

## **Re. CSIRO Divestment of Rural Blocks (EPBC 2024/09953) – Referral application**

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.

The Conservation Council ACT Region (Council) is the peak environmental advocacy organisation and hub for community groups in Canberra. Our mission is to protect nature and create a safe climate future in the ACT and region.

Thank you for the opportunity to raise matters of concern regarding the divestment of the CSIRO Ginninderra Field Station. We begin with matters ecological before turning to matters regulatory.

### **The action should be a controlled action**

Coupled with the regulatory uncertainty set out below, there are multiple reasons why the proposed action should be determined to be a controlled action:

- The effect of the divestment: Future impact assessments will be for a narrower range of matters of national environmental significance (MNES), not the environment generally.
- The mechanism proposed for controlling indirect impacts is likely to be ineffective.

### **Conservation areas and their connection in the landscape**

We support the up-front identification of conservation areas. We seek certainty they will be quarantined from development; this will avoid future argument about land uses. There is no legal certainty in what has been provided in the referral (particularly if it is not considered a controlled action) that these conservation areas will be protected.

In addition, we are concerned that the conservation areas identified within the CSIRO Ginninderra site are being treated as fragmented blocks. The effect of the divestment will mean that the significant impacts on the 'environment' as a whole, not just these fragmented areas, will not be assessed. This means, in a very practical sense, that any future environmental impacts will be limited in their assessment. Values within the Ginninderra Field Station are enhanced by connectivity within the surrounding landscape – within the entire Field Station, in addition to surrounding areas such as Hall Cemetery, Hall Horse Paddocks, Hall TSR to the north and west, Kuringa Woodlands, Mt Rogers, nature reserves, established gardens within surrounding urban blocks and farmland to the west. It would be unlikely that many of the diverse bird populations in particular would be so diverse if connectivity to the surrounding areas were reduced. To fully recognise, protect and maintain the conservation values within the CSIRO site, maintenance of connectivity within the site and beyond is critical.

Additionally, 30 m or 50 m buffers are inadequate to ensure the conservation areas are not impacted by invasive weeds, or, in the case of a fire emerging from the northwest, to have an adequate zone to prevent the fire from carrying on to housing. At Kama Nature Reserve, where there is a similar high fire danger rating, it was agreed to provide buffers of 200 m to the east of woodland and 70 m to the east of native grassland to ensure areas within the reserve were not impacted by fire controls such as bulldozing breaks or enforcing thinning of native vegetation.

We support the establishment of a stakeholder group to facilitate the divestment process. This group should include the NGOs with ecological awareness, including Ginninderra Catchment Group and Landcare groups as well as adjacent resident groups (Hall and Belconnen) and local First Nations People.

### **Uncertainty in the divestment process**

On matters regulatory, we begin with our understanding of the divestment process which will reveal our concerns about the absence of certainty. We adopt acronyms used in the referral noting none of them correspond to terms defined in the EPBC Act or ACT legislation.

- An EMP will be attached to CSIRO's Sales Contract. The EMP will require specific management by the Purchaser, *initially*, of Conservation Areas proposed for the benefit of protected matters. What is the legislative basis of this EMP, how will it be enforced, and why can't a proper environmental impact assessment be attached instead?
- The Purchaser will be required to continue that specific management until two documents have been prepared, a CMP for the Conservation Areas and a CEMP for actions to be taken in the Interface Areas and the area to be developed.
- By *somehow* controlling what must be included in the CMP and CEMP, the EMP will *somehow* require the Purchaser to adhere over the long-term to *unspecified* outcomes-based principles governing what can and cannot occur within the Conservation and Interface areas.
- CSIRO states it is discussing the long-term management of the Conservation Areas with the ACT Government but provides *no legally binding assurance* any part of these areas will be protected. Whether any portion of them will be designated as a nature reserve (or protected for conservation by any other method) under ACT legislation is not specified.

The adoption of terms that are largely outside either legislative regime that applies (or will potentially apply) gives no confidence that these plans will be produced, or enforced. They are a deliberate attempt to avoid an environmental impact assessment, as we argue is required for this parcel of land in its entirety.

No justification is provided for the unacceptably high degree of regulatory uncertainty. It is not even clear whether the ACT Government will be the Purchaser. If the ACT Government is not the Purchaser, what assurance does the ACT community have that the Purchaser will be a suitable person capable of delivering on their commitments in the proposed EMP and CMP (whatever these documents are)? The first paragraph in the referral states "that CSIRO is the PPA, PDP and RP for the Proposed Action." Seriously? What is a PPA, a PDP and an RP?

### **Effect of the divestment**

The action is likely to have a significant direct impact on the 'environment', certainly on the entirety of the CSIRO Ginninderra site, as follows. From the moment of the divestment, the option will no longer exist for the Federal Environment Minister to decide based on ss 26(1) that any action proposed on that land is likely to have a significant impact on the 'environment' as defined in s 528 of the EPBC Act.

The definition of 'environment' is as follows:

**environment** includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

After the divestment under the EPBC Act, there is only a requirement for a proponent to identify the matters of national environmental significance (MNES) on the block and to assess whether an action has, will have, or is likely to have a significant impact on these discrete and individual species and

ecological communities, rather than the 'environment' as a whole (as per section 26). Issues such as fragmentation, as raised before, will be accentuated if this land is determined not to be a controlled action, and divestment is approved without conditions put on this controlled action.

### **Controlling indirect impacts**

CSIRO acknowledge that, if the action proceeds, urban development is foreseeable and will follow. Changes to the National Capital Plan indicate that this is so. The proposed contract-based means for avoiding and mitigating the significant indirect impacts of urban development on protected matters is not fully disclosed (discussed above) and, even if it were, we doubt it would be effective. If this land is divested without a decision that this is a controlled matter, and conditions on such an approval that mandate protection of these areas through conservation agreement, there are no guarantees that this land will be protected.

That is because there is little evidence any of the commitments being proposed for inclusion in the Sales Contract will be legally binding on the Purchaser once the divestment is complete. There is also no certainty that these commitments will be in an agreement – once this land is divested, if a decision is made that this is not a controlled action, then there will be no legally enforceable controls to protect this land. CSIRO will find it difficult to enforce the commitments; for third parties, they will have little to no chance.

It is therefore likely the divestment will have, or is likely to have, a significant impact on protected matters such as White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (BGW).

### **Conclusion**

Given the:

- future impact assessments will be for a narrower range of MNES
- uncertainty about whether CSIRO (or the Commonwealth) will (or could) enforce the unspecified outcomes-based principles (whatever they are) on the Purchaser
- absence of a final EMP – section 4.1.10 is clear an EMP has been prepared
- absence of a CMP (whatever that is)
- DCCEEW will have no capacity to enforce the terms of the Sale Contract on the third-party Purchaser
- likely ineffectiveness of the contract-based measure proposed for avoiding and mitigating indirect impacts
- known high threat posed by urban development to protected matters such as BGW,

we consider the proposed action should be found to be a controlled action.

The risk of significant indirect impacts needs to be properly assessed based on an analysis of a better, wider range of more certain means for avoiding and mitigating significant indirect impacts. A controlled action decision should then result later in conditions mandating the protection of these future conservation areas, for better connectivity between them, informed by an environmental assessment that has looked at the site, the 'environment', as a whole.

### **Recommendations**

#### **Regulatory**

1. That the Minister find the proposed action is a controlled action.
2. That assessment documents discuss the impacts of the 'environment' on this site, with greater definition and precision how the significant indirect impacts of foreseeable, expected urban development will be avoided and mitigated.

3. That assessment documents explain how CSIRO proposes to enforce the terms of the Sale Contract (or present an alternative preferably better more enforceable means of gaining some minimum degree of assurance indirect impacts will be avoided).
4. If recommendation 1 is not accepted, that the Minister:
  - a. stop the referral clock and obtain a CMP from CSIRO that the Purchaser is genuinely legally obliged to implement
  - b. execute an EPBC Act Conservation Agreement with the Purchaser, that will take legal effect from the moment of the divestment, to protect the Conservation Areas and Interface Areas.

**Ecological considerations requiring elaboration in the approval granted by the Federal Environment Minister before the divestment occurs**

5. Provide adequate buffers within the Interface Areas to the Conservation Areas (70 m to grassland, 200 m to woodland). These may be used for compatible land uses, such as recreation, or facilitate joining of existing conservation areas , whilst allowing for fire control activities in the case of wildfire from the north-west.
6. Ensure connectivity between conservation areas internally and externally are retained and included in the Conservation Areas.
7. While it is identified that no areas of value are intended to be developed, we urge that key areas are merged, including the woodland above Brophy St, linked to Halls Creek to the wooded hill to the northwest.
8. Conservation values in the area along Kuringa Drive should be retained in all considerations of future road alignment, particularly towards the west (Kingsford Smith Drive to Tillyard Drive).
9. Where possible, lands around key small remnants should be ecologically enhanced to improve resilience and connectivity.
10. Ensure land uses in closer proximity to conservation areas are compatible e.g., in isolated pockets of non-conservation area lands, consider uses such as urban open space, or other uses that result in additional tree cover.
11. Apply ecological management to the identified conservation areas immediately, especially weed control, pest control, herbage mass management, to ensure biodiversity values are not reduced while process of divestment occurs
12. The CSIRO site (particularly the western portion) has a High fire danger rating; consideration needs to be given to ensure requisite inner and outer asset zones do not impinge ecologically on the conservation areas. It is our opinion that the recommended buffer widths of 30 m or 50 m are inadequate, and are likely to result in reduction in the ecological values of the conservation areas.

Yours sincerely

Professor Jamie Pittock  
President, Friends of Grasslands  
21 November 2024

Dr Simon Copland  
Chief Executive, Conservation Council ACT Region  
21 November 2024