

Planning (Protected Matters) Declaration 2023

Disallowable instrument DI2023-268

made under the

Planning Act 2023, section 221 (Meaning of *protected matter*)

EXPLANATORY STATEMENT

Background

Chapter 9 of the *Planning Act 2023* (the *Act*) deals with offsets, the making of offsets policy and guidelines and related matters.

Offset is defined in section 223 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 104 of the Act. *Development* is defined in section 14 of the Act. Development requires development approval under the Act, chapter 7, unless exempt from requiring approval under section 145 of the Act, the development table of the Territory Plan or the *Planning (Exempt Development) Regulation 2023*.

Part 9.4 of chapter 9 sets out matters relating to the making and implementation of an offset condition on a development approval.

This instrument declares certain matters to be *protected matters* for the purposes of offsets and offsets policy in chapter 9. In particular, section 224 (a) 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 224 (b) also provides that the offsets policy may set out “suitable forms for offsets”. The Minister administering the *Nature Conservation Act 2014* is responsible for the making, review and amendment of offsets policy (section 225).

Section 221 of the Act defines *protected matter* as a matter declared by the Minister to be a protected matter under section 221 (2) or a matter protected by the Commonwealth or a native species or ecological community protected under the *Nature Conservation Act 2014*. The concept of *protected by the Commonwealth* is defined in section 222 (1) as a matter protected by the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (the *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 222 (2)).

A matter that is a protected matter under section 221 is one which must be covered by an offsets policy (section 224) made under section 226 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 239 provides that an offset must be consistent with offsets policy.

Declaration of protected matters

The Initial Offsets Policy, made under section 226 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* (repealed). 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 221 of the Act. Many of the species listed as threatened in the ACT are already ***protected matters*** under section 221 (1). 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* (repealed) are protected matters either as a result of this declaration or by virtue of being covered by the EPBC Act consistent with section 221 (1) of the Act.