

15th June 2022

To whom it may concern

Please find below comments and recommendations around the ACT Planning Bill consultation draft.

Thank you for the opportunity to provide a submission on this critical document.

Sincerely,

PERSONAL DETAILS REDACTED BY EPSDD

Comments on the Planning Bill Consultation Draft

Chapter 2

Part 2.1

6. Key elements of Act

- a) Planning strategy
- b) District strategies
- c) Territory plan
- d) Leasing system
- e) Development assessment and approval system
- f) Ministerial powers
- g) Compliance and enforcement framework
- h) Review processes
- i) Access to information provisions

7. Object of Act

(1) The object of this Act is to support and enhance the Territory's liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that

(a) is outcomes-focussed; and

(b) promotes and facilitates ecologically sustainable development that is consistent with planning strategies and policies; and

See comments for (2) (b) below on approaches to improve cost efficient ecologically sustainable outcomes.

(c) provides a scheme for community participation

See comments for (2) (f) below on opportunities to engage citizen scientists.

(2) As part of achieving the object mentioned in subsection (1), the planning system is intended to –

(a) be based on policies, processes and practices that are easy to understand; and

(b) promote certainty of processes and consistent application of policies while at the same time providing scope for innovation in development proposals; and

Greater investment in obtaining and making available relevant spatial information early on, including through meaningful community consultation and appropriately detailed survey for environmental and heritage values, would like improve certainty around decisions made. Early consultation and community participation may aid in avoiding conflicts later in the development process.

(c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan; and

(d) engage with other laws to support the efficient delivery of other related government policy objectives; and

This Bill currently lacks appropriate integration with the Nature Conservation Act, the objects of which are highly relevant to the attainment of ecologically sustainable development.

(e) promote high standard for the built environment through an emphasis on design quality and universal design for the benefit of people with differing needs and capabilities; and

(f) provide for community participation in relation to the development of planning strategies and policies, and development assessment.

See comment on (b). Adopting information gathered by citizen scientists, particularly around environmental values, could also provide an opportunity for the participation of community members in informing planning decisions.

(3) The following matters are important in achieving the object of the Act:

(a) the knowledge, culture and tradition of the traditional custodians of the land, the Ngunnawal people;

This matter receives no further reference throughout the remainder of this Bill. As such, it is not clear how this matter will be appropriately considered in the planning processes under the reformed system.

(b) planning for population growth and evolution of the Territory while protecting those aspects that make the Territory an attractive place to live;

Planning for population growth, combined with the impacts of climate change, should explicitly consider implications for energy, food and water security.

(c) the ACT's biodiversity and landscape setting, including the integration of natural, built, cultural and heritage elements;

An appropriate understanding of these values, including where they lie in the landscape, is required to achieve this outcome and is currently lacking on ACTmapi. Likely this is reason as to why they are poorly provided for in the current planning system. Some better integration with the Nature Conservation Strategy (under the Nature Conservation Act), enabling of citizen scientists, more accessible data on both environmental and cultural values, improved frameworks around engagement of Ngunnawal traditional custodians, and a clear and streamlined approach to integrating data/information may benefit delivery of outcomes consistent with this object.

(d) high-quality, people focused and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;

Recognition should be given to the notion that people-focused and design-led built outcomes are likely to be at odds with ecologically sustainable and evidence-based objectives in many instances.

(e) a sustainable and resilient environment that is planned, designed and developed for a net-zero greenhouse gas future using integrated mitigation and adaptation best practices.

This point should more explicitly consider the impacts of climate change (the degrees of which are 'locked in' regardless of future greenhouse emissions scenarios) on people, business and ecosystems. The Bill should provide for explicit consideration of climate change impacts and adaptation requirements/considerations as part of any planning decision going forward.

8. Meaning of *ecologically sustainable development*

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

(a) the protection of ecological processes and natural systems at local, Territory and broader landscape levels;

(b) the achievement of economic development;

This should read "achievement of ecologically sustainable economic development". Economic development, *per se*, is often in conflict with achieving the objectives of ecological sustainability. As such, the approach to achieving economic development should be made explicit here.

(c) the maintenance and enhancement of cultural, physical and social wellbeing of people and communities;

Add "through the protection and enhancement of ecosystem services"

(d) the precautionary principle;

(e) the intergenerational equity principle.

(2) In this section:

The items below should be rearranged to reflect the order they are presented in in subsection (1).

achievement of economic development includes achieving a diverse, efficient, resilient and strong Territory economy that allows communities to meet their needs without compromising the ability of future generations to meet their needs.

maintenance and enhancement of cultural, physical and social wellbeing of people and communities includes

- (a) creating and maintaining well-serviced, healthy, prosperous, liveable and resilient communities with affordable, efficient, safe and sustainable development; and
- (b) conserving or enhancing places of special aesthetic, architectural, cultural, heritage, historic, scientific, social or spiritual significance; and
- (c) providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction; and
- (d) accounting for the potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development and design.

protection of ecological processes and natural systems includes —

- (a) conserving, enhancing or restoring the life-supporting capacities of air, ecosystems, soil and water for present and future generations; and

Consider replacing 'ecosystem' with 'species' in this list. Technically, the other listed elements are all components of an ecosystem.

- (b) conserving biological diversity and ecological integrity; and

Consider adding 'including through maintaining and restoring functional habitat connectivity'; to this statement.

- (c) appropriately valuing and pricing environmental resources.

Pricing environmental resources may be difficult to achieve; and is inconsistent with the move away from an economic values system towards one based upon the Wellbeing Framework delivered by CMTEDD. Such an approach, if pursued, would need to be undertaken in consultation with traditional custodians, and the broader community, to ascertain the true 'price' of a thing or place. The term value is more open to a non-monetary approach.

the inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

the precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Part 2.2

9. Principles of good planning

(1) In developing planning strategies, plans and policies, consideration must be given to the object of the Act and the following principles of good planning:

- (a) activation and liveability principles;
- (b) high quality design principles;
- (c) integrated delivery principles;
- (d) investment facilitation principles;
- (e) long-term focus principles;

- (f) urban regeneration principles;
- (g) sustainability and resilience principles;
- (h) natural environment conservation principles.

(2) In this Act:

activation and liveability principles means the following:

- (a) planning and design should support diverse economic and social activities, including through promoting different but compatible uses for buildings and other areas;
- (b) urban areas should include a range of high-quality housing options with an emphasis on living affordability;
- (c) urban areas should be designed to promote active travel and convenient and efficient use of public transport;
- (d) districts should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;
- (e) policies should support and enhance the quality of life and wellbeing of residents.

high-quality design principles means the following:

- (a) development should be focussed on people and designed to—
 - (i) reflect local setting and context; and
 - (ii) have a distinctive identity that responds to the existing character of its locality; and
 - (iii) effectively integrate built form, infrastructure and public spaces;
- (b) public spaces should be designed to be used, appropriately landscaped and vegetated, and should be designed to contribute to **a resilient and biodiverse** ~~the~~ urban forest;
- (c) built form and public spaces should be designed to be inclusive and accessible to people with differing needs and capabilities, including through the serious consideration of universal design practices;
- (d) developments should be planned and designed to be well-connected and integrated with **the surrounding development environment** in ways that facilitate the safe, secure and effective movement of people **and wildlife** within and through them.

Noting that the suggested inclusion of wildlife (non-human animals) here is in contrast with the first point around development being 'people focused'. See earlier comment around the mismatch between being people focused (specifically) and being able to meet the objectives of ecologically sustainable development. A focus on the environment, and how it can be protected whilst also improving wellbeing outcomes for people, is necessary to address the extinction crisis.

integrated delivery principles means the following:

- (a) policies relating to planning, including those arising outside the planning system, should be coordinated to efficiently and effectively achieve planning outcomes;

This should include relevant objectives within the Nature Conservation Strategy and Act.

- (b) planning, design and development should promote integrated transport connections and equitable access to services and amenities;
- (c) infrastructure, public spaces and facilities should be planned to meet future needs and designed to be integrated with related development;
- (d) built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with surrounding public spaces.

Add (e) urban planning, design and development should promote the conservation and enhancement of urban biodiversity and water sensitive urban design principles.

Add (f) planning, design and development should promote and enhance the connection of traditional custodians to Country, and Ngunnawal cultural values.

investment facilitation principles means the following:

- (a) planning and design should be undertaken with a view to strengthening the economic prosperity of the Territory and contributing to diversification of the economy, economic security and growth;
- (b) planning outcomes should be achieved by facilitating coordinated approaches that promote public and private investment towards common goals.

long-term focus principles means the following:

- (a) policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations;

More information and guidance will likely be required by planners and development proponents in order to enable delivery against this principal; what does 'ecologically sound' look like and how would one go about delivering on it? This may be addressed by the development of biodiversity focused Codes or Guidelines under the Territory Plan, but any such approach should be supported by this Act.

A monitoring and reporting program will also be required to ascertain if long-term focus principles are being met. Appropriately designed and resourced programs will be necessary to ensure this outcome, along with consideration of what compliance may be required where development outcomes do not achieve long-term benefits (see also below).

- (b) policy frameworks should be able to respond to emerging challenges and cumulative impacts identified by monitoring, benchmarking and evaluation programs.

As for above, delivery on this will require a system capable of tracking and assessing changes over time; in addition to a dedicated investment in collating, storing and analysing the necessary quantitative monitoring data. Such analysis should then be made available to the public.

Add (c) policy frameworks should explicitly consider the impacts of climate change on people, businesses and the environment (not just in regards to zero-emissions and being carbon neutral, but also in reference to the changes to the climate which are 'locked in' based on emissions to date). A similar approach will be required for ongoing human population growth.

natural environment conservation principles means the following:

(a) planning and design should promote healthy and resilient ecosystems, by avoiding or minimising loss of habitat, **functional connectivity**, and other key threatening processes for biodiversity;

(b) policies, planning and design should integrate and promote—

(i) nature-based solutions to climate change and water security; and

(ii) the **identification**, valuation and maintenance of the ecosystem services and amenity provided by a healthy natural environment;

The first point under here should speak to (i) the role of a healthy and connected natural environment in conserving natural biodiversity and ecosystem function. A second point (ii) should speak to the connection of the Ngunnawal people with country. The final point should more strongly acknowledge role of the natural environment in providing ecosystem services to support community wellbeing and resilience; these ecosystem services include providing nature-based solutions to climate change and water security. The current two items are not separate concepts.

Consider making reference to the Nature Conservation Strategy or Act [here](#).

(c) biodiversity connectivity and habitat values should be integrated across urban areas, including through appropriate planning for, and landscaping of, urban open space and travel corridors.

Appropriate ongoing management should also be acknowledged here. Water Sensitive Urban Design features are an example of something that may have been planned for without a strong appreciation or sufficient resourcing of the need for ongoing active management to retain functionality.

sustainability and resilience principles means the following:

(a) places should be planned, designed and developed to be sustainable and resilient;

Sustainable in terms of what, and resilient against which threats? More required here to improve clarity of intent.

(b) effort should be focussed on adapting to the effects of climate change, including through mitigating the effects of urban heat **and natural disasters**, managing water supplies and achieving **biodiverse and** energy efficient urban environments;

Add risks associated with wildfire and increased storm and flooding events. Also add recognition of the diversity of species, and of genetic material within species, being critical to the adaptive capacity of natural systems.

(c) policies and practices should promote the use, reuse and renewal of sustainable resources, and minimise use of resources.

urban regeneration principles means the following:

(a) growth should be mostly within the existing urban footprint, or in areas close to the existing urban footprint, while maintaining environmental values;

This needs to consider an adequate list of values in order to achieve ecological sustainability in the long-term. The current focus on protecting existing populations of predominantly EPBC listed matters *in situ* does not address the threatening processes which are driving these and other species towards extinction. Whilst mature trees are now protected, for example, there is little to protect the

next generation of mature trees coming through. There are also few provisions for the protection of natural grassland habitat and connectivity corridors or for aquatic and riparian environments, which are particularly heavily impacted by urban development in an effort to manage increased urban run-off and flood risks.

(b) urban regeneration should seek to make the best use (as appropriate) of underlying or latent potential associated with land, buildings and infrastructure.

The community should be engaged in meaningful urban regeneration wherever possible.

10. Principles of good consultation – no comment

Part 2.3

11. Meaning of *development* and *exempt development* – no comment

12. Meaning of *use* – no comment

Chapter 3 Territory planning authority and chief planner

Part 3.1

13. Establishment of authority

Outside of these statutory positions, the Chief Planner being senior to the Conservator of Flora and Fauna within reporting lines of the EPSDD organisational structure may present opportunities for a conflict of interest.

14. Authority represents the Territory

Where an individual is the Chief Planner, and the Chief Planner is the Territory Planning Authority (a corporation with the function of the authority to represent, and bind the Territory; with the same immunities) it may leave the system open to an unbalanced distribution of power and/or authority around planning functions (detailed in Part 3.2; Section 15).

Part 3.3

17. Ministerial directions to authority

This provision should include proviso's that the Ministers' direction is not inconsistent with this Act, or any other Territory or Commonwealth legislation. It should also consider the advice of other relevant authorities (e.g. Conservator of Flora and Fauna) before providing a direction to the planning authority.

20. Reports by authority to Minister

No information is provided as to what this report may contain, and hence it is not possible to understand this section or provide meaningful comment. More information should be provided in future drafts of this Bill.

21. Authority's role in cohesive urban renewal and suburban land development

The planning authority should also consult with the Conservator of Flora and Fauna in encouraging cohesive planning and development of land.

22. Delegations by authority

(2) The territory planning authority may also delegate the function of granting leases on behalf of the executive to the following:

- (a) the city renewal authority
- (b) the suburban land agency

Consideration should be given to how Land Management Agreements are managed under this structure, including the responsibilities within EPSDD for preparing LMAs, making appropriate assessments and ensuring compliance.

Part 3.4

No comments

Part 3.5

I don't understand the relevance of Section 33, otherwise no comments.

Chapter 4

Part 4.1

35. Consideration of planning strategy

This section has two part (1)'s.

It is not clear what the justification is for the Planning Strategy not being a relevant consideration for the listed chapters 6-8. More information should be provided in future iterations of this draft Bill.

Part 4.2 Estate Development Plans

39. Estate development plan

(3) An estate development plan for the estate may include the following:

- (a) design and construction requirements for roads;
- (b) design and construction requirements for infrastructure works and landscaping;
- (c) a requirement that stated areas be used for stated purposes;
- (d) a tree management plan;
- (e) design and construction requirements for reticulated services;
- (f) design and construction requirements for works on proposed public land;
- (g) a provision, which is consistent with the territory plan, that is proposed to apply to the ongoing development of a block in the estate that –
 - (i) relates to the subject matter addressed by an existing mandatory provision applying to the block
 - (ii) does not permit the development of the block in a way that would not be permitted by the existing mandatory provision

Add to this list:

(h) landscape design and ongoing management requirements for the protection of connected native wildlife habitat

(i) design and construction requirements for climate change adaptation and mitigation measures

(j) a waterway management plan; including design and construction requirements for water sensitive urban design

(k) a grasslands management plan (where proposed development areas occur in natural grasslands)

(l) a cultural values management plan; designed in consultation with traditional custodians

Chapter 5 Territory Plan

42. Object of the territory plan

The object of the territory plan is to ensure, in a matter not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work, and have their recreation.

Note the words 'sustainable' and 'compact' are absent here in regards to the aspirations for the urban areas of the ACT. Use of the word 'people' may be at odds with achieving outcomes which are ecologically sustainable (and provide appropriate habitat) for non-human (i.e. wildlife) species.

55. Proponent-initiated amendment – consideration of application

(2) In considering whether to accept the application, the territory planning authority must have regard to each of the following:

...

Add (a) the principles of good planning (as outlined in this document).

Part 5.4

82. (1) Each of the following territory plan amendments is a minor plan amendment for which no consultation is needed before it is made under section 83:

(a) an amendment (an error amendment) that –

(i) would not adversely affect anyone's rights if approved;

(ii) has as its only object the correction of a formal error in the plan

Add (iii) would not adversely affect ecological sustainability outcomes; (iv) would not adversely affect traditional custodian cultural values

86. Rezoning – development encroaching on adjoining territory land

(2) However, the territory planning authority must not amend the territory plan under section 83 to change the boundary of the zone if the adjoining territory land is designated as a future urban area under the territory plan

It would be good if there was similar zoning/overlay applied to areas identified as important ecological habitat or corridors (in addition to areas of 'future urban'). This would provide some certainty as to where biodiversity-focused guidelines should be applied, and where instances such as

minor amendments into Territory land should be considered in terms of impacts of biodiversity conservation.

Chapter 6 Significant development

Part 6.2

94. Members of design review panel

(1) Consider including a position for someone to provide ecological sustainability advice into land planning reviews. Consider also adding a representative to guide development which is consistent with the values of traditional custodians.

(3) add 'ecological sustainability' and 'traditional custodian knowledge' to the list of appropriate types of expertise which might be considered for inclusion on the design panel.

Part 6.3

99. Overview of environmental impact assessment

(6) This section is intended only as a guide to readers – This wording suggests that there is no expectation with compliance or alignment with the listed principles. If this is true, it should be stated more explicitly. If the reverse is true, this should also be made clear.

100. Overview of EIS process

(1) If this Act requires an EIS for a development proposal, the proponent of the proposal must apply to the territory planning authority for an EIS scoping document to identify the matters to be addressed in the EIS.

(2) The territory planning authority must prepare and give a scoping document to the proponent.

Preparation of EIS scoping documents by (or in consultation with) the Conservator of Flora and Fauna would likely yield helpful insight, including recognition and assessment of site-specific considerations. This would aid any subsequent ecological consultant to collect and provide helpful information, consistent with established methods, and in a format where resulting information can add to Territory wide datasets. If this capacity is not already in place, it should be considered to improve early assessment and guidance around development applications to avoid setbacks for developers and the natural environment in later stages of development.

101 Meaning of significant adverse environmental impact

Whilst I do not disagree with the sentiment here, it is not clear how a 'significant' impact would be established. Assessments of 'significant' impacts would require consideration of the kind, size, frequency, intensity, scope and length of time of the impact – and each of these would likely need to be quantified against a pre-determined threshold such that an assessment could be made based on the projected impact vs. the sensitivity of the identified values to such an impact.

Calculator instruments are already in place to calculate Offset requirements for EPBC listed matters, however a similar process is required to protect other critical matters and processes (e.g. functional habitat connectivity, ground water recharge, intact source-sink population dynamics, and soil creation). I think it will be hard to determine what is likely to have a 'significant' impact based on the current description, and so more work in this area is required. A set of guidelines, identifying

tolerable (quantified) levels of various disturbance events on various matters of environmental importance, would assist with clarity, consistency and transparency in this regard.

103 EIS – declaration by Minister

(2) See comments above around the capacity for various authorities to determine when a 'significant' impact is likely to occur.

106 Application for EIS scoping document

(2) See comments above around the preference for the Conservator of Flora and Fauna to prepare, or be engaged in preparing, the scoping documents for an EIS (to ensure alignment with priority conservation values relevant to the proposal, and ensure adequate and helpful information is collected and considered early in the development application process). This may be addressed in (3), but not explicitly. Data collected should be added to a public facing platform.

107 Contents of scoping document

(1) The matters identified in the scoping document for a development proposal must including any minimum content for scoping documents prescribed by regulation.

(3) In this section: *consultant* means a person who satisfies the criteria prescribed by regulation.

Regulations need to be provided to the public to enable meaningful review and comment on this (and other) sections.

111 Public notification of draft EIS

(a) (i) that the draft EIS is available for public inspection and for purchase at stated places and times

It is not clear why the EIS would be available for 'purchase'?

Add (e) any data collected as part of the EIS should be made available to feed into Territory wide spatial datasets to improve accessibility and inform future decision making (e.g. updates to the ACT Vegetation Map or Wildlife Atlas).

116 Public notification of revised EIS

(2) Details should be provided to describe how this approach would avoid scope for proponents to submit two EIS documents (a draft, followed by a substantially different, but potentially still inadequate revised EIS) without undergoing a minimum 20-day public consultation/review period.

118 Authority consideration of EIS

(2) The territory planning authority must –

(a) if satisfied that the revised EIS meets the requirements mentioned in section 115 (4) accept the revised EIS

(3) In making a decision under this division, the territory planning authority must consult each entity that made a submission to the authority about the scoping document for the draft EIS under section 106 (3).

Ensuring adequate capacity to engage in EIS scoping documents by the Conservator of Flora and Fauna would likely aid in ensuring thorough expert input to this as an evidence-based process.

121 Cost recovery

The territory planning authority may recover from the proponent of a development proposal to which an EIS relates the direct and indirect costs incurred by the authority –

- (a) in preparing an EIS assessment report for the proposal under section 123; and
- (b) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters...

This cost recovery process may represent a means of funding additional expertise within the relevant areas of EPSDD (and ACT Health) to improve outcomes consistent with the principles of good planning.

128 When EIS expires

(2) Adopting an EIS undertaken in accordance with part 8 of the EPBC Act may be problematic for the ACT should the Territory take the much needed step towards protecting critical matters and ecological processes beyond those listed under the EPBC Act (e.g. ecological values associated with urban aquatic and riparian ecosystems, ecological functions such as hydrology and habitat connectivity, protection of rare or otherwise significant native species which are not listed as vulnerable under the EPBC Act). If these improvements are being considered, suggest removing these references to the EPBC Act and instead referencing relevant ACT legislation (e.g. the Nature Conservation Act).

135 Environment significance opinion

(2) this list should include the Conservator of Flora and Fauna as an entity to be consulted.

162 Application for development approval

(3) A regulation may exempt a development application from a requirement under this section.

Meaningful public comment on this section is not possible without regulations also being available for inspection/review.

Chapter 9 Offsets

226 The territory planning authority must take reasonable steps to implement the offsets policy.

This is insufficient. The ACT needs a strong offsets policy, based on protecting the natural environment in a way which is consistent with ACT legislation and strategic objectives whilst also being consistent with national legislation, including the EPBC Act where relevant. From here, the territory planning authority should be required to implement the offsets policy, in full and in alignment with a formal offsets management plan, beyond just 'taking reasonable steps'. The same is true for section 243 in regards to the land manager taking 'reasonable steps'.

Offsets are intended to result in no net loss of natural values. For is very difficult to achieve in the face of urban development, and hence offsets should be taken seriously to protect natural values, including ecosystem services.

Chapter 10 Leases and licences

342 (3) A land management agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.

Changes to land management agreements should not be allowed to be varied by a third party without first consulting the original signatories to the agreement (i.e. the rural landholder and the conservator of flora and fauna).

Schedules

Schedule 4.1: definition of 'natural environment' should include the word 'functional' to allow for the species-specific ways in which different organisms persist and interact with the natural environment.

Schedule 4.2: add 'provide habitat for flora and fauna' to the management objectives of urban open space and national parks, nature reserves and wilderness areas. Reconsider the order of objectives regarding areas designated as 'lake' (given 387 (4)), to enable provision of habitat for flora and fauna to be ranked above other uses (given this objective is rarely incompatible with achieving other objectives listed, but the reverse is not true).

Schedule 5: reconsider equal penalty units for all offenses under this Act. This implies insufficient consideration has been given to the potential implications for committing the offence, and the ways in which compliance may be undertaken.