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The Biodiversity Review Panel

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**Submission on Independent Biodiversity Legislation Review Panel
Issues paper August 2014**

Thank you for the opportunity to comment on the Issues Paper.

A review of Biodiversity Legislation is timely since NSW is contributing to the dramatic decline in species globally as recognised at the start of the UN decade on biodiversity in 2012. It is also vital if we are not only to prevent further loss but also to reverse it so citizens can continue to benefit from the many ecosystem services biodiversity provides for us free of charge.

Eurobodalla Greens are appalled at the extent to which the natural diversity of NSW has been diminished over the last two hundred years by land clearing, development, over-exploitation of natural resources and introduction of invasive species. It is clear that existing protections are not enough.

Significant issues that must be addressed by the Review are set out below.

Theme 1: Objects and principles for biodiversity conservation

The *Native Vegetation Act* 2003 has played a critical role in reducing the loss of native vegetation in NSW. The *Threatened Species Conservation Act* 1995 has been crucial in identifying and addressing threats to biodiversity (including land clearing).

However, the 2012 NSW State of the Environment report reveals that “... *the overall diversity and richness of native species in New South Wales remain under threat of further decline.*” At that time 989 species of plants and animals, 49 populations and 107 ecological communities were listed as threatened in NSW legislation, and 45 key threatening processes had been identified and the numbers were predicted to rise.

Obviously, more needs to be done and removal or weakening of the protections provided by these Acts will accelerate biodiversity loss. There must be an overarching object to protect and conserve biodiversity and to maintain the principles of ecologically sustainable development that underpin existing legislation.

Eurobodalla Greens applaud the recognition by the NSW Government of its responsibility to protect the natural environment in its current State Plan, NSW 2021. We endorse Goal 22 which commits the Government “to protect high value conservation land, native vegetation and biodiversity”. This will necessitate not only maintenance of existing laws, but also their strengthening. It includes a clear commitment to end broad-scale land clearing across NSW, and a commitment to ‘no net loss’ of native vegetation.

NSW biodiversity protection laws must meet Australia's obligations under the various international treaties to which Australia is a signatory, including the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Flora and Fauna, and the *Convention Concerning the Protection of the World Cultural and Natural Heritage*.

There must be improved integration between the *Environmental Planning and Assessment Act* 1979 (EPA Act) and biodiversity and conservation legislation in NSW. In particular, the EPA Act must not be allowed to 'switch off' biodiversity and conservation laws.

Theme 2: Conservation action.

The principle of "improving or maintaining" environmental outcomes should be retained, and extended so that it applies to all development activities.

Offsetting is still resulting in a net loss of threatened species habitat which is likely to lead to a loss of threatened species and endangered ecological communities. It should be used only as a last resort and there must be a legislative commitment to maintain or improve environmental outcomes.

The recently exhibited *Draft NSW Biodiversity Offsets Policy for Major Projects*, represents an unacceptable departure from established offsetting principles, including those previously adopted by the NSW Government. The Government must commit to clear biodiversity offsetting principles and develop a consistent framework applied transparently for biodiversity offsetting across all areas of Government.

The 'like for like' offsetting principle is fundamental and must not be weakened. Offsets must be fully protected in perpetuity.

Significant amounts of public money are presently being spent remedying the damage past clearing has caused. In many cases the impacts of clearing are felt far beyond the property in question. Private landholders should be teamed up more often with local Landcare groups who can help to carry out prescribed activities free of charge.

Biobanking as currently set up is not working adequately. Farmers feel overwhelmed by the idea and believe they are being punished for having important ecosystems on their land. Further education on the importance and advantages of biodiversity conservation on their land, together with improved funding and an offer of volunteer help would go some way to alleviating this situation.

Theme 3: Conservation in land use planning

In 2012, the Australian Network for Environmental Defenders' Offices undertook an assessment of the adequacy of threatened species and planning laws in all jurisdictions of Australia (www.edonsw.org.au/planning_development_heritage_policy), and found that there are a number of weaknesses with the way threatened species and endangered ecological communities are managed in NSW:

- A key failing of the assessment of threatened species under the EP&A Act is that even where an EIS or SIS demonstrates that a development will have potentially devastating impacts on threatened species or their habitats, this does not operate as a stop on development under the EP&A Act.

- There is no requirement for consent authorities to refuse consent to development proposals where an environmental assessment has shown that there will be an unacceptable impact on threatened species, endangered ecological communities or their habitats.
- The listing of threatened species under the Threatened Species Act does not activate a requirement to consider such listings (particularly of Endangered Ecological Communities) when making or reviewing Local Environmental Plans.

There are a number of key areas in which the Native Vegetation Act could be strengthened:

- Regrowth vegetation should be assessed for its conservation significance and habitat value for threatened species. Significant regrowth vegetation should be mapped and protected.
- Provisions should be strengthened to reduce loopholes allowing clearing without a Property Vegetation Plan.
- The application of important land clearing laws should be extended so that all development (including extractive industry, forestry, urban development and agriculture) subscribes to the same policy of “improving or maintaining” environmental outcomes.

Recent amendments to regulations under the *Rural Fires Act* (the so-called 10/50 Regulations) enable habitat removal whether or not the habitat is important to threatened species.

Theme 4: Conservation in development approval processes

Development should seek to minimise negative impacts on native vegetation and fauna consistent with goal 22 of the NSW 2021 - Protect our natural environment.

There are significant concerns with the EPA Act’s ‘7 part test’ which requires an assessment of whether a development will have a significant impact on threatened species or ecological endangered communities; the test is often not undertaken where required, and is applied inconsistently.

There are a number of key areas where the protection of threatened species could be strengthened:

- The legislation should require development of recovery plans and critical habitat designation for all species, populations and ecological communities listed under the *Threatened Species Conservation Act* 1995 within 4 years. Suitable funding for the development and implementation of these plans must be provided.
- Databases can be improved so that cumulative impact can be adequately assessed.
- Local councils should be required to prepare an LEP that has the overall effect of adequately protecting biodiversity

More than enough land has been cleared to produce food and fibre and on which to improve the productivity of farming.

The recent expansion of RAMAs to include clearing of invasive native species, thinning of native vegetation, and clearing of paddock trees is likely to lead to an extensive increase in the amount of clearing that is exempt from assessment under the Native Vegetation Act 2003. The effect will be to open the door to broad-scale land clearing and lead to significant loss of native habitat. It will place further stress on fragile soils, rivers and catchments. Routine Agricultural Management Activities (RAMAs) should be restricted to genuinely low impact activities.

There must be strengthened protection for native vegetation and threatened species habitat under the *Environmental Planning & Assessment Act 1979* to ensure no net loss of native vegetation from urban, industrial and mining development.

The conservation of nature must remain as the primary focus of protected areas. Commercial and recreational activities that compromise conservation values should be excluded from protected areas.

Theme 5: Wildlife management

Invasive plants and animals represent the second greatest threat to biodiversity in NSW after habitat loss (Coutts-Smith & Downey, 2006; EPA, 2012).

Funding for assessing and combating the threat of invasive plants and animals should be increased. This will allow prioritisation of resources and control activities toward those species posing the greatest threats.

The Biodiversity Legislation Review should also consider the recently proposed framework biosecurity legislation for NSW which recommends legislative tools and powers required to manage pests, diseases, weeds and contaminants in NSW. The framework will be used to form the basis of the NSW Biosecurity Act, which will support the national agreed principle that biosecurity is a shared responsibility.

The number and scale of protected areas in NSW should be expanded and the conservation of nature must remain as their. Commercial and recreational activities that compromise conservation values should be excluded from protected areas.

Planning for protected areas should include accommodation of range shifts and the need for climate refugia resulting from climate change.

Theme 6: Information provisions

Decisions must be based on objective science-based decision making criteria (e.g. Environment Outcomes Assessment Methodology under the Native Vegetation Act), and discretionary decision making should be very limited.

The role of the Independent Scientific Committee under the TSC Act, to decide which species are threatened and deserve special protection, should be retained and listing must continue to be based on the professional advice of the Scientific Committee.

Extensive education resources must be made available to communicate to all citizens the importance of biodiversity. In particular native vegetation:

- Protects valuable topsoil from erosion, water logging and salinity;
- Provides shelter for stock and crops from wind and weather;
- Provides pollination and pest control;
- Moderates the climate – and positively influences rainfall patterns;
- Protects threatened species of animals and plants from extinction; and
- Provides health, recreation and amenity benefits to human beings.

Destruction of native vegetation extinguishes or reduces all these benefits, and also has direct detrimental impacts including loss of freshwater quality, loss of topsoil and death of native animals and plants. Economists now have reliable estimates of the dollar value of these services which should be widely published.

In summary, Eurobodalla Greens believe that this review provides a once in a decade opportunity for improving our conservation and biodiversity legislation for posterity. It is absolutely critical that we use this opportunity by taking an evidenced based and scientific approach with the goal of improving biodiversity across New South Wales.

Yours sincerely

Sheila Monahan

Secretary
Eurobodalla Greens