



**CONSERVATION  
COUNCIL** ACT REGION

Submission to the Environment Planning and  
Sustainable Development Directorate

## Review of the Nature Conservation Act

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June 2024

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 (CCACT) appreciates the opportunity to provide comments to the review of the *Nature Conservation Act 2014* (NC Act). This submission is supported by CCACT Member Groups who contributed expert knowledge and evidence based information to it: Friends of Grasslands, Canberra Ornithologists Group and the National Parks Association ACT.

Overall CCACT considers that the Act is failing to deliver the existing Government objective to “*protect, conserve and enhance the biodiversity of the ACT.*” Significantly, the Act is inadequately providing for the protection and conservation of areas outside the reserve system. Despite the ACT Government’s commitment to biodiversity conservation, the current focus on reserve sites within the ACT is incompatible with the way that biodiversity occurs as an unnaturally fragmented<sup>1</sup> mosaic across the landscape. As such, sites of natural significance occur in reserves as well as on other public and leased land. The Act is currently based on a species framework and any amendments or changes should include a shift in emphasis to reflect an ecosystem approach. Consequently the CCACT believes the Act requires substantive amendment in order to effectively protect the biodiversity in the ACT.

The ACT, like the rest of Australia, is undergoing a biodiversity extinction crisis. Canberra’s mature trees are being removed at alarming rates<sup>2</sup>; our faunal emblem, the Gang-gang Cockatoo is endangered; and our natural areas are continuing to be at increasing risk of development and degradation.<sup>3</sup>

Australia’s unique animals and plants are under significant pressure. In July 2022, a landmark State of the Environment Report was released outlining that overall Australia’s natural environment is “poor and deteriorating.”<sup>4</sup> The report found more extinctions are expected in the next decades. The ACT is also experiencing this biodiversity crisis with five new species added to the ACT Threatened Native Species List since 2020<sup>5</sup>. Urban development and climate change pose the largest threats to biodiversity in the ACT. The latest *State of the Environment Report* for the ACT expresses significant concern that recent fires have eroded the condition of our soils.<sup>6</sup>

The ACT has 58 threatened species and two critically endangered ecological

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<sup>1</sup> Nature Conservation (Unnatural Fragmentation of Habitats) Conservation Advice 2019. Accessed via: [www.legislation.act.gov.au/nl/2019-833/](http://www.legislation.act.gov.au/nl/2019-833/)

<sup>2</sup> Environment Planning and Sustainable Development Directorate, 2023. *Loss of Mature Native Trees Key Threatening Process Action Plan*. Accessed via: [https://www.environment.act.gov.au/\\_data/assets/pdf\\_file/0011/2316188/Loss-of-Mature-Native-Trees.pdf](https://www.environment.act.gov.au/_data/assets/pdf_file/0011/2316188/Loss-of-Mature-Native-Trees.pdf)

<sup>3</sup> Office of Sustainability and the Environment. *ACT State of Environment Report 2023, “Canberra’s Urban Boundary”*. Accessed via: <https://www.actsoe2023.com.au/issues/canberras-urban-boundary/>

<sup>4</sup> Australian Government, 2021. *Australia State of the Environment Report 2021*. Accessed via: <https://soe.dcceew.gov.au/>

<sup>5</sup> ACT Environment Planning and Sustainable Development Directorate. *Threatened Species and Ecological Communities*. Accessed via:

<https://www.environment.act.gov.au/nature-conservation/conservation-and-ecological-communities/threatened-species-and-ecological-communities>. The five additional species are the Gang-gang Cockatoo, Mountain Skink, Yellow-bellied Glider, Keys Matchstick Grasshopper and the Pilotbird.

<sup>6</sup> Office of the Commissioner for Sustainability and the Environment (ACT), 2023. *State of the Environment Report*. Accessed via: <https://www.actsoe2023.com.au/OCSE/ACT-State-of-the-Environment-Summary-Report-2023.pdf>

communities.<sup>7</sup> The protection of remaining Natural Temperate Grasslands and Yellow Box-Blakely's Red Gum Grassy Woodlands is especially important given their national significance, their intrinsic value, the amenity they bring to our city and their role as habitat for many threatened species.

Outlined in the following submission is recommended improvement for the NC Act. CCACT supports legislative measures to ensure the biodiversity of the ACT and remaining genetic diversity and threatened ecological communities are protected and planned around rather than 'lost' and subject to offsetting measures. The submission provides detail on Commonwealth legislation and policy as CCACT is cognisant the NC Act sits within this context; to be clear CCACT is making the following recommendations to ensure the ACT has appropriate legislative and policy settings.

## Definitions

The definitions within the Act affect the Act's scope. A particularly important definition is that of "animal" within the Act as it impacts many of the other definitions.

The CCACT is puzzled why the current definition of animal restricts the extent to which fish and invertebrates are covered. In order to fully meet its conservation objectives the Act should be comprehensive in its applicability. The current restrictions requiring fish and invertebrates to be only recognised under the Act where they have special protection status or are protected native species removes significant numbers of species from the protection of the Act.

### *Recommendation*

1. That ss 11(c) (ii) and (iii) are removed from the Act.

## Object and objectives of the Act

### ***Has the NC Act achieved its objectives in the past decade?***

As outlined by the Office of the Commissioner for Sustainability and the Environment in the ACT State of the Environment Report 2023, an increase in threatened species listings, continued fragmentation of ecological communities and removal of mature native trees, provides clear evidence the objectives of the Act are not being met. However, it is difficult to respond directly to this question without the Government providing analysis on their own metrics of success in terms of meeting the objectives of the Act. Publicly available analysis and data would assist in critiquing the success or failure of the Act. The ideal biodiversity protection legal framework should be designed to ensure that biodiversity is maintained such that genetic diversity, populations of species and ecological communities do not get to a point of having to be listed as endangered, and so that currently listed threatened species and ecological communities can be taken off the list.

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<sup>7</sup> Environment Planning and Sustainable Development Directorate, 2024. *Threatened Species and Ecological Communities*. Accessed via: <https://www.environment.act.gov.au/nature-conservation/conservation-and-ecological-communities/threatened-species-and-ecological-communities>

### ***Are the objects of the NC Act still valid and relevant?***

The object should indicate that the intent of this Act is to maintain and enhance ACT biodiversity. A range of actions are listed in ss 6(2) that are instrumental to the achievement of the object expressed in ss 6(1). The inclusion of the word “main” in ss 6(1) may give the impression these instrumental actions are also objects of the Act which, although desirable ends in themselves, they are not. Deleting the word ‘main’ will make clear what the Act must achieve.

‘Conservation’ is defined in s 10 as ‘the protection and maintenance of nature while allowing for its ecologically sustainable use’. Because it includes ‘ecologically sustainable use’, the ‘conservation’ element of the Act’s object potentially conflicts with the ‘protection’ element, and the ambiguity should be addressed explicitly in the Act.

The ‘conservation’ element is only relevant in so far as it relates to chapter 2 and chapter 3, Part 5.3 and other parts of the Act that result in ‘Exceptions to offences’ (Division 6.1.4). The application of the ‘conservation’ element to these relevant parts of the Act, only, should be clearly identified in the Act.

The Objects make no reference to a need for decisions under the Act to be based on current scientific evidence. While the Act does require the Conservator to prepare and implement a biodiversity research and monitoring program (s 25) the importance for conservation decisions to be based on the most up to date and relevant scientific evidence should be included in the Objects.

#### *Recommendations*

2. Delete the word ‘main’ from ss 6(1) of the NC Act. The inclusion of the word ‘main’ creates ambiguity as the NC Act has no other objects.
3. Separate (split) the three components of ss 6(1) (protect, conserve and enhance) so the Act clearly identifies where the ‘conservation’ of nature, as defined in the Act, is being applied.
4. Include in the Objects the need for decisions to be based on current scientific evidence.

### **First Nations engagement**

The CCACT supports giving greater recognition and decision-making power to First Nations people who are the traditional custodians of the ACT’s unique biodiversity. This commitment needs to be legislated, ensuring that wherever it is feasible and desired by First Nations peoples, that they are decision makers and stewards in helping to reverse the decline of, manage and enhance ACT biodiversity.

#### *Recommendation*

5. Legislate decision making powers for First Nations people to manage and enhance biodiversity in the ACT.

## General duty of care

The CCACT recommends the inclusion of a general duty of care in the NC Act. However, such a duty will be ineffective unless it allows third party standing, i.e., third parties will be able to make legal claims against persons who are alleged to have breached this legal duty. Further, the CCACT advocates for a specific duty of care for the environment to be created for the ACT Government.

### *Recommendation*

6. Include a Duty of Care in the Nature Conservation Act.

## Alignment with Territory programs

Any amendments to the Act need to ensure integration of higher level strategic policy outcomes and effective operational delivery of the Act and its associated instruments. Likewise the Act needs to be streamlined with other key environment and planning legislation with biodiversity implications including the *The Human Rights (Healthy Environment) Amendment Bill 2023* and *Planning Act 2023*.

A key structural feature of the current Nature Conservation Act is a reliance on a range of subsidiary documents such as the Nature Conservation Strategy and action plans for declared threatened species, ecological communities or threatening processes as well as management plans for reserved areas. It would strengthen biodiversity outcomes if provisions of these various documents were binding on decision-makers, including decision-makers and others in the ACT and Commonwealth governments (to the fullest extent possible).

In addition, while these documents are required under the Act, there are no substantive legal requirements for regular review, implementation or reporting of outcomes. Provisions should be included in the Act for regular reporting and review as well as outcome reporting against clear indicators (Discussion paper questions p.25).

There is currently, under s101, no time requirement for the Conservator to prepare a draft action plan for each relevant species, relevant ecological community and key threatening process.

Progress reports on action plans are required every 5 years. Currently, on the EPSDD website, there are 31 action plans listed, 21 of which have been included in three ecosystem strategies. The following do not have a published progress report: Glossy Black Cockatoo (listed 2010 Action plan 2013), Little Eagle (listed 2008 Action plan 2013), Northern Corroboree Frog (listed 2003, Action Plan 2008) Smokey Mouse (Current action plan 2013) and the loss of mature native trees (Action Plan 2023).

Under s177, the custodian of a reserve must prepare a draft reserve management plan but no timeframe is specified.

Under s189, the custodian of the reserve must report to the Minister about the implementation of the plan at least once every 5 years but there is no requirement for this to be made public.

Under s203, the Conservator must report to the Minister about each Ramsar wetland management plan at least once every 7 years. But why is there a difference in the timeframe in reporting to that required for reserves and there is again no public access to the report?

Part 5.3 of the Act deals with the development of conservation plans on stated land, but only for native species. In order to be consistent with the objectives of the Act this should be expanded to include ecological communities

These examples indicate a lack of resources to ensure the timing, development and reporting on progress and will require increased resourcing, improved public communication and the broadening and deepening of partnerships with stakeholders.

### *Recommendations*

7. Integrate policies, plans, strategy and legislative tools to provide greater integration between all the various strategies and actions plans under the Act. Subsequently, fully fund and implement these priorities, applying specific timeframes and making them publicly available to improve accountability.
8. Provide legal strength including binding effect to subsidiary documents.
9. Give regulatory weight, fully implement and provide sufficient funding for all threatened species action plans. Introduce a review process for these action plans, as well as specific timeframes and indicators to enable appropriate reporting over time.
10. Streamline the NC Act with other key environment and planning legislation that has biodiversity implications.
11. Review the responsibilities of the Act to incorporate and uphold the *The Human Rights (Healthy Environment) Amendment Bill 2023*.
12. Amend Part 5.3 Native Species Conservation Plans of the Act to include ecological communities.

## Nature Conservation Strategy

The Current Nature Conservation Strategy needs to be streamlined and have clearly defined and achievable targets that are outcome-related. The targets need to be qualitative as well as quantitative.

The current vision in the Strategy is “ Biodiversity rich, resilient landscapes stretching from the inner city to the mountains, where well-functioning ecosystems can meet the needs of people and the environment.” However, CCACT objects to this as a vision linked to conservation that talks about the needs of people before the environment.

The Strategy has an emphasis on lowland ecological systems however there has been significant damage to the highland ecological systems during the current strategy as a result of fire. The ongoing rehabilitation of the highlands and the risks facing highland ecological systems should be addressed in the Strategy.

### *Recommendations*

13. Amend the Vision to refer to the needs of the “environment and people.”

14. Ensure that measurable qualitative and quantitative targets are included in the Strategy.
15. Ensure the risks facing, and the rehabilitation needed in, the ACT's highland ecological systems are addressed in the Strategy.
16. Include outcomes.

## Address Key threats

It appears that climate change impacts and planning decisions relating to urban development are the key threats to biodiversity in the ACT that to date have been substantially unaddressed. Any changes to the Act therefore should reflect other legislative measures and processes to ensure that urban planning decisions are based on adequate biodiversity data and the precautionary principle and consider ecosystem impacts in the preparatory stages of the urban planning process. Likewise appropriate monitoring and research needs to be undertaken to assess climate change impacts on biodiversity, such that consideration can be given to mitigation activities prior to significant biodiversity losses.

With urban development one of the key threats to biodiversity conservation in the ACT, until biodiversity outcomes are given primacy in the planning process, effective biodiversity conservation outcomes will be difficult to achieve. In addition to adopting such a principle across the ACT agencies to align with the ACT Government's commitment to biodiversity conservation, it should be mandatory to refuse a development proposal where an unacceptable impact on threatened species, endangered ecological communities or their habitat has been shown.

Our changing climate will undoubtedly result in the naturalisation of new native and introduced species as well as result in changes in the abundance of existing species. There is a need to identify that some species that will establish may beneficially replace native species at risk of loss, others will require targeting as threats.

### *Recommendations*

17. Address key threats of urban and industrial development and climate change impacts.
  - a. The Minister direct the Scientific Committee to consider listing climate change as a key threatening process.
18. Require decision makers on a development proposal to refuse consent where an environmental assessment has shown that there will be an unacceptable impact on threatened species, endangered ecological communities or their habitat.

## Adequate enforcement and compliance

As the discussion paper outlines there has been very little enforcement of the Act. Effective regulation relies on effective enforcement. A wider range of enforcement options, such as remediation orders, could improve biodiversity outcomes and increased penalties could bring the penalties into line with other jurisdictions. For example, Part 10.2 of the Act *Prohibited and restricted activities* lists inadequate and ineffectively low penalty units. CCACT believes the compliance and enforcement mechanisms of the Act could be considerably enhanced.

S 30 of the Act states that a "conservation officer may exercise a power under a territory law in relation to a person only if the conservation officer first shows the person the conservation officer's identity card". The CCACT notes that there are situations where the immediate threat



of environmental damage may warrant the exercise of the powers prior to the production of the identification. It would seem contrary to the objectives of the Act if direct action and subsequent prosecution cannot be completed because of the failure to comply with this section.

There are further issues raised that relate to enforcement under the heading 'Primacy in nature reserves'.

### *Recommendations*

19. Include a wider range of enforcement options and increase penalty units.
20. Align penalties with other jurisdictions and ensure that penalties are commensurate with the offence.
21. Ensure the Act applies to government authorities, public authorities and utility providers.
22. Provide for measures to ensure remediation is undertaken.
23. Remove the requirement for a conservation officer to produce identification before preventing a person damaging the environment.

## Role of the Conservator

How environmental laws and policies are administered by the ACT Government and environmental statutory office holders is critical to achieving strong environmental outcomes and the object of the NC Act (to protect, conserve and enhance the biodiversity of the ACT). It is therefore essential that there are best practice environmental governance arrangements in place to ensure that fundamental accountability principles are upheld in relation to environmental management.

CCACT is concerned in Chapter 13, 316 "Simplified Outline" Note 4 states that a development approval that is inconsistent with the Conservator's advice may be given by the Chief Planner or Planning Minister. The Conservator's advice should not be to facilitate ecologically sustainable development but to protect, conserve and enhance the biodiversity of the ACT. Thus the Conservator's advice should not be able to be vetoed by the Planning Minister approving a development application. A form of 'dispute resolution' should be mandatory in cases where the Chief Planner or the Minister is inclined to override the Conservator's advice.

The role of the Conservator should be established as independent and the powers should be widened and strengthened. The Conservator should be a statutory appointee independent of Government who reports directly to the Environment Minister and the ACT Legislative Assembly.

### *Recommendations*

24. The Conservator of Flora and Fauna be established as a standalone and independent role that sits outside the structure of ACT Government directorates.
25. Expand the Conservator's functions under Chapter 2, Part 2.1, 21. to direct that land management actions be undertaken on sites of threatened ecosystems or threatened species habitat when the condition of such sites has deteriorated and the conservation status of the site is at risk.



26. Greater transparency is needed when development approval decisions are made that are inconsistent with the Conservator's advice. These decisions should also be reviewable.
27. Provide a review role of Environmental Impact Assessments prepared under the *Planning Act 2023* to the Conservator with the power to reject unsatisfactory EIAs.

## Primacy in nature reserves

As stated by the Office of the Commissioner for Sustainability and the Environment in the *ACT State of the Environment Report 2023*:

Unlike in other Australian jurisdictions, the *Nature Conservation Act 2014* does not have "primacy" in nature reserves. For example, legislation covering littering and dumping, erection of structures, and domestic animals falls under other Acts. It means rangers have no powers in relation to these matters – e.g., they do not have the power to extinguish a person's illegal campfire. This also means that offences in these categories are generally not pursued in reserves, where they should be *most* actively pursued. In the interests of conservation, the *Nature Conservation Act* must have primacy to allow for the proper operation of the park management act. A good example of an interstate law that provides for this is section 35(1) of the *National Parks and Reserves Management Act 2002* (Tas): "A statutory power may not be exercised in relation to any land in a national park, State reserve, nature reserve, historic site or game reserve except where – (a) the exercise of the power is authorised by the management plan for that land; or (b) the power is a power under the *Nature Conservation Act 2002* [Tas]".<sup>8</sup>

### Recommendation

28. Provide the NC Act primacy over other legislation within Nature reserves.

## Primacy over Emergency Act

S 7 of the Act identifies that activities under the *Emergencies Act 2014* have primacy over the Act where these are conducted for the purpose of:

- “(a) protecting life or property; or
- (b) controlling, extinguishing or preventing the spread of a fire”.

CCACT is concerned that both these purposes could be interpreted very broadly and would include activities undertaken to reduce the potential impacts of a future bushfire in environmentally significant areas, even if the potential for a future fire is low or where the risk to life or property is low. This concern further highlights the need for the Conservator's recommendations in respect to proposed developments in bushfire prone locations to be given greater weight as per our recommendation 3 under the Role of the Conservator section above.

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<sup>8</sup> Office of Sustainability and the Environment. *ACT State of Environment Report 2023, "Recommendations."* Accessed via: <https://www.actsoe2023.com.au/recommendations/>

## Recommendation

29. Except for immediate bushfire emergencies threatening life or property, the Conservator is advised of all proposed bushfire mitigation activities under the Emergencies Act affecting areas of conservation significance. The Conservator's advice in respect to these activities must be considered and where actions proposed are inconsistent with the Conservator's advice, comprehensive reasons must be given and be subject to review by the ACT Assembly.

## Protected Area ('Reserve') establishment and management

The Discussion Paper raises as an issue the lack of guidelines and formal processes for designating and revoking reserves. (Question discussion paper p12. *How can provisions and processes for reserve declaration and management be improved?*)

In Australia, protected areas are established in four ways, 'by government', or as 'Indigenous protected areas', 'shared management areas' or 'private protected areas'.<sup>9</sup> The 'Standards for inclusion in the National Reserve System' are found in *Australia's Strategy for the National Reserve System 2009–2030* (herein, the protected area standard).<sup>10</sup>

Consistent with this Strategy, the ACT Government is required to:

Publicly report every two years on protected areas in each of the four reserve types ... according to IUCN categories in the Collaborative Australian Protected Areas Database (CAPAD) along with an assessment of their contribution to the National Reserve System.

The ACT Government has consistently reported on protected areas in the ACT that meet the protected area standard. Leaving aside protected areas on Commonwealth Land in the ACT, three types of protected areas are recognised:

- Wilderness Area - Bimberi,
- National Park - Namadgi, and
- Nature Reserve - all the ACT Government's other protected areas.

All these protected areas are of the 'by government' type and all are established on Public Land.

We note the NC Act recognises additional places as 'Reserves', i.e., the ACT's 'catchment areas'<sup>11</sup>. To date, the ACT Government's CAPAD record has not included catchment areas such as the Lower Cotter Catchment, despite the fact such areas are likely to be achieving biodiversity outcomes.

### Establishment and revocation of Nature Reserves

As noted in the *ACT State of the Environment Report 2023*:

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<sup>9</sup> Natural Resource Management Ministerial Council (May 2009) *Australia's Strategy for the National Reserve System 2009–2030*. Accessed via: <https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf>, pp. 23-24.

<sup>10</sup> Natural Resource Management Ministerial Council (May 2009) *Australia's Strategy for the National Reserve System 2009–2030*. Accessed via: <https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf>, pp. 42-43.

<sup>11</sup> NC Act ss 169(1)(iv)

The ACT *Nature Conservation Act 2014* only provides for the management of reserves, not their “declaration”, as in other jurisdictions. Until the commencement of the *Land (Planning and Environment) Act 1991*, reserves were declared under section 51 of the *Nature Conservation Act 1980*, and wilderness zones under section 52. This approach to creating protected areas — specifically the lack of any formal declaration process specifying the name, class and boundaries for each individual reserve — sets the ACT apart from standard practice in all the states, the Northern Territory and the Commonwealth.<sup>12</sup>

Issues like the following need to be addressed by the *formal and overt* establishment, by declaration (or similar), of all protected areas in the ACT under the NC Act:

- Attachment A is a case study highlighting the apparent disappearance of part of an ACT Government Reserve on Public Land, a section of the Lower Molonglo Nature Reserve that ceased to be included in the ACT’s protected area record (CAPAD) sometime between 30 June 2006 and 30 June 2008, near what is now the suburb of Whitlam.
- While overall the area of the ACT’s protected area estate continues to rise steadily, in the years to 30 June 2018 the area (in hectares) of some other supposedly protected areas also inexplicably shrank.<sup>13</sup>
- Some ACT Government Reserves on Public Land have been extended with no public notification; for example, many if not all of the offsets that compensate for urban development at Gungahlin were dedicated by Technical amendment to the Territory Plan, only, i.e., they were not notified.<sup>14</sup>

The protected area standard “requires a Parliamentary process to extinguish [a] protected area or excise portions from it”.<sup>15</sup>

Separate provisions are needed to control the revocation of reserves.

In most other jurisdictions, declarations and revocations occur under dedicated legislation.<sup>16</sup>

Nowhere else in Australia do we find a planning system so dominate an entire jurisdiction’s environmental protection system. The fact the boundaries of Reserves on Public Land can be amended with no formal process, by the mere adjustment of lines on maps buried deep in the Territory Plan, is unacceptable.

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<sup>12</sup> Office of Sustainability and the Environment. *ACT State of Environment Report 2023, “Recommendations.”* Accessed via: <https://www.actsoe2023.com.au/recommendations/>

<sup>13</sup> For example, for whatever reason, sometime between 30 June 2016 and 30 June 2018, the area in hectares of the following nature reserves shrank: Black Mountain from 462 to 434 ha, Mt Ainslie Reserve from 770 ha to 637 ha, Farrer Ridge from 195 to 185 ha, and Mt Pleasant from 66 to 57 ha btw 2016 and 2018; CAPAD 2016 ACT Summary, Accessed via: <https://www.dcceew.gov.au/sites/default/files/env/pages/761994ab-42cc-4f24-952c-c21221861884/files/capad2016act.xlsx>; CAPAD 2018 ACT Summary, Accessed via: <https://www.dcceew.gov.au/sites/default/files/env/pages/f329f2b1-6945-43df-9e96-f68ec893b116/files/capad2018-terrestrial-act.xlsx>

<sup>14</sup> The Offset Management Plans for the extensions to Mulligans Flat & Goorooyarroo Nature Reserves (Accessed via: [https://www.planning.act.gov.au/\\_data/assets/pdf\\_file/0008/2331899/Mulligans\\_Offset\\_Management.pdf](https://www.planning.act.gov.au/_data/assets/pdf_file/0008/2331899/Mulligans_Offset_Management.pdf)), and for the Kinlyside Nature Reserve (Accessed via: [https://www.planning.act.gov.au/\\_data/assets/pdf\\_file/0007/2331898/Kinlyside\\_Offset\\_Management\\_Plan.pdf](https://www.planning.act.gov.au/_data/assets/pdf_file/0007/2331898/Kinlyside_Offset_Management_Plan.pdf)), each state (each on p. 3) that the extensions were “undertaken by way of a Technical Variation to the Territory Plan”. The ACT Government factsheet titled *Technical Amendments to the Territory Plan*, Accessed via: [https://www.devmatrix.act.gov.au/\\_data/assets/pdf\\_file/0018/2320551/technical-amendments-to-the-territory-plan-factsheet.PDF](https://www.devmatrix.act.gov.au/_data/assets/pdf_file/0018/2320551/technical-amendments-to-the-territory-plan-factsheet.PDF), confirms that, in such instances, no notification is required.

<sup>15</sup> Natural Resource Management Ministerial Council (May 2009) *Australia’s Strategy for the National Reserve System 2009–2030*. Accessed via: <https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf>, p. 43.

<sup>16</sup> For example, s 30A of the *National Parks and Wildlife Act 1974* (NSW)

Amidst our biodiversity crisis, there is a growing realisation primacy needs to be given to nature conservation generally.<sup>17</sup>

### Management of Nature Reserves

Under s 172 of the Act, Reserves can be, and have been, assigned to IUCN categories. However, the CCACT cannot find that any IUCN management objectives have been prescribed under s.173 of the Act.

### *Recommendations*

30. Provide, in the NC Act, the power to declare protected areas including (but not limited to) the 'Reserves' currently identified at ss 169(1)(a)(i-iii) of the Act.
31. That the option to establish protected areas on unleased or leased land via dedicated mechanisms be included in the NC Act.
32. Those mechanisms set out clear guidelines and formal processes (including public consultation and notification) for declaring and revoking Reserves. Reserves must be established with clearly delineated boundaries visible in CAPAD.
33. Prescribe the purpose of, and how each IUCN category of Reserve should be managed, in accord with s 173 of the Act (the 'IUCN reserve management objectives').

## Landscape scale conservation

The Act needs a framework designed to achieve landscape-scale conservation across the ACT, and particularly to take account of ecological connectivity (Discussion Paper Question p.16). Currently there is little consideration of ecological connectivity in the Act. This includes not only terrestrial land, but also the ACT's rivers, lakes, ponds, wetlands and riparian zones which support biodiversity and provide crucial food, refuge and habitat to local wildlife.<sup>18</sup>

The current system of dealing with the impacts from urban and infrastructure developments in a piecemeal process needs to change through adopting an ecosystem approach. Cumulative impacts from piecemeal development has resulted in fragmentation of ecosystems and edge effects thus limiting their viability to serve ecosystem functions.<sup>19</sup> CCACT supports mechanisms to ensure biodiversity mapping is undertaken well in advance of land release and structural planning activities, and that all conservation areas are protected from development.

The Act is currently based on a species framework and any amendments or changes should include a shift in emphasis to reflect an ecosystem approach, in addition to the current species protection measures. CCACT supports legislative measures to ensure the ACT's biodiversity and remaining genetic diversity and threatened ecological communities are protected, restored and planned around rather than 'lost' and subject to offsetting measures.

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<sup>17</sup> State of NSW and the Department of Planning and Environment (August 2023) *Final Report: Independent Review of the Biodiversity Conservation Act 2016*. Accessed via:

<https://www.parliament.nsw.gov.au/lc/tables/papers/Pages/tables-paper-details.aspx?pk=186428&houseCode=lc>, p. 3

<sup>18</sup> Office of Sustainability and the Environment, 2022. *State of the Lakes and Waterways in the ACT*. Accessed via:

<https://envcomm.act.gov.au/latest-from-us/acts-lakes-and-waterways/>

<sup>19</sup> Laurance, William F et al, 'Habitat Fragmentation, Variable Edge Effects, and the Landscape-Divergence Hypothesis' (2007) 2(10) *PLOS ONE* e1017. Accessed via: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0001017>

## Recommendations

34. Require the Scientific Committee to develop and regularly review principles of ecological connectivity. Draft principles and review of principles should be subject to public consultation.
35. Provision is made in the Act to ensure that the Planning Authority and other decision makers have regard to ecological connectivity.
36. Provide legal protection of existing ACT genetic diversity, threatened ecological communities and threatened species. Prohibit all development activities that impact listed threatened species and ecological communities.
37. Shift the emphasis of the Act from a species framework to reflect an ecosystem approach, in addition to the current species protection measures. Require Management Plans to consider ecosystems as well as species.
38. Bring remaining unprotected sections of the Molonglo and Murrumbidgee river corridors into the nature reserve system.
39. Continue to progressively restore, upgrade and renaturalise existing major creeks and stormwater channels including Tuggeranong Creek, Weston Creek, Yarralumla Creek, Jerrabomberra Creek, Sullivan's Creek and Ginninderra Creek.

## Off reserve conservation: Implementing the Biodiversity Network

As the 'bush capital', Canberra is fortunate to host a mosaic of important natural areas in and around the city. Many natural area types (ecological communities) are well represented and well managed within the ACT's Reserves on Public Land; however, others are not. Some areas of importance to conservation, outside the ACT's Reserves, are at risk of ecological mismanagement.

The ecological community types that are under-represented in the Reserves are those in the north of the ACT, where most of the ACT population lives. Here the system of Reserves is patchy, confined primarily to river corridors, steep slopes and hills. Broad U-shaped valleys are nearly all developed.

Under the NC Act, the ACT Government is responsible to protect, conserve, enhance, restore and improve biodiversity in the ACT, wherever it occurs, inside and outside the system of Reserves.<sup>20</sup>

Outside the system of Reserves the requirement for considering conservation as a primary land use objective is limited.

In summary, existing land uses are incompatible with the protection of natural values in four primary ways<sup>21</sup>:

- A. The ACT's system of Reserves does not protect all areas of importance to conservation;
- B. Areas of high conservation value outside Reserves are being lost through expansion of the city and associated infrastructure;

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<sup>20</sup> NC Act; ACT Government, *Parliamentary and Governing Agreement of the 10th Legislative Assembly*, 2020.

<sup>21</sup> Conservation Council ACT Region and Friends of Grasslands, 2022. *Building a Biodiversity Network Across the ACT*. Accessed via: [https://conservationcouncil.org.au/wp-content/uploads/BRIEFING\\_BIODIVERSITY-NETWORK-Final\\_Version\\_December.pdf](https://conservationcouncil.org.au/wp-content/uploads/BRIEFING_BIODIVERSITY-NETWORK-Final_Version_December.pdf)

- C. Natural resources outside Reserves are not consistently managed for conservation values; and
- D. Areas of biodiversity are fragmented across the ACT.

The Biodiversity Network concept proposed by the CCACT and Friends of Grasslands calls for better, more-coordinated management - with an ecological focus - of:

- not just the significant areas of native biodiversity that continue to exist - as remnants of woodlands and grasslands along roadsides, in patches within and between suburbs, and on rural leasehold land etcetera
- but the urban open space areas too - playing fields will still be managed as playing fields, while elsewhere urban open space with high conservation value, which may include connectivity corridors, will be managed to promote the survival of native species and ecological communities as we all adapt to climate change.

Many people already contribute to caring for the biodiversity that exists in and around our city. In addition to the ACT Government staff who mow and tend to suburban corridors, volunteers remove weeds, plant trees and care for injured wildlife. Many are organised in groups such as Parkcare and Landcare. Many have extremely high levels of expertise in a range of ecological and land management subjects, and bring skills and experience from their professional careers into the volunteer realm.

Across this ecosystem, the Biodiversity Network concept is 'tenure blind', i.e., it should not matter whether the land manager is a public utility, a government directorate, a rural leaseholder or a volunteer. People managing:

- the ACT's Public Land, within and outside the ACT's system of Reserves,
- National Land, and
- rural and urban leasehold land,

will all be aware of, and contributing to, the achievement of land management that is generally speaking directed to the survival of the ACT's native species and ecological communities.

### **Unleased land**

While the exact number of areas of high conservation value that remain on unleased land in ACT remain unknown, considerable work is being currently undertaken to identify and survey these areas that are outside the ACT's system of Reserves. As has been reported in response to the Territory Plan and District Strategies consultation, there are more high conservation areas than were defined as part of the 'blue-green network'. The Act must address the need to conserve these areas, including protecting them from development and managing them to retain those conservation values. Such areas may remain in use for complementary land uses.

### **Rural and urban leased land**

Protection has been provided to some leased areas by a combination of three measures, ending leases, changing the tenure to Public Land and changing the land use to Nature Reserve. The CCACT understands this approach is not popular with rural or urban lease holders. We observe it would give little confidence to leaseholders who might consider improving their land management practices if they knew their tenure was more certain.

Currently the management of each rural lease area continues to fundamentally rely on its Land Management Agreement (LMA):



- It is understood LMAs are: not published, not permanent, can be altered too easily by Government<sup>22</sup> and provide few incentives for lessees to undertake initiatives to improve their lease areas.
- The Conservator can make guidelines setting out the requirements for LMAs<sup>23</sup>; but, to our knowledge, no guidelines have been made.
- A development on a rural lease can only be approved if the proposal is consistent with any LMA<sup>24</sup>; however, given LMAs are not published, few people know what they contain. Whether development has already been approved in rural lease areas is unknown.

The ACT Auditor-General's 2020 report on LMAs was not complimentary.<sup>25</sup>

Unlike in other jurisdictions, there is currently no statutory program enabling lease holders to propose that their leased area be *permanently* and *securely* established as a protected area.

The protection of rural lease areas could not be more important because, due to a combination of ecosystem robustness and the good management of leaseholders, valuable biodiversity remains on many rural leases. For example, approximately 43 per cent of the total extent of the listed threatened (critically endangered) Blakely's Red Gum – Yellow Box (± White Box) tall grassy woodland persists on rural leasehold tenures<sup>26</sup>.

A statutory program should be enacted to enable the establishment of *permanent* and *secure* protected areas on leased land. Such mechanisms protect leasehold tenures in four of six Australian states.<sup>27</sup> Incentives are needed to encourage leaseholders considering executing protection instruments made under such a mechanism to protect both rural and urban leasehold sites with important remnants of critically endangered ecological communities and/or populations of threatened species.

The CCACT understands some leaseholders support the concept of providing perpetual protection for areas of high conservation value within their leasehold land, *if* suitable incentives are provided for lost productivity.

The current situation, in particular the short term of leases, and lack of tenure certainty, provides little to no incentive for rural leaseholders to manage land in their control conservatively. At worst, it creates a perverse incentive for the land to be worked hard for the limited period available.

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<sup>22</sup> Australian Conservation Foundation (2024) Appendices: Set and forget: how offsets under national environmental law drive habitat destruction. Accessed via: [https://assets.nationbuilder.com/auscon/pages/23522/attachments/original/1714694534/2402\\_Nature\\_EPBC\\_Report\\_Appendices.pdf?1714694534](https://assets.nationbuilder.com/auscon/pages/23522/attachments/original/1714694534/2402_Nature_EPBC_Report_Appendices.pdf?1714694534), p. 27

<sup>23</sup> Planning Act 2023 (ACT), ss 350(4)

<sup>24</sup> Planning Act 2023 (ACT), ss 189(1)(b)

<sup>25</sup> ACT Auditor-General (2020) *Land Management Agreements: Report No. 1 / 2021*. Accessed via: [https://www.audit.act.gov.au/\\_data/assets/pdf\\_file/0007/1697029/Report-No.-01-of-2021-Land-Management-Agreements.pdf](https://www.audit.act.gov.au/_data/assets/pdf_file/0007/1697029/Report-No.-01-of-2021-Land-Management-Agreements.pdf)

<sup>26</sup> Environment, Planning and Sustainable Development (2019) *ACT Native Woodland Conservation Strategy and Action Plans*. Accessed via: [https://www.environment.act.gov.au/\\_data/assets/pdf\\_file/0003/1444098/Woodland-Conservation-Strategy.pdf](https://www.environment.act.gov.au/_data/assets/pdf_file/0003/1444098/Woodland-Conservation-Strategy.pdf), pdf p. 19 (of 202), Table 1

<sup>27</sup> The exceptions are Tasmania and Victoria where leasehold land cannot be protected with high-quality protection mechanisms; see Australian Conservation Foundation (2024) *Appendices: Set and forget: how offsets under national environmental law drive habitat destruction*. Accessed via: [https://assets.nationbuilder.com/auscon/pages/23522/attachments/original/1714694534/2402\\_Nature\\_EPBC\\_Report\\_Appendices.pdf?1714694534](https://assets.nationbuilder.com/auscon/pages/23522/attachments/original/1714694534/2402_Nature_EPBC_Report_Appendices.pdf?1714694534), pp. 4 (Nature Refuges), 8-9 (Conservation Agreements), 19 (Heritage Agreements), 20 (Conservation Covenants) and 22 (National Trust Covenants).



## *Recommendations*

Three conservation tools exist (offsets) or are emerging (nature repair and other effective area-based conservation measures), at the Commonwealth level, that could be very useful in achieving a well-managed and well-protected Biodiversity Network. However, the CCACT has identified *clear* weaknesses associated with each of these tools.

The ACT Government's Discussion Paper invites forward thinking, contemplation of how the ACT Government should prepare for a future we can see is approaching. It is clear the future includes these three tools.

Sections of this paper (below) suggest how the ACT Government can apply the Commonwealth's conservation tools in ways that will ensure they have good effect in the ACT context.

The CCCACT Biodiversity Working Group would be pleased to discuss our recommendations further.

A statutory mechanism is needed to protect leasehold land to the protected area standard:

40. Enact a legal mechanism under the NC Act, such as a voluntary conservation agreement (or similar), under the NC Act's 'protect' object, that will enable urban and rural lease holders to voluntarily commit to protecting, maintaining and improving the biodiversity values of rural leasehold land for as long as legally possible in the ACT. The standard of the mechanism must be sufficient to meet the protected area standard. For example, instruments made under the mechanism must:
  - a. bind successors in lease title
  - b. endure 'for the term of the lease and any extension to the lease', or similar
  - c. be difficult to vary or revoke in favour of development of more-intense forms of land use (land uses sympathetic with and complementary to conservation are acceptable under, e.g., IUCN Category VI).
41. Resource the assessment of urban and rural lease areas proposed for inclusion in protected areas on leasehold land.
42. For areas assessed to be of high conservation value suitable for inclusion in protected areas on leasehold land, resource the preparation of a voluntary conservation agreement instrument (or similar).
  - a. The area to be protected must be established with clearly delineated boundaries visible in CAPAD.
  - b. The management to be delivered on the land must be checked for consistency with protected area standards and be appropriate for the area and ecosystem type.
  - c. Monitoring and reporting arrangements related to management effectiveness must be clear.
43. For urban and rural leaseholders that execute these instruments, provide secure long-term leasehold tenure.
44. Do not restrict the forms of support these land managers can obtain; rather, via future nature conservation strategies, offer relatively high degrees of support and incentive to maintain and improve the biodiversity on the protected leasehold land.

45. Monitor and enforce landholder compliance with the agreements.

A separate statutory mechanism is needed to protect critically important biodiversity outside Reserves and protected areas on leasehold land:

46. Enact a legal mechanism under the NC Act, such as a nature repair agreement (or similar), under the NC Act's 'protect' object, that will enable utilities, directorates and urban and rural lease holders to voluntarily commit to protecting, maintaining and improving the biodiversity values of land undergoing or in need of repair for as long as legally possible in the ACT. In that the land concerned will be recognised as degraded and in need of repair, the mechanism will not meet the protected area standard.
47. Provide support and incentives to promote landholder commitments via instruments made under the mechanism that:
  - a. bind successors in land or lease title
  - b. for urban and rural leasehold land, will endure 'for the term of the lease and any extension to the lease', or similar
  - c. be difficult to vary or revoke in favour of development or more-intense forms of land use.
48. Resource the assessment of areas proposed for inclusion in nature repair areas.<sup>28</sup>
49. For areas assessed to be suitable for inclusion in nature repair areas, resource the preparation of a nature repair agreement instrument (or similar):
  - a. The area to be repaired must be established with clearly delineated boundaries visible in publicly accessible registers.
  - b. The management to be delivered on the land must be checked for consistency with restoration standards appropriate for the area and ecosystem type.
  - c. Monitoring and reporting arrangements related to management effectiveness must be clear.
50. For urban and rural leaseholders that execute these instruments, provide secure long-term leasehold tenure.
51. Do not restrict the forms of support these land managers can obtain. Via the next nature conservation strategy, offer support until biodiversity certificates are issued then review each case based on information published in the Biodiversity Market Register.
52. Monitor and enforce landholder compliance with the agreements.

## Alignment with Commonwealth legislation and policy

The Biodiversity Network concept is broadly consistent with the Australian Government's intention to introduce 'regional planning' into national environmental law. At its core the regional planning reform will promote better decisions about where development should occur by *first* identifying high conservation value areas, protecting them and promoting their continued existence by ensuring habitat connectivity. Then, cautiously, development can occur in identified zones, with every sensible and necessary mitigation.

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<sup>28</sup> For 'project areas' to be repaired via biodiversity projects registered under the Nature Repair Act, the assessments required should be minimal, sufficient to confirm the projects registered by the Clean Energy Regulator are appropriate in the ACT context.

Both the Biodiversity Network and regional planning concepts provide for recognising landscape-scale conservation and all the different land uses discussed in this submission including ACT Government Reserves, offset areas, 'project areas' under repair under the Nature Repair Act, and Other Effective Area-based Conservation Measures (OECMs).

The Discussion Paper does not acknowledge the uncertainty caused by the update of *Australia's Strategy for Nature* (see [here](#)), the fact 'Australia's National Roadmap (Delivering the 30 x 30 land target)'<sup>29</sup> has not been finalised, or the fact multiple national environmental law reform proposals, set out in the Nature Positive Plan, are no longer scheduled to be introduced to the Australian Parliament during the life of the current Albanese Labor Government.

The Discussion Paper acknowledges but does not contemplate how the NC Act and the next ACT nature conservation strategy might be amended and drafted to support and capture the other emerging opportunities. Some changes may attract private finance. All offer potential to structure and incentivise better protection and management of nature in the ACT.

### *Recommendation*

53. Review alignment of the NC Act with *Australia's Strategy for Nature*, the *Nature Positive Plan* and Australia's National Roadmap (Delivering the 30 x 30 land target (in prep), in light of the uncertainty of implementation of Commonwealth reforms.

## Offsets

Applying terminology and procedures found in the *ACT Environmental Offsets Policy*:

- Offsets are typically required by the Conservator and/or the Commonwealth Environment Minister to compensate for the residual significant impacts of approved developments.
- Where an environmental impact assessment demonstrates that, after all planned avoidance and mitigation measures are taken, a proposal will still have residual significant impacts, and the decision-maker decides to approve the development anyway, typically conditions require what is termed an 'averted loss offset'.
- This means a developer who proceeds with an approved development is required to identify, acquire (if needed), legally protect and actively manage a like for like 'offset site' that is otherwise under threat, all to benefit the protected matter that will be impacted at the 'development site'. Those offset benefits should continue for the period of the impact at the development site.<sup>30</sup>

The CCACT observes:

- Offsets have only ever been required of developers when the residual significant impacts of their actions will be serious and irreversible, i.e. the impacts will be permanent. Yet,

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<sup>29</sup> DCCEEW (2024) *National Other Effective area-based Conservation Measures Framework* (Draft). Accessed via: <https://storage.googleapis.com/files-au-climate/climate-au/p/prj2d08d464a5f2aff7ed849/page/Draft%20National%20OECMs%20Framework%20-%20Public%20Consultation.pdf>, second page of the Preamble

<sup>30</sup> Australian Capital Territory (2015) *ACT Environmental Offsets Policy*. Accessed via: [https://www.environment.act.gov.au/\\_data/assets/pdf\\_file/0009/628758/ACT-Environmental-Offsets-Policy-ACCESS-PDF.PDF](https://www.environment.act.gov.au/_data/assets/pdf_file/0009/628758/ACT-Environmental-Offsets-Policy-ACCESS-PDF.PDF)

under the *Planning Act 2023*, requirements to manage offset sites lapse when the development approval that gives rise to the offset requirement expires.

- In the north of the ACT, where relatively intact remnant native vegetation is now rare, development could be authorised and proceed *without* impacting the habitats of species and the patches of ecological communities that are threatened (many are critically endangered). Wherever impacts on remnant native vegetation are avoided, the need for offsets disappears.
- Responding to the difficulties developers have experienced finding and establishing averted loss offset sites, reforms proposed to Australia's national environmental law will (if implemented) enable developers to make payments to approved funds instead. If these reforms proceed, the Australian Government will thereby assume significant responsibility for ensuring nature positive outcomes are achieved overall, through their oversight of the use of those funds. Right now however the timing of these reforms is unknown. Federal offset policy does not bind or limit the offsets ACT Government decision-makers can require.

Under the current Federal and ACT offsets policies, the CCACT considers the better approach would be for the development approval conditions requiring averted loss offsets to stand alone (Discussion Paper Questions p.13). At present, an offset condition for a development approval may require the lessee of an offset site to manage that offset site in accordance with an offset management plan.<sup>31</sup> However, the Planning Act is silent concerning whether and if so how that offset site must be protected. As noted above, the requirements to manage offset sites lapse when the development approvals expire.

Requirements need to specify how offset sites must be not just managed for a short period but established, how they will be protected for the duration of the impact at the development site and how outcomes for protected matters will be monitored and reported.

If they are to be established on Public Land, offset sites should be declared as nature reserves under the NC Act. If they are to be established on leased land, leases must be long-term and a formal legal instrument executed by the Approval Holder (or their resourced partner) to provide secure long-term protection and effective management for the term of the impact at the development site. For more on this mechanism and instrument, see our Recommendations under the heading 'Off reserve conservation: Implementing a Biodiversity Network'.

The CCACT is concerned that in the ACT offsets are not achieving outcomes that genuinely compensate for development impacts. The *State of the Environment Report* for the ACT (2023) explains "it is unclear whether offsets are truly compensating for the loss of biodiversity permitted under federal and Territory environmental laws and policy."<sup>32</sup> Of greatest concern, some do not appear to result in any additional conservation outcomes. For example, the:

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<sup>31</sup> *Planning Act 2023* (ACT), ss 244(2-3)

<sup>32</sup> Office of the Commissioner for Sustainability and the Environment (ACT), 2023. *State of the Environment Report*. Accessed via: <https://www.actsoe2023.com.au/OCSE/ACT-State-of-the-Environment-Summary-Report-2023.pdf>, p. 10

- Justice Robert Hope Park Reserve proposed and accepted as an offset area more than a decade after its establishment (and with no recognition of the work of volunteers who laboured throughout that decade to maintain and improve its values)<sup>33</sup>.
- The 'River Park' (urban) component of the Molonglo River Reserve, said to have been established to compensate for development in the Molonglo Valley, would never have been developed. Most of this part of the Reserve overlaps with the area's one in one-hundred year flood level, while another part around Whitlam was within the Lower Molonglo Nature Reserve from as early as 2002 only to strangely disappear before 30 June 2008<sup>34</sup> and then reappear as a proposed offset (later accepted) in 2010-11 (Attachment A).

If in future offset sites are sites to be repaired, or upon which threats are to be abated etc, whether directly by Approval Holders or with money paid by an Approval Holder into an approved Fund to acquit an offset obligation, those sites must be protected for the term of the impact at the impact site using a 'nature repair agreement' (or similar) executed under the NC Act.

### *Recommendations*

54. The ACT Offsets Policy should sit under the NC Act.
  - a. The Offset Policy be reviewed via public consultation. The review to enable inclusion of improved transparency over decision making. The review to enable inclusion for the objective of the policy to be for maintenance and gain and no loss.
55. That development approval conditions requiring offsets stand alone, i.e. the requirements must:
  - a. not expire when the corresponding development approval over its associated development site expires
  - b. relate specifically to what the approval holder must do - this entity will not always be the entity responsible for the management of the offset site.
56. The conditions requiring offsets must specify how any averted loss offset site must be established and managed as a protected area (on Public Land or leased land) for the duration of the impact at the development site. See recommendations 40-45.
57. The conditions requiring offsets must specify how any offset site to be repaired (or upon which threats to protected matters will be abated) must be protected and managed as a nature repair site (or similar) for the duration of the impact at the development site. See recommendations 46-52.
58. Avoid impacts on remnant native vegetation to remove the need for offsets.

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<sup>33</sup> EPSDD (online) *Justice Robert Hope Park Offset Area*. Accessed via: [www.environment.act.gov.au/ACT-parks-conservation/environmental-offsets/individual-projects/justice-robert-hope-park-offset-area](http://www.environment.act.gov.au/ACT-parks-conservation/environmental-offsets/individual-projects/justice-robert-hope-park-offset-area)

<sup>34</sup> DCCEEW (online) Data record: CAPAD 2008 for the ACT. Accessed via: <https://www.dcceew.gov.au/sites/default/files/env/pages/4fe91d68-b097-45ed-aa0b-450c5717438b/files/capad08act.xls>

## Nature Repair Market

The United Nations declared 2021-2030 the ‘Decade on Ecosystem Restoration’<sup>35</sup>, so it is timely that in December 2023 the Australian Parliament passed the *Nature Repair Act 2023*. The Act provides a *framework* for ‘enhancing and protecting’ biodiversity in Australia. Minister Plibersek expects the new market will unlock private finance, ‘making it easier for businesses, philanthropists and other Australians to invest in activities that repair and protect nature’<sup>36</sup>.

Recognising many other changes are urgently needed to national environmental law to address the biodiversity crisis, with so many Australian ecosystems under threat, the Nature Repair Act and the opportunities it presents are most welcome. The CCACT looks forward to reviewing the details, and to working with the community including all relevant governments so repairs might commence as soon as possible to the ecosystems under threat throughout our region. Repair of natural temperate grasslands should be a high priority because they are rare and in many areas in urgent need of repair.

To enable all this to happen, the CCACT recognises what is needed right now is high-quality well-informed decision-making. The views of experts must be properly considered, priorities set, the means of measuring gains established and repair ‘methods’ finalised and approved.

When the time comes, the ‘current way’ of protecting and managing to retain and improve valuable intact (and relatively intact) biodiverse remnants may be what’s best in some areas, ‘repairing’ land by minimising threats and nurturing seed sources.

Elsewhere, however, some of our region’s landscapes are in need of *radical* repair, i.e., to be ‘bulldozed for biodiversity’ by the removal of nutrient-rich and weed-infested topsoil<sup>37</sup>. Although drastic, such measures may be the only way to simultaneously prevent weed spread and create conditions more favourable to native seed than exotic seed<sup>38</sup>.

No-one knows yet if radical approaches like this will become formal ‘methods’ approved for implementation. We don’t yet know how much private financiers will be willing to pay, so it is difficult to say if such methods will appeal to land managers. The CCACT recognises this may be confronting. Our community needs to be aware of the scope of possible treatments given the scale of the repair task.

Under the Nature Repair Act, to propose a repair project by any approved method, land managers will have to commit to implementing their project proposals for a term of 25 years, 100 years or (depending on the approved method) somewhere in between.

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<sup>35</sup> United Nations Environment Programme (online) *Preventing, halting and reversing loss of nature*. Accessed via: [www.decadeonrestoration.org](http://www.decadeonrestoration.org)

<sup>36</sup> House of Representatives Hansard (29 March 2023) *Nature Repair Market Bill 2023 Second Reading Speech*. Accessed via: [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/26435/0045/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/26435/0045/hansard_frag.pdf;fileType=application%2Fpdf)

<sup>37</sup> Taws, N. (from Greening Australia) (May 2024) Restoration of native grasslands. In Friends of Grasslands Inc (ed; in prep) *Conserving grasslands of the South Eastern Highlands of NSW*, Proceedings of a Workshop held in Barton, ACT, on 31 May 2024.

<sup>38</sup> In Victorian grasslands, years of trials have enabled Greening Australia to hone the principles and techniques of groundcover restoration so different methods can be used in different landscapes and modified as needed. They explain the best restoration method largely depends upon the starting condition of any site.

To *enable* participation, the ACT Government will be asked and will need to provide land managers' assurance of secure tenure for *at least* these periods.

The CCACT notes the Nature Repair Act does not consider what might happen to nature repair market project areas after repair projects end.

There may be little point facilitating investments in repair if, as soon as any repair project ends, the repaired area can then be cleared or exposed once more to a degrading land use practice.

We consider long term protection should underpin every registered nature repair project. In a legal sense, 'long term' is protection *in perpetuity* or for a minimum of 99 years.

The ACT Government could *encourage* participation in the repair market by offering land managers considering a repair project as a form of land use, whether on public or leasehold land, additional support and incentives.

### *Recommendations*

59. To encourage Public Land and urban and rural lease holders to participate in the nature repair market by applying approved, applicable nature repair 'methods', support the applications of suitable project proponents by providing secure long term tenure in exchange for voluntary agreement to execute 'nature repair agreements' (described above, see recommendations 46-52).
60. Consider a complementary designation of Public Land that is or has been under repair under a protective overlay that reflects the fact the repaired area will be protected for as long as legally possible in the ACT.
61. Support and encourage the repair of degraded land in the ACT by a combination of measures including (but not limited to) providing:
  - a. educational and networking opportunities, including with a view to facilitating collaborations and partnerships, i.e., help to enable groups of land managers responsible for small holdings to consider conducting repair projects in cooperative ways, so larger areas can be repaired than would otherwise occur
  - b. incentives such as rate or lease payment rebates from the time any nature repair project is registered until the time a biodiversity certificate is issued by the Clean Energy Regulator.

## Applying Other Effective Area-based Conservation Measures

The Australian Government proposes to recognise places that, despite not being protected to the protected area standard, are expected to achieve good conservation outcomes over the 'long term':

- Landholders will be able to seek recognition for places where biodiversity conservation:
  - will not be the primary purpose of land management, but expect good biodiversity conservation outcomes will be achieved anyway
  - will be the primary purpose of land management but, for whatever reason, a protected area cannot be established.



- The proposal is to recognise situations where the land manager intends to deliver ‘Other Effective Area-based Conservation Measures’ (or OECMs) that will achieve good biodiversity outcomes for a minimum of 25 years.
- These places will be recognised as ‘conserved areas’ and will count, alongside Australia’s protected areas<sup>39</sup>, toward Australia’s contribution to the global protected area target, i.e., Target 3 (of 23) of the Global Biodiversity Framework targets.<sup>40</sup>
- The most-recent Federal Environment Department publication on this topic states “Conserved areas are distinct from Protected Areas. A site can be a Protected Area or a Conserved Area, it cannot be both.”<sup>41</sup>

The CCACT understands the ACT Government is working with the Federal Environment Department to develop an area-based site assessment tool that state and territory jurisdictions will use or adapt to invite and review applications for ‘conserved area’ recognition.

### Review

The CCACT has compared the standard for the inclusion of a place in a protected area and the standard proposed for recognising a conserved area (Table 1).<sup>42</sup>

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<sup>39</sup> In the ACT, the ACT Government’s Reserves, IUCN categories, 1b and 2.

<sup>40</sup> Convention on Biological Diversity Secretariat (22 December 2022) *COP15: Final text of the Kunming-Montreal Global Biodiversity Framework*. Accessed via: <https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>

<sup>41</sup> DCCEEW (2024) *National Other Effective area-based Conservation Measures Framework* (Draft). Accessed via: <https://storage.googleapis.com/files-au-climate/climate-au/p/prj2d08d464a5f2aff7ed849/page/Draft%20National%20OECMs%20Framework%20-%20Public%20Consultation.pdf>, p. 10

<sup>42</sup> Natural Resource Management Ministerial Council (May 2009) *Australia’s Strategy for the National Reserve System 2009–2030*. Accessed via: <https://www.dceew.gov.au/sites/default/files/documents/nrsstrat.pdf>, pp. 42-43

## Comparison of the protected and conserved area standards

Lens	Australia's protected area standard <sup>1</sup>	<u>draft</u> Conserved Areas Framework <sup>2</sup>
Valuable	<ul style="list-style-type: none"> <li>- enhances CAR<sup>3</sup></li> <li>- primary purpose: protect biodiversity</li> </ul>	<ul style="list-style-type: none"> <li>- “identifies principles to guide OECM recognition, provides information on implementation of these principles, and includes a site assessment tool. ... This framework is being developed by the Australian, state and territory governments, p. 4</li> <li>- protecting biodiversity can be secondary or ancillary purpose</li> <li>- site “must have biodiversity values for which [it] is important (p. 7)</li> </ul>
“Secure through legal or other effective means”	- land is under the control of an Act of Parliament that is focused on conservation	- “ <u>While there is no requirement for legal protection, Conserved Areas provide opportunities to protect natural areas with important biodiversity values ... (p. 8)</u>
<u>Intention</u> re permanence	- <i>in perpetuity</i> (legal standard is minimum of 99 years)	- “a clear long-term intention ( <u>minimum 25 years</u> ) for the continuation of management arrangements that deliver in-situ biodiversity conservation outcomes (p. 14)
Security (revocability)	- requires a <u>Parliamentary</u> process to extinguish or excise portions from the area	- referring to the landholder, “ <u>Consent can be withdrawn at any time</u> , including after a site has been recognised. If consent is withdrawn, a site would no longer be recognised as a Conserved Area (p. 15)
Well managed	recognising primary purpose: <ul style="list-style-type: none"> <li>- IUCN category assigned</li> <li>- management is adaptive</li> <li>- its effectiveness is evaluated</li> </ul>	<ul style="list-style-type: none"> <li>- “<u>management of biodiversity values in a way that achieves their long-term maintenance (or improvement) is the fundamental basis for Conserved Areas</u> (p. 7)</li> <li>- “There is no requirement for Conserved Areas to be managed in accordance with an IUCN ... category (p. 10)</li> </ul>
Clearly defined	- area is accurately identified on maps (CAPAD)	“Provide an accurate map that clearly shows boundaries agreed by the landholder/s (p. 46)

<sup>1</sup> Natural Resource Management Ministerial Council (May 2009) *Australia's Strategy for the National Reserve System 2009–2030*

<https://www.dcceew.gov.au/environment/land/nrs/publications/strategy-national-reserve-system>, pp. 42-43

<sup>2</sup> DCCEEW (March 2024) *National Other Effective area-based Conservation Measures Framework*

<https://storage.googleapis.com/files-au-climate/climate-au/p/prj2d08d464a5f2aff7ed849/page/Draft%20National%20OECMs%20Framework%20-%20Public%20Consultation.pdf>; that it is a Draft is stated on p. 1

<sup>3</sup> comprehensiveness, adequacy and representativeness of the National Reserve System.

To be a protected area, the area protected must be “Secure through legal or other effective means”. In other words, once executed, a protected area commitment will be difficult to revoke or otherwise vary in favour of development. By contrast, landholders seeking conserved area recognition will be able to declare an *intention* to manage well for a minimum of 25 years one day, and then change their intention the next day, including at any time after any conserved area has been recognised. If the landholder sells up and moves on, their commitment is not binding on successors in lease or land title.

There is a high risk some if not many of these commitments will not result in effective long-term protection for high conservation areas, i.e., that these areas will be every bit as vulnerable to complete loss or gradual degradation as they are now. That is because the intent of any land manager managing a conserved area can change at any time. Consent is needed continuously for the beneficial management to continue.

Debate continues over what a ‘long term’ commitment means in the ‘conserved area’ context.<sup>43</sup> The CCACT considers that recognising an intention to manage well for as few as 25 years is not sufficient. To count toward Australia’s protected area target, commitments should be for a minimum of 99 years and be difficult to revoke.

The Conserved Area Framework (Draft) acknowledges its own weakness. It explains:

There is no requirement for a Conserved Area to be secured by legal means. There may, however, be circumstances in which a legal mechanism (or other effective long-term measure ... ) is appropriate. ... Over time, the Commonwealth, states and territories may amend existing or develop new mechanisms to secure long-term Conserved Area recognition.

The CCACT considers there will be very few circumstances where conserved areas should count toward Australia’s contribution to the 30 x 30 target. The CCACT is only aware of one place in the ACT that is obviously suitable for conserved area recognition, the Lower Cotter Catchment. There, the circumstances are appropriate for recognition:

- The ACT Government recognises the Lower Cotter Catchment as a Reserve under ss 169(1)(a)(iv) of the NC Act; however, CAPAD shows the area is not a protected area. We presume this is because the ACT Government recognises the area is managed for human use (and not biodiversity conservation) as a primary purpose.
- The area is Public Land designated for the ‘protection of water supply’ under ss 385(g) of the Planning Act, and there is a low risk the area will be dedicated to any other land use.
- Thus, it appears likely good biodiversity outcomes are being and will continue to be achieved. The Lower Cotter Catchment ‘fits’ the proposed conserved area model well.

Wherever there is a high risk the ‘conserved area’ commitments of other landholders will be revoked and thus not realise long term conservation benefits, under the next iteration of the nature conservation strategy, the ACT Government could consider offering a modest level of

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<sup>43</sup> For example: Fitzsimons, J., Stolton, S., Dudley, N., Mitchell, B. (2024) Clarifying ‘long-term’ for protected areas and other effective area-based conservation measures (OECMS): Why only 25 years of ‘intent’ does not qualify. In IUCN-WCPA (1 May 2024) *Parks: The International Journal of Protected Areas and Conservation*. 30: 89-93. Accessed via: [https://parksjournal.com/wp-content/uploads/2024/05/PARKS-301\\_fin-amended.pdf](https://parksjournal.com/wp-content/uploads/2024/05/PARKS-301_fin-amended.pdf)

support and/or incentive. These commitments are equivalent to the Land for Wildlife commitments made by landholders in other jurisdictions<sup>44</sup>.

Wherever landholders seek conserved area recognition and are willing to execute an underpinning 'nature repair agreement' (or similar) under the NC Act, on a case by case basis, that will be different. What will matter is the degree to which the relevant landholder is prepared to make their 'nature repair agreement' (or similar):

- binding on successors in land or lease title
- one that will endure for the long term (for leaseholders, this will be 'for the term of the lease and any extension to the lease', or similar)
- difficult to vary or revoke in favour of development or more-intense forms of land use.

Where landholders are willing to make binding, long-term relatively irrevocable commitments, conserved area recognition can be supported.

### *Recommendations*

62. For any land or lease holder seeking long term tenure to support an application for 'conserved area' recognition , consider making the secure long term tenure available to the prospective applicant - on a case by case basis - in return for that land or lease holder's preparedness to execute an underpinning, binding, long-term 'nature repair agreement' (or similar) under the NC Act that will be difficult to vary or revoke in favour of development or more intensive forms of land use.
63. Support and encourage the retention of relatively intact land proposed for conserved area recognition in the ACT by a combination of measures including (but not limited to) providing:
  - a. educational and networking opportunities
  - b. incentives such as rate or lease payment rebates for the period of the conserved area commitment.

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<sup>44</sup> Land for Wildlife agreements are discussed here: Australian Wildlife Protection Council (online) *Resources*. Accessed via: <https://awpc.org.au/resources/>

## List of Recommendations

1. That ss 11(c) (ii) and (iii) are removed from the Act.
2. Delete the word 'main' from ss 6(1) of the NC Act. The inclusion of the word 'main' creates ambiguity as the NC Act has no other objects.
3. Separate (split) the three components of ss 6(1) (protect, conserve and enhance) so the Act clearly identifies where the 'conservation' of nature, as defined in the Act, is being applied.
4. Include in the Objects the need for decisions to be based on current scientific evidence.
5. Legislate decision making powers for First Nations people to manage and enhance biodiversity in the ACT.
6. Include a Duty of Care in the Nature Conservation Act.
7. Integrate policies, plans, strategy and legislative tools to provide greater integration between all the various strategies and actions plans under the Act. Subsequently, fully fund and implement these priorities, applying specific timeframes and making them publicly available to improve accountability.
8. Provide legal strength including binding effect to subsidiary documents.
9. Give regulatory weight, fully implement and provide sufficient funding for all threatened species action plans. Introduce a review process for these action plans, as well as specific timeframes and indicators to enable appropriate reporting over time.
10. Streamline the NC Act with other key environment and planning legislation that has biodiversity implications.
11. Review the responsibilities of the Act to incorporate and uphold the *The Human Rights (Healthy Environment) Amendment Bill 2023*.
12. Amend Part 5.3 Native Species Conservation Plans of the Act to include ecological communities.
13. Amend the Vision to refer to the needs of the "environment and people"
14. Ensure that measurable qualitative and quantitative targets are included in the Strategy.
15. Ensure the risks facing, and the rehabilitation needed in, the ACT's highland ecological systems are addressed in the Strategy.
16. Include outcomes in the Nature Conservation Strategy.
17. Address key threats of urban and industrial development and climate change impacts.
  - a. The Minister direct the Scientific Committee to consider listing climate change as a key threatening process.
18. Require decision makers on a development proposal to refuse consent where an environmental assessment has shown that there will be an unacceptable impact on threatened species, endangered ecological communities or their habitat.
19. Include a wider range of enforcement options and increase penalty units.
20. Align penalties with other jurisdictions and ensure that penalties are commensurate with the offence.
21. Ensure the Act applies to government authorities, public authorities and utility providers.
22. Provide for measures to ensure remediation is undertaken.
23. Remove the requirement for a conservation officer to produce identification before preventing a person damaging the environment.
24. The Conservator of Flora and Fauna be established as a standalone and independent role that sits outside the structure of ACT Government directorates.

25. Expand the Conservator's functions under Chapter 2, Part 2.1, 21. to direct that land management actions be undertaken on sites of threatened ecosystems or threatened species habitat when the condition of such sites has deteriorated and the conservation status of the site is at risk.
26. Greater transparency is needed when development approval decisions are made that are inconsistent with the Conservator's advice. These decisions should also be reviewable.
27. Provide a review role of Environmental Impact Assessments prepared under the *Planning Act 2023* to the Conservator with the power to reject unsatisfactory EIAs.
28. Provide the NC Act primacy over other legislation within Nature reserves.
29. Except for immediate bushfire emergencies threatening life or property, the Conservator is advised of all proposed bushfire mitigation activities under the Emergencies Act affecting areas of conservation significance. The Conservator's advice in respect to these activities must be considered and where actions proposed are inconsistent with the Conservator's advice, comprehensive reasons must be given and be subject to review by the ACT Assembly.
30. Provide, in the NC Act, the power to declare protected areas including (but not limited to) the 'Reserves' currently identified at ss 169(1)(a)(i-iii) of the Act).
31. That the option to establish protected areas on unleased or leased land via dedicated mechanisms be included in the NC Act.
32. Those mechanisms set out clear guidelines and formal processes (including public consultation and notification) for declaring and revoking Reserves. Reserves must be established with clearly delineated boundaries visible in CAPAD.
33. Prescribe the purpose of, and how each IUCN category of Reserve should be managed, in accord with s 173 of the Act (the 'IUCN reserve management objectives').
34. Require the Scientific Committee to develop and regularly review principles of ecological connectivity. Draft principles and review of principles should be subject to public consultation.
35. Provision is made in the Act to ensure that the Planning Authority and other decision makers have regard to ecological connectivity.
36. Provide legal protection of existing ACT genetic diversity, threatened ecological communities and threatened species. Prohibit all development activities that impact listed threatened species and ecological communities.
37. Shift the emphasis of the Act from a species framework to reflect an ecosystem approach, in addition to the current species protection measures. Require Management Plans to consider ecosystems as well as species.
38. Bring remaining unprotected sections of the Molonglo and Murrumbidgee river corridors into the nature reserve system.
39. Continue to progressively restore, upgrade and renaturalise existing major creeks and stormwater channels including Tuggeranong Creek, Weston Creek, Yarralumla Creek, Jerrabomberra Creek, Sullivan's Creek and Ginninderra Creek.

A statutory mechanism is needed to protect leasehold land to the protected area standard:

40. Enact a legal mechanism under the NC Act, such as a voluntary conservation agreement (or similar), under the NC Act's 'protect' object, that will enable urban and rural lease holders to voluntarily commit to protecting, maintaining and improving the

biodiversity values of rural leasehold land for as long as legally possible in the ACT. The standard of the mechanism must be sufficient to meet the protected area standard. For example, instruments made under the mechanism must:

- a. bind successors in lease title
  - b. endure 'for the term of the lease and any extension to the lease', or similar
  - c. be difficult to vary or revoke in favour of development of more-intense forms of land use (land uses sympathetic with and complementary to conservation are acceptable under, e.g., IUCN Category VI).
41. Resource the assessment of urban and rural lease areas proposed for inclusion in protected areas on leasehold land.
42. For areas assessed to be of high conservation value suitable for inclusion in protected areas on leasehold land, resource the preparation of a voluntary conservation agreement instrument (or similar).
- a. The area to be protected must be established with clearly delineated boundaries visible in CAPAD.
  - b. The management to be delivered on the land must be checked for consistency with protected area standards and be appropriate for the area and ecosystem type.
  - c. Monitoring and reporting arrangements related to management effectiveness must be clear.
43. For urban and rural leaseholders that execute these instruments, provide secure long-term leasehold tenure.
44. Do not restrict the forms of support these land managers can obtain; rather, via future nature conservation strategies, offer relatively high degrees of support and incentive to maintain and improve the biodiversity on the protected leasehold land.
45. Monitor and enforce landholder compliance with the agreements.

A separate statutory mechanism is needed to protect important biodiversity outside Reserves and protected areas on leasehold land:

46. Enact a legal mechanism under the NC Act, such as a nature repair agreement (or similar), under the NC Act's 'protect' object, that will enable utilities, directorates and urban and rural lease holders to voluntarily commit to protecting, maintaining and improving the biodiversity values of land undergoing or in need of repair for as long as legally possible in the ACT. In that the land concerned will be recognised as degraded and in need of repair, the mechanism will not meet the protected area standard.
47. Provide support and incentives to promote landholder commitments via instruments made under the mechanism that:
- a. bind successors in land or lease title
  - b. for urban and rural leasehold land, will endure 'for the term of the lease and any extension to the lease', or similar
  - c. be difficult to vary or revoke in favour of development or more-intense forms of land use.
48. Resource the assessment of areas proposed for inclusion in nature repair areas.<sup>45</sup>

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<sup>45</sup> For 'project areas' to be repaired via biodiversity projects registered under the Nature Repair Act, the assessments required should be minimal, sufficient to confirm the projects registered by the Clean Energy Regulator are appropriate in the ACT context.



49. For areas assessed to be suitable for inclusion in nature repair areas, resource the preparation of a nature repair agreement instrument (or similar):
  - a. The area to be repaired must be established with clearly delineated boundaries visible in publicly accessible registers.
  - b. The management to be delivered on the land must be checked for consistency with restoration standards appropriate for the area and ecosystem type.
  - c. Monitoring and reporting arrangements related to management effectiveness must be clear.
50. For urban and rural leaseholders that execute these instruments, provide secure long-term leasehold tenure.
51. Do not restrict the forms of support these land managers can obtain. Via the next nature conservation strategy, offer support until biodiversity certificates are issued then review each case based on information published in the Biodiversity Market Register.
52. Monitor and enforce landholder compliance with the agreements.

To ensure Commonwealth conservation tools (including offsets) will be effective in the ACT:

53. Review alignment of the NC Act with *Australia's Strategy for Nature*, the *Nature Positive Plan* and Australia's National Roadmap (Delivering the 30 x 30 land target (in prep), in light of the uncertainty of implementation of Commonwealth reforms.
54. The ACT Offsets Policy should sit under the NC Act.
  - a. The Offset Policy be reviewed via public consultation. The review to enable inclusion of improved transparency over decision making. The review to enable inclusion for the objective of the policy to be for maintenance and gain and no loss.
55. That development approval conditions requiring offsets stand alone, i.e. the requirements must:
  - a. not expire when the corresponding development approval over its associated development site expires
  - b. relate specifically to what the approval holder must do - this entity will not always be the entity responsible for the management of the offset site.
56. The conditions requiring offsets must specify how any averted loss offset site must be established and managed as a protected area (on Public Land or leased land) for the duration of the impact at the development site. See recommendations 40-45 under the heading 'Off reserve conservation: Implementing a Biodiversity Network'.
57. The conditions requiring offsets must specify how any offset site to be repaired (or upon which threats to protected matters will be abated) must be protected and managed as a nature repair site (or similar) for the duration of the impact at the development site. See recommendations 46-52.
58. Avoid impacts on remnant native vegetation to remove the need for offsets.
59. To encourage Public Land and urban and rural lease holders to participate in the nature repair market by applying approved, applicable nature repair 'methods', support the applications of suitable project proponents by providing secure long term tenure in exchange for voluntary agreement to execute 'nature repair agreements' (see recommendations 46-52).

60. Consider a complementary designation of Public Land that is or has been under repair under a protective overlay that reflects the fact the repaired area will be protected for as long as legally possible in the ACT.
61. Support and encourage the repair of degraded land in the ACT by a combination of measures including (but not limited to) providing:
  - a. educational and networking opportunities, including with a view to facilitating collaborations and partnerships, i.e., help to enable groups of land managers responsible for small holdings to consider conducting repair projects in cooperative ways, so larger areas can be repaired than would otherwise occur
  - b. incentives such as rate or lease payment rebates from the time any nature repair project is registered until the time a biodiversity certificate is issued by the Clean Energy Regulator.
62. For any land or lease holder seeking long term tenure to support an application for 'conserved area' recognition , consider making the secure long term tenure available to the prospective applicant - on a case by case basis - in return for that land or lease holder's preparedness to execute an underpinning, binding, long-term 'nature repair agreement' (or similar) under the NC Act that will be difficult to vary or revoke in favour of development or more intensive forms of land use.
63. Support and encourage the retention of relatively intact land proposed for conserved area recognition in the ACT by a combination of measures including (but not limited to) providing:
  - a. educational and networking opportunities
  - b. incentives such as rate or lease payment rebates for the period of the conserved area commitment.

# An examination of the offset for the development of the Molonglo Valley

the offset that was approved for implementation is detailed in the [\*Molonglo Valley Plan for the Protection of Matters of National Environmental Significance\*](#) (the Molonglo Valley Plan, authored by the ACT Government and dated 2011)

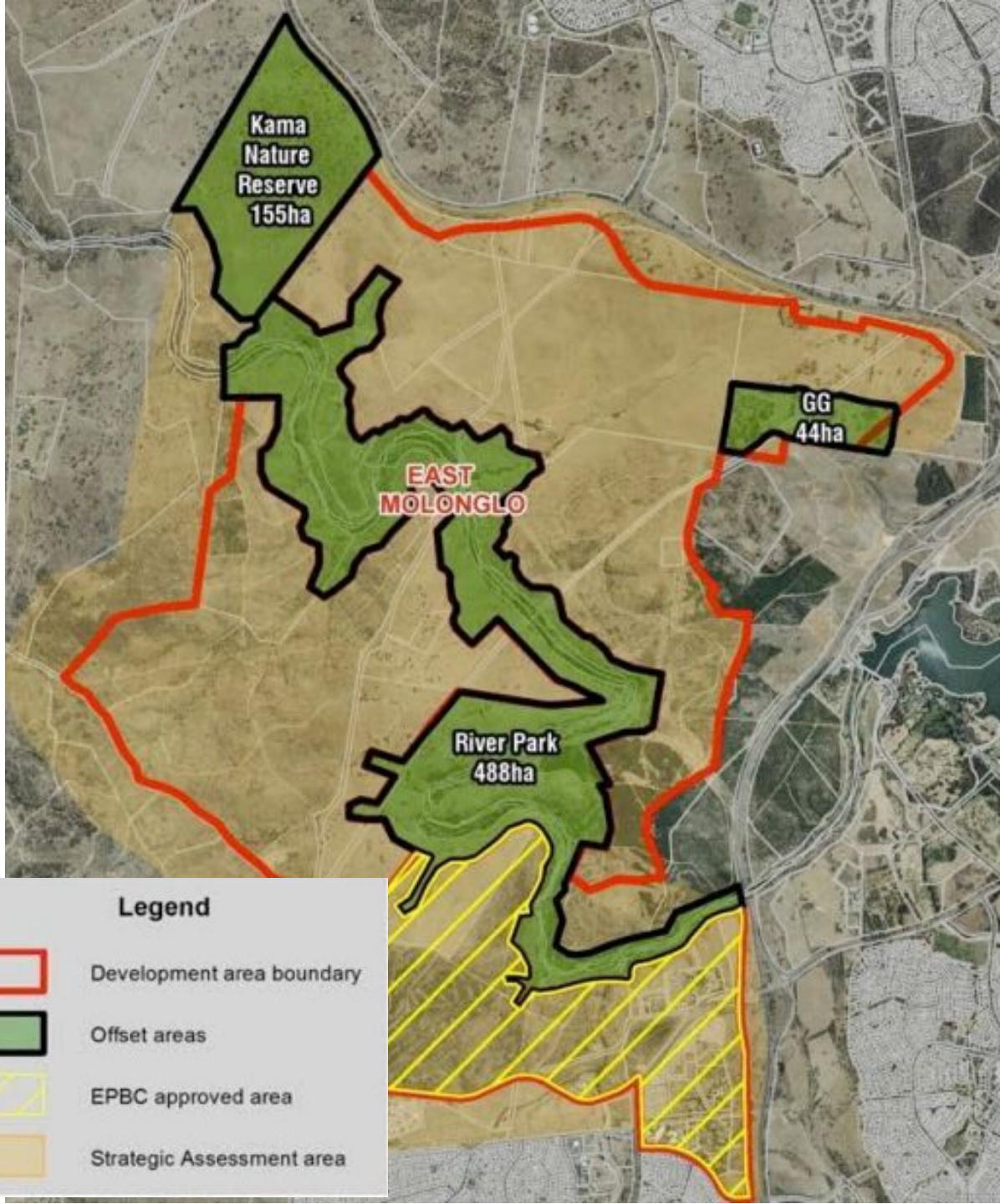
## Background

On 7 Oct 2011, following a strategic assessment, the then Federal Environment Minister [endorsed](#) the ACT Government's Molonglo Valley Plan.

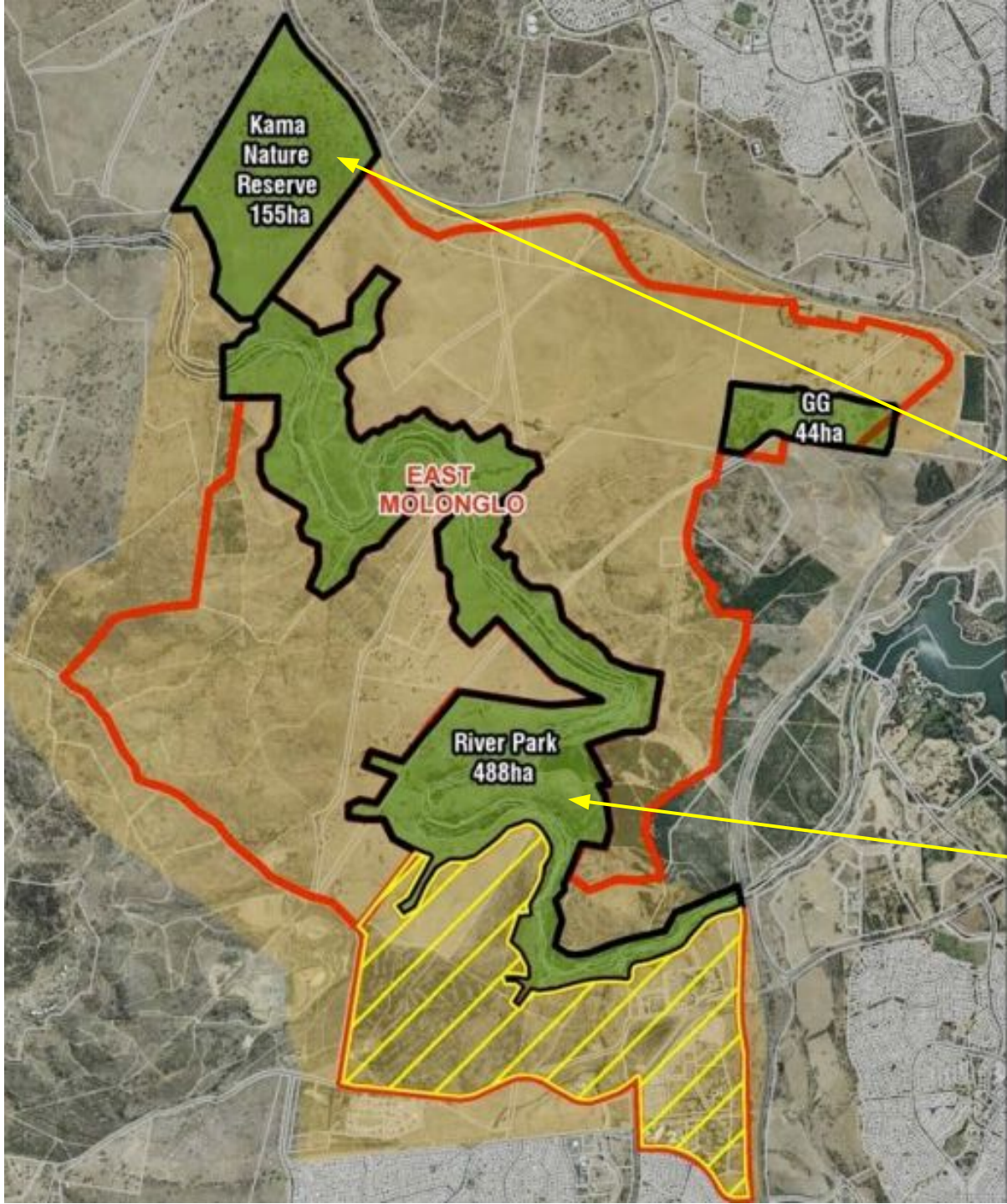
The image on the left is an extract from Figure 6 of this Plan, titled 'Offset Areas' (p. 14).

- The endorsed plan proposed development in areas shaded tan within the red line ... on the understanding areas shaded green would be protected and managed for conservation.
- Development in the area to the south, marked in diagonal yellow lines, was *initially* part of the development area to be assessed. However, due to time delays with the strategic assessment, separate approval was granted, before 20 Dec 2011, for development to proceed in this area.

On 20 Dec 2011, the then Federal Environment Minister [approved](#) of the ACT Government implementing the endorsed Molonglo Valley Plan. No conditions are attached to the approval (it is presumed this is because the ACT Government took responsibility; for contrast, *multiple* conditions are attached to West Belconnen approval).





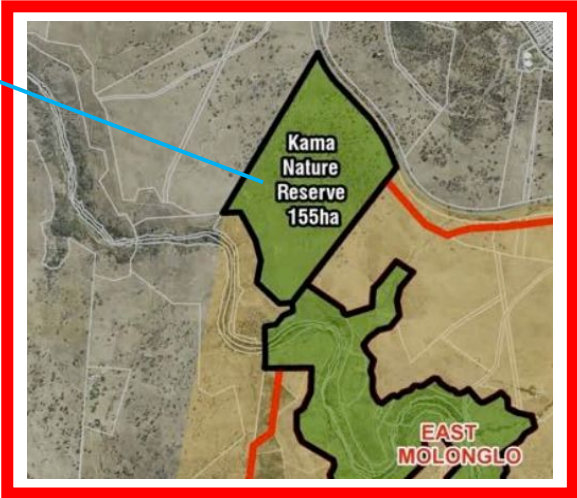


The Molonglo Valley Plan discusses the areas shaded green (the offsets) in three separate sections. This examination looks at two of these sections.

“Recognition of the Kama Nature Reserve as an offset site and ongoing management of the area ...

“Establishment and management of the “Molonglo River Park” as an offset site along the East Molonglo River Corridor

First, focus on the Kama Nature Reserve

A screenshot of a web-based GIS application. A map shows various geographical features. A red rectangular box highlights a specific feature. A 'Feature Information' popup window is open over this feature, displaying a table of metadata. The popup has a dark background and white text. The table contains the following information:

Name	Canberra Nature Park
Type	Nature Reserve
Type Abbr	NR
Iucn	II
Nrs Pa	Y
Gaz Area	0
Gis Area	154.75551623
Rept Area	154.75551623
Gaz Date	[object Object]
Latest Gaz	[object Object]
State	ACT
Authority	ACT_TAMS
Datasource	ACT_TAMS
Governance	G
Comments	Kama NR

The popup also includes a 'Show Raw Data' button and a dropdown menu at the top showing 'capad08\_terrestrial.zip - Canberra Nature Park'. The map background shows labels for 'CANBERRA', 'Molonglo Valley', and 'EAST MOLONGLO'. The bottom of the screen shows map controls and coordinates: 'Lat 35.24324°S Lon 149.13631°E Elev 0m 1 km'.

'Recognition' is right. Kama Nature Reserve was already a 155 ha protected area before 30 June 2008

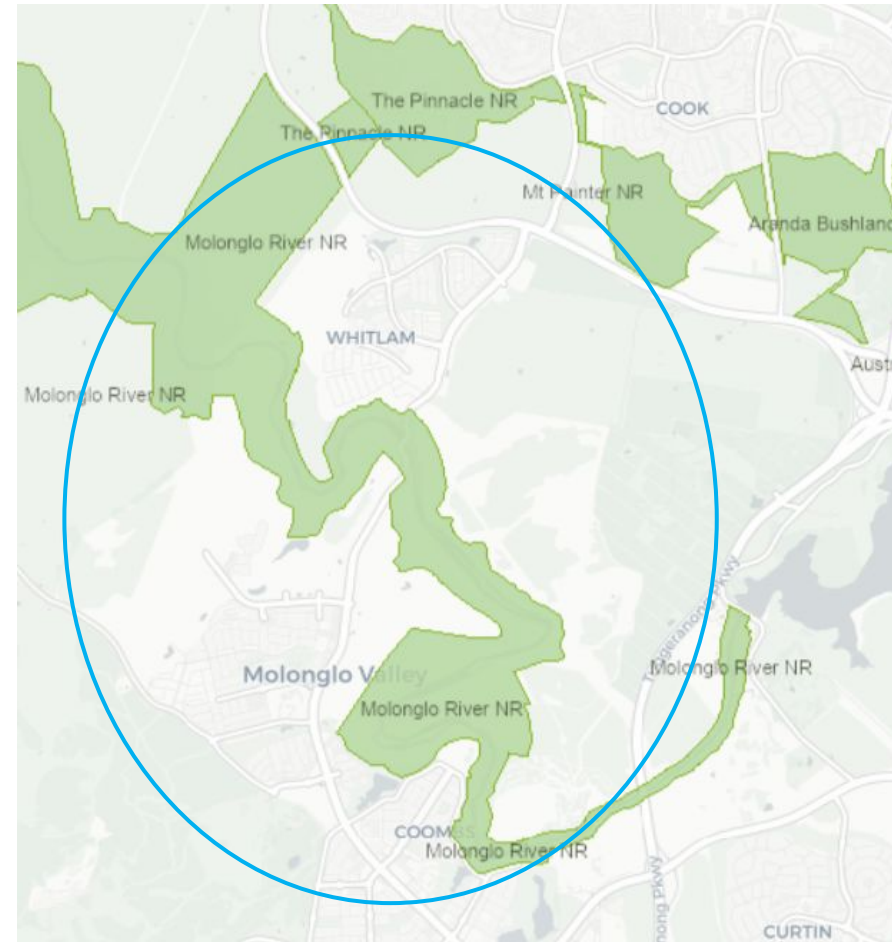
source: CAPAD 2008 for the ACT



Next, look at the River Park section

The River Park section extends south east from Kama Nature Reserve upstream along the Molonglo River to the Tuggeranong Parkway.

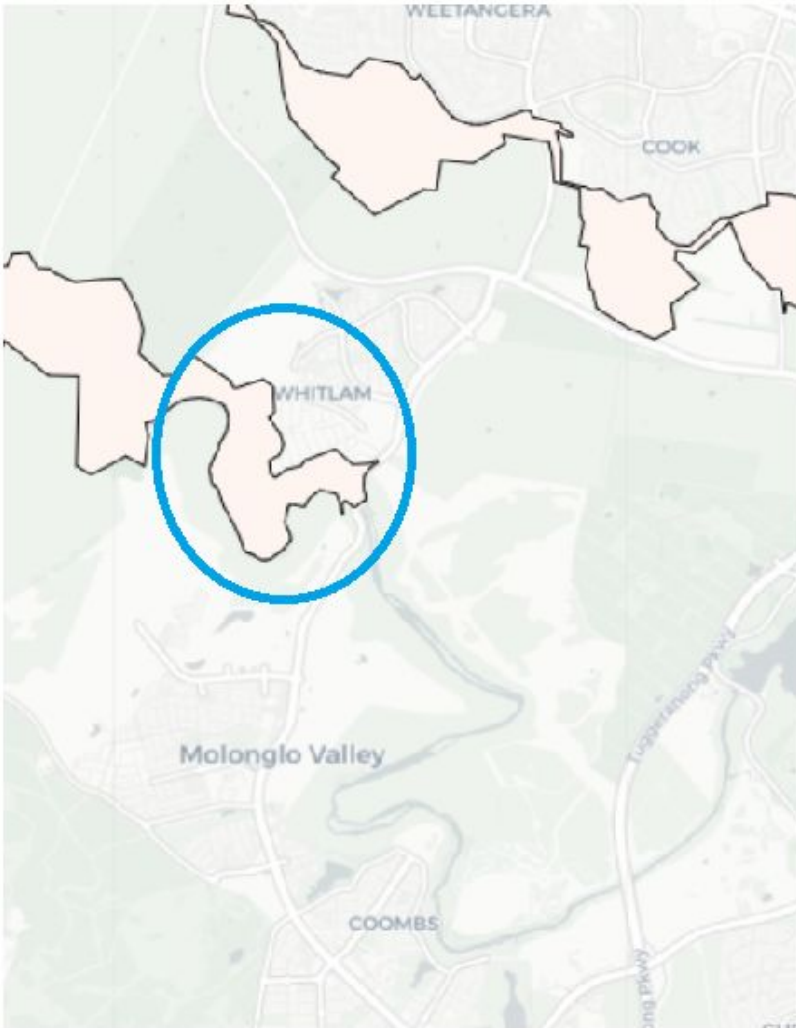
CAPAD 2022 shows a substantial River Park offset had been established ...



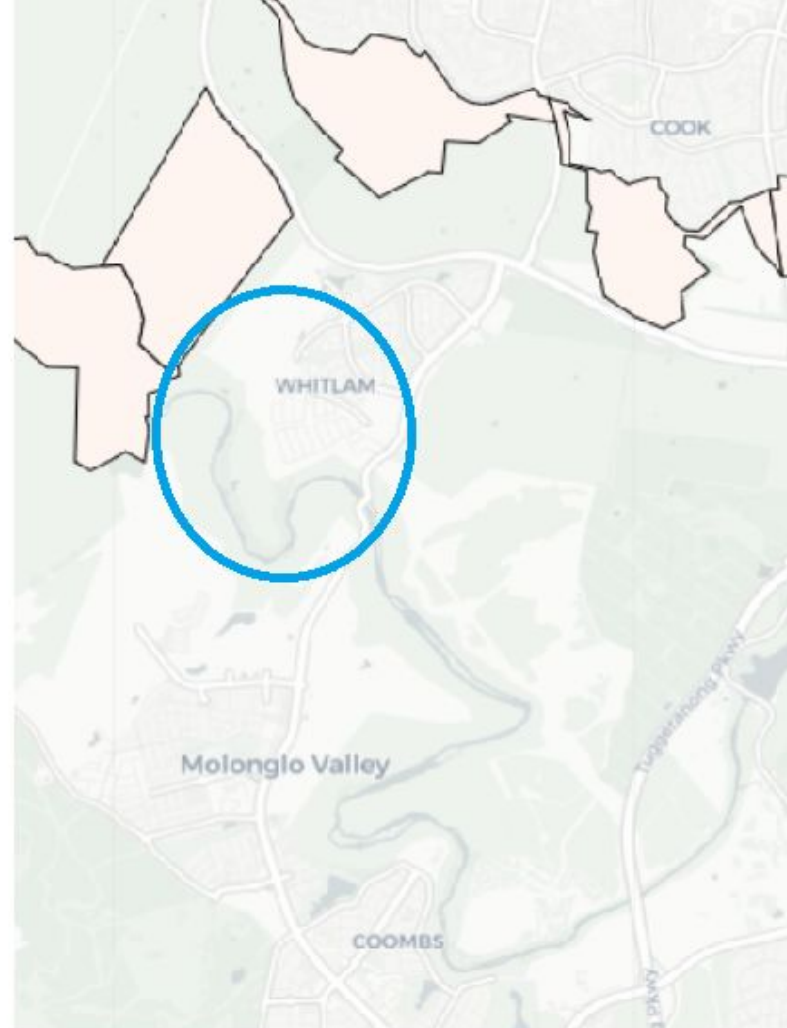


Except, CAPAD 2002 shows part of the supposedly new River Park offset was already a protected area way back then.

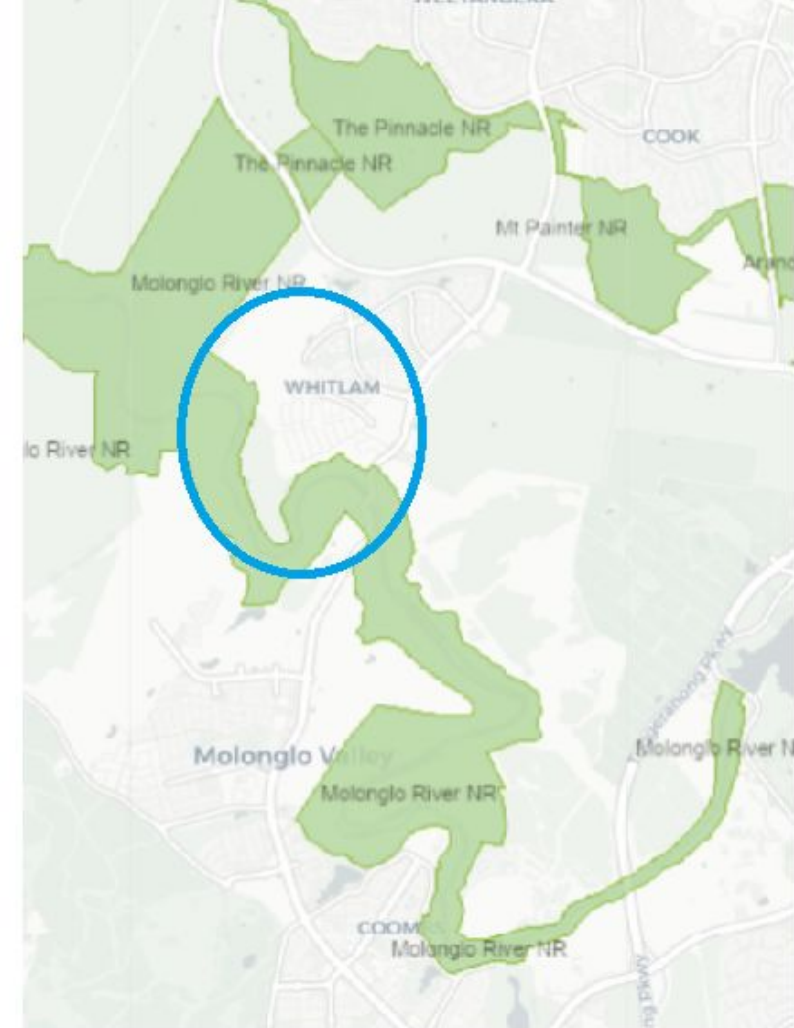
What happened, sometime before 30 June 2010, to what was formerly within the Lower Molonglo Nature Reserve?



30 June 2002



30 June 2010



30 June 2022



Finally, consider whether development would ever have occurred in the River Park.

- The 1 in 100 year flood model extent (shaded blue) lies within much of the River Park offset.
- The River Park offset does not include two 'Special Purpose Reserves'.
- Disaster modelling might also be relevant; it is likely to relate to an area greater than the 1 in 100 year flood model extent.

This case raises *significant* additionality concerns.

