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2 May 2025

Natural Resources Commission
GPO Box 5341
SYDNEY NSW 2001

By email: nrc@nrc.nsw.gov.au

Dear Sir/Madam,

NSW PLAN FOR NATURE INDEPENDENT REVIEW

Thank you for the opportunity to provide a response to the NSW Plan for Nature independent review (**Review**). The Law Society's Environmental Planning and Development, Rural Issues and Revenue NSW/Law Society Liaison Committees contributed to this submission.

We note that the Natural Resources Commission (**Commission**) has been asked to undertake an independent review to provide the NSW Government with advice on options to 'further protect and restore biodiversity and ecosystem functions in regional landscapes, and enhance value and support for landholders'.¹ The review is in accordance with a commitment made in the *NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013 (the NSW Plan for Nature)*.²

We support the objectives of the review and set out below a number of matters for consideration by the Commission.

1. Prioritising completion of the Native Vegetation Regulatory Map

The need to finalise the draft Native Vegetation Regulatory Map (**NVR Map**) was identified as part of proposed Government Action 17, 'Deliver decision-ready information and tools', in the NSW Government response to the reviews of the *Biodiversity Conservation Act 2016* (NSW) and the native vegetation provisions of the *Local Land Services Act 2013* (NSW).³ The NVR Map is prepared under Part 5A, Division 2 of the *Local Land Services Act 2013* (NSW) (**LLSA**), and it designates areas of land where the clearing of native vegetation is categorised as regulated or exempt under Part 5A of the LLSA.

¹ *Terms of Reference: Options to further protect and restore biodiversity and ecosystem functions in regional landscapes, and enhance value and support for landholders*
<https://www.nsw.gov.au/sites/default/files/noindex/2025-03/terms-of-reference-options-to-further-protect-and-restore-biodiversity_0.pdf>.

² NSW Government, *NSW plan for nature NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024) 25
<<https://www.nsw.gov.au/departments-and-agencies/cabinet-office/resources/nsw-plan-for-nature>>.

³ *Ibid* 18.

At present, as contemplated by the LLSA, both a draft NVR Map and a Transitional NVR Map have been published.⁴ It is intended that a finalised NVR MAP is published to replace both these documents.

In our view, the NVR Map should be finalised without further delay, to make the regulatory scheme it supports easier to navigate for landholders. We also support the continuation of a landholder's ability to seek a review of the categorisation of their land under the NVR Map once finalised, under section 60L of the LLSA, as this has important ramifications for determining agricultural land use.

2. The role of the Native Vegetation Panel

The Native Vegetation Panel (**NV Panel**) is an independent agency established under Part 5A, Division 6 of the LLSA, whose function is to objectively determine applications to clear native vegetation. Under section 60ZO of the LLSA, the Local Land Services is to maintain public information registers in relation to native vegetation management including approvals issued by the NV Panel. The Public Register of determinations by the NV Panel as shown on its website⁵ indicates that only one determination has been made in relation to a rural area, and no determinations have been made in relation to non-rural areas.

We suggest that greater transparency is required in relation to the operation of the NV Panel. Whether the NV Panel is operating as intended should also be considered.

3. Improve monitoring and reporting

In our view, consideration could be given to improving the monitoring of, and reporting on land clearing. Transparency and data collection in relation to the extent and location of land clearing in New South Wales is key to understanding the potential impact on biodiversity and whether the existing framework is operating as intended. Compared to the framework under the *Native Vegetation Act 2023* (NSW), in our view, there is a significant reduction in the information included in public registers required to be maintained by Local Land Services, under section 60ZO of the LLSA.⁶ We suggest consideration could be given to expanding the level of detail of information included in these registers, beyond reporting only on aggregated land clearing as currently required.

Land clearing that is compliant with the *Land Management (Native Vegetation) Code 2018* (NSW) (**Code**) does not require formal assessment or approval. Instead, there are requirements for landholders to notify the Local Land Services of intended clearing, and it issues a voluntary code-compliant certificate, or a mandatory code-compliant certificate, depending on the type of clearing. Detailed information for notifications and certification applications under the Code are not published,

⁴ NSW Environment and Heritage, Department of Climate Change, Energy, the Environment and Water, *Native Vegetation Regulatory map* (10 August 2014) <<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map>>.

⁵ Native Vegetation Panel <https://www.nvp.nsw.gov.au/applications/public-register>.

⁶ Public Registers maintained by the Local Land Services are available at: <https://www.lls.nsw.gov.au/help-and-advice/land-management-in-nsw/public-register>.

meaning that the monitoring and reporting of land clearing under the Code are not transparent. In this context, we note that Recommendation 2.2 of the Natural Resources Commission Report on Land Management (**NRC Report**) suggested:

Developing clear processes to monitor and report on compliance with certifications and notifications to clear and set asides under the Land Management (Native Vegetation) Code. Monitoring and reporting processes should be developed with consideration of best practice principles, including ensuring monitoring can identify incidents of non-compliance and compliance risks in a timely way.⁷

Although Recommendation 2.2 was supported in the Government response to the NRC Report,⁸ the development of reporting processes as described in relation to the Code has not yet been implemented, but in our view, should be.

We suggest that expanding the land clearing information published in the registers maintained by the Local Land Services, and new reporting in relation to Code based land clearing, would improve the monitoring of land clearing activities being undertaken lawfully, and assist in identifying illegal clearing for enforcement purposes, and for the purposes of due diligence for persons who are buying or leasing rural land. More broadly, improved monitoring will enable a better understanding of whether the existing framework adequately protects and restores biodiversity and ecosystem functions in regional landscapes.

4. Aboriginal cultural land management

We note the fifth Term of Reference for the current review, 'Aboriginal input an Aboriginal land management practice'. Aboriginal cultural land management, especially cultural burning, plays a vital role in protecting and restoring biodiversity and ecosystem functions in regional landscapes. There is growing recognition at national and state levels of the effectiveness of these practices.⁹ However, regulatory, and insurance barriers continue to limit their broader application in New South Wales. For example:

- Cultural burning is often subject to restrictive fire regulations designed for hazard reduction, not land care or biodiversity outcomes.
- Difficulties in obtaining insurance make it hard for Aboriginal practitioners to be covered for cultural burns, limiting opportunities for communities to lead this work independently and safely.

We suggest that to fully realise the benefits of Aboriginal cultural land management, systemic reforms are needed, including:

- Removing regulatory barriers and adapting legislation to recognise cultural fire as distinct from hazard reduction burning.

⁷ Natural Resources Commission, *Land management and biodiversity conservation reforms - Final advice on a response to the policy review point July 2019* (July 2019) 7, available at <<https://www.nrc.nsw.gov.au/completed/land-mngt-reforms>>.

⁸ NSW Government, *Response to the Natural Resources Commission Report on Land Management* (30 March 2020) 2, available at <<https://www.nrc.nsw.gov.au/completed/land-mngt-reforms>>.

⁹ For example, Recommendations 25 and 26 of the *Final Report of the NSW Bushfire Inquiry* (31 July 2020) <<https://www.nsw.gov.au/sites/default/files/noindex/2023-06/Final-Report-of-the-NSW-Bushfire-Inquiry.pdf>>.

- Providing accessible and appropriate insurance options.
- Supporting Aboriginal-led land and fire governance through policy, funding, and partnerships.

5. Opportunities to incentivise landholders to protect and enhance biodiversity and ecosystem functions

In our view, a whole of government approach (Federal and State) to incentivising landholders to enter into private conservation arrangements needs to be adopted. We wish to highlight two areas for further consideration.

5.1. Expand section 275 of the *Duties Act 1997*(NSW)

In our view, it is appropriate to consider the scope of the duty exemption under section 275 of the *Duties Act 1997*(NSW) (**Duties Act**) for charitable and benevolent bodies, and whether it ought to be available to transfers and donations of land to not-for-profit environmental organisations. Making the exemption available would assist these organisations in receiving donations of private land to advance the protection of the natural environment, without being constrained by the need to fund the duty payable on the acquisition.

There are several different types of charitable and benevolent organisations that may obtain the exemption under subsection 275(3):

- organisations, approved by the Chief Commissioner, for the relief of poverty in Australia (section 275(3)(a)(i));
- organisations, approved by the Chief Commissioner, for the promotion of education in Australia (section 275(3)(a)(ii)); and
- organisations, in the opinion of the Chief Commissioner,
 - of a charitable or benevolent nature, or
 - having its primary object the promotion of the interests of Aborigines,
 where the purposes of the transaction or use of the landholding is approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer (section 275(3)(b)).

Paragraphs 17 and 18 of *Revenue Ruling DUT 034 - Exemption from duty - Charitable and benevolent bodies*¹⁰ set out the purposes of the transaction or use of the landholding which may be approved in accordance with the relevant guidelines referred to in section 275(3)(b)(i) and (iii). We note these purposes are listed in paragraph 17 as:

- the relief of poverty
- the relief and prevention of sickness and disability
- the relief of suffering and distress caused by old age
- the promotion of education
- the establishment of organisations to assist sections of the community with special needs
- the relief of distress caused by natural disasters or sudden catastrophes.

As these categories do not expressly cover environmental organisations, it is difficult for an environmental organisation to obtain the exemption under section 275(3)(b).

¹⁰ Revenue NSW, *Revenue Ruling DUT 034 - Exemption from duty - Charitable and benevolent bodies* (9 March 2007) <<https://www.revenue.nsw.gov.au/help-centre/resources-library/rulings/duties/dut034>>.

Sometimes, a not-for-profit environmental organisation also undertakes educational activities, which may satisfy section 275(3)(a)(ii). However, where such an organisation has obtained its charitable registration from the Australian Charities and Not-for-profits Commission (ACNC) as a charity for the purpose of 'advancing the natural environment' (section 12 (1)(j) of the *Charities Act 2013* (Cth)), there may be an underlying tension created in relation to the ACNC registration if an exemption from duty is pursued on the basis that the charitable purpose of the organisation is the advancement of education.

We suggest that consideration be given to expanding the exemption under section 275 of the Duties Act to provide relief from duty for not-for-profit environmental organisations. One approach could be to provide duty relief for not-for-profit environmental organisations that are registered by the ACNC as organisations 'advancing the natural environment'.

With the increased importance being placed upon the protection of the natural environment by the NSW Government, we suggest it would be timely to reconsider the scope of section 275 and expand it to better support and incentivise transfers and donations of land to not-for-profit environmental organisations.

5.2. Review of the tax treatment of the creation of biodiversity credits

The taxation of income and capital gains associated with the creation of biodiversity credits is highly complex and in many instances a disincentive for landholders to enter into these schemes.

Any questions in relation to this letter should be directed to [REDACTED]

Yours sincerely,

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