

# *Review of the Roles and Functions of the ACT Conservator of Flora and Fauna*

*ACT Government*

*Department of the  
Environment, Climate  
Change, Energy and  
Water*

*June 2011*

**pwc**

*What would  
you like to grow?*



# Contents

1	Executive summary	1
	1.1 Introduction	1
	1.2 Summary of Findings	1
	1.3 Recommendations	2
2	Introduction	4
	2.1 Background to the Review	4
	2.2 Scope	5
	2.3 Approach	5
3	Findings	6
	3.1 Overview of Findings	6
	3.2 Detailed Findings	8
	3.2.1 The Strategic Role of the Conservator	8
	3.2.2 Governance Issues with the Provision of Technical Advice to the Conservator	11
	3.2.3 Other Findings	12
	Appendix A Stakeholder Consultations	16

This report and PricewaterhouseCoopers deliverables are intended solely for the Department of Immigration and Citizenship's internal use and benefit and may not be relied on by any other party. This report may not be distributed to, discussed with, or otherwise disclosed to any other party without PricewaterhouseCoopers prior written consent. PricewaterhouseCoopers accepts no liability or responsibility to any other party who gains access to this report.



---

# 1 Executive summary

## 1.1 Introduction

In October 2010, the ACT Government Department of the Environment Climate Change Energy and Water (DECCEW) engaged PricewaterhouseCoopers (PwC) to undertake a strategic review of the roles and functions of the ACT Conservator of Flora and Fauna.

Since the establishment of the Conservator's role there have been a range of significant changes to portfolio responsibilities in relation to planning and development. The Conservator has also been given additional statutory responsibilities, e.g., under the Tree Protection Act 2005; Heritage Act 2004 and the Domestic Animals Act 2000. All of these changes have raised concerns about the capacity of the Conservator to effectively influence planning decisions which have an impact on the natural resources of the ACT. This means that the functions of the Conservator are cited in seven pieces of Legislation as an approval, policy development, advisory, regulatory or consultative authority.

The terms of reference for the review requested that PwC provide options and suggest recommendations on how the Conservator's roles and functions should be curtailed, amended or strengthened to improve nature conservation outcomes. During the course of the review it also became evident that DECCEW is keen to consider how the role of the Conservator can be strengthened to have greater influence over planning and development decisions undertaken by ACT Planning and Land Authority (ACTPLA).

## 1.2 Summary of Findings

Below is a summary of the high level findings of the review. These are expanded in Section 3.1 - Overview of Findings and are further explored in Section 3.2 – Detailed Findings contained later in this report.

1. *Consensus that the Conservator role is valuable in most instances and is achieving good environmental outcomes*
2. *Governance arrangements relating to the provision of advice to the Conservator by officers of TAMS are inadequate and raise concerns in relation to conflicts of interest, priority setting, resourcing, quality of advice and an undue reliance on the performance of individuals rather than structures, processes and systems*
3. *Powers are limited in some areas (Planning and Development Act) but overly detailed and prescriptive or restrictive in others (Tree Protection Act)*
4. *Strong support for inter-agency coordination on planning and development at agency head level*
5. *Conservator needs to have a stronger strategic focus to achieve better environmental outcomes and provide greater clarity in relation to planning and development, land development, tree protection, etc.*
6. *Concern about lack of transparency in relation to ACTPLA decisions in relation to the Conservator's advice*
7. *Concerns regarding the value add in relation to land management agreements and inconsistencies, duplication and ambiguities in relation to the licensing functions of the Conservator in the planning and land development process*
8. *Inefficient processes and procedures and inadequate systems to support the role of the Conservator*

## 1.3 Recommendations

Following the review of documents as well as consultations undertaken and based on the findings of the Review of the Roles and Functions of the Conservator of Flora and Fauna, PwC makes the following recommendations:

### **Recommendation 1 – A More Strategic Role for the Conservator**

The Conservator to adopt a more Strategic approach to Planning and Development through:

- Access to enhanced research capability, including the necessary funding from Government to allow this to occur; and
- Development of clear strategies identifying conservation and environmental priorities through the Nature Conservation Strategy and other mechanisms.

### **Recommendation 2 – Development and Articulation of the Conservator’s Role in Planning and Development**

The Conservator to develop and promulgate criteria which guides and articulates the Conservator’s role in providing advice in relation to planning and development.

### **Recommendation 3 – Powers of the Conservator in Planning and Development**

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

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

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

### **Recommendation 5 – Creation of Dedicated Position of Conservator**

Consideration be given to creating a dedicated position of Conservator at the Deputy CEO level to provide enhanced strategic value and to directly manage and oversight the advice developed by the Conservator’s technical advisors.

### **Recommendation 6 – Transfer of Functions and Resources from TAMS to DECCEW**

Conservator co-ordination and technical advisory functions within TAMS be transferred to DECCEW. This should include all staff of the by Conservation, Planning and Research Section (CPR), and the funding associated with this Section’s operations.

### **Recommendation 7 – The Role of the Conservator under the *Tree Protection Act 2005***

The Government replace the Conservator as the principal decision maker under the *Tree Protection Act 2005* consistent with the recommendation of the ACT Commissioner for Sustainability and the Environment.

**Recommendation 8 – Remove Inconsistencies in Relation to offences under the *Nature Conservation Act 1980***

The current review of the Nature Conservation Act address apparent inconsistencies relating to offences within the licensing functions of the Conservator, e.g. the differences between offences which are summonable and those which attract an infringement notice

**Recommendation 9 – The Role of the Conservator in Relation to Land Management Agreements**

The role of the Conservator in relation to Land Management Agreements should be confined to setting the policy framework and guidance for the development and management of Land Management Agreements. The relevant Sections of the Planning and Development Act should be reviewed to enable approval of Land Development Agreements to be undertaken by an appropriate officer within the land management agency, within the policy framework and guidance established by the Conservator.

**Recommendation 10 – Improved Systems to support the Conservator’s Role**

The Conservator considers the options available to replace the existing PA-DA Database including the potential integration with the ACTPLA e-Development System. The Department will require additional budget funding to develop and implement improved systems to better support the Conservator’s role.

**Note:** This review has taken place while the Hawke Review into ACT Public Service Structures was being undertaken. As the Government has accepted the recommendations of the Hawke Report – Governing the City State, it should be noted that some of the recommendations of the Conservator Review may already be adopted as a consequence of the Hawke Review.

---

## 2 Introduction

### 2.1 Background to the Review

In October 2010, the ACT Government Department of the Environment Climate Change Energy and Water (DECCEW) engaged PricewaterhouseCoopers (PwC) to undertake a strategic review of the roles and functions of the ACT Conservator of Flora and Fauna. The scope of the Review is detailed in Section 2.2 below.

The functions of the Conservator are cited in seven pieces of Legislation as an approval, policy development, advisory, regulatory or consultative authority. The relevant Legislation is as follows:

- Nature Conservation Act 1980;
- Planning and Development Act (2007);
- Tree Protection Act (2005);
- Heritage Act (2004);
- Fisheries Act (2000);
- Domestic Animals Act (2000); and
- Emergency Act (2004).

Only the Nature Conservation Act and the Fisheries Act are administered by DECCEW, with the Tree Protection Act, Heritage Act and Domestic Animals Act administered by TAMS. The Planning and Development Act is administered by ACT Planning and Land Authority and the Emergency Act jointly by Departments of Justice and Community Safety and Treasury.

Since the establishment of the Conservator's role there have been a range of significant changes to portfolio responsibilities in relation to planning and development. The Conservator has also been given additional statutory responsibilities, e.g., under the Tree Protection Act 2005; Heritage Act 2004 and the Domestic Animals Act 2000. All of these changes have raised concerns about the capacity of the Conservator to effectively influence planning decisions which have an impact on the natural resources of the ACT.

This review has been conducted during a time of significant change for the ACT Public Service. During the Conservator Review period a strategic review of the ACT PS was already underway. The Hawke Report – Governing the City State was tabled in February 2011 and its recommendations adopted by the ACT Government, with a revised ACT PS structure to be implemented from 1 July 2011. It should be noted that some of the recommendations of the Conservator Review may already be adopted as a consequence of the Hawke Review.

DECCEW has been undertaking a review of the Nature Conservation Act over the past several years. In November 2010, a Discussion Paper was released as part of the Review of the Nature Conservation Act. The themes and questions posed in the Discussion Paper were considered during the formulation of recommendations for the Conservator Review, although the outcomes from the Discussion Paper are not known to PwC at the time of this Report.

In the context of these wider reviews DECCEW is keen to consider how the role of the Conservator can be strengthened to have greater influence over planning and development decisions undertaken by ACTPLA. This was the primary focus of this review.

## 2.2 Scope

The scope of this assignment was to conduct a review of the roles and functions of the Conservator of Flora and Fauna to establish whether these are being properly executed and if these functions are providing the Territory with good environmental outcomes. The scope of the review included the following:

- meet, discuss and document with, relevant Government stakeholders any matters/issues that they may have with regard to the current process/outcomes/decisions. Discuss and document suggestions for improvement of the processes to achieve better nature conservation outcomes.
- conduct a targeted audit of all the functions of the Conservator of Flora and Fauna under ACT legislation from 8 August 2009 till 8 August 2010;
- document and describe how delegated functions are undertaken, or not, if that is the case;
- evaluate whether the approvals, advice given and delegations made are resulting in positive nature conservation outcomes; and
- provide options and suggest recommendations, on how the Conservator's roles and functions could be curtailed, amended or strengthened to improve the nature conservation outcomes.

It should be noted that after the review commenced it became evident that easy and timely access to the information required to undertake the audit functions contained in the original scope detailed above was not available. We held discussions with a number of stakeholders regarding the availability of data for 'audit' purposes. Most of the data relating to decisions is held either across several systems or in hard copy files. While staff have been happy to discuss systems and processes and provide some numerical data, the information required to complete an audit of 12 months worth of data is not easily accessible.

Therefore, PwC requested that the scope of the review be amended to focus on the strategic and organisational components of the Conservator's roles and functions including high level comments regarding the current systems and where there are possible opportunities for improvement. This change of scope was confirmed by the Department's representative on 11 January 2011.

## 2.3 Approach

Based on the revised scope mentioned above, PwC's approach to this assignment was as follows:

- review the relevant legislation and other documents provided by DECCEW to better understand the key roles and functions performed by the Conservator or his delegates;
- following the review of legislation and initial meetings develop a range of key themes and issues to guide our consultations;
- meet with a broad cross section of internal and external stakeholders including staff from DECCEW, TAMS, LAPS and ACTPLA as well as representatives of several relevant Committees (see **Appendix A** for the full list of consultations completed);
- Development, presentation and ratification of key findings from our consultations and review of documentation with the Conservator and relevant DECCEW staff; and
- Development of a Report to the Conservator detailing our findings and recommendations regarding the role and functions of the Conservator (this Report).

## 3 Findings

### 3.1 Overview of Findings

During the Review a number of key findings were developed based on our review of the legislation, the interviews conducted and investigations of the processes and systems in place to support the Conservator. An overview of the Review findings is detailed below. These are further explored in Section 3.2 – Detailed Findings.

1. ***Consensus that the Conservator role is valuable in most instances and is achieving good environmental outcomes***

Key stakeholders acknowledged that the role of the Conservator is necessary and adds value to most processes. In most instances the Conservator is able to achieve good environmental outcomes. The stakeholders involved in the planning and development processes see the Conservator's role as critical to delivering sound economic development within the Territory without compromising on the achievement of environmental outcomes.

2. ***Governance arrangements relating to the provision of advice to the Conservator by officers of TAMS are inadequate and raise concerns in relation to conflicts of interest, priority setting, resourcing, quality of advice and an undue reliance on the performance of individuals rather than structures, processes and systems***

Technical advice to support the role of the Conservator is provided by Conservation, Planning and Research Section (CPR), which is currently located in TAMS. This is a critical and essential resource for the Conservator in formulating advice to ACTPLA and it is inappropriate that it be located in another agency. The Conservator needs unfettered access to the staff of this unit and also be able to direct its research and other priorities to ensure that he is able to provide the best advice to ACTPLA. The current arrangements severely compromise his ability to do this and are almost unprecedented in public sector governance and administrative terms.

Another key resource within TAMS is the role of Conservator Liaison, who co-ordinates and consolidates advice being provided by the Conservator's technical advisors, particularly in relation to land development applications. There is no clear backup for this role and much of the work is done through the extensive knowledge and understanding of the current occupant. Because this role is performed in another agency it is difficult for the Conservator to implement a succession plan for this position.

The separation of the Conservator from a number of his technical advisors poses several risks and may place the Conservator and his external advisors in an untenable situation in the future. It is also important that the unit is able to provide advice to the Conservator based on the science and not filtered by other considerations.

3. ***Powers are limited in some areas (Planning and Development Act) but overly detailed and prescriptive or restrictive in others (Tree Protection Act)***

The powers of the Conservator vary between the different legislative instruments. Currently the Conservator is restricted to an advisory role in the Planning and Development Act. However, he has very detailed and prescriptive powers under the Tree Preservation Act. There was considerable community concern that the Conservator's powers in relation to planning and development were too narrow and lacked sufficient teeth and that ACTPLA could ignore the Conservator's advice.

4. ***Strong support for inter-agency coordination on planning and development at agency head level***

There is strong support for inter-agency co-ordination on planning and development at the Agency Head level. All senior stakeholders endorsed this approach to enable improved co-ordination at the strategic level and to increase the Conservator's involvement at the strategic and early planning stages, which is critical to achieving effective environmental outcomes in the planning process.

5. ***Conservator needs to have a stronger strategic focus to achieve better environmental outcomes and provide greater clarity in relation to planning and development, land development, tree protection, etc.***

In a number of areas the Conservator's role is focused on a large number of issues which tend to distract from its critical role in protecting the flora and fauna of the Territory, particularly in the planning and future development of the Territory. Key areas of concern relate to tree protection, licensing and land management agreements. While each of these roles contributes to aiding the retention of valuable flora and fauna it takes significant effort and does not necessarily achieve the best environmental outcomes for the Territory. The Conservator needs to take a more strategic focus with more detailed investigation and input earlier in the planning and development phases of the land development process. As part of this, it is imperative that the Conservator is able to commission research studies of potential development areas so that there is adequate knowledge to inform the planning process. It is also important to recognize that the planning process needs to accommodate emerging knowledge and understanding of the conservation estate and to take this into account as developments proceed. The Conservator should also use the Nature Conservation Strategy as a document to identify key elements of the Territory's flora and fauna and nature conservation estate. This document should also reference the strategies and criteria to be utilised by the Conservator and his delegates for assessing conservation values guiding his interventions and advice in the planning and development processes.

6. ***Concern about lack of transparency in relation to ACTPLA decisions in relation to the Conservator's advice***

A number of stakeholders expressed concern about the lack of transparency in relation to ACTPLA decisions with regard to the Conservator's advice. Although ACTPLA meets its statutory obligations under the Planning and Development Act with regard to planning decisions taken, PwC was advised that there was limited feedback provided by ACTPLA as to how the Conservator's advice was considered with regard to planning issues and the reasons why a decision which is inconsistent with the Conservator's advice was made. Greater transparency, especially where ACTPLA makes a decision which is inconsistent with the advice of the Conservator by providing a more comprehensive statement of reasons, would facilitate greater public confidence in the integrity of the planning process.

7. ***Concerns regarding the value add in relation to land management agreements and inconsistencies in relation to the licensing functions of the Conservator***

A number of stakeholders expressed concern as to the Conservator's value in relation to the development and signing of Land Management Agreements. The role was seen as that of a rubber stamp on the already prepared agreements. A more useful approach would be for the Conservator to articulate policy objectives and conservation criteria that need to be met in developing and implementing land management agreements.

While the licensing functions of the Conservator are working satisfactorily several stakeholders expressed concerns regarding apparent inconsistencies relating to offences within the licensing functions of the Conservator, e.g. the differences between offences which are summonable and those which attract an infringement notice. These should be addressed through the current review of the Nature Conservation Act.

8. ***Inefficient processes and procedures and inadequate systems to support the role of the Conservator in the planning and land development process***

A number of the systems used to support the Conservator are inefficient and ineffective. Of particular concern is the system used by the Conservator Liaison Officer within TAMS to co-ordinate and provide technical advice regarding land planning and development processes.

The Conservator Liaison position plays a pivotal role in the co-ordination and development of sound and consistent advice for the Conservator. This position does not have any documented policy or procedures available to guide the work. There is a significant risk that if this officer became unavailable for any reason that it would be extremely difficult for anyone else to quickly understand and manage the roles and functions of the position.

---

## 3.2 Detailed Findings

### 3.2.1 The Strategic Role of the Conservator

#### Overview

The Conservator plays a key role in the identification and protection of the Territory's biodiversity and nature conservation values. He has a vital role in the management of these values both on and off reserve land within the Territory. With the current review of the Nature Conservation Act and the current ACT Public Service restructure there is the opportunity to strengthen the Conservator's role and functions associated with the Land Planning and Development processes for the Territory.

It was evident during our discussions with stakeholders at all levels that they see the role of the Conservator as vital to the development of sound environmental outcomes and adding significant value to most of the processes in which he is involved. It is clear that the Conservator is using his role to enhance environmental outcomes within the Territory. However, he has taken a pragmatic approach to the use of his powers, particularly in relation to planning and land development activities.

During the Review it became clear that much of the effort being expended by the Conservator and his delegates is limited to identifying and protecting single examples of habitat or individual trees. This work, while effective at an operational level often reduces the capacity to take a more strategic approach. This in turn reduces the effectiveness of the Conservator to achieve the best environmental outcomes for the Territory. This is particularly relevant in relation to the current Tree Protection Act which is very prescriptive and therefore limits the flexibility of the Conservator to possibly utilise offset processes to deliver the best environmental outcomes for the Territory.

There were varying opinions expressed regarding the adequacy of the powers of the Conservator, particularly in relation to the development and land planning functions where he operates in an advisory capacity. Some people believe that the Conservator should have the right of veto over planning decisions while others felt that the Conservator has sufficient power, particularly with the availability of the licensing requirements under the Nature Conservation Act as a point of last resort, where required.

#### Nature Conservation Strategy

The Nature Conservation Act requires the development of a Nature Conservation Strategy for the Territory. Following development of a Draft Strategy it is then released for public comment and possible amendment prior to being accepted by the Minister as the strategy for the Territory. The Nature Conservation Strategy is the document which provides detail on how environmental conservation is to be undertaken and achieved across the Territory. It includes proposals for protection, management and conservation of flora and fauna indigenous to the Territory and is supported by a number of Action Plans which are developed as a means of implementing various components of the strategy. Reporting is aligned with the State of the Environment reporting process presented by the Commissioner for Sustainability and the Environment.

The current Nature Conservation Strategy was released for public comment in June 1997 and published in December 1997. This document has not been amended or updated since that time. Although a number of Action Plans based on the strategy are developed and implemented on a regular basis, consideration should be given to whether the published strategy is still relevant and whether the implementation plans within the document are meeting the current conservation objectives of the Territory.

We note that a new Draft Conservation Strategy is currently being developed. Preparation of a new Conservation Strategy for the Territory will enable the Conservator to further document the environmental outcomes being sought and to provide clear and unambiguous strategies to achieve the desired outcomes. This document should also reference the strategies and criteria to be utilised by the Conservator and his delegates for assessing conservation values.

## Planning and Land Development

Planning and land development issues are consistent across most jurisdictions with the competing priorities of land development and economic sustainability at odds with preservation of the natural estate. This is particularly the case in the Territory where, due to its size there is limited land available for development. This is further exacerbated by the fact that approximately 54% of the Territory is occupied by National Parks and significant community expectations that environmental values are given a high priority in Government decision making.

In this context the Conservator has a significant role to play in the planning and land development processes. This should be a strategic role which can deliver the most significant environmental outcomes for the Territory. The current process involves the Conservator but does not afford the opportunity to take a strategic view of the particular developments or to enable the flexibility of major offsets.

It is clear that the Conservator's powers under the current *Planning and Development Act 2007* and its associated processes are limited. Currently the Conservator performs an advisory role with regard to land development approvals. There was considerable community stakeholder concern that the Conservator's powers to influence planning and development decisions were too narrow and could easily be ignored by ACTPLA without the need to explain why it had ignored the Conservator's advice. Bureaucratic stakeholders did not raise this as an issue. The relative influence of one interest over another in planning and development – economic, social, environmental, heritage, financial, etc. – is a matter to be resolved by the community's elected political leaders. However, the community concern about this issue suggests that it would be appropriate for Government to consider whether the current balance in relation to environmental and conservation continues to be appropriate or whether there is a need to strengthen the current role of the Conservator. We note that the Conservator had a stronger role in earlier iterations of the *Planning and Development Act*.

Often the planning processes (e.g. planning suburbs) can be quite lengthy and the Conservator may not have sufficient information available at the commencement of the process. The Conservator's knowledge of a particular area proposed for development can increase over time as further research is undertaken. This can result in advice from the conservator changing over time as more information becomes available. This can be a source of frustration for agencies responsible for land planning and infrastructure development.

A consistent theme throughout our consultation, particularly with senior level officers across agencies was that the current planning processes provide the Conservator with a number of opportunities to provide input and that on occasions this may occur up to five times for a single development application. All agreed that a more consistent approach is required with the Conservator becoming involved earlier in the process. A consultative cross agency approach will provide agencies, developers and the Conservator with greater certainty regarding developments and environmental outcomes. However, it should be noted that this approach will require significantly greater effort from the Conservator's advisors early in the land development process and will also require improved co-ordination across agencies. It is also contingent on the Conservator being provided with sufficient funding to be able to undertake the extensive research which is often required to have adequate knowledge about the conservation estate, including the identification of valuable flora and fauna and ecological communities, including those which are endangered or threatened.

During our discussions with the Conservator we were advised that some steps have been taken to increase the strategic input and focus between agencies in the land development process. The Chief Executives Land Supply Committee which includes the Chief Executives from TAMS, ACTPLA, DLAPS and DECCEW has been established to improve the strategic co-ordination of the land development process.

The delegate is required to consider the advice provided by the Conservator and other parties when making a final decision regarding the development application. However, after making the decision the Delegate is not required to provide visibility of how the decision was reached and what effect the advice of the Conservator had in the decision making process.

In making decisions regarding development applications the Delegate is bound by the provisions of the *Planning and Development Act 2007* (ss. 119 and 128) so can only make a decision which is inconsistent with the advice of an entity where:

- applicable guidelines have been considered;
- any realistic alternatives to the proposed development have been considered; and
- the decision to be made is consistent with the Territory Plan.

Prior to a decision being made the Major Projects Review Group considers every application where a decision is proposed that is inconsistent with the advice of an entity (eg. the Conservator). This is to ensure there are no design alternatives that would allow a different decision to be made.

Despite the above requirements, a number of stakeholders expressed concern about the lack of transparency in relation to ACTPLA decisions with regard to the Conservator's advice. Although ACTPLA meets its statutory obligations under the Planning and Development Act with regard to planning decisions taken, PwC was advised that there was limited feedback provided by ACTPLA as to how the Conservator's advice was considered with regard to planning issues and the reasons why a decision which is inconsistent with the Conservator's advice was made. Greater transparency, especially where ACTPLA makes a decision which is inconsistent with the advice of the Conservator by providing a more comprehensive statement of reasons, would facilitate greater public confidence in the integrity of the planning process.

As part of the planning process, which may have several iterations, the Conservator provides advice and or comments to the ACTPLA delegate regarding any nature conservation matters affected by the plans submitted by the developer. Currently there are no obvious criteria against which the Conservator formulates advice to ACTPLA. Development and articulation of such criteria would provide an increased level of confidence and certainty for other parties involved in the land development processes. This approach may also lead to improved environmental outcomes as it would provide increased awareness among developers and other agency staff regarding what is important to protect.

### **Recommendation 1 – A More Strategic Role for the Conservator**

The Conservator to adopt a more Strategic approach to Planning and Development through:

- Access to enhanced research capability, including the necessary funding from Government to allow this to occur; and
- Development of clear strategies identifying conservation and environmental priorities through the Nature Conservation Strategy and other mechanisms.

### **Recommendation 2 – Development and Articulation of the Conservator's Role in Planning and Development**

The Conservator to develop and promulgate criteria which guides and articulates the Conservator's role in providing advice in relation to planning and development.

### **Recommendation 3 – Powers of the Conservator in Planning and Development**

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

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

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

## Structural Arrangements

During our discussions with stakeholders, PwC raised the role of the Conservator from a structural perspective and whether the current arrangement is appropriate and working satisfactorily. It was universally agreed that the Conservator is currently doing a good job and in most instances contributing to achieving the most effective environmental outcomes for the Territory. However, opinions differed as to whether the Conservator should be operating at the Agency Head level or at a different level within the organisation or indeed whether the role should be a statutory appointment outside of the ACT Public Service. A number of stakeholders suggested the possibility of combining the role with that of the Commissioner for Sustainability and the Environment.

With the major changes underway as a result of the Hawke Review - Governing the City State there is an opportunity to review where the Conservator role best sits within these revised structures. The current Conservator and CEO of DECCEW is being given responsibility for planning and development in addition to his current portfolio. This situation may lead to difficulties in relation to conflicts between his role in planning and land development and that of Conservator. The additional responsibilities may also limit his ability to deliver the technical aspects associated with the role of Conservator.

Based on these changes PwC recommends that consideration be given to creating a senior position (Deputy CEO level) to undertake the role of Conservator within the revised structure. This position should have management oversight and responsibility for all of the technical advisory positions which support the role of Conservator. Having a dedicated position assigned as Conservator will provide an increased focus on enhancing the strategic approach to the role. The occupant of such a position should have appropriate qualifications, expertise and experience related to natural resource management, biodiversity and/or conservation.

### **Recommendation 5 – Creation of Dedicated Position of Conservator**

Consideration be given to creating a dedicated position of Conservator at the Deputy CEO level to provide enhanced strategic value and to directly manage and oversight the advice developed by the Conservator's technical advisors.

## 3.2.2 Governance Issues with the Provision of Technical Advice to the Conservator

### Overview

There has been significant structural change within the ACT Public Sector over the past several years. The Conservator's role has moved to the Department of the Environment, Climate Change, Energy and Water with the establishment of that portfolio. While some key roles have transferred to DECCEW with the Conservator, others have not. A number of his primary technical advisors remain within TAMS. PwC believes that this is an unusual situation and we could not find any similar arrangement in place in any other jurisdiction within Australia.

A consistent theme in our discussions with the Conservator's external advisors and staff from DECCEW was that they are hamstrung by resourcing and inefficient processes supported by legacy systems which no longer meet the business requirements of the Conservator. This is particularly the case in relation to land planning and development practices.

Technical advice to support the role of the Conservator is provided by Conservation, Planning and Research Section (CPR), which is currently located in TAMS. This is a critical and essential resource for the Conservator in formulating advice to ACTPLA and it is inappropriate that it be located in another agency. The Conservator needs to be able to have unfettered access to the staff of this unit and also be able to direct its research and other priorities to ensure that he is able to provide the best advice to ACTPLA. It is also important that the unit is able to provide advice to the Conservator based on the science and not filtered by other considerations. The current arrangements severely compromise his ability to do this and are almost unprecedented in public sector governance and

administrative terms. It is also important that in any reshaping of the administrative arrangements to give effect to the Hawke report recommendations that any efforts to break-up this unit are resisted as it needs to have a critical mass of knowledge, scientific skills and disciplines to be effective.

Another key resource within TAMS is the role of Conservator Liaison, who co-ordinates and consolidates advice being provide by the Conservator's technical advisors, particularly in relation to land development applications. There is no clear backup for this role and much of the work is done through the extensive knowledge and understanding of the current occupant. Because this role is performed in another agency it is difficult for the Conservator to implement a succession plan for this position.

Without exception all parties believe that the environmental components of the Territory business should all be located within the same agency.

## Risks of the Current Arrangements where TAMS staff support the Conservator

The separation of the Conservator from a number of his technical advisors poses several risks and may place the Conservator and his external advisors in an untenable situation in the future. These risks are outlined below:

- There is potential for a real conflict of interest to arise for the advisors located within TAMS. One of the core functions of TAMS is as a development and works agency, which does not integrate particularly well with the Conservator's role. In the future, management within TAMS could decide that all advice provided to the Conservator should be cleared through TAMS management and express a TAMS view rather than being independent and based on the scientific evidence;
- As the Conservator does not have management responsibility for the advisors he is tasking, he is unable to set priorities for them and ensure that they have adequate resources to address those priorities. This is particularly an issue with resourcing demands across agencies and competing priorities; and
- It was also noted that on more than one occasion conflicting advice had been provided by advisors from TAMS and DECCEW to ACTPLA.

We are unaware that these risks have materialised to date. However, this is more due to the exemplary behaviour of the individuals involved than the appropriateness of the structure and systems in place. This is an inappropriate and unacceptable situation and should not be continued into the future. The governance and administrative arrangements need to ensure that there is no potential for the advice to the Conservator in relation to planning and development issues to be compromised by potential conflicts of interest. Those providing advice to the Conservator need to always act and be seen to act in the best interests of the Conservator and the nature conservation estate at all times and for their advice to reflect the scientific evidence.

### **Recommendation 6 – Transfer of Functions and Resources from TAMS to DECCEW**

Conservator co-ordination and technical advisory functions within TAMS should be transferred to DECCEW. This should include all staff of the by Conservation, Planning and Research Section (CPR), and the funding associated with this Section's operations.

## 3.2.3 Other Findings

### Tree Protection

The *Tree Protection Act 2005* is the principal legislation protecting trees on leased land in the ACT. Under this Act the Conservator has a number of key functions and roles, including:

- Determine guidelines for tree management plans;

- Approving applications for approval of tree damaging activities;
- Keep a register of registered trees;
- Following nomination, decide whether or not to provisionally register trees;
- Decide whether to de-register registered trees;
- Declare whether information about the location of a tree should be restricted information;
- Issue tree protection directions in relation to protected trees; and
- Provide advice to ACTPLA on tree protection requirements in relation to development applications.

The *Tree Protection Act 2005* is administered by staff in the Department of Territory and Municipal Services whereas the Conservator is the Chief Executive of the Department of Environment, Climate Change, Energy and Water. The principal role of the Conservator derives from his responsibilities under the *Nature Conservation Act 1980* and relate to conservation of the natural environment whereas the *Tree Protection Act* covers both native and non-native trees.

PwC is concerned about the impact of the responsibilities of the Conservator under the *Tree Protection Act* impairing his capacity to focus on the significant conservation issues facing the Territory, particularly in relation to urban planning and development and inhibiting the Conservator taking a more strategic approach to these issues.

We note that a recent report from the Commissioner for Sustainability and the Environment has recommended that the Conservator be replaced by an ACT Tree Curator who should possess arboricultural, horticultural and/or equivalent skills to be the main decision maker under the *Tree Protection Act* retaining all of the current statutory powers under this Act.

PwC considers that it would be appropriate for consideration to be given to this proposal, particularly to enable the Conservator to play a more significant and strategic role in relation to nature conservation issues facing the Territory.

### **Recommendation 7 – The Role of the Conservator under the *Tree Protection Act 2005***

The Government should replace the Conservator as the principal decision maker under the *Tree Protection Act 2005* along the lines recommended by the ACT Commissioner for Sustainability and the Environment.

## **Licensing and Land Management Agreements**

Licensing functions under the Nature Conservation Act are delegated to the Licensing and Compliance Section within TAMS. Stakeholders indicated that this arrangement works satisfactorily and that there is little requirement to change the present arrangements. They did however, express concerns regarding a number of licensing issues and inconsistencies under the Nature Conservation Act.

Areas where issues were raised included:

- The ability to refuse a licensing application is slim as there is no reference to the license holder being a ‘fit and proper person’ or any other mandatory requirement;
- If conditions are placed on licenses it is not an offence to ignore those conditions, however it is an offence not to submit regular reports required under the legislation;
- Under Section 52 of the Act an infringement notice is issued for cutting down a tree, however a summons is issued for picking up timber.

As DECCEW is currently reviewing the Nature Conservation Act it would be appropriate to liaise with staff in the Licensing and Compliance Section to discuss these and other possible areas of concern with a view to improving the licensing powers under the Act.

TAMS currently manages the development and review of Land Management Agreements with ACT Rural Lease Holders. These are prepared and then submitted to the Conservator for final approval. Several stakeholders indicated that the Conservator's role in this process did not appear to add significant value. PwC believes that the Conservator would be better placed developing and managing the policy framework and guidance for the development of Land Management Agreements. The Conservator approves these agreements under the Planning and Development Act and cannot currently delegate approval of specific agreements. Consideration should be given to reviewing this area of the Planning and Development Act to enable the approval of Land Development Agreements to be undertaken by an appropriate officer within the land management agency, within the policy framework and guidance established by the Conservator.

### **Recommendation 8 – Remove Inconsistencies in Relation to offences under the *Nature Conservation Act 1980***

The current review of the Nature Conservation Act to address apparent inconsistencies relating to offences within the licensing functions of the Conservator, e.g. the differences between offences which are summonable and those which attract an infringement notice

### **Recommendation 9 – The Role of the Conservator in Relation to Land Management Agreements**

The role of the Conservator in relation to Land Management Agreements should be confined to setting the policy framework and guidance for the development and management of Land Management Agreements. The relevant Sections of the Planning and Development Act should be reviewed to enable approval of Land Development Agreements to be undertaken by an appropriate officer within the land management agency, within the policy framework and guidance established by the Conservator.

## **Systems and Processes**

A number of the systems used to support the Conservator are inefficient and ineffective. Of particular concern is the system used by the Conservator Liaison Officer within TAMS to co-ordinate and provide technical advice regarding land planning and development processes (the PA-DA Database). The PA-DA Database is utilised to allow the Conservator's advisors to provide technical comments on the planning and land development processes. This advice is then consolidated by the Conservator Liaison Officer for submission to ACTPLA as the Conservator's advice.

This system is now well past its economic life and is only supported internally within the agency. There have been structural changes within Government which are not reflected in the way the system operates and the system is subject to regular failure. There is a significant risk that this system will fail, leaving the Conservator in a position where legislated timeframes for responses to planning and land development applications may not be achievable.

A further issue with the current approach is access to information regarding planning and land development applications. The information within the system is not easily interrogated and management reporting capability is very limited. The only consolidated information directly available to the Conservator is in hard copy.

PwC was advised that ACTPLA has invested significant effort and funding to develop a land development system, e-Development (eDA). We were advised that this system could be easily modified to meet the Conservator's requirements. This system already has linkages with Objective which could be used as the primary document repository. Such an approach would provide significant benefits to both the Conservator and the Territory. It would allow the majority of the work affecting planning and land development processes to be conducted within a single modern system, which would improve workflow management, deliver enhanced management reporting capabilities

and would also reduce the effort required to co-ordinate the technical advisors comments. To ensure that the advice provided was sound and consistent, workflows could be established to allow direct notification to advisors of planning and land development applications and to have their comments forwarded to the Conservator Liaison Officer for consolidation prior to transfer to the delegate as part of the approval process. Such an approach will need to be appropriately funded to ensure its success.

The Conservator Liaison position plays a pivotal role in the co-ordination and development of sound and consistent advice for the Conservator. The current occupant of this position has been undertaking this role for a number of years and clearly understands the protocols required for different applications and advisory functions. However, this officer does not have any documented policy or procedures available to guide her work. There is a significant risk that if this officer became unavailable for any reason that it would be extremely difficult for anyone else to quickly understand and manage the roles and functions of the position.

### **Recommendation 10 – Improved Systems to support the Conservator’s Role**

The Conservator considers the options available to replace the existing PA-DA Database including the potential integration with the ACTPLA e-Development System. The Department will require additional budget funding to develop and implement improved systems to better support the Conservator’s role.

## **Heritage Act 2004**

Under Section 13 of the Heritage Act the Conservator is an ‘interested person’ for the purposes of the Act, and is a member of Heritage Council. However, under Section 19 of the Act is not eligible to vote on matters being determined by the Heritage Council. The Chief Executive of the Planning Authority is also afforded this status. Although the Conservator has no voting rights within the Heritage Council, the opportunity to participate in meetings of the Heritage Council is considered to be an important part of the Conservator’s role and should be continued.

## **Domestic Animals Act 2000**

The Conservator’s role with regard to the Domestic Animals (DA) Act is confined to a requirement under Section 43 of the DA Act that any decision by the Registrar of Domestic Animal Services to issue a permit to relax the prohibition that a dog should not enter a declared dog prohibited area must be referred to the Conservator for comment on environmental impact grounds. This role is seen as relatively minor and was not subject to further analysis as part of the review.

## Appendix A Stakeholder Consultations

During the review PwC consultants met with a broad cross section of internal and external stakeholders including staff from DECCEW, TAMS, LAPS and ACTPLA as well as representatives of several relevant Committees including the Flora and Fauna Committee.

PwC acknowledges and appreciates the co-operation of these individuals and Committees who gave freely of their time and responded to the review in a positive manner.

Name/Organisation	Role
David Papps	Chief Executive, Department of Environment, Climate Change, Energy and Water (DECCEW), Conservator of Flora and Fauna
Gary Byles	Chief Executive, Department of Territory and Municipal Services (TAMS)
David Dawes	Chief Executive, Department of Land and Property Services (LAPS)
Maxine Cooper	Commissioner for Sustainability and Environment and previous Conservator
George Tomlins	Deputy Chief Executive, (LAPS)
Hamish McNulty	Executive Director, Property and Strategic Projects (LAPS) and previous Conservator
Fay Steward	Executive Director, Land Management and Planning Division (TAMS)
Ian Fraser	Chairman, Natural Resource Management Council (NRMC)
David Shorthouse	Consultant and Member Natural Resource Management Council (NRMC)
Flora & Fauna Committee	Members: Arthur Georges (Chair), Penny Olsen (Deputy Chair), Margaret Kitchin, Barry Richardson, Paul Stevenson, Richard Schodde.  Observers: Warren Nicholls.  Government: Sharon Lane (Secretary), Tammie Spackman (Secretariat)
Sharon Lane	Manager, Conservation, Planning and Research (CPR) (TAMS)
Helen McKeown	Planning and Conservator Liaison Officer, TAMS
Rod West	Manager, Licensing and Compliance, TAMS
Michael Mulvaney	Senior Officer Conservation, Planning and Research (CPR) (TAMS)
Jo-Anne Bauer	Licensing and Compliance Section (TAMS)
Heather Tomlinson	Director, Climate Change and Natural Environment, DECCEW

Name/Organisation	Role
Kathryn Tracy	Senior Manager, Natural Environment and Resource Management, DECCEW
Ian Baird	Principal Policy Officer, Natural Environment, DECCEW
Stephen Hughes	Manager, National Parks, Reserves and Rural Land (PC) (TAMS)
Neil Cooper	Manager, Forestry and Fire Management (PC) (TAMS)
Kerrin Styles	Manager, Natural Resource Protection (TAMS)
Phil Jorritsma	Manager, Information Services, Client Services Branch (ACTPLA)
Karen Wilden	Manager, Impact, Codes and Estates Assessment (ACTPLA)
Chris Murray	Manager Land Policy, ACTPLA
Daniel Iglesias	A/g General Manager, Tidbinbilla (PC) (TAMS)

[pwc.com.au](http://pwc.com.au)