



**TIMBER NSW**

21 June 2017

Land Management and Biodiversity Conservation Reforms  
Office of Environment and Heritage  
PO Box A290  
Sydney South NSW 1232

Dear Sir/Madam,

**Re: Submission on the REGULATORY PROVISIONS FOR THE NATIVE VEGETATION REGULATORY (NVR) MAP**

This submission has been prepared by Timber NSW in accordance with Part 2 of the Submission Guide-Proposals for consultation for the draft NVR Map regulatory provisions.

**1. Landholder review process**

Timber NSW makes a number of submissions in relation to this process.

The accuracy of the NVR Map won't have been fully tested ('ground-truthed') when it comes into force, so it may be assumed that it will have errors.

We submit that it is inappropriate for the Environment Agency Head to charge a landholder a fee to correct the NVR Map after the final map is published. Further, we submit that the Environment Agency Head should not be entitled to make a landholder collect information to facilitate a review of an NVR Map or NVR subcategory Map unless that landholder is duly compensated for the time and costs that they incur.

In the event of a review process appeal, there should be an option that involves an independent, no or low cost solution such as a mediator (rather than the Land & Environment Court). Having the Land & Environment Court as the only appeal option will discourage most challenges on the basis of the time and costs that will be involved.

In addition, we submit that a failure by the Environment Agency Head to deal with a NVR Map review within a 40-day period should not be deemed as the review having been refused (Reg cl122(3)). This dis-incentivises the Environment Agency Head to deal with the review in a timely manner and unfairly penalises the landholder for the Environment Agency Head's failure.

We submit that the Environment Agency Head should not finalise the NVR Map until it is proven that it has a high level of accuracy (95% +) or, alternatively, there is a 'no cost' review process that has no time constraints imposed.

The above advice regarding the NVR Map should apply equally to any NVR subcategory maps (e.g. sensitive regulated land and vulnerable regulated land).

In summary, private individuals should not bear the cost of validating the NVR Map or any of its sub-category maps for or on behalf of the Environment Agency Head. The NVR Map is a NSW government product, the quality and accuracy of which is the responsibility of the NSW government.

A preferred and practical alternative, to having OEH responsible for individual Map reviews, would be to have a simple online self-assessment tool, like the one used for post 1990 regrowth. Under this arrangement OEH's role could be limited to an audit function.

## **2. Consultation on re-categorisation of land**

For the reasons outlined above, landholders seeking to have regulated land (category 2) changed to unregulated land (category 1) should not be burdened by a public notification process.

However, if the Environment Agency Head seeks to have unregulated land changed to regulated land, then we submit that a public notice of the proposed re-categorisation of land inviting submissions for at least 30 days is appropriate. This is because the change imposes additional regulatory burden and cost upon private land, which is a matter of public interest.

## **3. Consultation on re-categorisation of land subject to a private native forestry plan**

To re-categorise land subject to a private native forestry plan as 'regulated land' is premature as it precedes and circumvents the Government's commitment to undertake a separate review of private native forestry.

Land designated as being available for timber harvesting within an approved private native forestry plan (PVP) should not be re-categorised as category 2 regulated land (note this land does not include the excluded non-harvest area).

This land satisfies the historic land use test which applies to unregulated land regardless of whether or not the harvesting has been completed.

## **4. Categorising grasslands and other groundcover**

No comment

## **5. Introducing a new subcategory of land: category 2-sensitive regulated land**

Timber NSW does not support having a subcategory of land called category 2-sensitive regulated land. Timber NSW also objects to the use of the term 'sensitive'. Where land categories need to be described as a collective they should be simply described as 'regulated' land.

Please note, Timber NSW has made further comments regarding this subcategory of land in its submission on Ecologically Sustainable Development.

The Biodiversity Conservation Review Panel identified 'red tape' as a major problem with the existing legislation:

*“too much red tape alienates the very people whose cooperation is essential for great biodiversity outcomes”*

Without doubt, the proposal to introduce new subcategories of regulated land under the new legislation will create much more 'red tape'.

The Biodiversity Conservation Review Panel identified the need to rebuild trust with landholders by doing away with the ‘command and control’ approach:

*“Outcome focused and risk-based approach is the new standard...  
Support landowners and promote best practice management.”*

No compensation is proposed to be paid to landholders who are affected by the Map. This approach to conservation replicates the worst features of the Native Vegetation Act (which eroded trust by imposing conservation obligations on landholders without their consent). It is also inconsistent with the findings of the Biodiversity Review Panel, which said that landholders should be meaningfully compensated for the lost opportunity to develop their land.

It suggests that within OEH there still exists a ‘command and control’ culture where regulating from afar is preferable to working cooperatively with landholders to achieve outcomes which are holistic and durable.

As at June 2017 the location of the land features proposed to be included in the Sensitive regulated land subcategory were poorly defined (on existing maps) or in some cases undefined (e.g. the extent of core koala habitat, critically endangered plants and critically endangered ecological communities). Blind adherence to poor quality maps will not lead to good outcomes, rather it will see over protection of some features and under protection of others or protection where environmental features/entities are predicted to occur but don’t (especially if the confidence levels are low).

Having regulatory subcategory maps has been proposed on the basis that it will make things clearer for landholders. This argument doesn’t hold as landholders in general do not currently have to concern themselves with these features. Under the current legislative arrangements, only landholders with a PVP have to know the location of these features. Under the proposed approach all landholders would be burdened with this obligation.

Under the PVP approval process there has been a backlog of cases where landholders routinely identify incorrect mapping. The boundaries of rainforest and candidate old growth forest layers are particularly problematic as their preparation (in the late 1990s) was rushed and not ground-truthed or cross referenced with disturbance histories. The result is maps of very low quality. There has been very little subsequent investment by government to make these maps accurate and reliable. In principle, unless maps are accurate and reliable it may be assumed that they will create more problems than they solve.

The process of having mapped boundaries reviewed and validated (as is currently undertaken by the NSW EPA) is slow, cumbersome and resource intensive. The process is further complicated and made unworkable by internal departmental policies which see the review of both old growth and rainforest, even if only one has been contested. This results in additional delays and dis-incentivises landowners to bother with a challenge. To introduce a regulatory system that imposes such a burden onto all private landholdings is contrary to the principles of the reform process.

As an alternative to introducing a new subcategory of land Timber NSW advocates for a more holistic whole of landscape approach which is evidence and outcome based. Details of this approach were provided in Timber NSW June 2016 submission on the biodiversity legislation reform process.

## **6. Additional land to be designated as category 2- regulated land**

Under the draft LLSA Regulation land subject to a Private Native Forestry Plan is proposed to be designated category 2- regulated land.

Consistent with our comments in section 3 above, the categorisation of land subject to a Private Native Forestry Plan should not occur until the NSW Government has completed its separate review of private native forestry.

## 7. Describing koala habitat

Koalas have a very widespread distribution, which means their conservation is not well-suited to tenure-based protection models.

In addition, leading edge research being undertaken by the Department of Industry – Forestry & Lands has revealed that koalas are widespread and plentiful on the NSW north coast and do not require special protection (beyond that which they currently receive). The research has found that koalas are as plentiful in forests subject to a long history of moderate and high intensity selective timber harvesting as they are in national parks.

If the regulations are to be based on scientific evidence, then there is no case for designating koala habitat as category 2 – sensitive regulated land.

## 8. Maintaining the values of travelling stock reserves

In Western NSW an absence of managed fire (as traditionally practiced by indigenous Australians) has led to broad scale woody thickening. Woody thickening reduces forest health, productivity and resilience and can undermine the land's biodiversity conservation value. As many TSRs are no longer subject to indigenous cool burning practices nor low intensity grazer burning, they have become impacted by woody thickening. To restore TSR values they require active and adaptive management.

Timber NSW submits that the best way to actively conserve TSRs values is to prescribe them as category 1 – unregulated land and apply active and adaptive management practices in accordance with LLSA Regulation codes of practice.

Yours sincerely,



Maree McCaskill  
**General Manager**