

Review of *Nature Conservation Act 1980*

Submission by Conservation Council ACT Region Inc.

The Conservation Council ACT Region was founded 30 years ago and represents 35 community conservation and environment organisations with a combined total of just under 4,000 members of the public.

This submission comprises five major components:

- A statement of our major recommendations.
- An introductory appraisal of the existing Act.
- An examination of seven critical areas which we consider the Review must address if a revised Nature Conservation Act is to be effective in achieving conservation outcomes, viz: Objectives of the Act, the creation of a single integrated nature conservation agency, the management of activities within the conservation reserve estate, measures to ensure conservation management across the landscape on lands of all tenures and landuses; the place of market mechanisms (ie offsets) in nature conservation, the role of the Conservator and public participation and ownership of conservation outcomes.
- A response, in tabular format, to each of the questions posed in the Review Discussion Paper.
- Commentary upon the text of the Review Discussion Paper

A. Conclusions and Recommendations

1. After 30 years, the existing Nature Conservation Act requires comprehensive revision, including:
 - the insertion of Objectives which encompass the protection and management of ecosystems, connectivity and ecological processes,
 - the establishment and functions of a single integrated nature conservation agency,
 - enhanced role and powers for the Conservator, and
 - enhanced transparency and accountability through extensive public participation in environmental decision-making.
2. Revisions to the NC Act need to be carefully assessed and evaluated against criteria which will achieve real net conservation gains.
3. Monitoring, reporting, public participation and compliance and enforcement provisions of the Act all require substantial strengthening.
4. The Conservation Council is willing to provide further evidence in support of the views expressed in this submission and wishes to further engage positively with DECCEW in the revision of the Nature Conservation Act prior to the release of any exposure draft.

B. The Existing Act – an Appraisal

The current Act is a really old-fashioned piece of legislation with an enormous emphasis upon activity regulation, rather than providing strategic directions or a framework to achieve landscape-scale conservation across the Territory. The Conservation Council consequently believes that it

needs thorough re-writing from scratch. It even fails to have any stated 'objects' or 'purpose'. It also totally fails to address the issue of maintaining viable populations of native species in inter-connected and inter-dependant functioning ecosystems.

The community will be looking to assess the new Act by asking the following questions: “*Does the new Act achieve nature conservation objectives for the ACT?*”? “*Does the draft Act provide a firm basis to achieve equal weight for nature conservation in Government triple-bottom-line accounting & reporting?*”? “*Does the draft Act provide the legal framework that will achieve enhancement of ecological processes across the landscape, provide resilience to the impacts of climate change and other injurious agencies, and reduce the overall ecological footprint of the ACT?*”

Only after these questions have been resolved, should the Government formulate revised administrative structures and responsibilities, and relationships with other Territory legislative and administrative instruments.

Nevertheless, despite an auspicious beginning in the Discussion Paper, there are still a number of additional significant issues that must be addressed by the Review, and incorporated in any revision of the Act. These include:

- defining a set of Objectives in the Act;
- maintenance of connectivity & ecological processes;
- offsets and biocertification;
- the relationships between TAMS, DECCEW, ACTPLA and OCSE;
- commercial and non-commercial operations within conservation reserves;
- conservation management outside the reserve system;
- the role of the Conservator; and
- A bioregional context.

Omissions

There are also a number of critical issues omitted, and some current initiatives neglected, e.g.:

- The Commissioner for Sustainability and Environment's Investigations into Canberra Nature Park and the Urban Forest;
- role and relevance of Bush on the Boundary, and peri-urban conservation and land management issues;
- The Paper alludes to forthcoming policy papers in early 2011 on 'offsets' and the 'nature conservation strategy', but have not really indicated how they will relate to this exercise;
- Need for a single overarching piece of conservation legislation (like the NSW NPWS Act) to encompass reserve identification and dedication, management planning, landscape conservation, vegetation clearance, catchment and habitat protection - though there is reference to the need for something.
- The role of research and monitoring in informing planning and management of our natural resources.

C. Specific Areas Requiring Major Revision

C1. Objectives of the Nature Conservation Act

The Council has examined nature conservation legislation in a number of other jurisdictions, and believes that one of the best examples of integrated conservation and heritage legislation is afforded by the New South Wales *National Parks and Wildlife Act, 1974*. Consequently, we have taken this

piece of legislation and made some amendments to it drawing from other relevant legislation, especially the Federal *Environment Protection and Biodiversity Conservation Act, 1999*.

Objects of Act

- (1) The objects of this Act are as follows:
 - (a) the conservation of nature across the landscape, including, but not limited to, the conservation and enhancement of:
 - (i) native species, habitat, ecosystems and ecosystem processes, and
 - (ii) natural biological diversity at the community, species and genetic levels, and
 - (iii) landforms of significance, including geological and geomorphological features and processes, and
 - (iv) landscapes and natural features of significance including wilderness and wild rivers,
 - (b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:
 - (i) places, objects and features of significance to Aboriginal people, and
 - (ii) places of social value to the people of the Australian Capital Territory and Australia, and
 - (iii) places of historic, architectural or scientific significance,
 - (c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,
 - (d) facilitating appropriate research into natural systems and their management,
 - (e) providing for the conservation management of land reserved under the Planning and Development Act in accordance with best practice management principles applicable for each type of reservation, and
 - (f) to promote a co-operative and collaborative approach to the protection and management of the environment involving governments, the community, leaseholders and indigenous peoples.
- (2) The objects of this Act are to be achieved by applying the principles of adaptive ecological management and the precautionary principle.
- (3) In carrying out functions under this Act, the Minister, the Conservator and the Nature Conservation Agency are to give effect to the following:
 - (a) the objects of this Act,
 - (b) the public interest in the protection of the values for which land is reserved under the Planning and Development Act and the appropriate management of those lands,
 - (c) international best practice in nature conservation across the landscape,
 - (d) interventions to improve resilience against injurious agencies, including climate change, which might damage natural entities or ecological processes,
 - (e) promoting the conservation of biological diversity, connectivity and ecological integrity as a fundamental consideration in decision-making,
 - (e) the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, and
 - (e) the precautionary principle and the principle of inter-generational equity.

Functions of Conservator relating to reservation and protection of lands of conservation value

- (1) The Conservator is to consider, and may investigate, proposals for additional areas of land to be reserved or protected in perpetuity as part of the integrated nature conservation system of the ACT.

- (2) When considering or investigating any such proposal, the Conservator must give consideration to the following:
 - (a) whether the proposal will adversely affect the objective of protecting the full range of natural heritage and the maintenance of natural processes across the landscape,
 - (b) the establishment of a comprehensive, adequate and representative protected areas system,
 - (c) the contribution that such lands may make to building ecological resilience and in mitigating the impacts of injurious agencies across the landscape
 - (d) the desirability of protecting cultural heritage,
 - (e) providing opportunities for appropriate public appreciation and understanding, and sustainable visitor use and enjoyment, and scientific research, of the ACT's natural heritage, within such constraints to ensure the maintenance of the natural condition, integrity and ecological functioning of such lands,
 - (e) the opportunities for promoting the integration of the management of natural and cultural values,
 - (f) the desirability of protecting wilderness and wild river values,
 - (g) the objects of this Act and international best practice,
 - (h) the desirability of protecting world heritage properties and world heritage values,
 - (i) the application of the precautionary principle.
 - (3) The Conservator, when carrying out functions under this Act, must seek and consider advice, including scientific advice, from a wide range of relevant and expert sources, including Government advisory committees and boards with responsibilities relevant to this Act, and from community-based conservation groups.
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C2. Creation of a Single Integrated Nature Conservation Agency

Currently, nature conservation responsibilities are spread across a range of ACT Government agencies and authorities, e.g. DECCEW, TAMS, ACTPLA, OCSE, LDA and the NRM Council. The morale of on-ground management staff is low, resources strained, and there is a serious disjunct between policy, research and on-ground management. The Council strongly supports the creation of a single unified nature conservation agency, led by the Conservator for Flora and Fauna, and reporting directly to a single minister. This would provide for a more streamlined, integrated service, providing for better use of resources and cooperation and links between staff, and capable of effective partnerships with the community and response to their concerns.

C3. Management of the Conservation Reserve Estate

For sometime now there has been growing concern and disquiet over the condition of much of the ACT's conservation reserve system, especially the disparate components of Canberra Nature Park (CNP). OCSE's report on CNP should provide some clear recommendations on resolving some of these issues.

Resourcing of a nature conservation agency must recognize the importance that the community places upon CNP (as amply demonstrated during the Govt's Vision 2030 process) and the demonstrated health benefits that accrue to society through having access to a well-managed conservation reserve system in good ecological condition. Such resourcing must also include full

‘user-pays’ principles should any exclusive or commercial activities be permitted in the reserve system.

Revised legislation and strategies should target improving the health of natural ecosystems in the ACT through positive interventions to enhance the system’s natural values and to restore full ecological functioning. This should be underpinned by a well-resourced professional field service applying adaptive management and scientific evidence-based principles, and through the development of a partnership compact between the agency and community conservation organisations.

C4. Conservation Management Across the Landscape

Climate change will bring new challenges to natural area management in the ACT and surrounding region. The 2010 Ecological Society of Australian Conference at ANU powerfully endorsed the view that the traditional ‘reserve-dominated’ conservation paradigm is doomed to see increasing extinctions of our native flora and fauna. Scientists agree that we must identify what it is that we really wish to keep, and then move into direct interventions to create connectivity across the landscape, and to substantially improve our land and natural resource management practices to strengthen the resilience of ecological processes.

Initiatives (or strengthening of existing programmes) that could be resourced to achieve this might include:

- Further identification and mapping of existing and potential connectivity linkages across the ACT and into adjoining NSW;
- Initiation of lessee initiated conservation lease agreements to manage their land under strict ecological guidelines while providing leaseholders with financial incentives;
- Retention of hollow-bearing mature trees across the landscape – both urban and rural – and the introduction of management regimes to prolong their health;
- Increased effort and resourcing to reduce the effects of injurious agencies such as high impact fire mitigation activities including frequent burns, clearance of vegetation or habitat, weeds, feral animals, and excessive recreational pressures.

C5. Market Mechanisms for Nature Conservation

While the Conservation Council is not opposed to the general use of market mechanisms in securing positive nature conservation outcomes, they should not be used as a trade-off for the destruction or diminution of critical ecological entities: high conservation value lands/assemblages should never be considered for offsets or any other form of market instrument in order to justify development – just avoided!

The introduction of biobanking and biocertification in NSW has been fraught with problems and in a number of cases has led to direct net conservation loss. Offsets are a subset of these mechanisms, and the Conservation Council has a very firm policy on their use (attached). The Council does not favour the use of offsets except as a last resort on lands of low conservation value once all avoidance and mitigation measures have been applied. The Council also believes that offsets should never be used to provide a pool of \$\$ for nebulous ‘conservation’ works, or even to fund research.

Strategic Environmental Assessments (SEA) are increasingly seen as a mechanism to provide certainty to planning and development decisions, but legislative safeguards are required to ensure that

they do not ‘turn off’ later site-specific level assessment. In some jurisdictions, SEAs are seen as a form of biocertification upon which long-term development decisions can be based.

An example of the problems that this approach can create relates to planning for the Throsby area in the ACT north, where earlier Territory Plan broad level assessment (akin to an SEA) indicated the subject lands were of low conservation value and thus suitable for residential development. Years later, after grazing was removed and the vegetation recovered, site specific surveys indicated the lands to be of high conservation value and to contain a number of species of National Environmental Significance which would act as triggers under the EPBC Act. However, development interests complained that this later information destroyed certainty of development which had been believed to have been granted under the earlier SEA! In these days of uncertainty under climate change, it is imperative that site-specific surveys are always a final process that must be maintained. This is not to deny the value of identifying high conservation areas at all stages of planning, recognising the need to apply the precautionary principle reflecting the dynamic nature of ecosystems.

Nevertheless, it is important to explore opportunities to foster investment in nature conservation activities, especially where this can lead to improved ecological management of rural leases.

C6. Role of the Conservator

It is critical that the nature conservation agency is headed by a CEO of high professional ecological standing and integrity, and it is most appropriate that this role be performed by the Conservator for Flora and Fauna.

In relation to the Office of the Commissioner for Sustainability and the Environment (OCSE), the Council sees the Conservator’s role to be focussed on formulating and implementing policy and strategies to deliver specific conservation outcomes. The Conservator should have the legislative responsibility for the collection of survey and monitoring data and for the formal requirement to produce biennial State of the ACT’s Biodiversity Reports: to be made publicly available for review and comment. Such reports should then provide the basis for an audit by OCSE of the nature conservation agency’s performance against predetermined targets.

The ACT’s ecological footprint (reported upon by OCSE) is comprised of many components (eg CO₂ emissions, consumption patterns, energy use, waste recovery etc). Relevant to this review are aspects of the ecological footprint for which a nature conservation agency should have carriage, viz:

- Health of waterways and catchments;
- Extent and condition of native vegetation and fauna habitat;
- Effectiveness of a connected landscape in providing habitat for viable populations of all native species; and,
- Effectiveness of a connected landscape in mitigating the impacts of climate change upon ecological processes.

C7. Public Participation in Delivering Nature Conservation Outcomes

The Conservation Council strongly believes that the community must be an effective player and partner in delivering nature conservation outcomes. There is a wealth of expertise and experience in the wider community that is only partially tapped at present through existing conservation organisations and parkcare/bushcare/landcare groups.

Such on-the-ground groups need a supportive and responsive nature conservation agency that is willing to work collaboratively with the community, recognising each other strengths and experience. An effective partnership will deliver enhanced conservation outcomes with improved utilisation of scarce resources.

A degree of frustration and disconnection has arisen in recent years as opportunities for ownership of conservation outcomes has been minimal. It is essential that opportunities for meaningful engagement in the development of conservation policies, strategies and plans are provided at all stages of programme development.

Such public engagement should also actively seek to involve the participation of rural leaseholders who currently have the management responsibility for some critically important parts of the landscape with outstanding conservation values.

Finally, the revised Act needs to have specific clauses that empower the community to be part of the decision-making process at all levels, and have access to an appeal mechanism with 3rd Party rights.

We would recommend the establishment of a formal Community Consultative Committee (perhaps along the lines of the NSW National Parks Advisory Committee) which would include representatives from key stakeholder organisations.

D. Response to Questions Raised in the Discussion Paper

Nature Conservation Act Discussion Paper questions: Responses by the Conservation Council ACT Region

Questions in discussion paper	Response	Comment/justification
<i>What do you consider are the key issues for future nature conservation in the ACT?</i> Pg.9	Considerable	See details in our submission above. In summary: <ul style="list-style-type: none"> • Strong legislative protection for ecosystems and habitat as well as species; • Identification, protection & restoration of habitat linkages across the landscape; • Integrating conservation principles into all stages of the development planning process; • Improved management of rural leases to achieve conservation outcomes; • Adequate resourcing of on-ground management of injurious agencies; • Minimise impacts of urban development upon natural areas; • Developing pro-active strategies to mitigate the impacts of climate change; • Engage the urban community and rural lessees in valuing nature and participating in its management; • Creation of professional, highly skilled Bush Management and Restoration Teams; • Engaging the indigenous community in conservation programmes; • Enhancing & extending environmental education programmes at all levels; • Creating and resourcing a fully integrated single nature conservation agency under the Conservator reporting to the Minister;
<i>How do you think conservation concerns can be balanced with social and economic interests?</i> P.9	They cannot.	Social, economic and biodiversity outcomes need to be integrated, not ‘balanced’. Conservation outcomes can be achieved while also realising economic and social benefits. It is not “one <u>or</u> the other”, but a synthesis of complementary approaches to achieve a more sustainable and liveable city.
<i>How do you think connectivity and ecological sustainability across the ACT can best be protected and enhanced?</i> Pg. 19	Full integration into planning process	See detailed submission above.
<i>What are your views on no net loss of significant biodiversity and its applicability to the ACT?</i> Pg. 20	Replace with “Real net gain”.	Significant – or high value – biodiversity values should never be deemed tradeable items. The concept of biobanking and offsets must not be applied to significant biodiversity entities. Government and community should work collaboratively together to develop criteria to identify areas of high conservation value, The concept of offsets as practised in other jurisdictions is fraught with problems and has frequently led

Questions in discussion paper	Response	Comment/justification
		<p>to real biodiversity <u>loss</u>.</p> <p>We have lost or degraded so much of our original lowland ecosystems that we should be moving into an active restoration and rehabilitation phase, rather than trying to ‘buy off’ further biodiversity loss. Market mechanisms should result in making the clearing of any native vegetation prohibitively expensive. In general, current disincentives are too weak. The principles of ‘avoidance – mitigation – offset’ should be enshrined in any ACT market mechanisms.</p> <p>See detailed submission above.</p>
<p><i>Does the ACT contribution need to be viewed in the broader regional context, and if so, how could cross border offsetting considerations apply? Pg. 20</i></p>	<p>Contentious issue.</p>	<p>Cross-border offsetting should never be permitted <u>except</u> where low conservation status areas are offset for greater size of high status land on a strict ‘like-for-like’ ecological basis.</p> <p>Do we wish to lose natural areas in the ACT in exchange for lands in NSW which may not actually be under threat? Consideration could be given if the offset was substantially improving connectivity between NSW and the ACT.</p>
<p><i>Should the ACT consider a similar approach to NSW bio-certification to allow a better interface between the NC Act and the Territory Plan? Pg. 21</i></p>	<p>Absolutely NOT.</p>	<p>Biocertification in NSW has led to the ‘turning off’ of site-level assessment and has led to real biodiversity <u>loss</u>.</p> <p>Strategic Environmental Assessments must not be confused with, or lead to, Biocertification.</p>
<p><i>What are your views on including licensing provisions as part of strategic assessments to deliver maintained or improved biodiversity across the planning area? Pg. 21</i></p>	<p>Uncertain.</p>	<p>It is unclear how this process would actually work.</p>
<p><i>Do you think voluntary dedication of leased land for conservation should occur in the ACT?</i></p> <p><i>If so, what would be the simplest and most effective mechanism for achieving this? Pg 21</i></p>	<p>Definitely Yes.</p>	<p>Include a range of alternatives, preferably attached to the land, not lessee: ie in perpetuity, with incentives in line with the degree of protection, e.g. as applied in NSW.</p> <p>Through an enhanced and improved PVP programme coupled with financial incentives. There would be an important role for the NRM Council in this.</p>

Questions in discussion paper	Response	Comment/justification
<p><i>Do you think that private management trusts could be one way to encourage private lease conservation? How else do you think private lease conservation could be facilitated? Pg22</i></p>	<p>Yes – as <u>one</u> of the options.</p>	<p>The trustees would need people with technical conservation management expertise. The resourcing of trusts would need to be carefully considered. Specific conservation leases should be issued by the ACT Government with financial incentives – possibly administered and/or monitored by local catchment groups.</p>
<p><i>Does existing legislation have sufficient powers to deal with encroachments onto reserve land? What, if any, amendments should be made to the NC Act? Pg22</i></p>	<p>No.</p>	<p>Specific problems relate to the activities of external agencies such as Telstra and ACTEW. Changes are also needed to the Planning and Development Act and the EIA Amendment Act to ensure that all agencies, whether ACT Government, Federal Government, or private, follow the same processes as private developers. There should be a range of specific penalties.</p>
<p><i>Are the enforcement options and penalties within the NC Act adequate? If not, what could improve them? Pg23</i></p>	<p>No.</p>	<p>The current Act does not appear to be much of a deterrent, both in terms of enforcement and penalties. This needs to be addressed by provision of adequate resources to identify illegal activities and actively pursue enforcement action. Cat and domestic pet containment should also be legislated in all Canberra areas which border on natural areas – especially Canberra Nature Park (not just new suburbs).</p>
<p><i>Is it appropriate for the NC Act to contain civil penalties similar to that used in other jurisdictions? If so, to which matters under the NC Act could these most usefully apply? Pg25</i></p>	<p>Yes.</p>	<p>It should be used as a tool where the Conservator considers that a good outcome will result. Where a protected area is damaged by illegal activities, the obligation should be on the person who undertook the damage to <u>fully restore</u> the area. Should also include activities outside the site that impact inside the reserves: [cf. damage at Little Mulligans Flat caused by poor drainage works on Mulligans Flat Road.]</p>
<p><i>Are the levels of penalties available under the NC Act appropriate? Pgg26</i></p>	<p>Variable.</p>	<p>Some penalties appear to be too low and the Council would support strengthening them. Their enforcement also needs to be strengthened.</p>

<i>Is there a case for the expansion of strict liability offences under the NC Act? If so, what offences?</i>	Yes.	‘Strict liability’ offences should be strengthened e.g. for clearing of native vegetation or habitat, including firewood collection, killing or harming indigenous animals without an appropriate licence, disturbance to soil, and dumping etc.
<i>Are the current powers of search and seizure under the NC Act adequate? Pg27</i>	No.	The Conservation Council would support strengthening search and seizure powers.
<i>Are there further reforms required to better integrate Commonwealth and ACT nature conservation law? Pg28</i>	Yes	There are some inconsistencies existing between the ACT and Federal jurisdictions. We support the ACT (through the Conservator) automatically recognising any Commonwealth decision, strategy etc. There needs to be improved bilateral agreements relating to nature conservation on NCA lands. However, it is important that the ACT retains its listings powers for threatened and endangered species and not rely solely upon EPBC listings of Matters of National Environmental Significance.
<i>Should the provisions that control public activities in reserved areas be extended to public activities in open space and unleased lands generally? Pg29</i>	Complicated.	There need to be consistent provisions, but these should not be so rigid as to preclude activities that meet both the landuse zoning and nature conservation objectives.
<i>Should the NC Act indicate how to determine the appropriate uses for reserved lands (or other types of public land)? Pg30 Should certain types of activities have regulated management requirements?</i>	Yes.	Specifically in relation to nature conservation values. The Conservator should be deemed to be a Concurrence Authority for all lands which hold nature conservation values.
<i>Should the Conservator be able to issue orders for restoration work on reserved land and/or to cover the cost of reserve staff involvement in assessing the activity? Pg31</i>	Categorically Yes.	
<i>Should objects be incorporated in an objects section in the NC</i>	Critically Yes.	We believe that this is probably the single most important reform of the NC Act. See our proposed set of Objectives above.

<i>Act? What do you consider would be appropriate objects? Pg32</i>		
<i>Do you think that the current role of the Conservator is appropriate? If not, how could it be improved? Pg33</i>	No.	The Conservator needs to be recognised and empowered as the protector of nature conservation and ecological processes across the ACT. The Conservator can only achieve this if (selected reforms): <ul style="list-style-type: none"> • The role administers a vastly expanded and improved NC Act conferring appropriate and effective powers (including that of a Concurrence Authority on planning and development matters where significant nature conservation issues pertain; • The Conservator heads an integrated Nature Conservation Agency combining policy, research and on-ground conservation management functions; • The Conservator reports directly to one Minister; • The NC Act clearly expresses the requirement to consider and protect nature (including ecosystems, habitat, and ecological processes) across the landscape (including waterways) on lands of all tenures in the ACT
<i>Is it appropriate that the Flora and Fauna Committee and the Natural Resource Management Advisory Committee be merged? Pg 34.</i>	No.	This should not be attempted under any circumstances. The two Committees perform separate tasks and require separate skills.
<i>Is there any advantage in the role of the Natural Resource Management Advisory Committee being legally established as a statutory committee? Pg 34.</i>	No.	
<i>Do you think the role of the Flora and Fauna Committee should be expanded?p34</i>	No.	The expertise and functions of this Committee are perfectly adequate, and the Conservator should be required under the Act to seek their advice and take full consideration of such advice.
<i>What would be an appropriate model by which Indigenous groups were engaged under the Act? p35</i>	No comment.	

<p><i>Is there a need for a formal community consultation body representing conservation interests? p35</i></p>	<p>Yes.</p>	<p>Public participation in nature conservation policy and strategy formulation should underpin wider community ownership of nature conservation outcomes.</p> <p>A Community Consultative Committee should be established somewhat along the lines of the Advisory Committees under the NSW National Parks and Wildlife Act. Representatives should be sought from key peak conservation and park user groups, together with representation from practitioners such as Greening Australia, Landcare and Parkcare groups.</p> <p>For example, the Committee could include a representative from:</p> <ul style="list-style-type: none"> • Conservation Council ACT Region • National Parks Association • Canberra Bushwalking Club • Sporting users (runners, cyclists, horse riders) • Special interest specialist groups (eg CoG, FoG) • Landcare/Parkcare groups • Greening Australia • Educational groups • Rural leaseholders
<p><i>Should the NC Act establish a formal mechanism and timeframe for reviews of the Nature Conservation Strategy? Pg36</i></p>	<p>Yes.</p>	<p>A five year timeframe would appear to be appropriate without placing excessive strain upon agency resources. Extensive public participation in such reviews will be critical to effect ownership throughout the community.</p>
<p><i>How could the role of the strategy in defining areas that require landscape-wide consideration be better integrated with the ACT's strategic land use planning process? Pg36</i></p>	<p>Very important role. See submission.</p>	<p>ACTPLA should be required to consider the Nature Conservation Strategy at all stages of the planning and development control process.</p> <p>The Conservation Council's current Biomapping Project is working towards ensuring all available biodiversity information held across government and in specialist community groups is made available to ACTPLA for officer use on their GIS.</p> <p>Biodiversity and connectivity mapping will be provided as input to the Spatial Plan review.</p>

<i>Should the NC Act allow for amendments to the strategy? If so, given the potential impact on land use planning, should this adopt a transparent public process similar that used for Territory Plan variations? P36</i>	Yes.	With climate change, nature conservation status of specific parcels of land are likely to change within the formal Territory Planning timeframe. It is thus critical that the Strategy can be amended – through an extensive public participation process – and that such amendments inform and modify the Territory Plan. Amendments to the NC Strategy could arise from the improved monitoring and auditing process as described in our submission above.
<i>Should the NC Act allow for some policy documents to be given statutory force? If so, which and why? Pg36</i>	Yes.	The <i>Nature Conservation Strategy</i> for one. And the proposed biennial <i>State of Conservation in the Act</i> reports for another.
<i>Are any other changes warranted in relation to the declaration of protected and exempt species? Pg37</i>	Yes.	A thorough review is required. The Council support the view in the Discussion Paper at the top of Pg 37.
<i>Do you think section 38 of the NC Act should be amended to incorporate greater categorisation of threatened status, and should the new categories relate to IUCN categories? Pg39</i>	Some concern over IUCN classifications of some species.	They should be loosely based upon IUCN categories but do not necessarily have to be identical. The categories could be ACT specific within a broader framework. The Act should allow for the protection of threatened ecosystems as some areas of threatened ecosystems outside existing reserves are of far higher quality than those found in some of these reserves, but are afforded no protection under the Act.
<i>Should the definitions and listing categories in the NC Act and the EPBC Act be better aligned? Pg39</i>	Yes	Better alignment of the NC Act and the EPBC Act would decrease the reliance on the latter to protect threatened ecosystems and habitat for threatened species within the ACT, but listing in the ACT Act should not solely be confined to EPBC Matters of National Environmental Significance – we have species and ecosystems in the ACT which we wish to retain and protect which may not actually be listed as Threatened in NSW or Federally.
<i>Should the NC Act include the requirement for action plans to have formal monitoring and</i>	Absolutely Yes.	Monitoring is essential if our environmental resources are to be adequately managed by the nature conservation agency. Such monitoring should extend to the Action Plans (ie Woodlands, Grasslands).

<i>review provisions?p39</i>		The provision of scientifically-based monitoring data will enable regular independent auditing by OCSE.
<i>How do you think the protection of plants and animals in the ACT should be regulated? Is there a greater role for self-reporting by licensees on compliance? Should fees reflect the full cost of administering licences?p40</i>	Yes.	We fully support the following views as detailed in the Friends of Grasslands submission, viz: <ul style="list-style-type: none"> • That indigenous flora and fauna are safeguarded in the wild. • That flora and fauna can be taken under strict regulation and on a limited basis only to facilitate research, education and commerce. • That the keeping and trading of native fauna, and some flora, needs strong regulation. • the use of indigenous plants in restoration work and for use in home and public gardens is encouraged and supported. • better control of exotic pets, especially cats. • Commercial licences to collect and trade in flora and fauna must be strictly supervised with the collector paying full costs of such supervision and control. • Licences can also be granted to community groups (and professional scientists and vets) who specialise in developing knowledge and conservation of local flora and fauna. This would also apply to groups whose members care for injured animals. • We support full cost recovery principles, and also the use of resource taxes (although there may be legal problems here) and royalty payments.
<i>Should the definition of animal and native animal under the NC Act, or specific uses of these terms, be amended and how? Pg41</i>	Yes.	All native fauna should be encompassed irrespective of which part of the animal or plant kingdoms they occupy. All native animals should be protected, while non-native species must be appropriately managed and, if causing a threat to biodiversity, controlled or eliminated. The dingo and kangaroo require special attention to ensure that wild populations are retained while minimising impacts upon appropriate pastoral activities.
<i>How can the origin of a captive wild animal be verified?p41</i>	Redefine.	The offence should be keeping a particular (named) species without demonstrated evidence that it has been born in captivity or taken from the wild under licence. Falsifying evidence should bring harsh penalties.
<i>Should damage or destruction of known habitat (or identified critical habitat) be sufficient evidence for prosecution of an offence?p42</i>	Absolutely Yes.	
<i>Should a provision be included that taking native animals and invertebrates from reserved land</i>	Yes.	

<i>requires a licence?p42</i>		
<i>Should the removal of native timber incur the issuing of an infringement notice?p43</i>	Yes.	
<i>Should the definition of native plant be changed to encompass only species indigenous to the ACT?p43</i>	No.	Definitions need to encompass both ACT endemics and flora native to the region. A higher status and therefore higher penalties for destruction should apply to ACT endemics.
<i>Does the NC Act need to retain provisions relating to pest organisms?p44</i>	Yes.	
<i>In what circumstances do you think it would be appropriate for the Conservator to issue conservation directions? What powers should the Conservator be allowed to exercise? Should the Conservator's directions be tied to land title rather than to the landowner? Should the leaseholder be compensated for any loss of amenity or commercial value that results from the directions?p43</i>	Yes	When the Conservator believes it will result in enhanced conservation outcomes. The Conservator should be empowered to offer financial recompense when an approved landuse activity is constrained for conservation purposes. In some instances the Conservator should have a Concurrence Authority role (see elsewhere in this submission).
<i>Should the owner of a vehicle be held liable for the misdeeds of the driver, within a reserve area? Should the NC Act allow for the restriction of non-motorised vehicles to certain suitable</i>	Yes to both.	

<i>areas?p44</i>		
<i>Should hunting without a licence be specifically listed as an offence?p44</i>	Absolutely Yes.	In fact, <u>possession</u> of a firearm in a conservation reserve without a current hunting licence should be an offence.
<i>Should there be a licensing provision for the taking of non-native animals and pest plants into a reserved area? Should the NC Act be amended so that it is clear that it is legal to take animals into a reserve in a way that is allowed by a management plan?p45</i>	Yes to both.	But there should be strict provisions and monitoring to ensure that nature conservation outcomes are achieved. Can see no reason to bring pest plants into a reserve system: to prevent inadvertent entry mandatory vehicle hygiene practices need to be applied.
<i>Should the NC Act provide guidance on issuing commercial concessions on reserved or other public land and provide for the regulation of such activity as it affects biodiversity values, nature conservation objectives and general public enjoyment? Do you support provision of clauses in the NC Act that would allow regulation of private or community organisation use of reserved land? Pg45</i>	Yes.	This should be one of the powers of the Conservator.
<i>Should the NC Act be amended to allow for the requirement of a restoration plan and/or performance based bond? Pg46</i>	Definitely Yes to both.	Performance based bond should be required whenever work is undertaken.
<i>What wilderness protection or restoration provisions do you think should be included under</i>		The wilderness provisions in the NSW NPWS Act should be examined for relevance to the ACT.

<i>the NC Act? Pg46</i>		
<i>Are the current management plan provisions under the Planning Act sufficient for the provision of wilderness management? Pg46</i>	No.	Provisions should be incorporated into the revised NC Act.
<i>How should damage capable of causing serious or material damage be defined? What thresholds should be used to distinguish between different levels of harm? Pg46</i>	Probably.	Look at contemporary examples in other jurisdictions.
<i>Should licensing fees reflect cost recovery? Pg48</i>	In most cases.	Where there are clearly identifiable nature conservation benefits from such a licensed activity, the Conservator should be empowered to modify full cost recovery.
<i>Are the existing appeals mechanisms as they relate to the NC Act adequate? Pg48</i>	Unsure.	No information provided as to the effectiveness of current appeal mechanisms.
<i>Should the NC Act encompass the concept of royalties for biodiscovery? Are current royalty provisions for native plants, native animals and timber sufficient? Pg48</i>	Yes. No.	

E. Commentary on the Discussion Paper

Introduction

Much of the background information presented in the Review is excellent and really identifies critical issues for nature conservation in the ACT and its surrounding region. However, the translation of these issues into specific questions seems complicated and confused, and extremely difficult for many people to respond meaningfully. And after 30 years needs a thorough revision.

In addition, the Marsden Jacob report has been found almost incomprehensible and of extremely limited relevance to a thorough review of the Act. It concentrates heavily upon the regulatory aspects of the ACT and market-based instruments (e.g. biobanking & offsets) – rather than upon nature conservation *per se*. It seems to recommend that any omissions or problems with the Act be easily resolved through policy formulation rather than any legislative change. Most of the recommendations are very low-key, simplistic and endorse the *status quo* in TAMS.

Nature Conservation Principles

The Discussion Paper correctly highlights many of the key issues which we believe to be of critical relevance to nature conservation in the ACT, including:

(pg 2) Around 60 per cent of the ACT's lowlands have been cleared. Key vegetation remnants have generally been retained as conservation reserves. However, ongoing urban expansion has fragmented these remnants and led to deterioration in their condition. Weed and exotic animal invasion, fire management and recreation pressures are significant factors. Climate change is likely to impose additional stresses.

Monitoring of ACT lowland birds, reptiles and mammals has revealed a dramatic decline in both wildlife abundance and species diversity.

In light of ongoing urban growth, the sustainability of wildlife in ACT's lowland woodland and grassland communities is a particular challenge. Innovative mechanisms for addressing urban expansion and sustainability of lowland wildlife will need to be considered within the framework of the ACT's objectives for both conservation and development. These could include identifying, protecting and enhancing areas of importance to ecological connectivity, increased options for off-reserve or private conservation and adopting a goal of no-net-loss of significant biodiversity values, implemented through a three step process of avoiding and mitigating wildlife impact, and offsetting as a last resort.

Currently the NC Act has a focus on protecting individual plants, animals and their nests. The individual plant or animal focus of the NC Act is challenging. However, it is increasingly recognized that nature conservation requires a whole-of-landscape or ecosystem approach. The current single entity focus of the NC Act could be widened by providing legal protection to native vegetation (particularly threatened vegetation communities) and/or by protecting threatened species habitat rather than just individual animals or their nests.

(Pg 3) The NC Act guides management of national parks, nature reserves and wilderness areas. Comment is sought on whether the Act should apply to other public lands, such as special purpose reserves or water supply protection areas. Matters identified have

included that the Act does not require bonds or direct restoration activities for non-conservation related developments on the nature conservation estate. Unlike other jurisdictions, the NC Act does not provide for commercial concessions (e.g., eco-tours, concerts) or for non-commercial activities (e.g., weddings) on the nature conservation estate.

(Pg 5) The Canberra Plan: Towards Our Second Century sets the vision for Canberra to guide its growth and development. The vision sees Canberra recognised throughout the world as a truly sustainable and creative city and as a community that is socially inclusive. A sustainable future for the ACT would safeguard our economic future and protect our natural and built environments. It would respond to external challenges such as climate change Since 1980 the science of conservation management has expanded and community conservation concern has increased. Recent Australian legislation and conservation policy has increased the focus beyond individual species and reserve management to a whole-of-landscape or ecosystem approach to restore and protect ecological functioning. The concepts of ecosystem sustainability and no-net-loss of biodiversity or vegetation are often primary aims.

About 60 per cent of the ACT lowland areas have been cleared. Less than 15 per cent of the ACT's former lowland vegetation is reserved, with many of the reserved remnants fragmented from each other. Both on-and-off reserves, weed and feral animal invasion, fire management and recreation pressure are causing further loss or degradation of the lowland vegetation communities. Wildlife monitoring has highlighted an escalating and dramatic loss of woodland bird, small mammal and lizard species from lowland reserves in the ACT. Urban development occupies about 20 per cent of the ACT lowlands. Urban expansion will require the clearing of further vegetation and wildlife habitat. The majority of the ACT's lowland vegetation is listed as endangered or critically endangered at both the local and national levels.

(Pg 6) Expected climate change impacts are likely to place further stress on the lowland reserves, ecosystems and species. Predicted climate change in the ACT includes increasing temperatures, changing rainfall patterns, more extreme storms, more frequent and intense fires, more intense and prolonged droughts and reduced surface water flows. Climate change will add to, and interact with, a range of existing threats in the environment that have already impacted on the ACT's biodiversity. For example, climate change may allow new or existing weeds and feral animal to flourish in the ACT resulting in increased threats to native species. Under certain circumstances wildlife can adapt to environmental change. However, if environmental change is rapid and substantial, ecosystems may not be able to adapt. Failure to adapt can lead to reduced or changed geographic ranges, reduced population sizes and extinctions. The ability for species to disperse away from intolerable environmental changes is hampered in cleared or fragmented landscapes such as the ACT lowlands and is constrained for some species that have slow or localised dispersal mechanisms (such as many of ACT's grassland animals). Species already at the end of an environmental gradient are particularly susceptible.

In the face of climate change, management objectives will need to be focused towards

building landscape resilience. Key features for building resilience include:

- *improving the quality, variability, security and extent of native vegetation, particularly for remnants larger than 100 hectares*
- *addressing compounding pressures such as weeds and exotic animals*
- *improving connectivity between the larger remnants of native vegetation that allow movement across environmental gradients*
- *identifying, protecting or enhancing refuge areas (where species can concentrate and survive during times of stress), both at a regional and local scale. Local refuges may be creek lines or rocky outcrops on cooler southern slopes.*

The stated conservation objectives in these key documents include:

- *that Canberra becomes a fully sustainable city and region, where future developments are environmentally sensitive, the flora and fauna is maintained and protected; and there are responsive actions to the challenges of climate change (The Canberra Plan: Towards our Second Century);*
- *maintaining reserves and the connectivity between them (The Canberra Spatial Plan);*
- *making ecosystems more resilient to the effects of climate change by increasing their connectivity (Weathering the Change, The ACT Climate Change Strategy);*
- *protecting biological diversity and maintaining ecological processes and systems (The ACT Nature Conservation Strategy);*
- *that the ACT makes an outstanding contribution, regionally and nationally, to the conservation of lowland vegetation (Woodland and Grassland Action Plans, 27 and 28);*
- *that the Murrumbidgee and Molonglo Rivers in the ACT and their major tributaries make an outstanding contribution to the conservation of aquatic and riparian ecosystems of the upper Murrumbidgee River catchment (Riparian Zone Action Plan No 29);*
- *repairing and maintaining the (lowland) landscape of the ACT so that it is sustainable (Bush Capital Legacy);*
- *halting biodiversity decline and sustainably managing vegetation to ensure resilient ecosystem functioning (Bush Capital Legacy).*

Without seeking to limit community input, major conservation issues identified in the first part of the paper include:

- *how landscape connectivity across the territory can be protected and enhanced*
- *how to maintain and broaden the resilience and ecological functioning of the ACT's lowlands;*
- *how to reduce and, where feasible, reverse the decline in the extent of the ACT's lowland vegetation and species diversity;*
- *how to best encourage, monitor and regulate off-reserve conservation in the ACT;*
- *what is required to minimise the biodiversity impacts at the urban-bushland interface;*
- *how legislation can support the ACT to make an contribution regionally and nationally to the conservation of lowland vegetation;*
- *how to best address past difficulties in on-reserve compliance enforcement, non-conservation uses of reserves and inconsistency in public land management.*

(Pg 18) Connectivity, at least for parts of the ACT, could also be protected and potentially enhanced as part of strategic environmental assessment processes under the Planning Act.

A strategic environmental assessment is a comprehensive environmental assessment, suited to proposals in major policy matters rather than individual development proposals. Examples of when a strategic environmental assessment may be prepared include a major land-use policy initiative, or a major variation to the Territory Plan.

The Conservation Council details below some specific areas of concern (with a brief response) arising from statements in the Review Document:

(Pg 2) *adopting a goal of no-net-loss of significant biodiversity values, implemented through a threestep process of avoiding and mitigating wildlife impact, and offsetting as a last resort.*

Comment: The Conservation Council has severe reservations over the use of offsets (and ran a national workshop in 2009 on legislative instruments for native vegetation management), and has issued a policy on the use of offsets in the ACT (attached).

(Pg 6) *Like many Australian cities, a key question is how wildlife and key conservation areas can be maintained while allowing for Canberra's growth.*

Comment: The Conservation Council (and 86% of the ACT's population - see our independent 2010 survey) question the basis of such statements supporting continued growth.

(Pg 9) *How do you think conservation concerns can be balanced with social and economic interests?*

Comment: "Balance" is the wrong term as it implies unnecessary trade-offs – we should be seeking complementary achievement of sustainable conservation, economic and social outcomes. And enhancing environmental outcomes as part of the city's development.

(Pg 12) *The Planning Act resulted from a major planning reform program..... Any increased role for the Conservator would need to be consistent with the structure of the planning process and not work against the planning efficiencies recently gained.*

Comment: The critical role of the Conservator is "to advance nature conservation outcomes for the Territory". We believe that this can be achieved without unduly delaying development decisions as long as robust processes exist for early and comprehensive environmental impact assessment in development planning. Additionally, many of the recent 'planning efficiencies' were gained at the expense of good environmental outcomes.

(Pg 12) *The Commissioner for the Environment Act 1993 establishes the Office of the Commissioner for the Environment (now known as the Commissioner for Sustainability and the Environment [OCSE]), who oversees environmental matters and prepares the State of the Environment report. The Commissioner is an independent authority who can investigate complaints on the management of the environment by the territory or a territory authority. These complaints can relate to actions undertaken under the NC Act. The Commissioner can, on their own initiative also investigate actions of an administrative unit or a prescribed authority that may substantially affect the environment. Currently there is a review underway to better define the Commissioner's extended role regarding sustainability.*

Comment: Understood: so why is not this review of OCSE related and timed to coincide with the NC Act review process? We believe that the roles of Conservator and Commissioner for the Environment fulfill very different functions and that there should not be any perception of conflict between their respective responsibilities.

(Pg 16) *Territory-wide corridors have been identified in Action Plans 27, 28 and 29 and the Canberra Spatial Plan (2004). The protection and enhancement of local corridors is recognised in Design Standards for Urban Infrastructure (design standard 14 – urban open space).*

Comment: These design standards are now seriously out-of-date in the light of recent research (see ANU) and ACT biological survey data. The idea of corridors as spatially defined 'zones' that adequately providing for ecological connectivity is an outmoded view of how fauna use suitable

elements of the landscape for movement across urban and non-urban and even cross border movement.

It is important to note that improving connectivity does not mean re-vegetating long, large-scale corridors; rather it may involve providing stepping stones of habitat or protecting and rehabilitating important habitat areas such as the banks of rivers or streams.

Comment: Or also prioritizing key linkages for restoration. See also the ANU report, Manning *et al* 2010.

The mapping of an area as important for connectivity does not necessarily preclude developing that area. It identifies connectivity as an issue that should be considered as part of a development assessment or other activity and which may be retained by careful design or compensatory measures on site or elsewhere.

Comment: Such outcomes are unlikely given our past experience (eg Harrison). Much more stringent constraints need to be applied and enforced.

(Pg 18) *The Canberra Spatial Plan includes actions to ensure wildlife corridors are maintained primarily for wildlife movement.*

Comment: No it doesn't!

The implementation framework for the Canberra Spatial Plan indicates that corridors could be included in reserves through using the public land reservation provisions of the Planning and Development Act.

Comment: Corridors should never be limited to only public reserves. Obviously, lands in the conservation reserve system would, *de facto*, be considered connectivity corridors.

Another option would be for the critical habitat and ecological connectivity overlay to be included within a revised Nature Conservation Strategy (1997). This is a statutory document established under the NC Act, and could act as a guide as to what areas should be protected to maintain connectivity and how they could be managed.

Comment: We agree, but this should, inform and be incorporated within the ACT Spatial Plan.

The draft ACT biodiversity assessment and offset approach, currently under separate development, will also seek to enhance landscape connectivity.

Comment: See above. The Council is very concerned over the implications of such a policy which is being developed without any community input or ownership.