

Urban Forest (Canopy Contribution Agreements – Financial Settlement) Determination 2023 (No 1)

Disallowable instrument DI2023–315

made under the

Urban Forest Regulation 2023, section 7 (Canopy contribution agreements—financial settlement—Act, s 36 (5) (b))

EXPLANATORY STATEMENT

Overview

Section 7 of the Urban Forest Regulation 2023 allows the Minister to determine the following:

- (a) the amount lost from a tree being removed;
- (b) the amount gained from planting a replacement tree;
- (c) the canopy cover restoration period;
- (d) the cost of planting a replacement tree; and
- (e) the zone modifier for a zone.

These components are used to calculate the financial settlement amount that a person who is the lessee of land must pay as part of a canopy contribution agreement under the *Urban Forest Act 2023*, section 36.

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 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 canopy contribution framework supports the replacement of benefits lost by tree removal through canopy contributions. Where contribution via tree replacement is not possible, the financial settlements ensure the lost benefits are able to be replaced through equivalent works in the urban forest.

The right to privacy and reputation provides for a person's ability to enjoy their home. The Urban Forest Act limits this right by requiring occupiers of the land who receive approval to remove a protected tree to enter into a canopy contribution agreement to validate this approval. The financial settlements determination has the potential to limit the ability of persons to undertake tree removal. Safeguards ensure this only applies to certain tree removals, only applies where there is insufficient space to replant trees, and only applies where an occupier decides to proceed with tree removal. The financial impacts are mitigated by discounts for concession holders and the ability to establish a payment plan. The limitations on the right to privacy are considered proportionate to the legitimate purpose of securing a resilient and sustainable ACT urban forest.

Climate Change

Transport Canberra and City Services anticipates that the canopy contribution framework will have a positive impact on climate change by ensuring that when protected trees are removed, they are replaced. This instrument will ensure that where on-site tree replacement is not possible, the benefits of trees will be replaced through equivalent works to the expansion and renewal of the ACT urban forest. This will contribute to a healthy, sustainable environment in the ACT.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement (RIS) if a subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or part of the community. The RIS prepared for the Urban Forest Bill 2022 includes analysis of the impact of the canopy contribution framework.

Urban trees and their canopy provide essential public services that impact community wellbeing. The RIS found while the requirements for canopy contribution would have cost impacts, these are warranted as the cost of environmentally sustainable development which does not compromise the liveability of the Territory. The costs would not be burdensome on residents due to the existence of no-cost and low-cost pathways and a discount for concession holders.

Outline of Provisions

Clause 1 Name of instrument

This clause names the instrument the *Urban Forest (Canopy Contribution Agreements – Financial Settlement) Determination 2023 (No 1)*.

Clause 2 Commencement

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

Clause 3 Determination

This clause provides for the determination of the components of canopy contribution financial settlement calculations in Schedule 1.

Schedule 1

Paragraph 1 establishes the components of the formula for calculating the financial settlement amount for a person other than a homeowner. This supports section 7 of the Urban Forest Regulation which establishes that when entering a canopy contribution agreement that includes a financial settlement, a person other than a homeowner must pay an amount based on a formula that comprises the modified net loss of benefits from tree removal and the expense to replace these benefits in a set period.

Paragraph 1 (1) establishes that the amount lost from a tree being removed is equal to the sum of the annual benefits that the tree would have provided during the canopy cover restoration period had it not been removed. The annual benefits lost are valued at \$1.27 per year per square metre of canopy area of the removed tree.

Paragraph 1 (2) establishes that the amount gained is equal to the sum of the annual benefits that the required number of replacement trees would provide during the canopy cover restoration period as they develop. The annual benefits gained are valued at \$1.27 per year per square metre of canopy area of a tree growing in line with the average canopy growth rate of urban ACT tree species.

Paragraph 1 (3) states that the canopy cover restoration period is 20 years. This is the timeframe in which the removed tree canopy cover is to be replaced with equal tree canopy cover.

Paragraph 1 (4) sets the replanting cost at \$600 per replacement tree. The full replacement tree cost is equal to this set amount multiplied by the required number of replacement trees to replace the removed canopy cover in the canopy cover restoration period.

Paragraph 1 (5) uses Table 1 to outline the zone modifier for each of the zones in the Territory Plan. This states a multiplier for each zone which varies the overall amount of the financial settlement.