



**CONSERVATION  
COUNCIL** ACT REGION

## Submission to the Minister for the Environment and Water: EPBC Referral – Lawson North Residential Development (2022/09298)

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September 2022

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

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## Introduction

The Conservation Council ACT Region (the Council) and its member groups welcome the opportunity to comment on whether the proposed Lawson North Residential Development (the proposal) should be assessed under the EPBC Act, and what the controlling provisions should be. As summarised below, the Council has had an ongoing interest in this development due to the environmental significance of the site.

We find that the proposal in its current iteration is clearly unacceptable per Division 1A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) as it will have unacceptable impacts on the environment, and matters of national environmental significance (MNES), specifically Natural Temperate Grasslands (NTG).<sup>1</sup> We call on the Environment Minister to also find that the proposal in its current form is clearly unacceptable. If that determination is not accepted by the Minister, then the proposal should be found to be a controlled action and assessed using an Environmental Impact Statement or Public Inquiry.

The Council is joined by several of its member groups, and others, in making this submission. As noted in the most recent review of the EPBC Act, “it is complex legislation (that) makes it difficult, time-consuming and expensive for people to understand their legal rights and obligations. This leads to confusion ... and restricts access to justice”.<sup>2</sup> Our decision to submit a combined comment on the referral is a reflection of this legislative failure.

The organisations which have signed-on in support of this submission are outlined below. We request that the Minister consider this submission with full regard to the breadth of organisations and individuals who are concerned with the proposal.

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<sup>1</sup> 1999 (Cth).

<sup>2</sup> Graeme Samuel, Independent Review of the EPBC Act, October 2020.

Additional signatories to this submission:

- Friends of Grasslands
- Canberra Ornithologists Group
- National Parks Association ACT
- Ginninderra Catchment Group
- Australian Native Plants Society Canberra
- Field Naturalists Association Canberra
- ACF Community Canberra
- Australian Association for Environmental Education - ACT Chapter



Friends of  
Grasslands



**ACF Community  
Canberra**  
Independently organised ACF group



## Executive Summary

The Council considers that the proposal, and therefore the action, is clearly unacceptable per Division 1A of the EPBC Act. It is clear that the action will have unacceptable impacts on the environment and MNES, specifically NTG.<sup>3</sup> We also consider that the proposal will likely have a significant impact on destruction of Box Gum Grassy Woodland and other MNES that are identified in this submission. We also consider that the referral has failed to consider all relevant factors that could impact MNES.

We ask that the Environment Minister also find that the proposal in its current form would have unacceptable impacts on matters protected by Part 3 of the EPBC Act and therefore that the proposal is clearly unacceptable. If that determination is not accepted by the Minister, then the proposal should be found to be a controlled action and assessed using an Environmental Impact Statement or Public Inquiry.

The referral identifies that the following MNES are likely to be impacted by the proposal:

- Natural Temperate Grassland of the South Eastern Highlands (NTG) (critically endangered);<sup>4</sup>
- White Box-Yellow Box-Blakeley's Red Gum Grassy Woodland and Derived Native Grassland (Box Gum Woodland) (critically endangered);<sup>5</sup>
- Striped Legless Lizard (*Delma impar*);<sup>6</sup>
- Superb Parrot (*Polytelis swainsonii*);<sup>7</sup>
- Grey-headed flying fox (*Pteropus poliocephalus*);<sup>8</sup>
- Golden Sun Moth (*Synemon plana*).<sup>9</sup>

Of the above MNES, the referral identifies that the proposal will likely have a significant impact on the following MNES, and is therefore a controlled action:

- Natural Temperate Grassland of the South Eastern Highlands (NTG) (critically endangered);<sup>10</sup>
- Removal of 11.6 ha of habitat for Golden Sun Moth;<sup>11</sup>
- Removal of 26.53ha of habitat for the Striped Legless Lizard.<sup>12</sup>

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<sup>3</sup> 1999 (Cth).

<sup>4</sup> Species Profile and Threats Database, 'Natural Temperate Grassland of the South Eastern Highlands'.

<sup>5</sup> Species Profile and Threats Database, 'White Box-Yellow Box-Blakeley's Red Gum Grassy Woodland and Derived Native Grassland'.

<sup>6</sup> Species Profile and Threats Database, 'Delma impar - Striped Legless Lizard'.

<sup>7</sup> Species Profile and Threats Database, 'Polytelis swainsonii - Superb Parrot'.

<sup>8</sup> Species Profile and Threats Database, 'Pteropus poliocephalus - Grey-headed flying fox'.

<sup>9</sup> Species Profile and Threats Database, 'Synemon Plana - Golden Sun Moth'.

<sup>10</sup> Species Profile and Threats Database, 'Natural Temperate Grassland of the South Eastern Highlands'.

<sup>11</sup> EPBC 220905, 'Print Application' p19.

<sup>12</sup> Ibid.

In addition to the above MNES, the Council considers that it is likely that the following MNES are also present on the site:

- migratory species: Latham's Snipe;
- vulnerable species: Austral Toadflax; and
- vulnerable species: Ginninderra peppercress.

The Council considers that the proposal is likely to have a significant impact on these MNES, in addition to the MNES that Defence Housing Australia has identified.

In addition, we submit that the proposed action will have unacceptable impacts on the environment, which is a matter protected under Part 3 of the EPBC Act. These impacts include

- Landscape connectivity and fragmentation;
- Carbon sequestration; and
- Loss of species and habitat.

Our submission outlines why the impact of the proposal on MNES, and on the environment, is unacceptable, and why we therefore urge the Minister to decide that the proposed development has an unacceptable impact on MNES.

If that determination is not accepted by the Minister, then the proposal should be found to be a controlled action.

We highlight that the proponent has not provided a strong enough justification for the project in their referral in light of the significant impact to MNES or the environment. Our submission also outlines concerns about the proponent's management of the site to date, and going forward.

We would recommend that the proposal is assessed using an Environmental Impact Statement or Public Inquiry.

## Part 1: Background Issues

### The Proposal

The proposal is to build 443 residences at a site known as Lawson North, Lawson Grasslands, or the Belconnen Naval Transmission Station. The site is described further below. The proposal is being undertaken by Defence Housing Australia (DHA) and its purpose is to provide housing for Defence members and their families to meet provisioning needs of the Department of Defence in the ACT. However, only 150 dwellings are to be retained by DHA for their purposes, with the balance being sold on the public market.

The site of the proposal is on the northern part of the suburb of Lawson, located in the north-east of Belconnen, approximately 10.5 km north-west of Canberra City (see Figure 1). Lawson is divided into two areas: the partially developed suburb of Lawson in the south; and the northern area, which is the former Belconnen Naval Transmission Station now owned by DHA, which is largely natural grasslands and woodlands.

The southern area was managed by the ACT Government since 1988 as unleased Territory land. In 2008 the ACT Government engaged consultants for the development of a suburb. After public consultation, the Environment, Planning and Sustainable Development Directorate (EPSDD, which now includes the Planning section formerly ACTPLA) endorsed the final planning study for the southern area of Lawson in August 2009. The development proposed the creation of approximately 1850 residential dwellings.<sup>13</sup> This development was further divided into two stages. As of 2021, Lawson One has been completed (in yellow), however, Lawson Two (in orange) remains unconfirmed, as the master plan has failed to attract a developer.<sup>14</sup>



Figure 1: Map of Lawson Grasslands (approximately 143 hectares).<sup>15</sup>

<sup>13</sup> ACT Planning and Land Authority, 'Lawson South Planning Study' Available at: [https://www.planning.act.gov.au/\\_data/assets/pdf\\_file/0003/1223436/Lawson-South-Planning-Study-Final-Report-October-2009.pdf](https://www.planning.act.gov.au/_data/assets/pdf_file/0003/1223436/Lawson-South-Planning-Study-Final-Report-October-2009.pdf).

<sup>14</sup> Suburban Land Agency 'Lawson Two Englobo'. Available at: <https://suburbanland.act.gov.au/lawson/lawson-two-englobo..>

<sup>15</sup> Defence Housing Australia. 'Lawson North Location.' Available at: <https://www.lawsonnorth.com.au/location.>



Lawson North (in blue) refers to 144.9 hectares of Commonwealth land located north of the partially developed suburb of Lawson. Prior to 2017, it was managed by the Department of Defence. In 2017, the title of the land was transferred from the Department of Defence to DHA.

### **Development Control Plan 12/09**

As noted in the referral, in 2013 the National Capital Authority (NCA) recognised the natural values at Lawson by protecting them under a development control plan (DCP 12/09) that defined areas of the site considered suitable for development and those that should be retained for conservation.

The proposal does not respect the confines of DCP12/09 and will destroy large areas of critically endangered NTG by building over areas that were set aside for conservation and heritage purposes (precincts D and E). DHA has explained it is “pursuing an amendment of the Lawson DCP with the NCA to extend the residential zones on the site into areas ‘D’ and ‘E’ as part of the development, subject to appropriate [EPBC Act] approval”.<sup>16</sup> However, there is no document appended to the referral that indicates whether the NCA supports this proposal, and the proposal is currently at odds with existing planning approvals for the site. At 47.16ha, the referral area is more than double what the NCA deemed to be appropriate for the site in DCP 12/09.

It is important to note that at the time of publication of this DCP, NTG was listed as an endangered ecological community and since then it has been ‘uplisted’ to critically endangered. It follows that if any changes to DCP12/09 were to be made, they should be stricter in recognition of the increased value of the ecological community associated with its ‘uplisting’.

Should the proposal be approved and thereafter proceed, the referral states that: “[t]he de-gazettal of the land and the transfer of responsibilities to the ACT Government would occur following the issue of an amended DCP by the NCA that allows residential development over the full extent of the Referral area”.<sup>17</sup> There is no document appended to the referral that indicates how the ACT Government will implement the responsibilities it may hold. Furthermore, it is unclear which government body will be responsible for implementing mitigation measures during the ‘operational’ phase. Management of the site during and after construction is essential when considering what impact the proposal may have on MNES.

### **Public consultation and engagement of the Conservation Council and member groups**

In 2020, after public consultation on the first iteration of DHA’s proposed development commenced, the Council in partnership with member groups Friends of Grasslands (FoG) and Ginninderra Catchment Group (GCG) called on DHA to reconsider the development due to the high conservation values of the site. In July 2020 over 100 experts and community groups signed a joint letter opposing the development (see Appendix A).

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<sup>16</sup> EPBC 220905, ‘Print Application’ p1.

<sup>17</sup> EPBC 220905, ‘Print Application’ p3.

Since 2020, the Council has worked with FoG and GCG to raise awareness of the grasslands at the site and conduct further investigation into the environmental values of the site. We have held over 30 meetings with external stakeholders, including members of the ACT Legislative Assembly and Federal MPs, the ACT Conservator of Flora and Fauna (the ACT Conservator), the federal Department of Climate Change, Energy, Environment and Water (the Department), community and university groups, and three consultation meetings directly with DHA in regards to their proposals. The Council, with FoG and GCG, have written to DHA on numerous occasions, both submitting advice on the first iteration of its proposal as well as raising concerns about its management of the site.

As a result of raising awareness about the environmental values on the site, over 627 people wrote to DHA calling on it to stop the development. During DHA's 2021 consultation on its revised proposal, at least 28 written submissions were made opposing the development (see Appendix B).

In the lead up to the recent federal election, over 40 people wrote to their local federal candidates calling on them to stop the proposal and strengthen national biodiversity laws. The Council also hosted a community rally at the proposal site on 7 May 2022 at which over 70 people attended.

Due to this previous engagement and as the peak non-government environment organisation for the Canberra region, the Council should be identified as a key stakeholder in this matter.

Public consultation that is discussed in the referral strategically omits the ongoing attempts by the community to call on DHA to withdraw the project, as evidenced by the significant number of representations that have been made by the community to date. The referral also fails to mention that DHA has repeatedly denied or ignored requests for site access by FoG and the Council, despite providing for a site walkover with representatives of the ACT Conservator.<sup>18</sup> This is in spite of FoG representatives having a high degree of expertise in grassland and grassy woodland assessment and management.

Finally, the Council would like to raise concerns regarding the quality of public consultation facilitated by DHA and their engagement throughout the process. It is our view that the limited public engagement undertaken did not provide adequate opportunity for stakeholders to openly discuss their views. In one online meeting between DHA, FoG, GCG, and the Council, community stakeholders were muted, and as such, open, frank, and genuine engagement was stifled. DHA has failed to respond substantively to concerns raised about the ongoing management of the site. Nor has it made any attempt to ameliorate the impact of the proposal on significant environmental matters of which they were clearly aware of, and of which the community continued to make them aware of, since the proposal was first put in the public domain in 2020.

This demonstrates DHA's poor engagement practice on this issue and has prohibited genuine consultation. Importantly, poor practice has led to detailed consideration of crucial environmental facts being withheld from the public, and the community has had information about ecological assessments withheld from it throughout the process.

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<sup>18</sup> EPBC 220905, 'Appendix Q - Biodiversity Impact Assessment' p20.

Without information about how the site will be managed during and after construction, DHA's comments about how the impacts of the proposal will be mitigated or appropriately managed should not be given any weight. This supports our submission later in this document that DHA has underestimated the significance of the impact of the proposed development on MNES.

## Part 2: Significant and unacceptable impacts on Critically Endangered Ecological Communities

The proposal would see 23.52ha of native vegetation cleared, including 15.8ha of listed NTG and 1.31ha of Box Gum Woodland.<sup>19</sup> Both of these ecological communities are considered critically endangered under the EPBC Act and thus are MNES.<sup>20</sup> The referral recognises that significant impact will occur from the direct destruction of 15.8ha of NTG and considers the proposal a controlled action in recognition of this.<sup>21</sup> The proponent does not consider the destruction of 1.31ha of Box Gum Woodland a significant impact.<sup>22</sup>

The Council and associated member groups agree that the proposal will have at least a significant impact on NTG, but consider that the impact is clearly unacceptable. We disagree with the determination that destruction of 1.31ha of Box Gum Woodland is not significant. We also disagree with the inference that the destruction of NTG required for the proposal is acceptable as a controlled action. Considering the extremely threatened nature of NTG and the overarching state of the Australian environment as poor and deteriorating, it is clear that the proposal would have unacceptable impacts on MNES and is clearly unacceptable; we therefore ask the Minister to decide that the action is clearly unacceptable per s74B of the EPBC Act.<sup>23</sup> Furthermore, the likely impact of the proposal is even greater than what is outlined in the referral as not all relevant factors have been considered, reinforcing the nature of the proposal as unacceptable.

### Impact on NTG is clearly unacceptable

Under s74B of the EPBC Act, the Minister may decide that an action is clearly unacceptable if the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3 of the EPBC Act. MNES are matters that are protected under Division 1 of Part 3 of the EPBC Act.

The Environment Assessment Manual provides that, in order for a proposal to be deemed unacceptable, there must be a high degree of certainty that it will have a serious or irreversible impact on a protected matter that cannot be mitigated or adequately compensated.<sup>24</sup> We submit that the proposal meets these criteria, and therefore that the proposal would have an unacceptable impact on NTG, for the reasons outlined below.

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<sup>19</sup> EPBC 220905, 'Appendix A - Supplementary Report' p24.

<sup>20</sup> Nature Conservation (Yellow Box – Blakely's Red Gum Grassy Woodland) Conservation Advice 2020; Natural Temperate Grassland of the South Eastern Highlands; White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland National Recovery Plan.

<sup>21</sup> EPBC 220905, 'Print Application' p19.

<sup>22</sup> Ibid.

<sup>23</sup> Janke, Terri, Emma Johnston and Ian Cresswell, 'Australia State of the Environment 2021, Available at: <https://soe.dccceew.gov.au/>.

<sup>24</sup> [Environment Assessment Manual \(May 2012\), Section 2F.](#)

In making this submission, we note that, in accordance with the decision of *Secretary to the Department of Sustainability and Environment (Vic) v Minister for Sustainability, Environment, Water, Population and Communities*,<sup>25</sup> the Minister should take comments from the public into account, provided that she considers the information contained in the referral as the foundation of her decision. The following comment continues to address these elements using information provided from the referral and external resources.

### *Serious and Irreversible Impact*

NTG is a highly vulnerable ecological community as evidenced by its status as critically endangered both federally and in the ACT.<sup>26</sup> It should be recognised that ‘critically endangered’ is the highest possible category of threat to ecological communities that is provided for under Australian legislation. Indeed, DHA itself recognises in the referral that “all occurrences of this community are considered critical to (its) survival”.<sup>27</sup>

The pre-settlement range of NTG is estimated to be in the order of 500,000 ha. NTG is now highly depleted, and it is very poorly represented in the formal reserve network. It is estimated that only about 0.2% of the pre-settlement extent is now protected in nature reserves and national parks.<sup>28</sup> Many patches that remain are very small; most are less than 10 ha in size,<sup>29</sup> further increasing their vulnerability as impacts such as edge effects take a disproportionate toll. Considering the extreme vulnerability of NTG, the proposal to directly destroy 15.8ha of the community is serious. Indeed, the proposal intends to divide the site into two areas of NTG to the east and west of the development boundary. This will augment impacts and indirectly destroy much more grassland as edge effects and fragmentation are heightened.

Not only is the habitat within the referral area significant in that it is critically endangered, but it is also arguably one of the largest and most intact examples of NTG left in the ACT region.<sup>30</sup> The site is listed as one of several large areas of native grasslands left in the ACT, and is the largest area of NTG in the Belconnen region.<sup>31</sup> Considering this, the proposals impacts are enhanced owing to the uniqueness of the site.

Should the referral proceed, it will have a serious and irreversible impact on NTG as it will dramatically reduce the extent of ecological community in the region. The destruction from the proposal will cause irreparable damage to NTG as there is no way that the area can be rehabilitated to its full capacity once housing is erected. This is due to the direct loss of the community from the development footprint, the indirect loss from edge effects, the inability for the community to be recreated elsewhere, and the inevitable impacts of people living next to the

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<sup>25</sup> [\[2013\] FCA 1 at \[57\]-\[58\]](#).

<sup>26</sup> Nature Conservation (Yellow Box – Blakely’s Red Gum Grassy Woodland) Conservation Advice 2020; Natural Temperate Grassland of the South Eastern Highlands; White Box-Yellow Box-Blakely’s Red Gum Grassy Woodland and Derived Native Grassland National Recovery Plan.

<sup>27</sup> EPBC 220905, ‘Print Application’ p19.

<sup>28</sup> Nature Conservation (Yellow Box – Blakely’s Red Gum Grassy Woodland) Conservation Advice 2020 p34, 41.

<sup>29</sup> Ibid

<sup>30</sup> Armstrong RC, Turner KD, McDougall KL, Rehwinkel R and Crooks JI (2013). Plant communities of the upper Murrumbidgee catchment in New South Wales and the Australian Capital Territory. *Cunninghamia* 13(1): 125-265.

<sup>31</sup> ACT Government, ‘ACT Native Grasslands Strategy’, Figures 4 and 5, p130-131.

grasslands, including for example inundation of weeds from gardens and degradation of grassland from recreation.

As noted, once development occurs at the site, the surrounding grassland area that is not directly destroyed will suffer from edge effects, a well-documented phenomenon where an abrupt transition between nature and urban areas causes the boundary of an ecological community to degrade as issues such as pollution and disturbance take effect.<sup>32</sup> Completely overcoming these edge effects will also be impossible whilst maintaining a viable living circumstance for people as issues such as light pollution, sound pollution, recreation at the grasslands, and garden species would have to be strictly regulated. We maintain that there is no way these factors can be regulated rigorously enough that the impact on NTG will be permissible. As discussed below, these edge effects must be considered in the total loss of NTG.

It is also pertinent to note that NTG cannot occur in very many places due to its tightly defined range and distinct geographic requirements. Specifically, NTG is confined to the Southern Tablelands, a region bounded by the ACT, Yass, Boorowa, the Abercrombie River, Goulburn, the Great Eastern Escarpment, the Victorian border and the eastern boundary of Kosciuszko National Park. It requires broad sweeping plains with poor drainage and cold air inversions that promote frosts to inhibit tree growth.<sup>33</sup> These factors are recognised in the referral documentation.<sup>34</sup> The limited range of NTG is further constricted when considering that a lot of the appropriate areas have already been developed. This is because the natural lack of trees in the community has been attractive to developers, and because there has been a historical altitude bias in protected areas that often leaves NTG vulnerable.<sup>35</sup>

### *Impact cannot be mitigated or compensated*

The scope of the proposal is immense. Approximately 443 medium density residences are to be built across 47.16ha. The scope of the proposal is far beyond what can occur at the site without irreversibly harming NTG as evidenced by its failure to comply with DCP12/09. This is discussed further in Part 1. Considering this, there are no mitigation opportunities available regarding the current proposal as it would be impossible for the scale of urban development to proceed in a manner that maintains NTG at the site.

Regarding compensation, it is noted that the referral provides for “offsets”. This is discussed below, however, we are of the view that the offsets proposed by DHA are insufficient to ‘compensate’ the irreversible damage that will occur if the proposal proceeds.

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<sup>32</sup> Laurance, William F et al, ‘Habitat Fragmentation, Variable Edge Effects, and the Landscape-Divergence Hypothesis’ (2007) 2(10) *PLOS ONE* e1017.

<sup>33</sup> Nature Conservation (Yellow Box – Blakely’s Red Gum Grassy Woodland) Conservation Advice 2020; Natural Temperate Grassland of the South Eastern Highlands.

<sup>34</sup> EPBC 220905, ‘Appendix Q - Biodiversity Impact Assessment’ Table 4.1.

<sup>35</sup> ACT Government, ‘Native Grassland Conservation Strategy and Action Plans’ p16.

## **Destruction of Box Gum Woodland a Significant Impact**

The referral document states that “clearing of up to 1.31ha of box gum woodland is not considered to be a significant impact due to the small area of clearing [in reference to the extent remaining in the ACT and nationally] and the retention of the remaining areas of community in the broader site... Indirect impacts are considered unlikely to significantly impact on the retained areas of this threatened ecological community with implementation of mitigation measures and a biodiversity management plan.”

The Council disagrees with DHA's determination that the destruction of 1.31 ha of Box Gum Woodland is not significant. According to the Significant Impact Guidelines 1.1 – Matters of National Environmental Significance (Significant Impact Guidelines), whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.<sup>36</sup> The Significant Impact Guidelines include the ‘significant impact criteria’, which provide guidance on when an action is likely to have a significant impact on a critically endangered ecological community.<sup>37</sup> The significant impact criteria include if there is a real chance or possibility that the action will:

- reduce the extent of an ecological community;
- fragment or increase fragmentation of an ecological community; and
- adversely affect habitat critical to the survival of an ecological community.

We consider that Box Gum Woodland meets the significant impact criteria, and therefore that it is likely that the proposed development will have a significant impact on Box Gum Woodland.

### *Reduce the extent of Box Gum Woodland:*

It is evident from the proposal that the extent of Box Gum Woodland will be reduced by 1.31ha. This figure is significant as more than 95% of the ecological community has already been cleared.<sup>38</sup> Considering this, every remaining patch is important.

### *Fragment or increase fragmentation of Box Gum Woodland:*

The Box Gum Woodland at the site occurs in two primary patches, one on the north-east of the proposal's development footprint, and the other to the south-west of the proposal's development footprint. The Box Gum Woodland that will be cleared is part of the larger patch to the south-west of the proposal's development footprint.

By clearing Box Gum Woodland at this patch, fragmentation between the two patches will be increased as the distance between the two sites is widened. The impact of the proposal will clearly have disproportionate impacts higher than what is outlined in the referral due to edge

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<sup>36</sup> Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, p 2.

<sup>37</sup> Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, p 11.

<sup>38</sup> Threatened Species Recovery Hub, Ecosystem accounts in box gum grassy woodlands, Available at: <https://www.nespthreatenedspecies.edu.au>

effects. This will augment the impact of fragmentation as viable Box Gum Woodland will be further apart.

*Adversely affect habitat critical to the survival of Box Gum Woodland:*

Considering that Box Gum Woodland is critically endangered, the same threshold as applied to NTG above should apply, that is, “all occurrences of this community are considered critical to (its) survival”.<sup>39</sup> Considering this, the proposal will adversely affect habitat critical to the survival of Box Gum Woodland.

### **Failure of the referral to consider all relevant impacts**

In considering the effect of the proposal on both NTG and Box Gum Woodland, DHA has either partially or completely failed to consider the indirect and offsite effects, cumulative effects, connectivity, buffers, and edge effects. As a result, it is likely that the proposed development will have a greater impact on NTG and Box Gum Woodland than has been assessed in DHA’s referral. This supports our submission that impacts on NTG are clearly unacceptable, and that the proposal is likely to have a significant impact on Box Gum Woodland.

*Indirect and Offsite Effects*

When considering whether an action is likely to have a significant impact on a matter of national environmental significance, it is “relevant to consider all adverse impacts which result from the action, including indirect and offsite impacts”.<sup>40</sup> Discussion of indirect and offsite effects is found at Part 5.2 of Appendix Q of the referral. However, the referral does not consider the following indirect and offsite impacts that will occur as a result of the proposed development (both during and after construction), which will have a significant impact on NTG and Box Gum Woodland at the site if the project proceeds:

- Changes to runoff and infiltration patterns;
- Increased sedimentation and contaminant loads during construction;
- An increased risk of weed invasion from suburban gardens, ever more concerning due to the proposed fragmentation of the site;
- Increased predation of native species and heightened competition. For example domestic species like cats, Indian myna, house mouse, European wasp or Portuguese millipede, which are probably already present in nearby suburbs will infiltrate the site.<sup>41</sup>
- Increased human presence as public access to the Grasslands will no longer be prevented and recreational use of the space will become more common.

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<sup>39</sup> EPBC 220905, ‘Print Application’ p19.

<sup>40</sup> [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, p 6.](#)

<sup>41</sup> Hogg, D.McC., McIntosh, J., Nash, K. [‘Lawson South Residential Development Belconnen, ACT: EPBC 2010/5549: Preliminary Documentation’](#). Report for ACT Suburban Land Agency p. 29.



### *Cumulative Effects*

Appendix Q of the referral discusses cumulative impacts, however only with regard to the ACT. As the ACT exists wholly within NSW, it is critical that cumulative impacts be considered within the context of woodland and grassland that is occurring in the neighbouring NSW region. Furthermore, beyond listing the ACT developments affecting grasslands and woodlands, the referral does not make any conclusive statements relating to how these cumulative impacts will affect the MNES at the referral site. DHA has therefore not thoroughly assessed the cumulative impacts of the proposed development on NTG and Box Gum Woodland.

### *Connectivity Issues*

Appendix Q of the referral discusses connectivity and its importance for the survival and wellbeing of an ecosystem. However, the referral fails to consider how fragmenting the site into two patches of NTG will have long-term effects on the genetics of relevant species. This is particularly relevant in reference to the striped legless lizard as discussed further below.

### *Buffers*

The Referral includes recommendations from the ACT Government regarding Asset Protection Zones (APZs).<sup>42</sup> Notably, a 40m inner APZ is required on the development's western boundary and a 10m wide AZP is required on the eastern boundary. It is unclear in the referral whether these zones will be situated within the development envelope or on the neighbouring grassland. This is a significant omission as the ACT Government's recommendation to maintain ground layer cover within an APZ of equal to or less than 200mm will be deleterious for long-term management of NTG and Box Gum Woodland at the site.

### *Edge Effects*

As noted above in reference to the serious and irreversible impacts of the project on NTG and Box Gum Woodland, not all edge effects have been considered in the referral. Edge effects must be assessed in reference to the direct impacts on critically endangered ecological communities, as they add an additional spatial dimension of destruction beyond the proposal's development footprint.

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<sup>42</sup> EPBC 220905, 'Appendix A - Supplementary Report' p39.

### Part 3: Significant Impacts on Threatened Species

Lawson Grasslands is a stronghold for critically endangered NTG and Box Gum Woodland. The area is also habitat that is critical to the survival of species (flora and fauna) present on the site, and is an important habitat for migratory species present on the site.

For species, the Significant Impact Guidelines defines (p 10) habitat that is critical to the survival of a species as areas that are necessary:

- for activities such as foraging, breeding, roosting, or dispersal
- for the long-term maintenance of the species or ecological community (including the maintenance of
- species essential to the survival of the species or ecological community, such as pollinators)
- to maintain genetic diversity and long term evolutionary development, or
- for the reintroduction of populations or recovery of the species or ecological community.

Such habitat may be, but is not limited to: habitat identified in a recovery plan for the species or ecological community as habitat critical for that species or ecological community; and/or habitat listed on the Register of Critical Habitat maintained by the Minister under the EPBC Act.

For migratory species, the Significant Impact Guidelines defines (p 12) habitat that is important for a migratory species as:

- a. habitat utilised by a migratory species occasionally or periodically within a region that supports an ecologically significant proportion of the population of the species, and/or
- b. habitat that is of critical importance to the species at particular life-cycle stages, and/or
- c. habitat utilised by a migratory species which is at the limit of the species range, and/or
- d. habitat within an area where the species is declining.

Therefore, the loss of NTG and Box Gum Woodland caused by the proposed development is likely to severely jeopardise the long-term conservation of the threatened species identified below.

The referral has identified 8 threatened species of fauna that have potential to use the site, those being:

- Golden Sun Moth
- Grey-headed flying fox
- Little Eagle
- Perunga Grasshopper
- Scarlet Robin
- Striped Legless Lizard
- Superb Parrot
- White-winged Triller

Of those species, the referral considers the removal of 11.6ha of Golden Sun Moth habitat to be significant, and the removal of 26.53 ha of Striped Legless Lizard habitat to be significant. No threatened flora species were identified in the referral.

The Council agrees with DHA's assessment that the proposed development will likely have a significant impact on the Golden Sun Moth and the Striped Legless Lizard.

However DHA has failed to adequately consider the impact of the proposed development on migratory species, bird species, and threatened flora. The Council considers that the proposal will also have a significant impact on the following MNES, in addition to the two critically endangered ecological communities already discussed - NTG and Box Gum Woodland:

- migratory species: Latham's Snipe
- vulnerable: Superb Parrot

The Council also notes that the following species have not been considered in the referral, and that further research should be conducted into:

- vulnerable species: Austral Toadflax
- vulnerable: Ginninderra peppercress

### **Significant Impact on Latham's Snipe**

For migratory species, the significant impact criteria include if there is a real chance or possibility that the action will:

- substantially modify (including by fragmenting, altering fire regimes, altering nutrient cycles or altering hydrological cycles), destroy or isolate an area of important habitat for a migratory species.<sup>43</sup>

Anecdotal evidence suggests that Latham's Snipe occupy the lower sections of the eastern part of the site. If the proposal proceeds, it would substantially modify habitat for Latham's Snipe by directly destroying parts of the south-eastern corner of the development footprint, and fragmenting it from the remainder of the site. Moreover, Latham's Snipe is a shy bird, and is particularly vulnerable to disturbance from development occurring near its habitat.<sup>44</sup> Noise and activity generated by the proposal, both during and after construction, could impact migration patterns and breeding. We consider that this meets the significant impact criteria listed above.

### **Significant Impact on Superb Parrot**

For vulnerable species, an action is likely to have a significant impact if there is a real chance or possibility that it will:

- adversely affect habitat critical to the survival of a species.
- modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline.<sup>45</sup>

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<sup>43</sup> [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, p 10.](#)

<sup>44</sup> Species Profile and Threats Database, Gallinago hardwickii — Latham's Snipe,

<sup>45</sup> [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, p 10.](#)

As noted in the referral, the site contains habitat for Superb Parrot.<sup>46</sup> The proposal will directly destroy at least 3 identified habitat trees for Superb Parrot, and substantially impact 5 other habitat trees by isolating them from the rest of the site and building close to them.<sup>47</sup> It will also directly affect 10 hollow bearing trees that could be used by the Superb Parrot for breeding.<sup>48</sup> resulting in species decline by decreasing the availability and quality of habitat. This is of concern as it is thought that Superb Parrots are increasingly using the Canberra region for breeding; the future of the population depends on the quality and availability of habitat in the ACT. We consider that this meets the significant impact criteria as listed above.

### **Impact on Austral Toadflax and Ginninderra Peppercreess not assessed**

The referral document did not survey for Austral Toadflax or Ginninderra Peppercreess.

Austral Toadflax was not surveyed as it was determined that the likelihood of its occurrence at the site was low. The Council disagrees with this determination. Austral Toadflax has been sighted by local ecologists at equivalent sites. It is noted that the species may have been overlooked in surveys as it is parasitic on *Themeda triandra* and does not grow in dry years.

Ginninderra Peppercreess is often found in disturbed sites so it is likely to occur anywhere across the Referral area. As a vulnerable species, the effect of the proposal on this species must be considered.

Failure to consider the impact of the proposal on these species is a serious omission. Without access to the site, we are unable to conclude whether the impact will be significant on these species. However, engaging the precautionary principle,<sup>49</sup> this requires further assessment for the purposes of undertaking an assessment of the impacts on MNES.

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<sup>46</sup> EPBC 220905, 'Appendix Q - Biodiversity Impact Assessment' p59.

<sup>47</sup> Ibid.

<sup>48</sup> EPBC 220905, 'Appendix Q - Biodiversity Impact Assessment' Table 5.2.

<sup>49</sup> EPBC Act, s391(1).

## Part 4: Significant and unacceptable impacts on the Environment

The referral identifies that the proposal is a controlled action because it is on Commonwealth land, and is being undertaken by a Commonwealth agency, and is likely to have a significant impact on the environment. The environment is protected from proposals involving the Commonwealth under s 26 and 27A of the EPBC Act, and s 28 of the EPBC Act, respectively.

‘Environment’ is defined in s 528 of the EPBC Act as including: ecosystems and their constituent parts, including people and communities; natural and physical resources; the qualities and characteristics of locations, places and areas; heritage values of places; and the social, economic and cultural aspects of these matters.

We submit that it is clear that the proposed action will have unacceptable impacts on the environment, which is a matter protected under Part 3 of the EPBC Act. These impacts include

- Landscape connectivity and fragmentation;
- Carbon sequestration;
- Loss of species and habitat.

As noted earlier in this submission, under s74B of the EPBC Act, the Minister may decide that an action is clearly unacceptable if the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3 of the EPBC Act. Protection of the environment from proposals involving the Commonwealth is a matter that is protected under Division 2 of Part 3 of the EPBC Act.

As also noted earlier, in order for a proposal to be deemed unacceptable, there must be a high degree of certainty that it will have a serious or irreversible impact on a protected matter that cannot be mitigated or adequately compensated.<sup>50</sup> We submit the proposal meets these criteria, and therefore that it is clear the proposal would have an unacceptable impact on the environment for the reasons outlined below.

In making this submission, we note that, in accordance with the decision of *Secretary to the Department of Sustainability and Environment (Vic) v Minister for Sustainability, Environment, Water, Population and Communities*,<sup>51</sup> the Minister should take comments from the public into account, provided that she considers the information contained in the referral as the foundation of her decision. The following comments rely on information that is provided in the referral and some information from external resources.

### Landscape Connectivity and Fragmentation

#### *Serious and irreversible impact*

As discussed above, it has been well established in Part 2 of these submissions that the natural environment requires connectivity to function. Connectivity between landscapes provides for ecosystem services such as pollination, climate change adaptation, and genetic flow.<sup>52</sup> If the

<sup>50</sup> [Environment Assessment Manual \(May 2012\)](#), Section 2F.

<sup>51</sup> [\[2013\] FCA 1 at \[57\]-\[58\]](#).

<sup>52</sup> Laurance, William F et al, ‘Habitat Fragmentation, Variable Edge Effects, and the Landscape-Divergence Hypothesis’ (2007) 2(10) *PLOS ONE* e1017.

proposal proceeds it will not only fragment NTG and Box Gum Woodland at the site, but it will also seriously and irreversibly impact the environment at a landscape scale by seriously and irreversibly impacting connectivity.

An example of the effect on landscape connectivity is the ability for native animal species to move across the landscape to breed. In reference to whether the proposal will displace or substantially limit the movement or dispersal of native animal populations, DHA stated in the referral that this is "unlikely", citing the notion that grassland species have small ranges and grassland animals are likely to remain viable within retained patches of habitat. However, even small populations are subject to adverse genetic effects of isolation.<sup>53</sup> It is more likely that the proposal will displace or substantially limit the movement or dispersal of native animal populations, and therefore will have a greater impact on threatened species than has been assessed by DHA in its referral. Without access to the site, we are unable to determine exactly what native animals this includes.

### *Impact cannot be mitigated or compensated*

The impact on the environment of fragmentation cannot be mitigated or compensated because there is no way to restore the biodiversity network once it has been lost. While there have been some attempts to mitigate the impact of fragmentation using initiatives such as wildlife crossings, there is no evidence that this can be applied to grasslands, and their efficacy in reference to other ecosystems is still largely misunderstood.<sup>54</sup>

## **Loss of Species and Habitat**

### *Serious and irreversible impact*

As discussed above in Part 2 of this submission, there will be a serious and irreversible impact on NTG, a critical part of the ACT environment. As demonstrated, this is serious and irreversible. Part 3 of this submission demonstrates how this will have a significant impact on threatened species. In addition, the loss of habitat will also lead to a loss of rare and declining species that should also be considered as a constituent part of the ecosystem. This loss is serious owing to the sheer magnitude of the native vegetation that is proposed to be cleared. It is irreparable, as once housing is erected, the site can never be restored, and edge effects will have an ongoing impact on the environment as described above.

The loss of the grassland at the site will also seriously and irreversibly diminish the ability of the site to act as a refuge for species in the future. This is exemplified by the Canberra Grassland Earless Dragon *Tympanocryptis lineata* (GED). While the Canberra GED is not listed as threatened under the EPBC Act and has not been found to date at the Lawson Grasslands, there is great potential, given the area's historic isolation and high quality, that it could be used as a rehabilitation area for GED in the future. The proposal will seriously and irreversibly reduce

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<sup>53</sup> Yamashiro, Tadashi et al, 'Genetic Diversity and Divergence in Populations of the Threatened Grassland Perennial Vincetoxicum Atratum'.

<sup>54</sup> Kaplan, Matt, 'Uncertainty over Animal Crossings' [2009] *Nature* <<https://www.nature.com/articles/news.2009.114>>.

available habitat for Canberra GED because the ecosystem cannot be replicated elsewhere due to its geographical limits.

*Impact cannot be mitigated or compensated*

It is impossible to fully catalogue every plant, animal, and lichen that is present in an environment. Considering this, there is no way that the removal of large swathes of an environment can be compensated for. It is also impossible for the effects of the proposal to be mitigated as described above in reference to Part 2, because NTG cannot be recreated in other areas.

## **Carbon Sequestration**

*Serious and irreversible impact*

Temperate grassy ecosystems are effective carbon sequestration mechanisms. The relatively stable soil environment of temperate grasslands is conducive to accumulation of organic matter, because there is a slow turnover of carbon underground. Consequently, grassland soils contain large stocks of carbon in the form of soil organic matter that has accumulated during the lifetime of the grassland community.<sup>55</sup> As such, any development at Lawson would have a serious and irreversible impact on our climate by destroying carbon sequestration potential.

*Impact cannot be mitigated or compensated*

Whilst some work is currently underway on technical solutions to climate change,<sup>56</sup> there is currently no method reasonably available that can artificially remove carbon from the atmosphere.

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<sup>55</sup> Grassland carbon sequestration: management, policy and economics Proceedings of the Workshop on the role of grassland carbon sequestration in the mitigation of climate change Rome, April 2009 (p2). Scurlock, J.M.O. and Hall, D.O. (1998) 'The global carbon sink: a grassland perspective', *Global Change Biology*, 4(2), pp. 229–233. doi:[10.1046/j.1365-2486.1998.00151.x](https://doi.org/10.1046/j.1365-2486.1998.00151.x).

<sup>56</sup> 'Technological "Solutions" to Climate Change', *Scientific American* <<https://www.scientificamerican.com/article/geoengineering-solutions/>>

## Part 5: Additional Concerns

### Project Scope and Justification

The proponent in this matter, DHA has the specific purpose of “providing adequate and suitable housing for, and housing-related services to... members of the Defence Force and their families”.<sup>57</sup> Of the approximately 443 residences to be built, only 150 medium density dwellings will be retained by DHA for housing Australian Defence Force personnel, with the remaining residential dwellings on individual blocks to be sold to offset the cost of Defence Housing properties.<sup>58</sup>

DHA receives no direct funding from the Federal budget.<sup>59</sup> It appears to be following a developer model to meet its obligations whereby it redirects profits from housing sales on the open market. DHA is a developer in other parts of the ACT and Australia, using the same model. Its recent project at Coombs in the Molonglo Valley was for 83 architecturally designed townhouses.<sup>60</sup> DHA retained around one quarter of these properties for Australian Defence Force personnel, selling the remainder on the open market.<sup>61</sup> It is not clear why DHA did not retain more of these dwellings to fulfil its mandate to provide housing to Australian Defence Force personnel, should that need have been unmet, except that this model is consistent with how housing for defence personnel is funded under DHA. DHA’s mandate to provide housing for defence personnel is legitimate however, we would contest that developing property for the open market is not part of their remit. Yet DHA operates like a private property developer, using the guise of delivering a public good to develop land that has become available to it, in this case merely because Defence no longer had a useful purpose for it.

In regards to the proposal that is the subject of this referral, the areas that are being developed for the open market are the areas with the highest environmental values as the extended footprint takes the development into NTG areas. While the housing being proposed for defence personnel is medium density townhouses, DHA has chosen to release the other approximately 300 dwellings as stand alone dwellings on individual blocks, thereby increasing the footprint of the proposal, utilising a less sustainable housing development model. There is no indication the DHA has even considered reducing the footprint, and thereby the environmental impact, by offering only medium density dwellings.

While cognisant of their funding model, we do not believe that DHA has provided sufficient justification for destroying critically endangered ecosystems. The brief statement on p 1 of the referral does not discuss why the project is of such importance that it can have an extreme adverse effect on MNES as is demonstrated in Appendix of the referral documentation. Neither

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<sup>57</sup> Defence Housing Australia Act 1987 (Cth), s5.

<sup>58</sup> EPBC 220905, ‘Print Application’ p19.

<sup>59</sup> ‘Defence Housing Australia (DHA) | Department of Finance’

<https://www.finance.gov.au/government/government-business-enterprises/defence-housing-australia-dh>

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<sup>60</sup> <https://www.dha.gov.au/development/residential/the-crossing-at-coombs>

<sup>61</sup> <https://www.dha.gov.au/development/residential/the-crossing-at-coombs>, accessed early 2022.



the short nor longer-term need for additional dwellings for Defence personnel in the ACT are quantified. DHA can clearly purchase land for development on other sites, as evidenced by their development in the Molonglo Valley.

Given DHA is a statutory authority under the Federal Government, there would be the opportunity for DHA, the Federal Government and the ACT Government to negotiate a more suitable site that could be developed to ensure that DHA can meet its obligations to Defence families for housing in the ACT.

Finally, we would contest that DHA is, in actual fact, not delivering on their purpose of “providing adequate and suitable housing for, and housing-related services to... members of the Defence Force and their families”. DHA housing is being delivered by private home buyers, and in this particular proposal, at the expense of the environment.

## Offsets

Per the EPBC Act’s Environmental Offsets Policy paper:

"Avoidance and mitigation measures are the primary strategies for managing potential significant impact of a proposed action" and "The EPBC Act does not allow for any beneficial impacts, such as offsets, to be considered at the Referral stage".<sup>62</sup>

Considering this, the Council and stakeholders direct the Minister not to consider the discussion of offsetting throughout the referral.

If offsetting is considered, then attention should be paid to the incoherence of the model presented by DHA. Indeed, it is stated that “while loss of this ecological community will occur as a result of the proposed action, biodiversity offsets would be provided to achieve no net loss outcome”.<sup>63</sup> It is unclear how an offset can be provided within the same site to achieve no net loss. Simple calculations would suggest that prior to the proposed action there is Xha of NTG and after the proposed action there will be Yha (Xha-15.8) ha of NTG. Justifying a decision not to destroy everything at a site is not the same thing as offsetting.

## DHA as a land manager

Prior to land the site being managed by DHA it was managed by the Department of Defence, Anecdotal evidence stated that management included biomass reduction by sheep grazing across the site until the early 2000s. It is unknown when this changed but eventually biomass at the site was managed with mowers. Anecdotal reports from community members indicate that mowers were kept on site to lower the risk of introducing weeds. In addition to biomass and invasive species, kangaroo populations were also managed at the site.<sup>64</sup> Although the specifics of the site management by the Department of Defence are unable to be confirmed, anecdotal

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<sup>62</sup> p7.

<sup>63</sup> EPBC 220905, ‘Appendix A - Supplementary Report’ p42.

<sup>64</sup> Dr Maxine Cooper, Commissioner for Sustainability and the Environment, 12 March 2009, [https://envcomm.act.gov.au/wp-content/uploads/2020/08/ocse\\_actgrasslandreport\\_0309\\_full.pdf](https://envcomm.act.gov.au/wp-content/uploads/2020/08/ocse_actgrasslandreport_0309_full.pdf).

evidence supports findings that the grasslands were well managed and of good quality until DHA became the land manager.

DHA has maintained that it manages the land consistent with land management obligations, and in consultation with EPSDD and ACT Parks and Conservation Service. Contrary to this, over-the-fence observations by ecologists have determined that the site has recently undergone a decline in condition due to the proliferation of St John's Wort (*Hypericum perforatum*) which has invaded over significant portions of the site. Locals still report periodic dumping of significant amounts of rubbish and the illegal access to the site by motor vehicles which have worn tracks over the highest value grasslands in the south-east of the site.

## Contamination

In its analysis of the impacts of the proposal on the environment, DHA state “a small amount of PFAS compounds were detected below the human health guidelines”; however, that appears to contradict the assessment of DHA site contamination by WSP (2020) which indicates “the presence of one or more PFAS compounds, and certain exceedances in health criteria for residential accessible soils”. The subsequent assessment of DHA site contamination by JBS&G (ongoing) found “some remediation of the site may be required, however the presence of protected ecological communities and species would need to be considered in the remedial design”. The referral confirms JBS&G consider remediation of drainage infrastructure, disturbed soils and surfaces within the Transmission Station building area “may be required”, but does not explain whether the remediation would address PFAS contamination or some other problem how protected matters including the environment of the DHA site would be impacted if the work proceeds; nor whether DHA consider the remediation that may be required would have a significant impact on MNES.

## Part 6: Controlled Action Determination

As stated above, the Council maintains that the proposal will have an unacceptable impact on the environment, which is protected by ss 26 and 28 under Part 3 of the EPBC Act, and NTG, a critically endangered ecological community that is protected by s18(5) in Part 3 of the EPBC Act. For this reason, the Minister should make a decision under s74B of the EPBC Act that the proposal is clearly unacceptable.

However, if this finding is not accepted by the Minister, then the Minister should make a decision under s75 of the EPBC Act that the proposal is a controlled action on the basis that it is likely to have a significant impact on the following MNES:

- Natural Temperate Grassland of the South Eastern Highlands (NTG) (critically endangered);<sup>65</sup>
- White Box-Yellow Box-Blakeley's Red Gum Grassy Woodland and Derived Native Grassland (Box Gum Woodland) (critically endangered);<sup>66</sup>
- Striped Legless Lizard (*Delma impar*);<sup>67</sup>
- Superb Parrot (*Polytelis swainsonii*);<sup>68</sup>
- Grey-headed flying fox (*Pteropus poliocephalus*);<sup>69</sup>
- Golden Sun Moth (*Synemon plana*).<sup>70</sup>
- Latham's Snipe (*Gallinago hardwickii*).<sup>71</sup>

The Minister should also agree with DHA's conclusion in its referral that the proposal is a controlled action because:

- it is taking place on Commonwealth land and is likely to have a significant impact on the environment; and
- it is being undertaken by a Commonwealth agency and is likely to have a significant impact on the environment.

Considering the extreme risk and high degree of public concern in relation to the proposal, if it is found to be a controlled action, then the Minister should assess it using either:

- assessment by environmental impact statement (EIS) or
- assessment by public inquiry.

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<sup>65</sup> Species Profile and Threats Database, 'Natural Temperate Grassland of the South Eastern Highlands'.

<sup>66</sup> Species Profile and Threats Database, 'White Box-Yellow Box-Blakeley's Red Gum Grassy Woodland and Derived Native Grassland'.

<sup>67</sup> Species Profile and Threats Database, 'Delma impar - Striped Legless Lizard'.

<sup>68</sup> Species Profile and Threats Database, 'Polytelis swainsonii - Superb Parrot'.

<sup>69</sup> Species Profile and Threats Database, 'Pteropus poliocephalus - Grey-headed flying fox'.

<sup>70</sup> Species Profile and Threats Database, 'Synemon plana - Golden Sun Moth'.

<sup>71</sup> Species Profile and Threats Database, 'Natural Temperate Grassland of the South Eastern Highlands'.

We ask that the Minister assess the proposal using a Public Inquiry. The Environmental Assessment Manual states that while the method of assessment is a matter of discretion for the decision maker public inquiry may be appropriate if:

- the relevant impacts are likely to be complex;
- the relevant impacts, or the management of those impacts, are outside the control of a single proponent;
- it is necessary or desirable to have public involvement in the assessment process

As discussed throughout the submission, the impacts of the proposal are highly complex owing to the fact that NTG is particularly vulnerable, and little information is known about the site as public access has been restricted. Similarly to the above, we also maintain that it is desirable to have public involvement in the assessment due to the high degree of public interest. Finally, owing to the fact that management of the site will change from the DHA to ACT Government once it is de-gazetted (changing its status from National land to Territory land) we maintain that a public inquiry would be useful as the impacts are outside of the control of a single proponent.

Given the number of MNES affected, the scale and nature of impacts and complexity of issues, and the degree of public concern about the proposal, the proposal should not be assessed by an assessment method that is less stringent than an environmental impact statement.

Failing this, an Environmental Impact Statement should be used. The Environmental Assessment Manual states that while the method of assessment is a matter of discretion for the decision maker, environmental impact statement may be appropriate where:

- an assessment of the relevant impacts is expected to raise complex issues, or a large number of issues;
- an adequate assessment of these issues will require the collection of new information or further analysis of existing information;
- there is a high level of public interest or controversy.

The above submission establishes these points. Indeed, it is a highly complex case owing to the fact that multiple 'triggers' are relevant under the EPBC Act, NTG is a particularly vulnerable ecological community, and public access to the site has not been possible. Furthermore, there is a high degree of community interest as evident by the many organisations that have signed onto this submission, and by the amount of people that have previously consulted on the proposal as outlined in the context section of this submission.

# Appendix A: Joint Letter to DHA

Mr Barry Jackson,  
Managing Director  
Defence Housing Australia  
26 Brisbane Avenue  
Barton ACT 2600

31<sup>st</sup> July 2020

Dear Mr Jackson,

## **Proposed Defence Housing Development in Lawson North**

We, the undersigned, representatives of Canberra's key biodiversity groups, scientists, land managers and volunteers with extensive experience in managing Canberra's biodiversity assets, are writing to express our concern about Defence Housing Australia's proposed housing development in Lawson North, ACT.

Our concerns relate to the impact of the development on the critically endangered ecological communities Natural Temperate Grassland (NTG) and Box-Gum Woodland (BGW), and associated threatened and rare species that occur in the area identified as Lawson Grasslands in the *ACT Native Grassland Conservation Strategy and Action Plans*.

The Lawson Grasslands contain over 100 hectares of NTG, a critically endangered ecological community. The grassland at this site is one of only thirteen areas in the ACT that is over 100 ha in area and is the largest area of NTG in Belconnen. Lawson Grasslands, as defined in the NCA's *Development Control Plan 12/09* (DCP 12/09), includes the entire area bounded by Lawson South, Ginninderra Creek/Lake Ginninderra and Baldwin Drive (precincts D and E), with the exception of the former housing site on the eastern side of the hill facing Baldwin Drive (precincts A and B) (Figure 2, DCP 12/09). The site also provides habitat for bird species listed under the Commonwealth EPBC Act (Superb Parrot, Latham's Snipe) and bird species listed under ACT legislation (Scarlet Robin).

We have been informed that there will be two stages to the residential development proposal at this site, Stage 1 and Stage 2. Stage 1 would proceed under the already approved DCP 12/09, which allows for development of precincts A and B.

Stage 2 would require an amendment to DCP 12/09, as currently the DCP specifically excludes development in precincts D and E. It states that Precinct D "has been identified for heritage (natural, historic, cultural and technical) and nature conservation only." Precinct E "has been identified primarily for nature conservation." In both cases "Development of this precinct shall be in accordance with environmental and heritage management plans prepared for the site". It also notes the importance of maintaining the Kangaroo Grass (*Themeda triandra*) grasslands in precinct D.

Precinct D east (Figure 1) is dominated by some of the most extensive Kangaroo Grass community in arguably the best condition remaining in the ACT. Additionally, it contains a population of the vulnerable Striped Legless Lizard (*Delma impar*). While possibly not in such good condition, other parts of precincts D and E proposed for development also contain critically endangered NTG, BGW and habitat for threatened, rare and declining species.

Despite the significant conservation values in this area, identified in both the *ACT Native Grassland Conservation Strategy and Action Plans* and DCP 12/09, the new Master Plan recently released for public consultation proposes destruction of the majority of the critically endangered grassland and woodland in the east of the Lawson Grasslands, to allow development of precinct E, precinct D north and south, and much of precinct D east. While the Masterplan retains part of the grassland in precinct D east as a narrow strip, extensive scientific studies and past experience have demonstrated that the conservation values of a narrow strip of grassland such as this will undoubtedly degrade over time, as it will be heavily impacted by adjacent residential development as well as recreational uses and fragmentation. We note that there are

few open areas identified in the development footprint to mitigate against high impact recreational use of the grassland.

To proceed, the proposal will need to be referred to the Commonwealth to be approved under the EPBC Act, since it impacts on several Matters of National Environmental Significance (MNES). There will also need to be a change to the land use allowed for precincts D and E under the National Capital Plan. We understand that applications to obtain these approvals are imminent.

In the context of Australia's biodiversity crisis and giving consideration to the contribution Lawson North makes to our critically endangered grassy ecological communities, the destruction proposed by this development is unacceptable. The entire extent of the Lawson Grasslands and associated Box-Gum Woodland should be recognised for its ecological, natural and cultural heritage values, and conserved in perpetuity.

We urge Defence Housing Australia to reconsider proceeding with this development so as to ensure ongoing protection, conservation and enhancement of what are nationally important ecological communities under Commonwealth law.

Signed on behalf of:

Helen Oakey, Executive Director  
**Conservation Council ACT Region,**  
GPO Box 544 Canberra ACT 2601

Geoffrey Robertson, President  
**Friends of Grasslands Inc.**  
PO Box 440, Jamison Centre ACT 2614

Tein McDonald, President  
**Australian Association of Bush Regenerators**  
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**Hon Sussan Ley MP**, Minister for the Environment  
**Hon Darren Chester MP**, Minister for Defence Personnel  
**Mr Mick Gentleman MLA**, ACT Minister for the Environment and Heritage  
**Ms Sally Barnes**, Chief Executive, National Capital Authority  
**Dr Sophie Lewis**, ACT Commissioner for Sustainability and the Environment  
**Professor Arthur Georges**, Chair ACT Scientific Committee

## Appendix B: Submission to DHA



**CONSERVATION  
COUNCIL** ACT REGION



Friends of  
Grasslands

## Submission to Defence Housing Australia: Lawson North Development Public Consultation

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November 2021

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## About the Conservation Council ACT Region

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

## About Friends of Grasslands

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 grassy ecosystems, and carries out surveys and other on-ground work. Its members include professional scientists, landowners, land managers and interested members of the public.

## About the Ginninderra Catchment Group

Ginninderra Catchment Group's (GCG) mission is to 'connect, support and lead local communities to maintain and improve the health of the Ginninderra Catchment and surrounding environments'.

GCG is both a community-based natural resource management organisation and a Landcare network, operating primarily in the north-west ACT Region. GCG provides a network for our member groups and volunteers; linking the catchment community with the ACT Government and other stakeholders, providing assistance with project development and implementation, and facilitating community forums for ideas and discussion. Our organisation has demonstrated significant achievements in integrated environmental activities across all tenures (rural, urban and reserve) and landscape types in the ACT Region.

## Introduction

We welcome this opportunity to provide some general feedback on the proposed development at Lawson North, cognisant that we don't yet have access to the full ecological assessments for the site, nor any proposed plan to offset the impact of the development, nor access to the site itself.

Thank you for the briefing that you offered the Conservation Council, Friends of Grasslands and Ginninderra Catchment Group on November 10th 2021 with regards to the revised master plan proposal at Lawson. We appreciate the time you took to take us through the proposal.

We oppose the master plan continuing in its most recent iteration due the destruction of nationally listed, critically endangered Natural Temperate Grasslands, and impacts on nationally listed critically endangered Box-Gum Grassy Woodland (BGGW). We also reject the notion that exploitation of these natural resources is necessary in order to fund the 150 dwellings required by the Department of Defence.

## Impacts on Critically Endangered Ecological Communities

### Natural Temperate Grassland (NTG)

Lawson North contains large areas of Natural Temperate Grasslands of the South Eastern Highlands (NTG), White Box Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grassland (Box-Gum Grassy Woodland or BGGW). Each of these ecological communities is listed as critically endangered under the EPBC Act, and under the ACT's Nature Conservation Act, 2014.<sup>1</sup>

Per Lawson North's Development Control Plan (DCP 12/09) NTG occurs throughout Precincts D and E (see Figure 1). The eastern parts of Precinct D contain arguably some of the most intact NTG left in the ACT. It contains dry Kangaroo Grass – Wallaby-grass – Snow-grass Moist Tussock Grassland, habitat for the Striped Legless Lizard, which occurs in the area. Precinct E contains Wallaby-grass – Tall Speargrass – Common Everlasting Tussock Grassland, which provides habitat for Golden Sun Moth.<sup>2</sup> The importance of Lawson Grasslands as NTG is represented in the ACT's Grassland Strategy, where the site is listed as one of the several relatively large areas of native grasslands left in the ACT (see Figures 4 and 5, pages 130-131 of the Strategy). In fact, it is one of only thirteen areas in the ACT that is over 100 ha, and is the

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<sup>1</sup> Nature Conservation (Yellow Box – Blakely's Red Gum Grassy Woodland) Conservation Advice 2020; Natural Temperate Grassland of the South Eastern Highlands; White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland National Recovery Plan.

<sup>2</sup> Armstrong RC, Turner KD, McDougall KL, Rehwinkel R and Crooks JI (2013). Plant communities of the upper Murrumbidgee catchment in New South Wales and the Australian Capital Territory. *Cunninghamia* 13(1): 125-265.



largest area of NTG in Belconnen. The Grassland Strategy also states that the Lawson grassland is a "Key threatened species habitat" (per page 16).

Despite the significance of the NTG at Lawson North, the recently proposed master plan intends to destroy a large part of the ecological community in the eastern part of the site. We do not support the destruction of any NTG in pursuit of this development on account of its high conservation and environmental value. The Conservation Advice for the community states that any area of the community that meets minimum thresholds for the community is considered critical to its survival.

### Box-Gum Grassy Woodland (BGGW)

BGGW, as listed nationally and in the ACT, occurs in two areas proposed for development; Precinct D and Precinct E of DCP 12/09 (see figure 1). The Precinct D woodland is largely intact BGGW. Over-the-fence surveys by FoG ecologists confirm that these patches meet the criteria for the ACT and Commonwealth-listed critically endangered ecological communities. These areas of BGGW are likely habitat for the vulnerable Scarlet Robin, White-winged Triller, Superb Parrot, and Gang-gang Cockatoo, all of which have been recorded nearby.

We support the master plan's preservation of BGGW, however we disagree with the sacrifice of NTG in order to support this. We also note that even though BGGW is not directly impacted by the development, it is likely that the proposed development will lead to increased fragmentation and increased edge effects, this is discussed further below.



Figure 1: Map of Lawson Grasslands per DCP 12/09

## Loss of Vulnerable and Rare Species

Over the fence surveys suggest that development at Lawson will, or is likely to impact on threatened species by removing or impacting the critically endangered ecosystems of NTG and BGGW as discussed above. In particular, any development at Lawson will have a severe impact on threatened and rare insects. Specifically, the Perunga Grasshopper, Key's Matchstick Grasshopper, Canberra Raspy Cricket, and Golden Sun Moth (GSM).

Threatened bird species have been recorded in the vicinity of the site and are likely to be impacted by development. These include Superb Parrot, Gang-gang Cockatoo, Scarlet Robin, White-winged Triller, Little Eagle, and Latham's Snipe. Additionally, there are a number of other threatened or declining species of birds that have been recorded nearby and are likely to use the BGGW in the area, specifically. Dusky Woodswallow, Flame Robin, Swift Parrot and Diamond Firetail.

Maintaining habitat for the threatened species as well as a number of declining species is of great significance in light of the current global extinction crisis.<sup>3</sup> Australia is one of seventeen 'mega-diverse' nations in the world, making our biodiversity internationally significant.<sup>4</sup> However, Australia has the unfortunate distinction of being a world in extinction and Eastern Australia is also globally recognised as a deforestation front.<sup>5</sup> As such, the ecosystems with high conservation values at Lawson are not just locally significant, but nationally. By destroying and degrading the critically endangered ecological communities at Lawson North the proposed development will also be destroying these species, pushing them ever closer to extinction.

## Unnecessary Exploitation of Nature for Profit

DHA's function is to provide adequate and suitable housing for, and housing related services to: members of the Defence Force and their families, officers and employees of the Department of Defence and their families.<sup>6</sup> As indicated to us by DHA, to fulfill this purpose in the ACT, only an additional 150 dwellings are required, however the master plan proposes to build 416. The additional 266 dwellings will be sold to fund the project.

It might be possible for DHA to provide 150 dwellings at Lawson without harming the critically endangered natural environment by remaining in the confines of DCP 12/09. However, by seeking to build 266 additional houses the project encroaches on critically endangered ecological communities exploiting Canberra's natural resources.

<sup>3</sup> See: Williams, K.J., Ford, A., Rosauer, D.F., Silva, N.D., Mittermeier, R., Bruce, C., Margules, C. 2011. Forests of East Australia: the 35th biodiversity hotspot. In: Keith, D.A. (ed). Biodiversity hotspots, pp 295-310. Springer, Berlin, Heidelberg.

<sup>4</sup> Pacheco, P., Mo, K., Dudley, N., Shapiro, A., Aguilar-Amuchastegui, N., Ling, P.Y., Anderson, C. and Marx, A. 2021. Deforestation fronts: Drivers and responses in a changing world. WWF, Gland, Switzerland.

<sup>5</sup> Ibid.

<sup>6</sup> Defence Housing Australia Act 1987 (Cth), s5.

In addition, we note that DHA is developing 83 residences at Coombs in the Molonglo Valley. Only 20 of these are to be retained for Defence personnel, and 63 are to be sold on the open market. Clearly this also reinforces that DHA's business model is about returning development profits back to Defence Housing resources, rather than the core business of ensuring suitable housing for Defence personnel.

We strongly disagree with the exploitation of Canberra's nature to fund the Department of Defence's housing requirements. We note that the Department of Defence has received \$44.6 Billion in the most recent federal budget. This represents a substantial 2.1% of the national GDP. Considering the financial resources of the Department of Defence, we do not consider it necessary to fund housing for personnel by profiting off the destruction of Canberra's natural resources.

## Acting Against Conservation Planning

The NCA's Development Control Plan (DCP 12/09) boundaries (ie. areas identified primarily for conservation) are not aligned with the areas identified for reservation in this development proposal (ie. development zones appear to encroach on the conservation zones that were defined). In order for DHA's development to proceed, this DCP will have to be altered to allow for development to encroach on areas with high conservation value.

We note that DHA were aware of the confines placed upon a proposed development when they bought the land in 2017 (as the DCP was confirmed in 2013). Prudent business by DHA should have considered the economic viability of developing Lawson North prior to acquisition. We do not support the revision of DCP12/09 as it is an accurate representation of the environmental and heritage values at the site. If DHA were unable to profit off the land with relevant planning approvals, then they should not have bought it. Permitting environmental degradation by revising DCP12/09 is not a solution to poor business management.

## Inadequate Buffer Zones

The Conservation Advice for NTG recommends a minimum buffer zone of 30 metres from the edge of a patch, and larger buffer zones may be applied, where practical, to protect patches that are of particularly high conservation value, if patches are down slope of drainage lines, or a source of nutrient enrichment.<sup>7</sup> The proposed development provides for a 30m buffer around a mere 25% of the site, leaving the other 75% vulnerable to degradation from edge effects.

If the development is to proceed then a minimum 30m should be planned around all relevant edges of the site. Failing to do this will lead to increased degradation of the remaining NTG and BGGW, further harming the threatened and rare flora and fauna that inhabit the area.

<sup>7</sup> Nature Conservation (Yellow Box – Blakely's Red Gum Grassy Woodland) Conservation Advice 2020; Natural Temperate Grassland of the South Eastern Highlands; White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland National Recovery Plan; Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (s266B) Approved Conservation Advice (including listing advice) for the Natural Temperate Grassland of the South Eastern Highlands (EC 152), 2016.

## Summary

We hope that these thoughts are helpful in guiding your work in regards to this site. In summary, we remain significantly concerned about the proposed development and are yet to be convinced that locating an extensive urban area at Lawson North would be tenable given the significant ecological values.