

Australian Capital Territory

Urban Forest (Canopy Contribution Agreements – On-Site Canopy Contribution) Determination 2023 (No 1)

Disallowable instrument DI2023–316

made under the

Urban Forest Regulation 2023, section 6 (Canopy contribution agreements—on-site canopy contribution—Act, s 36 (5) (a))

EXPLANATORY STATEMENT

Overview

Section 36 of the *Urban Forest Act 2023* allows for a regulation to prescribe, or state how to work out, the number of trees and the size of the trees to be planted on land as an on-site canopy contribution.

Section 6 of the Urban Forest Regulation 2023 prescribes the number of trees that a person must plant on the land as part of a canopy contribution agreement and allows the Minister to determine the following:

- (a) the canopy cover restoration period;
- (b) the minimum size of a replacement tree; and
- (c) the projected canopy area of a replacement tree at the end of the canopy cover restoration period.

Through the Urban Forest (Canopy Contribution Agreements – On-site Canopy Contribution) Determination 2023 (No 1), these components are used to calculate the on-site canopy contribution that a person who is the lessee of the land must make as part of a canopy contribution agreement under the Urban Forest Act, 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 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 – On-Site Canopy Contribution) 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 on-site canopy contribution calculations in Schedule 1.

Schedule 1

Paragraph 1 establishes the components of the formula for calculating the on-site canopy contribution for a homeowner. This supports section 6 of the Urban Forest Regulation which establishes that when entering a canopy contribution agreement that includes an on-site canopy contribution a homeowner must plant two trees for every tree approved for removal.

This paragraph specifies that the trees that are planted must have a minimum height of 50cm at the time of planting, and must be species that, in ACT conditions, typically grows to a minimum of the height of the tree approved for removal. This also states that, alternatively, the decision-maker and the applicant may jointly agree to the planting of trees of different a species and size. These must align with the principle of replacing the lost canopy, for example, for the removal of a 14m high tree that has a canopy area of 14m it may be agreed to replant one large native tree that is projected to have a canopy of 20m, or to replant three shorter trees that in the ACT are projected to have a combined canopy of 15m.

Paragraph 2 establishes the components of the formula for calculating the on-site canopy contribution for a person other than a homeowner. This supports section 6 of the Urban Forest Regulation which establishes that when entering a canopy contribution agreement that includes an on-site canopy contribution a person other than a homeowner must plant the number of replacement trees required to ensure that, at the end of the canopy cover restoration period, the combined projected canopy area of all the replacement trees will be equal to the combined canopy area of all the protected trees on the land approved for removal.

Paragraph 2 (1) establishes that a replacement tree is to be a minimum of 50cm in height at the time it is planted on the land.

Paragraph 2 (2) states that the combined canopy area of all the protected trees on the land approved for removal is the total canopy area of all the protected trees approved for removal in the relevant tree removal application.

This refers to the protected trees' size at the time the removal application is assessed.

Paragraph 2 (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 2 (4) uses Table 1 to outline the projected canopy area in metres squared of a replacement tree at the end of the canopy cover restoration period. This states a projected canopy area value for each of seven species size classes. These size classes group trees by species type and mature height in the ACT and area consistent with the groupings used in ACT Government tree planting public guidance documents.