



## Submission to ACT Government, EPSDD: Draft Planning Bill 2022

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The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

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## Introduction

Canberra is a city that sits within a wonderful natural environment. Not only is the ACT home to nationally significant woodlands and grasslands, and the spectacular Namadgi National Park, our urban landscape is embedded in the natural environment, connected by nature parks, corridors and waterways that support biodiversity and enhance wellbeing in our community.

However, the ACT, like many other places in Australia, faces significant environmental challenges. The impacts of climate change, including longer hotter summers, increasingly severe bushfire seasons, and extreme weather events, have already had wide ramifications for nature and the community. In addition, our growing city is putting pressure on biodiversity, through loss of habitat, the proliferation of invasive species, noise and pollution.

Canberra can become more climate-resilient by investing in green infrastructure, managing water effectively, and ensuring new developments are environmentally-sustainable and designed for future climate conditions. Urban greenspace, supported by increased tree canopy and urban gardens, will improve livability and build resilience.

We can also support our nationally significant grasslands and woodlands by recognising their values, and protecting and managing them in a way that enhances biodiversity. Investing in nature means that we are nurturing the systems on which we depend for food, clean water and resources, and which hold important intrinsic value.

### Policy priorities

Relevant to the planning regime in the ACT, the Conservation Council took the following policy priorities to the 2020 ACT Election:

1. Legislate to ensure land of moderate to high conservation value (including Natural Temperate Grasslands and Yellow Box-Blakely's Red Gum Grassy Woodlands) outside the reserve system are protected in perpetuity through a protected-area network, including introduction of voluntary stewardship/custodianship agreements.
2. Utilise precinct planning to maximise shared greenspace in new developments to facilitate space for urban tree plantings in streets, urban open space and on residential blocks.
3. Urgently set a timetable to phase out the use of gas in the ACT by 2030, and stop all new gas connections immediately.
4. Urgently set a timetable to achieve net-zero emissions from transport by 2030.
5. Establish a compliance unit with authority and powers to ensure building standards and codes are met.
6. Require all government agencies to prepare, implement and publicly report on progress with climate change adaptation plans.
7. Set a permeable surfaces target for public space that aligns with achieving the city-wide 30% permeable surfaces target.
8. No further expansion of Canberra's urban boundary after existing identified suburbs in Molonglo,

Gungahlin and West Belconnen are completed.

9. Set a target of 80% of new residential development within the existing urban footprint.
10. Ensure a “green” buffer between the urban edge of the ACT and adjoining areas of NSW which defines the urban edge.
11. Increase the number of high quality, environmentally-sustainable medium-density residences around commercial centres and along public transport routes, to support diverse housing requirements and to reduce demand for additional greenfield development.
12. Mandate the inclusion of EV charging facilities in all new commercial and residential developments, including strata title developments by 2021.

Currently, the Draft Planning Bill is legislation that seeks to promote human development for humans, rather than promote a region where humans can live sustainably, and where other species can also thrive, both in harmony with the environment. The promotion of built form for human wellbeing ignores the reality that human wellbeing is built upon a foundation of environmental wellbeing. Introducing the concept of environmental stewardship throughout the Bill would be an important step, and the Bill should do more to prioritise objectives for the ACT to be a genuinely sustainable city that seeks to support humans and nature.

The Conservation Council has a range of additional policy objectives that we would like to see the Planning regime address, to do with urban infrastructure, sustainable housing, waste, green infrastructure and urban food production, and we look forward to providing further input on these policy outcomes when the Draft Territory Plan is released later in 2022. This submission, while addressing core biodiversity and climate change issues that need to be given a higher priority in the objects of the Bill, otherwise generally focuses on the process issues that are raised in the Draft Planning Bill 2022.

## Climate Change – our most pressing challenge

Climate change is the most significant threat to the survival of all life on earth, and requires immediate and significant global action. The impacts of a changing climate are well upon us; increasingly severe fires, storms and droughts are forcing societies and natural ecosystems to transform the way they function. Responding to climate change requires both adaptation (actions to adjust to changes that have happened and are predicted) and mitigation (actions to avoid and minimise further emissions).

To meet the internationally agreed target of limiting warming to 2°C, globally we must emit no more than another 95 billion tonnes of carbon. At the current rate of 10 billion tonnes of global emissions each year, we will exceed the remaining carbon budget by 2030. As one of the world’s wealthiest and highest-emitting countries (per capita), Australia has a clear moral obligation to take strong action to reduce emissions. In 2017–18, the ACT’s per capita emissions were 14.2 tonnes, nearly three times the 2014 global average of 4.9 tonnes per capita.

The ACT has demonstrated leadership by setting a target of net-zero emissions by 2045, but this is insufficient—we must do more. The science demands that the ACT should aim for net-zero emissions by 2030 regardless of how politically uncomfortable this might appear. This would bring the ACT in line with other leading cities, such as Bristol, Glasgow and Copenhagen who all have zero emissions targets of 2030 or earlier.

As a small jurisdiction within a national context, the ACT has limits on its capacity to achieve change within its borders and surrounding region. But as an agile and relatively wealthy community, we can continue to show what is possible and implement innovative policies to decarbonise all sectors, particularly transport and buildings. We must build resilience to deal with the changes that are occurring, and ensure a just transition to a low-carbon economy. Government and community responses to the COVID-19 pandemic demonstrate that we can make rapid and previously unthinkable changes when the need is considered sufficiently dire.

### **Failure to adequately respond to the Climate Emergency**

In May 2019, in recognition of the challenges that face us, the ACT Legislative Assembly declared a state of climate emergency noting that “globally, nationally and locally, human induced climate change is contributing to record breaking temperatures, extreme weather events, and a range of negative social, environmental and economic outcomes.”

The need for urgent action across government was called for in the debate:

*‘Climate emergency status means climate action takes precedence. From now on, every time we make a decision, we will ask ourselves what this decision means for climate change, for emissions and for the climate crisis we need to avert. If it is not consistent with reducing emissions, then we must stop and rethink. This mandate must extend beyond this Assembly and into all of the government agencies.’*

*Shane Rattenbury, 16 May 2019*

The ACT has legislated climate targets (*Climate Change and Greenhouse Gas Reduction Act 2010*) and released a 5 year Climate Change Strategy in 2019. The need to implement policy that drives action on climate change through the planning system is apparent, from rules that drive planting trees to support the tree canopy targets, to the design of houses, through to the requirements of houses to be connected to ‘essential service’ networks.

It is imperative for the ACT Government to implement legislation, policies and practices that ensure the climate change objectives are established as a priority across all policy settings of Government. While the ACT has put in place a number of policies and funded actions, there is a distinct lack of urgency demonstrated in the implementation of current planning decisions - the kind of urgency that is implicit in the declaration of a Climate Emergency. For example,

- the delay on implementation of DV369 in recent weeks will see houses for the next few years be built without the necessary space for tree planting, and
- the delay in implementing Territory Plan Variations with regards to the gas network will see hundreds if not thousands of Canberrans hook up to the gas network in new buildings - both single residential and multi-unit - despite the ACT Government having already set a policy direction to phase out gas.
- The delay responding to the need for all multi-unit development to be built with electric chargin facilities in the car parks to support the use of EVs and e-bikes.

It's as if there is a theoretical acknowledgement of the scale of the challenge that's facing us, but a "business as usual" approach to implementation. In these examples alone, the government has continued down the same path of putting short term financial gain ahead of long term benefit, at a time when it's clear what the required policy direction is.

## Climate change and the draft planning bill

The Draft Planning Bill fails to properly acknowledge or prioritise the actions that the Territory will need to take to ensure that we are responding on an emergency footing to the climate crisis. Consideration should be given to including reference to the *Climate Change and Greenhouse Gas Reduction Act 2010* in the Objects of the Planning Bill, and mechanisms should be included throughout the Bill to ensure that consideration of the climate emergency is a policy priority. The subject receives only a cursory mention under the definition of “maintenance and enhancement of cultural, physical and social wellbeing of people and communities” on the following page. While a safe climate will support the physical and social wellbeing of people and communities (and ecosystems) it is suggested that the significance of the climate emergency is such that it warrants inclusion. Section 7(3)(e) makes mention of integrated mitigation and adaptation best practices, but the meeting of the ACT’s targets is integral to the planning regime. Referring to the *Greenhouse Gas Reduction Act 2010* may not in itself be enough to ensure actions that cut emissions and mitigate impacts, however it would be a good start. A paragraph should be added to reflect that meeting territory, national and international targets to ensure a safe climate is an important matter in achieving the Objects of the Act (refer to the *Greenhouse Gas Reduction Act 2010*).

Integration of climate change imperatives across the ACT are recommended:

- Add meeting climate targets to *matters considered important* in achieving the object of the Act
- Review and strengthen the Climate Trigger for an EIS in the Schedule
- Update the Building Code to set a new to EER
- Integrate the objectives of the Climate Change strategy and the Living infrastructure Plan
- Prohibit development proposals for fossil fuel generation.

## Biodiversity – the real building blocks of life

The 2019 United Nations report on biodiversity identified that up to one million species globally face extinction in the coming decades. Australia is not immune, with approximately 100 native species having become extinct since European settlement and a further 1,600 species that are currently threatened. Urban development, invasive species and climate change pose the largest threats to biodiversity, including in the ACT.

Urban development on the lower lying areas of the ACT has had a significant impact on two critically-endangered ecological communities - Natural Temperate Grasslands and Yellow Box-Blakely’s Red Gum Grassy Woodlands. These ecological communities include 52 threatened species, and their protection going forward is especially important given their national significance, as well as their intrinsic value and the amenity they bring to our city. Given the pressure on biodiversity from development across the ACT, all areas of moderate to high conservation value should now be appropriately protected and managed for effective conservation outcomes. This protection can be delivered either through the planning system or via the *Nature Conservation Act 2014* - while there may be a preference for it to occur via the latter, the mechanism is secondary to the outcome that is required.

As the ‘bush capital’, Canberra is fortunate to host a mosaic of natural areas in and around the city. Many of these natural areas are protected under the ACT’s extensive reserve system. But, despite its large size, the ACT Reserve system does not adequately cover all of the Territory’s natural values leaving many unprotected and mismanaged.

Notably, the reserve system is biased against low lying ecosystems and small areas of natural land. Indeed, 67% of the ACT’s Natural Temperate Grassland remnants occur outside the reserve system despite their status as critically endangered. Similarly many of the threatened woodland remnants also

occur outside the reserve system; 40% of Box-Gum Woodland is within rural leases. Many small but significant areas outside the reserve system occur along roadsides, in urban open space, in green corridors between houses, or in urban leases. These sites are often highly valuable as they support threatened ecosystems, provide habitat for species, and facilitate connectivity.

### Biodiversity network for the ACT

Areas with high conservation value that occur on tenures outside of the reserve system are not primarily maintained for their natural values. In order to facilitate adequate protection of natural resources, a strategic system that facilitates conservation on and off reserves is required to ensure that all remaining threatened species and communities in the ACT are properly managed and protected in perpetuity. ‘A Biodiversity Network’ could support the protection and enhancement of natural values in the ACT, by designating land uses that put conservation values at the forefront. The proposed new Territory Plan, in the context of the Planning Review, is a substantial opportunity to reallocate both urban and non-urban land use zones to reflect this, consistent with IUCN guidelines, ensuring certainty of management and protection over the long term. By prioritising conservation outcomes whilst allowing for other compatible land uses, the ACT can ensure the protection of environmental values into the future.

The key outcomes of putting a Biodiversity Network in place across areas of moderate-high conservation value are:

- a. Protection in perpetuity of key biodiversity areas linked across the landscape;
- a. The implementation of existing government strategies and policies; and
- b. Implementation of consistent and best practice ecological management.

The identification and designation of land for the purposes of inclusion in a Biodiversity Network could be achieved through the planning regime, through land use zoning, through the establishment of an overlay system, or as a function of the Nature Conservation Act, where land is mapped, protected and managed for its conservation values. However, it is achieved, the objective is that conservation is the primary objective, irrespective of tenure and who manages the land, and that protection is in perpetuity.

**Section 385** As such, a review of designated reserve areas should be undertaken, with consideration to the upcoming review of the Territory plan, and potential changes to the *Nature Conservation Act 2014* that might be required.

### Protection of Mature Native Trees

The Conservation Council made a [recent submission](#) in regards to the Urban Forest Bill 2022 that flagged potential changes required in the planning regime as well to ensure the protection of Mature Native Trees (including Hollow-bearing trees), which are the subject of a Key Threatening Process under the Nature Conservation Act.

As was outlined in this submission, and in our submission to the Mature Tree Action Plan, irrespective of the mechanism (the Urban forest Bill or the Estate Development Code in the Territory Plan), the following objectives should be regulated to ensure protection of mature trees in new urban areas:

- Early identification and mapping of mature native trees in new development areas, prior to estate planning commencing.
- Requirements to retain mature native trees in new development areas, and only remove trees as a last resort.

- Tree retention and recruitment plans for new development areas prior to submitting the development application (as flagged in the Urban Forest Bill) - including the use of urban reserves to provide connectivity and ecological protection for mature native trees.
- Mandatory percentage targets for the retention of trees in greenfield developments.

While we are aware this issue will be considered during the development of the new Draft Territory Plan, and that there will be further consultation on that, it is of such importance as to warrant mentioning in this submission also.

## Acknowledgement of First Nations rights, culture and tradition

It is noted that the need for recognition of the cultural and traditional interests of First Nations people is not mentioned in the Object of the Act. Whilst it is listed under 7(3)(a) this is not considered to accord the subject the prominence that it deserves, which is a significant omission. It is the view of the Conservation Council that the interests of First Nations peoples are of great significance across many aspects of society, but particularly in areas involving the use and management of the land, as is the case with the planning regime. However, the Conservation Council would not presume to speak on behalf of First Nations people, and would encourage the ACT Government to engage with those who have a high level of expertise and with the endorsement of First Nations representatives, and give consideration to this issue.

## Ecological sustainability

*'Humans do not live separate to the ecosystem; we live as a part of it, and our behaviour is having a detrimental effect on our habitat, the very habitat that sustains us. We need to change our behaviour and look after our environment better than we have been, so that our environment can keep looking after us. I support this call and support the continued struggle to act because business as usual will not work for our planet. If we are to halt, and maybe even reverse, hopefully, even just some of the impacts of climate change, then we must take urgent and effective action.'*

Suzanne Orr, MLA, May 16, 2019, Legislative Assembly

The objects in the new Bill are less clear and weaken the focus on ecological sustainability at a time when the planet is facing an ecological crisis exacerbated by global climate change and biodiversity loss. This is unacceptable given the impact and effect that a planning regime can have on the future of a city. The inclusion of the phrase 'ecologically sustainable development' is a welcome step up from 'sustainable development', however, other aspects of the Objects of the Act could also be strengthened, and changes made to the definition of ESD.

**Section 7(1)** sets out the "Object of the Act" - the essential outcomes that the Act is aiming to achieve. This text is wholly human centric referring to "liveability and prosperity" (for people) and residents (i.e. peoples) well-being. Whilst it references a need for ecological sustainability, this is only in the context of promoting and facilitating development, not as an outcome in itself.

The Conservation Council suggests that the object of the act must include recognition of the stewardship role that the current generation has for the Territory's land and waters. (See Table of recommendations.)

**Section 7(2)** includes a list of items that are to be considered in achieving the Objects of the Act, including that the Act is outcomes-focussed and provides a scheme for community participation. We would suggest that the process aspects are gathered together into Section 7(2).

In addition, whilst “high standards for the built environment” is included there is no mention of environmental outcomes. In this case, the rest of the phrase about the built environment could be removed. However, if there is a preference that this stays, then we would suggest that there is an aspiration for environmental outcomes articulated in the objects as well. (See Table of recommendations)

### **Meaning of Ecologically Sustainable Development**

**Section 8(1) (b)** Meaning of ecologically sustainable development lists five principles including the “principle” of (b) the achievement of economic development, which should be removed.

Definitions of the principles of ESD do not include a specific reference to the achievement of economic development as a principle, and nor should the Planning Bill. Rather the principles (precautionary principle, intergenerational equity and polluter pays for example) are put forward to ensure development occurs in a way that protects environmental systems for this and future generations.

From a drafting perspective, the inclusion of ‘economic development’ as a principle is flawed and doesn’t make sense in the context of (8)(1):

*In this Act: ecologically sustainable development means development involving the effective integration of the following principles:*

*(b) the achievement of economic development.*

In addition, the definition of this principle of economic development at 8(2) appears to replicate the principle of 8(1) (c) the maintenance and enhancement of cultural, physical and social wellbeing of people and communities, and 8(1) (e) the principle of intergenerational equity. We would argue that this is because the established principles of ESD have already considered both the wellbeing of humans now and into the future, and that the inclusion of economic development as a objective in itself is at odds with ESD.

**Section (8) (2)** included in the meaning of Ecologically Sustainable Development, the definition of protection of ecological processes and natural systems should also include a reference to climate change, given that our climate is also a natural system that is at risk of collapse.

Finally, the Bill should acknowledge the environmental degradation that has already occurred and, whenever possible, articulate a commitment to enhancement of biodiversity values across the Territory, for example in section 9(1)(h), by expanding the principle about conservation to “conservation and enhancement”.

### **Integration of ESD principles across the Bill**

A stronger integration of the principles of ESD would ensure that they are fully considered in the operation of the Planning regime.

**Section 9** The Principles of good planning are made in addition to the matters that are considered important in Section 8 (3). Principles of good planning are currently only referred to in the development of the Territory Plan. It is suggested that ‘applying good planning principles’ should be a function of the Planning Authority under **section 15(1)**, as opposed to delivering what is currently undefined (and indefinable!) “promote good planning outcomes”. In addition the principles of good planning should cross refer to the definition of Ecologically Sustainable Development.

**Section 181** The principles contained in section 8 with regards to Ecologically Sustainable Development should be a consideration in decision-making for development applications.

## Environmental and Planning Assessments

The proposed legislation aims to streamline the development process by having a single process that Development Applications (DA) pass through. Environmental Impacts Assessments, when required, are to be prepared and presented with the DA. A proponent can avoid undertaking an EIS (despite a proposal triggering a requirement for an EIS) by being granted an Environmental Significant Opinion (ESO) from a relevant agency (often the Conservator) that the proposal won't have a significant environmental impact. Once an ESO has been granted, the proposal is no longer considered significant.

### Separation of Planning and Environmental Decisions

The proposed legislation perpetuates the arrangement whereby a "planning" decision is seen as being separate from an "environmental" decision. The notion that an environmental impact assessment, or at least some consideration of the environmental impacts of a proposal does not occur for developments unless the impact is "significant", or the development triggers an EIS under the regulations, ignores the fact that most developments have environmental impacts, each environmental impact is significant and should be assessed. The positive impact of all development identifying environmental impacts is that they can then be managed better, given that active consideration is given during the DA process. Indeed in other parts of the bill - section 181 - "considerations when deciding **any** "development application" (including those that may have triggered an EIS) are specified and include:

- (e) *the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;*
- (i) *any environmental significance opinion or conditional environmental significance opinion in relation to the development proposal;*
- (l) *for a development proposal in relation to which an EIS is required—*
  - (i) *the finalised EIS; and*
  - (ii) *the offsets policy; and*
  - (iii) *the conclusions of any inquiry about an EIS for the proposed development under division 6.3.9 (EIS inquiry panels); and*
  - (iv) *the EIS assessment report.*

Section 181 effectively outlines three layers of environmental assessment processes - a consideration of probable impact, an Environmental Significance Opinion or an Environmental Impact Statement. It is therefore unclear (and possibly confusing to the public) as to why some proposals need to be assessed under a separate process, and also, what level of scrutiny is applied to those proposals that don't trigger an EIS or receive an ESO. The degree of potential impact for activities listed in Schedule 1 may be generally greater than for unlisted activities but, firstly, this is only a matter of degree, and secondly, impacts are highly variable from one project to another and some proposals captured by Schedule 1 may self-evidently have low impact and some not captured may have a high impact (supported by the ESO provision itself). In reality a "planning" assessment and an "environmental" assessment cover the same ground, the breadth and depth of the coverage may vary from proposal to proposal, but only as a matter of degree. Consideration should be given to a simplification of the development application / environmental assessment process.

### Fragmented Standards for Environmental Assessments

There are different standards set in the Bill for what is included in the definition of 'environment' versus the 'natural environment'.

The "environment" in the Bill Dictionary is defined as:

**environment**—each of the following is part of the environment:

- (a) the soil, atmosphere, water and other parts of the earth;
- (b) organic and inorganic matter;
- (c) living organisms;
- (d) structures, and areas, that are manufactured or modified;
- (e) ecosystems and parts of ecosystems, including people and communities;
- (f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;
- (g) interactions and interdependencies within and between the things mentioned in paragraphs (a) to (f);
- (h) social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).

The definition includes “social”, “economic” and similar impacts.

Where only the natural environment is under consideration (e.g. in schedule 4 which specifies management objectives for public land), the definition is only concerned with the “natural environment”, exclusive of social and similar impacts, the “natural environment” is defined in Schedule 4 as:

**natural environment** means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

So the “environment” for the purposes of an EIS is the combined natural and human environment – a triple bottom line concept that considers the natural and human environment holistically and is preferred and consistent with similar provisions in other jurisdictions.

### **Environmental Significance Opinions**

**Section 135** Environmental Significance Opinions are able to be granted by agencies for some of the matters that are triggered under Schedule 1 of the Regulations (EIS triggers).

Many referrals for ESOs come from government agencies themselves, which potentially creates a conflict of interest. ESOs can set conditions on developments that minimise environmental impacts, and indeed function like a lower level ‘environmental review’. The role of ESOs should be better integrated with explanatory documentation for the community to make it clearer how they fit into the environmental assessment process. This could be clarified in the explanatory flow charts produced and in the explanatory clauses at the start of the chapter on EISs.

ESOs do not have a public consultation process, though they are a Notifiable Instrument and are listed on the ACT legislation register. Given the role that ESOs play as a second tier environmental review process, it is recommended that the issuing of an ESO has a *limited consultation* applied to it.

In addition, consideration should be given to the use of the term *Environmental Significance Opinion*. In many places there have been improvements to the Planning and Development Act that make the planning Bill easier to navigate, including nomenclature, and this is welcome. An ‘opinion’ in common language can be positive or negative, whereas the Bill assumes the granting of an opinion to be a definitive outcome (that is, that the proposal **isn’t** likely to have a significant adverse environmental impact.) If the development proposal is found to have a significant adverse environmental impact, then the “opinion” is rejected. This is complicated for the external users of the system to understand. In addition, the term opinion implies a subjective assessment not based in fact. Perhaps the word “advice”

or notice could be used, eg. “Advice on / Notice of environmental significance”. Even better would be a positive phrase that summarised that the proposal does not have significant adverse environmental impact.

### EIS triggers

The section outlining EIS triggers should be reviewed, and reimagined to ensure that they respond to relevant environmental challenges such as climate change and biodiversity loss. We would support a strengthening of the climate emissions trigger and the land clearing trigger, in particular with regard to future urban areas. (**General Regulations, Schedule 1, Part 1.2**)

While Estate Development plans are considered significant developments, they are not required by definition to require an EIS. **Section 39** only indicates that EDPs may have a tree management plan, which is a short term measure (and measures to protect trees will need strengthening in the Estate Develop Code to ensure protection of Mature Native Trees). Given the opportunity to ensure best practice environmental management in new estates due to the scale of the developments, and given the range of issues that are likely to be impacted, such as catchments, incisive species, and urban cooling, Estate Development Plans should be required to undertake an EIS.

### The removal of Strategic Environmental Assessments

The removal of the Strategic Environmental Assessments provision is not supported.

Explanatory documentation indicates that the provision hadn't been utilised, and that it wasn't suitable for the assessment of planning strategies. However, that does not negate the potential benefit of taking a strategic approach when assessing and designing planning policies and / or specific developments.

Strategic Environmental assessments allow for:

- Assessment of preferred options / alternatives
- Planning across bigger projects, such as new suburb developments / estate development plans
- Planning for larger projects such as transport networks

We acknowledge that the ACT has utilised EPBC Strategic Environmental Assessment processes for the Gungahlin region and the Molonglo Valley region since the SEA process was added to the Planning and Development Act, and it is likely that given most larger developments in greenfield areas would likely trigger an EPBC referral, a federal process could (and should) be utilised again, for example, should any development occur on the Western Edge. While preliminary assessments have commenced on the Western Edge, the ACT Government has not yet confirmed whether it will undertake an SEA process. While Federal and ACT processes could be aligned, the capacity to address local species under the Nature Conservation Act should be maintained.

The SEA process could also be used to assess cross-region policy, for example, to determine the development of a biodiversity network or layer across the urban landscape, that puts in place protection for mature native trees, biodiversity corridors and stops fragmentation of habitat. The loss of Mature Native Trees and Unnatural Fragmentation of Habitat have been identified under the Nature Conservation Act as Key Threatening Processes, and both require measures that are widespread and not development or site specific

## Offsets

The Conservation Council holds reservations regarding the provision of offset systems as there is little proof that they protect the environment. Despite the extensive use of offsets, very little evidence is available to demonstrate what those offsets deliver and in 2020 it was determined that offset systems “contribute to environmental decline rather than active restoration”.<sup>1</sup> It’s important to note that while offsets have delivered additional areas into reserve, additions to the reserved system outside the offsets process have been negligible over the past two decades.

It is our understanding that the offsets policy is due for a review later in 2022 and that there won’t be changes to the offsets chapter in the new planning regime until that review occurs. However, in summary, we have the following concerns.

### Key Concerns about Offsets

#### *“Like for Like” and Equivalence”*

The principle of “like for like” provides that offsets should reflect the biodiversity values that are being lost. There is a risk that more common woodland areas may be used as offsets for endangered natural temperate grassland or box gum grassy woodland. The exception to “like for like” might be where the offset habitat is rarer and of higher conservation value than the area being lost. However, the goal of ‘like for like’ is difficult and particularly in the ACT where ecosystems are critically endangered and sites to use as offsets are becoming increasingly limited.

#### *Advanced Offsets*

Past conservation actions or funding cannot be applied retrospectively as this will result in net-loss. Previous conservation must be publicly declared an ‘advanced offset’ at the time of reservation and included in a public offsets register so that baseline data is put in place to ensure conservation outcomes can be achieved.

#### *Time lag*

Offsets may not provide the outcomes needed until it is too late. Often development takes place and impacts on habitat and MNES felt before conservation outcomes are achieved at the offset site. It could take decades in some instances (e.g. the time for trees to mature) for the benefits to be realised. At the very least, the offset program (including long term resourcing, in perpetuity protection, management and compliance) should be in place before development commences.

#### *Leakage*

As the amount of available sites for offsetting in the ACT diminishes there is a risk of leakage of offsets sites into New South Wales, causing issues around the suitability of offset sites and their ability to meet key best-practice principles.

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<sup>1</sup> Independent Review of the EPBC Act – Final Report (2020)

## **Strengthen definition of offset in the Bill**

**Section 216** The ACT Government's key principle of offsets policy - that impacts should first be avoided or mitigated before offsets are established, is supported.<sup>2</sup> It is recommended that this be enshrined in the definition of offset in the Bill to reaffirm the use of offsets as a last resort.

## **Consultation and oversight**

The recognition in the Bill of the need for consultation with interested stakeholders is endorsed; genuine consultation can lead to better outcomes for all stakeholders and for the environment.

Consultation at the strategic and District planning levels is especially important because decisions made at these levels are likely to have environmental consequences that are significant at urban and landscape scales.

Consultation requirements for the preparation of the Planning Strategy in the Bill are minimal and vague. For example, **section 34(3)** says: "*The Executive must undertake public consultation before making the planning strategy*".

The nature and scope of the consultation should be specified, reference should be made to the need to consult with significant stakeholders (see further discussion below), timeframes should be specified and the need for the Executive to both consider and publicly respond to matters raised in consultation should be mandated.

Consultation should also be strengthened:

- **Section 15(1)** Functions of the Authority: Reinstate authority's function to: "provide opportunities for community consultation about, and participation in, planning decisions, per s12(1)(m) of the current Act, and consistent with the outlined objects of the Act."
- Scoping of Environmental Impact statements (as outlined under EIS)
- Preparation of Environmental Significance Opinion (as outlined under EIS)
- **Section 88** Include a minimum consultation period for the review of the Territory Plan.

## **Consultation Principles**

**Section 10** The Bill has a provision for the Minister to create "guidelines about principles of good consultation and how the principles are to be implemented".

The Council would support seeing the principles (not guidelines) outlined in the Bill, and not put in the regulations, nor left to the Minister to determine.

The Objects of the Act provide for a community consultation scheme, and while the entire scheme might not be determined in the Bill, the principles upon which that scheme should be built can be, as are the *principles of good planning*.

A series of consultation principles were put to community stakeholders in early 2022, that touched on clarity of purpose, timeliness, inclusiveness, accessibility, respect and transparency. Stakeholders also discussed that it was important for community feedback to be integrated and responded to, and that the community were clear about the impact that their consultation could and should have on any proposal. The ACT Government's: [ENGAGING CANBERRANS A guide to community engagement](#) (2011) outlines

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<sup>2</sup> For example see MTAP p25

principles for communication engagement on page 7 that would form a useful basis for discussion. The Conservation Council would welcome commenting on the principles of good consultation once they are released by the Government, and prior to the debating of the Bill.

### **Significant Stakeholders**

**Section 7(2)(f)** The proposal set out above for a “Significant Stakeholder Register” could be an integral part of a “scheme for community participation”, it is noted that the Act does not include provision for any sort of formal “scheme”.

The need for, and value of, consultation is now widely recognised. Our society now includes numerous community organisations established to advance various community objectives, often reliant on substantial volunteer effort. Such organisations are accorded legal recognition, for example, a resident’s progress association may be given “standing” in a planning appeal court if the matter under consideration is located in their suburb. An important and legitimate role for such organisations is to engage with Government decision making processes and formal recognition of the interest of key stakeholder groups in planning consultation processes is needed.

One way for this to occur would be to include a provision for the establishment of a “Register of Significant Stakeholders”. Parties on the register would receive automatic notification of planning matters relevant to them when such matters are publicly advertised. The table attached in Appendix 2 provides an example. There are specific places in the Bill where specific stakeholders could be targeted for notification, for example **section 111(a)(iii)** public consultation period for an EIS.

A simple process for adding or deleting organisations to the register, including specification of their area of concern and matters to be referred, should be established.

## Consultation timeframes

The Bill includes a number of different consultation periods for a range of different processes, each of which is articulated in a different format (eg. days, working days, weeks)

Definition in dictionary / section of Bill	Description of consultation periods.
<b>Consultation period</b> (a) for part 5.3 (Territory plan—major plan amendments)—see section 52; and	At least 30 working days
(b) for a draft revised offsets policy—see section 222 (2) (b); and	within 6 weeks after the day the consultation notice is published on the authority website (the consultation period)
New draft offsets policy	need not comply with the consultation requirements in section 222; and
(c) for draft offsets policy guidelines—see section 229 (2) (b); and	within 3 weeks after the day the consultation notice is published on the authority website (the consultation period); and
(d) for a draft land management plan—see section 390 (2) (b).	within 6 weeks after the day the consultation notice is published on the authority website (the consultation period); and
<b>Limited consultation</b> – Section 84.1 for Minor Plan Amendments	a stated period of not less than 20 working days
<b>Public consultation period</b> for draft EIS – Section 111	at least 20 working days
Revised EIS – Section 116	there is no minimum period during which representations may be made on a revised EIS.
New draft offsets policy	need not comply with the consultation requirements in section 222; no minimum period.

**Section 106** The addition of the EIS scoping process for the matters to be assessed under the EIS process is welcome. It's noted that the scoping process does not go out for public consultation, however the range of agencies to be consulted is extensive. Consideration should be given to a *limited consultation* in regards to the issuing of a scoping document, and the scoping proposal should also be referred to the Scientific Committee as well as the conservator.

**Section 111** It is recommended that the consultation period for an EIS is increased to at least 30 working days. It is not appropriate that an EIS consultation period should be shorter than a consultation on a major plan amendment. The quantity and nature of the material that is in an EIS can be extensive and at times technically complex, and require significant time to investigate and understand. Currently the minimum consultation period for an EIS is the same as for a minor amendment, something that is likely to be much less complex by definition, and for which the consultation period is even defined as “*limited consultation*”. This is effectively an acknowledgement that the consultation period for an EIS is also a limited consultation.

**Section 116** In addition, a revised EIS is not required to be put out for further consultation. It is recommended that a revised EIS has a *limited consultation* of *at least 20 working days* as is given for a minor plan amendment.

## Complex drafting

The Planning Bill is necessarily long and the processes within it will seem complex to those who are not professional planners and who are trying to navigate the system. The changes made from the previous legislation to the names of processes and the overall intention to simplify is welcome, however, the drafting itself often leaves the reader needing to look in multiple places to determine what the final rule is. Below are just a couple of examples:

- When referring to regulations and then a schedule within the regulations - for example the list of entities that need to be consulted when preparing a scoping document is mentioned in the Bill at 106(3) and then again in Section 10, and then again in the schedule of the regulation at section 28.
- Dictionary definitions for consultation periods - the actual consultation periods are not included in the dictionary, rather the reader is referred back to each relevant section in the Bill. This is useful when reading the individual section, but renders the dictionary somewhat difficult to use.
- Processes that are included that lack explanation as to how they fit into the bigger system, eg. the use of Environmental Significance Opinions within the EIS process.

## Appendix 1: Table of recommendations

Section	Name of section	Recommendations
<b>Chapter 2 Object, principles and important concepts</b>		
s6	Key elements of the Act - EIS	<ul style="list-style-type: none"> <li>• s6 lists the “key elements” of the Act, yet environmental assessment is not included in the list of 9 “key elements”. Unless the EIS process is combined into the DA process (in which case it is appropriate that it need not be identified as a “key element”) the EIS process, taking up 139 clauses of the Act, should be included in the list of “key elements”.           <ul style="list-style-type: none"> <li>○ Add environmental assessment as a key element to the Act</li> </ul> </li> </ul>
s7	Object of the Act - First Nations	<ul style="list-style-type: none"> <li>• Discussion with First Nations representatives about including better recognition of the cultural and traditional interests of First Nations people in the Object of the Act. Consideration should also be given to consultation and consent processes within the Bill</li> </ul>
7(1)	Object of the Act - ESD	<ul style="list-style-type: none"> <li>• Use of the term “ecologically sustainable development” as opposed to “sustainable development” is welcome, as are the principles that come with this - intergenerational stewardship, precautionary principle, and protection of ecosystems and natural systems. Better articulation of the environment is required in the objects.</li> <li>• Amend 7(1) to read:           <ul style="list-style-type: none"> <li>○ <i>The object of this Act is to sustain and enhance the Territory’s ecological integrity, liveability and prosperity, by creating an effective, efficient, accessible and enabling planning system that—</i></li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>■ <i>(a) provides for planning strategies and policies that will ensure proper stewardship of territory land and water resources; and</i></li> <li>■ <i>(b) facilitates ecologically sustainable development that is consistent with planning strategies and policies.</i></li> <li>● Refine scope of 7(1) to just be in reference to the desired planning outcomes for the Territory - “outcomes focussed” should not be an object of the planning regime in itself, but rather a procedural consideration. <ul style="list-style-type: none"> <li>○ move s7(1)(a) and s7(1)(c) into s7(2)</li> </ul> </li> </ul>
7(2)	Object of the Act	<ul style="list-style-type: none"> <li>● If the paragraph (e) on “high standards for the built environment” is maintained then the following should also be included: <ul style="list-style-type: none"> <li>○ <i>(f) ensure outcomes commensurate with an environmental stewardship approach whereby planning decisions made today will not impact adversely on the environment within which future generations will live.</i></li> </ul> </li> <li>● <i>Insert s7(1)(a) “is outcomes focussed”. With regards to “outcome focussed” - we do not support a weakening of mandatory considerations within the Territory Plan that will mean that best outcomes aren’t achieved, and that short cuts are taken by developers. “Outcomes focussed” needs to ensure that the Planning Authority will uphold best process and outcomes in the approval process, or otherwise the proponent must defer to the mandatory standard. The concern is that non-mandatory, outcome-focussed requirements will be easily challengeable under administrative law.</i></li> <li>● Amend s7(2)(f) to read: <i>(g) Provide for an accessible and fair community participation scheme in relation to the development of planning strategies and policies, and development assessment.</i></li> <li>● Include a provision for the establishment of a “Register of Significant Stakeholders” in the Schedule of the Act which outlines key community bodies and the issue on which they</li> </ul>

		should be routinely notified for consultation purposes. (see Appendix 1: Significant Stakeholders Register)
7(3)	Important matters in achieving the Objects of the Act.	<ul style="list-style-type: none"> <li>● 7(3)(a) Recognition of First Nations people, their cultural and traditional interests, and their aspirations for this city should be elevated to sit higher in the objects of the Act.</li> <li>● Amend 7(3)(b) <i>Planning for the impacts of population growth on the built and natural environment of the ACT.</i></li> <li>● Specifically remove the words: <ul style="list-style-type: none"> <li>- “evolution of the Territory” - subjective language, and unclear what it means. Bigger doesn’t necessarily mean better evolved, yet bigger is what is implied in this paragraph.</li> <li>- “Attractive place to live” - this is subjective</li> </ul> </li> <li>● Insert above (c) <ul style="list-style-type: none"> <li>○ (b) <i>meeting territory, national and international greenhouse targets for greenhouse gas reduction: OR</i></li> <li>○ (b) <i>meeting greenhouse gas emission reduction targets to ensure a safe climate</i></li> </ul> </li> </ul>
8(1)(b)	Meaning of ecologically sustainable development	<ul style="list-style-type: none"> <li>● Re: the achievement of economic development - this should not be included in the definition of ESD. The principles (precautionary principle, intergenerational equity and polluter pays for example) were developed to ensure development occurs in a way that protects the environmental systems for this and future generations. The “<i>achievement of economic development</i>” is not a principle in itself.</li> <li>○ Remove paragraph (b) the achievement of economic development.</li> </ul>

8(2)	Extended definitions associated with the meaning of ecologically sustainable development	<ul style="list-style-type: none"> <li>● Remove the definition of “achievement of economic development” consistent with the above. In addition, the definition repeats the intergenerational principle and the wellbeing principle, both of which are already well-defined.</li> <li>● The definition of “protection of ecological processes and natural systems is welcome, however, it should acknowledge that biodiversity loss and environmental damage has occurred, and that restoration and enhancement is required. <ul style="list-style-type: none"> <li>○ Amend (b) to read: <i>(b) Conserving and enhancing biological diversity and ecological integrity.</i></li> </ul> </li> <li>● The definition of protection of ecological processes and natural systems should also include a reference to climate change. Our climate is a natural system that is at risk of collapse.</li> </ul>
9	Principles of good planning	<ul style="list-style-type: none"> <li>● Definitions are out of sequence in relation to the listed principles.</li> <li>● Amend 9(1)(h) <i>natural environment conservation principles</i> to: <i>(h) natural environment conservation and enhancement / restoration principles</i> as per above explanation.</li> <li>● <b>Investment facilitation principles</b> - Amend “economic prosperity” to “prosperity” in alignment with the underpinnings of the Wellbeing Framework, which is that prosperity and wellbeing are not dependent on economic prosperity alone.</li> <li>● Under the definition of <b>Natural environment conservation (and enhancement) principles</b> - we welcome acknowledgement of biodiversity connectivity and habitat values across the urban areas.</li> <li>● Non-urban areas are also affected by planning decisions and should be included.</li> <li>● Amend “by avoiding and minimising loss of habitat” to “avoid and minimise (as a last resort) loss of habitat”.</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Sustainability and resilience principles</b> - at (b) add through mitigating the effects of urban heat, the impacts of extreme weather events, the impacts of natural disasters, managing water supplies....”</li> </ul>
10	Principles of good consultation	<ul style="list-style-type: none"> <li>• Include consultation principles in legislation prior to tabling the final Bill, not regulations (as the principles of good planning are included in the Bill).</li> </ul>
<b>Chapter 3 Territory planning authority and chief planner</b>		
s15(1)	Authority's functions	<ul style="list-style-type: none"> <li>• <i>Good planning outcomes</i> aren't defined in the Bill, but <i>Principles of good planning</i> are, and it is the Planning Authority's role to promote those principles. As such, changing this in the section of the Authority's function would provide clarity and serve to link the definitions in the Bill <ul style="list-style-type: none"> <li>○ Amend: (f) To promote high quality design and good planning outcomes to: <i>(f) to promote the principles of good planning (as outlined in s.9)</i></li> </ul> </li> <li>• Reinstate authority's function to: “provide opportunities for community consultation about, and participation in, planning decisions, per s12(1)(m) of the Planning and Development Act, and consistent with the outlined objects of the Draft Planning Bill.</li> </ul>
<b>Chapter 4 Strategic and Spatial Planning</b>		
s34(3)	Defining consultation	<ul style="list-style-type: none"> <li>• The nature and scope of the consultation should be specified, reference should be made to the need to consult with significant stakeholders, timeframes should be specified and the need for the Executive to both consider and respond to matters raised in consultation should be mandated.</li> </ul>

s35(1) - number 2	Consideration of Planning Strategy	<ul style="list-style-type: none"> <li>Number of paragraph 2 in Section 35 should be amended to read 35(2).</li> <li>In regards to this section, it is unclear why the Planning Strategy is not a relevant consideration for decisions taken under chapters 6 (Significant Development), 7 (Development Assessment and Approvals) and 8 (Territory Priority projects). Given the significance of the planning strategy and the desire to better integrate strategic outcomes with the implementation of the Approval process, this needs to be clarified.</li> </ul>
s37(3)	Defining consultation	<ul style="list-style-type: none"> <li>The nature and scope of the consultation should be specified, reference should be made to the need to consult with significant stakeholders, timeframes should be specified and the need for the Executive to both consider and respond to matters raised in consultation should be mandated.</li> </ul>
39(2)	Estate Development Plans	<ul style="list-style-type: none"> <li>So as to implement the good planning principle of <i>natural environment conservation and enhancement</i>, estate development plans should be mandated to consider these outcomes in the development approvals process. <ul style="list-style-type: none"> <li>Amend (2) to include: (d) the natural values of the estate and how they will be conserved or enhanced.</li> </ul> </li> <li>If not included under the mandatory requirements, then this should be included under non-mandatory requirements outlined in 39(3)</li> <li>Estate Development Plans should trigger a requirement for an EIS.</li> </ul>
<b>Chapter 5 Territory Plan</b>		
s42	Object of the Territory plan	<ul style="list-style-type: none"> <li>As with the object of the current Bill, the object of the Territory plan is even more anthropocentric and inadequate as a description of what the Territory Plan is aiming to achieve. Once again, the Territory Plan should include recognition of the stewardship role that the current generation has for the Territory land and waters, a commitment to</li> </ul>

		delivering environmental conservation and enhancement, and an acknowledgement that the Plan should not negatively impact on where we live, to the detriment of future generations.
s45	Format of the Territory Plan	<ul style="list-style-type: none"> <li>The Territory Plan should be in an easily accessible online format so as to be readily accessible to the community.</li> </ul>
s52(b)	Definition of background papers	<ul style="list-style-type: none"> <li>Statement of reasons - it would be helpful for the Territory Planning authority to provide a statement of reasons about inconsistencies between the draft plan and public comments made on the draft plan during the consultation process, so that the community can see that the comments have been considered.</li> </ul>
s67	Draft Major plan amendments	<ul style="list-style-type: none"> <li>Currently draft Variations to the Territory Plan under the Planning and Development Act must be referred to the Assembly. S67 of the planning Bill removes this provision, leaving the Minister to decide whether to send Draft Major Plan amendments to the relevant Assembly committee. This should be reversed. <ul style="list-style-type: none"> <li>Amend s67 to ensure the Minister must refer Draft major Plan amendments to the relevant Assembly committee.</li> </ul> </li> </ul>
s82(1)	Public consultation on minor variations	<ul style="list-style-type: none"> <li>Consideration should be given to ensure that minor plan variations subject to limited public consultation should be extended to include (under s82(2)) amendments currently identified under s82(1): <ul style="list-style-type: none"> <li>(b) an amendment to change the boundary of a zone under section 85 (Rezoning—boundary changes);</li> <li>(d) an amendment required to bring the Territory Plan into line with the National Capital Plan;</li> </ul> </li> </ul>

s.88	Review of the Territory Plan	<ul style="list-style-type: none"> <li>In the Planning and Development Act the review of the Territory Plan required the development of a Strategic Environmental Assessment, however this provision no longer exists in the Planning Bill. It is unclear what environmental perspective will be brought to the review of the Territory plan, and this should be clarified. The removal of the Strategic Environmental Assessment process overall is not supported.</li> <li>Set a minimum consultation period for the review of the Territory Plan in the legislation.</li> </ul>
<b>Chapter 6 Significant development</b>		
s99	Overview of environmental impact assessment	<ul style="list-style-type: none"> <li>The role of an Environmental Significance Opinion could be clarified in this section as well as at s135, given that this is the place where the EIS process is outlined. References to the ESO in this section are obscure and confusing because their purpose and role is not clearly explained. As this section acts only as a guide, this aspect could be better explained.</li> </ul>
s101	Meaning of significant adverse environmental impact	<ul style="list-style-type: none"> <li>Amend this definition to include two key threatening processes identified under the <i>Nature Conservation Act 2014</i>, namely: <ul style="list-style-type: none"> <li>- The unnatural fragmentation of habitats</li> <li>- The loss of mature native trees (including hollow bearing trees) and lack of recruitment.</li> </ul> </li> </ul>
Div 6.3.3	Climate Impact Statement	<ul style="list-style-type: none"> <li>Given the ACT Government's commitment to net zero emissions by 2045, and the legislative greenhouse gas reduction targets in the <i>Climate Change and Greenhouse Gas Reduction Act 2010</i>, it is recommended that every EIS should include a climate impact statement as a core requirement, such that proponents clearly identify whether their proposal is consistent with policy objectives that should be outlined in the objects of the Act and what they have done to ensure consistency with this objective.</li> </ul>

s106	Public consultation on draft scoping document	<ul style="list-style-type: none"> <li>Include a provision that mandates <b><i>limited consultation</i></b> into draft scoping documents.</li> <li>Refer to the Scientific Committee as well as the Conservator.</li> </ul>
S 110	Recent studies to support draft EIS	<ul style="list-style-type: none"> <li>The removal of EIS exemptions is welcome given the confusion they have caused, and the detailed processes that accompanied them. The provisions relating to recent studies in the draft Bill require the territory planning authority to consider a range of issues when deciding whether the environmental impact of the proposal has been sufficiently addressed. s110(3)(d) says that if the study is more than 18 months old, that the Minister has to be satisfied that the information in the study is correct, however the Conservator is better placed to make this decision. <ul style="list-style-type: none"> <li>Amend s.110(3)(d) so that the Conservator makes the decision about the value of recent studies.</li> </ul> </li> </ul>
s111	Public notification of draft EIS	<ul style="list-style-type: none"> <li>The Council has recommended that a list of registered stakeholders for particular issues forms part of the consultation process within the planning bill. s111 should require registered stakeholders with an interest in proposals that might have a significant adverse environmental impact to be notified. This could include First Nations representatives and conservation / environment organisations.</li> </ul>
s111(a) (iii)	Public consultation period for an EIS	<ul style="list-style-type: none"> <li>The <b><i>public consultation period</i></b> for an EIS defined in s111 is defined as at least 20 working days. Given EIS documentation can be long, dense and complex, and require considerable time to review and provide expert comment on, the consultation period for an EIS should be extended to at least 30 working days (6 weeks), to align with the consultation period for a major plan amendment, and allow suitable time for the public to respond.</li> </ul>

s135	Environmental Significance opinion	<ul style="list-style-type: none"> <li>Change the term <i>Environmental Significance Opinion</i> to better express what an ESO is and the function it serves within the EIS process, to assist community understanding.</li> <li>Include a <i>limited consultation</i> process for Environmental Significance Opinions.</li> </ul>
<b>Chapter 7 Development Assessment and Approvals</b>		
s180	Deciding development applications	<ul style="list-style-type: none"> <li>It is unclear why, when approving a development application that relates to a regulated tree, that the territory planning authority is allowed to amend or replace tree management plans that might have been signed off by the Conservator. This could have the effect of negating the Conservator's advice completely, which reflects poorly on the Planning Authority and the Conservator's role.</li> </ul>
181	Considerations when deciding a development application	<ul style="list-style-type: none"> <li>The principles continued in Section * with regard to Ecological Sustainable Development should be a consideration in decision-making for development applications.</li> </ul>
s185(a)	Development approval contrary to entity advice	<ul style="list-style-type: none"> <li>s184 requires Development Approvals to be subject to restrictions on development approval, including needing to abide by entity advice. However, s185 allows development approvals to go ahead contrary to entity advice including the Conservator's advice in s194. For Territory Priority Projects, this includes advice with regard to registered trees. The decision-maker is able to approve developments contrary to the advice if they are satisfied that it will "<i>significantly improve the planning outcomes</i>" ((s185(1)(d)), however it is unclear what is meant by this.</li> <li>If the "planning outcomes" are linked to the Principles of good planning as identified in s9, then considerations of environmental protection and enhancement would be included as part of a good planning outcome. But as it is currently drafted, it appears that a good planning outcome is likely to be the opposite to a good environmental outcome.</li> </ul>

		<ul style="list-style-type: none"> <li>● While it is acknowledged that an entity's considerations might be limited in scope, ignoring the advice of an expert entity is not recommended when the definition of the benefit is so intangible and subjective.           <ul style="list-style-type: none"> <li>○ More clearly define "Planning outcome" in regards to this provision.</li> </ul> </li> </ul>
s185(b)	Development approval contrary to entity advice	<ul style="list-style-type: none"> <li>● s185(b) facilitates the Chief Planner to approve a development even if it is inconsistent with the Conservator's advice and the proposal is for a significant development that is likely to have significant adverse environmental impacts on a declared protected matter. This is justified through being consistent with the offsets policy (despite the fact that offsets have been shown to have limited effect at improving biodiversity outcomes in the ACT) and by providing substantial public benefit, once again an undefined concept, and something that is likely to mean different things to different people.</li> <li>● It is recommended that the provision to allow the Chief Planner to do this under s185 is amended to at least reflect an outcome that is consistent with the principles of good planning.</li> <li>● In addition, it should be noted that it is here that the planning laws start to erode public confidence, as the protection of our environment is paramount, and this provision will entrench the thinking that ultimately, the short term benefits of human development trump the longer term benefits of protecting nature and enhancing our environment.</li> </ul>
<b>Chapter 8 Territory Priority Projects</b>		
s210.	Meaning of Territory priority project	<ul style="list-style-type: none"> <li>● It is unclear why light rail should be singled out for special mention under this section. Other projects (bus facilities, hospitals) may be of equal or greater importance. If a particular light rail project meets the criteria under s212(1) then it would be a priority project anyway as light rail projects would generally qualify. Is this provision a transitional arrangement?</li> </ul>

s212	Declaration of Territory Priority projects	<ul style="list-style-type: none"> <li>● s212(2) provides for a Territory Priority Project to be a “notifiable instrument”, ensuring that it is open to public scrutiny in the Legislative Assembly. The potentially far reaching impacts of a TPP decision and the exclusion of the possibility of an administrative appeal warrants a higher level of accountability.           <ul style="list-style-type: none"> <li>○ Recommend: that s212(2) is amended to be a disallowable instrument, rather than a notifiable instrument.</li> </ul> </li> </ul>
Chapter 9 Offsets		
s214	Meaning of Protected Matter	<ul style="list-style-type: none"> <li>● The meaning of protected matter only includes matters protected under Commonwealth environmental law, and not matters protected under the Nature Conservation Act 2014. This devalues the protection offered to species and ecological communities under the NC Act. The protection of matters at a national level is often because those species or ecological communities are at risk nationally, and so their local protection is important. However, local protection via the NC Act is increasingly important as pressure on biodiversity rises nationally - it is only by protecting local matters that we will contribute positively and head off the risk of extinction nationally. As such, we would recommend the inclusion of matters protected by the Nature Conservation Act in the meaning of “protected matters”.</li> <li>● There is the option that instead of listing the two Key Threatening Processes (Mature Trees and Unnatural Fragmentation) as EIS triggers, that they could be specifically included as Protected Matters. However, if dot point one in this section is accepted, that may not be required.</li> </ul>
s216	Offsets as a last resort	<ul style="list-style-type: none"> <li>● Affirm the use of offsets as a last resort, for example s216 should read:           <ul style="list-style-type: none"> <li>○ “offset, for a development that is likely to have a significant adverse environmental impact on a protected matter, and for which all options to avoid or mitigate impacts have been explored and implemented where at all practicable, means environmental compensation for the likely impact.”</li> </ul> </li> </ul>

220	Monitor effectiveness of offsets	<ul style="list-style-type: none"> <li>This information should be publicly available.</li> </ul>
235	Offset register	<ul style="list-style-type: none"> <li>Ensure this is publicly available.</li> </ul>
241	Draft offset management plan - submission to decision-maker	<ul style="list-style-type: none"> <li>Provide for public consultation of draft offset management plan.</li> </ul>
<b>Chapter 11 Public Land</b>		
s385	Reserve areas of public land	<ul style="list-style-type: none"> <li>A review of these designated reserve areas is warranted to reflect current best practice in biodiversity conservation and enhancement, with consideration of new reserve categories to support urban conservation reserves, corridor reserves, etc. to support the establishment of a Biodiversity Network across the ACT. The Conservation Council anticipates engaging further with EPSDD about how this concept might be developed via the Planning Bill, and importantly, the Territory Plan. <ul style="list-style-type: none"> <li>Review the nature reserve categories to meet the requirements for protection and land management for biodiversity outcomes.</li> </ul> </li> </ul>
<b>SCHEDULE TO THE BILL</b>		
Schedule 2 Part 2.2	Information required for DA - greenhouse gas emissions	<ul style="list-style-type: none"> <li>Currently the schedule identifies that all that is required from the proponent is a statement about the expected greenhouse gas emissions for the development. It's unclear who is required to produce this statement, nor what is to be included and how it is to be calculated. It is suggested that, at least, this is amended to:</li> </ul>

Item 12		<ul style="list-style-type: none"> <li>“An assessment based on modelling of the greenhouse gas emissions that will be generated by the proposal on an annual basis”.</li> </ul>
Schedule 4 Part 4.2	Management objectives for areas of public land	<ul style="list-style-type: none"> <li>Review the public land use categories and the management objectives applicable to land that has conservation value, and should be protected and enhanced to improve biodiversity outcomes.</li> <li>Review the land use management objectives in consultation with local First Nations representatives.</li> </ul>
<b>PLANNING (GENERAL) REGULATIONS 2022</b>		
Section 24	Prohibited development	<ul style="list-style-type: none"> <li>Fossil fuel based energy generators should be added as Prohibited Developments.</li> </ul>
Schedule 1, Part 1.2	Development proposals requiring environmental impact assessment	<ul style="list-style-type: none"> <li>It is unclear as to why the schedule for matters requiring an EIS are now included in the regulations rather than the Bill itself. It is recommended that given the importance of the criteria that consideration is given to returning them to the schedule of the Bill.</li> </ul>
Schedule 1, Part 1.2  Item 2	Development proposals requiring environmental impact assessment	<ul style="list-style-type: none"> <li>Remove fossil fuel generators from this section and list them as Prohibited Developments.</li> <li>Review the requirement to facilitate petroleum storage facilities.</li> </ul>
Schedule 1, Part 1.2  Item 17	Development proposals requiring environmental impact assessment  Column item 17	<ul style="list-style-type: none"> <li>Recommend a review of the threshold test for an EIS with regards to (b) the clearing of more than 5.0ha of native vegetation in a native vegetation area, on land that is designated as a future urban area under the territory plan.</li> <li>The clearing of any native vegetation is significant and an EIS should be undertaken irrespective of the quantity. Decisions about managing native vegetation clearing are best</li> </ul>

		made when the quality of vegetation is reviewed through a proper process.
Schedule 1, Part 1.2  Item 24	Development proposals requiring environmental impact assessment	<ul style="list-style-type: none"> <li>In the context of the climate emergency, review the proscribed level of CO2 identified under s26 of the Schedule, which relates to the annual expected greenhouse gas emissions from operating a development for which an EIS is required with a view to reducing the amount.</li> </ul>
Add to Schedule 1, Part 1.2	Development proposals requiring environmental impact assessment	<ul style="list-style-type: none"> <li>If the definition of 'significant adverse environmental impact' cannot be amended in s101 of the Bill to include Key Threatening Processes, then it is recommended that an additional criteria for Environmental Impact Assessment is added to Part 1.2 of the Regulations: The two listed Key Threatening Processes identified in the Nature Conservation Act are <ul style="list-style-type: none"> <li>○ Unnatural Fragmentation of Habitat; and</li> <li>○ The Loss of Mature Native Trees (including hollow-bearing trees) and lack of recruitment.</li> </ul> </li> </ul>
<b>OMISSIONS</b>		
P&D Act s99-101	Omission of Strategic Environmental Assessments	<ul style="list-style-type: none"> <li>The Strategic Environmental Assessment process has been removed from the new Bill. The Conservation Council recommends that the Strategic Environmental Assessment process is not removed from the planning regime.</li> </ul>

## Appendix 2: Significant Stakeholders Register

Significant Stakeholder	Matters for automatic notification
Conservation Council	Planning strategy District strategies Draft territory plan variations (excl minor variations) Development proposals involving an EIS (or the alternative as per the discussion above)
Community Councils (Woden, Inner North, Belconnen, etc)	Planning strategy District strategies Draft territory plan variations (excl minor variations) All development proposals within their district
First Nations groups	Planning strategy District strategies Draft territory plan variations (excl minor variations) Any development proposal referred to ACT heritage as a consequence of an Aboriginal heritage matter
Residents groups	development proposals within their area of interest
Pedal power	Proposals involving roads and Bikeways
ACTCOSS	Planning strategy District strategies Draft territory plan variations (excl minor variations) All proposal involving land zoned “community facility”
Property Council	Planning strategy District strategies Draft territory plan variations (excl minor variations)