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Review of the Nature Conservation Act 1980 - Submission on the Discussion Paper 2010

In making this submission on the review of the ACT Nature Conservation Act, my comments encompass biodiversity values in the broad rather than taking a specific focus on birds which are an integral element of the ecological functioning of the ACT lowland vegetation and grassland communities. Conserving biodiversity in the broader context is essential if specific species are to be protected and able to flourish.

Key Issues Raised in the Discussion Paper

(1) Ecosystem functioning and sustainability

As recognized in the Discussion Paper, around 60% of the ACT's lowlands have been cleared with key vegetation remnants mostly retained in areas with conservation or reserve status.

The biggest threat to the ongoing ecological viability of these lowlands is urban expansion and associated fragmentation with the additional pressures from weeds and exotic animal invasions, fire management, recreation and as yet unclear climate change impacts.

To manage these threats a more effective landscape level approach to planning and decision making about the use of the lowlands is imperative. Such an approach needs to be realistic about maintaining and enhancing ecological connectivity across the landscape in both public and private land. This in essence calls for more effective connection between conservation and planning legislation and an enhancement of the Conservator's role in the planning processes.

The Act's objectives need to reflect both a landscape level approach to planning, management and use of the nature conservation estate and integration of the various elements that contribute to management of ecological functioning of the lowland vegetation. This requires the Act to have as its priority the management and protection of the ACT's native wildlife, vegetation and ecosystems. This needs to be a fundamental underpinning of the Act combined with consideration of broad ecological processes that affect these elements rather than just a focus on individual species or plants. The Act must provide a stronger overall legal framework for the protection of the systems and species dependent on them.

Market approaches may provide avenues for achieving better sustainability of the nature conservation estate in the ACT but they need to be based on a solid recognition of and commitment to achieving conservation outcomes consistent with the Act, not just maximizing economic benefits. **Both** the planning and conservation legislative frameworks should look to achieve the triple bottom line – social, environmental and economic benefits. This should not be left as the exclusive territory of the conservation legislation. Planning processes need to be more clearly taking account of the impacts on ecological systems from development and looking at more effective means to mitigate the adverse impacts.

Further, consideration should be given to including in the Act specific provisions for the establishment of a Foundation or Trust to be funded from contribution by development interests of all areas that result in the loss of existing lowland vegetation given its already diminished state. Such funds should be clearly destined for the management of the ACT nature conservation estate.

(2) No net loss of significant biodiversity values

The *“goal of no net-loss of significant biodiversity values...with offsetting as a last resort”* as mentioned in the Discussion Paper requires careful consideration. Offsetting against a threatened or diminished vegetation type is often ineffective in conserving the very values that are intended to be conserved. The reality of urban expansion into an already diminished vegetation type by definition has to result in loss of biodiversity values and their loss may become significant more in a longer term cumulative impact than through immediate impacts.

The Discussion Paper refers to the legislation used in other jurisdictions such as NSW and SA. To refer to one example, the SA Native Vegetation Conservation Act 1991 established a mechanism (the Native Vegetation Council) to assess proposals for the removal of native vegetation and where such approval is granted to require a replacement proportion of like vegetation be planted to make up for the loss of the vegetation cleared. In principle this works fine but in practice, if there is no ongoing monitoring of the vegetation planted (and this is generally the case), there is little to assess the effectiveness of the Act's intent to maintain no net loss of vegetation.

Introduction of restrictions on clearance without the support of private landowners has proven to be a very vexed process with frequent greater loss of native vegetation immediately prior to the implementation of legislation. This was the case with respect to SA, NSW and Qld where failure to engage adequately with the landowners proved counterproductive with accelerated vegetation clearance prior to the introduction of legislation. Where the ACT may wish to extend the provisions of the Nature Conservation Act to include private land, engagement with the relevant stakeholders will be essential to gain appropriate and workable outcomes.

The Act's objectives could include provisions that foster the development of stewardship arrangements with private landowners for the conservation of biodiversity on their land.

Offsets that are intended to achieve no or less loss of biodiversity values are also difficult mechanisms to implement, if the intention is to maintain biodiversity values in the ecosystem type affected. Offsets may produce biodiversity outcomes but they may not equal the ones lost and thereby may do little to maintain ecological functioning of a specific ecosystem type.

(3) Strategic Application of Licensing Powers

The suggestion to focus the Conservator's involvement in the development assessment process around native vegetation clearance should be adopted.

Equally the Conservator should be able to endorse any plan as meeting native wildlife conservation requirements although there would be wisdom in allowing for review processes to look at subsequent activities consistent with the plan given that ecological processes are not static and may need to be considered afresh in light of potential impacts, for example, from as yet unclear climate change impacts

(4) Land Management

If landscape level approaches to planning, decision-making and compliance enforcement underpin the Nature Conservation Act, then it would make sense as proposed by the Commissioner for Sustainability and the Environment that the Nature Conservation Act should cover all land matters. Otherwise the outcome is likely to be a piecemeal approach to land management and the maintenance of biodiversity values and effective ecological functioning.

As mentioned above, engagement with private landowners needs to be integral to such an approach.

The Nature Conservation Act should also provide for commercial concessions and for non-commercial activities on the nature conservation estate to ensure that these activities are appropriately managed consistent with maintaining biological values of the nature conservation estate.

(5) Compliance Enforcement

If compliance is to be an effective part of the Act and a deterrent to offences under the Act adequate resources need to be allocated for investigation and assessment of activities that may be in breach of the Act.

Fines and other deterrents under the Act need to be seen to be seriously pursued in the event of breaches or offences and this requires proper resourcing to ensure compliance with the Act.

(6) Wildlife Keeping

The suggestion that the Nature Conservation Act makes it an offence to possess a wild animal unless it can be demonstrated that it was not taken from the wild should be acted on.

This can be particularly relevant to Australian birds in terms of those who do not observe the requirements not to take eggs and/or young wild birds to the detriment of both the wild populations and those taken for breeding/or sale purposes.

(7) Community Engagement

Support by the community for the nature conservation estate in the ACT is imperative. To engage with the community on the importance of the biodiversity values associated with the ACT nature conservation estate, an understanding of these values and their overall contribution to social welfare is needed. This requires better understanding and knowledge of the ecological functioning of lowland woodlands and grasslands communities in the ACT, their biodiversity values and the contribution that they make to social, economic and environmental benefits, and the role of the Conservator as the “guardian” of the ACT nature conservation estate.

Engaging Indigenous people and their knowledge of land management practices in the management of the conservation estate on public lands has precedents in other jurisdictions. In NSW, the NT, and WA Indigenous people with connections to land under conservation management have been engaged in Co-management partnerships under the Australian Government’s Indigenous Protected Areas Program. In these partnerships Indigenous Australians jointly manage the areas under the partnership responsibility, providing their experience and traditional knowledge of the lands in management arrangements and on-ground activities.

Utilising Indigenous knowledge and experience in land management for the conservation of biodiversity values would considerably enhance the ACT conservation estate and this should be reflected in the objectives of the Act.

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