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To Whom It May Concern,

### **Draft Ecological Harvesting Plan Guideline for Endangered Ecological Communities**

The Environmental Defender's Office of NSW (EDO) is a community legal centre specialising in environmental law and policy. The EDO has been involved in the development of the NSW native vegetation legislation, regulation, assessment methodology and Codes since 2003. We welcome the opportunity to provide feedback on the *Draft Ecological Harvesting Plan Guideline for Endangered Ecological Communities* (the *Draft Guideline*).

The EDO submits that allowing any commercial logging in EECs is inconsistent with the intent of both the *Native Vegetation Act 2003* (NV Act) and also the *Threatened Species Conservation Act 1995* (TSC Act). At all times, subordinate instruments such as Codes and Guidelines must uphold the objects of relevant legislation, such as the NV Act and also the TSC Act. Adoption of the *Draft Guideline* would seriously undermine the proper application and integrity of the legislative test that any clearing approved under the NSW native vegetation regulatory regime must "improve or maintain environmental outcomes."

This test, when first developed under the NV Act, was relatively strict. However, subsequent applications of the test have been weakened, for example in the contexts of biobanking and biocertification. The *Draft Guideline* is a further example of the test being watered down. To construe the test as allowing commercial logging of endangered ecological communities is inconsistent with the NV Act and also with the objects of the TSC Act. The latter defines EECs as "facing a very high risk of extinction in New South Wales in the near future" (section 12(2)(a)), and so to provide Guidelines on how they may be commercial logged is clearly inconsistent with the intent of the primary Act.

The NV Act specifically establishes 'red light' areas that should not be cleared. It has been very clear throughout the development of the legislation, regulation and methodology that EECs trigger red light provisions, and the regime was designed to protect those vegetation communities most at risk. Some minor variation of red lights is permitted, and some thinning can be done under existing PVP applications; however providing further loopholes is likely to result in further degrading the condition of remaining EECs.

In summary, the EDO reiterates that allowing any commercial logging in EECs is inconsistent with the intent of both the NV Act and the TSC Act. DECCW must ensure the intent of the primary legislation is effectively applied in any subordinate code or guideline to avoid the undermining of legislative intent and to ensure that EECs are effectively protected from further threats such as commercial logging.

If you require further information, please contact the EDO.

Yours sincerely  
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*An independent public interest legal centre specialising in environmental law*