

AUSTRALIAN CAPITAL TERRITORY

NATURE CONSERVATION ACT 1980

DETERMINATION OF CRITERIA

INSTRUMENT NO. 59 OF 2001

Pursuant to section 50 of the *Nature Conservation Act 1980* (the Act) I determine that:

1. the criteria for the purposes of paragraph 47 (2) (b) of the Act are as set out in Schedule 1; and
2. the criteria for the purposes of subsection 47 (2A) of the Act are as set out in Schedule 2.

Dated this 31 day of March 2001

Dr Colin Adrian
Conservator of Flora and Fauna

Schedule 1

Determination of Criteria for the Purposes of Paragraph 47 (2) (b) of the *Nature Conservation Act 1980*.

- 1) The Conservator of Flora and Fauna (the Conservator) may give a direction under subsection 47(1) of the *Nature Conservation Act 1980* (the Act) when:
 - (a) the actions of the occupier of land constitute or are likely to constitute a threat to the native animals, native plants or native timber on the land; or
 - (b) there are actions that the occupier of land could take that would constitute or would likely constitute a threat to the native animals, native plants or native timber on the land; or
 - (c) there are actions the occupier of land should take that would promote the conservation of the native animals, native plants or native timber on the land.

- 2) Examples of the kinds of activities that will fall within those described in 1(a) and 1(b) above are activities that:
 - (a) materially affect, or are likely to materially affect, a site of ecological or scientific significance in an adverse manner;
 - (b) materially affect, or are likely to materially affect, an individual or a population of an endangered, vulnerable, protected or special protection status species in an adverse manner;
 - (c) materially affect, or are likely to materially affect, an endangered ecological community in an adverse manner;
 - (d) materially affect, or are likely to materially affect, the habitat of a species or ecological community about which a declaration under section 21 of the Act has been made by the Minister, in an adverse manner;
 - (e) materially affect, or are likely to materially affect a species or ecological community being considered by the Flora and Fauna Committee in relation to the making of a declaration under section 21 of the Act, in an adverse manner;
 - (f) are materially inconsistent or are likely to be materially inconsistent with an action plan prepared under section 21C of the Act;
 - (g) conflict with or are likely to conflict with the management of an organism declared under section 45AA of the Act to be a prohibited or controlled organism in a material way;

- (h) add to or exacerbate, or are likely to add to or exacerbate a threatening process that has been declared by the Minister under section 21 of the Act, in a material way; or
 - (i) add to or exacerbate, or are likely to add to or exacerbate a threatening process that is the subject of a report of, or a submission being considered by, the Flora and Fauna Committee in relation to the making of a recommendation to the Minister under section 21 of the Act, in a material way.
- 3) Examples of the kinds of actions that will fall within those described in 1(c) above are actions that:
- (a) protect, or are likely to protect a site of ecological or scientific significance in a material way;
 - (b) protect or conserve, or are likely to protect or conserve an individual or a population of an endangered, vulnerable, protected or special protection status species in a material way;
 - (c) protect or conserve, or are likely to protect or conserve an endangered ecological community in a material way;
 - (d) protect or conserve, or are likely to protect or conserve the habitat of a species or ecological community about which a declaration under section 21 of the Act has been made by the Minister, in a material way;
 - (e) protect or conserve, or are likely to protect or conserve a species or ecological community being considered by the Flora and Fauna Committee in relation to the making of a declaration under section 21 of the Act, in a material way;
 - (f) support, or are likely to support an action plan prepared under section 21C of the Act, in a material way;
 - (g) assist, or are likely to assist with the management of an organism declared under section 45AA of the Act to be a prohibited or controlled organism, in a material way;
 - (h) reduce, or are likely to reduce the effect of a threatening process that has been declared by the Minister under section 21 of the Act, in a material way; or
 - (i) reduce, or are likely to reduce the effect of a threatening process that is the subject of a report of, or a submission being considered by, the Flora and Fauna Committee in relation to the making of a recommendation to the Minister under section 21 of the Act, in a material way.

- 4) The lists of examples set out in paragraphs 2 and 3 do not limit the circumstances in which a direction may be given.
- 5) When deciding whether to make a direction, and in deciding the content of a direction, the Conservator shall take into account the following matters:
 - (a) the management objectives specified in schedule 1 of the *Land (Planning and Environment) Act 1991* or under sub-section 195(2) of the Act for the land or surrounding land, if any;
 - (b) the plan of management prepared under section 197 of the *Land (Planning and Environment) Act 1991* in relation to the land or surrounding land, if any;
 - (c) the management agreement prepared under Part 6A of the Act in relation to the land, if any;
 - (d) any relevant action plan prepared under section 23C of the Act;
 - (e) the precautionary principle as expressed in the inter-governmental agreement on the Environment;
 - (f) where the direction is to relate to an activity being carried out by the occupier or proposed to be carried out by the occupier:
 - i) whether there is any prudent and feasible alternative to the activity;
 - ii) any additional action that could be taken to keep the adverse impacts of the activity to a minimum;
 - iii) the effect the activity may have on the survival or recovery of a native species (or its habitat) or ecological community;
 - iv) whether there is adequate provision for monitoring of the effects of the activity on the conservation requirements of affected species or ecological communities;
 - v) whether the activity may have the effect of introducing or enhancing the adverse effect of a weed or feral species;
 - (g) the purpose for which the land is occupied;
 - (h) any occupancy conditions that apply to the land, including any property management or land management agreement;
 - (i) the need to protect persons or property on the land;
 - (j) the costs likely to be incurred by the occupier in giving effect to the direction; and
 - (k) any other matter relevant to the conservation and protection of native animals, native plants and native timber.

Schedule 2

Determination of Criteria for the Purposes of Subsection 49 (2A) of the *Nature Conservation Act 1980*.

In making a direction under section 49 (2) of the *Nature Conservation Act 1980* (the Act), the Conservator shall consider the following matters:

- 1) The nature and effectiveness of possible means of preventing the impact or spread of the disease;
- 2) In the case of an animal suffering from a disease:
 - a) The likelihood of the disease spreading to wild or captive populations of native animals;
 - b) The likely impact of any such spread on those populations, other species or ecosystems (both inside and outside the ACT) and the conservation of native wildlife, especially endangered, vulnerable, protected and special protection status species and endangered ecological communities;
 - c) The likelihood of the disease spreading to commercial and/or companion animals and the likely impact on those animals;
 - d) The likelihood of the disease spreading to humans, and the likely effect on the health of the human community;
 - e) The likely time it will take for the animal to respond to the treatment, and the need to monitor its response;
 - f) Animal welfare concerns; and
 - g) The likely or potential impact of the proposed treatment on non-target species.
- 3) In the case of a native plant suffering from a disease:
 - a) The likelihood of the disease spreading to wild or cultivated populations of native plants, including nursery stocks;
 - b) The likely impact of any such spread on those populations, other species or ecosystems (both inside and outside the ACT) and the conservation of native wildlife, especially endangered, vulnerable, protected and special protection status species and endangered ecological communities;
 - c) The likelihood of the disease spreading to commercially or domestically cultivated plants and the likely impact on those plants;

- d) Any risks posed by the disease to human health;
- e) The likely time it will take for the plant to respond to the treatment, and the need to monitor its response; and
- f) The likely and potential impact of the proposed treatment on non-target species;

and

- 4) The costs likely to be incurred by the owner in carrying out the treatment.