

**Submission
No 395**

**INQUIRY INTO MANAGEMENT OF PUBLIC LAND IN
NEW SOUTH WALES**

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Submission in response to the Inquiry into the Management of Public Lands in NSW

prepared by

EDO NSW

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About EDO NSW

EDO NSW 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 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO NSW 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.

EDO NSW is part of a national network of centres that help to protect the environment through law in their states.

Submitted to:

The Director
General Purpose Standing Committee No. 5
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Introduction

EDO NSW is a community legal centre specialising in public interest environmental law. We have made a number of submissions to the NSW Government and NSW parliament on public land management, national park management and forestry practices in recent years.¹ We welcome the opportunity to comment on the Inquiry into the Management of Public Lands in New South Wales.

As a community legal centre specialising in public interest environmental law, our responses to the broad terms of reference focus on the legal and regulatory framework for the management of public lands (predominantly protected areas) with input from our in-house science team.

Our submission is structured as follows:

1. In relation to the first term of reference, we provide comment on
 - a. The purpose of conversion of land to national park estate,
 - b. The process of conversion of land to national park estate,
 - c. The impacts of conversion of land to national park estate.
2. In relation to the second term of reference, we discuss best practice approaches to 'managing the matrix' of public and private land in NSW; and
3. In relation to the third term of reference, we assess the sustainability of current land uses.

Summary of recommendations

Term of Reference 1: In recognition of the numerous benefits of protected areas, EDO NSW recommends that:

- *the conversion and adjustment process remain a robust and transparent legislative process, and*
- *that the national park estate be expanded in line with CAR principles to enhance measures that build resilience to climate change.*

Term of Reference 2: In recognition of the benefits of a healthy landscape and the necessity to manage a matrix of land tenures, EDO NSW recommends:

- *Increased funding for the NPWS to undertake ecologically appropriate invasive species control in protected areas, and for the relevant agencies in relation Crown lands and State Forests.*
- *Resources and assistance should be made available to private landholders to assist with invasive and feral species control on areas adjacent to protected areas.*
- *Increased resources to implement best practice detection, suppression and ecologically appropriate management measure by both NPWS and landholders adjacent to protected areas.*
- *To ensure maintenance of landscape values and function, maintain robust native vegetation laws.*

¹ EDO NSW submissions are available at http://www.edo.org.au/edonsw/site/policy_submissions.php.

Term of Reference 3: EDO NSW recommends:

- *An independent review of state forest and crown land to identify areas of high biodiversity value that should be converted to national park status and protected from inappropriate activities that do not meet a 'sustainable use' test.*
- *Retention and strengthening of relevant national park management plans and principles, and OEH sustainability guidelines, that stipulate that sustainable use must be consistent with the overarching legislative objective of nature conservation.*

Term of Reference 1 – Conversion of land to national park

Before providing comment on the process of conversion, and the impacts of conversion, it is useful to analyse the *purpose* of conversion of land to national park.

a) Purpose of conversion of land to the national park estate

The objects of the *National Parks & Wildlife Act 1974* (NSW) clearly express that the primary purpose of the Act is for the *conservation of nature*.²

The reasons for conserving nature, and in particular biodiversity,³ are many and include recognition of nature's intrinsic value;⁴ maintenance of ecosystem services; aesthetic and recreational enjoyment; economic value; and future uses.⁵ Some of the key reasons for providing legal protection to national park estate are set out below.

Ecosystems perform many important 'services' which directly benefit the community. For example, healthy productive landscapes depend on ecosystem processes which maintain water quality in catchments; moderate the atmosphere; conserve soil fertility; maintain coastal function; pollinate crops; and sequester carbon.⁶

The last two decades have seen a significant increase in research examining the economic value of these services.⁷ For example, it is estimated that pollination of crops in Australia is worth approximately \$1.2 billion dollars per annum.⁸ Pollination depends on a delicate balance of biological processes that take place within the

² *National Parks and Wildlife Act 1974*, section 2A (1)(a).

³ Biodiversity is defined in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as 'the variability among living organisms from all sources...and includes (a) diversity within species and between species; and (b) diversity of ecosystems': EPBC Act, section 528.

⁴ It is widely accepted and recognised in legislation that biodiversity has 'intrinsic value and a right to exist independent of any use to humans' see for example: the objects of the *Natural Resources Management Act 2004* (SA) include 'recognis[ing] and protect[ing] the intrinsic value of natural resources', and the *Nature Conservation Act 1992* (QLD) defines nature to include 'intrinsic or scientific value.'

⁵ Australia State of the Environment Report 2001 (Biodiversity Theme Report). <http://www.environment.gov.au/soe/2001/publications/theme-reports/biodiversity/biodiversity01-1.html>.

⁶ Australia State of the Environment Report 2001 (Biodiversity Theme Report).

<http://www.environment.gov.au/soe/2001/publications/theme-reports/biodiversity/biodiversity01-1.html>

⁷ See for example Pearce et al, *The Economic Value of Biodiversity*, IUCN, London, 1994.

⁸ Land and Water Australia, *Making economics work for biodiversity Conservation*, 2005, page 4.

broader environment,⁹ and interference with these processes may therefore have indirect impacts on the farming sector and Australia's GDP. The NSW Government is aware of the financial implications of environmental degradation, noting that '[t]he cost of not protecting biodiversity is likely to be substantial.'¹⁰

The aesthetic value and recreational uses of nature are well-established. For example, the management principles for national parks under the NPW Act include protecting outstanding ecosystems that 'provide opportunities for public appreciation and inspiration.'¹¹

Finally, our knowledge regarding the environment is imperfect. In Australia, for example, only one in four species is known.¹² Hence many scientists advocate applying a precautionary approach to resource management to protect future ecosystem services that may be of use, for example, in relation to food and medicine.¹³

The benefits of biodiversity are indisputable, so too is the most effective means of safeguarding it into the future: protecting land in perpetuity. In 2005, the Secretariat to the Convention on Biological Diversity acknowledged this link, resolving that the only way to significantly reduce biodiversity loss and to conserve ecosystems, species and habitats was to create a global system of protected areas.¹⁴ The reason is clear: protected areas control and in some instances eliminate the major threats to biodiversity.¹⁵ They may also be managed in such a way so as to facilitate species' adaptation to climate change, which is also listed under the *Threatened Species Conservation Act (1995)* as a key threatening process.¹⁶

Commonwealth policy clearly reflects this approach, with the National Reserve System (NRS) forming the cornerstone of Australia's biodiversity protection strategy. The NRS is based on a scientific framework with a clear objective: 'to develop a comprehensive, adequate and representative system of protected areas – commonly referred to as the CAR system.'¹⁷

Priorities under the NRS system, which currently covers only 13.4% of the continent, include safeguarding habitats for nationally-listed threatened species and/or

⁹ <http://australianmuseum.net.au/Pollination>

¹⁰ <http://www.environment.nsw.gov.au/resources/nature/landholderNotes12Biodiversity.pdf>

¹¹ *National Parks and Wildlife Act 1974*, section 30E (1).

¹² Australian Government, Department of Industry and Tourism Resources, *Biodiversity Management*, Page 9.

¹³ Australia State of the Environment Report 2001 (Biodiversity Theme Report).

<http://www.environment.gov.au/soe/2001/publications/theme-reports/biodiversity/biodiversity01-1.html>

¹⁴ Secretariat of the Convention on Biological Diversity, *Protected areas for achieving biodiversity targets*, 2005, page 1.

¹⁵ For example, land clearing, grazing and removal of dead wood and dead trees - Key threatening processes listed in Schedule 3 of the *Threatened Species Conservation Act 1995*.

¹⁶ *Threatened Species Conservation Act 1995*, Schedule 3.

¹⁷ <http://www.environment.gov.au/parks/nrs/science/scientific-framework.html>.

migratory species.¹⁸ This priority is anchored in evidence-based science, which has confirmed the nexus between land reservation and protection of listed species.¹⁹

This link was the starting point for a recent study examining the relationship between the NRS and the geographic distribution of threatened species. Using spatial prioritisation software, it was found that the reserve system would need to cover 17.6% (or an additional 4.2%) of Australia's landmass in order to reach target levels of representation for threatened species.²⁰ This research provides ample motivation for the Commonwealth, States and Territories to work together to strategically increase reserved land for the purposes of protecting our most vulnerable biota.

NSW policy likewise acknowledges that protected areas are fundamental to biodiversity conservation and restoration. For example, the 2009 State of the Environment Report declared that:

*'A dedicated system of parks and reserves is the cornerstone of conservation efforts to preserve and protect biodiversity and ecosystems in NSW...Protected areas provide refuge for a significant proportion of threatened species...'*²¹

This notion is enshrined in Part 4 of the *National Parks and Wildlife Act 1974* (NPW Act), which outlines seven different categories of land reservation, namely: national parks; wilderness areas; historic sites; state conservation areas; regional parks; karst conservation reserves; nature reserves; and Aboriginal areas.²² Each of these reserved areas is managed in accordance with specific principles, a common theme of which is biodiversity conservation and/or the conservation of natural values.

b) The process of conversion

EDO NSW notes that the Governor may convert land to one of the reservation categories listed in the NPW Act by publishing a notice in the Gazette.²³ We further note that Ministerial concurrence is required to convert certain land.²⁴ For example, the concurrence of the Minister for Primary Industries is required before land administered under the Forestry Act can be reserved under the NPW Act,²⁵ while the concurrence of the Minister for Resources and Energy is needed 'as the case requires' before land can be converted to a state conservation area.²⁶ EDO NSW does not object to this concurrence framework in principle, however would be concerned if it were used to obstruct environmentally and culturally significant land

¹⁸ <http://www.environment.gov.au/parks/nrs/science/bioregion-framework/ibra/index.html>

¹⁹ Brooks et al, Protected areas and species, *Conservation Biology*, 18:616–618, 2004; Possingham et al, Protected areas: goals, limitations, and design, pp 509–533 in M. J. Groom, G. K. Meffe, and C. R. Carroll, eds, *Principles of Conservation Biology*, Sinauer Associates, Sunderland, Massachusetts, 2006.

²⁰ This assumes current reserves are maintained. See Watson et al, The capacity of Australia's protected-area system to represent threatened species, *Conservation Biology*, Volume 25, No. 2, 2011, p 329.

²¹ New South Wales State of the Environment 2009, Chapter 7: Biodiversity, page 246.

<http://www.environment.nsw.gov.au/resources/soe09/09716biodiv.pdf>

²² *National Parks and Wildlife Act 1974, Part 4.*

²³ *National Parks and Wildlife Act 1974, section 30A.*

²⁴ *National Parks and Wildlife Act 1974, section 30C, 30D.*

²⁵ *National Parks and Wildlife Act 1974, section 30C (c), 30D (c).*

²⁶ *National Parks and Wildlife Act 1974, section 30D (d).*

from being added to the NSW reserve system in accordance with the Commonwealth's 'Strategy for Australia's Reserve System 2010-30' and the 'New South Wales National Parks Establishment Plan 2008.'

EDO NSW has consistently argued that ecologically and culturally significant land should be afforded the highest level of protection under environmental legislation. Once afforded the appropriate level of protection, it is essential that protection is maintained in perpetuity and not easily revoked. We therefore support the current provisions in the NPW Act. According to this framework, national parks, historic sites, karst conservation reserves, regional parks, nature reserves, and conservation areas can only be revoked by an Act of Parliament.²⁷ We submit that this system should remain unchanged. Where "adjustment of areas" legislation does come before the NSW parliament, there should be clear justification provided – ie, that any adjustment is for a public purpose and all possible alternative options to revocation were fully considered. Compensatory park area (that legally protects equivalent environmental values) must also be gazetted before any revocation occurs.²⁸

c) The impacts of conversion

EDO NSW has identified the following *benefits* of conversion of land to protected area status.

a. Economy

Protected areas in NSW make significant indirect and direct contributions to the Australian economy. Indirect contributions comprise ecosystem services such as carbon sequestration, maintenance of water catchments, controlling soil erosion and harbouring bird and insect species that pollinate crops. The CSIRO has estimated that these services are worth \$1,327 billion per annum,²⁹ which is more than ten times the income generated by exporting minerals.³⁰ The NSW Government has estimated the short term economic benefits of ecosystem services to be even higher, notably \$2000 billion per annum, which is twice the annual gross national product.³¹

Direct contributions are made via tourism. The Federal government estimates that the 'nature-based tourism industry' contributes approximately \$23 billion to the Australian economy each year.³² This profit can be maintained by ensuring tourist satisfaction levels are retained in those areas that are often visited. A recent study looked at tourist satisfaction indicators, and discovered that:

²⁷ *National Parks and Wildlife Act 1974*, sections 37, 47L, 47ZB, 52, 58M,

²⁸ See: *NPWS Revocation of Land Policy 2002*.

²⁹ This figure is for ecosystem services across Australia. See Commonwealth Government, *Reserving a Green Future, Natural Heritage – Journal of the Natural Heritage Trust*, No 33 Winter 2007, page 2. <http://www.environment.gov.au/parks/publications/nrs/nht-journal.html>

³⁰ In 2009 the Australian mining industry's exports (excluding petroleum) were worth \$114 billion. <http://www.ga.gov.au/minerals/basics.html>

³¹ This figure is for ecosystem services across Australia.

<http://www.environment.nsw.gov.au/resources/nature/landholderNotes12Biodiversity.pdf>

³² <http://www.environment.gov.au/parks/publications/landscapes/sustainable-tourism.html>

“Conditions considered of greatest importance in determining visitor’s quality of experience included litter, inadequate disposal of human waste, presence of wildlife, levels of noise, and access to beach and ocean”³³.

This illustrates that economic benefits associated with tourism are very much dependant on preserving protected areas in their natural state. Accordingly, the NSW Government should remain mindful of the impact that activities such as hunting, mining, forestry and poorly managed tourism ventures will have on this valuable sector.

b. Facilitating species’ adaptation under climate change

As previously noted, protected areas may also contribute to biodiversity conservation by assisting species to adapt to climate change. The goal of adaptation can be defined as reducing the risk of adverse impacts by enhancing the ‘resilience’ or ‘resistance’ of ecosystems to change.³⁴

Protected areas enhance resilience and resistance in a number of ways. For example, they provide what is known as ‘climate refugia’. Climate refugia are areas where species are able to persist during periods of climatic stress and from which they can recolonise when conditions favourable for their survival and reproduction return.³⁵ Protected areas may also be strategically managed so as to maintain and restore large patches of vegetation, which in turn support larger and more diverse populations (both of which are markers of resilience).³⁶ Given this connection, some scientists argue that ‘large patch protection’ should be the primary focus of conservation efforts under climate change.³⁷

EDO NSW strongly supports the NRS and we submit that it should be strategically expanded in accordance with best available science in order to protect threatened species and facilitate species’ adaptation under climate change.

The ‘New South Wales National Parks Establishment Plan 2008’ recognises the need to facilitate species adaptation under climate change. The adaptation policy

³³ Moore S.A. & Polley, A. 2007, Defining indicators and standards for tourism impacts in protected areas: Cape Range National Park, Australia, *Environmental Management*, Vol. 39, Pgs. 291-300.

³⁴ Climate Change Science Program (US) (2008): *Preliminary review of adaptation options for climate sensitive ecosystems and resources*. A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [Julius SH and West JM (eds), Baron JS, Griffith B, Joyce LA, Kareiva P, Keller BD, Palmer MA, Peterson CH, and Scott JM (Authors)]. U.S. Environmental Protection Agency, Washington, DC, USA.

³⁵ Noss R (2001) ‘Beyond Kyoto: Forest management in a time of rapid climate change’ *Conservation Biology* 15(3): 578-590; Dunlop, M. and Brown, P. (2008) ‘Implications of climate change for Australia’s National Reserve System: A preliminary assessment.’ Report to the Department of Climate Change, February 2008. Department of Climate Change, Canberra, Australia.

³⁶ Lindenmayer D, Hobbs R, Montague-Drake R, Alexandra J, Bennett A, Burgman M, Cale P, Calhoun A, Cramer V, Cullen P, Driscoll D, Fahrig L, Fischer J, Franklin J, Haila Y, Hunter M, Gibbons P, Lake S, Luck G, MacGregor C, McIntyre S, MacNally R, Manning A, Miller J, Mooney H, Noss R, Possingham H, Saunders D, Schmieglow F, Scott M, Simberloff D, Sisk T, Tabor G, Walker B, Wiens J, Woinarski J and Zavaleta E (2008) ‘A checklist for ecological management of landscapes for conservation’ *Ecology Letters* 11: 78-91.

³⁷ Hodgson J, Thomas C, Wintle B, Moilanen A (in press) ‘Climate change, connectivity and conservation decision-making – back to basics’ *Journal of Applied Ecology*.

outlined in this document could be more comprehensive. For example, in addition to adding critical landscape corridors and buffer zones,³⁸ there could be further consolidation of large patches, as recognised in scientific literature as useful adaptation tools.³⁹

c. Aboriginal cultural heritage

In addition to the clear benefits to biodiversity of creating a robust system of reserved lands, as indicated by the NPW Act reservation category 'Aboriginal area', benefits extend to protecting areas of natural or cultural significance to Aboriginal people. While these areas are principally safeguarded for use by Aboriginal Australians, tourists may also be granted access to the extent that this access is compatible with the 'Aboriginal area's natural and cultural values and the cultural values of Aboriginal people.'⁴⁰ In addition to the importance of protected areas of cultural significance and of relevance to cultural practices, cooperative management of national parks can also provide important employment opportunities for local Aboriginal communities.

d. Broader public benefits

The benefits to the broader public of spending time in protected areas are well-documented and include relaxation, a sense of peace and enhanced appreciation of the natural environment.⁴¹ The Act, current plans of management and management principles already provide for a range of recreational, cultural and educational activities to be enjoyed by the public in national parks. We support the ongoing basis of these activities being that they are not inconsistent with the overarching object of conserving nature.

Recommendations: In recognition of the numerous benefits of protected areas, EDO recommends that:

- ***the conversion and adjustment process remain a robust and transparent legislative process, and***
- ***that the national park estate be expanded in line with CAR principles and to enhance measures that build resilience to climate change.***

³⁸ NSW National Parks and Wildlife Service/DECC, *New South Wales National Parks Establishment Plan 2008: Directions for building a diverse and resilient system of parks and reserves under the National Parks and Wildlife Act, 2008*, page 2.

³⁹ Lindenmayer D, Hobbs R, Montague-Drake R, Alexandra J, Bennett A, Burgman M, Cale P, Calhoun A, Cramer V, Cullen P, Driscoll D, Fahrig L, Fischer J, Franklin J, Haila Y, Hunter M, Gibbons P, Lake S, Luck G, MacGregor C, McIntyre S, MacNally R, Manning A, Miller J, Mooney H, Noss R, Possingham H, Saunders D, Schmieglow F, Scott M, Simberloff D, Sisk T, Tabor G, Walker B, Wiens J, Woinarski J and Zavaleta E (2008) 'A checklist for ecological management of landscapes for conservation' *Ecology Letters* 11: 78-91.

⁴⁰ *National Parks and Wildlife Act 1974*, section 30K.

⁴¹ Noss et al, *Saving Nature's Legacy: Protecting and Restoring Biodiversity*, Island Press (The Centre for Resource Economics), Washington, 1994, pp 21 -2.

Term of reference 2 – Managing the matrix

We note the importance of taking a landscape approach to the conservation of biodiversity. Protected areas are an essential element of the healthy landscape matrix in NSW. To this end, best practice land management activities need to be applied appropriately across tenures, including private land, leasehold, crown land and protected areas. This requires two things; robust environmental laws and the provision of adequate funding for appropriate management activities.

We recognise that private landholders have legal responsibilities under legislation relating to native vegetation, noxious weeds and pests, and rural fires etc. These environmental laws are essential to maintain a healthy functioning and productive landscape. We recommend that the same legal requirements and best practice land management standards be applied across all land tenures whether public or private.

Numerous alien (or invasive) species are listed as key threatening processes under the *Threatened Species Conservation Act 1995*.⁴² EDO NSW strongly supports increasing funding for the NPWS to implement ecologically appropriate measures to control and eradicate invasive species in areas protected under the NPW Act. These measures should be executed in accordance with relevant policy by qualified officers employed by the NPWS, as a division of OEH.

To complement this, additional funding and assistance should also be made available assist landholders control feral and invasive species on land adjacent to protected areas (for example, assistance to undertake measures under noxious weeds legislation).

Another threat across all land tenures is bushfire. While it is impossible to stop all fires starting, especially in bushfire season, impacts can be ameliorated by improved measures for detection, suppression and ecologically appropriate management. While the majority of fires that start on parks or reserves are contained in those areas, fires do not respect tenure boundaries – with over twice as many off-park ignitions spreading to park areas than those initiating within parks.⁴³ Increased resourcing is needed to facilitate best practice fire management by both NPWS and landholders adjacent to parks.

Just as it is recognised that natural hazards and threats (such as weeds or bushfire) are indiscriminate in their impacts across land tenure; there are also positive impacts that should be managed across tenures. For example, in recognition of the multiple values of vegetation corridors (for example, as wind breaks, for soil stabilisation and for wildlife corridors)⁴⁴, robust native vegetation clearing laws must be maintained in NSW.⁴⁵

⁴² *Threatened Species Conservation Act 1995*, Schedule 3.

⁴³ See: *Living with Fire in NSW National Parks - A Strategy for Managing Bushfire in National Parks and Reserves to 2021*, Figure 8 indicates that 68% of fires start and are controlled on park land, 10% start on park and spread off-park, and 23% start off park and spread into park areas.

⁴⁴ For example, see the *Draft National Wildlife Corridors Plan* developed by the Advisory Group to the Minister for Sustainability, Environment, Water, Population and Communities, 2012.

⁴⁵ See EDO NSW Submission to the native vegetation review, August 2012, available at:

Recommendations: In recognition of the benefits of a healthy landscape and the necessity to manage a matrix of land tenures,

- ***EDO NSW strongly supports increased funding for the NPWS to undertake ecologically appropriate invasive species control in protected areas, and for relevant agencies in relation Crown lands and State Forests.***
- ***Funding should be available to private landholders to assist with feral and invasive species control on areas adjacent to protected areas.***
- ***Increase resources for implementing best practice detection, suppression and ecologically appropriate management measure by both NPWS and landholders adjacent to protected areas.***
- ***To ensure maintenance of landscape values and function, it is essential for NSW to maintain robust native vegetation laws.***

Term of reference 3 - Best practice sustainable management

The phrase “sustainable use” means different things to different people. In environmental law, it has emerged in international agreements alongside concepts such as “wise use.”⁴⁶

As noted, the NPW Act provides for seven categories of reserved (or protected) areas that are reserved for their ‘outstanding or representative ecosystems’,⁴⁷ ‘outstanding or representative examples of karst landforms’,⁴⁸ or ‘natural or cultural significance to Aboriginal people’.⁴⁹ We note that management principles applying to uses of each category, and that there are a range of activities and uses currently permitted in each reserve category. We recommend maintaining and strengthening the application of management principles – for sustainable use of parks consistent with the overarching objective of conserving nature.

For the purposes of this submission, we assess four different current activities (mining, forestry, and hunting) in terms of their compatibility with the overarching goal of protected areas – to conserve nature, and assess whether they currently meet a ‘sustainable use’ test in NSW.

We would also like to note in relation to a range of activities, that ‘sustainable use’ must not negatively impact on the traditional rights of Aboriginal Australians to access land and natural resources for a range of cultural purposes. The destruction of Aboriginal objects and degradation of Aboriginal places cannot be justified. The intrusion of activities such as hunting, mining and forestry into culturally significant areas is highly inappropriate.

⁴⁶ For example, see the Ramsar Convention provisions on wise use of wetlands.

⁴⁷ *National Parks and Wildlife Act 1974*, section 30E (1).

⁴⁸ *National Parks and Wildlife Act 1974*, section 30I (1).

⁴⁹ *National Parks and Wildlife Act 1974*, section 30K (1) (a).

a) Tourism and visitor use

The importance of meeting the overarching legislative conservation objective is recognised by the NSW Government in relation to tourism and visitor use. For example, the *Sustainability Guidelines for visitor use and tourism in NSW national parks* state that the guidelines.⁵⁰

provide background information on sustainable visitor use and tourism in the national parks system, highlighting the need to ensure that public visitation and enjoyment must always be compatible with the protection of conservation values.

We refer the inquiry to the management principles and plans to guide sustainable use of current parks. We support the strengthening and ongoing application of these principles, consistent with the objects of the Act, to guide 'sustainable use.'

For further detail on sustainable tourism in national parks, we refer the inquiry to our submission to the Australian Network of Environmental Defender's offices (ANEDO) *Submission to the Taskforce for Tourism and National Parks*, 29 August 2008.⁵¹ To meet a 'sustainable use' test, we submit that any visitor or tourist use of parks must be consistent with the objects of the Act and the management principles.⁵²

b) Exploration and Mining

The direct and indirect impacts of mining on the environment vary from case to case, but are rarely insignificant. Common impacts include habitat fragmentation, disturbance of aquifers, water, air and noise pollution, and biodiversity loss.⁵³ Allowing these impacts in protected areas is clearly not a sustainable use.

While mining legislation⁵⁴ does not apply in national parks, historic sites, karst conservation reserves, regional parks, nature reserves and Aboriginal areas, the Minister for Minerals and Energy may nevertheless authorise prospecting in the categories of reserved land subject to approval by Parliament.⁵⁵ Mining may be authorised on these lands by an Act of Parliament.⁵⁶ Mining legislation *does* apply within state conservation areas.⁵⁷ While this is consistent with one of the management principles for this particular category of reserved land,⁵⁸ it does not reflect either the remaining management principles or the objects of the NPW Act, as state conservation areas are reserved in order to conserve 'significant or

⁵⁰ State of NSW and Department of Environment, Climate Change and Water NSW, February 2011.

⁵¹ Available at: http://www.edo.org.au/edonsw/site/pdf/subs/080908tourism_np_taskforce.pdf.

⁵² EDO NSW provided extensive advice on this issue to environment groups on the *National Parks and Wildlife Amendment (Tourist and Visitor Use) Bill* in 2010.

⁵³ See for example Randall, A, Toward a risk management framework for a novel intervention, *Environmental and Planning Law Journal*, Volume 29/2, March 2012, pages 154-5.

⁵⁴ That is, the *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Petroleum (Onshore) Act 1991*, and the *Petroleum (Offshore) Act 1982*.

⁵⁵ *National Parks and Wildlife Act 1974*, section 41 (4).

⁵⁶ *National Parks and Wildlife Act 1974*, sections 41 (1), 47ZA, 54, 58(o), 64

⁵⁷ *National Parks and Wildlife Act 1974*, section 47J.

⁵⁸ *National Parks and Wildlife Act 1974*, section 30G (2) (c).

representative ecosystems, landforms or natural phenomena or places of cultural significance.⁵⁹

State forest is also subject to the provisions of mining legislation.⁶⁰ That is, exploration and mining may take place on this land with the concurrence of the Minister for Primary Industries, whose portfolio includes Forests NSW.⁶¹ Eastern Star Gas (now taken over by Santos) was granted an exploration licence to explore for CSG in the Pilliga State Forest, west of Narrabri. The Pilliga is a recognised biodiversity hotspot and home to a number of threatened species. So far, the exploration has involved seismic surveys, clearing of numerous roads and tracks, drilling of up to 92 coal seam gas drill holes and wells, development of five pilot production fields and construction of 13 major water treatment dams and a water treatment plant.⁶² At the time of writing, Santos was seeking approval to allow them to drill over 1000 gas wells in the forest.

Allowing mining to occur in protected areas raises some important legal questions including concerns around subordinate instruments allowing activities inconsistent with objects of the Act, and the implications of certain activities (for example CSG operations⁶³) effectively privatising areas that have been set aside by statute for the public good.

We note that legal precedent does exist to address concerns for mining activities that do not meet a 'sustainable use' test for areas of high conservation value. For example, the South Australian *Arkaroola Protection Act 2012* prohibits mining without exception in the 'Arkaroola Protection Area',⁶⁴ an area of 'outstanding geological, paleontological, biodiversity, conservation, landscape, wilderness, cultural, educational and tourism values.'⁶⁵

c) Forestry

Seventy percent of Australia's remaining forests – including state forests - are ecologically degraded from logging.⁶⁶ Kingsford et al have identified the loss and degradation of habitat as the first of six major threatening processes driving biodiversity decline in Oceania, threatening more terrestrial species than any other process.⁶⁷ EDO NSW submits that current forestry activities in NSW would not pass a 'sustainable use' test.

⁵⁹ *National Parks and Wildlife Act 1974*, section 30G (1) (a).

⁶⁰ *Petroleum (Onshore) Act 1991*, sections 9 and 70.

⁶¹ *Petroleum (Onshore) Act 1991*, section 70 (1).

⁶² Stop Pilliga Coal Seam Gas, available at http://www.stoppilligacoalseamgas.com.au/?page_id=61.

⁶³ Randall, A, Coal seam gas – Toward a risk management framework for a novel intervention, (2012) 29 *Environmental and Planning Law Journal*, page 153.

⁶⁴ *Arkaroola Protection Act 2012*, section 10.

⁶⁵ http://www.environment.sa.gov.au/Conservation/Ecosystem_conservation/Arkaroola_protection_area.

⁶⁶ Kingsford et al, Major Conservation Policy Issues for Biodiversity in Oceania (2009) 23; 4 *Conservation Biology*, page 834.

⁶⁷ Kingsford et al, Major Conservation Policy Issues for Biodiversity in Oceania (2009) 23; 4 *Conservation Biology*, page 834.

Forestry operations in NSW are conducted in State forests in accordance with the *Forestry Act 1916* (Forestry Act) and *Forestry and National Parks Estates Act 1988* (FNPE Act). According to Forest NSW, 1.1 million hectares of State forest is held in conservation and flora reserves or otherwise subject to exclusions from harvesting, while 1.3 million hectares (of mostly native forest) is available for harvesting. Extensive literature exists regarding the ecological and cultural significance of certain areas held within the NSW State forest reserve.⁶⁸

While logging conducted under the FNPE Act must promote ecologically sustainable forest management (ESFM)⁶⁹, it has been observed that there is an inherent tension between the adaptive management regime underpinning ESFM⁷⁰ and statutory requirements to produce, without exception, specific volumes of timber every year.⁷¹ As ESFM comprises principles that are less concrete than a declared 'figure', there is a real risk that sustainable practices will be a secondary consideration to meeting timber targets. This will necessarily exacerbate impacts on biodiversity, including threatened and endangered species and their habitat.

Forests NSW has a particularly poor record of compliance with the environmental regime established under the FNPE Act.⁷² As noted by Justice Pepper of the NSW Land and Environment Court,

*'...the number of convictions suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws.'*⁷³

It is clear that in relation to certain areas of state forest, appropriate models of management are not being applied and 'sustainable use' is not being achieved.

We therefore recommend that the NSW undertake a review of state forest and crown land to identify areas of high biodiversity value that should be converted to national park status and protected from inappropriate activities such as forestry. This is consistent with the 'New South Wales National Parks Establishment Plan 2008', according to which 'it is NSW Government policy to secure lands required for

⁶⁸ See for example Hogan, H, *Icons Under Threat: Natural areas and threatened species at risk from mining and gas in NSW*, November 2011. <http://nccnsw.org.au/content/icons-under-threat>

⁶⁹ *Forestry and National Park Estate Act*, section 16 (2) (a).

⁷⁰ Hammond-Deakin, N. and Higginson, S. (2011), *If a tree falls: Compliance failures in the public forests of New South Wales*, EDO NSW Ltd, Sydney, Australia, page 13.

⁷¹ *Forestry and National Park Estate Act*, section 16 (2) (b).

⁷² For example, South East Forest Rescue reported 54 breaches of forestry regulations in 2010-11, including failure to mark out threatened and protected species, failure to protect ground habitat from forestry activities and failure to prevent damage to habitat and recruitment trees. It is important to keep in mind that these statistics only pertain to one section of NSW State forest. Thus overall breaches for 2010-11 – reported or otherwise - were in all likelihood much higher. See: Hammond-Deakin, N. and Higginson, S. (2011), *If a tree falls: Compliance failures in the public forests of New South Wales*, EDO NSW Ltd, Sydney, Australia, Appendix 1, pages 32 – 37.

⁷³ *Department of Environment, Climate Change and Water v Forestry Commission of NSW* [2011] NSWLEC 102, Justice Pepper at 100.

building the DECC [now OEH] reserve system in the first instance from existing Crown or other publicly owned lands.⁷⁴

d) Game hunting

Recent amendments to the *Game and Feral Animal Control Act 2002* allowing game hunting in all but 48 of NSW's 779 reserves (including national parks) are also at odds with the management principles outlined in the NPW Act, as well as the Act's objects. Game hunting will invariably disturb native animals, including state and federally listed endangered species, and in certain instances result in their unintentional maiming and/or death. Regardless of direct impacts on native species, any recreational activity that injures and kills wildlife is 'so forcefully at odds with the purpose of the National Park System'⁷⁵ as to render it manifestly inappropriate. EDO NSW therefore submits that control of pest animals on reserved lands should be exclusively managed and carried out by the Office of Environment and Heritage (OEH) in accordance with relevant NSW Government policies including National Parks and Wildlife Service Regional Pest Management Strategies, the Threatened Species Priorities Action Statement and threat abatement plans.

Recommendations: EDO NSW recommends:

- **An independent review of state forest and crown land to identify areas of high biodiversity value that should be converted to national park status and protected from inappropriate activities such as mining.**
- **Retention and strengthening of relevant national park management plans and principles, and OEH sustainability guidelines, that stipulate that sustainable use must be consistent with the overarching goal of nature conservation.**

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⁷⁴ NSW National Parks and Wildlife Service/DECC, *New South Wales National Parks Establishment Plan 2008: Directions for building a diverse and resilient system of parks and reserves under the National Parks and Wildlife Act*, 2008, page 21.

⁷⁵ Almy, Jessica, Taking Aim at Hunting on National Parks Service Lands, *New York University environmental law journal*, Issue 2, 2010, page 185.