



**CONSERVATION  
COUNCIL** ACT REGION

## Submission to the Standing Committee on Planning, Transport and City Services: Inquiry into the Territory Plan 2023

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November 2023

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.

### **For further information please contact:**

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## Introduction

The Conservation Council ACT Region welcomes the opportunity to provide feedback to the Standing Committee on Planning, Transport and City Services regarding the interim Territory Plan.

In March 2023, The Council made a submission to Environment, Planning and Sustainable Development Directorate's consultation on the Draft Territory Plan and District Strategies.

We are happy to see that there is some improved clarity in the language in the Territory Plan, and that living infrastructure provisions, akin to Variation 369 (V369), have been expanded to other zones, including commercial and community facility zones and the subdivision technical specifications. A number of our recommendations were not integrated into the new interim Territory Plan, and we note that this Inquiry does not consider District Strategies, which were of immense interest to the public – this is disappointing. We continue to advocate for the adoption of a Biodiversity Network for the ACT as per our previous recommendations and the paper that we launched in 2022.

Upon review of the Territory Plan and its supporting documents, in addition to the *Territory Plan Explanatory Report* and the *Territory Plan Consultation Report*, and in light of the new *Planning Act 2023*, we make the following recommendations, briefly explained below:

- **There needs to be clearer guidance in the Territory Plan about the status of Design Guides and Technical Specifications in decision making.**
- **Design Guides and Technical Specifications need to be better integrated into the Territory Plan.**
- **Design Guides and Technical Specifications need to be formally integrated into the Territory Plan to ensure greater transparency and accountability with respect to future changes, and public scrutiny where required.**
- **Applicability and enforcement of each of the design guides needs to be reviewed and expanded.**
- **Additional resourcing for compliance and enforcement of the Territory Plan and planning outcomes is needed, given the increased subjectivity of the new planning system.**

Each will be discussed in turn.

1. **There needs to be clearer guidance in the Territory Plan about the status of Design Guides and Technical Specifications in decision making.**
2. **Design Guides and Technical Specifications need to be better integrated into the Territory Plan**

## The relationship between the Territory Plan and technical specifications and design guides

The language around the relationship between the Territory Plan, technical specifications and design guides has improved, but is still unclear.

The Territory Plan at Part A Administration and Governance states that the Territory Plan “*is accompanied by supporting documents such as design guides and planning specifications that provide important guidance and clarification to deliver a more efficient development assessment*”

process...”.<sup>1</sup> It further states that “supporting materials do not form part of the Territory Plan but may be ‘called up’ by policies within the Territory Plan”.<sup>2</sup>

It is unclear how and why documents such as design guides and planning specifications, which are both notifiable instruments, do not form part of the Territory Plan. Technical specifications contain the bulk of what was formerly classified as rules in the former Territory Plan and have been referred to as minimum thresholds in present documentation. The design guides have the same, qualitative qualities that criteria had in the former Territory Plan and are now to be taken into consideration by decision makers when deciding a development application, as set out in section 186(b) of the *Planning Act 2023*. Their role is more than as ‘mere’ supporting documents.

The Territory Plan states that “where a proposed development complies with a relevant provision in the design guide and/or planning technical specification and the development comprehensively addresses the outcome, further assessment regarding those assessment outcomes will not be required”.<sup>3</sup> Why, given their weighting in the planning assessment process, do they not continue to form part of the Territory Plan? The communication around the use of these documents is confusing.

## Design Guides

On the one hand, the Territory Plan states that “*supporting materials do not form part of the Territory Plan but may be ‘called up’ by policies within the Territory Plan*”.<sup>4</sup> On the other hand, the Territory Plan states:

*“The guides provide clear and easy to understand qualitative guidance that identify design possibilities and encourage innovation. Design guides also identify where flexibility in design can be considered and matters that must be addressed. Overall, the guides are critical in the design and assessment process, particularly when planning provisions are less prescriptive and leave room for interpretation and innovation”*.<sup>5</sup>

We understand that design guides (and technical specifications) are considered in demonstrating compliance with the assessment outcomes, and that “*while all assessment outcomes are to be met, not all outcomes are covered by design guidance and/or technical specification*”.<sup>6</sup> Clearly, one you cannot apply a design guide or technical specification if there is none that is relevant to an assessment outcome. We also understand that where a proposed development complies with a relevant provision in a design guide and/or a technical specification and the assessment outcome is addressed comprehensively, further assessment of that outcome will not be required.<sup>7</sup> In addition, “*where a design guide applies to a development, the proposal must demonstrate that it is consistent with the guidance provided for assessment outcomes in relation to the design elements listed*”.<sup>8</sup>

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<sup>1</sup> *Territory Plan Part A: Administration and Governance*, p 5 and ACT Government, *Territory Plan Explanatory Report*, p 8.

<sup>2</sup> *Territory Plan Part A: Administration and Governance*, p 5 and ACT Government, *Territory Plan Explanatory Report*, p 8.

<sup>3</sup> *Territory Plan, Part A: Administration and Governance*, p 8.

<sup>4</sup> *Territory Plan, Part A: Administration and Governance*, p 5.

<sup>5</sup> *Territory Plan, Part A: Administration and Governance*, p 5.

<sup>6</sup> *Territory Plan, Part A: Administration and Governance*, p 7.

<sup>7</sup> *Territory Plan, Part A: Administration and Governance*, p 7.

<sup>8</sup> *Territory Plan, Part A: Administration and Governance*, p 8.

Clearly design guides are more than 'mere' supporting documents, but are actually critical in the assessment process. Given design guides are so critical to planning in Canberra, they ought to be subject to scrutiny by the Legislative Assembly.

Design guides need to be more clearly integrated into the Territory Plan.

### **3. Design Guides and Technical Specifications need to be formally integrated into the Territory Plan to ensure greater transparency and accountability with respect to future changes, and public scrutiny where required.**

The practical implications of design guides and technical specifications remaining 'supporting documents' rather than better integrated *as part of* the Territory Plan, is that if either the design guides or the technical specifications were to change, there is now very little oversight of these changes, and certainly no public inputs or scrutiny. Major and minor plan amendments refers to what is currently in the Territory Plan and not its supporting documents, even though these supporting documents form the backbone of development assessment. As stated above, technical specifications and design guides are akin to rules and criteria in our former planning system. As set out, both design guides and technical specifications are 'critical' to the development assessment process. And yet they can be amended without scrutiny, with potential impacts on the environment. Critically important policy with respect to planning, such as living infrastructure provisions (V369) are now primarily located in 'supporting documents' that the community, and the Legislative Assembly, cannot interrogate if weakened. This is a critical issue.

In addition, greater clarity is required about the role of technical specifications. Are technical specifications regarded as a benchmark? If that is the case, and developments are intended to exceed these benchmarks, this should be clearer.

## **Technical Specifications**

The Territory Plan makes reference to planning technical specifications to be used as a possible solution or to provide guidance for identified aspects of a development proposal. Planning technical specifications may also be used as a reference or benchmark for planning matters in the preparation and assessment of development proposals to demonstrate compliance with the Territory Plan. There needs to be clearer language as to the utility of technical specifications. The wording 'may be used' make it unclear as to whether it is a benchmark or whether it needs to be adhered to at all.

For instance, an assessment outcome for residential zoning is that "sufficient planting area and canopy trees are provided, and roofed areas and hard surfaces limited, to reduce urban heat island effects, minimise stormwater run-off and maintain ecosystem services...".<sup>9</sup> The technical specifications then set out provisions around planting areas, tree planting and tree canopy cover under this assessment outcome. Do the technical specifications set out what is 'sufficient'? Is this a 'possible solution' or is it a benchmark? These terms/phrases are different and have implications for, for instance, heat island effect in our residential areas.

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<sup>9</sup> ZS1 – Residential Zones Specifications, p 22.

#### 4. Applicability of each of the design guides needs to be reviewed and expanded.

Each of the design guides set out opportunities for innovation in future development in Canberra. There are some excellent considerations set out in these design guides. However, the design guides are each limited in their respective ways, and this needs to be addressed.

#### Housing Design Guide

The Housing Design Guide is a guide addressing “*housing and built form outcomes at a range of densities*”.<sup>10</sup> It is critical to “support the new Territory Plan to ensure the planning system adequately considers design quality and development appropriateness, leading to improved design quality and overall planning and design outcomes”.<sup>11</sup> It includes considerations such as siting, built form, active travel, private open space, and sustainability and the environment. Within the ‘Sustainability and Environment’ section, there are essential sections including flood resilience, bushfire resilience, heatwave and urban heat island resilience, deep soil planting and tree canopy cover.<sup>12</sup> And yet, this design guide does not apply for residential development comprising single dwelling housing and secondary residences.<sup>13</sup> We know that RZ1 currently comprises about 80% of residential housing in the ACT. Why doesn’t the Housing Design Guide apply the majority of residential housing in the ACT? We understand that there are some elements of this design guide that are simply not relevant to single dwellings (including the provisions with respect to communal open spaces, for instance). But there are many good, innovation parts of the Housing Design Guide that now do not apply to, for instance, exempt development and new single dwelling residences in greenfield areas. This is not a good design outcome.

As a passing note, it would be good to have a clearer link or a better understand of the link between the technical specifications (which, we understand, are regarded as a minimum threshold) and the relevant design element. For example, in Design Element 7.3, Integrated Landscape Planting, we can see a box setting out planning strategies and tools and this includes Canberra’s Living Infrastructure Plan, the ACT Climate Change Strategy 2019-2025, the relevant district strategy and planning specifications PS1, PS2 and PS4. Is this the order of priority?

#### The Biodiversity Sensitive Urban Design Guide

The Biodiversity Sensitive Urban Design Guide (the BSUD Guide) is good. The BSUD Guide sets out that it “*is an approach to planning and development that recognises biodiversity as an opportunity rather than a constraint*”<sup>14</sup> and applies to the limited planning, design and approval processes for development and redevelopment of sites in our most sensitive of areas, such as Future Urban Areas, in non-urban zones (NUZ1-5), in PRZ1 Urban Open Space and areas with an area greater than one hectare in all zones.<sup>15</sup> The BSUD Guide contains really important considerations for development in these areas.

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<sup>10</sup> ACT Government, *Housing Design Guide*, page 3.

<sup>11</sup> ACT Government, *Housing Design Guide*, page 3.

<sup>12</sup> ACT Government, *Housing Design Guide*, pages 64-77.

<sup>13</sup> ACT Government, *Territory Plan Explanatory Report*, p 10 ACT Government, *Housing Design Guide*, page 3.

<sup>14</sup> ACT Government, *Biodiversity Sensitive Urban Design Guide*, p 14.

<sup>15</sup> ACT Government, *Biodiversity Sensitive Urban Design Guide*, p 10.

However, the applicability of the BSUD Guide is limited and enforcement is required.

## The Urban Design Guide

The Urban Design Guide applies where it is precinct scale with a site greater than one hectare, the combined development gross floor area exceeds 10,000m<sup>2</sup>, it comprises more than 1,000m<sup>2</sup> of public or common space or advice is required from the Design Review Panel.<sup>16</sup> It focuses on the broader spatial and public space outcomes<sup>17</sup> for such developments.

Given the size of the developments that the Urban Design Guide applies to, it is important to see better linkages with the BSUD Guide. Whilst there is the following reference in the Urban Design Guide “*development may be required to consider and provide a design response to the Biodiversity Sensitive Urban Design Guide. Refer to the development thresholds outlined in the Biodiversity Sensitive Urban Design Guide for the application of this guide*”,<sup>18</sup> there is no reference to it in “Related planning strategies and tools”. Better links between these two design guides is required.

### **5. Additional resourcing for compliance and enforcement of the Territory Plan and planning outcomes is needed, given the increased subjectivity of the new planning system.**

It is clear that the intention of the ACT Government, through the introduction of the new Planning Act 2023, and the new interim Territory Plan and supporting documents, is a shift in direction for planning in the ACT, focussing development assessment on impacts and outcomes of development, rather than a compliance approach. Certainly we would all like better planning outcomes, particularly when they align with the objects of the *Planning Act 2023*, including the achievement of ecologically sustainable development.<sup>19</sup>

Aiming for better outcomes in development is a good shift, in our view. This provides more opportunity to ensure that we are building the Canberra that we need, and not one that is dictated by developers. However, we are concerned that a shift to a more subjective, ‘outcomes-based’ planning system will make our planning system even less regulated. We recommend better and more resourcing for stronger compliance and enforcement of planning approvals, and that these resources ensure compliance with approvals throughout the actual development process, and not just at the end.

Our experience has been that Construction Environment Management Plans (CEMPs), whilst developed as a critical part of a development application and approval process, are often not adhered to, with direct environmental impacts. Adequate resourcing to monitor that developments are adhering to their relevant approvals, including any relevant CEMPs, is critical.

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<sup>16</sup> ACT Government, Urban Design Guide, p 10.

<sup>17</sup> ACT Government, Urban Design Guide, p 8.

<sup>18</sup> ACT Government, Urban Design Guide, p 11.

<sup>19</sup> *Planning Act 2023*, s 7(1)(b).

## Our previous submission to the Territory Plan and District Strategies consultation

In our previous submissions, we previously set out the following:

1. It is recommended projections be based on the population Canberra is capable of holding and therefore planning to accommodate within set timeframes. Research needs to be undertaken on the carrying capacity of the ACT to inform the draft Territory Plan and thus set meaningful population targets to live within our region's means.<sup>20</sup>
2. The Territory Plan should be a principal instrument for the achievement of the actions recommended by the State of the Environment report.<sup>21</sup>

Both recommendations are still sound. We are unsure whether there have been adequate studies to determine the amount of density that is required to house a growing population, and to ensure that *at least* 70% of new development is built within our current urban footprint (and by that we mean not 70% of Canberra's *growing* urban footprint, but it's footprint when that policy was first determined). In addition, the State of the Environment continues to be a sound indicator of the current health of the ACT's environment, and the ACT Government must ensure each of the 35 recommendations are met, given that a number are relevant or directly related to the way we grow and develop in the ACT.

### Climate

With respect to climate, we reiterate that the following climate mitigation measures be integrated into the Territory Plan to ensure the ACT continues to develop into a climate resilient Territory:

- Construction of the residential development should be undertaken in an environmentally sensitive way. The dwellings should be of high quality and energy efficient.
- All new construction should have pale roofs.
- All new construction should have a minimum rating of 8 stars.
- All construction must optimise solar access in winter and shade in summer.
- All new construction should not connect to the gas network, including multi unit developments, large infrastructure such as crematoriums, schools, social housing and aged care facilities.
- EV charging stations should be available to the community including in all multi-unit developments.
- Set planning rules that reduce house size as a percentage of block size.
- Utilise a variety of native plantings including shrubs and grasses to reach the tree canopy target.
- Set a permeable surfaces target for public space that aligns with the city-wide 30% permeable surfaces target.
- Mandate community infrastructure.

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<sup>20</sup> Page 7 original sub.

<sup>21</sup> Page 8 original sub.

## Biodiversity

As set out in our previous submissions, we continue to strongly recommend:

- Our [Biodiversity Network paper](#) is implemented and appropriately managed to better support biodiversity through adequate financial resourcing;
- The Biodiversity Network be implemented to appropriately identify, conserve and manage biodiversity values.
- Further research is undertaken to identify remnants and corridors.
- District Strategies identify off-reserve conservation land uses that can ensure consistent conservation management is applied across tenure.
- Clear Guidelines on the protection of mature native trees.
- Bluetts Block-Piney Ridge should be designated as a Nature Reserve.
- A “green belt” that provides a buffer between ACT and NSW to define the urban edge and protect environmental values is identified.
- No expansion of Canberra’s urban footprint, including the Western Edge.
- Strengthen commitment to urban infill to reduce pressure on natural ecosystems. Set a target of 80% of new residential development within the existing urban footprint and there is no further expansion of Canberra’s urban boundary after existing identified suburbs in Molonglo, Gungahlin and West Belconnen are completed.
- Population projections be based on the population Canberra is capable of holding and therefore planning to accommodate within set timeframes. Research needs to be undertaken on projected rainfall amounts and the carrying capacity of the ACT to inform the draft Territory Plan and thus set meaningful population targets to live within our region’s means.
- The approved species list for planting in urban settings is reviewed and certain species are removed. Planting must be ecologically appropriate. Furthermore, training and professional development for TCCS staff in ecological management will increase the skills in managing, restoring and maintaining plantings.
- There is cohesive environmental stakeholder input.
- District Strategy maps be implemented to ACTmap1 28 and the maps are detailed at a neighbourhood level.
- The Territory Plan should be a principal instrument for the achievement of the actions recommended by the SOE report.
- Provide for climate mitigation measures in legislation.
- Halt the Planning System Review and Reform process. - Ensure community and tripartisan confidence and support. - Produce adequate documentation that is readable, accessible and fit for purpose. - Allow for adequate feedback and redrafting. - Until matters concerning the Planning Bill 2022 are clarified and finalised.

## Miscellaneous

Lastly, we assume ‘technical specifications’ as referenced in the *Planning Act 2023* and ‘planning specifications’ as referenced in the Design Guides are the same thing. Please correct either the *Planning Act 2023* or the design guides so that the terminology is consistent.



## Summary Recommendations

- There needs to be clearer guidance in the Territory Plan about the status of Design Guides and Technical Specifications in decision making.
- Design Guides and Technical Specifications need to be better integrated into the Territory Plan.
- Design Guides and Technical Specifications need to be formally integrated into the Territory Plan to ensure greater transparency and accountability with respect to future changes, and public scrutiny where required.
- Applicability and enforcement of each of the design guides needs to be reviewed and expanded.
- Additional resourcing for compliance and enforcement of the Territory Plan and planning outcomes is needed, given the increased subjectivity of the new planning system.