



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES  
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),  
Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Planning Bill 2022

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Legislative Assembly Inquiry into the ACT Planning Bill 2022

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### **Comment on ACT Planning Bill 2022**

The Canberra Ornithologists Group (COG) wishes to provide comments on the ACT *Planning Bill 2022*.

COG is a volunteer-based community group with around 450 members, with a mission that includes the conservation of native birds and their habitats in Canberra and the surrounding region. COG plays an active role in advocating for protection of native vegetation, and for the mitigation of threats to and impacts on native birds. COG undertakes surveys of birds, including long-term monitoring projects that can usefully inform land use and land management actions, and has undertaken comprehensive bird surveys in ACT woodlands over several decades.

Overall, COG welcomes the new *Planning Bill 2022*. COG's main comment is that the draft bill fails to articulate a landscape or ecosystem approach for protecting and enhancing biodiversity across all ACT land tenures, inside and outside the reserve system. Areas of ecological significance outside the reserve system, including areas suitable for restoration, do not necessarily have to be in the reserve system provided that they are well-managed for biodiversity outcomes through robust measures with defined outcomes, monitoring and compliance.

#### **Bird habitats and long-term trends in woodland birds**

COG has recently undertaken an analysis of its bird survey data from 142 sites in ACT woodlands from 1998 to 2019<sup>1</sup>, with concerning findings. These include:

- Declining trends for 32 species of bird, mostly small birds, but including birds generally regarded as common (16 species), birds dependent on woodland habitats, and both resident and seasonal species.
- Significant increases in large-bodied birds, including many common birds adapted to urban environments, and birds associated with degraded woodland communities.
- An unexpected decrease in the group of birds that feed primarily in the tree and tall shrub canopy, including insectivores and nectar feeders such as honeyeaters.
- A six-fold increase for Noisy Miner, an aggressive, colonial native honeyeater which can suppress and exclude other small birds.

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<sup>1</sup> <https://canberrabirds.org.au/conservation/woodland-birds/cog-woodland-bird-monitoring-project/>

Some ACT threatened woodland birds, such as Hooded Robin and Brown Treecreeper, have disappeared from peri-urban woodlands (including peri-urban reserves) and now generally occur only in small and isolated sub-populations in rural landscapes.

### **No loss of biodiversity with explicit requirement to protect biodiversity**

COG believes that the *Planning Bill* should provide for improvement in habitats and habitat connectivity across the ACT, especially for birds. In many cases, planning decisions inherently affect habitat on which birds rely. The *Planning Act* needs to specify mechanisms that detail how habitat will be protected, and that limit the circumstances in which habitat can be removed, so that these principles can be adopted at the start of any development planning process.

In particular, the Planning Act needs an explicit Object regarding its contribution to the protection of biodiversity across the ACT. At the moment, in the Object section 'biodiversity' is merely one amongst a list of things that must be considered in achieving the objects of the Act.

The *Planning Act* or its subsequent regulations or instruments such as the Territory Plan should then contain three specific elements relevant to biodiversity:

- Ensuring no further loss of existing high-conservation woodlands or grasslands, and no further loss of mature native trees, with exceptions only under strictly defined conditions.
- Identifying then protecting areas suitable for restoration.
- Protecting and promoting features such as connectivity corridors that reduce fragmentation of ecosystems.

There are a number of options for *Planning Act* measures to ensure ongoing ecological assessment of the ACT environment, to support statutory protection of threatened ecosystems and species. One option is a 'biodiversity overlay' in the Territory Plan, previously considered but not yet pursued. In any case, the *Planning Act* should contain a head of power to mandate use of whatever mechanism is put in place.

### **Integration with *Nature Conservation Act 2014***

COG considers the Planning Bill needs greater integration with the *Nature Conservation Act 2014* and its various instruments. The *Planning Act* should clearly uphold the guidelines, policy and procedures developed under the *Nature Conservation Act 2014*.

The Planning Bill needs to state how the planning system addresses key threatening processes determined under the *Nature Conservation Act 2014*, and should include specific reference to 'Unnatural Fragmentation of Habitats' as a Key Threatening Process under this Act<sup>2</sup> as well as the 'Loss of Mature Native Trees' Conservation Advice under this Act<sup>3</sup>. Addressing both these issues through integration into the *Planning Bill* could have significant benefits in both efficiency and outcomes for protecting biodiversity: there is no reason for this linkage to be considered 'out of scope', as suggested in the [Consultation Report](#) on feedback to the Exposure Draft (p.12).

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<sup>2</sup> [Nature Conservation \(Unnatural Fragmentation of Habitats\) Conservation Advice 2019 | Notifiable instruments \(act.gov.au\)](#)

<sup>3</sup> [Nature Conservation \(Loss of Mature Native Trees\) Conservation Advice 2018 | Notifiable instruments \(act.gov.au\)](#)

## **Mature Native Trees**

The [Consultation Report](#) on the Exposure Draft of the *Planning Act* noted (p.44) feedback on measures to protect mature native trees, but referred this issue to the relevant team/agency. However, this approach does not create the necessary legislative requirement. COG's considered view is that a formal mechanism to ensure retention of mature native trees needs to be put in place very early in planning processes, and that this mechanism therefore needs to be specified in the *Planning Act*.

The COG submission to the Exposure Draft of the *Planning Act* devoted an entire section and two recommendations to the need for measures in planning instruments to protect the biodiversity value of mature trees in greenfield and infrastructure sites. Similarly, a key recommendation of COG's submission to the draft *Action Plan on Mature Native Trees* was that prevention of loss of mature native trees was essentially a planning issue that needed to be dealt with long before land release, Environmental Impact Statements/Assessments or Estate Development Plans. The *Planning Act* is a logical first place for articulation of clear regulatory constraints or guidelines or specific requirements, with complementary requirements then present in the proposed *Urban Forest Bill* and/or the *Nature Conservation Act*.

Specifically, COG recommended, and continues to recommend, that, as part of relevant legislation to effectively implement some actions of the *Loss of Mature Native Trees Action Plan*, the *Planning Bill* should include mandatory minimum targets in regard to retention of mature native trees at development sites, and provisions and measures to protect mature native trees at development sites.

## **Land Management Agreements and rural lands**

Land Management Agreements and Conservator's Directions are the principal mechanisms supporting biodiversity measures on rural lands. Land Management Agreements are put in place as part of leasehold arrangements to help landholders manage their land sustainably with respect to natural values. These measures to ensure biodiversity protection on rural lands are very important for biodiversity habitat for woodland birds, as about 40% of lowland woodlands in the ACT are on rural lands.

However, the 2021 Audit of Land Management Agreements concluded that "the value of Land Management Agreements is questionable"<sup>4</sup> and that Land Management Agreements as operating in the ACT were ineffective, with compliance noted as a key issue. The recent draft *Natural Resource Management Plan* for the ACT 2022-2042 (p.30) also acknowledged the need for "effective monitoring and enforcement of LMA to ensure the sustainable management of rural lands".

The current *Planning & Development Act*<sup>5</sup> and the proposed *Planning Act* include provision for the Conservator of Flora and Fauna to make guidelines setting out the requirements for Land Management Agreements. The new *Planning Act* should make the preparation and updating of these guidelines a specified requirement.

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<sup>4</sup> ACT Auditor-General's Report *Land Management Agreements*. Report No. 1/2021.

<sup>5</sup> Section 283 (4) *Planning & Development Act 2007*

These Land Management Agreement Guidelines need to give priority to the importance of mature native trees, native vegetation and biodiversity in the rural landscape, including targets and actions to ensure protection and enhancement of these values. Key elements needed on rural lands are:

- Ecological surveys of key areas of habitat, mapping of habitat connectivity, mapping of species distributions, and ongoing monitoring and public reporting of biodiversity.
- Mechanisms for conservation covenants on rural lands.
- Additional incentives for on-ground works and measures.

The *Planning Act* should therefore specify that the ACT Conservator of Flora and Fauna work to develop principles, guidelines and strategies to facilitate biodiversity conservation on rural lands and other off-reserve areas, developed in consultation with rural landholders, conservation and catchment groups. Off-reserve management then needs to be supported through incentive schemes for actual, practical on-ground works.

### **Biodiversity Offsets**

The *Planning and Development Act 2007* sets out significant requirements regarding the application of biodiversity offsets in the ACT. In short, where the impacts of development on areas of ecological significance cannot be mitigated, 'offsets' in other locations are required. However, there are significant questions around whether biodiversity offsets actually deliver the required outcome of 'no net loss'.

COG therefore considers that the use of biodiversity offsets needs to be reviewed. Moreover, COG also notes that the *Planning and Development Act 2007* requires the Minister to "consider, at least once every five years, whether the offsets policy needs to be reviewed" [Section 223(b)]. As far as COG is aware this has not happened, with the five-year time frame being 2020 as the ACT offsets policy was adopted in 2015. It is understood that the ACT review may await the Commonwealth review of offsets, but in the absence of clear timetables for these reviews COG proposes that the use of offsets in development proposals be suspended until the reviews are concluded and any recommendations implemented.

### **Role of the ACT Conservator of Flora and Fauna**

The role of the ACT Conservator is created under the *Nature Conservation Act 2014*, and the *Planning Act* requires the advice of the Conservator on development applications that may have a significant adverse environmental impact, and on other planning matters such as variations to the Territory Plan. However, the force of this advice in modifying approvals or decisions is not specified.

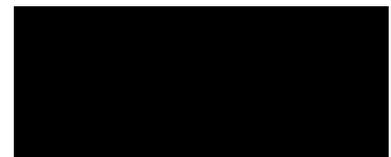
The role and powers of the ACT Conservator need to be reviewed and enhanced. The Conservator's position should become fully independent of the Directorate, with appropriate resourcing; and the Conservator's standing should be equal to that of the Chief Planner, with approval from both required before a development goes ahead. The Conservator's advice should be able to be overridden only by the Chief Minister and only in exceptional circumstances.

## Summary

In summary, COG considers the *Planning Act* should explicitly acknowledge and include:

- The need for a landscape or ecosystem approach, with a head of power in the *Planning Act* to ensure that key ecological features, and areas of high biodiversity value, are not impacted by development.
  - This is to remedy the cumulative negative impacts facilitated by the current planning system, especially for ACT rural lands of a range of tenures.
  - This approach should encompass ecosystem protection, restoration and connectivity.
  - The *Planning Act* should specify measures to ensure protection of mature native trees very early in the planning process, to empower and sit alongside complementary requirements in the proposed Urban Forest Bill and/or the Nature Conservation Act.
- Explicit linkages to ‘Unnatural Fragmentation of Habitats’ as a Key Threatening Process under the *Nature Conservation Act 2014*, and the ‘Loss of Mature Native Trees’ Conservation Advice under the same Act.
- A requirement for the Conservator to prepare guidelines setting out requirements for biodiversity conservation on rural lands through Land Management Agreements.
- The need for a full assessment and review of the effectiveness of environmental offsets programs. It would be appropriate for all the use of offsets in development applications to be suspended until this review is concluded.
- Strengthening of the role of the Conservator, in particular to ensure that their advice can only be overridden by the Chief Minister and only in exceptional circumstances.

  
Yours sincerely

  
Neil Hermes  
President, Canberra Ornithologists Group  
25 November 2022