Submission:
Review of the Tree Protection Act 2005

DECEMBER 2019

The **Conservation Council ACT Region** is the peak non-government environment organisation for the Canberra region. We have been the community's voice for the environment in the Canberra region since 1981. Our mission is to achieve an ecologically sustainable and zero net carbon society through advocacy, education, research and engagement with community, the private sector and with government.

We represent more than 45 member groups who in turn represent over 20,000 supporters. We harness the collective expertise and experience of our member groups and networks. We work collaboratively with Government, business and the community to achieve the highest quality environment for Canberra and its region.

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Introduction

The Conservation Council ACT Region welcomes the opportunity to make a submission to the review of the Tree Protection Act 2005.

In May 2019, the ACT Legislative Assembly declared a state of climate emergency noting that "globally, nationally and locally, human induced climate change is contributing to record breaking temperatures, extreme weather events, and a range of negative social, environmental and economic outcomes." The motion also acknowledged the need for urgent action across all levels of government. The Conservation Council advocates that this is an imperative for all governments nationally and globally, and that the ACT Government should ensure the climate change objectives are established as a priority across all policy setting of Government.

Urban trees are increasingly important in the face of climate change impacts and as a tool to build resilience across our city. In addition to the recently released Climate Change Strategy, the ACT Government released a Living Infrastructure Plan which set a tree canopy for the city of 30% by 2045, to improve liveability and reduce the urban heat effect. A 30% permeable surfaces target was also set. Canberra's estimated current urban tree cover is only 21%, and given our urban forest is ageing, we face significant challenges maintaining our urban trees, let alone increasing our tree canopy cover to 30%. The Conservation Council welcomes the proposed planting 17,000 trees over the next 4 years as a useful start to turning around our declining urban forest. We note the proposed development of an Urban Forest Strategy, that will apply to all trees inside the urban area and in nature reserves. We believe that the urban forest is a vital asset and resource with regards to managing urban heat, protecting biodiversity, and ensuring the health and wellbeing of the community

In addition, May 2019 saw the United Nations IPBES release the Global Assessment Report on Biodiversity and Ecosystem Services which warned against mass species extinction across the globe, with the biomass of wild mammals having fallen by 82%, a 50% loss of the area of natural ecosystems and a million species are at risk of extinction within decades. Australia, and the ACT are not immune to species decline - the ACT added over 20 new species to the Threatened Native Species List earlier this year.

Urban trees can support improved biodiversity outcomes for our city, by providing habitat for native species, and supporting connectivity between habitats across the

urban landscape. The ACT has 37 nature reserves that make up the Canberra Nature Park, abutted by old and new suburbs. Supporting habitat connection between nature reserves with green corridors running through our urban landscapes is an important function for our urban forest.

Ensuring liveability for the people who live in the city, especially as we experience more hot days and drier conditions is crucial to wellbeing, and will facilitate people making choices that will improve their health and wellbeing, such as walking or cycling for short journeys, and being outdoors more often. Cities that are hot and dry drive people indoors, and into their cars, as they seek to escape the heat.

The Conservation Council supports that the Tree Protection Act should be updated to increase protections for trees, maintain and build the urban forest across our city, support biodiversity outcomes and increase the level canopy tree cover available for public amenity, and have outlined some specific recommendations for consideration when the Act is updated.

Objects of the Tree Protection Act

The Objects of the Tree Protection Act should be reviewed and broadened to reflect the broader agenda of the building out urban forest across the city to ameliorate heat, support biodiversity and improve wellbeing and livability for residents.

The current objects of the ACT could be widened to include a specific objective to meet the 30% tree canopy target in a proactive way. Consideration could be given to legislating the 30% tree canopy target, however, interim targets would need to be set given the current target is 25 years away. Legislating the tree canopy target could be a useful mechanism to ensure that investment in the urban forest is maintained and that the Government reports at regular intervals as to their progress meeting the target.

The urban tree canopy needs to be developed with some consistency across the city. In the ACT, some suburbs are lucky to have a high level of tree cover, while other suburbs, especially in new development areas, have little to no tree cover. An inconsistent tree canopy across the city does not equitably deliver the benefits of the urban forest. While the 30% target is proposed to be set as an average measure across the city, measurements of how individual suburbs are progressing against the target will be important information for the public to ensure equity of investment and outcomes.

The Conservation Council supports that the scope of the Tree Protection Act should be extended to include public land. Currently the Tree Protection Act only applies to private land, which is not adequate if the Act is to fulfil a role in building the urban forest. In addition, processes could be simplified by being included in one Act, rather than having different processes for different circumstances. In addition, by being applicable to street trees and trees on public land, the Tree Protection Act can take into account objectives around supporting connectivity across the city.

With urban expansion and densification in our city, it is important that we ensure protection for mature trees, many of which are over 200 years old, noting that the loss of these trees cannot easily be offset.

Recommendations:

1. Consider legislative urban tree canopy targets.
2. Ensure that tree canopy targets are measured and reported across all suburbs in the urban landscape.
3. Include Objects in the Act that support landscape connectivity to improve biodiversity outcomes.

Biodiversity

Urban trees can play an important role in improving biodiversity outcomes across the city. The Canberra Nature Park, which has a core objective of protecting biodiversity and ecosystems, interfaces heavily with Canberra suburbs and 50% of Canberrans live within 500m of a nature reserve.

A key objective of the recently released Canberra Nature Park Draft Reserve Plan of Management is to protect biodiversity in the face of a changing climate. One strategy to do this is to restore habitats and facilitate habitat connectivity between the reserves to support the movement of native species across the landscape. The urban forest can play an important role in building connectivity; protecting mature native trees and planting additional native trees across public lands will allow native birds in particular to move between reserves and thereby supporting the resilience of at-risk populations.

For this reason, consideration needs to be given as to where native versus non-native trees are planted on public land, and opportunities for planting native trees should be maximised. Consideration should also be given to NOT planting trees in or near sensitive ecosystems that don’t have trees as part of their natural landscape, such as our natural temperate grasslands.

The Tree Protection Act must also integrate and acknowledge the recent listing of the removal of hollow bearing trees as a Key Threatening Process under the Nature Conservation Act.

Recommendations:

4. Consideration should be given to the role of native and non-native trees across the urban forest.
5. Consideration should be given to the impact on protected habitats (eg. Natural Temperate Grasslands) when trees and shrubs are selected for planting.
6. The Tree Protection Act amendments should consider the newly listed Key Threatening Process of removal of hollow trees.

Changes to Tree Protection Criteria

The Conservation Council supports at least maintaining, if not strengthening, the existing criteria for the Conservator to give approval to remove or undertake works to a tree. Even under the current criteria, 75% to remove trees have been approved, which raises the question as to why the criteria might need to be made more "flexible". It cannot be said that the criteria are too strict when the significant majority of requests for Tree Damaging Activity are approved across the board. In addition, there are complexities around defining a "flexible" criteria in the legislation without putting at risk many more trees.

The example given on page 10 of the discussion paper is a good case in point for retaining the criteria as they are with regards to "substantial damage to a substantial structure", as the damage shown would not warrant the removal of a protected tree. Lowering the criteria for tree protection to the level that such an action would be allowed in this case study would effectively render the tree protection measure ineffectual and would not support of the objectives of an Urban Tree Strategy,

If the objectives of the Tree Protection Act are to protect large trees, ensure that fewer trees are required to be replaced or planted, and thereby progress the urban tree canopy target, then the criteria for ensuring trees of value need to remain as they are or potentially be strengthened. While the discussion paper indicated that the number of applications received to undertake damaging activities to protected trees were only a small proportion of the total number of trees on private land, had all of the nearly 3000 applications have been approved for removal in that year, then

it would render the planting of 17,000 trees on public land over 4 years as almost "tree-neutral" in terms of the overall outcome for the urban forest.

Changes to the Act could include extending the definition of regulated trees under section 10 of the Act to include smaller trees, in particular slower growing native trees that are established and will contribute to the tree cover more quickly than a replacement. There is currently no delineation between native and non-native trees in the definitions of regulated trees, which fails to acknowledge the different biodiversity value and growing times of some native trees as compared to non-native species.

Recommendations:

7. The criteria to damage protected trees under the Act should not be made more flexible.
8. That consideration is given to increasing protection for smaller, potentially slow growing native trees that might have considerable ecosystem benefits.

A streamlined approach

The Conservation Council supports improved processes to increase transparency and timeliness of decisions for the public and developers. It seems odd that while one Act prevents the removal of a tree or trees, that another Act would then allow the removal as part of the Development Application process. It would be clearer and easier for decisions about the management of trees with regards to a development to be considered by the Tree Protection Act prior to the development process commencing and to remove other avenues for approval from the DA process.

However, when the action being proposed does not include the actual removal of the tree, then consideration during the DA process may provide better context for any decision or advice given. Currently, under section 119 of the Planning and Development Act, if a development impacts on a registered tree, the proposal must not go ahead without the advice of the Conservator. Having the decision-making point at this time in the planning process enables the Conservator to make a decision with regards to the management of the tree in the context of the development proposal. This is important when the advice given would need to the specific development to ensure it is sympathetic to the protection of the tree. However, should the proposal be to remove the tree, then this decision can be taken under the Tree Protection Act, and should not be able to be overturned or changed throughout the DA process. This would give clarity / certainty to the developer prior to the development planning starting, at which point the development could be structured in a way that accommodates and / protects the tree. Indeed, were changes made to the Development Act to ensure that the percentage of land allowed to be developed

was less, then developers would find it easier to adjust their proposals to minimise the impact on established trees.

Currently section 162 of the Planning and Development Act allows the Planning authority to amend a tree management plan on a regulated tree. It is recommended that this should not be done without authority of the Conservator.

Part of an integrated approvals processes for decisions about trees should also include consideration of a tree's heritage values and whether their removal constitutes a key threatening process under the Nature Conservation Act.

The Conservation Council supports Action 6 in the Living Infrastructure Plan that developers will be required to have a landscape plan that addresses surface treatment and tree cover.

Recommendations:

9. That decisions about actions in regard to protected trees are made by the Conservator under the Tree Protection Act, and that decisions about tree removals are binding and not revisited during the planning process.
10. That the Planning and Development Act is utilised only to finalise advice and management conditions with regards to protected trees in the context of the development proposal.
11. That tree management plans should not be amended by the planning authority, only on the recommendation of the Conservator.
12. That Key Threatening Processes and heritage considerations are integrated into the Tree Protection Act decision-making processes.
13. That amendments to the Planning and Development that reduce the percentage of the block size on which developers can build are considered to improve incentives for retaining trees.

Offset scheme

The Conservation Council supports the establishment of an offset scheme, but only where is drives the protection of urban forest through retaining trees where possible and investing in a fund to support further tree planting where that is not possible. An offset scheme could be useful as a way to ensure that the many smaller trees which removed on leased land are replaced, and that developers contribute to a fund for tree planting, as a viable way to help finance the development of our urban forest. However, the current definition of a protected tree should be at least

maintained, and the criteria to undertake damage to protected trees should not be weakened or made “more flexible”.

The loss of mature trees cannot be easily offset by newly-planted small trees that do not have the same benefits as established trees in terms of supporting biodiversity, canopy cover, carbon storage and climate regulation. However, currently trees are routinely removed to facilitate urban development. An offset scheme could provide both an incentive to developers to a) not remove smaller trees that are on the land or b) pay a fee that is then used to replant tree/s either on the same site or into a fund for the ACT Government to spend on replacing the urban forest.

While these trees may not meet the current criteria for protection, they would generally have some value to the environment, and if they were to be protected, then the wider community. If we are to value all trees, even those that are smaller and have less canopy cover but may have future potential, then it follows that even the removal of smaller trees should be compensated for by an offset scheme. The Conservation Council supports that developers should aim to replace trees on the same block as a primary objective, potentially delivered via the proposed new Landscape Plans. However, should this not be possible we would support that offset fees are paid into a fund administered by the ACT Government.

The fees need to be graduated such that people applying to remove trees have an incentive to consider keeping it where the value of the tree is higher. Establishing a value for trees under an offset plan should include a number of aspects (as outlined in the example from the City of Melbourne). These could include:

- the ecological value of the tree
- the size of the tree (some trees should not trigger the offset scheme)
- the time is takes to regrow a similar tree (regeneration) or achieve a replacement level of canopy cover
- urban amenity
- removal costs (where applicable)

Removal of protected trees, should this need to occur, should trigger a higher offset payment to compensate.

Recommendations:

14. That any tree offset scheme promotes the retention of trees where possible.
15. That the offset scheme applies to protected trees under the Tree Protection Act as well as trees that currently have no protected status.
16. That tree replacement is prioritised to occur on the same block, or else a fee is paid to be administered by the ACT Government to support the further development of the urban forest in another location.

17. That the offset fees are graduated in regard to the value of trees being removed.

Tree Fund

The Conservation Council supports the development of a tree fund to receive offset payments in lieu of tree removals that cannot be avoided. However, it is important to recognise that funds raised are unlikely to support all the objectives for urban tree renewal and those outlined in the Living Infrastructure Plan, and ongoing investment will be required from the ACT Government.

Funding for the urban forest will need to address replacement trees (given that many of our street trees are nearing the end of their lives) and new trees. Adequate funding will be required to ensure proper maintenance of newly planted trees, particularly if it is occurring under drought conditions as we are currently experiencing.

Recommendations:

18. That offsets payments are paid into a hypothecated fund that supports the urban forest renewal.
19. That there is an acknowledgment that this funding alone will not support all the objectives of the Living Infrastructure Plan, and that the Government continues to invest funding to meet the Tree Canopy target.

Tree Curator

The Conservation Council supports the role of a tree curator if that role has at least all of the same statutory powers that currently sit with the Conservator under the Tree Protection Act. In addition, the tree curator role could provide an advisory service and promotion role, giving expert advice to Government and the community about the value of our urban forest, species selection and other issues, and could review and report on the implementation of an offset scheme.

It is important that the Tree Curator has a wide remit to consider all issues that are at play with regards to the urban forest, including biodiversity and conservation, and climate resilience.

Given that TCCS is the service delivery body in terms of "managing" the urban forest, and the role of a tree curator should sit somewhat independent of this function, it

could be well-placed in EPSDD, at arms length from the Planning and Development processes, and be free of the conflicts of other roles and obligations within the Directorate. This would strengthen advice around the ecological benefits of trees.

Recommendations:

20. That a new tree curator role has the same statutory decision-making powers as the Conservator and resides in the Environment Directorate so as to be independent from on-ground tree management, and from the planning and development process.
21. That the tree curator's function extend to providing advice and promotion of the benefits of the urban forest with regards to urban heat, wellbeing and health, and biodiversity outcomes.

New plantings

The Conservation Council supports the development of an Urban Forest Strategy, that encompasses strategic identification of appropriate sites and species for planting. There are many spaces within suburbs and between suburbs that could be used for tree planting, giving consideration to biodiversity connectivity and ongoing fire management issues. The Urban Forest Strategy should also give consideration of the value of using native shrubs and lower level ground cover in appropriate locations (and in particular places where tree cover is not appropriate), acknowledging the benefits that these can bring to urban biodiversity and public amenity.

Importantly species selection will also need to take account of our changing climate, soil quality and water availability over the longer term, but particularly in the establishment phase.

Recommendations:

22. The proposed Urban Forest Strategy should take a broad perspective of what constitutes urban forest, and the opportunities get strong outcomes using a variety of trees and shrubs.

Community Engagement

Community engagement will continue to play an important role in the protection of our trees and the implementation of the Living Infrastructure Plan. The value of trees seems unquestionable to many of us, however, these values are not necessarily

shared or understood across the whole community. The Government could play an important role in building understanding about the valuable role that trees play for our health and wellbeing, the aesthetic appreciation, protecting us against the worst impacts of climate change, and supporting our wildlife to flourish. Ongoing community engagement on these issues can occur as the public interact with the Tree Protection Act, ensuring that this is a key opportunity to engage people on the value of trees.

To this end, the Conservation Council ACT Region recommends that the ACT Government considers hosting and funding an annual Urban Forest Day (perhaps with our extra public holiday!) This significant event could come to hold historical importance within our culture, celebrate our communities and the ACT's championing of sustainability and climate leadership, and the 30% canopy target. This event could include mass tree plantings by schools, work places, sporting clubs, institutions, community councils, groups and so forth, in dedicated urban forest locations which have been adequately researched and deemed appropriate, and with species that are suitable. In addition, picnics, games and other events could be held in nature reserves and parks across the city.

In Bhutan, Social Forestry Day is held annually. In 2018 more than 75,000 seedlings and saplings were planted by schools, institutions, workplaces and community groups, supported and organised by the Department of Forests and Park Services. This is consistent with the Bhutanese constitutional mandate of ensuring a 60% forest cover in perpetuity.

Recommendations:

23. The ongoing community engagement and education be part of the implementation of the Tree Protection Act so as to promote the value of our urban forest widely throughout the community.