

Canberra Ornithologists Group
PO Box 301
CIVIC SQUARE ACT 2608
ABN 72 534 628 789



Submitted online to yoursayconversations.act.gov.au/act-planning-system-review-and-reform/upload-submission

Planning Bill Consultation Draft 2022

The Canberra Ornithologists Group (COG) wishes to make comments on the Planning Bill Consultation Draft 2022 released by the ACT Government for public comment. We note the Bill is part of the broader Planning System Reform and Review Project, and that consideration of a revised Territory Plan will follow later in the process.

COG is a volunteer-based community group with around 400 members, with a mission that includes the conservation of native birds and their habitats. COG undertakes long-term surveys and monitoring of birds in ACT woodlands, and analyses data for trends. COG plays an active role in advocating for the protection of native vegetation as bird habitat, and for the mitigation of threats to and impacts on native birds.

COG has made a significant submission to consultation on the Loss of Mature Native Trees Action Plan, and much of the argument and content of that submission on the ecological significance of mature native trees, especially for birds, also applies to this submission and elements of the ACT planning system. Here we summarise that submission in the context of the Planning Bill Consultation Draft 2022, and offer additional comments specific to ACT planning legislation and regulations.

1. The ecological significance of mature native trees

Mature native trees are a key structural element of ecosystem biodiversity, but to date their protection has not been well addressed in ACT planning systems. As a consequence, too many mature native trees are being lost. Mature trees are routinely removed for greenfield development, and those that are retained are often subsequently declared unsafe. This direct loss combines with loss due to climate change, drought, fire and old age, and modelling suggests that these keystone structures could be lost within 120 years if current, unsustainable practices continue.

Moreover, mature native trees cannot be replaced directly by planting large numbers of young trees. It can take 100 years before the unique features of mature native trees are produced, and their contribution continues to increase with age. While efforts are being made to plant thousands of trees across the ACT, there is an unavoidable time lag while the trees grow to maturity. The ecological value of mature native trees cannot meaningfully be offset.

The value of mature native trees, particularly those with hollows, is significant generally for biodiversity, but especially for birds. Many bird species are reliant on hollow-bearing trees for nesting and refuge. Further, in the ACT, a number of bird species that use mature native trees for foraging or nesting are listed as threatened under the *Commonwealth Environment Protection & Biodiversity Conservation Act 1999* and/or the *ACT Nature Conservation Act 2014*, including the Swift Parrot, Superb Parrot, Brown Treecreeper, Gang-gang Cockatoo and Glossy Black-Cockatoo. Mature trees are also embedded in their ecological communities, many of which are listed as threatened in their own right, such as Box-Gum Grassy Woodland.

2. Intersection of instruments

A number of ACT instruments relate to the protection of trees and forests, principally the Urban Forest Strategy, the Loss of Mature Native Trees Draft Action Plan, the *Tree Protection Act 2005* (which is to be replaced by the Urban Forest Bill) and the Planning System Review and Reform Project. Effective implementation of these instruments will require integration with each other, the new planning legislation and the new Territory Plan. However it remains unclear how this intersection will occur.

3. Measures to protect the biodiversity value of mature trees in planning instruments

The key recommendation of COG submission to the Loss of Mature Native Trees Draft Action Plan was that Action 15 of that plan

ACTION 15

Where broadacre sites are to be cleared for conversion to urban development, the actions cited above for the urban environment should be considered proactively.

Planning should identify key locations with a view to ensuring that the context (location, connectedness, surrounding vegetation) is maintained to maximise the retention of MNT and their biodiversity values.

New estate development plans explicitly address MNT retention and recruitment and demonstrate effective protection consistent with, for example, Action 12 above.

→ Policy approach should follow the principles of the Offset Policy:

- > Avoid tree removal.
- > Mitigate (e.g. change decision to reduce tree removal, use landscaping or barriers to limit to access below tree canopy to limit pedestrian access and thus reduce safety concerns).
- > Offset. Plant (and protect) sufficient seedlings to replace the tree(s) in the longer term and maintain and enhance broader landscape connectivity.

should be reviewed and re-cast to significantly strengthen its ability to protect mature native trees in greenfield and infrastructure sites planned for development, and prevent their loss.

However, this is essentially a planning issue that needs to be dealt with long before land release, Environmental Impact Statements or Estate Development Plans. And, while Action 15 acknowledges that this is a planning issue, there are no clear regulatory constraints or guidelines or specific requirements flagged in the Draft Action Plan, and the Action Plan by itself has no regulatory weight.

There is therefore a need for a specific legislative or regulatory requirement regarding the protection of mature native trees. The proposed Planning Act would be the logical place to articulate this requirement, with complementary requirements then being placed in the proposed Urban Forest Bill and/or the Nature Conservation Act.

4. Urban Forest Bill

COG also made a submission on the Draft Urban Forest Bill. In summary, COG noted that the Urban Forest Strategy has a focus on new plantings, but this is not a substitute for retaining mature native trees. Likewise, the *Tree Protection Act 2005* provides a reasonable basis for managing existing mature trees in urban settings, however it has an overarching focus on amenity and risk in the urban setting rather than on the biodiversity values of these trees.

Again, therefore, there is a need for a strong instrument designed to result in the retention of mature native trees both within and outside the urban setting, for biodiversity benefits. Replanting young trees does not offset the values of mature native trees, nor does payment of a levy. As above, we suggest the Planning Act could be the basis for such a legislative instrument structured so as to ensure protection of mature native trees.

5. Recommendations

COG therefore has two recommendations in regard to the proposed new planning Instruments.

Recommendation 1

As part of relevant legislation to effectively implement some actions of the Loss of Mature Native Trees Action Plan, the new Planning Bill should include **provisions and measures to protect mature native trees at development sites.**

Recommendation 2

As part of relevant legislation to effectively implement some actions of the Loss of Mature Native Trees Action Plan, the new Planning Bill should include **mandatory minimum targets in regard to retention of mature native trees at development sites.**

These measures should be designed to ensure that no mature native trees are approved for removal in greenfield sites without stringent requirements being met, and would include:

- Early scoping and assessment of mature native trees before urban planning.
- Enhanced criteria for determining significance of trees.
- Mandatory requirement for tree retention plans for all new estates.
- Minimum targets for mature native tree retention at greenfield sites.

Full details of the proposed content of these measures are given in the COG submission to the Loss of Mature Native Trees Draft Action Plan.

6. Conclusion

Whether the new ACT planning requirements will make a meaningful difference to the retention of mature trees in the ACT will depend on a number of factors, but most crucially the commitment to tree retention in relation to new urban greenfield development by planning authorities. This will in turn require integration of planning instruments, and appropriate levels of resourcing to fully implement actions.

COG is willing to discuss these matters further in a collaborative approach, to find the right processes and mechanisms to achieve the outcomes needed to protect as many mature native trees in the landscape as possible, to build up tree recruitment in the right locations, and effectively implement best-practice ongoing management. All these are crucial to assist in restoring biodiversity in the ACT landscape, including threatened and declining bird species, especially species such as the Brown Treecreeper which have disappeared from urban and peri-urban reserves.

COG can be contacted on cogoffice@canberrabirds.org.au.

Yours sincerely



Neil Hermes
President
Canberra Ornithologists Group
15 June 2022