

Urban Forest (Approval Criteria) Determination 2023 (No 1)

Disallowable instrument DI2023-270

made under the

Urban Forest Act 2023, section 20 (Criteria for approval of activities)

EXPLANATORY STATEMENT

Overview

Section 20 of the *Urban Forest Act 2023* allows the Minister to determine criteria for approving 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;
- (b) Registered trees (including provisionally registered trees); and
- (c) Declared sites; and
- (d) Remnant or registered trees in a future urban area or an area that is the subject of an estate development plan.

Human rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, the right to life is promoted and the right to privacy and reputation is limited.

The *Urban Forest Act 2023* promotes the right to life. It seeks to address the ACT Government's obligation to protect the health and wellbeing of its citizens through maintaining and enhancing the environmental conditions of Canberra society. The approval criteria support the Government to be able to assess proposed activities which

may significantly affect the urban forest in order to permit those which are justified and limit those which are not.

The right to privacy and reputation provides for a person's ability to enjoy their home. The *Urban Forest Act 2023* limits this right by requiring occupiers of the land on which regulated and registered trees are located to apply to the ACT Government to conduct activities which may impact these trees. The approval criteria limit the ability of persons to undertake such activities where the proposed activities do not meet the approval criteria. The limitations on the right to privacy are considered proportionate to the legitimate purpose of tree protection and securing a resilient and sustainable ACT urban forest.

Climate Change

The Government anticipates that the protection of trees via the *Urban Forest Act 2023* and this instrument will have a positive impact on climate change through limiting the disturbance to, pruning and removal of protected trees to circumstances that warrant such an activity. This will contribute to the canopy cover in the urban ACT and the overall health and sustainability of the urban forest. A strong and resilient urban forest provides a range of climate mitigation benefits, such as protection from heat island effects and reduced damage from storm surges as trees can provide protection to buildings and infrastructure.

Outline of Provisions

Section 1 Name of instrument

This section names the instrument the *Urban Forest (Approval Criteria) Determination 2023 (No 1)*.

Section 2 Commencement

This section states that the instrument commences on 1 January 2024.

Section 3 Determination

This section provides for the determination of the criteria in Schedule 1.

Section 4 Revocation

This determination revokes the previous determination (DI2006–60).

The determination takes effect on 1 January 2024.

Schedule 1

Criterion 1 provides criteria against which the Conservator may approve tree damaging activities on regulated trees under section 28. The criteria provide for the approval on the basis of:

- tree health;

- risk to human health and safety;
- damage to property;
- inappropriate location of tree;
- causing excessive shading; and
- close planting.

When all other reasonable remedial treatments and risk mitigation measures have been determined ineffective.

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. It also provides for the conservator to approve the removal of a tree under urgent circumstance (when the tree is actively failing).

Paragraph 1 also provides criteria for the Conservator to approve major pruning of regulated trees.

Major pruning of a protected tree (including Registered and regulated trees) is any pruning that exceeds the definition of minor pruning. Minor pruning of a protected tree means pruning (other than lopping or pollarding) that:

- only involves removing deadwood; or
- does not involve removing any limbs that have a diameter greater than 100mm; or
- does not adversely affect the general appearance of the tree; 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 canopy¹; or
- is done for fruit production for a fruit tree.

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;
- reduce excessive shading.

Criterion 2 provides criteria 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.

Criterion 3 provides criteria for the Conservator to approve major or minor pruning of a Registered tree.

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

- does not substantially alter the tree's shape and form; or

¹ That does not result in a protected tree losing its protection status through a reduction in tree height.

- 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.

Criterion 4 provides criteria 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.

Criterion 5 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 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 5(2) enables the Conservator to consider the broader objectives of the Territory Plan when considering an approval for groundwork within a Declared Site.

Criteria 6 and 7 provide examples of reasonable remedial treatments and risk mitigation measures to clarify the sorts of activities that may be considered under paragraph 1.

Criterion 8 provides examples of some of the tree damaging activities that the Conservator may approve under section 28 of the Act. This provision is required to clarify that some normally inappropriate activities, such as pollarding, may be appropriate in certain circumstances.

Schedule 2

This schedule provides a list of species that grow naturally in the immediate region for the purposes of criterion 1 (2) (c). This criterion is intended to enhance the general environmental value of the urban forest.