



SUBMISSION TO THE COMMUNITY
CONSULTATION ON THE PROPOSED
LAWSON NORTH CANBERRA
DEVELOPMENT

Acknowledgement of Country

We recognise our Aboriginal and Torres Strait Islander nations were the first sovereigns of our lands and waters. This sovereignty was never ceded and continues to this day, informing our connection to land, waters and community.

Indigenous respect and guardianship over the Australian land is an integral part of environmental justice and must be acknowledged and respected for the realisation of environmental justice in this country. Indigenous leadership, autonomy and justice are also critical to broader climate justice in Australia.

GreenLaw and its members acknowledge we meet on Indigenous land and, in working towards environmental justice, stand beside the traditional guardians of our lands. We recognise that during the writing of this submission we met on Ngunnawal and Ngambri Country. We pay our respects to Elders past and present.

GreenLaw

GreenLaw welcomes the opportunity to provide a submission to the project proposed by Defence Housing Australia (DHA) at Lawson North, to construct a residential and community development.

GreenLaw is a young person-led law reform and legal research institute leveraging the expertise and imagination of the next generation of lawyers to tackle the climate crisis. GreenLaw works in partnership with Universities, NGOs and other industry partners to deliver policy development, legal research and law reform recommendations, as well as a volunteer team of over 70 law students, primarily based in Canberra.

We conduct novel research in four core research areas: democracy and the environment, a just transition, thriving ecosystems, and future communities. Our research has appeared in major media outlets, contributed to groundswell environmental campaigns, and been published in peer-review journals. GreenLaw was recognised as a key civil society group addressing the climate crisis by the Pro Bono Centre's 2020 *Pro Bono Guide to the Climate Crisis*.

This submission reflects the views of GreenLaw researchers and is not intended to be an institutional submission by the Australian National University nor is it intended to represent the views of our respective employers.

If it would be of assistance, we are happy to be contacted for further comments, please email: green_law@outlook.com.

Executive Summary

GreenLaw opposes to the Lawson North Development and the revised master plan proposed by DHA. The ecological values contained within Lawson North are significant, including significant habitat for critically endangered species and ecological communities. The development will damage these values and is therefore not in the interests of the community or best practice threatened species management.

As a government-controlled organisation, DHA should prioritise community interests over profits. All Australians, including Canberrans, have an interest in maintaining the ecological integrity of our local and national environment – as a source of recreation and enjoyment, heritage for Indigenous and non-Indigenous peoples, agriculture, filtration of water sources, and to appropriately manage natural disaster risks. DHA can source housing from alternative sites that do not carry the same environmental values or risks, and that will not generate the same level of community opposition. DHA could also explore a much smaller plan for the Lawson North site that does not involve development on conservation land, with a limit of approximately 150 dwellings.

Lawson North site is north-east of Belconnen, in the northern part of Canberra. The Lawson North site is approximately 145 hectares and was managed by the Department of Defence until 2017 when it was transferred to DHA.¹ The Lawson North site has significant ecological and heritage value. The site has been identified as potential conservation land by both the Commonwealth and ACT Government,² and contains large areas of the critically endangered ecological communities Natural Temperate Grasslands of the South Eastern Highlands (NTG) and White Box Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Habitat (BGGW).

At Lawson North the following threatened species have either been identified or are likely to be present at the site: Golden Sun Moth, Perunga Grasshopper, Striped Legless Lizard, Swift Parrot, Scarlet Robin, Little Eagle, White-winged Triller, Superb Parrot, Hoary Sunray, Small Purple Pea, and Ginninderra Peppercreep.³

This submission will outline:

- The relevant legal and regulatory issues that impact development on the Lawson North site and highlight the ecological significance of the site;
- The high ecological values present at the Lawson North site; and

¹ Defence Housing Australia, 'Lawson North Location,' *Lawson North* (Web Page, 2021) <<https://www.lawsonnorth.com.au/location>>.

² See Chief Planner, *National Capital Plan: Development Control Plan Block 2 Section 6 & Block 1 Section 16 Lawson* (DCP (12/09), 13 February 2013) ('DCP (12/09)').

³ Conservation Council of the ACT Region, Friends of Grasslands and Ginninderra Group, *Lawson Grasslands* (Briefing Paper, November 2021) 5.

- The (likely) difficulties DHA will face in offsetting the high ecological values present at the Lawson North site, and thus, the potential for the Lawson North site to operate as an attractive offset property for other Canberra developments.

These three issues demonstrate that it would be inappropriate, and not in community interests, to develop the Lawson North site under the revised master plan. We outline, at [page 13](#), that DHA could explore alternative options for the management of the Lawson North site.

Thus, we recommend to DHA:

Recommendation 1: DHA not proceed with the revised Lawson North Development

Recommendation 2: DHA explore options for significantly smaller development, of 150 or less dwellings, that is more compatible with the conservation goals of the Lawson North site

Recommendation 3: If appropriate, DHA could utilise the Lawson North site as an advanced biodiversity offset for other developments, creating a revenue stream without compromising the ecological integrity of the site

Relevant Legal and Regulatory Background

Developing the Lawson North site will involve an extensive legal and regulatory process, designed to minimise environmental risks at the site. This is an indication that the site is not appropriate for the scale of development proposed by DHA. In particular we note:

The Site Has Been Identified as Potential Conservation Land That Should Not be Developed

In 2013, the National Capital Authority (NCA) released a Development Control Plan (DCP) that covered the Lawson North Site. This DCP – called **DCP (12/09)** – divided the Lawson North site into five areas. In Precinct A and B, residential areas are suitable, but Precincts C, D and E are all deemed conservation zones for the preservation of kangaroos, heritage and other significant ecological values.⁴ Indeed, the NCP states:

Precinct D – Desired Planning Outcomes...Precinct D has been identified for heritage (natural, historic, cultural and technical) and nature conservation only.

Precinct E – Desired Planning Outcomes...Precinct E has been identified primarily for nature conservation.⁵

This DCP clearly indicates the Commonwealth Government and ACT Government are both cognisant of the high ecological value of the site and have taken action to preserve the ecological integrity of the site. Whilst the ACT Government does not have jurisdiction over the site, it has supported conservation of the site and there were plans in 2008 for the land to be planned as a reserve.⁶ Indeed, the ACT Commissioner for Sustainability and the Environment found in a 2008 investigation of lowland grasslands that Lawson North:

Is one of the important remaining grasslands in the ACT, with [several] threatened species, including the only known population of the Ginninderra Peppercreess...The ACT Government has stated that it wishes to retain this site as a nature reserve once the Australian Government relinquished it.⁷

An offset should be required if areas of grassland are developed.⁸

These previous investigations and recommendations, as well as the current planning instruments that limit development on Lawson North highlight that the site is most suited for conservation land. DHA would be required to negotiate an amendment of DCP (12/09) with the NCA to develop Lawson North under the revised proposal. Such a revision to DCP (12/09) would occur with significant community opposition and against the interests of the community, and would likely to result in the permanent loss of ecological values.

⁴ DCP (12/09) (n 2) 9.

⁵ Ibid.

⁶ Commissioner for Sustainability and the Environment, *Report on ACT Lowland Grassland Investigation* (ACT Commissioner for Sustainability and the Environment Major Investigation Report, 12 March 2009) xv.

⁷ Ibid 70.

⁸ Ibid xvii.

Environmental Impact Assessment Process

The proposed development is highly likely to constitute a significant impact to threatened species and ecological communities under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*'). This is a federal legislative regime that seeks to protect nationally significant environmental matters, including threatened species.

The environmental impact assessment framework is a protracted process under the *EPBC Act*. It is likely the Lawson North development will be deemed a controlled action, which requires DHA to negotiate with the federal Environment Department the necessary avoidance, mitigation and offsetting measures to ensure the site does not result in a net loss of biodiversity. The process will also involve several rounds of community consultation.

As will be outlined in the final section of this submission, offsetting the Lawson North site is likely to be difficult and expensive.

Ecological Impacts of the Proposed Development

The revised plan for the Lawson North site is likely to cause significant ecological impacts. DHA, as a Commonwealth-regulated entity is required not to take actions that will have a significant impact on the environment.⁹

DHA should endeavour to undertake developments that are in the community interest and compatible with ecologically sustainable development, including the precautionary principle. The precautionary principle – enshrined under the *EPBC Act* – emphasises caution, and that actions should not be taken if they may have irreparable or significant environmental impacts. In essence, the developer bears the burden of proof that a development does not harm the environment.¹⁰ We encourage DHA to apply a precautionary approach to the Lawson North site and elect to not proceed with the development because of significant ecological impacts associated with the revised plan. These significant impacts are summarised below:

Presence of Critically Endangered Ecological Communities

The Lawson North site contains BGGW and NTG in Precinct D and E of DCP (12/09). Both these ecological communities are listed as critically endangered under the *EPBC Act*. The loss of both ecological communities or their degradation through urbanisation and edge effects represents a significant ecological impact.

In particular, the NTG present at Lawson North has been identified as one of the most intact remnants of NTG in the ACT region. The ACT's Grasslands Strategy lists the site as one of the last NTG areas that is over 100ha in size.¹¹ Damage to NTG would result in significant ecological impacts and is likely to be expensive to offset because of its high value. Offsets may be required for edge effects and degradation of retained NTG.

Inappropriate Buffer under the Revised Plan and Likely Edge Effects

The master plan does not appear to provide an adequate buffer for critically endangered ecological communities, increasing the risks of edge effects and degradation to the ecologically community remnants retained on site. The Conservation Advice for NTG recommends a minimum buffer of 30 metres but that larger buffers should be utilised for particularly high value areas of NTG.¹²

Furthermore, we note the master plan contemplates the less developed areas of Lawson North will serve as 'public open space' with walking tracks, cycling paths and other community access. We are not opposed to community access to Lawson North, however without further details of

⁹ *EPBC Act* s 28(1).

¹⁰ See generally Elizabeth Fisher, Judith S. Jones and Rene von Schomberg, *Implementing the Precautionary Principle: Perspectives and Prospects* (Edward Elgar Publishing, 2006).

¹¹ ACT Government, *ACT Native Grassland Conservation Strategy and Action Plans* (2017) 19 – 21.

¹² Department of Agriculture, Water and the Environment, *Approved Conservation Advice (including listing advice) for the Natural Temperate Grassland of the South Eastern Highlands* (EC 152, 31 March 2016) 14.

such a proposal, we are concerned these pathways may further fragment ecological communities present at the site. This would exacerbate edge effects.

Presence of Critically Endangered and Threatened Species

The Lawson North site contains suitable habitat for several critically endangered and threatened species, as well as many more native species that are not formerly protected under legislation. In particular, the site provides significant habitat for the critically endangered (EPBC Act listing) Golden Sun Moth. Informal surveys by qualified ecological scientists under Friends of Grasslands estimate 500 individuals counted over an area of approximately 120 hectares.¹³ This is an ecologically significant population.

The site is likely to also support populations of the following threatened species:

- Perunga Grasshopper (vulnerable, ACT listing);
- Striped Legless Lizard (vulnerable, EPBC Act and ACT listing);
- Swift Parrot (critically endangered, EPBC Act and ACT listing);
- Little Eagle (vulnerable, ACT listing);
- Scarlet Robin (vulnerable, ACT listing);
- White-winged Triller (vulnerable, ACT listing);
- Superb Parrot (vulnerable, ACT listing);
- Hoary Sunray (endangered, EPBC Act listing);
- Small Purple Pea (endangered, EPBC Act listing); and
- Ginninderra Peppercress (endangered, EPBC Act and ACT listing).

We further note the Gang Gang Cockatoo, Canberra's faunal emblem, has been recorded at Precinct D of the Lawson North site. The Gang Gang Cockatoo is in the process of being listed as critically endangered under the EPBC Act.¹⁴

The Carbon Sink Value of Lawson North

The intact grasslands at Lawson North represents an important carbon sink in Canberra's north. Temperate grassy ecosystems are an effective carbon sequestration mechanism and thus provide ecosystem services in the form of carbon retention.¹⁵

The development of Lawson North would destroy the integrity of this carbon sequestration site and, albeit on a small level, contribute to net greenhouse gas emissions in the ACT region. This is strongly against community interests, both because of community concern for climate change and the impact climatic changes have on community wellbeing and safety.

¹³ Conservation Council of the ACT Region, Friends of Grasslands and Ginninderra Group (n 3) 5.

¹⁴ Department of Agriculture, Water and the Environment, *Consultation Document on Listing Eligibility and Conservation Actions: Callocephalon Fimbriatum (Gang Gang Cockatoo)* (Listing Assessment, 2021).

¹⁵ J.M.O Scurlock and D.O. Hall, (1998) 'The global carbon sink: a grassland perspective' (1998) 4(2) *Global Change Biology* 229, 229 – 233.

Heritage Values

Although not the focus of our submission, we further note that the Lawson North site also contains significant heritage value. Such heritage values are not interchangeable and damage to these sites represents irreparable harm to the community.

The heritage values contained in the Lawson North site include the former Belconnen Naval Transmission Station, protected in Precinct D of DCP (12/09). It is also likely the site includes significant Indigenous heritage value for both Ngunnawal and Ngambri Peoples – although site surveys have yet to be made publicly available.

Risks Associated with Offsetting Ecological Values

At this stage in the development proposal, whether offsets for the Lawson North site are required is not yet public information. However, we note that for DHA's earlier development at Lawson South required an offset and the provision of not less than \$972,000 to facilitate management of the offset site.¹⁶ We therefore anticipate the Lawson North development will likely need offsets. The following section outlines the difficulties associated with offsetting high ecological value sites like Lawson North and feasible alternatives for DHA to explore.

Offsetting High Ecological Value Habitat and Ecological Communities

As outlined in the previous sections the ecological values present at the Lawson North site are significant. The revised plan does not appear to include adequate buffers and the boundaries in the revised plan indicate DHA intends to develop part of Precinct D and develop up to the very edge of precinct E (as outlined in NCP (12/09)).

These boundaries indicate the development will clear, and otherwise degrade, habitat for the following critically endangered species and ecological communities:

- BGGW;
- NTG; and
- The Golden Sun Moth.

The Lawson North site contains large areas of habitat for these critically endangered communities and species. It will be expensive for DHA to offset and maintain the conservation quality of the retained vegetation on site.

DHA is likely to have difficulties offsetting this site, particularly destruction to BGGW and NTG, given high quality critically endangered ecological communities are exceptionally rare in the ACT and nearby NSW. In a recent Australian National Audit Office (ANAO) investigation into federal Environment Department decision-making, the ANAO noted that developers have difficulties acquiring satisfactory offsets, particularly for critically endangered species and ecological communities.¹⁷ This represents a significant cost and delay risk for DHA.

¹⁶ Assistant Secretary South Eastern Australia Environment Assessment Branch, *Approval: Lawson South Residential Development, Belconnen ACT* (EPBC 2010/5549, 13 September 2012) 4.

¹⁷ Australian National Audit Office, *Referrals, Assessments and Approvals of Controlled Actions under the EPBC Act 1999* (Report No. 47 2019-20 Performance Audit, 25 June 2020) 67.

Risks Associated with Offsetting and Likely Net Biodiversity Loss

Offsets are a contentious form of environmental management. They involve compensating for lost ecological values at one site through actions at an external site, such as restoration or habitat protection.¹⁸ However, there is significant scientific evidence that offsets are rarely effective and that the ecological values that can be offset are minimal. These scientific risks are not fully reflected in the *EPBC Act* process,¹⁹ and we emphasise to DHA that a precautionary principle approach is important to ensure no negative environmental or community impacts.

Gibbons et al found that offsetting practices will not produce 'no net biodiversity loss' unless offset properties are maintained for an average of 146 years.²⁰ They also found that offsets typically involve the substitution of one type of habitat (or ecological community) for another type of habitat, which does not meet the no equivalent loss standard.²¹ In summary, these findings indicate offsets are not effective during the typical life of an offset property and that there are significant risks associated with offsets not properly compensating the lost ecological values on a site.

Similarly, Lindenmayer et al, found that offsets are often ineffectual. There are a relatively narrow range of impacts on biodiversity that can be properly offset.²² One biodiversity value, explored by Lindenmayer et al is the substitutability of hollow-bearing trees. The study found that substitutes for hollow-bearing trees are not effective, and that the loss of such trees is an irreparable environmental harm with flow-on impacts for breeding and habitat for threatened species.²³ At Lawson North, there are hollow-bearing trees present in BGGW vegetation that have high ecological value – the loss or degradation of these trees would be an irreparable harm to the viability of the BGGW habitat at the site and for the threatened species that rely on those hollows. Such species include the Gang Gang Cockatoo. The significant negative impact of the loss of hollow-bearing trees has been recognised by the ACT government as a threatening environmental process.²⁴

This scientific literature emphasises that offsets as a result of development at Lawson North are likely to result in net biodiversity loss. This is also a loss for the local and Act community, who will lose these ecological values for all future generations. DHA, as a government-controlled entity, should exercise the precautionary principle and elect not to proceed with a development that represents potentially irreparable environmental harm.

¹⁸ Jenny Pope et al, 'When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets' (2012) 67 *Environmental Management* 424, 425.

¹⁹ Graeme Samuel, *Independent Review of the EPBC Act* (Final Review Report, October 2020) viii ('Samuel Review').

²⁰ Philip Gibbons et al, 'Outcomes from 10 years of Biodiversity Offsetting' (2017) 24 *Global Change Biology* 643, 644.

²¹ Ibid.

²² David B. Lindenmayer et al, 'The anatomy of a failed offset' (2017) 2010 *Biological Conservation* 286, 286.

²³ Ibid.

²⁴ Nature Conservation Key Threatening Processes List 2019 (ACT).

Feasible Alternative Management Options for Lawson North

We emphasise to DHA that there are alternative management options for Lawson North, that do not risk the ecological integrity of the site and will be in the community's interests. These options include:

- A significantly reduced development plan, that aligns with DCP (12/09) and limits residential housing to Precinct A and B, which would likely result in the construction of 150 or less dwellings.
- Alternative development options such as low density community facilities to supplement Lawson South within Precinct A or B.
- To maintain, or sell, the Lawson North site as an advanced offset property for BGGW and NTG, as well as threatened species offsets. This would provide a meaningful revenue stream for DHA, or an offset property for DHA, as part of acquiring alternative land for housing developments in the ACT or nearby NSW.