



Friends of Grasslands

supporting native grassy ecosystems

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Environment, Planning and Sustainable Development Directorate

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Consultation Draft Planning Bill 2022

Friends of Grasslands (FOG) is a community group dedicated to the conservation of natural temperate grassy ecosystems in south-eastern Australia. FOG advocates, educates and advises on matters to do with the conservation of native grassy ecosystems, and carries out surveys and other on-ground work. FOG is based in Canberra and its members include professional scientists, landowners, land managers and interested members of the public.

FOG has limited comments on the draft Planning Bill to matters related to the conservation (protection and management) of biodiversity within the planning framework.

Summary

FOG believes that the review of the planning bill is a key opportunity to fully embrace Canberra's unique biodiverse landscape setting, to integrate the natural, built and cultural elements of the city. FOG welcomes the opportunity for the territory to achieve sustainable and innovative planning outcomes that integrate biodiversity, improved living and health outcomes, and more equitable societal outcomes. This links directly to the underlying planning principle of maintaining the Bush Capital.

FOG's key recommendation, is that the Planning Bill 2022 reflects the policy that conservation of existing biodiversity in the ACT is of critical importance for public health and welfare, resilience to climate change and protection of the multiplicity of species and habitat interactions and processes. The outcome of this should be that future design demonstrates that the conservation of biodiversity will be genuinely and consistently incorporated into planning outcomes.

We believe that, in order to meet this recommendation, any development, for new structures, future development areas or an area that is the subject of an estate development plan, should proceed **only after** declared biodiversity areas including off-reserve remnants have been identified and protected and that management plans have been developed and are being implemented to maintain their conservation values.

We support the development of district strategies as the critical means to identify, protect and manage biodiversity areas across the landscape and across tenure, and thus to ensure their protection.

Success in achievement of integrated ecological, environmental and social principles in planning can only occur if effective compliance is achieved, through implementation of compliance codes and consistent action against breaches.

Further, we recommend greater consideration of other environmental issues in the Planning Bill, including mitigation against climate change, water availability, and improved design standards to reduce wildfire risk and energy use and increase liveability of housing.

We elaborate below on those sections of the draft bill and associated explanatory documents where we believe the above principles should be addressed more fully.

Specific issues

Object and key elements, Chapter 2.1

We support the object of the Act that seeks to support delivery of other related government policies (in the context of our submission, environmental laws, strategies and policies), that take into account the integration of natural, built, cultural and heritage elements of the landscape, and the protection of ecological processes and natural systems. Of importance in the draft bill is the statement that appropriate valuing and pricing of environmental resources is recognised.

We welcome the inclusion of objects related to sustainability (S7), but we believe an additional object needs to be included as follows: (S7(1): promotes integrated planning within the Territory's natural landscape setting. This will then strengthen the relationship between the intentions and matters (S7(2), S7(3)).

Definition of a protected matter, Chapter 9

We note that the term 'protected' in the bill has extremely restricted application. It is defined specifically in Chapter 9, S214 relating to those matters protected by the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) or by the Minister. However, it also used, without definition, to refer to protection of biodiversity generally (Chapter 2 and see objects and principles below). This latter inclusion requires a definition to understand how biodiversity is to be protected under the bill.

We are concerned that there is no reference to matters (threatened species and communities and threatening processes) declared under the *Nature Conservation Act 2014* (NC Act) where they differ from the matters under the EPBC Act, except in relation to a public land management plan (S388). Clarification of how matters declared only under the NC Act are relevant to the planning bill need to be clarified.

The *Tree Protection Act 2005* is to be shortly superseded and so references to this Act need to be updated/removed. We urge consistency of issues identified in FOG's submission regarding the Urban Forest Bill, in which we recommend a much higher recognition of remnant mature trees and their importance in the landscape. For example, we have included a recommendation that all remnant trees over 100 cm diameter be registered as 'exceptional', and automatically deemed protected.

Estate development plan, Part 4.2

We note that, while the draft bill identifies that an estate development plan **may** include a tree management plan (3d), it does not identify the need to develop a plan for other remnant natural habitat such as grasslands, rocky outcrops or wetlands. All biodiverse areas need to be mapped and conservation needs to be included in an estate management plans.

Cross tenure protection of biodiverse areas

Territory Plan Chapter 5, and Schedule 4

Currently conservation as the highest priority is applied only to Public Land that is a wilderness area, national park or nature reserve. Within other Public Land and on leased land there are also significant biodiverse areas, that include remnants with single mature native trees, corridors of native trees and remnants of native vegetation containing threatened species and/or communities. FOG urges that the revised Territory Plan ensures that biodiverse remnants that across public land under most listed categories and on leased as well as unleased land are protected and managed according to their values.

Public Land Chapter 11

We urge that an additional category of reserved areas of public land be included in S385 that provides for protection and ecological management of smaller parcels of land that contain biodiversity attributes, including. These areas occur across all public land, including urban open space, cemetery and heritage area. Management objectives for these areas (Part 4.2) should reflect primarily the need to conserve the natural environment and provide for the use of the area for recreation, education and research. These areas require development of a public land management plan.

Leased land, chapter 10

Incorporated into the Planning Bill should be a provision to protect areas of biodiversity on rural and urban leased land.

Environmental impact assessment, Chapter 6 Part 6.3

It is unclear what the simplification of the EIS process will mean in terms of outcomes. As per the objects, the outcomes should be focussed on, amongst other things, sustainability and conservation of biodiversity. As per earlier statements, the EIS is fundamentally EPBC focussed, so the implications of protection of other matters of biodiversity that are not identified under the EPBC Act are unknown.

Offsets

While the provisions of the 2007 bill are generally achieving existing outcomes of clarity and consistency, FOG believes increased effort should be applied to reducing **any** loss of biodiversity, through maximising avoidance and maximising outcomes when offsetting. We refer to the recommendations from the Independent Review of the EPBC Act, October 2020

(<https://epbcactreview.environment.gov.au/resources/final-report>):

1. Biodiversity offsets can only be considered after all possible measures to avoid and mitigate the impacts of an action have demonstrably been taken. Avoidance and mitigation measures must include, but not be limited to, consideration of:

- the appropriateness of project scoping, footprint relocation and/or reduction
- changed timing of project activity
- design-based avoidance and minimisation

3. Offset plans must

- include time-bound milestones that clearly identify the required absolute increases of approved indicators – for rehabilitation and restoration offsets milestones, this must be in accordance with the International Principles and Standards for the Practice of Ecological Restoration (Gann et al. 2019 (<https://onlinelibrary.wiley.com/doi/10.1111/rec.13035>))
- outline corrective courses of action that will be taken where increases in the indicators or milestones have not been achieved

4. Offset sites must:

- be identified and legally secured prior to commencement of the approved impact – delays between impact and full achievement of required offsets gains must be minimised and appropriate discount factors applied

In addition, consideration should be given to prioritising landscape connection when establishing offsets. Offsets must be managed and given appropriate funding to prevent degradation as they progress into the reserve system.

Development assessment and approvals, Chapter 7

Reference should be provided to prevent cumulative impacts from multiple projects. The district strategies should be used to reduce/stop what can amount to significant environmental impacts over multiple land units.

Effect of S144 on development approval

No retrospective approvals should be given for areas defined as protected from development (identified biodiverse areas).

Declaration for development encroaching on adjoining territory land, S155

This section should include an additional criterion under (c): '*not impact on the biodiversity of the surrounding land*'. This includes the importance of adjoining land as corridors and connecting diverse areas, to consider the landscape values outside the actual proposed footprint.

Entity referral, S161

Referral to the Conservator of Flora and Fauna must be for matters relating to all protected matters (i.e., biodiversity conservation matters) not just those matters under the Tree Protection Act 2005.

Bringing back the bush

While an aside to the direct objects of the Bill, FOG believes that there are significant gains to be made by implementing natural analogue planting designs, similar to, but more complex than the designed gardens along Northbourne Ave tramline. Such plantings are attractive, encourage appreciation of the natural vegetation and enhance biodiversity across the landscape.

Thank you for the opportunity to comment on the draft Planning Bill 2022, and we look forward to having input into the development of district strategies as well as revisions to the Territory Plan.

Yours sincerely



Professor Jamie Pittock
President

15/6/2022