

Tree Protection (Approval Criteria) Determination (No 2)

Disallowable instrument DI2006—60

made under the

Tree Protection Act 2005 s21 (Approval Criteria)

EXPLANATORY STATEMENT

Under section 21 of the *Tree Protection Act 2005* the Minister may determine criteria for the Conservator to approve an activity that would or may:

- (a) damage a protected tree; or
- (b) be prohibited groundwork in:
 - (i) the protection zone for a protected tree; or
 - (ii) a declared site.

The criteria apply to activities relating to:

- (a) Regulated trees (greater than 12m tall etc) in areas designated as Tree Management Precincts;
- (b) Registered trees (including provisionally registered trees); and
- (c) Declared sites.

The criteria are similar to the criteria in place under the *Tree Protection (Interim Scheme) Act 2001*. Some changes are required to reflect the more stringent protection afforded to registered trees and to improve to administration of assessing tree damaging activities for regulated trees.

This instrument is to replace the instrument *Tree Protection (Approval Criteria) Determination (No.1) DI2006 — 55* which contained a technical slip referring to the '*Tree Protection (Interim Scheme) Act 2001*' in sub-paragraph 1(2). This has been amended to refer to the *Tree Protection Act 2005*.

Formal Clauses

Clause 1 provides the name of the instrument.

Clause 2 provides for the commencement of the instrument.

Clause 3 provides for the determination of the criteria in Schedule 1.

Clause 4 provides for the previous instrument to be repealed.

Schedule 1

Paragraph 1 provides criteria against which the Conservator may approve tree damaging activities on regulated trees. The criteria provide for the approval on the basis of:

- tree health;
- risk to human health and safety;
- damage to property;
- inappropriate tree species;
- obstructing solar access; and
- limiting the growth of other trees.

This paragraph also provides for the conservator to consider factors such as exceptional circumstances, the role of the tree in the landscape and the ecological value of the tree.

Paragraph 2 provides criteria for the Conservator to approve pruning of regulated trees that is not in accordance with the Australian Standard for Pruning of Amenity Trees (AS4373). The criteria provide for the approval when the work is required to:

- improve the health and safety of the tree;
- reduce the risk of damage to a building or structure;
- improve solar access.

Paragraph 3 provides a criterion for the Conservator to approve prohibited groundwork within the tree protection zone of a regulated tree providing the activity will have minimal impact on the tree.

Paragraph 4 provides criteria for the Conservator to major pruning of a Registered Tree. Major pruning of a Registered Tree is any pruning that exceeds the definition of minor pruning. In relation to a registered tree—**minor pruning** means pruning (other than lopping or pollarding) done in accordance with AS 4373 that:

- only involves removing deadwood; or
- does not involve removing any limbs that have a diameter greater than 50mm; or
- is the first pruning of the tree in the calendar year, affects less than 10% of the canopy and does not alter the overall shape of the canopy.

The criteria enable the Conservator to approve major pruning provided it:

- does not substantially alter the tree's shape and form; or
- does not cause the tree to become unsafe; or
- does not result in the decline and death or necessitate the removal or destruction of the tree; and
- is necessary to maintain the health and safety of the tree, to maintain clearance from services or as a remedial treatment.

Paragraph 5 provides a criterion for the Conservator to approve prohibited groundwork within the tree protection zone of a Registered Tree providing the activity will have minimal impact on the tree.

Paragraph 6 provides criteria for the Conservator to approve prohibited groundwork within a declared site. The criteria enable the approval providing the proposed groundwork, and any groundwork done with or without approval in the past 12 months would be less than 10%.

The conservator may give approval under the Act, s 25 to carry out prohibited groundwork within a declared site if satisfied that the area of the site affected by the other prohibited groundwork done with or without approval in the past 12 months, would be less than 10%.

The intent of this criterion is to allow minor activities, i.e. trenching for services etc, to proceed whilst maintaining the general restriction upon activities as a disincentive to killing a Registered Tree in order to realise a development intention.

Sub para 6(2) enables the Conservator to consider the broader objectives of the Territory Plan when considering an approval for groundwork within a Declared Site.

Paragraphs 7 and 8 provide examples of reasonable remedial treatments and risk mitigation measures to clarify the sorts of activities that may be considered under paragraph 1.

Paragraph 9 provides examples of some of the tree damaging activities that the Conservator may approve under section 25 of the Act. This provision is required to clarify that some normally inappropriate activities, such as lopping, may be appropriate in certain circumstances.

Schedule 2

This schedule provides a list of species that are known to be problematic when grown on an urban block for the purposes of criterion 1(2). This criterion is limited to blocks of 1,200m² or less. Examples of why a tree may be considered problematic include:

- rapid rate of growth of a large growing species;
- propensity to structural decay;
- propensity for developing structural defects or weaknesses; or
- propensity for prolific root suckering.

Schedule 3

This schedule provides a list of species that grow naturally in the immediate region for the purposes of criterion 1(3)(c). This criterion is intended enhance the general environmental value of the urban forest.