

Preparation of an application for scoping

Preparation of an application for an
Environmental Significance Opinion



A GUIDE



ACT Planning &
Land Authority

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The purpose of this guide

The *Planning and Development Act 2007* (the Act) and *Planning and Development Regulation 2008* provide the statutory framework for the preparation of an environmental impact statement (EIS) in the ACT.

This guide will help proponents understand the basic concepts related to environmental impact. This information will help proponents prepare an **application for scoping** document under the Act, or an application for an **environmental significance opinion (ESO)** under section 138AA of the Act. The information in this guide will also help proponents understand the nature of the information required to be included in any subsequent EIS.

Background to environmental impact assessment

Environmental impact assessment is the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant impacts of development proposals prior to major decisions being taken and commitments made (IAIA 1999). The aim of the assessment is to ensure decision-makers consider environmental impacts before deciding whether to proceed with developments.

An EIS is a report that documents the information required to evaluate the environmental impact of a project. It informs both decision makers and the community of the measures, or reasonable alternatives, that would avoid or minimise adverse impacts or enhance the quality of the environment.

The purpose of undertaking and documenting the assessment in an EIS is to:

- identify and assess the impacts of a proposed activity on the environment
- consider feasible alternatives to the project
- assess the adequacy of proposed measures to avoid or minimise those impacts and develop additional measures, as necessary
- assess the potential adverse and beneficial environmental, economic, and social impacts of the project
- obtain input from the community and stakeholders about the project impacts
- assess management, monitoring, planning and other measures proposed to avoid, minimise, mitigate or offset any adverse environmental impacts of the project, and
- inform approval (or not) of any subsequent development application.

The EIS should inform the decision maker as to how:

- consistent the project is with relevant legislation and policies
- the project will meet relevant environmental protection performance standards
- judgments about the significance of impacts have been made, including performance against thresholds, standards or comparative projects
- The project will avoid, minimise, mitigate, offset or manage significant impacts.

What is an environmental impact

An environmental impact is a positive or negative effect of a development on a given area and/or resources identified as important and significant.

All projects are likely to have some impact on the environment. Most impacts can be dealt with through design, and can be assessed in the subsequent development application through the requirements of the relevant codes within the Territory Plan and the requirements of the Act. The environmental impact assessment process is designed to address potentially significant impacts.

There are generally two sources of significant impact:

1. Those that arise from the type of development – generally major infrastructure projects – wherever they are situated because of their known impacts such as emissions, material use or construction methods.
2. Those that arise from the location of the development, for example where the significance of the impact of the project is context dependent; for example, because of its location within a catchment or because of proximity to threatened species' habitat.

The impacts that arise from these are often different and require assessment of different characteristics and values of the environment. There will, however, be projects that require assessment of both sources, i.e. because of the type of development and its location.

What to consider when assessing the natural conservation value of a development location

- Is the location important in maintaining existing processes or natural systems of the ACT? For example:
 - places of importance to maintaining hydrological and nutrient cycles (such as sub-alpine bogs)
 - places of importance to a specie's life cycle processes of breeding, feeding, nursery and habitat (e.g. Bogong moth aestivation site or grey-headed flying fox roosting site)
 - species movements/migration routes and corridors, drought refuges (such as Murrumbidgee corridor and honeyeater migration).
- Is the location important in exhibiting unusual richness of diversity of flora, fauna or landscapes?
 - relates to both abundance and variety of species (e.g. compared to all other Box – Gum woodland sites surveyed in the region Mulligans Flat with over 250 woodland plant species maintains an unusually high woodland plant diversity).
- Is the location important in its possession of uncommon, rare or endangered flora, fauna, communities, natural landscapes or phenomena?
- Is the location important in demonstrating the principal characteristics of the range of landscapes, environments or ecosystems, the attributes of which identify them as being characteristic of their class?
 - Is the place one of the best examples of a type of landform, vegetation community or other natural feature?
- Is the location important for information contributing to a wider understanding of the ACT's natural history, by virtue of its use as a research site, teaching site, type locality, reference or benchmark site?

Purpose of scoping an Environmental Impact Statement

Screening is generally considered to be the first step in an EIS process. In the ACT the screening of a proposal – i.e. whether it will be subject to an EIS – is established through Schedules 4.2 and 4.3 of the Act and the relevant development tables in the Territory Plan. Some judgement is required about developments that trigger an EIS under Schedule 4.3 because these are context dependent.

Through the requirements of the Act and the Regulation, the scoping document establishes the breadth, or scope, of the assessment based on the particular circumstances and attributes of a proposed development. It is the process of establishing the assessment requirements, by gathering and analysing information that the ACT Planning and Land Authority (ACTPLA) will use to develop the scoping document for an assessment of a proposed project.

The scoping document sets out the specific requirements in accordance with the Act and Regulations for the assessment of the level of impact and the requirements to address ways to minimise or mitigate impacts. It documents the complexity of the assessment, identifies key stakeholders to be consulted during the assessment process, and guides the proponent on the EIS requirements. The final scoping document is referred to as “terms of reference” in other jurisdictions.

Scoping ensures the EIS is focussed on those matters likely to cause potentially significant environmental impacts including the:

- degree to which the impacts of the action are known and understood, and therefore can be predicted
- total significant impact that can be attributed to that development over the entire geographic area potentially impacted
- total significant impact which can be attributed to that development over time
- level of confidence in predicting impacts and the adequacy of knowledge.
- The process of scoping is designed to:
 - eliminate unnecessary information collection
 - ensure focus on key issues by identifying issues that require detailed investigation
 - avoid inventory format which misses issues
 - define the spatial, temporal and other boundaries of the assessment
 - improve the quality of decision-making.

Environmental impact statements that are not well scoped can result in:

- extensive and unnecessary information collection with a decrease in efficiency and effectiveness
- a lack of identification of/or focus on key impacts
- slower assessment process
- increased costs.

Determining significance using a preliminary risk assessment

A risk-based approach to scoping is used in the ACT. ACTPLA evaluates the significance of the impact based on best available information and considers the likelihood or probability of impact. An application for a scoping document must be accompanied by a preliminary risk assessment. The quality of the preliminary risk assessment will be a key factor in achieving a well targeted, relevant scoping document against which an EIS is prepared.

The following provides information on the key elements required to prepare a preliminary risk assessment. The matrix methodology outlined below is consistent with AS/NZS ISO 14004:2004 (environmental management systems) and AS/NZS ISO 13000:2009 (risk management). A proponent may choose a different or modified methodology and criteria, provided it is consistent with these ISOs and the criteria used that is specific to the project is clearly explained in the documentation.

Identifying possible impacts

Identifying possible impacts requires the consideration of all of the likely activities that will be involved in the construction, operation and decommissioning of the project with further consideration given to all the impacts that these activities could lead to.

What is a significant adverse environmental impact?

Central to the assessment process is the consideration of whether the project is likely to cause a significant adverse environmental impact. This is irrespective of the scale, or type, of development. The interpretation of significance is context dependent and relative to multiple elements (e.g. spatial, temporal, cultural, ecological, social, economic, institutional). Section 124A of the Act provides guidance on how the significance of an adverse impact is to be determined for the purposes of the Act. Section 124A states:

An adverse environmental impact is significant if—

- the environmental function, system, value or entity that might be adversely impacted by the development proposed is significant or
- the cumulative or incremental effect of the development proposed might contribute to a substantial adverse impact on an environmental function, system, value or entity.

In deciding whether an adverse environmental impact is significant, the Minister must consider the following:

- the kind, size, frequency, intensity, scope and length of time of the impact
- the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

The consideration of 'significance' during the scoping process is used to determine the level of potential impact and assists to determine the final content of the scoping document and therefore the draft EIS.

Evaluating likelihood

The likelihood of an impact occurring is best described in terms of probability. Overlaying this is the need to recognise the uncertainty that may be associated with potential impacts, particularly during the preliminary risk assessment process. Best practice dictates that where there is scientific uncertainty, a cautious approach is warranted which will in turn identify a higher level of risk.

Each identifiable potential impact can be assigned a likelihood between 'remote' and 'almost certain'. In simplifying the possible impacts for the purposes of a risk assessment an element of subjectivity is introduced.

Table 1 is an example of the criteria that **could** be used to determine the likelihood of an impact. The criteria used for each column of information must be included in the preliminary risk assessment and must be appropriate to the project for which the preliminary risk assessment is being prepared.

Table 1 - Evaluating likelihood

Likelihood	Description	Probability	Community attitude
Remote	May occur in exceptional circumstances	<1%	Few people interested
Unlikely	Not expected to occur in most circumstances	1-20%	Some people affected
Possible	May occur	21-49%	Many people affected
Likely	Probably will occur	50-85%	Most people affected
Almost Certain	Expected to occur	>85%	Almost everyone affected

Evaluating consequence

The consequences of an impact require a degree of subjective assessment as the likely consequences of an impact may consist of several elements. For the purpose of a preliminary risk assessment the elements that **could** be considered are illustrated in the following tables, Table 2 and Table 3. Several of the elements are interrelated and a consequence is considered to be major if any one of the elements has a predicted major impact. A subjective decision is needed for each possible impact as to the level of consequence taking a balanced view of the impact against each of the elements.

The consequence of an impact used in the risk assessment needs to be the reasonably foreseeable consequence. If there is a large amount of uncertainty then the consequence may be worse. The criteria for each element (both general and project specific) are a matter for the proponent and must be provided with the preliminary risk assessment.

Table 2 – Evaluating consequence (general elements)

Magnitude	Spatial	The area over which the impact will occur, from square metres to square kilometres.
	Intensity	The level of impact within the spatial area, from minor disruption to total destruction. A low intensity impact over a large area could be worse than a high intensity impact in a small area, depending on upon other elements.
Temporal	Duration	The length of time of the impact, from a single event to a permanent change.
	Timing	Short term events may create significant impacts if they occur often. They may also coincide with particularly sensitive times in the receiving environment such as breeding cycles.
Ecological	Values	The quality of the receiving environment, generally identified through the declaration of conservation areas, identification of protected species and other features of natural conservation value.
	Sensitivity	The capacity of the receiving environment to regenerate or adapt to the impact (resilience). The sensitivity of an environment to a potential impact will require informed judgement.
Social	Number of people	The number of people directly or indirectly affected through lost opportunities for enjoyment or other values such as equity or existence values.
	Heritage	The impact on known or possible items of heritage or cultural value.
	Political	The measure of the likely political implications or level of community interest.
Economic		The financial cost of the impact through lost productivity or the cost of remediation.

Table 3 – Evaluating consequence (project specific elements) (Criteria used are examples)

Consequence	Minimal	Minor	Moderate	Major	Catastrophic
Magnitude					
Spatial	A single pool	A reach or river or part of a catchment	Multiple reaches or whole catchment	Multiple catchments	Whole of basin
Intensity	Low level behavioural, lifespan or condition effect	Acute impacts on some species	Moderate impacts on growth, recruitment or survival rates	Lethal impacts on some species	Lethal for individuals or communities
Temporal					
Duration	Single incident or transient event	Short term impact, single generation	Medium term	Long term, multiple generations	Permanent
Timing	Occurs outside breeding times	Occasional interruption of feeding or breeding	Interrupts one life cycle	Regularly interrupts life cycle	Permanent interruption of life cycle
Ecological					
Values	Previously disturbed areas	Parkland	Nature conservation area	Conservation area, listed species or other conservation feature of ACT significance	Wilderness, nationally threatened species or other conservation feature of national significance
Sensitivity	Will recover completely	Will recover with some changes	Moderate change to ecosystem functioning	Significant change to ecosystem functioning	Will not recover

Social					
Number of people	Some people indirectly impacted	Some people directly impacted or several indirectly	Several people directly impacted or many indirectly	Large number of people directly impacted	Loss of life
Heritage	Impact on item of minimal significance	Impact on multiple items of low significance	Impact on significant item	Impact on multiple significant items	Major impact on protected item
Political	Single negative press article	Multiple negative press articles	Significant public interest	Leads to an inquiry	Change of government
Economic	Minimal losses	Several thousand dollars lost revenue or remediation costs	Half million dollars in lost revenue or remediation costs	One million dollars in lost revenue or remediation costs	Several million dollars in lost revenue or remediation costs

Based on the assessment of likelihood and consequence, as described above and illustrated in Tables 1 through 3, any foreseeable impact can be assigned a risk rating.

Table 4 illustrates the risk rating process as a matrix. Increased consequence from left to right and increased likelihood from top to bottom. The resulting juncture of consequence and likelihood produces the risk rating on a scale of negligible to significant.

Table 4 – Risk assessment matrix

Consequence	Minimal	Minor	Moderate	Major	Catastrophic
Likelihood					
Remote	Negligible	Negligible	Very low	Low	Medium
Unlikely	Negligible	Very low	Low	Medium	High
Possible	Very low	Low	Medium	High	Very high
Likely	Low	Medium	High	Very high	Significant
Almost certain	Medium	High	Very high	Significant	Significant

ACTPLA will use this information to determine the significance of the impacts and will prepare the scoping document with regard to the risk ratings.

Application for scoping - information requirements

If a proponent has determined they need to prepare an EIS for their development proposal, they must apply to ACTPLA for the preparation of a scoping document. The application form requires certain information to be provided so ACTPLA can prepare a scoping document that gives the proponent instruction on what information must be included in their EIS. The quality of information provided with the application will determine the extent of work required to complete the EIS. It is important that an application is not made until there is sufficient information to clearly understand the nature of the development and its potential impacts.

In addition to a preliminary risk assessment for the proposal the application form also requires:

- identification of the land subject to the proposal (block identifiers)
- the signature of the lessee/s of custodian/s
- information on the reasons why an EIS is required, including references to items within Schedule 4 relevant to the proposal
- a description of the proposal, including a layout plan for proposed construction
- description of the proposed site including location (map and grid references), aerial/satellite images, descriptions of topography, drainage, vegetation cover and type (including native plants and ecological communities), fauna and physical features of the site
- whether or not the proposal is a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act); if so, the Decision on Referral must be attached to the application.

Application for an Environmental Significance Opinion – information requirements

Under section 138AA of the Act, a proponent may seek an environmental significance opinion that, if successful would enable a proposal to be assessed in the merit track. There are only limited circumstances where this option is available. The Schedule 4 items where an application for an opinion can be sought are:

Part 4.2 Item 3(c) or (d)

Proposal for construction of a water storage dam—

- (c) in the river corridor zone under the Territory Plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact or
- (d) on a continuously flowing river in a non-urban zone under the Territory Plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact.

Part 4.3 Item 1

Proposal that is likely to have a significant adverse environmental impact on one or more of the following, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact:

- (a) a species or ecological community that is endangered
- (b) a species that is vulnerable
- (c) a species that is protected
- (d) a species with special protection status
- (e) a species or ecological community if a threatening process has been declared under the Nature Conservation Act 1980, s 38 (4) in relation to the species or community
- (f) a species or ecological community if the flora and fauna committee has stated criteria for assessing whether the committee should recommend the making of a declaration under the Nature Conservation Act 1980, s 38 (Declaration of species, community or process) in relation to the species or community

Note: Criteria are specified under the Nature Conservation Act 1980, s 35. An instrument under that Act, s. 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (g) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or species presumed extinct under the Threatened Species Conservation Act 1995 (NSW), if the potential impact of the proposal will be on the species or community in New South Wales.

Part 4.3 Item 2(a) or (b)

Proposal involving—

- (a) the clearing of more than 0.5ha of native vegetation other than on land that is designated as a future urban area under the Territory Plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant adverse environmental impact or
- (b) the clearing of more than 5.0ha of native vegetation on land that is designated as a future urban area under the Territory Plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant adverse environmental impact.

Part 4.3 Item 3

Proposal for development on land reserved under s. 315 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact.

Part 4.3 Item 6

Proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the Heritage Act 2004, unless the heritage council produces an environmental significance opinion that the proposal is not likely to have a significant adverse impact.

To avoid potential duplication, the information requirements for an application for scoping document are also required for an environmental significance opinion (ESO). However, to enable the Conservator of Flora and Fauna to form an ESO, applicants for an ESO are required to provide sufficient information to accurately describe the values of a site and potential impacts of the proposal and demonstrate that avoidance, mitigation and offset strategies have been addressed.

If the application for an environmental significance opinion is rejected, there may only be a limited amount of additional information required for the application for scoping document to be completed.

ACTPLA and the relevant agencies for environmental significance opinions strongly encourage proponents to consult with them before finalising their application. If there are key environmental or local interest groups relevant to the proposal the proponent should also consider early engagement with them.

