

# Planning and Development (Protected Matters) Declaration 2015 (No 1)

## Disallowable instrument DI2015-62

made under the

Planning and Development Act 2007, s 111A (Meaning of protected matter - Act)

## EXPLANATORY STATEMENT

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### Background

Chapter 6A of the *Planning and Development Act 2007* (the Act) deals with “offsets”, the making of offsets policy and guidelines and related matters. This covers various matters including for example the following.

“Offset” is defined in section 111C of the Act as an “environmental compensation for the likely impact” of a development that is “likely to have a significant adverse environmental impact”. “Significant adverse environmental impact” is defined in section 124A of the Act. “Development” is defined in section 7 of the Act. Development requires development approval under the Act under Chapter 7 unless exempt from requiring approval under s 134 of the Act, development table of the Territory Plan or the Planning and Development Regulation 2008 (s133).

Division 7.3.6A of Chapter 7 sets out matters relating to the making and implementation of an offset condition on a development approval. Such a condition may be imposed under section 165(3)(ha) of the Act. Section 165B defines a development approval offset condition as a condition “identifying a protected matter that is likely to suffer a significant adverse environmental impact from the Development” and requiring an offset to “compensate for the likely impact of the development on the protected matter. for the landholder to implement an offset.”

This instrument is about declaring certain matters to be “protected matters” for the purposes of offsets and offsets policy in Chapter 6A. In particular, section 111E of the Act defines “offsets policy” as a policy on “how environmental compensation may be made to offset the impact of developments that have a significant adverse environmental impact on *protected matters* [emphasis added]”. Section 111E also provides that the offsets policy may set out “suitable forms for offsets”. The Minister (administering the Nature Conservation Act) is responsible for the making, review and amendment of offsets policy (ss 111F-111J).

Section 111A of the Act defines “Protected matter” as a matter declared by the Minister to be a protected matter under s111A(2) or a matter protected by the Commonwealth. The concept of “protected by the Commonwealth” is defined in

s111B as a matter protected by the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) chapter 2 (Protecting the environment), part 3 (Requirements for environmental approvals). These protections include world heritage properties, national heritage places, wetlands of international importance (Ramsar wetlands), threatened species and threatened ecological communities, migratory species protected under international agreements; nuclear actions and water resources in relation to coal seam gas and large coal mining development (refer to note under section 111B).

A matter that is a protected matter under section 111A is one which must be covered by an offsets policy (s111E) made under ss 111F, 111K consistent with related sections. The policy essentially determines what might constitute compensation for impacts on a protected matter by a proposed development or other activity and how they might be made. Section 111S provides that an offset must be consistent with offsets policy.

There are other provisions relating to offsets, for example the following. The Minister may prepare guidelines about the implementation of offsets policy consistent with ss111N-111R of the Act. Under s111T of the Act the Minister may determine how the value of an offset must be calculated. Section 111U provides that the offset may take a form prescribed in the regulation or another form considered appropriate by the planning and land authority. The planning and land authority must keep a register of each offset under s111V. The offsets register is included in the public register under s28 of the Act along with development applications, approvals and other matters.

### **Declaration of protected matters**

The Initial Offsets Policy, made under s111F of the Act indicates the intent for offsets to apply to threatened species listed under the *Nature Conservation Act 2014* or its predecessor the *Nature Conservation Act 1980*. This is necessary and important because species that are listed have been assessed as being threatened with extinction unless action is taken to address the threatening processes which are contributing to their decline.

This declaration declares specified ACT listed threatened species to be protected matters for the purposes of section 111A of the Act. Many of the species listed as threatened in the ACT are already “protected matters” under ss 111A(1)(a), 111B. Because they are covered by the EPBC Act, this declaration only covers those species that are not so covered. In effect this declaration ensures that all threatened species listed under the *Nature Conservation Act 2014* or its predecessor the *Nature Conservation Act 1980* are “protected matters” either as a result of this declaration or by virtue of being covered by the EPBC Act consistent with ss 111A(1)(a), 111B of the Act.