



Biodiversity Financing Mechanisms for the ACT

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Acronyms

Acronym	Full Form
ACT	Australian Capital Territory
ATO	Australian Taxation Office
CBD	Convention on Biological Diversity
CCP	Core Carbon Principles
CER	Clean Energy Regulator
CGT	Capital Gains Tax
COP	Conference of Parties
Cwth	Commonwealth of Australia
DCCEEW	Department of Climate Change, Energy, the Environment and Water
EEA	Environmental-Economic Accounting
EIA	Environment Information Australia
EPA	Environment Protection Australia
EPBC	Environment Protection and Biodiversity Conservation Act 1999
GBF	Kunming-Montreal Global Biodiversity Framework
GEF	Global Environmental Facility
ICVCM	Integrity Council for the Voluntary Carbon Market
IPA	Indigenous Protected Areas
NSW	New South Wales
OECD	Other Effective area-based Conservation Measures
SDG	Sustainable Development Goals
WA	Western Australia
WEF	World Economic Forum

Contents

Executive Summary	5
About the Project	8
Context	8
Objectives	8
Methodology & Scope	9
Institutional framework – ACT	10
Commonwealth and ACT legal and policy frameworks	12
Australian Capital Territory (Self-Government) Act 1988 (Cwlth)	12
Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)	12
Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)	13
Nature Repair Act 2023 (Cwlth)	13
Nature Positive (Environment Protection Australia) Bill 2024 (Cwlth)	14
Nature Positive (Environment Information Australia) Bill 2024 (Cwlth)	14
Australia's Strategy for Nature 2019 – 2030	15
National Other Effective area-based Conservation Measures Framework (Cwlth)	16
Planning Act 2023 (ACT)	18
Nature Conservation Act 2014 (ACT)	19
Global Biodiversity Financing Landscape	21
Global Biodiversity Frameworks	21
Financing mechanisms	22
Role of the private sector	24
Environment Offsets	27
Biodiversity Credits Developments	27
Conservation Covenants	28
Challenges and opportunities financing biodiversity in the ACT	30
Relevance to the ACT	30
Permanence Period	32
Planning Zones	33
Property rights / Fungibility	34
Recommendations & Model	35
Model 1: Rate Concession	36
Model 2: Biodiversity Levy	39
Model 3: Market Schemes	41
Model 4: Agreements and Covenants	43
Model 5: Combined Model	45
Conclusion	47
References	48

Executive Summary

Biodiversity financing and natural capital are in early stages of development in Australia following passage of the *Nature Repair Act 2023*. Driven by the Kunming-Montreal Global Biodiversity Framework (GBF) that recognises the importance of leveraging private finance to close the biodiversity finance gap, nations are focused on developing mechanisms to integrate nature into finance to achieve the shift to nature-positive. This report reviews and analyses the existing institutional and legal frameworks in the Australian Capital Territory (ACT) relevant to this goal and after a comprehensive review of the global biodiversity financing landscape, and examination of the challenges and opportunities of financing biodiversity in the ACT, provides recommendations in the form of potential models of biodiversity financing, taking into account the unique circumstances of the ACT, that work toward achieving 30 by 30 targets.

Institutional Framework

This report identifies the institutional framework relevant to biodiversity environmental matters in the ACT under the Environment, Planning and Sustainable Development Directive (EPSDD) and identifies the enabling legislation. The functions, roles and responsibilities of the Commissioner for Sustainability and the Environment, the Conservator for Fauna and Flora, the Environmental Protection Authority but also Territory Planning Authority and the Chief Planner are set out. Our analysis identifies the Conservator of Fauna and Flora is the most appropriate office to oversee mechanisms for biodiversity financing in conjunction with the role of the Chief Planner and Territory Planning Authority that have the responsibility of granting rural leases and ensuring appropriate implementation of Land Management Agreements.

Legal and Policy Frameworks

The relationship between the ACT Government and the Commonwealth from legal and policy perspectives are reviewed and critically analysed commencing with Commonwealth legislation establishing the ACT Government and its powers particularly in relation to land planning and explaining the interplay with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999 (EPBC)* and *Nature Repair Act 2023* and the current *Nature Positive Bills* before Federal Parliament.

This report considers the implications of *Australia's Strategy for Nature 2019-2030* on the role of the ACT in the regulation, funding and management of nature conservation and the need to bring non-government organisations, the private sector, research institutions, natural resource management bodies and the community on the journey to achieve nature positive goals and objectives. Further, this report critically analyses the recently agreed *National Other Effective area-based Conservation Measures (OECMs) Framework*, Australia's Strategy for the National Reserve System and Australia's National Roadmap (for land conservation), which provides a mechanism for incorporating and managing Conserved Areas as an important component of meeting Australia's '30 by 30' target under the GBF.

The two key ACT laws identified and analysed in this report are the *Planning Act 2023* and the *Nature Conservation Act 2014* which is currently under review. The interrelationship between these two pieces of ACT legislation provide the legal framework that will enable the ACT to implement biodiversity financing mechanisms to assist with the achievement of nature positive and Australia's '30 by 30' target under the GBF.

Global Biodiversity Financing Landscape

The Kunming-Montreal Global Biodiversity Framework (GBF), adopted in 2022 at the fifteenth meeting of the Conference of the Parties (COP 15) of the Convention on Biological Diversity (CBD), commits parties (member nation states) to protect at least 30 percent of the world's land, freshwater and ocean ecosystems by 2030 ('30 by 30'). Having committed to the GBF, Australia has set a national target requiring the preparation and implementation of national biodiversity finance plans and the stimulating of innovative schemes such as payment for ecosystem services (PES), green bonds and biodiversity credits pursuant to Target 19 under the GBF. This report reviews and analyses the range of examples of biodiversity financing mechanisms already implemented across the globe classifying them into four categories:

1. Taxes, fees & charges;
2. Subsidies & grants;
3. Market schemes; and
4. Agreements & covenants.

This report addresses the potential for increasing the role of the private sector in biodiversity funding which currently stands at only 17% globally. Examples of the variety of instruments that have been used to encourage private biodiversity financing are identified and the role of governments in promoting investment in green financial products emphasised. The significance of developing biodiversity credit schemes overseas is explored together with the role of conservation covenant schemes that have been in use Australian states but not territories to date.

Challenges and Opportunities Financing Biodiversity in the ACT

In examining the challenges and opportunities facing the ACT in encouraging the financing of biodiversity within its territory, this report sets out the opportunities, limitations, barriers and enablers of schemes that would fall within the four categories of the GBF biodiversity financing mechanisms. Key considerations include the permanence period of the biodiversity project, the role of planning zones, and the creation of property rights/fungibility such as Biodiversity Certificates under the *Nature Repair Act 2023 (Cwlth)*.

Recommendations and Models

Based on the analysis in this report, four models for biodiversity financing are recommended to be considered by the ACT Government either in isolation or in combination. A fifth model is proposed that demonstrates how a combination might operate. For each mechanism, factors such as governance, risks, implementation challenges, safeguards and standards, cost, and timeframes as well as the legal, policy and regulatory reforms needed to enable the operationalization of the option were considered. The following table outlines the models.

Model	Description
Model 1: Rate Concession	ACT Government introduces a scheme to provide rural leaseholders who make eligible investments in biodiversity with rate relief.
Model 2: Taxes, licenses, fees & charges	ACT Government introduces a biodiversity levy to fund biodiversity actions. A biodiversity levy would be used to establish an ACT Nature Trust that would make long-term investment decisions.
Model 3: Market Schemes	The ACT Government uses the Australian Government's <i>Nature Repair Act 2023</i> and Conserved Area framework to establish biodiversity as a separate property right as biodiversity certificates.
Model 4: Agreements and Covenants	The ACT Government incorporates biodiversity into Land Management Agreements that are already legally binding and enforceable agreements required under the <i>Planning Act 2023</i> with the Conservator of Flora and Fauna issuing guidelines as enabled under the Act.
Model 5: Combination	The ACT Government adopts a combination of models to create an ecosystem that both incentivizes rural leaseholders to invest in biodiversity whilst securing larger scale biodiversity projects through the establishment of an ACT Nature Trust.

It is recommended that the ACT adopt the fifth model, which combines the establishment of a broad-based levy to establish an ACT Nature Trust with a biodiversity investment rate relief scheme to incentivize biodiversity investments by rural leaseholders. To be eligible for rate relief, it is proposed that rural leaseholders must incorporate biodiversity into Land Management Agreements.

Backed by long term security from a broad-based levy, the ACT Nature Trust would be able to issue 'nature bonds' to finance strategic biodiversity investments. The establishment of an ACT Nature Trust in conjunction with incentives for rural leaseholders to invest in biodiversity would establish the foundations for

the ACT to participate in the *Nature Repair Act 2023*. There is the potential that an ACT Nature Trust could develop biodiversity projects that would be eligible for biodiversity certificates that are transferrable property assets under the Nature Repair Act 2023.

The establishment of the ACT Nature Trust on best practice governance principles will be critical to its success. First Nations knowledge, values and perspectives should be incorporated into the design and operation of the ACT Nature Trust, including representation from Ngunnawal and Ngambri peoples on the board of the Trust.

An ACT Nature Trust can operate in conjunction with a biodiversity investment rate relief scheme that incentivizes smaller investments that can make a meaningful difference to nature. An example is the potential to establish biodiversity habitats based on the example of Miyawaki pocket forests which can be the size of a small tennis court.

The combination of actions presents an opportunity for the ACT to genuinely be the 'bush capital', establishing an ecosystem where government, community and private sector all have a role to play in preserving and enhancing ACT biodiversity for generations to come.

About the Project

Context

Globally nations are focused on developing mechanisms to integrate nature into finance. This is driven by the Kunming-Montreal Global Biodiversity Framework (GBF)^a that recognises the importance of leveraging private finance to close the biodiversity finance gap which is estimated to be in the order of \$700 billion per year.¹

A shift to nature-positive, with a focus on halting and reversing the loss of nature, will require integrating nature into legal frameworks that are the foundation of finance and investment decisions. The development of financial instruments including blended finance and impact funds offers specific opportunities to flow finance into nature. A key opportunity is to incorporate Indigenous knowledge, values and perspectives into finance recognising that First Nations peoples have cared for country for thousands of years. Australia's unique biodiversity is a product of First Nations' stewardship.²

Biodiversity financing and natural capital are in early stages of development in Australia following passage of the *Nature Repair Act 2023*. The Australian Government is committed to demonstrating Australia as delivering best practice by hosting the Global Nature Positive Summit in October 2024 in Sydney. If biodiversity financing / natural capital models are built well, they have the potential to have a very positive impact on nature and support Australia's ambition to be nature-positive.

Objectives

The ACT Government is seeking to review and analyse the existing institutional and legal framework in the territory in order to recommend legal, policy and regulatory reforms needed to enable a robust biodiversity financing mechanism in the ACT. The objectives of this project are to:

1. Review and analyse the ACT's existing institutional and legal framework to identify and understand the gaps, barriers, opportunities, and enablers associated with the development of financing mechanisms to drive investments to repair and restore nature in the ACT;
2. Based on the analysis of the ACT's institutional and legal framework, provide biodiversity finance options/recommendations best suited to the ACT. During the development of recommendations, the consultant must consider best practice, case studies from Australia and overseas, and innovative and socially inclusive financing mechanisms for the conservation, sustainable use, and restoration of biodiversity;
3. Outline and discuss the legal, policy and regulatory reforms needed to enable each option/recommendation, including considerations such as governance, risks, implementation challenges, safeguards and standards, cost, and timeframes. The finance options/recommendations should include the Commonwealth's Nature Repair Market.

^a Kunming-Montreal Global Biodiversity Framework (GBF), adopted in 2022 at the 15th COP of the Convention on Biological Diversity 1992.

Methodology & Scope

This section gives an overview to the project and report. The next two sections focus on the first objective, to review the institutional and legal framework that governs biodiversity financing. Next the report explores the different mechanisms used to finance biodiversity conservation globally, while it presents an analysis of the relevance of these mechanisms to the ACT. Finally, the report presents a series of models and recommendations to implement biodiversity financing mechanisms in the ACT.

This report is based primarily on desktop research, expertise of the team and feedback from the ACT team. The report critically analyses information to identify, understand and evaluate the gaps, barriers, opportunities, and enablers associated with the development of financing mechanisms to drive investments to repair and restore nature in the ACT. Based on this analysis it proposes options that the ACT can further explore to increase capital flows to biodiversity conservation.

Key issues considered include:

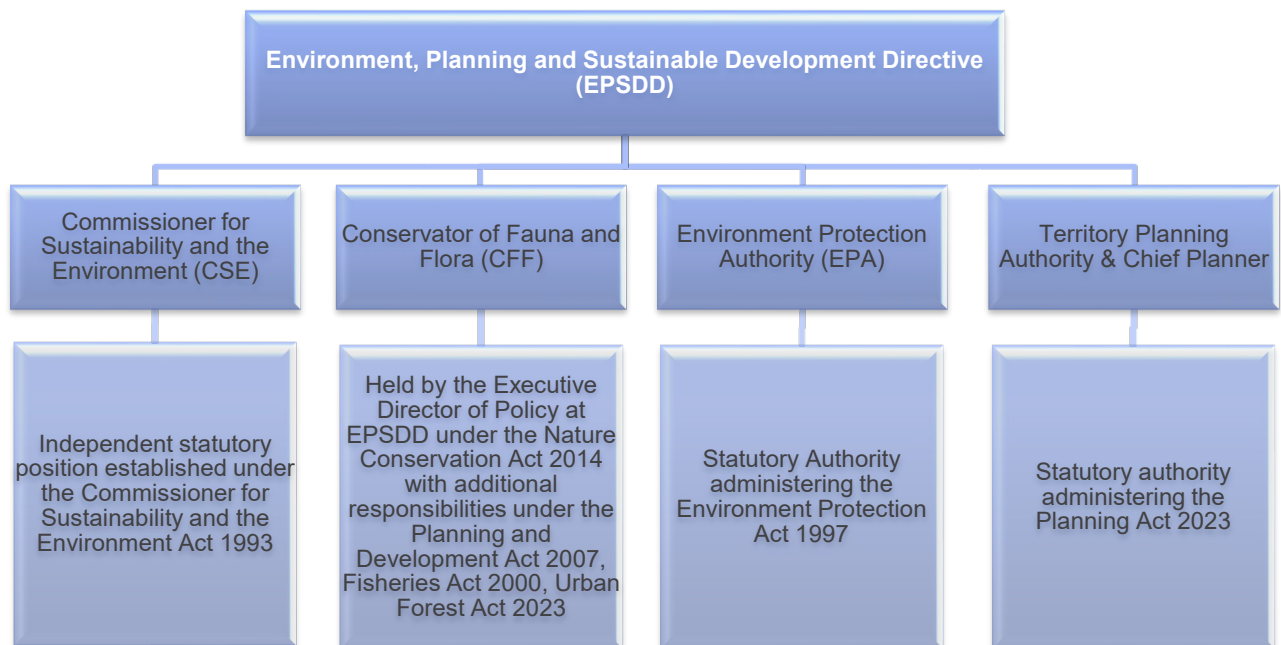
- The relationship between the ACT Government and the Commonwealth and the interplay with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) and *Nature Repair Act 2023*.
- The challenge and opportunities for financing biodiversity within the ACT's territorial boundaries.
- The implications of the GBF 2022 focus on the contributions of Indigenous peoples and local communities as custodians of biodiversity and as partners in its conservation, restoration and sustainable use, with a specific focus on Ngunnawal and Ngambri peoples.

A limitation of this work is the constraint to consider all elements of biodiversity financing in the ACT. It is noted that there is legislation such as the *Urban Forest Act 2023* that could have implications. However, it is beyond the scope of this report to examine these in detail.



Institutional framework – ACT

The following diagram sets out the basic institutional framework relevant to biodiversity environmental matters in the ACT. Key statutory office holders/agencies are the Commissioner for Sustainability and the Environment, the Conservator for Fauna and Flora, the Environmental Protection Authority but also Territory Planning Authority and the Chief Planner. The roles and responsibilities of these offices are listed below the schematic.



The Commissioner for Sustainability and the Environment has the following functions and responsibilities:

- Investigating complaints about the management of the environment by the Territory or a territory authority; and issues relating to ecologically sustainable development in the ACT;
- Conduct investigations as directed by the Minister;
- Conduct on the Commissioner's own initiative, investigations into actions of the agency where those actions would have a substantial impact on the environment of the ACT; and
- Deliver state of the environment reports (SoER).

The Conservator of Fauna and Flora acts particularly on issues relating to protecting native plants and animals including:

- Administration of a licensing system for the taking, keeping, selling, importing, disturbing, displaying and killing of native plants and animals;
- Approvals for the translocation of native flora and fauna in the ACT;
- Biodiversity Research and Monitoring Program (BRAMP);
- Managing the nature reserve system; and
- Protecting and conserving threatened species and ecological communities.

The EPA's functions include:

- Protecting, restoring and enhancing the quality of the ACT environment;
- Preventing environmental degradation and risk of harm to human health;
- Requiring polluters to make progressive environmental improvement;
- Integrating environmental, economic and social considerations in decision-making processes;
- Facilitating adoption of national environment protection measures;
- Monitoring and reporting on environmental quality;
- Ensuring contaminated land is managed in consideration of human health and the environment.

The Planning Authority has the power and functions to:

- Prepare, administer, review and amend the Territory Plan;
- Plan and regulate the development of land;
- Advise on planning and land policy;
- Promote & implement the planning strategy & district strategies;
- Promote high-quality design and good planning outcomes;
- Maintain the digital cadastral database under the Districts Act 2002;
- Make available land information;
- Grant, administer, vary and end leases on behalf of the Executive;
- Grant licences over unleased land;
- Decide applications for approval to undertake development;
- Make controlled activity orders under part 12.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;
- Provide planning services, including services to entities outside the ACT;
- Review its own decisions & participate in external review processes;
- Provide opportunities for participation in planning and decision-making processes;
- Promote public education about, & understanding of, the planning system, including by providing easily accessible public information & documentation on planning & land use; and
- May exercise any other function given to the authority under the Planning Act 2023, another territory law or a Commonwealth law.

Given the nature of the functions of each office/agency, the Conservator of Fauna and Flora is the most appropriate office to oversee mechanisms for biodiversity financing in conjunction with the role of the Chief Planner and Territory Planning Authority that have the responsibility of granting rural leases and ensuring appropriate implementation of Land Management Agreements.



Commonwealth and ACT legal and policy frameworks

This section covers the relationship between the ACT Government and the Commonwealth and the interplay with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) and *Nature Repair Act 2023*.

Australian Capital Territory (Self-Government) Act 1988 (Cwlth)

The Australian Capital Territory was established as a body politic under the Crown under s.7 of the *Australian Capital Territory (Self-Government) Act 1988*. The Act provides for a Legislative Assembly for the ACT and under s.22, power is granted to the Assembly to “make laws for the peace, order and good government of the Territory”. This was effective from 6 December 1988 with elections for the Assembly taking place in 1989.

The Act establishes an Australian Capital Territory Executive under s.36 and sets out its general powers in s. 37 specifying the matters in respect of which that power can be exercised in Schedule 4 of the ACT. Schedule 4 lists the matters over which the Executive has power to govern in the Territory and amongst the extensive list are the following of relevance to developing a model of biodiversity financing for the ACT:

- Taxation
- Provision of rural, industrial and home finance credit and assistance
- Private law
- Administration of estates and trusts
- Markets and marketing
- Control of prices and of rents
- Industry, including primary production
- Territory Land as defined in the *Australian Capital Territory (Planning and Land Management) Act 1988*
- Use, planning and development of land
- Environment protection and conservation (including parks, reserves and gardens and preservation of historical objects and areas)
- Flora and fauna
- Fire prevention and control
- Water resources
- Use and supply of energy
- Registration of instruments
- Local government
- Making instruments under enactments or subordinate laws
- Matters arising under instruments made under enactments or subordinate laws
- Entering into, and implementing, agreements and arrangements with the Commonwealth, a State or the Northern Territory
- The formation of corporations, corporate regulation and the regulation of financial products and services

Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)

The Commonwealth managed all the land in the ACT prior to self-government. The *Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)*³ makes provision for the planning and management of land in the ACT noting there are two types of land: National Land and Territory Land. The Commonwealth is responsible for National Land and the ACT Government is responsible for Territory Land.

National Land

National Land is land within the ACT that the Commonwealth continues to manage following the establishment of self-government in 1989. This is mainly administered under the National Capital Authority where land is required by the Commonwealth for special purposes such as diplomatic purposes. Meanwhile, National Land that is required by the Commonwealth for other purposes is administered by the Minister of Finance.

Administration of National Land is in accordance with the *Australian Capital Territory National Land (Leased) Ordinance 2022* (Leased Land Ordinance) and the *Australian Capital Territory National Land (Unleased) Ordinance 2022* (Unleased Land Ordinance). The Leased Land Ordinance provides for the grant and administration of leases over National Land and the Unleased Land Ordinance provides for the use of unleased National Land that is open to the public, such as road and parks, as well as unleased land used and occupied by the Commonwealth for Commonwealth purposes.

The Department of Finance (Finance) supports the Minister's legislated responsibilities under the Leased Land Ordinance and the Unleased Land Ordinance. Finance's role in administering National Land includes the issuing and administration of Crown leases.

Part III of the 1988 Act required the development of a National Capital Plan.

Territory Land

Part IV of the 1988 Act required the establishment of a Territory Plan including the establishment of a Territory planning authority under s.25 (1) (a) and a Territory Plan not inconsistent with the National Capital Plan (s.25 (1) (b)(i) 1988 Act).

s.26 Territory Plan not to be inconsistent with National Capital Plan

The Territory Plan has no effect to the extent that it is inconsistent with the National Capital Plan, but the Territory Plan shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan.

Under s.28 of the 1988 Act, land in the Territory that is not National Land is therefore Territory Land. And the Executive has the responsibility to manage that land, including to "grant, dispose of, acquire, hold and administer estates in Territory Land" (s.29(1)).

As to the period of land tenure under Territory Land, s.29 (3) states "[t]he term of an estate in Territory Land granted on or after Self-Government Day shall not exceed 99 years or such longer period as is prescribed, but the estate may be renewed." Under s.53, the Governor-General has the power to make regulations, not inconsistent with the 1988 Act, prescribing matters that are required or permitted to be prescribed under the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act. This implies that the Governor-General is able to prescribe a longer period than 99 years for the term of an estate under the Act.

Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) provides a framework for protection of the Australian environment. An independent review of the EPBC was conducted by Professor Graeme Samuel AC which was publicly released on 28 January 2021.⁴

The Australian Government's response to the Samuel Review was to commit to implementing a Nature Positive Plan.⁵ Three elements of the plan are:

- *Nature Repair Act 2023*
- *Nature Positive (Environment Protection Australia) Bill 2024*
- *Nature Positive (Environment Information Australia) Bill 2024*

Nature Repair Act 2023 (Cwlth)

The *Nature Repair Act 2023*⁶ provides a framework for a world-first legislated, national, voluntary biodiversity market in Australia. It came into force in December 2023. The scheme is a government initiative that incentivizes actions to restore and protect the environment by establishing a marketplace where individuals and organisations can undertake nature repair projects to generate a tradable certificate.

The Clean Energy Regulator (CER) is empowered to issue a biodiversity certificate for a registered biodiversity project under s. 70 of the Act. A biodiversity certificate is defined as personal property which is transmissible by assignment under s. 71. A biodiversity certificate would remain valid for the life of the project, unless relinquished or cancelled.

Key elements of the *Nature Repair Act 2023*:

- Project proponents are required to report on their projects at least every five years.
- The CER has power to audit projects and require third-party audits to be commissioned by a project proponent.

- The CER is empowered with information-gathering powers to monitor general compliance or undertake more specific investigations into suspected breaches.
- Project proponents are subject to record-keeping and project monitoring requirements.
- Methodology determinations set out requirements for undertaking a kind of biodiversity project. A method includes information on how the activity period for the project (if any) and the permanence period for the project will be worked out. The permanence period would cover the life of the project. A project would have either a 25-year or 100-year permanence period unless a different period is provided for in the applicable method.
- Section 90 covers eligible interest in Crown land that is not Torrens system land, recognising where a lease is in force over the land, and the grant of the lease took place under a law of the Commonwealth (s.90(6)(c) (i)). This is of particular importance to leasehold land in the Commonwealth Territories like the ACT.

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) is currently collaborating with technical experts and partner organisations to progress the development of methods.⁷ The development of a Permanent Protection method to protect and conserve biodiversity in line with Australia's national goal of protecting 30 percent of land by 2030 is identified by DCCEEW. At the time of writing work on the development of this method has not commenced.

Nature Positive (Environment Protection Australia) Bill 2024 (Cwlth)

The *Nature Positive (Environment Protection Australia) Bill 2024* would establish a statutory Commonwealth entity known as Environment Protection Australia (EPA) that would be Australia's first national, independent environmental protection agency. The functions of the EPA would include undertaking education, compliance and enforcement activities, issuing permits and licences; and undertaking delegated activities, which may include assessments and decision making about development proposals, including approval conditions.

The establishment of EPA has the potential to address one of the ongoing challenges that can undermine the establishment of nature markets which is unauthorised activity such as land-clearing.

Enforcement is a foundation of efficient markets. United States criminologist Dr. Donald Cressey⁸ examined the rationale behind establishing and enforcing rules for market integrity going back to 1953. Cressey interviewed one hundred thirty-three inmates in three penitentiaries who had misused a position of financial trust. His resulting "fraud triangle", which has become the core of financial markets, consisted of three components that work together to contribute to increasing the risk of fraud: (1) opportunity, (2) incentive, and (3) rationalisation. To counter the risk of fraud, financial regulators have focused on the importance of market integrity. Janet Austin⁹ has examined the importance of market integrity for securities regulation and argues that it requires the elimination of market abuse activities, that is, behaviours whereby one person takes advantage of their position to gain an unmerited advantage over another.

Nature Positive (Environment Information Australia) Bill 2024 (Cwlth)

The *Nature Positive (Environment Information Australia) Bill 2024* would establish Environment Information Australia (EIA) that would be responsible for the establishment and maintenance of environmental economic accounts. Environmental economic accounts are statistical accounts that describe the condition of the environment and its relationship with the economy.

The Bill defines nature positive which is an improvement in the diversity, abundance, resilience and integrity of ecosystems from a baseline. Diversity, abundance, resilience and integrity are attributes that, when improved, enhance the environmental value of an ecosystem.

- Diversity of ecosystems is intended to refer to biological differences of, and within, ecosystems. Diversity of species is intended to refer to the presence of different species within an ecosystem and diversity within species.
- Abundance of ecosystems is intended to refer to the quantity and size of ecosystems. Abundance of species is intended to refer to the number of individuals per species.

- Resilience is intended to refer to the ability of ecosystems, including species, to be resilient to impacts and pressures, including for example climate change and natural disasters.
- Integrity of ecosystems is intended to refer to the completeness and functionality of an ecosystem and its ecological processes. The term integrity is not referred to in subclause 6(2) because genetic integrity of species would be considered as part of diversity of species.

The Bill would apply to every external Territory (Clause 8).

EIA would develop and implement a monitoring, evaluation and reporting framework to assess and publicly report on, whether and to what extent nature positive is being achieved in the Australian jurisdiction.

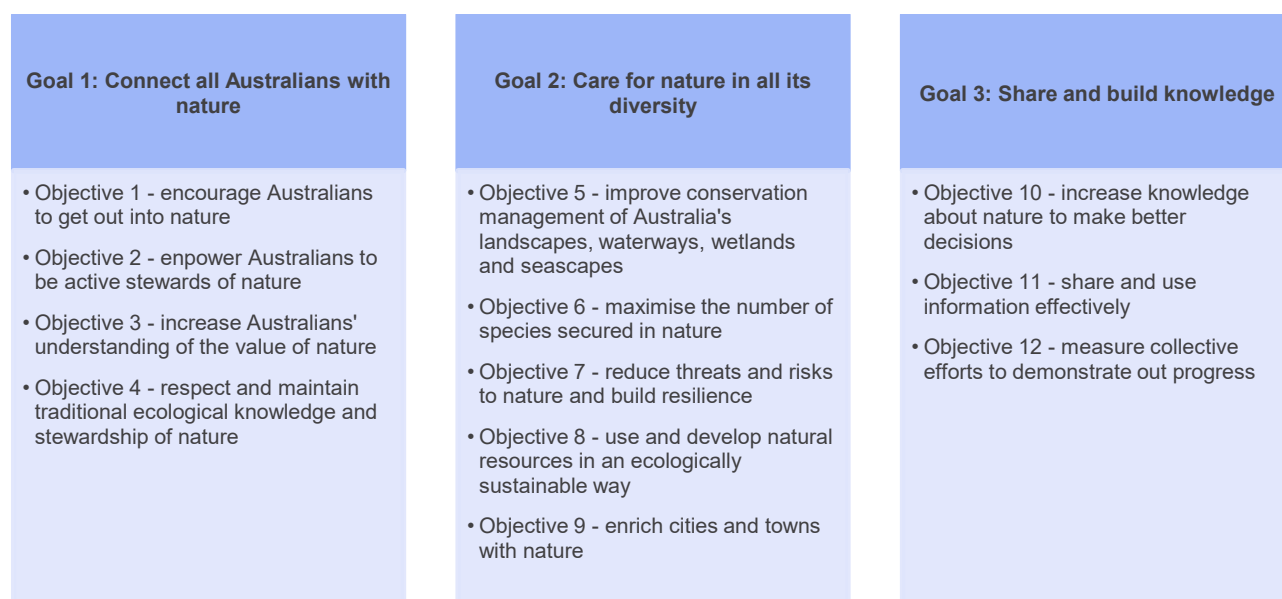
Environmental-Economic Accounting (EEA) helps to provide insights into how and where strategic investments can be made to manage the natural environment and resource base.¹⁰

Australia's Strategy for Nature 2019 – 2030

This national biodiversity strategy and action plan recognises the role of all governments in Australia including federal, state, territory and local in the regulation, funding and management of nature conservation. The strategy recognises Australia's international commitments including:

- UN Convention on Biological Diversity (CBD)
- Sustainable Development Goals (SDGs)
- UN Framework Convention on Climate Change (UNFCCC)
- UN Convention to Combat Desertification
- Convention on Migratory Species
- Convention on International Trade of Endangered Species
- Ramsar Convention on Wetlands
- Convention for the Regulation of Whaling
- World Heritage Convention

Australia's strategy for nature is best described in the following diagram:



In addition to bringing all forms of government to work together, this strategy recognises the need to bring non-government organisations, the private sector, research institutions, natural resource management bodies and the community on the journey. Biodiversity financing therefore needs to embrace the need for such a shared approach.

National Other Effective area-based Conservation Measures Framework (Cwlth)

Australia's global commitments to 30 by 30, have encouraged the ongoing reforms of the biodiversity legislation in Australia, key being the National Other Effective area-based Conservation Measures (OECMs) Framework, Australia's Strategy for the National Reserve System and Australia's National Roadmap (for land conservation).

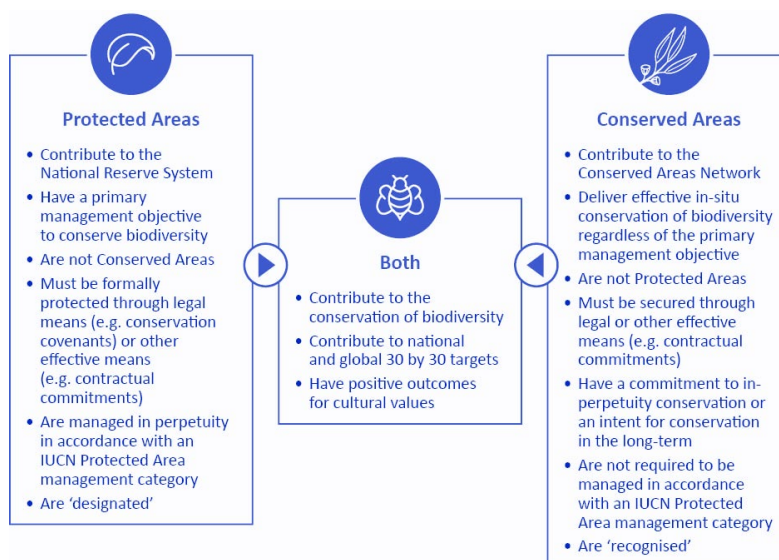
The OECMs Framework which was agreed to by Environmental Ministers on 21 June 2024¹¹ provides a mechanism to recognise and record OECMs, which are an important component of meeting Australia's '30 by 30' target under the Global Biodiversity Framework.

The framework outlines Australia's approach to OECMs, which are referred as Conserved Areas. The approach is informed by the definition by the Conference of the Parties to the CBD as "a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.

Protected Areas vs Conserved Areas

The two components that collectively contribute to Australia's 30 by 30 target are Protected Areas and Conserved Areas. The key differences between Protected Areas and Conserved Areas are:

- Protected Areas which include National Parks, Indigenous Protected Areas provide the strongest legal protection of biodiversity via either legislative means or conservation covenants recorded on land title. They are managed in accordance with established IUCN Protected Area management categories and contribute to the National Reserve System.
- A site can be either a formally designated Protected Area or recognised as a Conserved Area but it cannot be both. National Parks, Indigenous Protected Areas, or any other type of Protected Area, cannot be considered for Conserved Area recognition.
- Conserved Area recognition should be considered for areas that do not meet the Protected Area definition, for example where formal Protected Area designation is not possible, appropriate, or supported.



The framework outlines 12 Principles to guide recognition of Conserved Areas in Australia. The key legal implications of the Principles are reviewed:

Difference with Covenants

The framework acknowledges the difference between a Conserved Area and a Covenant stating that Conserved Areas "can be an entry point into natural resource management. Some landholders may be reluctant to enter into a conservation covenant arrangement in-perpetuity. Conserved Area recognition may be a starting point on their conservation journey".

The implication is that Conserved Areas could be established in the ACT without the need to establish a legislative framework for the establishment of covenants.

Changing Ownership

A Conserved Area may discontinue upon changing ownership. The framework states that upon changing ownership of land “the existing owner should inform the relevant government agency that a property is changing hands. This provides an opportunity for the relevant agency to engage with a new landholder and seek their consent for a property to continue to be recognised as a Conserved Area. This requires the new landholder’s agreement to undertake management, monitoring and reporting for the site. If the landholder does not consent, the site would be removed from the Conserved Area Network”.

Once removed as a Conserved Area, the site will not contribute to the national and global 30 by 30 targets.

Boundaries

The framework states that “Conserved Area boundaries must be clear and agreed, and of a sufficient size to achieve the long-term in-situ conservation of biodiversity, including all ecosystems, habitats and species communities for which the site is important. Given the sites specific nature of scale, no minimum or maximum site size is proposed. Where a proposed Conserved Area is part of a larger property, the footprint of the Conserved Area must be clearly described, and able to be accurately identified on maps and on the ground, to differentiate it from other parts of the property”.

A zoning system may support identification of boundaries for Conserved Areas in the ACT. The zoning system would need to acknowledge the need for sufficient size to achieve biodiversity outcomes.

Long term management arrangements

The framework identifies long term management arrangements as a key mechanism to ensure continuity. The framework outlines minimum requirements for recognition of Conserved Areas that include:

Monitoring: The framework states that “Conserved Areas should be monitored at a frequency required to detect meaningful change in the site’s biodiversity values. This will be dependent on the biodiversity values at the site. This monitoring may be undertaken by the landholder / land manager, or someone on the landholder’s behalf. Monitoring is not required more than yearly and should occur no less than every 5 years”.

Conservation objectives for the site: Including the biodiversity values for which the site is important and threats to those values.

Land management requirements set in legislation: The framework states that “Management arrangements must also indicate that the site meets land management requirements set in legislation, such as those relating to invasive / feral species management, fire risk management, natural heritage, and First Nations or other cultural heritage protection and management”.

Tenure: The framework states that long-term management arrangements for Conserved Areas should “ideally be in-perpetuity, but if this is not possible, then the minimum should be at least 99 years. Where there are underlying legal or land tenure restrictions or other constraints to securing in-perpetuity conservation, there should be a formal or legal commitment of at least 25 years coupled with a long-term conservation management commitment of at least 99 years”.

Conserved Areas could be incorporated into Land Management Agreements that are legally binding and enforceable agreements required under the *Planning Act 2023*. There is a need for LMAs to be at least 25 years to align with Conserved Area requirements.

Environmental Offsets

The framework acknowledges that Conserved Areas can be used for environmental offsets, stating “A site where an environmental offset has been delivered to compensate for the impacts of a development activity under the current Commonwealth environment law (the *Environment Protection and Biodiversity Conservation Act 1999*) can be considered for recognition as a Conserved Area. The role of environmental offsets with Conserved Areas will be at the discretion of the relevant Australian, state or territory government agency.

Conserved Areas could be incorporated into the ACT Environmental Offsets Policy framework.

Biodiversity restoration

The framework addresses sites that are being restored stating that “sites requiring restoration that are not being actively restored, are severely degraded, damaged, or destroyed are not appropriate for Conserved Area recognition”.

The establishment of Conserved Areas may not be appropriate for some ACT farmland where natural habitat has been impacted including the use of fertilisers.

First Nations

The Strategy for Australia's National Reserve System 2009-2030 guides the work on the National Reserve System – the system of formally recognising protected areas through legal or other effective means and managed in perpetuity. Indigenous Protected Areas (IPAs)^b represent more than 50 percent of Australia's National Reserve System. However, there are no IPAs in ACT.

The framework states that First Nations Peoples' knowledge in caring for Country should be considered and incorporated where appropriate in Conserved Area management arrangements. The ACT could establish processes to integrate First Nations Peoples' knowledge in caring for Country into establishment of Conserved Areas.

Planning Act 2023 (ACT)

The ACT *Planning Act 2023*¹² is the legal foundation of the ACT's planning system.

Part 2.2 s.7(3) of the Act identifies that the ACT's biodiversity values and its landscape setting including the protection and conservation of biodiversity, habitat, ecological processes and natural systems are integral to achieving the ACT's objectives.

Relevant sections of the *Planning Act 2023* are:

Ecologically sustainable development

The Act (Chapter 2 Part 2.1 s.9) defines ecologically sustainable development as development involving the effective integration of (a) the protection and enhancement of ecological processes and natural systems at local, territory and broader landscape levels and (b) the achievement of economic prosperity.

Environmental Offsets

The Act (Chapter 9) defines that an offset for a development that is likely to have a significant adverse environmental impact on a protected matter, means environmental compensation for the likely impact.

The value of an offset (s.240) is determined by the Minister who may make an offset value calculation determination consistent with the offsets policy. An offset value calculation determination is a notifiable instrument.

An offset condition for a development approval may include a requirement, if the offset land is not the land to which the approval applies, that the lease for the offset land be subject to a condition requiring the lessee of the offset land to comply with an offset management plan.

Extensions of lease

The Act (Part 10.3) establishes conditions for the extension of leases. Where eligible, the territory planning authority must grant the lessee the further lease of the land for a term not longer than 99 years. Rural leases may operate for shorter periods.

Rural Leases

The ACT *Planning Act 2023* (Part 10.8) establishes requirements for rural leases.

^b IPAs are areas of land and sea that Traditional Owners have agreed to manage for biodiversity conservation.

A rural lease is subject to land management agreements (Section 350). The Conservator of Flora and Fauna may make guidelines setting out the requirements for land management agreements.

Land Management Agreements are legally binding and enforceable agreements required under the *Planning Act 2023*. The overall purpose of a Land Management Agreement is to 'establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land and protecting the environment from harm.'¹³ Land Management Agreements are required to be reviewed and replaced by a subsequent agreement within five years from the date of signing. As at March 2020 there are an estimated 180 Land Management Agreements in existence for a total area of 27,000 hectares. Land Management Agreements are unique to the Territory. No other jurisdiction in Australia has a legal agreement with every rural leaseholder to deliver sustainable management of rural lands including the conservation of natural and cultural values. Because LMAs are already part of the *Planning Act 2023* they will be important in the establishment of biodiversity certificates aligned to the Federal *Nature Repair Act 2023*. The concept of introducing conservation overlays would require integration with LMA legislative requirements. The ability to change lease conditions through changes to land use zoning is specifically recognised in the ACT Environmental Offsets Policy 2015.¹⁴

Declaration of Leases

The Act empowers (s.366) the Minister under the Act, together with another Minister, to declare leases if satisfied it is in the public interest.

Nature Conservation Act 2014 (ACT)

The ACT Nature Conservation Strategy 2013–2023 aimed to enhance the resilience of natural areas at wider 'landscape scales', provide direction on how to better integrate and extend conservation efforts beyond reserves to include natural areas across a range of land uses and tenures, and cross-border, to ensure ecosystems remain healthy and well-managed. To this end the *Nature Conservation Act 2014* was passed by the ACT Legislative Assembly on 27 November 2014 and came into operation on 11 June 2015. It is administered by the Minister for the Environment, Parks and Land Management under the Environment, Planning and Sustainable Development Directorate and has appointed a Conservator of Fauna and Flora as administrator (s.20) who in turn is supported by the ACT Parks and Conservation Service (s.27) and its Conservation Officers (s.28). In addition, a Scientific Committee (s.31) and potential Advisory Bodies (s.46) are able to advise the Minister and Conservator about nature conservation.

Nature Conservation Strategy

The Conservator has the responsibility to prepare a nature conservation strategy for approval by the Minister and review it every 10 years and report on that strategy every 5 years. The strategy must consider—

- landscape scale approaches across tenures; and
- restoration of habitats; and
- landscape connectivity; and
- threats to biodiversity; and
- the impacts of climate change; and
- biodiversity research and monitoring program reports (s.49(2)).

The Conservator must consult with the scientific committee and the Commissioner for Sustainability and the Environment and undertake a public consultation. The strategy would be an appropriate instrument under which biodiversity financing could be included as an initiative.

Native Species and Ecological Communities

Under Chapter 4 of the Act, lists are to be prepared of threatened native species and ecological communities together with an action plan to deal with the threats. Under Chapter 5 of the Act conservation plans are to be prepared for the protection of native species with offences created under Chapter 6. Meanwhile, Chapter 7 provides for the drafting of controlled native species management plans and under Chapter 7A cultural resource management plans are to be prepared.

Reserves

Reserve management plans are dealt with under Chapter 8 with reserves covering a wilderness area, national park, nature reserve, catchment area and any other area of public land that is reserved in the territory plan under the *Planning Act 2023* (s. 385, Reserved areas of public land) and prescribed by regulation to be a reserve. The custodian of the reserve prepares the draft reserve management plan in consultation with the Conservator and the Territory Planning Authority and then opens up the draft to public consultation before submission of the revised draft plan to the Minister for approval via a Legislative Assembly committee process. Offences in relation to reserves are dealt with in Chapter 9 with prohibited and restrictive activities covered in Chapter 10.

Nature Conservation Licences

Meanwhile under Chapter 11, Nature Conservation Licences authorise the licensee to carry on 1 or more activities that would otherwise be an offence under the Act. Applications for a licence are made to the Conservator and failure to comply with conditions under the licence will result into an offence under the Act. The term of such licences must be no longer than 5 years.

Management Agreements

Management Agreements with utility suppliers, land developers and others are provided for under Chapter 12 and are between the conservator and an agency, in relation to public land or unleased territory land. The Agreement sets out standards and conditions for avoiding or minimising any conflict with the management objectives for the land which may arise as a result of the agency's activities; and may deal with the following provided they do not conflict with a development approval given under the *Planning Act 2023*, chapter 7:

- access to the public land or unleased territory land;
- fire management on the public land or unleased territory land;
- drainage on the public land or unleased territory land;
- management and maintenance of public or private facilities on the public land or unleased territory land;
- rehabilitation of the public land or unleased territory land or public or private facilities on the land;
- indemnities;
- emergency procedures to be used on the public land or unleased territory land;
- internal stockpiling on the public land or unleased territory land;
- fencing on the public land or unleased territory land;
- feral animals and weed control on the public land or unleased territory land (s.310).

These are distinct from the Land Management Agreements for rural land under the *Planning Act 2023*.

Land Development Applications

Chapter 13 requires Land Development Applications to be referred to the Conservator where the application is likely to have a significant adverse environmental impact on a protected matter. The Conservator gives advice to the territory planning authority, within the prescribed number of days, about adverse environmental impacts of the proposed development and the decision-maker under the *Planning Act 2023* must take such advice into consideration when deciding upon the development application. Approvals inconsistent with conservator's advice may only be given by either the chief planner or Minister in certain circumstances.

Enforcement

Enforcement procedures are provided under Chapter 14 of the Act while notification and review of decisions are dealt with under Chapter 15 of the Act. Failures to comply with specified directions result in offences, while injunctions can be utilised to restrain urgent directions and conservator's directions. The powers of conservation officers are provided in Part 14.2 along with the powers behind search warrants, return and forfeiture of seized items and the ability to destroy unsafe items, as well as obligations to deal with damage and compensation in the exercise of enforcement powers.

Global Biodiversity Financing Landscape

Global Biodiversity Frameworks

This section considers the implications of the GBF 2022 including a focus on the contributions of Indigenous peoples and local communities as custodians of biodiversity and as partners in its conservation, restoration and sustainable use.

GBF 2050 goals:

- A. Protect and restore
- B. Prosper with nature
- C. Share benefits fairly
- D. Invest and collaborate

The overarching global framework is the Kunming-Montreal Global Biodiversity Framework (GBF) that was adopted in 2022 at the fifteenth meeting of the Conference of the Parties (COP 15)^c of the Convention on Biological Diversity (CBD).¹⁵ The GBF contributes to the achievement of the 2030 Agenda for Sustainable Development^d and sets the global vision for biodiversity conservation and restoration by 2050. It aims to galvanise governments to urgent action to halt and reverse biodiversity loss by 2030 through four long term goals and 23 action-oriented targets for 2030.

The GBF commits parties to 30x30, that is to protect at least 30 percent of the world's land, freshwater and ocean ecosystems by 2030. The Australian Government has committed¹⁶ to the GBF and set a national target.

Noteworthy for this paper, is GBF Target 19 that seeks to mobilise US\$ 200 billion per year for biodiversity. Key areas of focus of Target 19 are the preparation and implementation of national biodiversity finance plans and the stimulating of innovative schemes such as payment for ecosystem services (PES), green bonds and biodiversity credits.

GBF Target 19

Substantially and progressively increase the level of financial resources from all sources, in an effective, timely and easily accessible manner, including domestic, international, public and private resources, in accordance with Article 20 of the Convention, to implement national biodiversity strategies and action plans, by 2030 mobilizing at least US\$ 200 billion per year, including by:

- a. Increasing total biodiversity related international financial resources from developed countries, including official development assistance, and from countries that voluntarily assume obligations of developed country Parties, to developing countries, in particular the least developed countries and small island developing States, as well as countries with economies in transition, to at least US\$ 20 billion per year by 2025, and to at least US\$ 30 billion per year by 2030;
- b. Significantly increasing domestic resource mobilization, facilitated by the preparation and implementation of national biodiversity finance plans or similar instruments according to national needs, priorities and circumstances
- c. Leveraging private finance, promoting blended finance, implementing strategies for raising new and additional resources, and encouraging the private sector to invest in biodiversity, including through impact funds and other instruments;
- d. Stimulating innovative schemes such as PES, green bonds, biodiversity offsets and credits, benefit-sharing mechanisms, with environmental and social safeguards
- e. Optimizing co-benefits and synergies of finance targeting the biodiversity and climate crises,
- f. Enhancing the role of collective actions, including by indigenous peoples and local communities, Mother Earth centric actions and non-market-based approaches including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity
- g. Enhancing the effectiveness, efficiency and transparency of resource provision and use

^c Conference of Parties. Australia is a party.

^d The key SDGs for biodiversity management are SDG 14: "Conserve and sustainably use the oceans, seas and marine resources for sustainable development" and SDG 15: "Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss."

The Australian Government also endorsed¹⁷ the ‘10 Point Plan for Financing Biodiversity’ that was initiated by Ecuador, Gabon, Maldives, and the United Kingdom to support its protection, conservation, restoration, and sustainable use.¹⁸

The “10 Point Plan for financing biodiversity” includes a commitment to *“use financial and policy levers to mobilise more biodiversity finance domestically including through: appropriate fiscal policies, including those supported by natural capital accounting; green financial products; investments in green infrastructure and other nature-based solutions; PES; and high integrity carbon markets to incentivise private sector flows”*.¹⁹

The next sections look at examples of products and mechanisms used in different parts of the world to mobilise biodiversity finance.

Financing mechanisms

Current biodiversity financial flows are estimated to be USD\$ 166 billion per year, with over 75 percent from domestic government spend²⁰, while the total estimated biodiversity protection need is between \$722 and \$967 billion per year²¹. While the GBF target is one of the most ambitious to date, it is estimated that a six-fold increase is needed by 2030²².

Closing the biodiversity financing gap is critical to protecting and sustainably managing biodiversity and ecosystem integrity. The Financing Nature²³ report places the onus on closing this gap on government actions such as reforming harmful subsidies (decrease the need for funding on conservation) and reducing investment risk by public and private investors (increase capital flows into conservation). While private finance has potential to support biodiversity conservation, appropriate government policies and incentives are required to catalyse the capital flow.

There are various approaches to financing biodiversity like PES or protection of natural infrastructure, fiscal and economic policy to manage resources use or penalise abuse, reducing investment risk through green instruments like green bonds or blended finance. Various finance or implementation mechanisms have been used across the world to increase biodiversity funding. These range from taxes, subsidies and grants to tradable permits and quotas to negotiated contracts and agreements to market schemes. There isn’t a universally accepted taxonomy on nature or biodiversity finance yet. For the purposes of this report, we have classified mechanisms and instruments into four categories:

1. **Taxes, fees & charges:** These are fiscal instruments that are required or unrequited payments for using a natural resource and are generally designed to disincentivize harmful behaviour. They translate into an income or revenue source for the government. However, it is important to earmark these funds for the conservation purposes for which they were created.
2. **Subsidies & grants:** These are also fiscal instruments used by governments but they are an expenditure. This could be in terms of payments or deductions. They can be used to increase capital flow to biodiversity by subsidising the cost of good behaviour or reduce the capital flows required by removing harmful subsidies. Grants or direct stewardship payments can be used in PES schemes or for conservation activities.
3. **Market schemes:** These are economic and market instruments that create a market for tradable fungible units (biocredits or certificates) to incentivize the protection of natural infrastructure or as PES. Offsets are also included in this category.
4. **Agreements & covenants:** These are voluntary approaches either led by government schemes or corporate or community responsibility. They can adopt an auction or bid approach to sign an agreement with the (often state) government to protect biodiversity in lieu of payment(s). These include covenants and other conservation agreements.

Implementation Mechanism	Short Description	Examples
Taxes & Fees		
Taxes / Levies	Compulsory unrequited payment on the use of a natural resource or the emission of a pollutant, to reflect the negative environmental externalities that they generate.	• Tax on logging, British Columbia, Canada; • Tax on pesticides, France • Great Barrier Reef Marine Park Authority Environmental Management Charge, Australia
Fees / charges	Requited payment to general government, meaning that the payer of the charge gets something in return, more or less in proportion to the payment made, such as park entrance fees, hunting licences, charges for groundwater abstraction and biodiversity-relevant noncompliance fines.	• Subnational water abstraction charges Germany; • Coastal protection fees, Texas, US • Park charges, Australia
Fines / Penalties	Designed to disincentivize harmful behaviour that may negatively impact biodiversity.	• Illegal waste dumping fines, Australia • Canopy contribution agreement financial settlement (penalty), ACT, Australia
Green budgets	Green budgeting aligns government spending and fiscal policy with environmental objectives. Tools and approaches, include budget tagging, environmental impact assessment, cost-benefit analysis to nature-proof projects, etc.	• Green Budget tagging, European Union • National Biodiversity Expenditure Review, Ireland
Subsidies & Grants		
Biodiversity-motivated subsidies	Subsidies that support the conservation, sustainable use or restoration of biodiversity or if it reduces directly or indirectly the use of something that has a proven, specific negative impact on biodiversity.	• Subsidies for reforestation, Canada • Subsidies for protection of landscapes and nature (Caring for our Country), Australia
Rate relief / Tax deduction	Tax or debt reductions that are converted into payments for conservation	• Tax deduction for mining site rehabilitation, Australia
Grants (one off)	Protection of natural infrastructure to maintain healthy ecosystems for the long term, to deliver ecosystem services to human populations, and support livelihoods and communities. This includes watershed and coastal protection programs.	• Indigenous Protected Areas Program, Australia
Harmful subsidy reform	Modify existing subsidies to deliver a net positive effect on biodiversity rather than inducing production or consumption activities that exacerbate biodiversity loss. These are particularly important within the agriculture, fisheries, and forestry sectors and in reframing fossil fuel support.	• Phase out price support, concessionary lending, development loans, and tax concessions in agriculture and fisheries and shift to rights-based management in fisheries, social welfare programs, and loan restructuring, New Zealand • Replace direct payments to livestock farmers, with transition payments, and increasing payments to farmers meeting biodiversity goals, Switzerland

Market Schemes		
Credit schemes	Based on the beneficiary pays approach, PES are voluntary transactions between ecosystem service users and providers, that are conditional on agreed rules of natural resource management.	Reef Credit scheme, Queensland, Australia
Tradable permits	Set a limit on total amount of a natural resource that can be exploited, and then allocate individual permits to users that they can also trade.	- Tradable development rights for pinelands management, US - Individual transferable fishing quotas (ITQ), Australia - Water trading, Australia
Carbon markets	Regulated cap-and-trade program in which greenhouse gas emitters are capped and regulated through programs that allow the creation and trading of carbon credits. Including the creation of carbon offsets from forest practices or other natural and land-based projects.	Carbon farming initiative, Australia
Biodiversity offsets	Actions / projects with measurable conservation outcomes to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken. Implementation can be through developer responsible offset, third party mitigation / habitat bank or compensation funds.	- US Wetland Compensatory Mitigation - Biodiversity Offsets Schemes, NSW, Australia - UK Net Gain, UK
Agreements & Covenants		
Conservation Covenants	Voluntary agreement made between a landholder and an authorised body that permanently protects and conserves private land with natural, cultural or scientific values.	Conservation covenants under the Victorian Conservation Trust Act 1972 by Trust for Nature, Australia
Voluntary approaches - PES	Based on the beneficiary pays approach, PES are voluntary transactions between ecosystem service users and providers, that are conditional on agreed rules of natural resource management.	Vittel (Nestlé Waters) watershed payments, France

Adapted from ^{24, 25}

Role of the private sector

The private sector only contributes to 17 percent of the global biodiversity funding and this is mainly through payments for ecosystem services and sustainable supply chain finance followed by environmental markets and impact investing.²⁶ The government can play an important role in promoting green investments by creating a conducive policy environment that incentivises biodiversity conservations and encourages the flow of capital from the private sector.

Besides regulatory levers, another catalyst is public private partnerships in projects designed to protect and conserve biodiversity, or in nature-based solutions. Green financial products are a collection of financial instruments, primarily debt and equity, that facilitate the flow of investment capital into companies and projects that have a positive impact on biodiversity. Besides the Nature markets (biodiversity offsets, carbon markets, PES) discussed above, the catalogue of private biodiversity financing mechanisms²⁷ includes bonds, equity funds, impact investing, green microfinance, financial guarantees. Other tools being developed

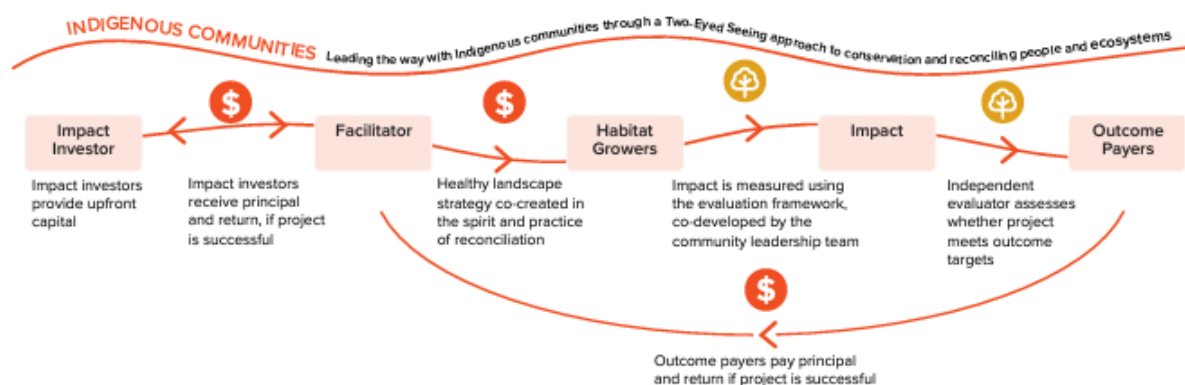
are the sustainable finance taxonomies, definitions and metrics. While forest-related activities have been included in the EU Taxonomy under climate change mitigation and adaptation criteria, so far they have been excluded from biodiversity protection and restoration criteria²⁸. Some of these are described in the table below. A range of these instruments and products can be used to incentivize private investors to invest in biodiversity projects.

Instrument	Short Description	Examples
Bonds: forest bonds, ecosystem green bonds, climate bonds, blue bonds	Opportunity for investors to back government supported projects for improved environmental outcomes. Some bonds allow investors to receive their annual coupon in carbon credits.	- Green Treasury Bond, Australia - IFC Forests Bond (IFCFB), Kenya
Loans: concessional loans, nature repair loans, carbon loans	Loans to accelerate businesses that have nature-positive impacts. Terms could include decreasing interest rates based on returns in natural capital, carbon credits from forest sequestration as collateral, and preferential rates for environmental objectives.	- Nature-linked loans, Wedgetail - Quzhou Agricultural Development Bank, China
Trusts: biodiversity trusts, environmental trusts:	Funding from public, private (community) entities interested in environmental objectives that is invested partly in a growth fund and partly towards immediate conservation projects.	Tungurahua Páramos and the Fight Against Poverty' fund, Ecuador
Biodiversity equity funds	Equity portfolios that invest in businesses that are enhancing the protection and restoration of the natural world.	- ASN Biodiversity Fund, first listed fund - Federated Hermes Biodiversity Equity Fund - UBAM Biodiversity Restoration fund - Fidelity Biodiversity Equity Fund - AXA WF ACT Biodiversity Fund
Venture Capital	Investing in start-ups and initiatives focused on biodiversity preservation	- Superorganism, VC firm dedicated to biodiversity crisis - Silverstand Capital, Biodiversity accelerator - CI Ventures
Blended Finance	Catalytic approach to unlocking more capital by using grants to de-risk private sector capital. This can be through grant funding for design or technical assistance, risk guarantees or concessional finance.	- Global Fund for Coral Reefs – grants & philanthropy grants & concessional capital from GCF - Seychelles Blue Bond – WB repayment guarantee & GEF non grant instrument
Impact Investment / Impact Bonds	Pay-for-success, and outcome-based financial structures that can strengthen conservation efforts.	- Deshkan Ziibi Conservation Impact Bond, Canada - Rhino Impact Bond (RIB), South Africa
Labelling & Certification	Often voluntary, certification schemes are based on standards which provide the basis of verification.	- Ancient Forest Friendly™ by Canopy - Forestry Stewardship Council (FSC) - Ecological Outcome Verification by Savory Institute

Deshkan Ziibi Conservation Impact Bond (DZCIB), Ontario, Canada

The Conservation Impact Bond (CIB) is a “pay-for-success”, outcomes-based conservation finance instrument that aims to enhance natural assets at a landscape scale. It was launched in 2020. These landscapes are the traditional territories of Indigenous Peoples; hence it is important that the CIB is a place-based model is guided by Indigenous partners. The key components of the model are:

- **Outcome Payers or Accelerators:** Groups and individuals that commit to pay for a range of benefits from healthy and resilient ecosystems e.g. government agency, a farmer, or business that relies on these ecosystem services.
- **Impact Investors:** Private sector investors attracted by the commitments of the Outcome Payers and willing to invest upfront in these healthy landscape outcomes.
- **Habitat Growers:** Diverse and experienced groups and landowners who deliver “on-the-ground” habitat projects.
- **Facilitator:** Neutral party to connect the parties to co-develop and apply the “rules” of the bond, and the definition of successful outcomes.
- **Evaluators:** Independent auditor that uses expert monitoring, healthy landscape tracking technology, and academic research to track and assess impacts.



Projects include: Protecting biodiversity, planting trees, restoring waterways, removing invasive species, growing native plants, installing seed orchards, connecting natural infrastructure, implementing nature-smart climate solutions, urban forestry, or regenerative agriculture.

Many of these projects can be delivered by Indigenous- or youth-led initiatives and enterprises.

Source: Lynch, M., & Kanter, M. (2022)²⁹

Environment Offsets

Environmental offsets can be considered a financing mechanism to fund biodiversity investments. Environmental offset schemes were first developed in Germany in the 1970s and California in the 1980s as a mechanism to compensate for the unavoidable, significant impacts of development on threatened species and habitats. Environmental offset schemes are typically founded on a mitigation hierarchy, defined as 'avoid - mitigate - offset', where environmental offsetting is the last resort.

Environmental offsets are established through Chapter 9 of the ACT *Planning Act 2023*. The *Planning Act 2023* establishes that the Minister may establish an offsets policy (Section 226) and make guidelines about the implementation of the offsets policy (Section 234). In preparing the draft offsets policy guidelines, the Minister must consult the conservator of flora and fauna (Section 235). The Minister may determine how the value of an offset is to be calculated (Section 240). The current ACT Environmental Offsets Policy³⁰ was issued in April 2015. The objectives of the Policy are:

1. To ensure areas of high conservation value or irreplaceable assets are avoided, or avoided and mitigated:
 - a. environmental offsets are considered only after feasible and appropriate avoidance and mitigation measures have been taken.
 - b. the use of environmental offsets cannot be used to make inappropriate actions⁶ appropriate.
2. Should impacts be acceptable, to ensure the impacts from the loss of ecological communities and habitat are balanced by commensurate gains in extent or quality elsewhere.

The ACT Government has developed the Offsets Policy to be consistent with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The ACT Environmental Offsets Policy 2015 states that offsets can be provided on either leasehold land or public land. Offsets on leasehold land can be secured through lease conditions and changes to land use zoning.

The Policy states that the preference in the ACT is for direct offsets to be firstly provided in the ACT in the same district as the impact, secondly in a different district to the impact but outside of the ACT, or thirdly elsewhere in Australia where the protected matter occurs. Offsets must deliver a conservation gain for the impacted protected matter, and that conservation gain must be new, or additional to what is already required by a duty of care or to any environmental planning laws at any level of government. The Policy states that a conservation gain may be achieved by:

- improving existing habitat for the protected matter
- creating new habitat for the protected matter
- reducing threats to the protected matter or
- averting the loss of a protected matter or its habitat that is under threat.

A key challenge with offsets on leased land in the ACT is uncertainty around future development of land. Offsets do not require permanence, however the Policy recognises the benefits of certainty of outcomes which is reflected in assessments for offsets.

A key challenge with the implementation of environmental offsets has either been a failure to follow a mitigation hierarchy or a lack of compliance. The Australian Government recently conducted an audit of environmental offsets approved under the EPBC Act. Between June 2023 and March 2024, 222 EPBC Act approved offsets were reviewed to determine compliance with offset conditions. The review found that 14% were non-compliant or potentially non-compliant with their approval conditions. The review also performed a desktop audit of an additional 120 approvals and found that 25% of approvals have not, or potentially not, secured the necessary offsets and are subject to further information review, investigation, or audit³¹.

Biodiversity Credits Developments

Nature / biodiversity credits are developing as an approach to finance biodiversity outcomes. Nature / biodiversity credits are defined by the World Economic Forum (WEF) as an economic instrument that can be used to finance actions that result in measurable positive outcomes for biodiversity (e.g. species,

ecosystems, natural habitats) through the creation and sale of biodiversity units³². Two relevant financial instruments are Biodiversity- Positive Carbon Credits and Nature / Biodiversity Credits.³³

In NSW, the *NSW Biodiversity Conservation Act 2016*³⁴ establishes (Division 2 5.5) that the Minister may enter into a biodiversity stewardship agreement for the purpose of establishing a biodiversity stewardship site. This agreement has effect in perpetuity (Division 2 s.5.10 (2)). The agreement may contain provisions on the timing of the creation of biodiversity credits and their release for sale. biodiversity credits can be transferred unless cancelled or retired (Division 4 s.6).

The integration of biodiversity into carbon markets is recognised through the Core Carbon Principles (CCP) which were recently released by the Integrity Council for the Voluntary Carbon Market (ICVCM).³⁵ ICVCM aims for the CCP to become the gold standard for carbon credits. The framework recognises sustainable development benefits including biodiversity. The WEF identifies key principles to safeguard the integrity of biodiversity credits with three main overarching themes of transparent and sound governance, equity and inclusion, and rigorous measurement, reporting and verification.

The legal frameworks for nature / biodiversity credits are still innovating. Key issues that have been identified by the Global Environmental Facility (GEF) ³⁶ to support development include the need for:

- Convergence with international approaches to carbon credits and PES schemes.
- Piloting and testing of biodiversity positive carbon credits and nature certificates to build market support.
- Good governance as the precursor for discussing more technical items such as methods and measurements.

A key difference between carbon offsets and nature/ biodiversity credits is **fungibility**. A commodity is fungible if it is interchangeable and buyers are willing to pay the same price for the commodity regardless of the source.³⁷ An example of a fungible commodity is gold. Carbon credits have elements of fungibility because carbon is the same no matter where it is sourced. Key to unlocking biodiversity finance in different forms is the establishment of a **property right**. A property right may be a physical asset such as land, or a certificate / licence that confers ownership such as a share certificate. Internationally we are seeing the focus on establishing property rights for credit instruments.

Convergence with carbon offset schemes has focused on **permanence obligations**. A permanence obligation means the carbon stored by a project must be maintained for a chosen period, with 25 or 100 years often designated in scheme design rules.³⁸ WEF note that whilst carbon removal projects permanence is often intended around 100 or 1000 years, there is no clear agreement yet on the permanence of biodiversity outcomes.³⁹

UK Nature Market

The United Kingdom (UK) introduced a biodiversity credit scheme in 2024. This creates a nature market for biodiversity net gain (BNG) credits under the *Town and Country Planning Act 1990*. All developers / building projects must deliver a BNG of 10 percent, i.e. more or better-quality natural habitat than there was before development over a period of 30 years. As per the mitigation hierarchy, this can be done by enhancing wildlife habitats on-site or off-site in habitat banks or through buying statutory biodiversity credits (last option). This has led to the creation of a new market for landowners to create habitat banks on part or all of their land. Their conservation and biodiversity gain activities then earn them money through the sale of biodiversity credits.

Conservation Covenants

Conservation covenants are commonly used as a mechanism for landholders to deliver environmental outcomes on a specific piece of land.

Landholders may be entitled to claim a tax deduction and concessional capital gains tax (CGT) treatment if they enter into a conservation covenant over land they own, and certain conditions are met.⁴⁰ According to the Australian Taxation Office (ATO) to be eligible for taxation concessions a conservation covenant must:

- restrict or prohibit certain activities on the land that could degrade the environmental value of the land;
- be permanent and if possible be registered on the title to the land;
- be approved by the Environment Minister.⁴¹

The following programs are approved by the Environment Minister for the purposes of the *Income Tax Assessment Act 1997*⁴²:

Jurisdiction	Program
New South Wales	Conservation Agreement and Biodiversity Stewardship Agreement Programs Biodiversity Conservation Trust of NSW
Queensland	Private Protected Area Program Queensland Government Department of Environment and Science
South Australia	South Australian Heritage Agreement Scheme Department of Environment and Water
Tasmania	Private Land Conservation Program Department of Natural Resources and Environment Tasmania
Victoria	Trust For Nature (Victoria) Conservation Covenant Program Trust for Nature (Victoria)
Victoria	BushTender Department of Environment, Land, Water and Planning
Western Australia	The National Trust of Australia (WA) Conservation Covenant Program The National Trust of Australia (WA)
Western Australia	The Nature Conservation Covenant Program Department of Biodiversity, Conservation and Attractions

No conservation covenant programs have been approved for Australian territories. Instead, due to its peculiar leasehold tenure, there is an inherent conflict in the ACT between the conservation objectives of a covenant and the management intent for land use of the leaseholder and lease legislation. Land Management Agreements (LMAs) and Environmental Grants are the primary policy tools employed by the ACT Government for biodiversity conservation on rural leaseholds⁴³. However, there are challenges with enforcement of the agreements and lack of accountability for violators.

The requirement that a conservation covenant program be permanent may deter programs where landholding is based on a 99-year lease. But further, a leasehold would generally not entitle the holder to grant an encumbrance on the land as they are not the title holder. A covenant is an agreement registered on title that imposes obligations on its owner in relation to the land. The holder of a leasehold is not an owner of the land. The 'owner' in the case of ACT Territory Land would be the Crown as administered by the Australian Capital Territory Executive.

Challenges and opportunities financing biodiversity in the ACT

This section examines the challenges and opportunities for financing biodiversity with the ACT's territorial boundaries.

Economists have generally considered environmental problems like air and water pollution to be the result of a 'market failure', whereby those who cause the pollution impose costs on third parties but do not themselves bear the burden of those 'external' costs. Various strategies can be suggested to 'correct' such a market failure. These range from 'soft' approaches like environmental education and voluntary agreements, to mandatory obligations imposed by 'command and control' regulation. Somewhere between these extremes are a variety of economic incentives provided by market based instruments.

Gumley & Stoianoff (2011) Federal Law Review Vol 39, p.132

Arthur Cecil Pigou's seminal work, *The Economics of Welfare* proposes the internalisation of external costs such as pollution in order to maximize welfare by placing a tax or levy on the polluting activity such that it equals the 'marginal social damage it generates'.⁴⁴ In essence, this is referred to as the polluter pays principle which was adopted by the OECD in 1972, with the primary aim being to avoid market distortions through the use of direct and indirect environment-related subsidies.⁴⁵

On the other hand, the Coase theorem proposes that the factors of production, including a 'right to do something which has a harmful effect', is a transferable property right and a market can be used to value them and ensure their best possible use.⁴⁶ This is the reasoning behind emissions trading which effectively is underpinned by the issuing of tradable permits to pollute to specified levels and allowing the polluters the freedom to either change their behaviour to meet those targets or reduce their pollution and sell the balance of their permits to those polluters unable to meet their targets under their permits. In this way, Biodiversity certificates could represent a property right demonstrating specified levels of biodiversity management which could be sold to businesses that have destroyed biodiversity as part of land developments and need to meet certain targets that enable the development to proceed.

Relevance to the ACT

There are a number of ways biodiversity financing mechanism can be set up depending on the biodiversity goals to be met, the legal and institutional framework and the available funding for the projects. The table below presents a succinct analysis of some of the mechanisms discussed in the previous sections of this report, based on their relevance for the ACT.

Category	Finance Mechanism	Opportunity	Limitation / Gap	Barriers	Enabler
Subsidies & grants	Rate Relief	Subsidy could be based on demonstrated actions, for example reimbursement of nature-related expenses	There is a risk that subsidy could be removed in the future. Depending on structure of the subsidy it could have an ongoing cost to ACT budget.	Determining biodiversity outcome criteria to be eligible for a subsidy. Cost of managing subsidy scheme.	Legislation to amend: <i>Rates Act 2004</i>
Taxes, licences, fees & charges	Tax / levy	A levy could be placed on all farm land with proceeds used to fund biodiversity investments. Scheme could be designed to allow exemptions for property with a covenant / Conserved Area in place.	Levy would need to be administered to ensure compliance. Cost of levy would be incorporated into operation of farm business. This may act as a disincentive to investments in biodiversity that could otherwise be made voluntarily. Lessons from rehabilitation bonds (e.g. mining lease rehabilitation bonds) show that bonds may not be sufficient to meet the goals of restoration.	Cost of collection of levies and implementing conservation activity. Levy could be linked to rates. Where levy was not paid it could be recouped at point of sale of a property.	Legislation to amend: <i>Rates Act 2004</i>
Market schemes	Biodiversity certificate scheme	Property right created for owner that can be passed to future owners.	Integrity and governance of schemes are critical to implementation. Uncertainty on life of project: Certificates under OECM are 25 / 99 years but certain conservation goals require land to be held in perpetuity.	Mechanisms to establish a biodiversity project that earns a biodiversity certificate may deter potential applicants.	Nature Repair Market
Agreements & Covenants	Covenant Conserved Areas (OECM)	Biodiversity is linked to property and is not a separate asset as with biodiversity certificates. The value of a property with recognised covenant, Conserved Area would be determined by market. Biodiversity benefits can be preserved in perpetuity.	The value of property with attached covenant / Conserved Area could decrease. This may deter applicants.	Conserved Areas would require monitoring of compliance with Land Management Agreements.	Legislation to amend <i>Nature Conservation Act 2014, Planning Act 2023</i> and Land Management agreements

The design and implementation of economic instruments and finance mechanisms is key to effectively delivering desirable biodiversity impact. From the analysis of the ACT's legal and institutional framework and an understanding of the key mechanisms used to finance biodiversity conservation, there are a few critical considerations while developing a model for ACT. These are discussed in the section below.

Permanence Period

A key issue identified to unlock financing of biodiversity is the permanence period. There is uncertainty around the definition of permanence for biodiversity projects. Internationally efforts to establish nature/ biodiversity credit schemes have sought to harmonise with carbon credit schemes which either have a permanence period of 25 or 100 years. The *Nature Repair Act 2023* has replicated this permanence period. There is however a key difference between carbon credit scheme and nature/ biodiversity credit schemes which is that nature / biodiversity schemes are not fungible. Shorter permanence periods of 25 that may in certain circumstances be appropriate for carbon credits may not be appropriate for nature/ biodiversity credit schemes. Whilst the *Nature Repair Act* creates a framework for shorter term biodiversity credits (25 years), it is unclear whether there will be market demand for shorter term biodiversity credits given uncertainty around the long-term biodiversity outcomes that can be delivered.

Conservation covenants are commonly used as a mechanism for landholders to deliver environmental outcomes on a specific piece of land. For the purposes of the *Income Tax Assessment Act 1997* the Australian Government Environment Minister may approve a conservation covenant scheme. A key element for approval is permanence. No conservation covenant programs have been approved for Australian territories. The requirement that a conservation covenant program be permanent may be a factor where landholding is based on a 99-year lease or may simply require the Territory to create the covenant and amend the leasehold to account for that creation and incorporate terms in the land management agreement.

The *Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)* establishes that leases shall not exceed 99 years. The *Planning Act 2023 (ACT)* establishes conditions for a lease to be rolled over. The *Planning Act 2023 (ACT)* establishes that rural leases may have shorter periods than 99 years and a rural lease may be 'declared' if in the public interest.

A key consideration for the ACT is what it can and cannot control. The ACT is not able to change the 99-year lease arrangements that are part of the Australian Capital Territory's enabling legislation. Only the Governor-General has the ability to prescribe a longer period under s.53 of the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)*. The implication of this is that the ACT's legal frameworks do not support permanent obligations. This for instance limits the ACT's capacity, under existing requirements for permanence to have a conservation covenant scheme approved by the Australian Government Environment Minister.

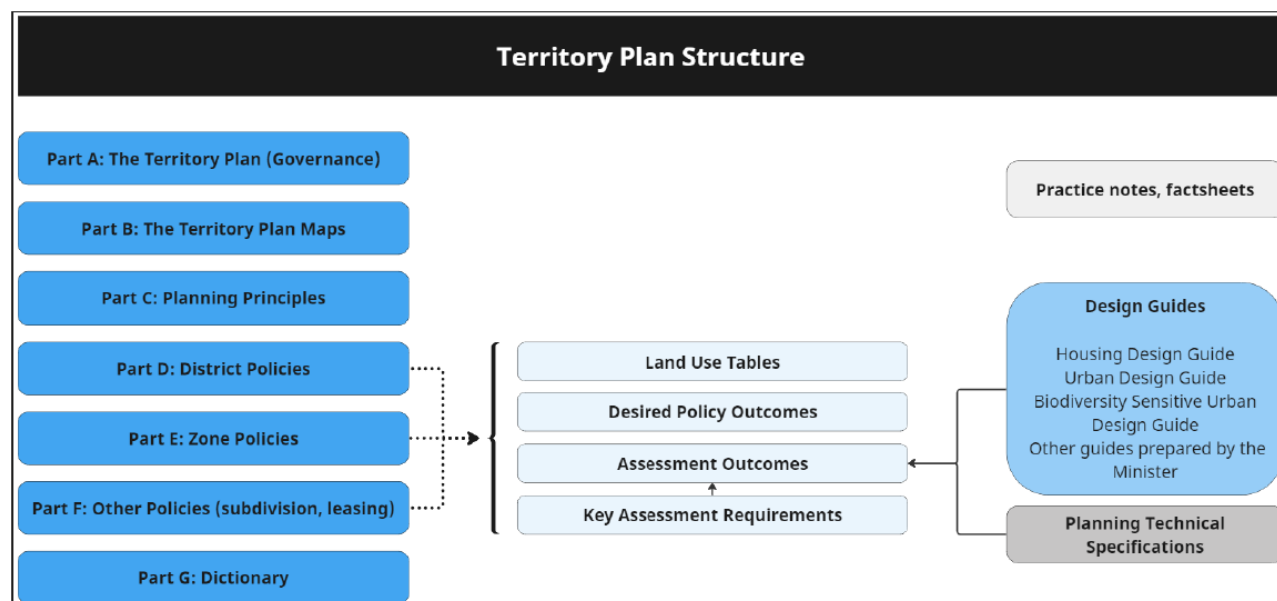
The linkage between the Australian Government's *Nature Repair Act 2023* will depend on how the Permanence Period method is defined. The *Nature Repair Act 2023* itself has scope for the Minister to approve a Permanence Period that is less than 100 years and could accommodate the ACT's 99-year lease legal frameworks. The Australian Government is in the process of establishing the processes that will deliver a Permanence Period method. There is therefore an opportunity for the ACT to engage with the Australian Government.

The ACT has the capacity to control the establishment of a Biodiversity Credits Scheme within ACT boundaries. A Biodiversity Credits Scheme could be established through amendments to the *Planning Act 2023*. An ACT Biodiversity Credits Scheme would define a permanence period as 99 years. In practical terms the difference between a 99-year lease and a 100-year permanence obligation is minimal.

The ACT can control the terms of rural leases which may currently be granted for periods less than 99 years. Given that the *Planning Act 2023* establishes (Section 366) that the Minister may declare leases if satisfied it is in the public interest, there is no reason if the ACT determines that land is needed for another purpose that rural leases cannot be declared. The impact of transferring leases to 99-year leases would be to remove uncertainty for rural land holders. This would establish the conditions for the establishment of an ACT biodiversity credits scheme.

Planning Zones

The Territory Planning Authority prepared and administered the Territory Plan 2023 as a notifiable instrument under s.45 of the *Planning Act 2023* and in accordance with Chapter 5. The following diagram sets out the Territory Plan Structure and supporting material.



Source: Territory Plan 2023

The Territory Plan sets out the Zone policies which allocate land uses and development opportunities to land in the ACT. There are 23 land use zones comprised in the 7 zone policies for the ACT.

Zone policies specify uses that are permissible (subject to a development application) or prohibited in specific zones. The policies outline desired policy outcomes that are important in differentiating each zone and include assessment outcomes and key assessment requirements relevant to each zone.

Part A Administration and Governance

Part C of the Territory Plan 2023 sets out the 10 principles of good planning which include natural environment conservation, sustainability and resilience and cultural heritage conservation. Meanwhile, Part D is concerned with District policies in the ACT with D10 being the Non-Urban District Policy. There are eight desired policy outcomes to be achieved for Non-Urban Districts in the ACT. These are:

1. Maintain and conserve the significant cultural and natural heritage resources, the river corridors and the ecological integrity and biodiversity values and habitats of the non-urban areas.
2. Provide a predominantly non-urban natural landscape setting for a range of uses which require larger sites and/or a location outside the urban area.
3. Provide for activities requiring clearance zones or protection from conflicting development such as landfill sites, quarries, and water quality control treatment plants.
4. Promote development, including in the Harman industrial area, that does not adversely impact or visually intrude on the landscape and environmental quality of the non-urban setting.
5. Promote type and intensity of development that is ecologically sensitive and sustainable.
6. Retain and enhance the existing rural village character of Hall and Uriarra and preserve their heritage significance in a distinctive non-urban natural landscape setting.
7. Provide for the productive and sustainable use of land for agriculture including livestock grazing and plantation forestry.
8. Provide for other uses which are compatible with the use of the land for agriculture.

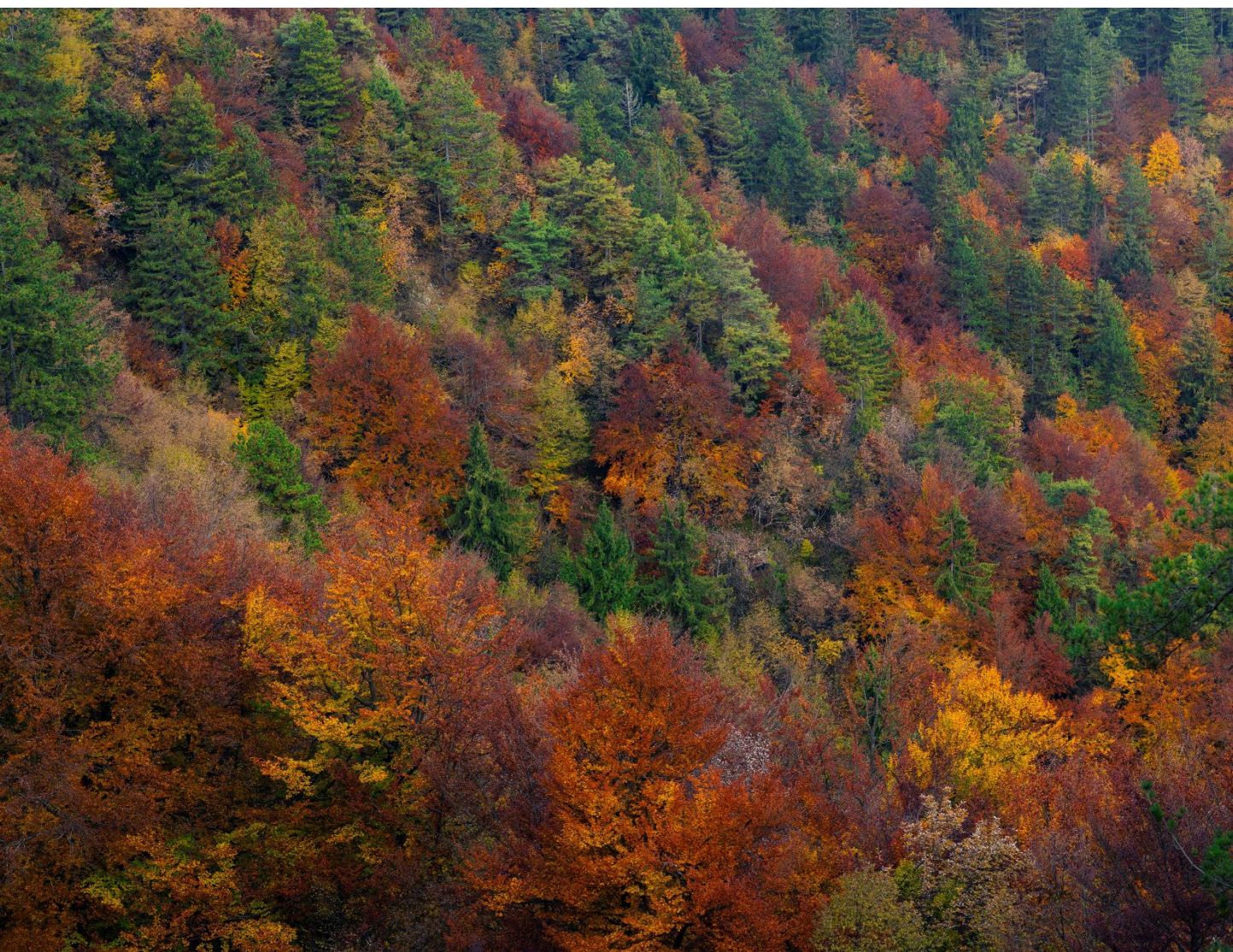
There are 5 Non-Urban Zones: NUZ1 – Broadacre Zone, NUZ2 – Rural Zone, NUZ3 – Hills, Ridges and Buffer Zone, NUZ4 – River Corridor Zone and NUZ5 – Mountains and Bushland Zone.

The policies associated with these Zones are contained in Part E Zone Policies, specifically E07. In each of these non-urban zones, development proposals are assessed against a series of policy outcomes. Nature conservation to some degree is expected in all five Zones among a variety of other policy outcomes but there is no separate conservation zone.

Property rights / Fungibility

The motivation of the owner or leaseholder is a key component in the success of biodiversity conservation projects. Not having land ownership due to the crown lease tenure might negatively impact the perception of property rights in ACT and thus reduce the willingness of rural leaseholders to invest in conservation measures, as well as reduce the certainty of conservation objectives being achieved in perpetuity.

The *Nature Repair Act 2023 (Cwlth)* establishes that biodiversity certificates are personal property. The CER can issue biodiversity certificates for registered biodiversity projects. The Act requires that a project would have either a 25-year or 100-year permanence period unless a different period is provided for in the applicable method. The rules around issuance of biodiversity certificates are determined through the issuance of 'methods'. The Australian Government has yet to develop a Permanent Protection method, however, no covenant is required to run with the land and accordingly deals with the issue of leasehold land upon which biodiversity projects are considered.



Recommendations & Model

This report has reviewed and analysed the ACT's existing institutional and legal framework to identify and understand the gaps, barriers, opportunities, and enablers associated with the development of financing mechanisms to drive investments to repair and restore nature in the ACT. Based on this analysis we now consider four biodiversity finance options/recommendations that are suited to the ACT.

This section outlines four specific models and one combination model for biodiversity financing that could be considered by the ACT Government.

The development of models is based on analysis of the ACT's existing institutional and legal framework. We have considered the evolving regulatory environment for biodiversity financing including the *Nature Repair Act 2023* and OECM/ Conserved Area framework agreed to by environment minister.

Four specific models are proposed. These models can be considered in isolation or implemented together as in the proposed fifth model. For each mechanism we consider factors such as governance, risks, implementation challenges, safeguards and standards, cost, and timeframes as well as the legal, policy and regulatory reforms needed to enable the operationalization of the option.

The five models are:

Option 1: Rate Concession

ACT Government introduces a scheme to provide rural leaseholders who make eligible investments in biodiversity with rate relief.

Option 2: Taxes, licenses, fees & charges

ACT Government introduces a biodiversity levy to fund biodiversity actions. A biodiversity levy would be used to establish an ACT Nature Trust that would make long-term investment decisions.

Option 3: Market Schemes

The ACT Government uses the Australian Government's *Nature Repair Act 2023* and Conserved Area framework to establish biodiversity as a separate property right as biodiversity certificates.

Option 4: Agreements and Covenants

The ACT Government incorporates biodiversity into Land Management Agreements that are already legally binding and enforceable agreements required under the *Planning Act 2023* with the Conservator of Flora and Fauna issuing guidelines as enabled under the Act.

Option 5: Combination Model

The ACT Government adopts a combination of models to create an ecosystem that both incentivizes rural leaseholders to invest in biodiversity whilst securing larger scale biodiversity projects through the establishment of an ACT Nature Trust.

It is important to note that these models are proposals. A detailed feasibility study needs to be undertaken to understand the risks and operational challenges before committing to implementation. This is beyond the scope of the current assignment.

Model 1: Rate Concession

Description

ACT Government introduces a scheme to provide rural leaseholders who make eligible investments in biodiversity with rate relief.

Design

A biodiversity investment rate relief scheme could be designed to either be a flat dollar amount, % of land value, or reimbursement of eligible expenditures.

Flat dollar amount: Eligibility could be linked to commitments made by the rural leaseholder.

% of land value: Eligibility could be linked to commitments made by the rural leaseholder.

Reimbursement of eligible expenditures: The rural leaseholder could be reimbursed for eligible biodiversity investments. This could for instance include reimbursement of cost to fence a particular area to protect native flora and fauna.

Biodiversity considerations

A biodiversity investment rate relief scheme would need to define the types of investments that would be eligible for rate relief.

Biodiversity investments should link into objectives of the Conservator of Flora and Fauna including protecting and conserving threatened species and ecological communities.

Eligible investments could include:

- Planting and maintenance of native vegetation
- Infrastructure to support restoration and maintenance of habitats including fencing and water
- Activities to support restoration and maintenance of habitats including weeding.
- Advice from ecologists on restoration and maintenance of habitats.

Governance

A biodiversity investment rate relief scheme could be incorporated into the ACT Government's existing Land Management Agreement framework.

A Land Management Agreement is required for any lease that contains a rural purpose clause. Section 350 of the *Planning Act 2023* provides the authority for the agreements.

The principal objective of Land Management Agreements is to establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land and protecting the environment from harm.⁴⁷

In section 256 of the *Planning Act 2023*, a rural lease is defined as "a lease granted for a rural purpose or purposes including a rural purpose". Part 10.8 of the *Planning Act 2023* deals specifically with rural leases. Subsection 350(2)(a) defines a Land Management Agreement as "an agreement with the Territory about managing the rural land described in the lease". Subsection 350(2)(b) of the *Planning Act 2023* requires that the Land Management Agreement be signed by the Conservator of Flora and Fauna and the leaseholder. The Rural Services and Natural Resource Protection Team has primary responsibility for the development of Land Management Agreements. This includes working with the rural leaseholder to complete an Agreement as well as organising technical assessments of ecologically sensitive sites (where required) and obtaining and coordinating technical stakeholders' feedback.

In the review of the *Planning and Development Act 2007* (the precursor to the *Planning Act 2023*) the Auditor General states that there is no procedural guidance in place to guide Rural Services and Natural Resource Protection Team officers (and other Environment, Planning and Sustainable Development Directorate stakeholders more generally) in the development of Land Management Agreements.⁴⁸

However, it is noted that the Conservator Liaison Team has developed a Land Management Agreements Procedure intended to provide guidance and advice to the Conservator Liaison Team for its Land Management Agreement responsibilities.

The Auditor General states “The Environment, Planning and Sustainable Development Directorate specifically notes that Land Management Agreements ‘are a mechanism under the *Planning and Development Act 2007* to facilitate agreement between the ACT government and the leaseholder on the sustainable management of rural lands including the conservation of natural and cultural values’”.⁴⁹

The *Rates Act 2004* (Part 7 Division 7.3 Section 60) provides that a person may apply to the commissioner for revenue or a rebate of rates.⁵⁰ An application must:

- (a) be in writing signed by the applicant; and
 - (b) include a statement of particulars in support; and
 - (c) include a statement signed by the applicant authorising any entity chosen by the commissioner to disclose relevant information about the applicant to the commissioner for the purpose of deciding the application.
- (3) The commissioner may ask the applicant for additional information or documents that the commissioner reasonably needs to decide the application.
- (4) The applicant must give the commissioner the information or documents asked for.

In concluding, the *Planning Act 2023* has the legal foundations to incorporate ecological considerations into Land Management Agreements. The *Rates Act 2004* has the legal foundations for rate relief which are based on individual application. A mechanism to guide eligibility for rate relief for biodiversity investments could be for the Conservator to revise the Land Management Agreements Procedure to establish a criteria for biodiversity investments that would be eligible for rate relief.

Risk Management and Monitoring

The ACT Government would need to establish systems and processes to support the management of a biodiversity investment rate relief scheme.

Linked to rate relief eligibility Land Management Agreements could require leaseholders to submit an annual statement on biodiversity actions.

The Auditor General identified that there is no overarching risk management framework to guide the development of Land Management Agreements in the ACT.

The Auditor General recommended⁵¹ that:

- The Environment, Planning and Sustainable Development Directorate should develop policy and procedural guidance for the development and ongoing management and administration of Land Management Agreements. (Recommendation 2)
- The Environment, Planning and Sustainable Development Directorate should develop and implement policy and procedural guidance for the documentation and record-keeping of Land Management Agreements. The guidance should include principles for the consistent documentation of processes associated with the development of Agreements with rural leaseholders. (Recommendation 4)
- The Environment, Planning and Sustainable Development Directorate and Access Canberra should develop a risk-based framework for the monitoring and enforcement of Land Management Agreements including processes for a) monitoring rural leaseholders’ compliance with their Agreements; and b) taking enforcement action in the event of potential non-compliance. (Recommendation 6)

Cost

A biodiversity investment rate relief scheme would incur costs for the Government and initially the leaseholder.

Government

The cost to the ACT budget would depend on the design of a scheme.

Flat dollar amount: Assuming that rate relief would apply for the term of a Land Management Agreement the long-term cost could be assessed.

% of land value: The cost to the ACT budget would depend on changes to rural land valuations which increased significantly in 2023.⁵²

Reimbursement of eligible expenditures: biodiversity investments may fluctuate depending on a range of factors. In the short term a leaseholder that made significant upfront biodiversity investments, which could include for instance fencing to protect particular native flora and fauna, could result in large cost implications to the ACT budget. Ultimately, rate relief is a subsidy and therefore a tax expenditure to the ACT government.

Leaseholder

The cost to a leaseholder would include:

- The financial costs of making biodiversity investments (such as planting, maintenance)
- The time and legal costs of negotiating a revised Land Management Agreement
- The compliance costs of submitting an annual statement in order to access ongoing rate relief.

Timelines for implementation

A biodiversity investment rate relief scheme can potentially be introduced without amendments to ACT legislation.

Linkage to Conserved Area / Biodiversity Certificates

Access to biodiversity investment rate relief would not preclude access to Conserved Area status or eligibility to establish a biodiversity certificate under the *Nature Repair Act 2023*.

Rate relief could encourage investments in biodiversity to prepare for future Conserved Area status.

Benefits

One of the key benefits of establishing a biodiversity investment rate relief scheme is to establish a mechanism to incentivize all types of biodiversity investments.

Whilst achieving Conserved Area status, including biodiversity certificates through the *Nature Repair Act 2023*, is of value, a key challenge is that there will be incentives for landholders to seek Conserved Area status and generate biodiversity certificates for large areas of land due to the overall costs of implementation.

A biodiversity investment rate relief scheme could incentivize smaller investments that can make a meaningful difference to nature.

An example is the potential to establish biodiversity habitats based on the example of Miyawaki pocket forests⁵³ which can be the size of a small tennis court.⁵⁴

A biodiversity investment rate relief scheme wouldn't preclude the ACT making a decision in the future to acquire land for development. It could be possible to incorporate smaller size biodiversity investments within a development.

Model 2: Biodiversity Levy

Description

ACT Government introduces a biodiversity levy to fund biodiversity actions. A biodiversity levy would be used to establish an ACT Nature Trust that would make long term investment decisions.

Design

A biodiversity levy could be struck on ACT property.

Key issues to consider in the design of a biodiversity levy is how broadly the economic base should be. The ACT Government does not have access to personal income information and therefore a levy linked to property rates may be the appropriate mechanism. The Queensland Flood levy required support from the Australia Government to link to taxable income.⁵⁵

The design of a biodiversity levy could be broad based or based on rural leaseholders.

The argument in favor of a broad-based levy is that the whole ACT community would benefit from biodiversity investment.

The argument against a levy on rural leaseholders is that rural rates have recently been increased reflecting increases in rural land valuations. Evidence is that rural land valuations across Australia have recently increased, however the increase in land valuations is not evenly dispersed and reflects a number of factors including the quality of land. Rural land that is close to urban areas can be subject to increases in valuation that reflect the potential that land will be re-zoned from rural to residential.

A biodiversity levy would be used to establish an ACT Nature Trust.

An alternative structure is for an Environmental Trust to be established within Icon Water Limited which is an unlisted public company wholly owned by the ACT Government. The voting shareholders of Icon Water are the ACT Chief Minister and the Minister for Water, Energy and Emissions Reduction.⁵⁶

Biodiversity considerations

A key issue to resolve would be to consider how income from a levy is allocated to new biodiversity investments which does not crowd out existing biodiversity investment, made for instance by the ACT Government.

A mechanism to do this could be to establish an ACT Nature Trust that would be responsible for making biodiversity investments.

A levy that was imposed on an annual basis would create an income stream that could support the financing of large-scale investments through the issuance of a bond. An example is that the ACT Government could use a biodiversity levy to purchase rural land at market rates and make investments to restore native habitat.

If the structure was a Nature Trust, the trust could borrow based on the security of knowledge that the biodiversity levy would pay off the cost of the land purchase overtime. The Nature Trust could also make investments to restore land including planting of native species and re-introduction of fauna.

An ACT Nature Trust would have the financial stability based on the security of the biodiversity levy to engage around complex projects. For instance a ACT Nature Trust would have the capacity to manage changes to zoning including the establishment of a conservation overlay on a property.

The ACT Government could link the Nature Trust to the ACT Environmental Offsets Policy. The impact of this would be that environmental offsets would be made in the ACT instead of other States such as NSW.

Governance

The establishment of a levy would need supporting legislation.

The precedent is that the *Rates Act 2004* is already used for levies:

- Police, fire and emergency services levy
- City centre marketing and improvements levy

- Safer families levy

Accompanying legislation may also be needed. An example is the funding of emergency services with the ACT Government's *Emergencies Act 2004* establishes the legislative framework for emergency planning, prevention response and recovery operations within the ACT.

A mechanism could be to establish an ACT Nature Trust through separate legislation or insert provisions in the *Nature Conservation Act 2014*.

An ACT Nature Trust should be established on best practice governance principles. First Nations knowledge, values and perspectives should be incorporated into the design and operation of the ACT Nature Trust, including representation from Ngannawal and Ngambri peoples on the Trust's board. Embedding Australian Indigenous knowledge and practices into the governance of the ACT Nature Trust is a mechanism to protect and share the local knowledge and practices of the Ngannawal and Ngambri peoples.⁵⁷

Risk Management and Monitoring

An ACT Nature Trust established through legislation would need to be based on best practice corporate governance standards including the establishment of an independent board, establishment of a strategy and annual reporting.

Cost

The cost of expenditure of funds would depend upon the overall ambition of the levy.

Legislation could establish a framework for the levy to vary depending on the identified expenditure needs. Examples including collection of prudential levies for Australia's financial system provide a template for governance arrangements to vary levies.

Timelines for implementation

The establishment of an ACT Nature Trust would require legislation, potentially an amendment to existing legislation such as the *Nature Conservation Act 2014*. ACT would not require federal agreement to establish the Trust and levy.

Linkage to Conserved Area / Biodiversity Certificates

The establishment of an ACT Nature Trust would provide a structure to establish Conserved Areas and Biodiversity Certificates through the Nature Repair Market.

A key issue for the ACT to establish Conserved Areas / Biodiversity Certificates is that the compliance costs of establishment favour larger parcels of land.

The establishment of an ACT Nature Trust, with potential that it is part of Icon Water, would establish a long-term ownership structure that would address the issues around perpetuity. We have identified for instance that a Conserved Area could be extinguished upon transfer of land to a new owner.

Benefits

The establishment of an Environmental Trust would provide a mechanism for the ACT to make strategic investments in nature. With resourcing of the Trust, potentially through ownership with Icon Water, it would be possible to work with leaseholders to re-zone parcels of land within a larger rural leaseholding.

The establishment of an Environmental Trust would provide a mechanism for the ACT to meet 30 by 30 targets through conversion of land to Conserved Areas.

Model 3: Market Schemes

Description

The ACT Government uses the Australian Government's *Nature Repair Act 2023* and Conserved Area framework to establish biodiversity as a separate property right as biodiversity certificates.

Design

The general purpose of biodiversity market-based schemes is to establish biodiversity as a separate property right to land. The Nature Repair Act is in the process of establishing methodologies for registered biodiversity projects and the issuance of biodiversity certificates as a transferrable property right.

Environment ministers have agreed to a framework for Conserved Areas. It is likely that further guidance will be developed to support registration of Conserved Areas.

Biodiversity considerations

A key issue for consideration is the likely scale of Conserved Areas in the ACT.

The Conserved Areas framework states that "Conserved Area boundaries must be clear and agreed, and of a sufficient size to achieve the long-term in-situ conservation of biodiversity, including all ecosystems, habitats and species communities for which the site is important. Given the sites specific nature of scale, no minimum or maximum site size is proposed. Where a proposed Conserved Area is part of a larger property, the footprint of the Conserved Area must be clearly described, and able to be accurately identified on maps and on the ground, to differentiate it from other parts of the property".⁵⁸

It is uncertain whether the ACT will have the potential for Conserved Areas that are of sufficient size to achieve the long-term in-situ conservation of biodiversity.

The Conserved Areas framework states that "sites requiring restoration that are not being actively restored, are severely degraded, damaged, or destroyed are not appropriate for Conserved Area recognition".

It is uncertain whether ACT farmland that has been subject to traditional intensive farming practices would be eligible for Conserved Area status.

The methodologies for biodiversity certificates through the *Nature Repair Act 2023* have yet to be finalized. Key decisions are around definitions of perpetuity.

Governance

Conserved Areas and biodiversity projects as part of the *Nature Repair Act 2023* could be established in the ACT without the need to establish a separate legislative framework.

Risk Management and Monitoring

The Federal Government is establishing risk management and monitoring processes for biodiversity projects through the *Nature Repair Act 2023*. It is likely that processes will be developed for Conserved Areas.

Cost

The cost of utilizing the *Nature Repair Act 2023* and OECM/ Conserved Area framework is likely to be principally around the administration, compliance and consulting costs of establishing biodiversity projects. At this stage there is a lack of clarity on likely costs.

Timelines for implementation

While the *Nature Repair Act 2023* has passed through the Australian Parliament, methodologies have yet to be finalized. Processes to establish Conserved Areas have yet to be finalized.

Linkage to Conserved Area / Biodiversity Certificates

Conserved Areas / Biodiversity Certificates could be used with other schemes, for instance an ACT Nature Trust.

Benefits

Once fully implemented by the Australian Government biodiversity certificates will be a transferrable property right. Through structures that can invest in biodiversity certificates, including the potential to establish an ACT Nature Trust can provide a market-based framework that supports investment in biodiversity in the ACT.

Model 4: Agreements and Covenants

Description

The ACT Government incorporates biodiversity into Land Management Agreements that are already legally binding and enforceable agreements required under the *Planning Act 2023* with the Conservator of Flora and Fauna issuing guidelines as enabled under the Act.

Design

A structural challenge is that the ACT has not settled on land for future urban development. A mechanism needs to establish processes where land could be excluded if there was a potential for future development.

A key structural reason why the ACT does not have existing conservation covenant regimes is the 99 year (or less) tenure of land. Conservation covenant regimes in other jurisdictions are aimed at private landholders who have the legal right to impose a voluntary encumbrance on their landholding. In the ACT the leaseholder is not the owner of the land and therefore does not have the same rights as in other states.

A mechanism to permanently reserve land for biodiversity could be to either establish a special biodiversity zone or strengthen the existing Land Management Agreements framework to allow leaseholders to incorporate biodiversity.

Zoning

Of the 23 land use zones set out the Zone policies under the Territory Plan, there are 5 Non-Urban Zones: NUZ1 – Broadacre Zone, NUZ2 – Rural Zone, NUZ3 – Hills, Ridges and Buffer Zone, NUZ4 – River Corridor Zone and NUZ5 – Mountains and Bushland Zone. There is the potential to consider establishing a new type of biodiversity zone as an addition to the Non-Urban Zones.

A key consideration in establishing a new type of biodiversity zone is the potential need to compensate rural leaseholders if a part of land is transferred to a new zone. Any consideration of zoning changes needs to consider how to formally value a new biodiversity zone including through biodiversity certificates. Experience around covenants in other jurisdictions suggests that when land is secured for a different purpose it is discounted from financial valuation.

Land Management Agreements

There is the potential to adapt the existing Land Management Agreements framework to incorporate biodiversity.

Land Management Agreements are legally binding and enforceable agreements required under the *Planning Act 2023*.

A key issue is that LMAs are established for a set period of time. In order to deliver biodiversity outcomes there is a need to develop mechanisms that, to the great extent possible, preserve biodiversity in perpetuity. One way to do this is for the time period that an LMA is in place to be lengthened. An agreement could be structured as having an overall period of 99 years, aligned to broader land tenure in the ACT.

A mechanism to incorporate biodiversity into LMAs is through the Conservator of Flora and Fauna, who has under Section 350 of the *Planning Act 2023* the power to make guidelines setting out the requirements for land management agreements.

The ACT Government, through the Conservator of Flora and Fauna, could establish a formal requirement for a rural leaseholder to report on biodiversity indicators and plans for biodiversity improvements. The involvement of the Conservator of Flora and Fauna and the establishment of reporting and planning is consistent with requirements for a covenant to be eligible for taxation concessions, namely, the involvement of a recognized environmental management body and regular compliance reporting.

A key issue that would need to be addressed is the continuation of the LMA in the event that it is transferred to a different party. Section 351 of the *Planning Act 2023* establishes that the Territory Planning Authority must approve a transfer and that a new Land Management Agreement must be in place at the time of transfer. To ensure continuity of biodiversity commitments it is important that the biodiversity elements of a LMA are rolled over to a new LMA upon transfer.

There is the potential that a combination of actions to incorporate biodiversity into LMAs including reporting on biodiversity metrics and plans, and ensuring commitments are rolled over in subsequent LMAs with different parties, would effectively establish a 'proxy covenant'.

Biodiversity considerations

A key issue is the permanence of biodiversity investments. This can be addressed through the issuance of guidelines by the Conservator of Flora and Fauna (see above discussion).

Governance

Incorporation of biodiversity into Land Management Agreements can be achieved without legislative change.

The Conservator of Flora and Fauna has the ability to make guidelines. Section 350 of the *Planning Act 2023* states that:

- The conservator of flora and fauna may make guidelines setting out the requirements for land management agreements.
- In preparing a guideline, the conservator of flora and fauna must consult the territory planning authority.
- A guideline is a notifiable instrument.

An amendment to Section 351 of the Planning Act 2023 may be required to ensure that biodiversity elements of a LMA are rolled over to a subsequent LMA, including if the lease is transferred to a new party.

Risk Management and Monitoring

A key issue is resourcing the monitoring of LMAs, which was previously identified by the Auditor General. The Conservator of Flora and Fauna would need to play an increased role in LMAs.

Cost

The cost of incorporating biodiversity into LMAs would not involve additional costs as the structure already exists.

Timelines for implementation

Immediately.

Linkage to Conserved Area / Biodiversity Certificates

It would be possible to link LMAs to Conserved Areas and biodiversity certificates. As the Federal Government finalizes methodologies and processes a pathway for formal recognition could be established.

Benefits

The incorporation of biodiversity into LMAs could be structured in a way that it effectively establishes a 'proxy covenant', providing a mechanism for rural leaseholders and the ACT Government to work collaboratively for parcels of land to be permanently protected.

Model 5: Combined Model

Description

The ACT Government adopts a combination of models to create an ecosystem that both incentivizes rural leaseholders to invest in biodiversity whilst securing larger scale biodiversity projects through the establishment of an ACT Nature Trust and potentially contribute to the Conserved Area framework.

Design

A biodiversity investment rate relief scheme with a cap on reimbursement of eligible expenditures to incentivize biodiversity investments.

To be eligible for rate relief, a rural leaseholder must incorporate biodiversity into Land Management Agreements.

A broad-based biodiversity levy would be used to establish an independent ACT Nature Trust. Backed by long term security from the levy, the ACT Nature Trust would be able to issue 'nature bonds' to finance strategic biodiversity investments.

The ACT Nature Trust would invest in biodiversity certificates through biodiversity projects issued through the Australian Government's *Nature Repair Act 2023* and Conserved Area framework. Environmental Offsets would be invested through the ACT Nature Trust.

Rural leaseholders would have incentives to invest in biodiversity with the potential that biodiversity projects are issued with biodiversity certificates through the *Nature Repair Act 2023*.

Biodiversity considerations

There is likely to be rural lease holdings that would not meet criteria for biodiversity certificates because the land has been degraded. At the moment rural leaseholders have no incentives to invest in biodiversity. A biodiversity investment rate relief scheme would provide the mechanism to incentivize smaller biodiversity investments. There is the potential that investments ultimately lead to the potential to issue biodiversity certificates.

In order to manage a biodiversity investment rate relief scheme there is a need for the Conservator to issue guideline to incorporate biodiversity into Land Management Agreements. Land Management Agreements then become the key mechanism for incentivizing biodiversity investments by rural leaseholders. The establishment of a scheme doesn't impinge on ACT's potential to resume land for development purposes. It is possible to use examples from development of Miyawaki pocket forests to incentivize small projects. This provides a mechanism for rural leaseholders in the ACT to productively farm land and manage biodiversity.

Beyond short term rate relief there is an opportunity to provide rural leaseholders with longer term incentives to invest in biodiversity through the establishment of property rights. This can be achieved through the issuance of biodiversity certificates through the *Nature Repair Act 2023*. The establishment of a financially independent ACT Nature Trust would provide a mechanism to support market capacity biodiversity certificates. An ACT Nature Trust would largely focus on larger parcels of land, through environmental offsets, and strategic acquisitions, but could have a mandate to support rural leaseholders to develop biodiversity projects, and issue biodiversity certificates. Potentially an ACT Nature Trust could hold biodiversity certificates issued by rural leaseholders.

Governance

The critical factor to enable a Combined Model to succeed is the integration of biodiversity into Land Management Agreements. This provides the connection between larger projects, potentially managed by an ACT Nature Trust and smaller projects managed by rural leaseholders. Under Section 350 of the *Planning Act 2023* the Conservator of Flora and Fauna has power to make guidelines setting out the requirements for land management agreements.

Risk Management and Monitoring

A key objective of a Combined Model would be to build a biodiversity ecosystem that incentivizes both large and small investments in biodiversity. There is a need to build a risk management and monitoring framework that captures collective outcomes from all biodiversity investments in the ACT whether made by ACT Government on public land, an ACT Nature Trust, rural leaseholders and the ACT community. The ACT community has a key role to play in establishing and maintaining habitat that provides the ecosystem for native species to thrive.

Cost

The major financial cost to the ACT Government of a Combined Model would be the ongoing cost of rate relief for rural leaseholders and the establishment and maintenance of integration of biodiversity into Land Management Agreements. The broader cost of establishing an ACT Nature Trust would be supported financially by all ACT rate payers. On the asset side of the ledger, the establishment of a framework that enables a pathway to invest in biodiversity projects, both large and small, increases the assets of the ACT community.

Timelines for implementation

Work to establish a biodiversity investment rate relief scheme and ACT Nature Trust can begin immediately. The establishment of biodiversity certificates is contingent on the issuance of methodologies by the Australian Government as part of the *Nature Repair Act 2023*. The timeline is unknown however work has commenced.

Linkage to Conserved Area / Biodiversity Certificates

The Combined Model aims to create opportunity for biodiversity certificates for small and larger parcels of land.

Benefits

The Combined Model aims to maximise the opportunity to invest in biodiversity across the ACT. A major opportunity is to consider biodiversity from a collective perspective, with the ACT community also playing an important role. Through engagement of the ACT community offers there is an opportunity for widespread appreciation of the interconnectedness of nature.

Conclusion

This report reviews and analyses the existing institutional and legal frameworks in the ACT, examining the challenges and opportunities of financing biodiversity in the ACT.

To unlock financing of biodiversity there is a need to recognise the unique features of the ACT. The key difference between the ACT and other state jurisdictions is that under the *Australian Capital Territory (Self-Government) Act 1988* property can only be leased on terms not exceeding 99 years.

The permanence of land is particularly important when it comes to biodiversity. The Australian Government has established that landholders may be entitled to claim a tax deduction and be eligible for concessional CGT tax treatment if they enter into a conservation covenant over land they own, and certain conditions are met. To be eligible for taxation concessions a conservation covenant must be permanent. No conservation covenant programs have been approved for Australian territories.

Recognising the constraints of the 99 leasehold requirements, the ACT can innovate to unlock biodiversity financing. This report has considered four mechanisms that can be utilised to unlock investment in biodiversity. Our recommendation is that the ACT adopt our fifth model, which combines the establishment of a broad-based levy to establish an ACT Nature Trust with a biodiversity investment rate relief scheme to incentivize biodiversity investments by rural leaseholders. Backed by long term security from the levy, the ACT Nature Trust would be able to issue 'nature bonds' to finance strategic biodiversity investments.

The establishment of an ACT Nature Trust in conjunction with incentives for rural leaseholders to invest in biodiversity would establish the foundations for the ACT to participate in the *Nature Repair Act 2023*. There is the potential that an ACT Nature Trust could develop biodiversity projects that would be eligible for biodiversity certificates that are transferrable property assets. Owned by the ACT Nature Trust biodiversity certificates would be financial assets that would have a recognized value in the market. The ACT Nature Trust could receive environmental compensation contributions under the ACT's Environmental Offsets Policy for developments in the ACT. The combination of actions would establish the ACT Nature Trust on a sound financial footing that would enable strategic purchases of land that would provide a mechanism to act proactively to protect and enhance ACT's threatened species.

The establishment of the ACT Nature Trust on best practice governance principles will be critical to its success. First Nations knowledge, values and perspectives should be incorporated into the design and operation of the ACT Nature Trust, including representation from Ngunnawal and Ngambri peoples on the Trust's board.

A critical issue to address is to create incentives for rural leaseholders to invest in biodiversity. A biodiversity investment rate relief scheme could be designed with a cap on reimbursement of eligible expenditures that would provide a financial incentive for biodiversity investments. To be eligible for rate relief, it is proposed that rural leaseholders must incorporate biodiversity into Land Management Agreements. This would require issuance of guidance by the Conservator of Flora and Fauna which is already empowered to do so under legislation.

A biodiversity investment rate relief scheme could incentivize smaller investments that can make a meaningful difference to nature. An example is the potential to establish biodiversity habitats based on the example of Miyawaki pocket forests which can be the size of a small tennis court. A biodiversity investment rate relief scheme wouldn't preclude the ACT making future decisions to resume land for development as it could be possible to incorporate smaller size biodiversity investments within a development.

The combination of actions presents an opportunity for the ACT to genuinely be the 'bush capital', establishing an ecosystem where government, community and private sector all have a role to play in preserving and enhancing ACT biodiversity for generations to come.

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