



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

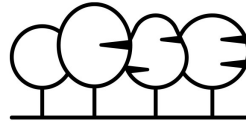
STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Mr Mark Parton MLA

Submission Cover Sheet

Inquiry into the Territory Plan and other associated documents

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Standing Committee on
Planning, Transport and City Services
Email: LCommitteePTCS@parliament.act.gov.au

Dear Standing Committee Chair and Members

Re: Supplementary Submission for the Inquiry into the Territory Plan

Further to the appearance of my staff at hearings for your Inquiry into the Territory Plan on 7 December 2023, please find below some additional comments which did not come up during the hearings.

There is a clear intent to improve sustainability, environmental and biodiversity outcomes in the new Territory Plan and its supporting documents. Historically, however, well-intended policy has not been sufficient to avoid consistent degradation of the environment in the ACT. This includes substantial reductions in the areas of native communities which are listed as Matters of National Environmental Significance (MNES) under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwth) (EPBC Act) and an increase in the number of species listed as endangered under both ACT and Commonwealth legislation. The impacts on these species and communities are indicative of broader environmental decline in the Territory. Preservation of native habitats and species is often at odds with other planning outcomes, especially human settlement.

Despite its clearly articulated intentions to improve biodiversity outcomes, it remains to be seen whether the new Territory Plan will be implemented in a way which rigorously safeguards the environment. There remains a large degree of subjectivity in how the requirements of the new planning strategy are applied in practice. In dealing with public complaints over recent years, my Office has seen that it is entirely possible to follow legal requirements for planning and development and still have poor outcomes for the environment and sustainability. Some elements of the Territory Plan designed to protect the environment are also inadequate because there are other legislative mechanisms that undermine them (see below).

The [Urban Forest \(Registration and Cancellation Criteria\) Determination 2023](#) states that ‘‘The Conservator may cancel the registration of a tree if, on advice from the territory planning authority, the registration of the tree will significantly compromise the broader strategic planning objectives of the Territory Plan.’ This would presumably include Territory Priority Projects (which include all residential developments) so could potentially include a large number of trees¹. Removal of Mature Trees is a Key Threatened Process under the *ACT Nature Conservation Act 2014*, as mature trees provide essential habitat for many native species and are impossible to directly replace. This example illustrates the fact that development is considered more important than environmental protection in the ACT, as the environmental protection afforded in legislation can be automatically overruled by inbuilt provisions in planning legislation.

¹ This is also an example of the problematic governance arrangements entrenched in the current system where the Conservator of Flora and Fauna is also the Executive Group Manager of Environment, Water and Heritage. This position is responsible to the Director General of EPSDD, who is also the Chief Planner and ultimate decision-maker for the planning authority. The lack of separation between these roles raises concerns about decisions where there is a conflict between development and environmental outcomes.

Similarly, the provision for an Environmental Significance Opinion (ESO) under Division 6.3.10 of the [Planning Act 2023](#) enables developers to adopt a ‘more streamlined’² approach to environment impact assessment³. The ACT Government’s guide to the ESO describes it as being for ‘more minor proposals. If granted, an ESO outlines that the development is not likely to have a significant environmental impact’.

My Office is concerned by the types of development (defined in the [Planning \(General\) Regulation 2023](#))⁴ which are eligible to obtain an ESO from the Conservator of Flora and Fauna, including:

- *Item 4: Proposal for construction of a water storage dam in a river corridor zone, or on a continuously flowing river in any non-urban zone.*
- *Item 16: Proposal that is likely to have a significant adverse environmental impact on any of the following:*
 - *Critically endangered, endangered, vulnerable, conservation dependent species, protected native or any other protected species*
 - *A listed migratory species*
 - *A threatened ecological community, or*
 - *A Ramsar wetland*
- *Item 17: Proposal involving the clearance of 0.5ha of native vegetation, or more than 5ha in a future urban area.*
- *Item 18: Development in a reserve, which includes wilderness areas, national parks, nature reserves, catchment areas or special purpose reserves.*

It is hard to understand why development impacting endangered and internationally protected species and sites are considered unlikely to have a significant adverse environmental impact. Under the ESO process, proposals that impact MNES are able to obtain ESO and no longer be deemed a significant development. I urge reconsideration of what constitutes a ‘significant environmental impact’ in the context of the dual crises of climate change and biodiversity loss. In this context of sustained and gradual environmental degradation, it is no longer tenable to assert that a development is minor if it removes nationally threatened species and ecological communities. This is true regardless of the size of the area affected. This policy again illustrates the primacy of development over the environment in the ACT as native vegetation is explicitly described as having less value if it is in a future urban area than if it is not.

The issue of cumulative impact was a key finding of a recent [independent review](#) of the EPBC Act. Administration of the EPBC Act focuses on project-by-project assessment and approvals, and there is no provision to recognise that while individual projects may have a minimal impact, their combined impact can result in significant long-term damage. The ACT method for environmental protection established in the planning system mirrors this approach.

The crematorium at Symonston and visitor’s centre at Ginninderry are two examples of current development proposals that will both directly and indirectly impact on ‘minor’ areas of MNES. Such development should not be permitted anywhere in Australia, and especially in the ACT where our remaining areas of endangered ecosystems are so small and fragmented. For all its stated intentions, the new planning system, including the Territory Plan, appears to offer no redress to ongoing destruction of MNES and broader degradation of our natural environment.

² https://www.planning.act.gov.au/_data/assets/pdf_file/0009/2331945/guide-environmental-significance-opinions.pdf

³ As opposed to completing a more rigorous Environmental Impact Statement, which also involves public notification.

⁴ Note that this is a continuation of the provisions of the previous Planning (General) Regulation, not a new concept in the 2023 version.

I am not assured that the new Territory Plan and other planning reforms have altered the ACT planning system sufficiently to address the issues outlined above and discussed during the hearing. At a minimum, the ACT Government should seek to protect Matters of National Environmental Significance by prohibiting all development activities that impact listed threatened species and ecological communities. This recognises that the adverse effects of development are cumulative and cannot be compensated for, including by offsetting, where Matters of National Environmental Significance are concerned.

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

Yours sincerely

Dr Sophie Lewis
Commissioner for Sustainability
and the Environment

16 January 2024