



Environmental Defenders' Office
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Conservation Research
City Services, Transport Canberra and City Services Directorate
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By email: EPSDDComms@act.gov.au

Dear Conservation Research Team,

Draft ACT Native Woodland Conservation Strategy: Environmental Defenders Office ACT Submission

The Environmental Defender's Office (ACT) Inc ('EDO ACT') is a community legal centre specialising in public interest environmental law in the ACT and surrounds. We provide legal representation and advice, take an active role in environmental policy and law reform, and offer community legal education publications and sessions.

The ACT is home to important native woodland environments, including Commonwealth-listed, critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland. The EDO ACT regularly assists community groups and individuals seeking to protect these woodlands and therefore welcomes the opportunity to contribute to the Draft ACT Native Woodland Conservation Strategy ("Draft Woodland Strategy") and offer recommendations arising from our experiences.

While the previous ACT Lowland Woodland Conservation Strategy (Action Plan No. 27) ("2004 Woodland Strategy") was called an Action Plan (Action Plan No. 27), it appears that the proposed ACT Draft Woodland Conservation Strategy is intended to be a policy or reference document¹ which is different from an Action Plan.² This distinction is important as Action Plans involve a specific process under the *Nature Conservation Act*. The *Nature Conservation Act* imposes a duty on the Conservator to take reasonable steps to implement action plans that are in force (section 107 *NC Act*) and to monitor and report on their effectiveness to both the public and the Minister at least once every

¹ ACT Government, Draft ACT Native Woodland Conservation Strategy, April 2019

² An "action plan" is defined in section 99 of the Nature Conservation Act 2014 as "action plan, for a relevant species, relevant ecological community or key threatening process, means a plan for the species, ecological community or process, notified under section 105 (Draft action Plan final version and notification).



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5 years (section 108 *Nature Conservation Act 2014*). Action plans are reviewed by the Scientific Committee every 10 years or at the Conservator's request and recommendations can be made to amend the plans. In contrast, there is no statutory obligation to report on this proposed strategy.

We note that the consultation for the Draft Woodlands Strategy is taking place concurrently with the consultation for several revised action plans. It is unclear whether the current action plans for the woodland-dependent birds referred to in the Draft Woodlands Strategy are being downgraded to a conservation advice. A conservation advice is not the same as an Action Plan (although the Draft Woodland Strategy appears to use the two concepts interchangeably). As outlined above, an Action Plan is a statutory document which must be reviewed and the Conservator must take reasonable steps to implement. In contrast, a conservation advice is a preliminary step towards an Action Plan. The EDO ACT would oppose the downgrading of any Action Plans without clear and appropriate consultation and/or a robust justification.

We set out a number of broad concerns that arise, partly as a result of comparing this strategy with the 2004 ACT Woodland strategy and in light of current and future environmental issues likely to impact on woodlands.

Objectives and vision

The proposed draft ACT Native Woodland Conservation Strategy is intended to supersede the former 2004 Woodland Strategy, which contained the following two "protection goals":

1. *Conserve in perpetuity all types of Lowland Woodland communities* in the ACT, as viable and well-represented ecological systems. (*including the declared threatened ecological community and component threatened species); and*
2. *Conserve in perpetuity, viable, wild populations of all Lowland Woodland flora and fauna species* in the ACT, and support regional and national efforts towards conservation of these species. (*including declared threatened species).*

We note that, in comparison with the 2004 Woodlands Strategy, the proposed draft strategy contains weaker objectives. There is no longer a vision to conserve in perpetuity all types of Lowland Woodland communities and viable, wild populations of all lowland woodland flora and fauna species in the ACT. The previous 2004 Woodland Strategy's vision that "*the Australian Capital Territory makes an outstanding contribution, regionally and nationally to conservation of Lowland Woodland*" has been removed and the current Draft Woodlands Strategy does not contain a vision.



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The proposed Draft Woodlands strategy does set out four goals – to protect, to maintain, to improve and to collaborate – and these are significantly less ambitious than the protection goals set out in the previous 2004 Woodland Strategy.

The goal to protect

The current draft Woodlands strategy's protection goal is that: "*Commonwealth and ACT statutory requirements and ACT Government policies protect threatened species and other fauna and flora associated with woodlands within and outside formal reserves.*" As evidenced by the ongoing decline in population and conservation status of Australia's flora and fauna, it is clear that the current Commonwealth and ACT statutory regimes do not adequately protect species and ecological communities. Revised, stronger legislation is required to ensure a halt in the decline of species and ecological community loss. The Draft Woodland Strategy should recognise the failure of current laws and policies and, where possible, seek to address this by filling in gaps in law and policy related to woodland associated species and ecological communities.

It is noted that a conservation objective set out to retain and protect native woodlands is to "*ensure no net loss of the ecological and cultural values of woodlands in the ACT.*" (emphasis added).³ The use of offsets is set out in a number of conservation objectives. The EDO ACT is concerned about the emphasis on managing the impact of residential and commercial development on woodlands in the ACT through environmental offsets and the ACT Environmental Offsets Policy.

Biodiversity offsets are intended to compensate for the remaining impacts of an approved project after measures to avoid or mitigate impacts have been exhausted. Offsets are designed, over the long term, to ensure that there is no net loss as management actions on the offset site replace biodiversity values lost on the development site. In the ACT, offsets facilitate planning permissions that might otherwise have been refused on the basis of environmental impact.

Most urban development in the ACT has an impact on nationally threatened box gum woodlands, native grasslands or threatened species such as the striped legless lizard.⁴ It is essential that offsets are only applied in accordance with good practice, including:⁵

1. Biodiversity offsets must only be used as a last resort and clear limits must be placed on the use of offsets, such as the use of 'no-go zones'

³ Draft ACT Woodlands Strategy, ACT Government (April 2019), page 17.

⁴ <https://www.smh.com.au/opinion/its-becoming-harder-to-see-the-trees-for-the-revenue-20140128-3112b.html>

⁵ Rachel Walmsley et al 'Fundamental Principles for Best Practice Biodiversity Offsets' (2014) Impact 96; Senate Environment and Communications References Committee (Cth), 'Environmental offsets' (Commonwealth of Australia, 2014), ch 3.



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2. Offsets must be based on sound ecological studies and principles
3. Indirect offsets must be strictly limited
4. Offsetting must achieve benefits in perpetuity
5. Offsets must be based on principles of net gain
6. Offsets must be additional to what has already been required by law
7. Offset arrangements must be legally enforceable.

Although the Draft Woodlands Strategy interacts with the ACT Planning Strategy or ACT Environmental Offsets Policy, it should be clear that offsets are a last resort. The Draft Woodlands Strategy should also support the identification of 'no-go zones' which cannot be offset to make it clear that there are certain environments and ecological values in relation to which offsetting cannot be an appropriate strategy. This includes threatened species or ecological communities that can withstand no further loss and may be appropriate particularly for areas of YB-BRG woodland.

The goal to improve

The current goal to improve woodlands in the strategy is "*management activities must, wherever appropriate, aim to enhance ecosystem function of woodlands by improving the condition and connectivity of woodlands*". The ecosystem function of woodlands must be enhanced as a priority, and the words "wherever appropriate" must therefore be removed from this goal. This must be supported by clear goals that reflect improved outcomes for woodlands, including comprehensive data (including baseline data) to assess improvement. The draft strategy needs to be expanded to include further consideration of improvements to woodlands in the ACT, including how to ensure their resilience in a changing climate.

Recommendation 1: The current Draft Woodlands Strategy must develop a strong vision, retain the strength of language of the 2004 Woodlands Strategy, and seek to conserve ecological values in perpetuity. The Draft Woodland Strategy must acknowledge the drawback of offsets as a strategy for maintaining woodlands and address good practice for offsetting. It must set clear goals for the improvement of woodlands and gather comprehensive data to assess improvement.

Ensuring community involvement

The EDO ACT notes the Draft Woodland Strategy's emphasis on collaboration and welcomes processes which enhance community involvement, particularly in decision-making. The ACT community is unique in its level of engagement with environmental issues, being home to community councils, residents' groups, landcare groups, environment groups to name a few. The role of



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residents' groups and community councils is unique in the ACT. Support to community groups in the ACT who represent local interests in the protection of nature in our city is best recognised through secure funding and ongoing government support to ensure community voices are articulated in such matters.

Recognising that there is a broad level of public support for high-quality nature and natural environment areas in the ACT, it is vital to utilise community interest and expertise through consultation processes.

Development of land has a significant impact on woodlands – being one of the largest threats to the future of woodlands in the ACT. It naturally follows that the way that development applications are processed, including the opportunities that community members and groups to consult on such applications, is vital for effective environmental protection. In the EDO ACT submission to the Inquiry on Development Application processes in the ACT,⁶ we made several detailed recommendations for better public consultation. These include (but were not limited to):

- Increasing the accessibility of the Environment, Planning and Sustainable Development Directorate Planning Website by including plain language and best practice content and design;
- Extending the minimum notification period for major developments from 15 to 30 days;
- Increasing the transparency of pre-development application discussions between the Planning and Land Authority and the applicant; and
- Creating detailed information guides to promote improved public consultation, especially through the development application process.

Supporting improved consultation through development processes would be an applied means of implementing the Draft Woodland Strategy's goal to collaborate between stakeholders to successfully protect woodlands.

Recommendation 2: The Draft Woodlands Strategy must support meaningful and effective consultation processes are in place in the ACT to support community groups to fully participate in decisions that affect their natural environment, including woodlands.

⁶ Available at www.edoact.org.au/submissions.



Addressing threats to Native Woodland Biodiversity

Urbanisation and greenfield development

The Woodlands Strategy notes that *“the development and expansion of new suburbs will be the primary cause of future losses of woodland habitat in the ACT.”*⁷ Having acknowledged this threat, the Strategy does not adequately address it, but accepts it as a *fait accompli*.

The EDO ACT has discussed the impacts of greenfield development on the natural environment in submissions to the Housing Choices Discussion Paper (February 2018); ACT Climate Strategy to a Net Zero Emissions Territory (April 2018); and Inquiry into Engagement with Development Application Processes in the ACT (August 2018).⁸ It remains our position that, where possible, greenfield development should be avoided due to its impacts on the environment, including on woodlands such as YB-BRG.

This is in line with the ACT Government’s 2018 ACT Planning Strategy which aims to work towards a compact city and notes that *“continued urban expansion puts pressure on the valued natural resources that surround the city such as our bushland and grasslands, landscape setting and connectivity of ecosystems.”*⁹

We are concerned that despite broad recognition of the impacts of greenfield development, land releases and developments in greenfield areas in the ACT continue.¹⁰ Given the impact of greenfield development on woodlands, the EDO ACT welcomes solutions that reduce developments on greenfield land by creating a more compact city through urban infill initiatives.

As stated in the EDO ACT submission to the Housing Choices Discussion Paper:

“Where greenfield developments cannot be avoided, there must be comprehensive assessment by independent experts of any greenfield site to identify environmental and heritage value in these areas. It is essential for government to include sufficient buffer zones, conservation corridors and no-go development areas in development planning to reduce the environmental impact”.

⁷ Draft ACT Woodlands Strategy, ACT Government (April 2019), page 26.

⁸ Available at www.edoact.org.au/submissions.

⁹ ACT Government, Environment and Sustainable Development, ACT Planning Strategy: Planning for a sustainable future (ACT Government, 2018) Page 38

¹⁰ ACT Government Land and Property Report (2017)

https://www.planning.act.gov.au/_data/assets/pdf_file/0016/1226104/act-land-and-property-report-december-2017.pdf; https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1207295/Indicative-Land-Release-Program-2018-19.pdf.



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We continue to maintain that, considering it is likely that greenfield developments will have a significant adverse environmental impact particularly with respect to threatened species of flora and fauna, development applications must be lodged in the impact track and accompanied by an environmental impact statement. Whilst the Woodlands Strategy interacts with other related policies, it should address this threat head-on by supporting infill solutions and protecting woodlands where they are threatened by greenfield development.

Climate change

Given the ACT is the first jurisdiction in Australia to announce a climate emergency, the Draft Woodland Strategy must include conservation objectives that go beyond research and monitoring. The Strategy must actively engage with climate change adaptation strategies by restoring and enhancing woodland ecosystems in the face of a changing climate. The importance of woodlands as a carbon sink must also be acknowledged and prioritised.

Recommendation 3: The Draft Woodland Strategy should support the avoidance of development on greenfield land. Where new developments on greenfield land are unavoidable, good practice techniques and thorough, independent environmental assessment must be applied. Climate change impacts must also be addressed as a priority within the Draft Woodland Strategy.

Should you have any questions or would like further information on the above, please do not hesitate to contact Stephanie Booker on 6243 3460 or stephanie.booker@edoact.org.au.

Yours faithfully

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