



Standing Committee on Planning, Transport and City Services

Inquiry into Planning Bill 2022 **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by Ms Jo Clay MLA on 6 December 2022: Ms Clare Henderson, Mr Neil Hermes of the Canberra Ornithologists Group took on notice the following question(s):

Reference: Hansard uncorrected proof transcript 6 December 2022, page 128

In relation to: Public reasons for decisions when advice is not followed

THE CHAIR: Yes. We had a discussion this morning, we had the government architect and Mr Ponton in his capacity as he appears on the design review panel for our very first session, and similar ground got covered, not specifically with a conservator but with what happens when the chief planner gets different and conflicting advice from the different referring entities from the Conservator, the Heritage Council, like there are a lot of different referrals in there, and Mr Ponton told us, and I do hope very much that I am not misrepresenting his comments, we were told very clearly that reasons are always given for decisions when the advice of the conservator or some other entity is not followed. Is that what happens, do you usually find that there are public reasons given for decisions when that advice is not followed?

Mr Hermes: We do not have the answer to that.

Ms Henderson: Yes, I think we will take that on notice.

Canberra Ornithologists Group: The answer to the Member's question is as follows:–

Yes, statements of reasons for planning decisions are available, generally on request, but often in very generalised and formulaic terms that do not actually reveal how or why the Chief Planner chose to override the advice of the Conservator of Flora and Fauna, or how different values were weighed.

The reasons provided can be broad as, for example, that the mature native trees that the Conservator recommends be retained cannot be retained as they interfere with the proposed road design, or that the cost of re-designing an Estate Plan to protect the mature native trees is significant.

No reference is made in such reasons to any guidelines or criteria or processes that underpin such decision-making, or why the road design or Estate Plan were initially designed without consideration of mature trees.

COG therefore suggests (and has previously submitted) that decisions to override the advice of the Conservator be more transparent and robust, be based on previously articulated and endorsed criteria, be independent from the Chief Planner, and only occur in exceptional circumstances.

Part of the issue is that the legal trigger to seek the advice of the Conservator often occurs at the Development Application or Estate Development Plan stage, by which time many decisions have been made and much expenditure has been undertaken. Earlier engagement of the Conservator could prevent such conflict arising, through embedding consideration of conservation issues early in the planning process. This would ensure that matters of environmental significance, such as mature native trees, are protected and excluded from development impacts without the need for subsequent conflicting advice.

We also reference the June 2011 Review of the Roles and Functions of the Conservator for Flora and Fauna by PricewaterhouseCoopers (p.1) which found "Concern about lack of transparency in relation to ACTPLA decisions in relation to the Conservator's advice". The proposed remedies (p.2) were the following:

Recommendation 3 – Powers of the Conservator in Planning and Development

The ACT Government to consider whether the powers of the Conservator to influence planning and development decisions should be strengthened under the *Planning and Development Act 2007*.

Recommendation 4 – Greater Transparency from ACTPLA in considering the Advice of the Conservator

The Delegate under the Planning and Development Act should provide greater transparency of ACTPLA decisions in relation to advice provided by the Conservator by providing more comprehensive reasons as to why a decision has been made which is inconsistent with the Conservator's advice when approving development applications and related decisions. (page 2)

Detailed supporting argument for these recommendations are given on pp.9-10 of this report. It is not clear that there has been significant improvement in regard to the transparency of decision-making following this report.

Approved for circulation to the Standing Committee on Planning, Transport and City Services



16 December 2022

By Clare Henderson, Canberra Ornithologists Group Committee Member

