



## **A Management Framework for Important Trees in the ACT**

A report prepared for  
**OFFICE OF THE  
COMMISSIONER FOR  
SUSTAINABILITY & THE  
ENVIRONMENT**

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**CB RICHARD ELLIS (V) PTY LTD**

Level 4, 92 Northbourne Avenue  
Braddon ACT 2612  
GPO Box 1987  
Canberra ACT 2601

T 61 2 6232 2733  
F 61 2 6232 2740

**CBRE**  
CB RICHARD ELLIS

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# 1 Introduction: Development of a Management Framework for Important Trees in the ACT

This report sets out some possible directions and general planning principles for providing a framework for the management of Important Trees in greenfield sites and existing urban areas of the ACT.

The information contained herein seeks to summarise and provide a synthesis of potential constraints that Important Trees may provide in future urban design as well as the values these trees may have that would warrant their protection (such as habitat and connectivity roles or other environmental values of specific conservation significance), and discusses also the broad range of planning considerations that may affect the ability to retain such trees (such as maintenance responsibilities and issues for ongoing management, provenance, maintaining indigenous species, and visual amenity). This advice also aims to summarise possible consistencies or conflicts with existing policies related to Important Trees.

Advice is also provided in relation to future planning with respect to issues such as succession planning and the provision of offsets for the removal of Important Trees. This report also discusses briefly the importance and role of education and public awareness of the management of Important Trees (such as why some trees should be retained and why some trees must be removed). The report also seeks to provide a set of preliminary management recommendations as part of the conclusions of this report's investigation.

This report responds to the consultancy brief issued by the Office of the Commissioner for Sustainability and the Environment.

Initially, the brief was established in relation to the management of "Remnant" Trees and included a request to establish a definition of what constitutes a Remnant Tree. Given the inherent difficulty in establishing a clear definition of what constitutes a Remnant Tree as discussed in Section 3 of this report, the scope of this investigation has been broadened to include what may be defined as Important Trees in the ACT, such that all trees regarded as important in the context of Canberra's urban landscape and treescapes, be they "Remnant" or otherwise, are included in this assessment.

## 2 The Importance of Trees in Canberra's Landscape

Trees are an essential part of Canberra's landscape, they provide potential habitat for native fauna, have heritage significance, provide scenic amenity and add to the bushland setting of the Nation's Capital, they may also provide important shading to enable cooler homes, and they also assist with mitigating the effects of climate change through carbon uptake. Examples of early urban tree plantings commencing in about 1910, can be seen in Haig Park, City Hill, Acton, Weston Park, the Parliamentary Triangle, Telopea Park and various inner Canberra suburbs.

It is estimated there are now 210,000 trees in Canberra's residential streets and a further 440,000 trees in urban parks that are managed by Territory and Municipal Services. Native tree species comprise about 40% of this total tree population<sup>1</sup>. However, the total number of natives will be far greater if those in nature parks and on privately leased lands were considered.

Given the importance of maintaining Canberra's unique bushland values, it is imperative that a strategy for managing trees in the ACT be developed to give greater certainty in relation to the requirements to protect existing trees to the greatest extent possible, whilst also giving some direction to land managers as to their options in relation to tree management, including the circumstances under which a tree may be removed. This document aims to provide sufficient background information on the current circumstances (in regards to legal and land use planning issues) in which Important Trees in the ACT, which includes all Remnant trees, are managed and it also provides a preliminary set of recommendations through which the current circumstances may be improved.

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<sup>1</sup> Department of Territory and Municipal Services  
[http://www.tams.act.gov.au/play/pcl/parks\\_reserves\\_and\\_open\\_places/trees\\_and\\_forests/trees](http://www.tams.act.gov.au/play/pcl/parks_reserves_and_open_places/trees_and_forests/trees)

### 3 Definition of Remnant Tree(s)

A comprehensive review of relevant legislation and government policies that might provide a legal or otherwise consistent definition of what constitutes a “Remnant Tree” or may otherwise set out criteria for determining the Remnant status of a tree (eg measurement criteria) has been conducted. The legislation and policies reviewed included:

- *Nature Conservation Act 1980 and Regulation 1982;*
- *Commissioner for the Environment Act 1993;*
- *Environment Protection Act 1997 and Regulation 2005;*
- *Tree Protection Act 2005;*
- *ACT Government Action Plan No. 10 – Yellow Box/Red Gum Grassy Woodland: An Endangered Ecological Community* (this document has been replaced by the *ACT Lowland Woodland Conservation Strategy* – see below); and,
- *ACT Government Action Plan No. 27 – ACT Lowland Woodland Conservation Strategy.*

Throughout these legislative instruments, no single definition has been provided for a Remnant Tree specifically. Some references have been identified that relate to remnant vegetation and remnant woodland communities, but these are not able to be directly applied to individual trees.

Given that only about 40% of the actual trees in urban streets and public urban parks of the ACT are native species and with tree plantings in the ACT dating back to as early as 1910 (informal plantings may be dated as far back as the 1820’s, Charles Weston was appointed as the ACT’s first Afforestation Officer in 1913, and the first large-scale National Capital plantings commenced around 1917), it is important to have a clear definition that eliminates from the classification criteria, trees that have been planted, regardless of their age, particularly when they are not native trees indigenous to the ACT region.

In reviewing other jurisdictions and their use of the term Remnant Vegetation or Remnant Trees that might be able to be adopted for use here in the ACT, it was found that Queensland provides perhaps the only suitable reference. In Queensland “Remnant Vegetation” is defined specifically under legislation, this being the *Queensland Vegetation Management Act 1999* and the mapping of Remnant Vegetation has been formally determined and set-out in *Methodology for Survey and Mapping*

*of Regional Ecosystems and Vegetation Communities in Queensland* prepared by the Queensland Herbarium (Neldner et al 2005).

The definition provided by this legislation applies to vegetation communities as opposed to individual trees. Remnant Vegetation under this Act is defined as vegetation where the dominant canopy has greater than 70% of the height and greater than 50% of the cover relative to the undisturbed ecologically dominant layer of vegetation (which is then used as a reference for applying the above 70/50 rule).

This particular definition is unfortunately of limited use in our ACT exercise in attempting to define Remnant Trees for two reasons. The first is that this definition applies to a vegetation community and not individual trees. The second is that not all of the individual trees within an area of vegetation mapped as Remnant under the Act are included in the mapping process (if the individual tree is less than 75% of the median height of the reference site) and therefore cannot reasonably be regarded as Remnant Trees. This is because according to the Qld Herbarium rules for mapping remnant vegetation, an individual tree that is included in the transect survey count must be 75% of the median height of the reference site). For example, if the median height of vegetation in the undisturbed layer is 20m, then an individual tree must be at least 15m in height to be included in the transect count of vegetation that would be mapped as remnant (QLD Herbarium, 2005).

In addition to the above, remnant vegetation under this Act can also include heaths and shrublands as well as grass/sedge vegetation types (for example, Regional Ecosystems RE12.3.8 described as *Freshwater swamps with Cyperus spp., Schoenoplectus spp. and Eleocharis spp.*; RE1.3.1 Mitchell grass (*Astrebla spp.*) grassland on alluvial plains; RE12.9-10.15 Semi-evergreen vine thicket with *Brachychiton rupestris* on sedimentary rocks; and, RE12.11.15 *Xanthorrhoea johnsonii* (Grass Tree) woodland on serpentinite). None of these Regional Ecosystems contain large trees and clearly, the use of this assessment of remnant vegetation would be inappropriate for the assessment of Remnant Trees.

Notwithstanding the above, no other jurisdictions have a clear legislative or planning definition of remnant vegetation (or Remnant Trees), nor do they provide specific guidelines for the identification and mapping of remnant vegetation, that would otherwise provide a sound basis for application in determining remnant status of individual trees here in the ACT.

New South Wales, the Northern Territory, South Australia and Western Australia have all begun process for identifying and mapping remnant vegetation with maps of remnant vegetation available from the respective government departments, however these maps are not state-

wide (i.e. do not cover the entire state). Additionally, these state and territory governments have not yet developed any policies or legislation to legally enforce remnant vegetation management.

Similarly, Victoria (through the DPI) provides information on the types of remnant vegetation present in the state and their conservation status, but does not have any policy or legislative frameworks detailing the protection or management of remnant vegetation. Notwithstanding this, the City of Whittlesea in Victoria has prepared a River Red Gum Protection Policy although this policy has not yet been brought into any corresponding legislation. Of note in this policy, it refers to mature Red Gum trees that have been estimated to be between 200 – 800 years of age, which may be of some value in determining the status or definition of a Remnant Tree.

Given the lack of a scientifically accepted (published) or otherwise legally defined, definition of what may or may not constitute a Remnant Tree, it has become necessary (for the purposes of this investigation) to attempt to provide a suitable definition of what a Remnant Tree is. In doing this, a number of processes have been undertaken to arrive at a defensible definition and which has included the review of other legislation and policies of other jurisdiction as provided above. Our investigation has also included going back to the literal meaning of the word as defined in the dictionary so that the implied meaning of the word "remnant" is faithfully/correctly applied here.

The Collins English Dictionary defines "remnant" as:

"remaining, left-over; a part left over after use, processing; a surviving trace or vestige, as of a former era"

The Macquarie Dictionary defines "remnant" as:

"a part, quantity or number remaining... a trace, vestige; remaining".

Following from this, most references of "Remnant" Tree(s) or vegetation have been in the context of Pre-European settlement. It could therefore be reasonably argued that a "Remnant Tree" is a tree that would be typical of an area prior to European Settlement. As such, a proposed practical definition of Remnant Tree is:

"a native tree of indigenous origin and which has regenerated from or is a remnant of the original vegetation community prior to urban development."

Ideally, such trees would also contribute to local ecological, landscape or cultural values.

With regard to regenerating vegetation, we consider that it would not be appropriate to identify, for example, an immature tree of about 2m height to be regarded as a "Remnant" tree in and of itself. As such, the above definition has included further criteria to be applied to the nature of the vegetation so that small, immature trees (in isolation) are not covered by this definition.

This has been purposely done in this regard as we consider that whilst such trees should be afforded some protection when found to be part of the original vegetation community, they should not pose a significant constraint to the use of the land in which they occur when they exist as an isolated individual tree. In this regard, smaller immature trees are granted some protective status when found to contribute to or be a part of a mapped vegetation community (eg part of a mapped box gum woodland vegetation community) through the ACT Government Action Plans and federal legislation relating to endangered ecological communities (eg box gum woodland) and hence do not require additional specific identification and protection here.

We believe it appropriate that such (small/young) trees are not afforded the same identification as the larger/older trees when these trees occur in isolation (as an individual tree and not part of a community) as they do not provide the same landscape amenity or ecological (habitat) value as the larger, older trees.

Finally, it is acknowledged that for the purposes of the current exercise which is to provide a framework for managing ACT's trees at the level of the individual tree, the above definition may not be suitable as a number of desirable trees may not meet the proposed definition and therefore receive no formal protection (should a new protection policy be drafted on the basis of protecting the ACT's Remnant Trees). Given this, we propose that the broad definition of Remnant Tree provided above remain for the purposes of having a consistent approach toward a specific terminology, but that also, this current exercise of providing a framework for managing important trees in the ACT be expanded beyond simply those trees which meet the criteria for Remnant Tree, to also include trees of ecological, cultural and historical significance. In doing so, we remove the ambiguity surrounding the term "remnant" and its application, and more importantly, manage to include in the strategy all trees that may be regarded as desirable to manage and protect.

## 4 Assessment of the existing level of legislation /policy protection afforded to Important Trees in greenfield and brownfield sites, and in existing urban areas and streetscapes

A summary of relevant legislation and policies that (may) provide protection to trees in the ACT (though not specifically Remnant Trees as no such classification and hence provision for protection currently exist in ACT legislation and policy) is provide below.

### 4.1 Tree Protection Act 2005<sup>2</sup>

The objects of this Act are to primarily protect individual trees in the built up urban area, and mainly on leased lands, that have exceptional qualities because of their natural and cultural heritage values or their contribution to the urban landscape, to protect urban forest values that may be at risk because of unnecessary loss or degradation, to protect urban forest values that contribute to the heritage significance of an area and to ensure that trees of value are protected during periods of construction activity and to promote the incorporation of the value of trees and their protection requirements into the design and planning of development, as well as to promote a broad appreciation of the role of trees in the urban environment and the benefits of good tree management and sound arboricultural practices.

For this Act, protected trees are either a *Registered tree* or a *Regulated tree*. A Registered Tree can be on both Leased and Unleased land in the built-up urban area and receives very strong protection under this Act. *Registered* trees are trees that are registered (or provisionally registered) by the Conservator for Flora and Fauna (Conservator) in accordance with the Criteria determined by the Minister. The criteria for registration (under Schedule 1 of Disallowable Instrument DI2006-56), of a tree located in a built-up urban area, is that it must contribute to one or more of the following values:

- Natural or cultural heritage value (The object of this value is to identify trees that are of particular importance to the community due to their intrinsic heritage values)
- Landscape and aesthetic value (The object of this value is to identify trees that are of particular importance to the community due to their substantial contribution to the surrounding landscape).

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<sup>2</sup> *Tree Protection Act 2005*

<http://www.legislation.act.gov.au/a/2005-51/default.asp>

- Scientific value (The object of this value is to identify trees that are of particular importance to the community due to values associated with their ecological, genetic or botanical significance or ability to substantially contribute to the scientific body of knowledge and understanding).

A *Regulated* tree is a living tree (other than a registered tree or a palm tree) that is on leased land within a Tree Management Precinct and is 12m or more high, or has a trunk with a circumference of 1.5m or more at 1m above natural ground level, or has 2 or more trunks and the total circumference of all the trunks at 1m above natural ground level, is 1.5m or more, or has a canopy 12m or more wide (note: a tree cannot be a regulated tree if it is a pest plant under the *Pest Plants and Animals Act 2005*).

A decision making flowchart of how trees are protected under this legislation including the circumstances under which a tree may be removed is provided at Appendix A.

The criteria for approving an activity that may damage a protected tree, or be prohibited work within the protection zone for a protected tree or within a declared site, are determined by the Minister and are set out in Schedule 1 the Tree Protection (Approval Criteria) Determination 2006 (No2) Disallowable Instrument DI2006-060.

With regards to applications to damage a protected tree, under Section 22 of the Act a person may apply, in writing, to the conservator for approval for an activity that would or may damage a protected tree or be prohibited groundwork in the protection zone for a protected tree or a declared site. This is usually performed through a Tree Damaging Activity Application or through a Tree Management Plan. In reviewing this instrument, it is noted that additional special protection is made for "remnant eucalypts" whereby approvals to damage a regulated tree for the purpose or reason of it being in an inappropriate location due to (potential) size and growth habit or for solar access cannot be given for remnant eucalypts, although unfortunately the document does not go on to specify exactly what a remnant eucalypt is.

In addition to a direct application to damage a protected tree, an activity which damages a protected tree may also be approved through a Development Application (DA). With regard to a DA that involves an activity that may damage a protected tree, the DA is to be referred to the Conservator for Advice under s148 of the Planning and Development Act 2007. The Chief Planning Executive (CPE) (ACTPLA) may make a decision on a regulated tree that is inconsistent with the Conservator's advice only if satisfied that:

- any applicable guidelines have been considered;
- any realistic alternative has been considered; and,
- the decision is consistent with the objects Territory Plan.

Under Section 81 of the Tree Protection Act 2005, a development approval that is inconsistent with the Conservator's advice in relation to a *Registered* tree must not be given.

A *Tree Management Precinct* is an area declared to be a Tree Management Precinct. The Minister may, in writing, determine criteria for declaring an area of land in a built-up urban area to be a tree management precinct or, the Minister may, in writing, declare a stated area of land in a built-up urban area to be a tree management precinct.

The Minister may declare an area of leased land as a Tree Management Precinct if satisfied that a significant threat to the urban forest values exists or is likely to exist in the near future (for example, due to existing or projected high levels of development activity; or in an area of low or reducing level of tree canopy cover); or if the area is entered on the Heritage Register under the *Heritage Act 2004*; or if the area is a new estate development that is subject to construction activity.

In declaring an area to be a Tree Management Precinct, the Minister may have regard to the broader strategic planning objectives of the Territory Plan and associated urban planning by the ACT Planning and Land Authority. Development within Tree Management Precincts, or that may have an impact on a protected tree, is often accompanied by an approved Tree Management Plan.

The preparation of Tree Management Plans is provided for under Part 4 of this Act. A Tree Management Plan may provide for activities that may be undertaken in relation to a tree and may set out conditions about how the activities are to be undertaken. Anything done in relation to a protected tree in accordance with a tree management plan for the tree is an exception to the offences against s15 (Damaging protected trees—general) and s17 (Doing prohibited groundwork—general). Under this part of the Act, the Conservator may, in writing, determine guidelines for tree management plans, and may, on the Conservator's own initiative, propose a tree management plan for a registered tree.

The land management agency for the land where a registered tree is located may also apply for a tree management plan for the tree as well as anyone else may apply for approval of a tree management plan for any tree on leased land in a built-up urban area. The application must be given to the Conservator for approval and the Conservator may ask the advisory panel for advice on the proposal or application.

If the Conservator approves a tree management plan for a registered tree, the Conservator must include details of the plan in the tree register. The Conservator must also give written notice of the decision on the tree management plan to the applicant (if any) and if approved, the conservator must also give written notice of the decision to—

- (a) the lessee of, or land management agency for, the land where the tree is located; and
- (b) if the tree is on leased land—the lessee of, or land management agency for, land that—
  - (i) adjoins the land where the tree is located; and
  - (ii) is within 50m of the tree; and
- (c) if the plan is for a tree that the conservator considers may have heritage significance—the heritage council; and
- (d) if the plan is for an Aboriginal heritage tree—each representative Aboriginal organisation.

The Conservator may give written notice of the decision to anyone else the Conservator considers appropriate.

In summarising this piece of legislation as it may apply to the management of trees in the ACT, which includes the management of Important and/or Remnant Trees as well as protected trees, the Act does not provide a specific definition of what constitutes a Remnant Tree, although it does clearly define two classes of trees which are given a relatively strong degree of legislative protection. In particular, a Regulated tree is clearly defined, with dimensional criteria quoted in the Act, for determining exactly what constitutes a Regulated Tree. A Regulated Tree however, can in fact be a planted, non-indigenous species and therefore not constitute a Remnant Tree in so far as this report applies the term/concept. Additionally, the Act only applies to trees in the built-up urban area declared by the Minister. The Minister has declared most of urban Canberra as land in the built-up urban area, although land specifically excluded from the built-up urban area is all land designated in the Territory Plan as broadacre, hills, ridges and buffers, forestry, river corridors, rural and water features (refer to Notifiable Instrument NI2010-414<sup>3</sup> for maps detailing the built-up urban area). As such, any tree located in these areas is not protected under this legislation which may sometimes result in trees that are physically located quite close to urban precincts but are not protected.

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<sup>3</sup> Tree Protection (Built-up Urban Areas) Declaration 2010 (No 1). Notifiable Instrument NI2010-414  
<http://www.legislation.act.gov.au/ni/2010-414/default.asp>

## 4.2 Nature Conservation Act 1980<sup>4</sup>

The *Nature Conservation Act 1980* establishes the ACT Flora and Fauna Committee which provides advice to the Minister in relation to nature conservation. The committee assesses the status of the ACT's flora and fauna and (amongst other things), advises on Action Plans. The ACT Action Plans that have some relevance to the conservation of trees in the ACT are the *Yellow Box/Red Gum Grassy Woodland: An Endangered Ecological Community* (Action Plan No.10) and the *ACT Lowland Woodland Conservation Strategy* (Action Plan No.27). These are discussed individually below.

The following sections of the *Nature Conservation Act 1980* are of relevance to the protection and management of Important Trees in the ACT:

Section 33 (Special Protection Status) and Section 34 (Declaration of protected and exempt flora and fauna) of this Act provide the legislative power to declare members of a species of native plant to have special protection status if believed on reasonable grounds that the species is endangered or threatened with extinction. None of the species of trees in the ACT that might be considered Remnant Trees (i.e. primarily trees of the genus *Eucalyptus*) are protected species under Disallowable Instrument DI2008-53 which lists the vulnerable and endangered species in the ACT or DI2005-64 which lists the species declared as having Special Protection Status under s33 of the Act. Disallowable Instrument DI2003-6 lists species that have either protected or exempt status under Section 34 of the Act. Of these, only three are tree species, and two of which are very uncommon in the ACT, with the Mountain Swamp Gum (*Eucalyptus camphora*) not recorded in the ACT region at all.

Section 40 of the Act (draft Action Plan) provides the requirement for the Conservator to prepare draft Action Plans for species, communities or threatening processes that are the subject of a declaration. The Action Plans prepared to date that are relevant to the (indirect) protection of trees are discussed individually in the following sections.

Also under this Act, trees in the ACT are given some additional protection under Section 51 (Taking Plants) as it is an offence for a person to take a plant, except in accordance with a licence, that has special protection status, or is a protected native plant, or is a native plant growing on unleased land. However this offence does not apply under particular

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<sup>4</sup> *Nature Conservation Act 1980*  
<http://www.legislation.act.gov.au/a/1980-20/default.asp>

circumstances generally relating to cultivated native plants or plants in built up areas.

Section 52 of the Act also provides for the preservation of native timber, and creates an offence whereby a person (with the exemption of Conservation Officer or a contractor acting under a license) shall not, without reasonable excuse fell, or cause to be felled; or damage, or cause to be damaged; standing native timber on unleased land in the built-up area, or leased or unleased land outside the built-up area, except in accordance with a licence.

However this does not apply in relation to felling or damage of native timber on leased land outside the built-up area where the timber was planted by or on behalf of an occupier and felled or damaged by or on behalf of that occupier or a subsequent occupier. As the criteria here relates specifically to planted trees, this particular issue is regarded as being of little relevance to Remnant Trees.

In considering Sections 51 and 52 of the Act, we note that the definition of native plant, which specifically excludes "*native timber*" (being a native tree taller than 2m in height), leads to a situation of ambiguity as native timber, whilst not specifically meaning a "tree", may in fact result in a circumstance whereby native timber may be removed to the extent that the tree is in fact removed altogether. Our assumption is that the *intent* of the Act is to provide protection of trees to the same extent as any other native plant (such as a shrub, grass or forb etc) and as such, the definition of native timber should not automatically be interpreted as a tree in its entirety. Notwithstanding this, both native timber and native plants are given protection under this Act so that "trees" are still afforded some protection. It is recommended that the definitions of both native plants and native timber be amended to specifically comment on what a "tree" is, be it either a native plant or native timber.

In assessing this piece of legislation as it may apply to this report, it does provide a relatively high degree of protection to individual native trees (or plants), regardless of their age/size (i.e. Remnant status), as ALL native plants are provisionally protected, however, this protection does not apply where a person holds a licence to remove a plant and therefore applications can be made to remove plants on leased land, unless it is a protected plant, although a protected plant that has been cultivated, can be removed by the occupier of the land. Similarly, a protected native plant that has been planted is not covered by this Act. Occupiers of land in built up areas may also take protected native plants, or in non built up areas, may take protected native plants for preparing land for primary production under a lease agreement or licence. Since most of the

exemptions relate to planted or cultivated plants, the protections therefore remain quite strong for Remnant Trees.

In summarising the above, this Act provides protection for native plants and native timber (which would include all Remnant Trees as per our definition) on built-up land in the urban areas of the ACT.

#### **4.3 ACT Government Action Plan No. 27 – ACT Lowland Woodland Conservation Strategy<sup>5</sup>**

This strategy is targeted primarily toward the identification and management/protection of woodland vegetation communities. Under this Action Plan individual trees or even clumps of trees are not covered and therefore receive no formal protection. Trees are protected in this plan only if they form part of the ecological community as defined by the criteria for mapping the woodland at an ecological community level. Therefore if a specific tree is located at the periphery of mapped woodland, but not within it, it is not covered or protected by Action Plan No. 27 (note: Table 2.3 of this document defines single trees or small clumps of trees as being *Highly Modified*). It therefore provides little/no benefit for the protection of individual isolated trees, and in particular, the strategy provides no protection of individual Important or Remnant Trees in the built-up urban unless they are part of a designated woodland ecological community that is mapped and afforded protection.

The strategy does “promote actions to address maintenance of...isolated paddock trees...” but does not detail exactly how this will be done and through what policy specifically to enforce it. It is therefore useful as a guide only, but not a legislative policy upon which protection of isolated trees can be guaranteed whether Remnant or otherwise Important.

Under Action Plan No. 27 (once approved/endorsed), trees within a mapped woodland community would be relatively well protected with strict rules on the removal of mapped woodland. Generally, mapped woodland cannot be removed unless some form of suitable environmental offset is provided. Possible suitable environmental offsets may come in a variety of forms and could include, amongst other things, financial or monetary contributions (such as towards management of nature reserve areas) commitments towards rehabilitation of degraded areas or the purchase and setting aside from development of existing areas of suitable environmental value.

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<sup>5</sup> ACT Lowland Woodland Conservation Strategy (Action Plan No. 27)  
[http://www.tams.act.gov.au/play/pc/conservation\\_and\\_ecological\\_communities/woodlands\\_strategy](http://www.tams.act.gov.au/play/pc/conservation_and_ecological_communities/woodlands_strategy)

In addition to this document, box gum woodland vegetation in the ACT is also listed as an Endangered Ecological Community under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and is therefore currently subject to protection under existing legislative instruments.

In regards to distinctions between greenfield and brownfield sites, there are some, but ultimately few, areas of mapped woodlands within the urban area. The total extent of this woodland within the urban area is not currently known as the mapped distribution of woodland has not been overlaid onto the current Territory Plan at a sufficient level of detail to enable accurate reporting of woodland within the urban area. The extent of occurrence and the patchiness of the distribution of mapped woodland within the urban area make it hard to assess how much woodland is actually situated within the urban zones and to then assess how much of this may be at threat of removal.

#### **4.4 ACT Natural Resource Management Plan 2004–2014<sup>6</sup>**

This plan seeks to make Canberra a leading example of a major urban centre in the Murray-Darling Basin where ecosystems are managed in balance with social and economic development.

Whilst being a comprehensive document on natural resource management issues and providing a clear set of management targets and management actions to achieve those targets, the plan does not at any point deal explicitly with targets or methods to enable the protection of individual Remnant Trees. It does however seek to continue with and improve upon the preparation of Land Management Agreements (LMAs) which indirectly may form a basis for identifying, managing and protecting individual Important or Remnant Trees (on leased rural land – see below for further information on LMA's). This is however simply a management action that in effect defaults to the *Nature Conservation Act 1980* which already provides the legislative provisions for this to occur as stated above. It is possible that conditions within an LMA may in fact allow for the removal of native trees on leased rural land, so the level of protection this affords to Remnant Trees is not overly strong, although keeping in mind the fact that the Conservator must be a signatory to the agreement and therefore must consider and approve any (possible future) proposals to clear vegetation. What it does do is give some clarity and confidence to rural lessees as to what they may and may not be able

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<sup>6</sup> *ACT Natural Resource Management Plan 2004-2014*  
[http://www.tams.act.gov.au/data/assets/pdf\\_file/0011/13340/actnaturalresourcemanagementplan2004.pdf](http://www.tams.act.gov.au/data/assets/pdf_file/0011/13340/actnaturalresourcemanagementplan2004.pdf)

to do in respect of tree clearing over a given period of time and without always requiring individual or separate approvals for each activity that a rural lessee undertakes in the course of managing a property. With this being the case, the success of LMA's will depend largely on their monitoring and enforcement of conditions. These issues are beyond the scope of this paper.

Within leased urban areas and other unleased land within urban areas, such as parks and streetscapes, the ACT Natural Resource Management Plan provides very little guidance or policy in relation to individual tree protection either directly or indirectly.

### **Land Management Agreements**

Land Management Agreements (LMAs) are enacted by Section 283 of the *Planning and Development Act 2007*. LMAs are for rural leases only and the agreement is held between the lessee and the Territory. All agreements must be signed by the Conservator of Flora and Fauna (and the lessee).

Given the requirement of the Conservator to sign the agreement, the preparation of LMA's and the subsequent agreement they provide between the land manager/lessee and the ACT Government therefore automatically require advice from the Conservator. Once a LMA has been entered into, any provisions for the felling of trees that the individual LMA provides, does not require the subsequent approval from the Conservator.

As LMA's are for rural leases only, the Tree Protection Act therefore does not apply as rural land is outside the declared built-up urban area for which the Act exists. Nevertheless, it is still possible to have a tree protected to the equivalent extent of a Registered tree, which could be identified and enforced through the LMA process. Furthermore, important rural trees can be also identified and afforded protection in the LMA without necessarily needing to be individually identified, particularly those that are an important component of a woodland vegetation community (see below).

## **5 Advice on the roles of the Conservator of Flora and Fauna and the Chief Planning Executive in relation to a development application that affects Important Trees in both greenfield and brownfield sites, and in existing urban areas**

A flow chart of the decision making process and how the *Tree Protection Act 2005* (discussed in Section 4.1 of this report) apply to the retention or removal of vegetation in the ACT has been prepared and is included at Appendix A of this document.

### **5.1 Role of the Conservator**

The position of the Conservator of Flora and Fauna is established under Section 7 of the *Nature Conservation Act 1980*.

Under the Act, the role of the Conservator includes (but is not limited to):

- preparation of a (draft) Nature Conservation Strategy;
- declare members of a species to be Protected or Exempt flora or fauna or to have Special Protection Status;
- preparation of (draft) Action Plans in relation to vulnerable or endangered species or ecological communities; and,
- issue licences (to take etc).

This Act and the powers of the Conservator established under this Act have relatively strong levels of protection of individual trees in the ACT if listed as protected or otherwise regarded as important (eg native timber which (may) include Remnant Trees).

The role of the Conservator under the *Tree Protection Act 2005* includes (but is not limited to):

- keeping a register of trees to include all registered trees whether provisionally or fully registered;
- determining guidelines for Tree Management Plans; and
- making decisions on applications for approval of a Tree Damaging Activity or a Tree Management Plan;
- giving advice under s82 of the Act to the Planning Authority on Development Applications (as per provisions under s149 of the *Planning and Development Act 2007*).

The Conservator may also propose a Tree Management Plan for a Registered tree.

Under this Act, the Conservator has relatively strong powers for enabling the protection of an Important Tree (assuming the tree is a protected tree under the Act that requires approval for any work that may damage the tree). As previously stated, the Conservator of Flora and Fauna may also declare a tree to be a Registered Tree under the provisions of the *Tree Protection Act 2005*. Registered Trees receive relatively high levels of protection, whereas regulated trees can often be removed through application, and in particular, can be removed through development approval granted by the planning authority even if the Conservator has recommended its protection.

In summarising this, if the Conservator wants to protect an individual tree of concern, the tree must be Registered under the Tree Protection Act. For land outside of the built-up urban area, this poses a difficulty as the Tree Act does not apply and therefore the Conservator under Section 47(2) can only (provisionally) register a tree if it satisfies the registration criteria, which includes the tree being located in the built-up urban area. Nevertheless, the Conservator may, under the Nature Conservation Act or in signing (entering into on behalf of the ACT Government) a Land Management Agreement, control the removal of protected species, as well as the removal of native timber including trees.

Further to the above, the Conservator may make representations on a particular development proposal through the Public Notification process. In doing this, the Conservator may then have the legal right to appeal any decision made in relation to that particular proposal.

## **5.2 Role of the Chief Planning Executive**

The role of the Chief Planning Executive, specifically in relation to the protection of trees, is restricted to only those circumstances where a Development Application (DA) is made to the Planning Authority under Part 7 of the *Planning and Development Act 2007*. The process by which an assessment and subsequent decision is made in relation to protected trees in an area subject to a proposed Development Application is set out below.

Section 148 of the *Planning and Development Act 2007* requires that a development application must be referred to an entity prescribed by regulation. Under Section 26 of the *Planning and Development Regulation 2008*, the list of entities for which a development must be referred includes the Conservator of Flora and Fauna for developments in the Impact Track (i.e. where the requirement for an EIS to be prepared is

triggered). For Merit Track assessments however, the development application need only be referred to the Conservator when the development site is in the built-up urban area as declared by the Minister.

Section 119 of the Act requires that development approval must not be given for a development proposal in the merit track if the approval would be inconsistent with any advice given by an entity unless satisfied that:

- Any applicable guidelines have been considered;
- Any realistic alternative has been considered; and,
- The decision is consistent with the objects Territory Plan.

The authority may approve a development that will affect a *Regulated* tree, despite the advice of the Conservator. The Authority must not however, approve a development that will affect a *Registered* tree if the approval is inconsistent with the advice of Conservator. These conditions are also very similar to those provided for developments in the Impact track.

### **5.3 Advice on how this framework translates into the actual retention of Important Trees in both greenfield and brownfield sites, and existing urban areas**

#### **5.3.1 Greenfield Sites**

New subdivisions are undertaken through Estate Development Plans (EDP). Under Section 94 of the Act, an EDP is to include, amongst other things, a Tree Management Plan. An EDP must also be consistent with the *Guidelines for Estate Development Plans – Greenfield Land Subdivision* (September 2007) which sets out the type of information likely to be required to be submitted with the EDP application. A draft EDP is then prepared based on these guidelines and is lodged with ACTPLA who will then circulate the draft EDP for agency comment, at which point in time, certain specific details may be requested to be included in the final EDP DA.

The final (or revised) EDP is then lodged as a DA and assessed in accordance with the requirements of the *Planning and Development Act 2007* and the Territory Plan. The DA is circulated to agencies (including the Conservator) for comment, unless the agency has provided endorsement for the proposal as lodged, and that endorsement is less than 6 months old.

The EDP guidelines require that a Tree Management Plan be prepared in accordance with the *Tree Protection Act 2005* and *TaMS How to Prepare a*

*Tree Management Plan Guidelines.* Tree Management Plans include management actions for tree removals, tree impacts, impact mitigation measures, tree retention and protection. As stated in the section regarding the *Tree Protection Act 2005*, above, a Tree Management Plan may be proposed by the Conservator for a registered tree, or the land management agency for the land where a registered tree is located may apply for a tree management plan for the tree. Anyone else may also apply for approval of a tree management plan for any tree on leased land in a built-up urban area. There is however no specific trigger set-out in the Act that automatically requires the preparation of a Tree Management Plan.

If there are individual trees that warrant preservation (such as Remnant Trees) they can or should be *Registered* by the Conservator of Flora and Fauna under the provisions of the *Tree Protection Act 2005* (Note: the urban area of the ACT, including Future Urban Areas in the Territory Plan and which includes the majority, if not all, potential greenfield sites, is already included in the “built-up urban area” declared by the Minister and shown in **Notifiable Instrument NI2010-414** of the Act). If this does not occur, the Conservator can recommend the trees are kept, however, taking into consideration appropriate planning arguments, the Authority may make a decision that is inconsistent with the Conservator’s decision and allow the trees to be removed (for Merit Track applications). This is appropriate because Important/Remnant Trees, while worthy additions to local parks and open space areas, may become very problematic on private leased land in the built-up urban area for a variety of reasons. The main conflicts that can arise include situations where the orderly design for a new subdivision (including location of roads, services etc) provides a conflict between numerous trees, not all of which can be retained, and the ideal planning outcome (including density, yield, and provisions of services etc), in which case the CPO requires the decision-making powers to be able to approve the tree removal if the best practice planning design warrants that removal.

The retention of large trees on leased land, particularly smaller residential blocks, can also give rise to adversarial situations where they devalue one or more blocks through building constraints and overshadowing, while adding amenity to other surrounding blocks. This may then lead to great friction between neighbours. Large and very old trees may also provide serious safety concerns through the threat of large limb falls or possibly even the entire tree falling onto persons and/or property (though in this latter case, a protected tree may be allowed to be removed on application if supported by the advice from a qualified arborist that the tree poses a serious safety threat).

Furthermore, the current market for residential blocks has been increasingly moving toward smaller blocks (typically between 400-600m<sup>2</sup>). Within such blocks, there is simply no scope to provide for the retention of a large, mature tree in a safe and sustainable manner.

Whilst it may seem appropriate to simply change the subdivision design, the actual design of a new subdivision is an often difficult process as there are numerous planning constraints to manage beyond simply the retention of trees (such as solar orientation of blocks, requirements for sewer and other services to be located in specific areas to tie-into the mains which in many cases has already been built, often by the Government (through ActewAGL)), such that for a good planning outcome to be achieved the final decision must lie with the Planning Authority.

Further to the above, the issue of densification must not be ignored in the decision making process and in the case of protecting individual trees, it is seen as a better outcome to increase density through smaller blocks and the like which can have a negative influence on tree protection but which in turn helps to alleviate urban sprawl and thus has a positive influence on overall tree retention in the outer areas of Canberra's urban footprint. In this scenario, it is regarded as a far better outcome both in terms of town planning as well as the region's ecology, to sacrifice (or at least avoid the scenario of) individual and isolated trees within private residential blocks for the greater good of retaining larger intact communities of vegetation with greater ecological connectivity to the Mountains and Bushland zones as well as the hills and ridges within the urban footprint. To further clarify this statement, the retention of important patches of trees or clumps of trees as forest remnants, need not be restricted to the areas at the outer edge of residential areas. Forest remnants and groups or clumps of trees in general may, and where feasible, should, be retained *within* (new) suburbs through the appropriate location of open space places such as urban parks and other public open space areas.

It is noted that other policies such as the City of Whittlesea's *River Red Gum Protection Policy* recommends the establishment of larger (residential) blocks to retain individual trees. This approach is not supported by our advice for the reasons described above in relation to densification and limiting urban sprawl. It is also noted that the City of Whittlesea is well outside Melbourne city, has a rural township "feel" and as such, the town planning considerations are different than for a major capital city. The policy makes note that trees independently assessed as presenting a danger to people and property can be removed which is supported by this review.

In considering the above, whilst it is appropriate that the Conservator be included in referrals to provide advice on the values of trees and the relative importance of keeping them, it is otherwise considered appropriate that for DA's, the final decision be made by the Planning Authority as this office is the only office with the responsibility to assess the merits of an application holistically (i.e. taking everything into consideration).

It should be noted however that the above discussion is in relation to a DA only. If there is no DA, then it is simply the Conservator's decision on a Tree Management Plan or an application for a Tree Damaging Activity.

An important final note on the issue of tree retention within greenfield sites is that since the development of the ACT Lowland Woodland Conservation Strategy which informs the zones in the Territory Plan, and hence protects the vast majority of Important/Remnant trees that have been retained within areas of remnant woodland communities in the Territory, the need to focus on individual trees is greatly diminished. The real strength of this document in respect of tree retention (for ecological purposes – i.e. non-social/cultural) is that for a relatively small amount of effort we can achieve greater outcomes in tree retention than focusing lots of attention (time and money resources) on individual trees. The flow-on from this in respect of maintaining biodiversity values and ecological values as habitat and wildlife corridors is that through this strategy, better quality wildlife habitats are identified and managed/protected as opposed to attempts to maintain smaller, fragmented trees with lower ecological value.

The outcome of the Woodland Strategy document and its affect on land zoning in the ACT is that land is (generally) not re-zoned for urban development if it is of high ecological value (i.e. mapped as unmodified or largely unmodified woodland). This however can only occur if the mapping that supports the Woodland Strategy is of high quality and kept up to date.

The Policy Guideline for woodland conservation involves a *Comprehensive, Adequate and Representative* Reserve System (CAR Approach) whereby sufficient woodland is formally protected in nature parks and other reserve systems such that the total extent of protected woodland is comprehensive (i.e. the inclusion in the Reserve system of examples of regional-scale ecosystems in each bioregion), is adequate (i.e. there is a sufficient amount of woodland to ensure longer term conservation) and is representative (i.e. the inclusion of areas at a finer scale, to encompass the variability of habitat within ecosystems). Through this approach, there will be sufficient amounts of woodland formally protected in the reserve system so that the conservation of

smaller areas of woodland within the urban fabric, whilst still desirable, is not specifically required to ensure the longer term conservation of the woodland community. Nevertheless, it is still necessary to consider Remnant Trees, retained in parks and open space, as addressing the need for corridors and connectivity.

Finally, if development is to be undertaken that may have an effect on the woodland community, then a form of biodiversity offset should be provided (it is noted that the provision of an offset is likely to be required by the Department of the Environment, Water, Heritage and the Arts (DEWHA) in any event if it involves a potential significant impact on part of a Box-Gum woodland). It is not within the scope of this investigation to prescribe what form an offset should take, but a suitable biodiversity offset strategy may or at least should, include proposals to contribute towards the rehabilitation of existing parks and/or nature reserves to increase their biodiversity conservation values or the purchase and setting aside of existing woodland areas to be protected from further future development impact.

### 5.3.2 Brownfield Sites and Existing Urban Areas

For brownfield sites (these being defined as sites that have already been developed for urban purposes), the roles of the Conservator and the Chief Planning Executive are not significantly different from the roles described above for greenfield Sites.

In particular, a proposal to remove a tree in the urban area can be made either through an application for a Tree Damaging Activity or a Tree Management Plan which requires the approval of the Conservator or it can be made through a Development Application to the Planning Authority which is then referred to the Conservator for advice. As for greenfield sites, if the tree in question is a *Regulated* tree, then the Chief Planning Executive makes the final decision (having regard to the advice of the Conservator) and if the tree is a *Registered* tree then it cannot be removed.

Given the above, there is no significant difference between greenfield and brownfield sites in the legislative protection afforded to trees under the legislation.

Our summation of this existing policy framework is that it is essentially a workable process however we are unaware of any guidelines in existence that ACTPLA may use in considering the advice of the Conservator and whether or not to approve a development that results in the removal of a regulated tree.

## 6 Summary Points of this Review

- Important trees in the ACT are currently relatively well protected by existing legislation, regulations, policies, strategies and guidelines, although the interpretation and implementation may result in mixed outcomes that do not meet everyone's expectations within the community. Individual trees in the built-up urban area are well protected under the *Tree Protection Act 2005*, and native trees outside the built-up urban area are protected by the Woodland Conservation Strategy (as well as by commonwealth legislation) where they are a component of a woodland community. Individual trees outside the built-up urban area are protected as "native timber" under the *Nature Conservation Act 1980*.
- The preservation of trees on private leased land in the built-up urban area and Future Urban Areas is not believed to be an ideal planning outcome under all circumstances, particularly for individual trees on small to medium sized residential blocks. If trees are to be preserved, the focus should be on protecting trees within urban open spaces and the like. This ideally should (and would) be determined at the concept planning/EDP (Estate Development Plan) stage of development.
- The desirable key features of Open Space areas where important trees have been designed to be retained should include an area of sufficient size such that a number of trees may be retained and sufficient ecological connectivity to ensure that the desired habitat values can in fact be realised. In order to achieve desirable open space areas, a design code or other similar policy document should be prepared to give urban designers and others greater clarity as to what the desirable features are and how they are to be managed (this could be in the form of a Statement of Planning Intent made by the Minister, though it need not necessarily be limited to this function/ process). The requirement for better made design codes or other planning policies and/or statements pertaining to tree protection is particularly evident in the confusion that often arises whereby a design feature of a park/open space area has certain features which may be desirable from an ecological perspective, but are not desirable from a TaMS

perspective in terms of the cost relating to ongoing management and maintenance once the land is transferred to TaMS custodianship, or possibly from a CPTED (Crime Prevention Through Environmental Design) principle.

- The retention of trees on unleased land may create conflicts between the protection and management of trees and the roles of other government agencies such as Emergency Services, ACTEW's roles under the Utilities Act and TaMS (Roads ACT) management roles. For example, Roads Act (under TaMS) have the main responsibility for the management of verges and traffic safety and issues related to road safety surpass those of the protection of ecological or landscape values of street trees. Roads ACT typically may remove street trees or trees in verges if the retention of trees conflicts with their ongoing management roles. Under such circumstances, trees may be removed without the approval from Conservator (as per the exemptions discussed previously under Section 19 of the *Tree Protection Act 2005*). The conflicts are becoming more prevalent as road widths are becoming narrower (although this is dependent on traffic volume assessment). Good planning should NOT be moving away from this as cities, including Canberra, should be looking toward greater density of residential planning. Greater densities allow for increased public transport facilities, shorter travel routes and limiting urban sprawl into surrounding greenfield sites which generally have higher ecological values than urban areas, and thus should be a greater target for protection than individual trees within the urban fabric.
- All Remnant trees are worthy of protection and are considered to be important in the context of maintaining Canberra's unique environmental character. Therefore, all reasonable efforts should be made to retain them to the greatest extent possible. However, this report does not seek to prescribe differences between Remnant Trees where one should be retained and another removed. This must be done on a case-by-case basis and based on holistic planning assessments.

## 7 Recommendations

- Issues or conflicts regarding the protection and management of Important Trees are often a result of perception or expectations. A greater level of understanding and education is therefore required in relation to the planning conflicts that arise with respect to retaining trees within urban areas, particularly residential subdivisions, and would help reduce conflicts or other problems that arise in regards to decisions to retain or remove Important Trees. A recent example of this conflict would be the case of some trees in Corroboree Park in Ainslie whereby an assessment was made that trees needed to be removed for public safety reasons (given the declining health of the trees); however, there was some local community disagreement with the decision to remove the trees.

As was noted previously in this report, the safety of the general public and property must be paramount in all decisions on tree management and trees that are independently assessed as being potentially dangerous should have clear and easy opportunities made available for their removal.

- A more strategic approach to Important/Remnant Tree management is recommended. This should include investing more resources to ensure the mapping that underpins Action Plan 27 is accurate and up to date, rather than focusing on individual trees. Any new natural heritage mapping undertaken in the ACT (either by the ACT Government or consultants) should be required to be incorporated into a consolidated data set. This data set could then be relied upon for strategic planning decisions, informing the protection or development of open space or greenfield areas. A relatively small amount of effort could result in much greater ecological outcomes.
- Greater clarity needs to be given to the criteria that either formally protects or allows for removal of Important Trees. This would include, but may not be limited to, any applicable guidelines that ACTPLA might have to inform their decision making, particularly in relation to when they make a decision that is inconsistent with the advice of the Conservator, as discussed

previously in relation to S119 of the *Planning and Development Act 2007*.

(Note: There are no applicable guidelines under s119(2)(a)(i). ACTPLA has documented its Standard Operating Procedures that require any possible decision to act inconsistently with the Conservator's advice to be elevated to ACTPLA's Major Projects Review Group. Feasible alternative design options are the key considerations in whether or not to act inconsistently with the Conservator's advice.)

- New subdivisions may sometimes provide circumstances whereby trees are retained within larger (private) urban blocks. This situation is not recommended as it may result in conflict between future owners' safety and their legal ability to remove the tree. The tree will eventually fall, and when it does, may provide a major safety issue. We believe that the ideal scenario is to avoid this situation altogether. If a tree is of sufficient value, it should be retained in an urban park; however "Pocket Parks" are not seen as desirable outcomes for many reasons (including TaMS management implications, CPTED principles, and the actual ecological value of trees in small parks with typically limited ecological connectivity etc). Additionally, the creation of larger blocks reduces density and ultimately leads to increased urban sprawl. This is at odds with the latest environmental planning principles whereby increased density is seen as a major planning focus.
- Within urban settings, a clear distinction needs to be made between planted (street) trees and Important or Remnant Trees. In reality, it may only be desirable to retain Important or Remnant Trees in parks and to move away from seeking to retain them in verges or within private blocks (for safety and densification issues previously discussed). If it is important to retain or promote the bushland and garden setting of the ACT within the residential urban fabric, greater consideration should be given to planted trees.
- The ACT consists of wooded hills and ridges, tree lined streets and large areas of public open space that provide the vast majority of the values we relate to the sense of the ACT's urban forests. Tree-lined streets are predominantly not made up of Remnant

Trees but planted specimens, often not native/indigenous to the local area. The ongoing maintenance of urban forest values within residential and other urban developed precincts therefore does not require a strong commitment towards retaining/protecting Remnant Trees, but more so creating a landscape of relatively high tree cover from either native or introduced trees. The maintenance of habitat values of the ACT's urban forests should focus on interconnected open spaces more so than individual trees in verges and private lots.

- Where individual Important or Remnant Trees are removed as a consequence of development, there should be a focus towards a greater use of environmental offsets whereby removal of trees is offset or compensated for by increased attention given to rehabilitation of urban forests or other suitable urban open space.
- The retention of trees in future urban areas, specifically within residential blocks and other private leases, should not come at a cost of reduced density (such as by creating larger blocks to retain only a small number of trees). We consider that it is a far better outcome from a sustainability (ecological, economic and social) perspective to increase density and hence decrease the speed and extent of urban sprawl. This in turn then serves to better protect the existing woodland communities outside of the built-up urban area where the ecological values are far greater than those provided by a few scattered trees in backyards and road verges. Isolated trees in private leases have continuously diminishing ecological values as a consequence of the interaction with the human environment (which includes but is not limited to the effects of traffic, noise, night-time lighting, fragmented connectivity, loss of important understorey habitat values, and the presence of domestic animals, all of which provide a deterrence to native fauna).

It would be a much more efficient use of resources to focus on saving the majority of trees in non-urban land rather than the few scattered trees in the urban area which are of lower ecological value.

Ecological values might be re-introduced to urban areas post-development via provenance planting (within appropriate locations that provide adequate connectivity etc), including a focus on restoring the native understorey component as well as

through exploring other measures such as the installation of nest boxes. It is noted that these introduced values may take some time to develop and as such, there is likely to be a lag between when the original value is removed and when it is adequately replaced. For these reasons, the focus should remain in subdivision designs on identifying appropriate areas for open space which already support ecological values, or the provision of larger environmental offset areas outside of the subdivision.

- Preparation of design guidelines or other similar policy document to give urban designers and others greater clarity as to what the desirable features are and how they are to be managed. At present, it is not clearly known what the design aspects of urban open spaces are in relation to TaMS management principles once the area has been handed over to PCL for ongoing management. Issues that should be resolved are in relation to:
  - understorey vegetation (including the ability or requirement for a mower/slasher to maintain the area);
  - potentially dangerous trees with large limbs or structural faults in the tree (including TaMS legal responsibility to provide safe parks);
  - tree density/spacing (including the ability for a mower/slasher to navigate between trunks); and
  - overhanging limbs from open space areas into private blocks (including the legal recourse for lessees of private blocks to prune).
  
- The Subdivision Code should be revised to provide clear guidance as to how to manage and protect existing Important or Remnant Trees in new subdivisions. At present, the management principles may not be known until an EDP/DA has been submitted and comments received from the agency referral process. It would be desirable to have better information during the design phase prior to submission. At present, the Subdivision Code gives only limited guidance, largely in relation to specifications on types of trees to be planted from a TaMS-approved list. Unfortunately though, there appears to be little guidance as to how to manage/protect existing "Remnant Trees" in new subdivisions.

- Following on from the previous point, there should be a review of the existing controls as presented in the Subdivision Code to look at areas for improvement, particularly in respect of a more holistic approach to subdivision design, such that all issues (such as tree protection rules and criteria) are given due consideration. Such design concepts may include (but not be limited to):
  - (i) Bundling of services within a single easement that incorporates all utility service connections. Ideally, these could be located in easy to access places such as under footpaths or along road verges etc. The idea behind this is to minimise the overall area of land under easements and to reduce the width of easements so as to limit the extent of conflict between service easements and the retention of (Important) Trees. Services should not however be vertically stacked as a fault in one line may then require interference with all service lines within that easement. Common trenching for ties might also provide more space along the length of the road.
  - (ii) A move away from the current design philosophy of locating services in open space areas, and for open space areas to have greater focus toward landscape amenity and ecological values rather than simply a place to put a service utility connection/easement.
  - (iii) A review of other possible methods for retaining trees in built areas that ensures longer term health/viability, such as use of semi-permeable hardstands.
  - (iv) More specific design controls to limit impact on/increase protection of tree roots
  - (v) Tree easements to dedicate a specific space for trees where available/appropriate.
  
- It would be desirable to undertake detailed mapping of individual Important Trees within existing urban areas and open spaces not just the more recent mapping that occurs as a consequence of a Development Application. In practical terms however this may be very hard to achieve in entirety, as it may be a time-consuming and costly exercise. This should be in accordance with the provisions of the *Tree Protection Act 2005* to populate the tree register and to make the register a more robust management tool for tree protection.

- The licensing and enforcement/policing of activities that damage protected trees may need to be reviewed to give greater certainty to tree protection. At present, unless a local resident or similar notifies the Government of an illegal activity, then the government may well be unaware of any unapproved tree damaging activities that occur.
  
- All (Important) trees in greenfield sites should be entered on to the Tree Register, if they meet the criteria for registration. The registration may take place simultaneously with the assessment of the application and Notice of Decision.
  
- ACTPLA should prepare a set of guidelines that clearly define the circumstances under which the Chief Planning Executive may make a decision that is inconsistent with the Conservator's advice on a referral. Currently, no such guidelines are known to exist and it is therefore not known the circumstances or criteria by which the Chief Planning Executive makes their decision. The guidelines should be developed in conjunction with the conservator and approved by both the conservator and the Chief Planning Executive.
  
- TaMS should prepare a Street Tree Guidelines document to give planners and designers greater information in preparing subdivisions or to provide consultancy advice to clients for already developed blocks. The current "DESIGN STANDARDS for URBAN INFRASTRUCTURE - 4 - ROAD VERGES" provides some information for designing new subdivisions, but provides little information for existing urban areas.
  
- There should be consideration of a further range of ways to protect Important Trees, including:
  - amendment to the definition of Native Plant and Native Timber under the *Nature Conservation Act 1980* to remove the ambiguity in relation to tree protection. Currently the Conservator is required to give licences for removal of native trees and native timber on both leased and unleased land and both within and outside the urban area, so that in effect there is good protection of trees, but the confusion

still remains as to whether a “tree” is “native timber” or a “native plant”; and

- changing planning guidelines so that tree management plans are mandatory for greenfield subdivisions.

- The Conservator should have appeal rights to decisions on EDP development applications if the advice of the Conservator is overridden (although these may already exist to some extent, but only when a decision on a DA has been made). This would give the Conservator greater powers of enforcement to enable tree protection.

- It is recommended that Joint Agreements be established between ACTPLA, TaMS and the Conservator. This should be undertaken so that a clear mandate can be derived to enable greater transparency and understanding between the various government departments on the issues relating to the retention of urban trees.

Currently, there are no published guidelines on exactly how and why decisions are made, particularly by the Chief Planning Executive in circumstances where the advice of the Conservator to retain a protected (regulated) tree is not followed. As such, there is little certainty that decisions are made in a consistent fashion.

Given this lack of certainty, it is recommended that Joint Agreements be made between the various departments with the content or direction of such agreements to ideally include:

- A review of the existing guidelines (if any in fact exist) to determine their suitability in regards to the roles/objectives of the Chief Planning Executive, the Conservator for Flora and Fauna and TaMS (PCL) management.
- Agreement on the content for revised guidelines to give greater certainty in relation to decisions on tree management such that all relevant Departments are satisfied with the final decision. Ideally, the guidelines should be of sufficient detail such that any of the Departments would arrive at the same decision on a particular tree protection issue. This would relate to Development Applications as well as standard TaMS management issues in which tree management matters are involved.

- A review of existing codes/policies that relate to tree protection (i.e. subdivision codes and the like) to ensure that any agreement is not in conflict with the objectives or rules and criteria of such codes.
- A clear understanding and acceptance of which Department is responsible for the decision on a particular tree.

Finally, it is recommended that the outcome of such agreements (i.e. the agreed guidelines) is made publicly available.

## 8 References

ACT Government Website: Territory and Municipal Services (TaMS); Parks Conservation and Lands – Maintaining Canberra’s Public Treescape.

[http://www.tams.act.gov.au/play/pcl/parks\\_reserves\\_and\\_open\\_places/trees\\_and\\_forests/trees](http://www.tams.act.gov.au/play/pcl/parks_reserves_and_open_places/trees_and_forests/trees)

*ACT Lowland Woodland Conservation Strategy (Action Plan No. 27).*

[http://www.tams.act.gov.au/play/pcl/conservation\\_and\\_ecological\\_communities/woodlands\\_strategy](http://www.tams.act.gov.au/play/pcl/conservation_and_ecological_communities/woodlands_strategy)

*ACT Natural Resource Management Plan 2004-2014.*

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