



To whom it may concern

ACT Planning System Review and Reform Project

The Commissioner for Sustainability and the Environment is an independent statutory position established by the *Commissioner for Sustainability and the Environment Act 1993*. My Office (OCSE) embraces transformative change for an environmentally sustainable future and encourages sound environmental practices and procedures to be adopted by the Territory and territory authorities as a basis for ecologically sustainable development.

As such, this submission focuses on improving environmental outcomes through reform of the ACT Planning System. Comments provided relate to the Planning Bill 2022 Consultation Draft.

Implementation of principles of good planning

It is noted that in Part 2.2 Planning Principles, the natural environment conservation principles are listed last of eight considerations. Written as such, it is inferred that these principles are a hierarchy of considerations and that environmental principles are lowest in importance. It is also unclear how these principles will be applied and the process by which they will be weighted when they are opposed to each other.

Recommendation 1: That the application of planning principles does not unduly diminish conservation of the natural environment and that the Planning Bill 2022 Consultation Draft is revised to explicitly state that the principles listed do not constitute a hierarchy.

Achieving environmental outcomes through district-level planning

District strategies provide an opportunity for a more strategic approach to ecosystem and natural resource protection in the ACT.

- a) For new urban areas, identify areas which are not suitable for development due to topography, hydrology, presence of protected or threatened native habitat or species, presence of mature native trees, presence of significant Aboriginal sites, and exclude these from development in perpetuity.
- b) For existing urban areas, identify those which support protected or threatened native species, established native trees, and mandate protection for these as part of the planning and development approval process.
- c) For each district, develop models to determine Water Sensitive Urban Design (WSUD) requirements at the catchment scale to ensure protection of downstream waterways and consider the climate and multi-hazard resilience of districts.

Recommendation 2: Revise Draft Planning Bill 2022 Consultation Draft to include points a), b) and c) above.

Diligent assessment of development applications

During the 2022 State of the Lakes and Waterways in the ACT Investigation, OCSE became aware of potential gaps in the development approvals process with challenges accessing appropriate expertise within government to assess technical elements of WSUD plans and modelling. OCSE also heard that post-construction checking of compliance with approval conditions for WSUD is variable. This is likely, in part, due to the fact that personnel with the relevant expertise for this work are distributed throughout EPSDD and not based within the Development Assessment Team. Assessment of development applications is not a core part of the role of these people, and requests for assistance with reviewing development applications compete with their other duties. Similarly, building inspectors' duties do not include checking whether aspects of the WSUD Code relating to installation of water efficient appliances have been completed. This means that possible issues with WSUD proposals for developments may not be identified during the design phase, nor following construction.

OCSE expects that there are similar issues in assessment of Development Applications relating to other technical areas.

Recommendation 3: That the ACT Government ensures sufficient resourcing is provided to the assessment of development applications to ensure good planning occurs that is faithful to the Bill's principles.

Development approval contrary to entity advice

Part 7.6 of the Draft Planning Bill, Division 7.6.1, Section 185 outlines that the chief planner can approve development contrary to entity advice, including where:

- 1) *“the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (c) in relation to the protected matter.*
- 2) *Also, the chief planner may approve a development application if—*
 - (a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and*
 - (b) the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (c) in relation to the protected matter; and*
 - (c) the chief planner is satisfied that the proposal— (i) is consistent with the offsets policy; and (ii) would provide a substantial public benefit.*

Note The chief planner's approval must be consistent with approvals required under the EPBC Act.”

This is problematic as it is a conflict of interest for the chief planner to have the power to approve a development that is likely to have a significant adverse environmental impact on a declared protected matter, even if it would provide a substantial public benefit. Such an intervention should be ministerial.

Recommendation 4: The Chief Planner should not be provided with the power to approve a development contrary to entity advice.

Use of offsets

It is noted that the text in the Planning Bill 2022 Consultation Draft Chapter 9 Offsets is identical to that in the current version of the Planning Bill (*Planning and Development Act 2007*). That is, the definition and implementation of environmental offsets in the ACT will remain the same.

The ACT Environmental Offsets Policy is currently implemented in line with national policy, with some added specifications relevant to the ACT context. Environmental offsets are required to be set aside permanently for urban development where the impact is permanent. In practice, this has proved to be a very significant challenge due to changing pressures and priorities. The overarching aim of offsetting is to achieve no net loss of biodiversity overall but in practice it is yet to be demonstrated.

In 2021, OCSE published an online background report on environmental offsets in the ACT (<https://envcomm.act.gov.au/latest-from-us/environmental-offsets-in-the-act/>). This report identified opportunities for improving offsets in the ACT, summarised as:

1. *Strategic future planning of offsets:*
 - a. Explicitly link the ACT Environmental Offsets Policy to key strategic planning for Canberra under a changing climate such as:
 - Living Infrastructure Plan: Cooling the City
 - Planning Strategy refresh
 - Territory Plan Review
 - ACT Transport Strategy 2020
 - ACT Climate Change Strategy 2019-2025
 - 2019 ACT State of the Environment Report recommendations.
 - b. Undertake strategic and early identification of offset areas available in the ACT.
 - c. Develop better collective outcomes for biodiversity across jurisdictions given different methodologies and calculators.
Ensure Land Management Agreements are updated for approved offsets and management funding is provided to the leaseholder.
2. *Monitoring and evaluation of offsets:*
 - a. Ensure adequate and accurate monitoring to establish baseline condition of offsets.
 - b. Ensure ongoing monitoring to assess management effectiveness and long-term condition.
 - c. Early onset of management actions for approved offset sites to ensure maintenance of condition, i.e. without waiting for approval of associated development.
3. *Compliance and transparency*
 - a. Provide an enforcement regime for compliance with offsets policies.
 - b. Ensure the ACT Offsets Register is comprehensive and updated regularly.

The retention of the offsets text in the draft Bill does not consider any of the established issues with offsetting. The ACT Government is waiting on the federal government to announce its changes to the *Environment Protection and Biodiversity Conservation Act 1999* (which includes environmental offsets), to ensure it aligns with national policy. However, this means that any lessons learnt during implementation of the ACT offsets policy since it commenced in 2015 will not be addressed.

Recommendation 5: That the draft Bill is revised to reflect and address identified issues with current offsets policies and their implementation.

The review of the Planning Act provides an excellent opportunity to consider the issues we face in the Territory and to ensure we build in the necessary adaptation and resilience for broad ones such as climate change.

Thank you for your consideration and please do not hesitate to contact me if you have any queries about this submission and recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Lewis', with a stylized, cursive script.

Dr Sophie Lewis
Commissioner for Sustainability and the Environment

1 June 2022