Environmental Defenders Office

Submission on the ACT Nature Conservation Strategy Stage 2 Consultation Package

11 March 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

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Acknowledgement

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations peoples. We acknowledge that not all First Nations peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

Role of EDO

EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

EDO has and continues to work with First Nations clients who have interacted with western laws, including litigation and engaging in western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the ACT Nature Conservation Strategy Stage 2 Consultation Package (**Consultation Package**).

A summary of recommendations arising from our submission is provided below.

Summary of Recommendations

Recommendation 1: Goal 2 should be updated to better convey the range of action needed to achieve ecological recovery.

Recommendation 2: The key challenges should be reframed to better reflect the challenge as opposed to the cause.

Recommendation 3: The Strategy should address all challenges identified in the ACT State of the Environment Report.

Recommendation 4: The definition of Biodiversity Network should be revised, to clarify how it relates to Protected Areas and Conserved Areas.

Recommendation 5: The definition of critical habitat should be updated to mean areas of land and water that are essential to the survival **and** recovery of a protected species or ecological community.

Recommendation 6: The definition of Conservation Overlay should identify the origin of the overlays.

Recommendation 7: The Strategy should include time-bound targets that align with Australia's international and domestic commitments.

Recommendation 8: The Strategy should establish SMART standards and targets that have appropriate baselines against which the progress towards outputs identified in the Strategy can be measured.

Recommendation 9: Targets should be legislated (e.g. in the *Nature Conservation Act 2014*), where possible.

Recommendation 10: The use of offsets to mitigate impacts of actions should not contribute towards achievement of nature conservation targets.

Recommendation 11: The right to a healthy environment and right for First Nations peoples to maintain connection with their land and waters should be incorporated into the Strategy outcomes.

Introduction

The Nature Conservation Strategy (**Strategy**) aims to coordinate an integrated approach to nature conservation in the Australian Capital Territory. The *Nature Conservation Act 2014* (ACT) (**NC Act**) provides for the establishment of the Strategy and requires that the Conservator of Flora and Fauna takes reasonable steps to implement the Strategy. The Conservator oversees the implementation of policies and programs, under the Strategy, to manage nature conservation across the ACT.

This submission addresses the following key issues:

- Goals
- Key challenges
- Definitions
- Consistency with relevant commitments
- Establishing appropriate targets
- Offsets to not contribute towards achieving targets
- Incorporation of the right to a healthy environment and maintaining a connection to Country

We look forward to participating in any further consultation opportunities that may arise.

KEY ISSUES

Goals

We support the 'headline' of Goal 2: "Ecological Recovery", but are concerned there is a gap between that headline and the description of the goal (which is: "land use and land management is proactively and strategically planned across the Territory to ensure our natural values have protected spaces to recover and thrive, now and into the future").

Land use and land management is an important part of achieving ecological recovery, but is only one piece of the puzzle. Further, this appears to focus on protected spaces and strategic planning only. In order to achieve ecological recovery we also need:

- Mechanisms in place to manage impacts on biodiversity across all land tenures (e.g. protected spaces and private land) and across all activities (e.g. housing, industry, agriculture, infrastructure). These mechanisms do not just include protected spaces but appropriate frameworks for assessing and managing impacts outside of protected spaces.

- Conservation programs, which are also a key component of ecological recovery and extend beyond land use and land management and protected spaces. For example, properly implemented recovery planning and private land conservation programs should be recognised under this goal.

Recommendation 1: Goal 2 should be updated to better convey the range of action needed to achieve ecological recovery.

Key challenges

The Consultation Package provides that the key challenges that must be addressed in the Strategy are:

- the future climate will be different;
- the city is growing;
- pest, weeds and disease;
- chronic under resourcing.

Generally, we agree with the challenges identified in the Consultation Package; however, we recommend reframing these challenges to better reflect the challenge as opposed to the cause. For example, the Strategy should explicitly acknowledge habitat loss as a challenge (rather than "the city is growing"). This better describes the threat and is clearer as to what impact a growing city has on nature.

Additionally, the Strategy should include all challenges identified in the 2023 State of Environment Report, to the extent that they relate to nature conservation.

For example:

- The ACT 2023 State of the Environment Report[1] (**State of the Environment Report**) identifies issues with the independence and accountability of the ACT's environmental governance framework. The Strategy should provide clarity regarding the roles of relevant departments, authorities and stakeholders and what responsibilities each has in relation to the management of nature conservation in accordance with the Strategy to ensure ongoing transparency and accountability.

- The State of Environment Report outlines issues with the sustainability of ACT's resources, including heavy reliance on public transport, low-density housing despite a growing population and poor data for waste management. The "growing city" challenge incorporates habitat loss from urban sprawl but does not address the impacts of increasing population on additional infrastructure needs, climate impacts and pollution.

- Bushfires are identified as a risk in the State of Environment Report due to increasing numbers of consecutive fire seasons with elevated severity risk. The Strategy should identify how bushfire management will be incorporated, in particular noting how bushfire risks to areas conserved in accordance with *Achieving 30 by 30 on land - National Roadmap for protecting and conserving 30% of Australia's land by 2030*[2] (**National 30 by 30 Roadmap**) or under the offsets framework will be managed.

Recommendation 2: The key challenges should be reframed to better reflect the challenge as opposed to the cause.

[1] The State of Environment Report 2023 is available here.
[2] The National 30 by 30 Roadmap is available here.

Recommendation 3: The Strategy should address all challenges identified in the ACT State of the Environment Report.

Definitions

We provide the following feedback on definitions proposed in the NCS Glossary:

Biodiversity Network

The term Biodiversity Network needs clarification. It is currently defined as:

> Biodiversity Network: The network of natural areas across the ACT, under some form of long-term protection or conservation and active conservation management, enabling connectivity.

It is unclear how the Biodiversity Network relates to Protected Areas and Conserved Areas (both defined terms, which have elements of being under some form of long-term protection or conservation and active conservation management), and whether the Biodiversity Network is made up of those up of those areas only or is wider in scope.

If it is only Protected Areas and Conserved Areas, then it could better be described as the Protected and Conserved Area Network. A term such as Biodiversity Network might better describe all areas with biodiversity value and this may not be limited to areas under some form of long-term protection or conservation and active conservation management.

Recommendation 4: The definition of Biodiversity Network should be revised, to clarify how it relates to Protected Areas and Conserved Areas.

Critical habitat

We suggest critical habitat is defined as areas of land and water that are essential to the survival **and** recovery of a protected species or ecological community. We agree these areas cannot be developed or offset.

Recommendation 5: The definition of critical habitat should be updated to mean areas of land and water that are essential to the survival **and** recovery of a protected species or ecological community.

Conservation overlay

The definition of Conservation Overlay does not provide information as to where conservation overlays are to be found (e.g. are they part of the Strategy, or are they made under another framework (e.g. the Territory Plan). The definition should be more specific and cross-reference the location of or mechanism that creates the overlays.

Recommendation 6: The definition of Conservation Overlay should identify the origin of the overlays.

Consistency with relevant commitments

Australia's international and domestic commitments to halt biodiversity decline and restore ecosystems should be incorporated into the Strategy.

International Commitments

Australia is a signatory to the *Kunming-Montreal Global Biodiversity Framework*[3] (**GBF**) which sets out global goals and targets to reverse biodiversity loss and restore ecosystems by 2030, and protect and conserve 30 per cent of land and waters by 2030 (30 by 30). Australia's National 30 by 30 Roadmap forms part of Australia's Strategy for Nature, which establishes national targets in accordance with the GBF. These targets include several matters identified as challenges in the ACT, which should be incorporated in the Strategy, including:

- minimising the impacts of climate change on biodiversity.
- increasing Australia's circularity rate and reduce pollution and its impacts on biodiversity by 2030;
- eradicating or controlling invasive species in priority landscapes and further minimising their introduction by 2030.

Australia is also a signatory to the Glasgow Leaders Declaration on Forests and Land Use[4] (**GLDFLU**) and a founding member of the Forests and Climate Leaders Partnership, aimed at increasing the use of forests to combat emissions contributing to climate change. Under the GLDFLU, signatories commit to collaboratively reversing forest loss and land degradation by 2030.

Domestic Commitments – Threatened Species Action Plan

The *Threatened Species Action Plan: Towards Zero Extinctions*[5] published in 2022 by the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) aims to reduce extinction risks for all priority species, improve conditions for priority places, prevent new extinctions and conserve 30% of Australia's land mass by 2032.

There are several priority species listed in the Threatened Species Action Plan that are located in the ACT, such as the Canberra Grassland Earless Dragon, Regent Honeyeater and Swift Parrot. A key threat for each of these species is habitat destruction, caused by land clearing, poor fire management or agriculture.

The Strategy should incorporate these commitments into its targets, with consistent timeframes.

[3] Information about the GBF is available here. More information about Australia's involvement on the GBF is available here.
[4] The signatories to and commitments under GLDFLU are available here.
[5] See the Threatened Species Action Plan here.

Recommendation 7: The Strategy should include time-bound targets that align with Australia's international and domestic commitments.

Establishing appropriate targets

The Consultation Package provides that feedback requesting inclusion of "SMART" (specific, measurable, achievable, relevant and time-bound) targets has been taken on board. However, we note that the targets are not developed or provided as part of the Stage 2 Consultation Package.

In the 2013-2023 Strategy[6], progress against targets was difficult to measure in some instances due to a lack of baseline data against which progress could be compared. For example, the Progress Against Implementation Plan 2 provides that Targets 6 and 7 had no trackable indicators to established progress. Further, Target 2 noted that it was only partially achieved as baseline habitat connectivity was not mapped to allow tracking of changes in habitat connectivity during this Strategy.

The ACT State of the Environment Report also identified data gaps as a challenge, including the difficulties this poses in assessing the efficacy of management actions being undertaken. It is critical that the targets established in the Strategy have established baselines and substantial data sets to ensure that progress can be clearly identified.

We note the NC Act is currently being reviewed and we recommend legislating the targets established under the Strategy, where possible, to encourage compliance and strengthen accountability.

Recommendation 8: The Strategy should establish SMART standards and targets that have appropriate baselines against which the progress towards outputs identified in the Strategy can be measured.

Recommendation 9: Targets should be legislated (e.g. in the *Nature Conservation Act 2014*), where possible.

Offsets to not contribute towards achieving targets

The purpose of the Strategy is to provide for the framework to manage and strengthen nature conservation in the ACT. The ACT Environment Offsets Policy was finalised in 2015 (**Offsets Policy**) and provides for the use of offsets as a subsidiary approach to managing impacts of actions to protect national and ACT listed species and ecological communities.

The Consultation Package does not reference the offsets framework or how the Strategy will interact with the offsets framework in relation to managing impacts of actions on biodiversity. However, it is important that areas set aside as offsets under the offsets framework are separate from, and do not contribute to, progress towards nature conservation targets under the Strategy.

[6] The 2013-2023 Strategy and progress towards implementation reports are available here.

Offsets areas are set aside for the specific purpose of compensating for impacts of development or activities. They are not a tool for delivering broader conservation outcomes, particularly as they are predicated on something being damaged or destroyed. Achieving targets through use of offsetting cannot be considered a net-positive nature conservation outcome, nor does it provide for carers of Country to deliver conservation action under a shared Nature Positive vision.

Recommendation 10: The use of offsets to mitigate impacts of actions should not contribute towards achievement of nature conservation targets.

Incorporation of the right to a healthy environment and maintaining connection with Country

On 28 August 2024, the Legislative Assembly passed the *Human Rights (Healthy Environment) Amendment Act 2024* to incorporate the right to a healthy environment in the *Human Rights Act 2004* (ACT) (**HR Act**). The HR Act also provides for First Nations peoples to maintain connections with their land and waters. These rights should be incorporated into the Strategy where possible.

The proposed goals of the Strategy recognise the importance of establishing trusted partnerships with carers for Country to deliver meaningful conservation action. The State of the Environment Report discusses the increasing risk of bushfires and more severe drought seasons as consequences of climate change. This may present an opportunity to engage with First Nations peoples to gain insight in cultural land and fire management practices to establish effective conservation and land management processes, while maintaining connection to Country.

ACT is the first jurisdiction in Australia to enshrine the right to a healthy environment in its human rights legislation. The review of the Strategy provides a key opportunity to incorporate this right into nature conservation and land management. Further consideration should be had as to how conservation can improve public health outcomes, including retaining trees and greenspaces to reduce heat island effects, contributions of native forests to reducing emissions and better management of pollution.

Recommendation 11: The right to a healthy environment and right for First Nations peoples to maintain connection with their land and waters should be incorporated into the Strategy outcomes.