

Public submission

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Environmental
Defenders Office

**Submission on development of the NSW Forestry
Industry Action Plan**

October 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Independent Forestry Panel

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Acknowledgement

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations peoples. We acknowledge that not all First Nations peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

Role of EDO

EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

EDO has and continues to work with First Nations clients who have interacted with western laws, including litigation and engaging in western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

EXECUTIVE SUMMARY

In EDO's view, development of the NSW Forestry Industry Action Plan must:

1. Consider and apply all proposed actions in the baseline context of continued environmental decline in NSW, the predicted exacerbating impacts of climate change, and government commitments to avoid native species extinctions and arrest and reverse deforestation.
2. Incorporate actions that respond to the latest science and related state of the environment reporting, including pending relevant public and private forest assessments from the NSW Natural Resources Commission, findings from the NSW State of Environment report (due 2024) and pending updates (planned 2024) from ABARES on critical indicators in the national State of the Forests report.
3. Consider and implement findings of the pending five year reviews of both the NSW Coastal Integrated Forestry Approval and NSW Regional Forests Agreements, particularly with respect to applying the legislated principles of ecologically sustainable forest management (**ESFM**) in native forestry regulation.
4. Include actions for reform of NSW threatened species laws to improve application of ESFM within native forestry regulation.
5. Consider, and include actions for, any reform to planning laws to promote a sustainable plantation forestry resource.
6. Engage with, and incorporate, mechanisms to harness the beneficial non-forestry values of NSW native forests, while ensuring that such schemes (markets or other) result in actions that achieve genuine and timely environmental benefits.
7. Prioritise First Nations voices and expertise to ensure that consent, governance and management of Country, and protection of cultural heritage, are supported and resourced in the Plan.
8. Include further public consultation, including on a draft Plan.

INTRODUCTION

The Environmental Defenders Office (EDO) welcomes the opportunity to make a submission to the Independent Forestry Panel on the sustainability of current and future forestry operations in NSW to inform development of a NSW Forest Industry Action Plan.

EDO is a community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on forestry issues and advocating for law reform, with a focus on ensuring sound laws are in place to protect the environment, and that the community has the right to properly participate in environmental decision-making, oversight and enforcement. Our work has most recently included the following.

- Submission to the NSW Parliamentary inquiry into the long term sustainability and future of the timber and forest products industry (2021-2022)
- Submissions on Forestry Corporation of NSW forest management plans and on native forestry certification
- Engagement as an expert stakeholder on review and reform of the NSW Biodiversity Conservation Act and Local Land Services Act
- Litigation in the NSW Land and Environment Court and Federal Court about NSW native forestry operations and regulation
- Publications on policy and law reform for protecting east coast unburnt forests following the 2019-2020 bushfires
- Submissions on nature market legislation and reform, and on biodiversity offsets
- Meetings with the NSW Environmental Protection Authority regarding public native forestry regulation
- Frequent legal advice to a range of community clients about native forestry operations

We recognise that the topic areas of the Panel's consultation are broad, aimed at addressing a range of issues relating to the sustainability and future of the timber and forest products industry in both native forests and plantations.

EDO, with input from our scientific and First Nations programs, and from our work with a range of community clients, is best placed to assist the Panel by providing comment on the regulatory framework for native forestry operations, rather than in plantations. We do not substantively address other topics outside of our areas of expertise, acknowledging that other information will be available to the Panel, including through other stakeholders, on key issues such as timber demand and alternative native forest uses and industries.

We direct the Panel to previous EDO submissions and reports, and where possible, avoid repeating earlier analysis.

We welcome the opportunity to discuss with the Panel any matters arising from this submission, our relevant past work and/or to provide further information.

1. Sustainability of current and future forestry operations in NSW

Further to our past submissions referenced above, EDO remains concerned that the existing regulatory framework for native forestry in NSW is not achieving ecologically sustainable¹ native forestry operations, and will not in the future, unless there is immediate and effective regulatory reform.

NSW laws require forestry operations carried out in NSW native forests (on both public and private land) are to be underpinned by the principles of ecologically sustainable forestry management (**ESFM**).² ESFM is an internationally-recognised set of principles that aim to maintain and monitor the broad range of social, economic and environmental values of forests and are derived from the Montreal Criteria.³ ESFM adopts a triple bottom line approach to maintaining a broad range of social, economic and environmental values of forests. ESFM is also at the core of Australia's framework of criteria and indicators with respect to its *State of the Forests* reporting.⁴

As a result of EDO's involvement in recent court matters, discussions with the NSW EPA and advice to community clients, EDO contends that effective implementation of ESFM in the NSW native forestry regulatory framework remains acutely wanting. This is also evidenced by considerations such as:

- the continued decline of various biodiversity metrics in NSW, including threatened species like the koala (see more in topic 2 below);
- difficulties between the EPA (as regulator) and FCNSW implementing adequate regulatory measures in response to the 2019-2020 bushfires, despite clear advice from the NSW Natural Resources Commission that native forestry operations in high-risk areas should be suspended;⁵
- FCNSW's inadequate engagement with and application of ESFM in legislatively required forest management plans;⁶

¹ We note that this Panel topic area may also purport to include economic sustainability, about which we do not provide substantive comment.

² See Part 10 of the *Forestry Act 2012*. One of the two identified purposes of Part 5A of the *Forestry Act* is to "[authorise] the carrying out of ... forestry operations in accordance with the principles of ecologically sustainable forest management". Part 60ZR of the *Local Land Services Act 2013* provides that one of the objects of Part 5B of that Act is "to authorise the carrying out of private native forestry in accordance with principles of ecologically sustainable forest management".

³ The principles of ESFM and Montreal Criteria are reproduced in the appendix to this submission.

⁴ See <https://www.agriculture.gov.au/abares/forestsaustralia/framework>

⁵ See EDO's submission to BSI Group on FCNSW's Native Hardwood Forests Division Responsible Wood Recertification (June 2022) at paragraphs 13 to 22 (to be uploaded to EDO website – copy available on request)

⁶ See EDO's submissions to FCNSW on:

- the fact that until last year, FCNSW had been inappropriately conducting surveys for the endangered nocturnal greater glider during the day, and the EPA has only just this year attempted to implement a regulatory response to improve relevant habitat protection;⁷
- ongoing breaches by FCNSW of forestry laws, resulting in prosecution and enforcement of by EPA; and⁸
- Commonwealth law reform that is proposed to enable stronger environmental protection from native forestry operations by changes to the current Regional Forests Agreement scheme.⁹

Further, and as our submission to the NSW Parliamentary Inquiry details,¹⁰ one of the key criticisms of both the former IFOAs and the RFAs prior to their variation in late 2018 has been the lack of data and information available to determine whether ESFM is being achieved. There is an obvious public interest in understanding whether strategic environmental outcomes and detailed targets for the native forest estate are being achieved – including the overarching objective of ESFM.

As such, the current legal framework for regulating forestry operations in native forests on public and private land must be promptly revised to better align with and implement the principles of ESFM. This includes with respect to increased transparency and reporting, third party enforcement rights, and responding to environmental challenges such as climate change and biodiversity loss.

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- the Draft Forest Management Plan (Softwood Plantations and Coastal Hardwood Forests)(June 2022), available here - <https://www.edo.org.au/publication/edo-submission-on-fcnsws-draft-forest-management-plan-softwood-plantations-and-coastal-hardwood-forests/>; and
 - the Draft Updated Forest Management Plans (Cypress and inland hardwood forests and Cumberland State Forest)(May 2024) - to be uploaded to EDO website, copy available on request

⁷ See “Protecting greater gliders” on the EPA’s website here - <https://www.epa.nsw.gov.au/your-environment/native-forestry/public-native-forestry/integrated-forestry-operations-approvals/coastal-ifoa>

⁸ See EDO’s submission on FCNSW’s Responsible Wood certification at note 6 above at paragraph 23. See also, for example “FCNSW fined for breaking bushfire harvesting rules” EPA media release dated 31 July 2024, available at <https://www.epa.nsw.gov.au/news/media-releases/2024/epamedia240731-fcnsw-fined-for-breaking-bushfire-harvesting-rules/> and the NSW Audit Office’s 2023 report on public forestry regulation that found FCNSW does not consistently monitor its contractors and target activity monitoring on a risk basis (see <https://www.audit.nsw.gov.au/our-work/reports/regulation-of-public-native-forestry/>).

⁹ See the Australian Government’s *Nature Positive Plan* (2022) in response to the independent Samuel’s review at pp 18, 19 and 40 (available at <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>)

¹⁰ Available at <https://www.edo.org.au/publication/inquiry-into-the-long-term-sustainability-and-future-of-the-timber-and-forest-products-industry/> - see in particular section 3.

The need to assess and consider climate and biodiversity risks from a corporate perspective will only continue grow, given international movements by corporations and financial institutions agreeing to disclose how their businesses affect climate and nature.¹¹

These observations underscore the need for the pending five year reviews of the Coastal Integrated Forestry Operations Approval and NSW Regional Forests Agreements to be undertaken as soon as possible. EDO will make detailed comments on necessary reform on ESFM as part of those pending reviews. The outcomes of those reviews must then be duly considered and implemented as part of the proposed Plan.

2. Environmental and cultural values of forests, including threatened species and Aboriginal cultural heritage values

EDO's Parliamentary Inquiry submission details the important environmental context which should carefully inform how the action Plan is now to be developed.

In particular, the 2021 NSW State of the Environment report included the following findings:

- “The number of species listed as threatened in NSW continues to rise. These species are at the greatest risk from threats including vegetation clearing, the spread of invasive species and the mounting impacts of climate change.”
- “The effects of climate change are already evident, but these will become broader and intensify in the future.”
- “The condition of most native vegetation continues to deteriorate. Since the Black Summer fires of 2019–20, 62% of vegetation in the fire zone is under pressure from too much burning.”
- “The growing population of NSW continues to exert pressure on the environment, although there has been a temporary respite due to reduced activity and human caused disturbance during the COVID-19 pandemic. Innovative ways to use our natural resources more sustainably and to protect fragile ecosystems must continue to be found”.¹²

Similarly, the NSW Government's 'Biodiversity outlook report 2024' reaffirms that biodiversity is in decline in NSW, with habitat loss as the key pressure.¹³ The next NSW State of the Environment report is due this year, and is unlikely to deviate from that conclusion.

¹¹ The separate taskforces for Climate-related (TCND) and Nature-related (TNFD) disclosures. For example, see <https://www.climatechange.environment.nsw.gov.au/news-and-events/adaptsw-2023-forum/nature-redefined-and-revalued-your-company-ready-tnfd>

¹² See <https://www.soe.epa.nsw.gov.au/key-findings>

¹³ Available at <https://www.environment.nsw.gov.au/research-and-publications/publications-search/nsw-biodiversity-outlook-report-2024>

We also note that the NSW Natural Resources Commission has a number of projects assessing regulatory measures under the Coastal Integrated Forestry Operations Approval,¹⁴ as well as the first five yearly review of its CIFOA monitoring program.¹⁵

While Australia's last *State of the Forests* report was in 2018, and despite the Australian Government previously producing a report every five years, we are not aware of a new report since. However, ABARES' reporting against many of the crucial indicators to inform the state of forests are noted as 'planned to be updated in 2024'.¹⁶ Several of these particularly relate to an assessment of the effectiveness of current regulatory regimes in meeting ESFM principles, such as on biodiversity, productive capacity, and forest condition and function – but also with relate to Indigenous and non-Indigenous cultural and social values.

Further, in a recent challenge to the legal validity of the renewed north east NSW Regional Forests Agreement, the Federal Court confirmed that environmental assessments first done some 20 years prior did not need to be revisited as part of the (potentially indefinite) extension of NSW RFAs in 2018.¹⁷ That finding underscores the critical need for other avenues of ongoing monitoring, assessment, reporting and review of NSW forests, such as that by the NSW NRC, state of the environment and state of forests reporting to continually ensure contemporary information is available on the environmental and other values of forests. Crucially, development of the action Plan must consider and reflect this latest information.

EDO also draws the Panel's attention to its other relevant policy and law reform work on improving threatened species protection, in particular, its:

- 'Defending the Unburnt' reports in the context of post 2019-2020 wildfires:
 - o *Wildlife can't wait: Ensuring timely protection of our threatened biodiversity regarding regulatory response to major events*¹⁸;
 - o *Legal mechanisms for protecting critical, unburnt habitat*;¹⁹ and
- further report on critical habitat laws with WWF on *Bushfires, Bureaucracy and Barriers*²⁰

¹⁴ See <https://www.nrc.nsw.gov.au/ifo-mer-biodiversity>

¹⁵ See <https://www.nrc.nsw.gov.au/ifo-mer-reporting>

¹⁶ See <https://www.agriculture.gov.au/abares/forestsaustralia/sofr/data-and-information#frameworks-supporting-conservation-and-forest-management>

¹⁷ *North East Forest Alliance Inc v Commonwealth of Australia* [2024] FCA 5 available at <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0005>

¹⁸ Available at <https://www.edo.org.au/publication/discussion-paper-wildlife-cant-wait-ensuring-timely-protection-of-our-threatened-biodiversity/>

¹⁹ Available at <https://www.edo.org.au/wp-content/uploads/2022/05/Legal-mechanisms-for-protecting-critical-unburnt-habitat-following-the-2019-2020-bushfire-season-2.pdf>

²⁰ Available at <https://www.edo.org.au/2024/05/14/australias-habitat-protection-laws-ineffective-woefully-underused-new-report-finds/>

- submission on the NSW Koala Strategy Review.²¹

The issues we raise in those papers should be captured as in the Plan as actions for necessary reform of threatened species laws to better facilitate ESFM – and made operational in the regulatory instruments for public and private native forestry.

With respect to Aboriginal cultural heritage values, please see our comment below on topic area 5.

3. Demand for timber products, particularly as relates to NSW housing, construction, mining, transport and retail

EDO simply notes a number of its clients' views that timber demand should be increasingly met by an appropriately located and regulated plantation estate to minimise adverse environmental impacts, particularly where other states (Victoria, Western Australia, and parts of south east Queensland) have or will transition out of native forestry and are shifting demand to plantations.

To that end, development of the Plan should consider any necessary action to adapt NSW planning and assessment regimes to facilitate an increased reliance on a sustainable plantation resource. EDO would then provide further detailed comment on any such planning law reform at that time.

We also note that the NSW Government's response to the Parliamentary Inquiry into the long-term sustainability and future of the timber and forest products industry includes numerous actions relevant to timber demand and the plantation resource.²² Development of the action Plan should review and consider the appropriateness and status of those Government response actions.

4. The future of softwood and hardwood plantations and the continuation of Private Native Forestry in helping meet timber supply needs

We note our brief comment above with respect to timber demand and plantations, and focus our submission on this topic area on private native forestry (**PNF**).

²¹ Available at <https://www.edo.org.au/publication/submission-on-the-nsw-koala-strategy-review/>

²² NSW Government Response: Inquiry into the long-term sustainability and future of the timber and forest products industry (available at <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2762/Government%20response%20-%20Report%2054%20-%20Timber%20and%20forest%20products%20industry%20-%20received%2015%20December%202022.pdf>)

EDO has made a number of submissions outlining the regulatory context of, and its concerns with, NSW's PNF operations.²³ While the NSW Government commenced a PNF review in 2018, it does not appear to have finalised the review and produced a report.²⁴ Rather, it appears that it instead:

- asked the NRC in 2021 to help finalise new PNF codes of practice²⁵ (which then occurred in 2022²⁶); and
- proposed, but then withdrew, legislative amendments aimed at streamlining PNF consent processes.²⁷

As such, many of EDO's earlier comments remain relevant. This includes that a formal process for monitoring PNF operations should be legislated for, which covers cumulative impact assessment of PNF over time. It should expressly mandate the publication of these assessments and related reports, and also require all approved PNF plans to be contained in a public register.²⁸

We note that the Government's response to the Parliamentary inquiry into the forestry industry referenced actions under the PNF Codes to conduct annual checks and five yearly reviews.²⁹ An important assessment with respect to ESFM in the initial annual check by the NRC is the pending risk-based review of threatened species protections in Appendix A of the Codes.³⁰ Development of the action Plan with respect to PNF therefore must consider the pending results of that NRC review, and reflect necessary actions to affect changes to the Codes. We note also note that Government indicated that from 2023, the LLS would annually publish information on PNF harvest activities in each Code region³¹ – but we have not been able to find that information to date.

If any final PNF review report is not pending (which seems likely, given the time lapsed and subsequent events), development of an action Plan should revisit issues raised in the review to assess whether any further actions remain relevant, but unaddressed or incomplete, to warrant inclusion in the Plan.

²³ These include EDO's 2019 submission to Private Native Forestry Review (https://www.edo.org.au/wp-content/uploads/2020/01/190124_Submission_to_the_Private_Native_Forestry_Review_2018_-_EDO_NSW_submission_corrected.pdf), submission on Draft Private Native Forestry Codes of Practice NSW (<https://www.edo.org.au/publication/private-native-forestry-nsw/>) and 2021 submission into the Parliamentary inquiry at note 9 above (see PNF discussion on pp 25-27).

²⁴ No information is available on relevant government websites – see for example <https://www.dpi.nsw.gov.au/forestry/science/forest-resources/2018-private-native-forestry/private-native-forestry-review>

²⁵ Per <https://www.nrc.nsw.gov.au/completed/pnf#>

²⁶ Per <https://www.lls.nsw.gov.au/help-and-advice/private-native-forestry/private-native-forestry-code-of-practice>

²⁷ See <https://www.abc.net.au/news/2022-11-14/nsw-government-abandons-forestry-koala-laws/101653090>

²⁸ See the submission on the PNF Review at note 18, particularly recommendations 17 and 18 at pp 8 & 9.

²⁹ See note 17, regarding recommendation 15.

³⁰ See the NRC's Annual Progress Report 2022-23 Private Native Forestry Monitoring Program at section 2.3 - (available at <https://www.nrc.nsw.gov.au/PNF%20MER%20Annual%20Progress%20Report%202022-23.pdf>)

³¹ See note 17, regarding recommendation 16.

Given that PNF falls under the separate regulatory regime of the *Local Land Services Act 2013* and *Biodiversity Conservation Act 2016*, EDO's recent submission to Statutory Review of the Biodiversity Conservation Act includes comments relevant to PNF regulation.³² In July 2024, the NSW Government published its response to that statutory review of the BC Act (and LLS Act) in its 'Plan for Nature' report.³³ While it does not specifically address PNF, some of the plan's proposed actions do positively reflect on EDO's previous PNF submissions and will have implications for PNF operations. These include an overarching Nature Strategy, the requirement for consideration of climate and cumulative impacts in development assessments, establishing monitoring, evaluation and reporting, and enhancing reporting on compliance and enforcement actions.³⁴

As such, development of the industry Plan with respect to PNF must be consistent with, and be underpinned by, the NSW Government's Plan for Nature.

5. The role of State Forests in maximising the delivery of a range of environmental, economic and social outcomes and options for diverse management, including Aboriginal forest management models

Briefly, with respect to the economic role of native forestry operations in State Forests, EDO reiterates its concerns with the current regulatory regime failing to properly implement ESFM; thus, development of the Plan must temper the economics of native forestry as against the need for regulatory reform to achieve ESFM.

This is also bolstered by the role State Forests have in maximising environmental outcomes, particularly in light of Australian Government international commitments to enhanced environmental stewardship with broader, global initiatives and goals for the greater protection of nature. These include:

- The protection of at least 30 percent of the world's land and ocean by 2030 (High Ambition Coalition for People and Nature 30 x 30 goal)
- Halting and reversing forest loss and land degradation by 2030 (Glasgow Leaders' Declaration on Forests and Land Use); and
- Reversing biodiversity loss by 2030 (Leaders' Pledge for Nature).

³² See <https://www.edo.org.au/publication/submission-to-the-statutory-review-of-the-biodiversity-conservation-act-2016/> particularly at section 11.4 regarding interaction with forestry legislation and recommendations

³³ Available at <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/nsw-plan-for-nature>

³⁴ See EDO's comment on the Government's plan 'Biodiversity law reforms a step in the right direction for NSW', available at <https://www.edo.org.au/2024/07/17/biodiversity-law-reforms-a-step-in-the-right-direction-for-nsw/>

We discuss these commitments further in section 3.4 of our discussion paper on *Defending the Unburnt: Opportunities to expand and enhance environmental stewardship*.³⁵

This context for State Forests increasing their roles for environmental outcomes must be considered and incorporated into the development of the Plan.

Diverse management – Aboriginal forest management models

We note the Panel is seeking the views of stakeholders on Aboriginal cultural heritage values of forests (topic area 2), as well as Aboriginal forest management models.

EDO emphasises that it is a non-Indigenous community legal centre that works alongside First Nations peoples in their efforts to protect their Countries and cultural heritage from damage and destruction. The voices of First Nations people must be centred in any conversations about management of Country, including forests, in accordance with the right to self-determination.

Out of respect for First Nations self-determination, we provide the following high-level key recommendations in relation to these topics.

- The NSW Independent Forestry Panel should engage and consult directly with First Nations people in NSW in relation to the development of the Plan.
- First Nations people must be the primary decision-makers about management of their Countries and cultural heritage. The Plan must prioritise and resource First Nations leadership in proactively managing Country and cultural heritage values, including forests.
- First Nations-led innovations in governance and management of Country should be prioritised, supported, resourced and encouraged.
- First Nations people must have the opportunity to give their free, prior and informed consent in relation to decisions that impact their Countries and cultural heritage, including management of forests.
- The Plan needs to mandate respect for First Nations cultural heritage values of forests. Where the destruction of cultural heritage will have a detrimental effect on culture or cultural identity as identified by First Nations people, it must be protected in-line with Australia's obligations under international law, including the United Nations Declaration on the Rights of Indigenous Peoples.
- First Nations people are the experts in their own Countries and cultural heritage and are not outweighed by Western scientists when defining whether cultural heritage is significant, or how it is significant.
- Meaningful relationships and partnerships with First Nations people and communities must be based on First Nations decision-making processes and protocols. Those processes and protocols must be respected, supported and properly resourced.

³⁵ Available at <https://www.edo.org.au/publication/discussion-paper-opportunities-to-expand-and-enhance-environmental-stewardship/>

We refer to recommendations made in EDO's *Opportunities to expand and enhance environmental stewardship*,³⁶ in particular recommendations made in section 3.2 regarding enhancing opportunities for First Nations involvement in caring for Country.

6. Opportunities to realise carbon and biodiversity benefits and support carbon and biodiversity markets, and mitigate and adapt to climate change risks, including the greenhouse gas emission impacts of different uses of forests and assessment of climate change risks to forests

EDO has consistently engaged with a range of policy and legislative proposals for carbon and biodiversity markets (including related biodiversity offset schemes) at both the NSW and national levels.

From a stewardship perspective, we discuss the opportunities for such markets in our paper *Opportunities to expand and enhance environmental stewardship*³⁷. We have also published a guide on *Carbon market opportunities for private landholders* that is of potential relevance to PNF operations.³⁸

With respect to biodiversity offsets schemes, EDO has expressed its continued concerns most recently in:

- NSW submissions on the *Biodiversity Assessment Method 5-year Review*³⁹ and *Monitoring the Biodiversity Credits Market in NSW* (IPART); and⁴⁰
- its discussion paper *Defending the Unburnt: Offsetting our way to extinction*.⁴¹

EDO has also recently made a submission on the discussion paper on the Nature Repair Market, established under the national *Nature Repair Act 2023*.⁴²

While EDO generally supports investment in opportunities for environmental restoration and funding for biodiversity stewardship and/or climate benefits by way of market solutions, the sum of our work on these issues is that there is a critical need for establishing schemes that achieve

³⁶ See note 31.

³⁷ See note 31 at section 3.4.

³⁸ Available at <https://www.edo.org.au/wp-content/uploads/2022/10/9a19152a95cf-EDO-Defending-the-Unburnt-Carbon-market-opportunities-for-private-landholders-a-guide-Web-Final-1.pdf>

³⁹ Available at <https://www.edo.org.au/publication/edo-submission-on-the-biodiversity-assessment-method-5-year-review/>

⁴⁰ Available at <https://www.edo.org.au/wp-content/uploads/2023/08/230804-IPART-Biodiversity-Market-Monitoring-Review-EDO-submission-1.pdf>

⁴¹ Available at <https://www.edo.org.au/publication/discussion-paper-offsetting-our-way-to-extinction/>

⁴² Available at <https://www.edo.org.au/wp-content/uploads/2024/09/240927-Nature-Repair-Market-Discussion-Paper-EDO-submission.pdf>

genuine and timely environmental benefits. Careful consideration and scrutiny is required of proposal details to implement schemes that achieve this aim.

As such, development of the action Plan must engage with, and incorporate, mechanisms to harness the beneficial non-forestry values of NSW native forests and related opportunities arising. However, ultimately the Plan must promote subsequent actions founded in the core requirement of achieving actual environmental outcomes, and not simply being a further source of damage to the range of other values of NSW native forests that such schemes set out to encourage.

Appendix

Forestry Act – Ecologically sustainable forest management

Section 69L(2) of the *Forestry Act 2012* (NSW) provides the following principles of ecologically sustainable forest management:

- a) maintaining forest values for future and present generations, including:
 - i) forest biological diversity, and
 - ii) the productive capacity and sustainability of forest ecosystems, and
 - iii) the health and vitality of native forest ecosystems, and
 - iv) soil and water quality, and
 - v) the contribution of native forests to global geochemical cycles, and vi) the long term social and economic benefits of native forests, and
 - vii) natural heritage values,
- b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations,
- c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards,
- d) applying best-available knowledge and adaptive management processes to deliver best-practice forest management,
- e) applying the precautionary principle (as referred to in section 6 (2) (a) of the Protection of the Environment Administration Act 1991) in preventing environmental harm.

The same meaning is adopted by section 60ZQ of the *Local Land Services Act 2013* (NSW) for the purpose of private native forestry.

Montréal criteria

The *Montréal Process, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests*, Fifth Edition, September 2015 outlines seven criterion for the sustainable management of forests, namely

Criterion 1: Conservation of biological diversity

Criterion 2: Maintenance of productive capacity of forest ecosystems

Criterion 3: Maintenance of forest ecosystem health and vitality

Criterion 4: Conservation and maintenance of soil and water resources

Criterion 5: Maintenance of forest contribution to global carbon cycles

Criterion 6: Maintenance and enhancement of long-term multiple socio-economic benefits to meet the needs of societies

Criterion 7: Legal, institutional and economic framework for forest conservation and sustainable management

[www.montrealprocess.org/The Montreal Process/Criteria and Indicators/index.shtml](http://www.montrealprocess.org/The_Montreal_Process/Criteria_and_Indicators/index.shtml)