



Office of the Commissioner for  
Sustainability and the Environment

Report to the ACT Legislative Assembly on the  
Roundtable called to explore issues relating to  
the Nature Conservation Bill (14 April 2014).

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Prepared by

**Mr Robert Neil**

**Commissioner for Sustainability and the Environment**

*8 May 2014*

I report to the ACT Legislative Assembly in accordance with its motion of Thursday 27 February to hold a Roundtable discussion on the Nature Conservation Bill. The motion was as follows:

“That this Assembly:

(1) notes:

- (a) the ACT Nature Conservation Ordinance was initially drafted in 1980 by the Federal Government, and precedes self-government in the ACT;
- (b) there have been many iterations of the *Nature Conservation Act 1980* since then, and many changes in the ACT’s built and natural environment;
- (c) it has been an ACT Labor commitment since 2004 to revise the Act; and
- (d) that a draft of the proposed new Nature Conservation Bill was available as an exposure draft for comments during 31 October to 13 December 2013; and

(2) calls on the government to:

- (a) establish a Roundtable to explore the issues relating to the draft Nature Conservation Bill. This Roundtable is to:
  - (i) be chaired by the Commissioner for Sustainability and the Environment;
  - (ii) include all relevant stakeholders, including:
    - (1) Territory and Municipal Services Parks and Conservation Service;
    - (2) Conservation Planning and Research and legislative drafters from the Environment and Sustainable Development Directorate;
    - (3) Key conservation and rural lessee groups; and
    - (4) Representatives from each of the three political parties;
  - (iii) allow sufficient time for full discussion of the issues; and
  - (iv) provide a detailed report to the Assembly by May 2014 on the range and extent of issues raised by stakeholders on the draft Nature Conservation Bill.”

In response to the motion, this report details the range and extent of issues raised by stakeholders at the Roundtable discussion that took place on Monday 14 April 2014, in the reception room of the ACT Legislative Assembly Building.

The agenda for the Roundtable is attached to this report at **Appendix 1**.

A copy of the recorded transcript of the meeting is at **Appendix 2**.

The following stakeholders were in attendance at the Roundtable.

<b><i>List of Attendees - Nature Conservation Bill Roundtable - 14-04-2014</i></b>
<b>Chair</b> Mr Bob Neil Commissioner for Sustainability and the Environment
<b>Facilitator</b> Mr Steve Lancken Contracted to Office of the Commissioner for Sustainability and the Environment
Minister Simon Corbell Member of the Legislative Assembly
Dr Lesley Cameron Adviser to Minister Corbell
Minister Shane Rattenbury Member of the Legislative Assembly
Ms Indra Esguerra Adviser to Minister Rattenbury
Ms Nicole Lawder Member of the Legislative Assembly
Ms Angela McGuinness Adviser to Ms Lawder
Ms Dorte Ekelund Director General Environment and Sustainable Development Directorate
Ms Clare Henderson Executive Director Conservation Council of the ACT Region
Dr Helen Sims Biodiversity Working Group Conservation Council of the ACT Region
Ms Jenny Bounds Conservation Officer Canberra Ornithologists Group
Ms Sarah Sharp President Friends of Grasslands
Mr Clive Hurlstone National Parks Association of the ACT Attending for Mr Rod Griffiths, President
Ms Hanna Jaireth Chair Environmental Defenders Office
Emeritus Professor Ian Falconer

Vice President Conservation Council of the ACT Region
Mr John Starr Landholder
Mr Geoff Hyles Rural Landholders Association Attending for Tom Allen, President/John Guth, Secretary RLA
Mr Ian Fraser Chair Natural Resource Management Advisory Committee
Mr Paul Davies Deputy Chair Natural Resource Management Advisory Committee Chair ACT Natural Resource Management Council
Professor Arthur Georges Chair Flora and Fauna Committee
Ms Helen McKeown Liaison Conservator of Flora and Fauna Environment and Sustainable Development Directorate Attending for the Conservator of Flora and Fauna, Mr Alan Traves
Dr Margaret Kitchin Manager Conservation and Research Unit Environment and Sustainable Development Directorate
Ms Kathryn Tracy Senior Manager Environment and Sustainable Development Directorate
Mr Daniel Iglesias Director Parks Service Territory and Municipal Services Directorate
Mr Adam Roach Principal Legal Policy Officer Territory and Municipal Services Directorate
Ms Julia Pitts Office of the Commissioner for Sustainability and the Environment
Ms Amanda Slade Office of the Commissioner for Sustainability and the Environment

The meeting was opened by the Chair.

Attendees introduced themselves.

Minister Corbell addressed the meeting in relation to the history leading to the Roundtable and thanked the attendees for participating in the Roundtable.

The range and extent of issues raised at the Roundtable was quite broad however there was general support from the stakeholders as to the provisions within the Consultation Draft and the modernising of the dated 1980 legislation. The Roundtable had a focus on the legislative components of the Nature Conservation Bill but also included policy discussion. Some issues, particularly those related to process, were clarified during discussion and are indicated in this report in the summary boxes at the end of each section.

The technical issues of the Nature Conservation Bill, such as changing discretionary powers to mandatory obligations (i.e. change may to must) and similarly amending Notifiable Instruments to Disallowable Instruments were discussed briefly. Stakeholders were given further opportunity to provide the range and extent of issues they have with these technical aspects by 28 April 2014.

The range and extent of issues raised by stakeholders present at the Roundtable fell into three major categories;

- Taking an ecosystem approach to the management of biodiversity and conservation;
- The role and functions of the Conservator; and
- Off reserve management of biodiversity.

The report is broken down into these three main areas, with other issues raised during the discussion recorded in the latter sections of the report.

## 1. An ecosystems approach

- a. Ecosystem-based biodiversity conservation is an issue for stakeholders, especially whether and how the Nature Conservation Bill (the Bill) addresses best practice biodiversity conservation at an ecosystem level. An issue for Stakeholders was whether the Bill addresses best practice in this regard.
- b. There is concern that current mechanisms for biodiversity conservation are not delivering protection and enhancement of biodiversity values. It was suggested that mechanisms be put in place to shift thinking to focus on all biodiversity values on a landscape approach, not just the management of threatened species.
- c. Biodiversity management to take place across the landscape not just for threatened species and not on a case by case basis.
- d. Delivery of biodiversity outcomes to be proactive not reactive.
- e. Views were expressed that the process for the protection of threatened species is (today) not delivering the required outputs because of the lack of resources allocated for monitoring, the continuing loss of habitat and the lack of a landscape approach within legislation. This was not a comment on the legislation itself.
- f. The Nature Conservation Strategy be given statutory recognition in the Act.

During the discussion on an ecosystem services approach to biodiversity conservation the following points were also raised.

- The Nature Conservation Strategy is the framework for biodiversity management in the ACT, and that this document takes a landscape or ecosystems approach to conservation management.
- Action plans for individual species are now included in broader strategies, for example the woodlands strategy, in an effort to address species management within ecosystems.

## 2. The role and functions of the Conservator

- a. Section (s)17(1) of the Bill requires the appointment of a public servant as the Conservator. The wording of this legislation implies that the role of Conservator must be filled by someone already within the Public Service. Does this exclude looking outside the public service to fill the role which may in turn exclude worthy candidates?
- b. In the Bill (s21) the Conservator is given responsibility for making, monitoring and carrying out guidelines. The role, if any, of the Scientific Committee in this process to provide a level of external scrutiny is an issue that was raised as one needing clarification and consideration.
- c. The required expertise of the Conservator is an issue, in particular whether the Conservator should be required to have expertise in nature conservation and ecologically sustainable development.
- d. The statutory relationship between the Conservator and the Commissioner for Sustainability and the Environment to ensure dialogue on significant decisions was identified as an issue.
- e. Stakeholders asked how should the role of the Conservator as delegated under planning legislation (for example the Conservator's role in Environmental Impact Assessment) be specified and supported in the Bill?
- f. At present the Conservator is a Public Servant with other functions as part of a senior management role. It was suggested that the role of the Conservator could be strengthened further if it was a dedicated role (without other management responsibilities), if required qualifications were specified in the Bill and if resourcing was increased.
- g. Concern was expressed that the Conservator's decisions may be overruled by the Chief Planning Executive.
- h. The Conservator's independence from the Environment and Sustainable Development Directorate and from planning processes is an issue for stakeholders.

Discussion of point (a) clarified that Section 17(1) - The Director-General must appoint a public servant as the Conservator of Flora and Fauna (the **conservator**) – does not preclude the directorate looking outside of the ACT public service during the recruitment process for the Conservator. Upon appointment to the role, the Conservator will become a public servant and consequently comply with the requirements of the Public Sector Management Act.

Discussion of point (b) acknowledged a role for the Scientific Committee in this process.

Discussion of point (h) clarified that the Chief Planning Executive (CPE) may act inconsistently with the Conservator's advice in some circumstances. The CPE considers a range of issues, including advice from the Conservator and has discretion regarding agreeing with some or all aspects of the Conservator's advice but must provide reasons for a decision that is inconsistent with the Conservator's advice in the development application. This document is publically available.

### 3. Off reserve management of biodiversity

- a. The planning process should encourage threatened species management within developments. Developers can reintegrate biodiversity into the urban landscape.
- b. Threatened species and habitat species could be planted on public land and used within residential gardens.
- c. How can the legislation better support private landholders to contribute to conservation management?
  - i. There is currently no mechanism for the recognition of off reserve management of native grasslands (including on rural leases, roadside verges and within urban open space). In the current language conservation directions are "imposed" on landholders, this was considered negative. There is no formal recognition for landholders conserving biodiversity on their land and it was suggested that this could be addressed in the Bill.
- d. Volunteer conservation agreements could be used as a mechanism for off reserve management.
- e. A "head of power" could be placed in the legislation so that a stewardship program could occur in the future in agreement with rural lessees.



- f. At present the major impediments to landholders managing conservation on rural land are that there is no assistance to manage threatened species and that lease holders still have to pay rent and rates and manage weeds and pests on their land as well as undertake conservation activity.
- g. Rates could be removed on designated conservation areas on rural leases to provide recognition and incentive for lessees managing conservation.
- h. Biodiversity off reserve is very important and a legislative mechanism is needed to maintain and enhance this habitat such as a “head of power” requiring the Conservator to deal with biodiversity on rural land.
- i. The current legislative framework including the Nature Conservation Act may already hold sufficient powers and mechanisms for actions (as above) to occur – it was suggested that it was in the areas of policy and implementation and that work needs to occur and there could be improvements.
- j. Long term conservation agreements (as are possible under the EPBC Act) may assist with compliance and achieving outcomes.

During the discussion of off-reserve management it was noted there are currently powers and mechanisms to allow for conservation leases however these are some impediments that exist due to the ACT’s leasehold system, for example, conservation leases cannot be in perpetuity agreements, they can only exist for the life of the current lease.

#### **4. Other issues raised**

##### **a. Mays and Musts**

- i. Move s18 (4)b, c and e to s18(3) so that in exercising a function, the conservator must ensure that it is exercised in a way that is consistent with:
  - an action plan for a species, ecological community or process;
  - a reserve management plan;
  - any other government policy or plan relating to nature conservation;or
- ii. In s18(4) change “may” to “must” so that the Conservator is obliged to have regard to the matters listed including the findings of

monitoring programs under s21 and reports by the Commissioner for Sustainability and the Environment.

- iii. Amend s21(2) to ensure that the Conservator must either carry out a nature conservation monitoring program or commission another entity to carry out a nature conservation program .
- iv. All decision makers should be required to give effect to the objects of the Act. Where the objects conflict, the primary object (s 6(a)) should take precedence.
- v. All decision makers should be required to act consistently with any conservator guideline, the nature conservation strategy and any relevant list, plan, or agreement.
- vi. All decision makers should be required to have regard to the findings of monitoring programs.
- vii. Amend s21 to require that the Conservator must: Prepare and publish a biodiversity research and monitoring program based on Guidelines developed and reviewed at least every 5 years by the Scientific Committee; and publish an annual report on this program and its implementation.

## **b. Disallowable and notifiable instruments**

- i. It was noted that Action Plans have been changed from a disallowable instrument to a notifiable instrument in this Bill.
- ii. The issue was raised that action plans for threatened communities/species should retain their current status as disallowable instruments, because these are primary, overarching documents which relate to fundamental objectives/outcomes of the legislation. Because of this they should have the highest level of scrutiny and accountability, especially at the political level.
- iii. Retaining action plans as a disallowable instrument may also assist in terms of focusing the important matter of resourcing implementation.
- iv. The fact that no action plan document has been disallowed is not sufficient reason to downgrade the status of these important Plans. There are only a handful of documents arising from the Bill now on

the list which would have disallowable status, potential Action Plans are very low in number, and this should still be manageable in terms of process.

**Action Plans as a disallowable instrument** - It was noted that Action Plans have been changed from a disallowable instrument to a notifiable instrument in this Bill. It was explained that this is an efficiency measure to minimise the delay in completing Action Plans. If Action Plans are disallowable they are required to sit with the assembly for six sitting days – this can be a period of up to two months – and they are not in effect until the disallowance period is over and they have not been disallowed. Notifiable instruments are tabled with the assembly, but do not require the same timeframe, and are in effect from their date of notification.

## 5. Key threatening processes

- a. Climate change to be considered as a key threatening process. It was suggested that the legislation be “future proofed” to deal with changing issues such as climate change.
- b. It was suggested that there is no clear process within the legislation for community members to nominate key threatening processes to the Scientific Committee and that this process should be made clear within the Act.
- c. It was suggested that the Bill should cross reference invasive species legislation in order to address invasive species as a key threatening process.

During discussion about key threatening processes it was clarified that it is possible for anyone to put a case to the Scientific Committee to consider additional key threatening processes however the process for doing so is unclear.

## 6. Connectivity

- a. It was suggested that developers should be required to address connectivity when planning residential developments.
- b. It was suggested that a requirement could be placed on crown leases to consider connectivity in development.

- c. Provision is made in the Act to ensure that the Planning Authority and other decision makers have regard to ecological connectivity.
- d. The Act should provide for a connectivity map and appropriate connectivity action plans.

## **7. The Parks and Conservation Service**

- a. It was suggested that the regulatory functions of the Parks and Conservation (P&C) Service should be strengthened to allow P&C Officers to issue infringement notices. It was noted that they could do this under the Bill and under current legislation.
- b. It was suggested that the Bill provide for a unified service comprising both environmental monitoring and operational arms by creating a provision within the Bill for an integrated Conservation agency with defined functions.
- c. Partnership arrangements between the P&C Service and volunteer groups such as ParkCare and LandCare are not addressed in the Bill. The recognition of the contribution of such volunteer groups within the legislation would allow the funding of these groups to be considered within budget arrangements. This could take the form of a co-management arrangement within legislation.

Discussion of point (a) – clarified Parks and Conservation Officers have powers to issue infringement notices under the current Nature Conservation Act.

## **8. The Scientific Committee**

- a. The Bill includes a provision that at least two members of the Scientific Committee must not be members of the public service. In order for the Committee to be autonomous of the government it was suggested that the majority of members should come from outside the public service.
- b. The Bill requires members of the Scientific Committee to have expertise in biology and ecology. Is this wording too restrictive in that it may preclude valuable candidates?

9. Amendments to the Bill are based on submissions received on the exposure draft. Many stakeholders did not make detailed submissions on the exposure draft for a number of reasons. Detailed submissions were considered in the discussion paper in 2010 and concerns were expressed over how only a few of the ideas from these earlier submissions made it into the Bill.
10. A recent Productivity Commission draft report recommends alternative dispute resolution mechanisms within legislation. A view was expressed that the Bill should contain a statutory provision for mediated dispute resolution where there is a grievance with a decision made by the Minister. It was suggested that this would serve as a means to obtain genuine consensus with stakeholder groups rather than having a dispute determined by a tribunal.
11. Monitoring and review should be required for lists themselves (items and criteria), reserve management plans, licences (compliance, number of licences, criteria) and management agreements.
12. Reports of the findings of monitoring and review should be made publicly available online.
- 13. Decision making process**
- a. Stakeholders wanted to compare the decision making responsibilities in the Nature Conservation Act 1980 with those in the Nature Conservation Bill. Some expressed that this was not easy and asked that a diagrammatic comparison be prepared.
  - b. It was suggested that there is a lack of clarity in the Bill about who has responsibility for what components, for example, in making a decision on species listing, what are the responsibilities of the Minister, the Scientific Committee and the Conservator in the decision making process?
  - c. Stakeholders were unsure about how much input the Scientific Committee will have in making decisions on the criteria for listing threatened species and communities and on their listing in those categories.

Discussion of point (b) clarified that criteria for species listing is set by the Minister in consultation with the Conservator and the Scientific Committee. Once set the criteria are applied by the Scientific Committee in species listing.

## 14. Timeframes

- a. It was proposed that the Bill attach statutory timeframes to all statutory plans that it mandates.
- b. The length of the review periods for threatened species Action Plans as outlined in the Bill are an issue, it being suggested that the time between reviews is too long, and should be less than ten years.

## 15. Offsets

- a. It was suggested that the Bill should contain governance arrangements for environmental offsets.
- b. An offsets register that will include offset sites and reporting on outcomes could be provided for.
- c. The appropriate role of the Commissioner for Sustainability and the Environment, if any, in the review of offsets was raised.
- d. It was argued that provisions relating to offsets should sit in the Nature Conservation Act because that Act relates to biodiversity management.

Discussion clarified that offsets will sit within the Planning and Development Act and in the same way that the Conservator already has powers referred to them and functions delegated to them through the Planning and Development Act, the same would be the case in relation to offsets.

## Conclusion

This report sets out the issues raised by stakeholders on the Nature Conservation Bill at the Roundtable meeting on 14 April 2014.

The Roundtable provided an opportunity for stakeholders to discuss the Nature Conservation Bill and get a better understanding of its content. Following from the Roundtable the Conservation Council (ACT Region) and the Environmental Defender's Office (Australian Capital Territory), on behalf of their 40+ member groups including those at the Roundtable, are providing a detailed submission to the ACT Government on the Nature Conservation Bill 2014.

Robert Neil  
Commissioner for Sustainability and the Environment

**Proposed Agenda  
Nature Conservation Bill Roundtable**

**14 April 2014**

**1:30pm – 1:45pm Welcome and Introductions (Chair/facilitator)**

1. Welcome by the Chair – Bob Neil the Commissioner for Sustainability and the Environment
2. Opening Comments from Minister Corbell
3. Purpose of the Roundtable

**1:45pm – 2:15pm Topic One – Amendments to Exposure Draft of the Bill**

1. Overview and discussion of changes made to the Bill based on submissions received

**2:15pm - 2:45pm Topic Two – Administration of the Act**

1. Minister
2. The Conservator
3. Parks and Conservation Service
4. Scientific Committee

**2:45pm-3:00pm Tea/coffee break**

**3:00pm – 3:30pm Topic Three – Technical amendments**

1. Disallowable instruments and notifiable instruments
2. Mays and Musts

**3:30pm – 4:15pm Topic Four – Other issues**

1. An opportunity for attendees to raise other issues relating to the Nature Conservation Bill not yet covered.

**4:15pm – 4:30pm – Wrap up of discussion (chair/facilitator)**

1. A wrap up the discussion, including what happens next.