not need to be considered in determining whether a biodiversity development assessment report is required for a subsequent development application.

Any vegetation impacted by a proposed development that is within the 10/50 clearing entitlement of a neighbour's building will be considered when determining whether a biodiversity development assessment report is required. An exception may be made if the applicant presents a written consent from the neighbour for removal of this vegetation at the time of submission of the development application. A landholder can only remove vegetation on their land that relates to the 10/50 clearing entitlement of a neighbour's building if they have a written consent from the neighbour.

A landholder can remove vegetation for an approved APZ that relates to a neighbour's property where the Rural Fire Service's requirements specifically extend into their property from the neighbouring property and these requirements are included in a development consent. For the purposes of determining whether a biodiversity development assessment report is required, this clearing may be excluded from consideration.