

**CONSULTATION REPORT**

**DRAFT AMENDMENT 88**

**Blocks 3 and 15 Section 22 Barton**

October 2017

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# 1 Introduction

## Purpose and background

The National Capital Plan (the Plan) sets out general planning policies and principles for overall development of the Australian Capital Territory (ACT). One of the functions of the National Capital Authority (NCA) is to keep the Plan under constant review and propose amendments to it when necessary.

This report summarises the issues raised during the public consultation process undertaken by the NCA on Draft Amendment 88 – Blocks 3 and 15 Section 22 Barton (DA88) to the Plan.

DA88 proposes to vary the land use policy for Blocks 3 and 15 Section 22 Barton, from ‘National Capital Use’ to a mixed use policy allowing for residential, office, commercial accommodation, and ancillary uses such as café and restaurant.

# Consultation

On 12 August 2017, DA88 was released for public comment. A public notice was published in *The Canberra Times* on this day (Attachment 1). On 16 August 2017, a notice was published in the *Government Notices Gazette* (Attachment 2).

In accordance with the NCA’s ‘Commitment to Community Engagement (August 2015)’ the period for public comment ran for 30 business days, concluding on 22 September 2017. DA88 was available on the NCA’s website, and hard copies were available on request.

Key activities during the consultation period for DA88 included:

* On 14 and 15 August 2017, the NCA referred DA88 to the following stakeholders:
  + ACT Government Environment, Planning and Sustainable Development Directorate (EPSDD)
  + Inner South Canberra Community Council
  + Doma Group
  + Department of Foreign Affairs and Trade
  + Motor Trades Association of Australia
  + Friends of Grasslands
  + Kingston and Barton Residents’ Group.
* On 24 September 2017, the NCA held a public information session at the NCA offices. Two members of the public attended the session.
* On 14 August 2017, a request for an exemption to undertake a Regulation Impact Statement was sought from the Office of Best Practice Regulation (OBPR).
* On 15 August 2017, the OBPR advised no Regulation Impact Statement would be required for DA88.
* On 18 October 2017, EPSDD provided a response to the draft amendment. There was no objection to DA88 proceeding.

# Key issues

The NCA received four written submissions in response to DA88. The key issues raised in submissions are identified below. Full details of submissions are available in Attachment 3.

## Environment

***Comments***

The focus of many submissions was the environmental values of Blocks 3 and 15 Section 22 Barton, and future impacts of development of the site. Submitters highlighted the importance of the site, currently identified for conservation, from a number of perspectives. The *Synemon plana* (Golden Sun Moth) population on the site is important for the scientific study of the species due to its urban location, and the fact that it has been subject to ongoing longitudinal study and research. There is also a relatively high population density of moths when compared with other nearby sites.

In addition to the two matters of national environmental significance identified in the draft amendment documentation (Natural Temperate Grassland of the South Eastern Highlands, and Golden Sun Moth), a number of submitters advised that a third matter of national environmental significance has recently been identified on the site. A specimen of *Delma impar* (Striped Legless Lizard), listed as Vulnerable under the EPBC Act, was captured, although no surveys have been undertaken to determine the extent of the population.

The proposed draft amendment and its consistency with provisions of the Plan were questioned. For example, principles and objectives of the Plan include:

* the development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia’s urban areas, and
* ecological communities, threatened flora and fauna, water catchments and water quality will be protected and supported by sustainable resource management.

A number of submitters noted that they had also made submissions on the EPBC referral for the proposed clearing of vegetation on the site. In this regard, the proposed offset put forward in the EPBC referral was refuted as being adequate, and submitters were of the view that the offset analysis understated the value and importance of the Barton site.

Several submitters recommended alternative courses of action that could be taken. For example, the land use could be changed to ‘Nature Conservation Area’. The site could be made a feature of the Central National Area, and managed appropriately by an agency with recognised expertise in managing similar conservation areas.

***NCA response***

The Plan does not operate in isolation. There are other Commonwealth environmental protections in place, including through the EPBC Act.

In regard to objectives concerning the protection of ecological communities, flora and fauna, the Plan identifies areas of conservation value in a number of ways. For example, at a strategic level the Plan recognises the importance of National Park areas by designating these as part of the open space system. Some individual sites, including Blocks 3 and 15 Section 22 Barton, are specifically identified for their conservation value. The process of amending the Plan allows for changes to be made where there is a change in environmental values, or where a decision has been made under Commonwealth environmental legislation.

## Open space

***Comments***

One submitter stated that they did not support the removal of the site as open space, and contested the conclusion of the planning report that loss of the site for this purpose would not negatively impact the overall supply of open space in the area.

***NCA response***

The open space analysis undertaken to support the draft amendment identified 78 open space areas within approximately 15 minutes walking distance of the site, including a variety of informal and informal spaces, as well as areas that have high biodiversity value or are significant for the visual amenity that they offer. Many of these spaces will remain due to planning and/or heritage requirements. The NCA maintains that there will be sufficient open space in the area for a variety of uses and purposes.

# Recommended changes

No changes to DA88, as released for public consultation, are recommended.

# Conclusion

On 12 August 2017, DA88 was released for public consultation. The public consultation period ran for six weeks in accordance with the NCA’s ‘Commitment to Community Engagement (August 2015)’, concluding on 22 September 2017.

Four written submissions were received in response to DA88. No changes have been recommended to DA88.

# Attachments

1. Notice of release of Draft Amendment 88 for public comment published in *The Canberra Times*.
2. Notice of release of Draft Amendment 88 for public comment published in the *Commonwealth Notices Gazette*.
3. Summary of submissions and NCA response.

### Attachment 1 – Canberra Times notice



### Attachment 2 – Government Notices Gazette notice

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| Commonwealth Coat of Arms | **Commonwealth of Australia** | **Gazette** |
| Published by the Commonwealth of Australia | | **GOVERNMENT NOTICES** |

***National Capital Plan Draft Amendment 88***

The National Capital Authority (NCA) has released National Capital Plan Draft Amendment 88 – Blocks 3 and 15 Section 22 Barton (DA88) for public consultation. The draft amendment can be viewed on the NCA’s Public Consultation webpage.

The purpose of DA88 is to vary the land use policy for Blocks 3 and 15 Section 22 Barton, from ‘National Capital Use’ to a mixed use zoning permitting offices, residential, commercial accommodation, and ancillary uses such as café and restaurant.

The NCA welcomes feedback on DA88 by close of business 22 September 2017. Submissions can be made via email to [draft.amendment@natcap.gov.au](mailto:draft.amendment@natcap.gov.au), or by post to Chief Planner and Deputy Chief Executive, GPO Box 373, Canberra ACT 2601.

A public information session for DA88 will be held on 24 August 2017 between 12-1pm at the National Capital Authority, Treasury Building, King Edward Terrace, Parkes ACT 2601. Attendees should register their interest in attending this session by emailing [draft.amendment@natcap.gov.au](mailto:draft.amendment@natcap.gov.au) or phoning 02 6271 2888.

Please contact the NCA for further information on 02 6271 2888.

### Attachment 3 – Summary of submissions

| **No.** | **Details of submitter** | **Details of submission** | **NCA consideration** |
| --- | --- | --- | --- |
| 1 | Friends of Grasslands (FOG) | FOG has had a long standing interest in the site concerning this amendment, i.e. York Park. We have, for instance, responded to several proposals concerning development impacts to the Park in the past, e.g. EPBC referrals 2010/5548 (5 July 2010) and 2012/6606 (19 November 2012 and 21 March 2013 – reconsideration request), and to the NCA’s development application concerning Block 14 Section 22 Barton - Redevelopment of 21 National Circuit - Stage 1 Works. FOG has visited the sites on multiple occasions, and undertook monitoring for the Golden Sun Moth (GSM) (*Synemon plana*) there in 2008-2009. In January 2013, FOG also wrote to the Department of Finance concerning deficiencies in management of the site, in particular weed control.  FOG is appalled by Draft Amendment 88 to the National Capital Plan and the accompanying EPBC referral, and is completely opposed to both proposals.  Under section 1.3, there is no mention of a third MNES involving York Park. A Striped Legless Lizard (*Delmar impar*) was recently captured on the site, and surveys are needed to understand the population and extent of area occupied by the Striped Legless Lizard at York Park and in adjacent areas.  FOG notes that the report ‘Proposed Amendment to the National Capital Plan: Block3 3 and 15, Section 22 Barton’ (July 2017) briefly outlines, in section 7.4, the main thrust of the EPBC referral document. This section acknowledges the loss of Natural Temperate Grassland (NTG) and of GSM habitat, but does not mention the loss of an actual GSM population that has been reasonably stable and persistent over many years. FOG takes issue with the Umwelt conclusion cited on pages 26 and 30 of this report, that the GSM population is not viable in the long term. Evidence supporting this is not presented in the EPBC referral, and any recent decline in the population is most likely due to poor management of the site.  FOG also takes issue with the statement in the report (p30) that there is an appropriate offset available – in our view the offset is inadequate.  A summary of our reasons for opposing the EPBC referral, and hence this amendment is:   * The reduction in NTG and GSM habitat have come about because of inadequate management, despite earlier EPBC referrals approved with the condition that the block be managed for conservation * The impact of removal of York Park on the newly-discovered Striped Legless Lizard population in the area has not been assessed * The scientific values of York Park have not been considered * The offset analysis significantly understates York Park’s values, so the offset proposal is not clear cut * There is likely to be a net loss of GSM and NTG in the offset block over time based on past evidence that the Department of Finance lacks the processes to manage such an offset. * There has been a lack of consideration of alternatives to the current proposal that might retain our biodiversity.   We can provide more information, or a copy of our submission concerning the EPBC referral, if needed.  In conclusion, FOG recommends that draft amendment 88:   * Not be approved as it stands since it supports a proposal that will totally destroy a place where matters of NES are well documented; * Instead change the land use of York Park to ‘Nature Conservation Area’ instead of ‘National Capital Use’; and * Propose that York Park be directly and permanently added to the national conservation estate and managed by an area of government that has expertise in conservation, e.g. Department of the Environment or Parks Australia. | Please refer to section 3.1 of the report. |
| 2 | S Holden | My main objection is on environmental grounds. I absolutely object to putting buildings on, or building near, areas where critically endangered species and ecological communities exist. The destruction on surrounds caused by building sites spreads wide and deep. These two things do not co-exist.  The idea of simply de-identifying an area as an environmental protection area and identifying it as a building site is as abhorrent as it is stupid. This is not the action of an intelligent, forward-thinking society. Please, do not allow this.  I also object to the fact that this proposal intends to gobble up more open space in Canberra. It is not a sufficient reason that the ACT and Federal Governments are trying to get dollars into their coffers for this valuable asset. We do not need more atrocities like City West and Woden with their oversupply of concrete and glass creating sunless, wind tunnels and destroying open space. Neither do we need more lobbyists in close proximity to Parliament House pushing their private interests often at the expense of the public interest.  I do not agree that the removal of the open space would not negatively impact on the overall supply of open space in the area. The ‘nearby’ areas cited are not nearby – Old Parliament House rose gardens … really?!.  Can't we just try to do something sensitive to the natural environment? Use these big brains of ours to come up with options that do not destroy things just because they don't have a voice and are not included in our economic models? Please, go back to the drawing board on this one. | Please refer to sections 3.1 and 3.2 of the report. |
| 3 | Kingston and Barton Residents Group | Draft Amendment 88 to the National Capital Plan covers Blocks 3 and 15 in Section 22, Barton (the York Park Conservation Site). This site contains two elements that are Matters of National Environmental Significance, namely the Critically Endangered Golden Sun Moth (GSM) and the Critically Endangered ecological community Natural Temperate Grassland of the south eastern highlands (NTG). Removing environmental protection for the GSM and NTG on this land will be catastrophic. Other vulnerable and rare species will also be impacted.  KBRG made a submission to the Department of Environment and Energy concerning the referral under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). For the many reasons set out in the submission KBRG strongly opposes the removal of this iconic inner city site’s environmental protection and asks that its maintenance be enhanced to meet the requirements of the management plan: that important longitudinal studies are continued and that measures are taken to promote and celebrate its importance.  KBRG believes that asset divestment should not be used to justify destruction of this scientifically valuable GSM and NTG site.  ***National Capital Plan objectives***  A number of provisions of the National Capital Plan support the protection of the York Park Conservation site.  The introduction to the National Capital Plan establishes five matters of national significance in the planning and development of Canberra and the Territory. One of these is ‘The development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia’s urban areas.’ This is also referred to as the objective of environmental sustainability and open space.  One of the five principles for the above objective is:  *‘d. Ecological communities, threatened flora and fauna species, water catchments and water quality will be protected and supported by sustainable resource management.’*  The Barton Precinct Code requires that ‘Significant natural and heritage values of the area should be identified and protected.’ This is incorporated into the York Park Master Plan (which is part of the National Capital Plan). Specific mention is made of ‘Part of Block 3, Section 22 as the site of investigation for rare [now critically endangered] moth (*Synemon plana*) will be subject of further study to determine its ecological and habitat in the long term, Pending that study the site is to be protected.’  To allow the clearing of the site of all vegetation, its sale and significant building construction would clearly be in breach of all the above elements of the National Capital Plan. This is an iconic and probably unique inner city conservation area and one that the national capital should be showcasing.  ***Environment***  Environmental matters are addressed in detail in the attached submission to the Department of Environment and Energy in relation to the referral under the EPBC Act. This attachment forms part of this submission.  In summary the submission addresses the following concerns:   1. The proposal will lead to the destruction of the GSM population and NTG at York Park and the consequent loss of its many and considerable scientific values. 2. The offset proposal is inadequate. 3. There has been very limited public consultation or attempts to make the public aware of the proposal. In particular, we are advised there has been no consultation with the scientific community, despite the long term studies of the site. It is important that relevant stakeholders, such as the scientific community, are consulted on actions involving critically endangered environmental assets.   Based on advice received, we believe the owners of the block have not managed the block according to the agreed conservation plan and this might have caused some degradation of the block’s biodiversity values.  The York Park Conservation Site is important because:   * It has a relatively high density of GSM compared with nearby sites; * It is unique in its Central National Area location; * From a national perspective scientific studies of GSM viability have been conducted here over a relatively long period yielding important longitudinal information; and * In addition to the GSM and NTG it is understood to also be the habitat of the vulnerable Striped Legless Lizard and the rare Canberra Raspy Cricket.   Removal of this site would set a terrible precedent as the GSM is generally only found in small fragmented sites which could each be removed if Purdon's arguments are accepted.  **Conclusions**  If the environmental protection for this site is removed and it is sold for development the site’s environmental values would be irrevocably lost.  The site has considerable scientific value and is unique in Australia for its inner city location, and in particular it’s unique inner city location on National Capital designated land.  There is an excellent opportunity to make the site a feature of central Canberra, rather than see it a hindrance to commercial development. This is an asset the Australian Government should be proudly promoting as demonstrating its commitment to biodiversity.  The KBRG therefore recommends that:   1. The development proposal be rejected. 2. The conservation status of the site be retained and updated to include other vulnerable and rare species. 3. The site be properly managed in accordance with the management plan including ensuring appropriate weed control. 4. If the current owner of the site cannot guarantee to comply willingly and transparently with the management plan the site should be transferred to an area of the Commonwealth government that has recognised expertise in managing areas of conservation value. 5. The environmental values of the site should be updated and promoted in the community. | Please refer to section 3.1 of the report. |
| 4 | Environment, Planning and Sustainable Development Directorate (on behalf of ACT Government directorates) | *General comments*  There are three Matters of National Environmental Significance (MNES), natural temperate grasslands, Golden Sun Moth and Striped Legless Lizard. A referral to the Department of the Environment and Energy and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be required prior to finalizing DA88.  The natural temperate grassland is nominated to the ACT Heritage Register and whilst the proposed changes are unlikely to diminish the potential heritage value, approvals under the *Heritage Act 2004* may be required.  The scale and extent of commercial and ancillary uses needs careful consideration so as not to adversely impact on the hierarchy of centres within the Territory Plan.  Impact on the roads and other infrastructure needs to be reviewed and modelled ahead of any development. | In regard to the environmental values of the site and EPBC referral process, please refer to section 3.1 of the report.  Block 3 Section 22 Barton is National Land and the provisions of the *Heritage Act 2004* do not apply to the site. Please also refer to section 3.1 of the report concerning clearing of vegetation on the site.  The NCA does not believe development of the site will adversely impact the hierarchy of centres established for Canberra, however the proposed mix of uses will be considered as part of any future Works Approval processes.  The impact on roads and infrastructure needs arising from development can also be determined and considered at this stage, when detailed development plans are known. |
| *ACT Conservator of Flora and Fauna*  The ACT Conservator of Flora and Fauna considers it unlikely that EPBC approval will be provided for the destruction of this significant site. There used to be over 20 square kilometres of Natural Temperate grassland across Central Canberra, today just 16.7 ha (0.75%) is left spread across 20 patches in nine locations. As one of the nine locations, and one of the few in public open space, the retention of this area as an Environmental Protection Area seems warranted. It is a rare remnant and example of the Central Canberra environment prior to European occupation.  The Draft Amendment is wrong in stating that there are two matters of National Environmental Significance found on the site. In addition to Golden Sun Moth and Natural Temperate Grassland, the nationally vulnerable Striped Legless Lizard was incidentally recorded on the site on 23 November 2016.  Suitable habitat for this lizard appears to occur right across the 1.25ha of the subject site. The EPBC referral should include details of a survey conducted for this species. The nearest other known populations of this lizard are Yarramundi Reach (10km to the west) and the Amtech Fyshwick site (9km to the west) so it is an important local remnant population. Until about the 1970’s York Park would probably have been part of a much wider habitat area. The current isolation of York Park may make the long term prognosis for the lizard low, but at the very least it is an important research site to determine aspects of genetic loss and viability in relation to the species as a whole.  Given the high condition of the remnant grassland and the high level of clearance that this community has suffered it is also likely that York Park will be habitat of other rare or uncommon invertebrates, which have yet to be subject to comprehensive survey or study. | Please refer to section 3.1 of the report. |
|  | *ACT Heritage*  Review of the ACT Heritage Register has identified that Blocks 3 and 15, Section 22 Barton comprise natural temperate grassland which is nominated to the ACT Heritage Register. The potential heritage values of the place have not been assessed by the Council at this time.  The Council understands that the current provisions of the NCP provide for 'National Capital use' on the blocks, whilst DA 88 proposes to include 'Mixed use' which allows for 'cafe', restaurant', 'commercial accommodation', and 'residential' uses.  Whilst the proposed changes to use are unlikely to diminish the potential heritage significance of the place, any physical impacts to the blocks arising from the change of use are likely to diminish the significance of the place. As such, Heritage Act 2004 approvals may be required. | Block 3 Section 22 Barton is National Land and the provisions of the *Heritage Act 2004* do not apply to the site. Please also refer to section 3.1 of the report concerning clearing of vegetation on the site. |
| *Transport Canberra and City Services, Capital Works and Development*  It is anticipated that with land use changes there will be an increase in traffic on the surrounding road network.  Traffic Impact Assessment must consider holistic effects of the proposed development at the intersections of Sydney Avenue/National Circuit, State Circle/Sydney Avenue, National Circuit/Bourke Street, National Circuit/Darling Street, National Circuit/Brisbane Avenue, National Circuit/Fitzroy Street, National Circuit/Canberra Avenue, Canberra Avenue/State Circle.  Guidelines for the preparation of Traffic Impact Assessments are provided on the TCCS website.  The TCCS Transport Impact Assessment guidelines document should be used when preparing a Traffic Impact Assessment.  Please justify 20% discount on the trip generation as stated in the report Page 19 of Northrop Services, Utilities, and Traffic Report, dated 09 June 2017.  The current traffic volume per day on Sydney Avenue and the traffic generation from the proposed development indicate that the traffic volume exceeds the road capacity of the Minor Collector Road.  The relationship between the classification of road and land use planning for the proposed three options have to be considered in the proposed development.  The option of access and egress on National Circuit should consider left in and Left-out arrangement.  The option of access and egress on the Sydney Avenue should consider the impact of queuing on the existing U-turn bay and the need of slip lane for traffic movement.  The proposed development for all the three options attracts pedestrian traffic.  Adequate width should be provided considering the current pedestrian traffic and also from the proposed development. Pedestrian safety has to be given priority particularly at the conflict points at the entry and exit points of the driveways and vehicle parking areas.  ArcGIS map indicate there are 375mm diameter stormwater pipe running perpendicular to the Sydney Avenue of the proposed development.  In addition, on the median strip, concrete pipes of 790mm and 900mm were noticed.  The proponent has to cross check its presence and depth by potholing. | The impact on roads and infrastructure needs arising from development can also be determined and considered at this stage, when detailed development plans are known. |
| *Environment Protection Authority*  The Environment Protection Authority (EPA) would support the proposed rezoning subject to the following conditions:   * Prior to the site being used for other purposes an environmental assessment in accordance with EPA endorsed guidelines must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the site from a contamination perspective and to determine whether remediation is required to make the site is suitable for the proposed uses. * The consultant's assessment report into the site's suitability for the proposed and permitted uses from a contamination perspective must be reviewed and endorsed by the EPA prior to the site being used for other purposes. | Noted. This matter is for a future proponent of development to address. |
| *EPSDD Planning Policy*  Whilst there are no specific comments on the draft, your observation relating to limiting the scale and extent of commercial and ancillary uses is supported.  This should be set by the NCA in the context of development and lease conditions for development in the surrounding area.  It is also noted that a suitable offset area will need to be found, and assessed under the EPBC Act, as necessary. | The NCA does not believe development of the site will adversely impact the hierarchy of centres established for Canberra, however the proposed mix of uses will be considered as part of any future Works Approval processes.  Please also refer to section 3.1 of the report. |
| *EPSDD Leasing*  Block 3 Section 22 Barton (Block 3) is unleased National land, while Block 15 Section 22 Barton (Block 15) is Designated Land.  Please note that one Crown lease cannot be granted over both blocks until such time as either the national land status is revoked on Block 3 or the status of Block 15 becomes national land. | Noted. |
|  | *ActewAGL Icon Water*  The site is not currently serviced by sewer. There are existing sewer mains provided to the east and west of the site as follows;   * 600 mm sewer main located adjacent to the block to the west. There is an access hole located one third of the way along the block boundary and a site tie shown to Block 3. * 150 mm sewer main located in the eastern verge of National circuit.   Water Network  The site is not currently serviced by water. There are existing water mains provided to the east and south of the site as follows;   * 150 mm water main located along Sydney avenue. * 300 mm water main located in the eastern verge of National circuit   Icon Water requires that Sewerage and Water  Master Plan be drafted for the Blocks 3 and 15, Section 22 Barton.  The Master Plan to address the ultimate development of the site and shall identify any upgrades or relocation of assets which may be required as a result the change in land use and development. Particular emphasis to be on:   * Increased discharge to the sewer network. * Fire flow requirement. * Identification of assets which may require upgrades or relocation.   The Master Plan to be submitted to and approved by Icon Water prior to the commencement of any new developments or re-developments within the site. | Noted. Preparation of a Sewerage and Water Master Plan is a matter for a future proponent of development to address. |
| *ActewAGL Enworks*  ActewAGL Distribution do support the development at above mentioned blocks. Proponent is required to submit the Request for ‘Preliminary Network Advice’ form to [enworks@actewagl.com.au](mailto:enworks@actewagl.com.au) prior to commencement of any development activity to negotiate the connection of new and /or alteration if/as required. | Noted. This matter is for a future proponent of development to address. |
| *Emergency Services*  ACTF&R has no special considerations or objections at this stage to the National Capital plan Draft Amendment 88 to change block 3, 15 Section 22 to mixed used from diplomatic use. | Noted. |