

Urban Forest Amendment Regulation 2024 (No 1)

Subordinate law SL2024–28

made under the

Urban Forest Act 2023

EXPLANATORY STATEMENT

PURPOSE OF THE REGULATION

The purpose of the Urban Forest Amendment Regulation 2024 (No 1) (regulation) is to support the operation of the *Urban Forest Act 2023* (the Act), which commenced on 1 January 2024. One of the key features of the Act was the introduction of a Canopy Contribution Framework (CCF). The Act is intended to encourage a behavioural shift towards greater retention of trees and where trees are approved for removal ensures that they are replaced either through replanting or a financial contribution, under the CCF.

The Act was introduced into the Legislative Assembly on 11 April 2023. In the period between the introduction and now the economic climate of the ACT and Australia more broadly has shifted, with the costs of every day necessities rising. The Act was designed to allow detail of specific replanting and financial contributions to be flexible and responsive to different circumstances. It is an object of the Act to increase canopy cover to 30% by 2045, but there is a need to balance this with imposing as little burden as possible on individuals and fairness. Further, during the nine months the Act has been in place, operational teams have been monitoring outcomes. These factors have contributed to the regulation makes changes for:

- a) homeowners with heavily planted blocks that do not have space to plant more trees and are required to make a financial contribution; and
- b) homeowners in unit titled developments, the current definition of a homeowner excludes common areas resulting in them being liable for canopy contributions at the higher non-homeowner rate.

The regulation amends the *Urban Forest Regulation 2023* for applicants seeking to remove a protected tree by:

- a) introducing an exemption from entering into a canopy contribution agreement (CCA) for homeowners who have 30% or more canopy cover and insufficient planting space due to existing trees on their block;
- b) introducing changes to CCA's for homeowners who have 30% tree canopy on their land if the decision-maker is satisfied that it is not feasible to plant all of the required replacement trees on site;
- c) providing that an owners' corporation for a units plan are taken to be homeowners for the purpose of entering in a CCA when the removal of a protected tree is on common property and not associated with development work; and
- d) minor and technical amendments to recast the existing provisions to introduce the above changes and support the operation of the provisions.

Section 144 of the Act provides the Executive with the power to make regulations for the Act.

CONSULTATION ON THE PROPOSED APPROACH

Key partners, stakeholders and the Canberra community were extensively engaged throughout the development of the Urban Forest Bill 2022 (the Bill). Additionally, the public release of an exposure draft of the Bill allowed for the detailed provisions and operation of the various provisions of the Act to be informed by feedback from a wide range of stakeholders.

Operational teams within ACT Government have been monitoring outcomes during the nine months of operation. The amendments in this regulation align with the feedback while striking a balance with the objectives of the Act.

CONSISTENCY WITH HUMAN RIGHTS

During the development of this regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The Regulation does not impose any limitations on a person's human rights. A human rights compatibility statement for the requirement to enter in a Canopy Contribution Agreement was prepared prior to the commencement of the Act and the *Urban Forest Regulation 2023*.

CLAUSE NOTES

Clause 1 Name of regulation

This clause names the regulation as the *Urban Forest Amendment Regulation 2024 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the *Urban Forest Regulation 2023* is amended.

Clause 4 Section 5

This clause updates the definition of *homeowner* to include land that is the common property of a units plan. An owners corporation which holds the lease for the land is considered a homeowner for land that is the common property of a units plan in certain circumstances. For an owners corporation to be considered a homeowner, the corporation's request to remove a protected tree must not be as part of an application for development approval or when the corporation is an approval-holder in relation to a development that involves the removal of a protected tree on the land.

This clause notes that the owners corporation is granted a lease for the common property on registration of a units plan (see *Unit Titles Act 2001*, s 33 (2) (b)).

This clause also inserts a number of signpost definitions for terms that are used throughout part 2 and section 5 and have the same meaning as terms in the *Unit Titles Act 2001*, *Unit Titles (Management) Act 2011* and the *Planning Act 2023*.

Clause 5 Section 6 (1) to (3) and note

This clause recasts how an on-site canopy contribution is calculated in a canopy contribution agreement to reflect operational practices and is consequential to the amendments to the definition of *homeowner* in clause 4. The amendments establish what land can be considered when determining the feasibility of planting a replacement tree on land that is part of a unit or common property of a unit plan.

Two replacement trees are required to be replanted for every protected tree approved to be removed if the decision-maker is satisfied that it is feasible otherwise a financial settlement may be required in accordance with section 7.

Section 6 (3) of the existing regulation is now omitted because of the changes to how the financial settlement is calculated in section 7, consequential to the amendments in clause 9.

Clause 6 New Section 6 (6)

This clause defines the term *applicant* in the new section 6 as meaning a person entering into a canopy contribution agreement under the Act, section 35 in relation to the removal of a protected tree.

Clause 7 Section 7 (1)

This clause is a minor and technical amendment to the introduction of the provision.

Clause 8 Section 7 (1) (b)

This clause is a minor and technical amendment to substitute the term *a person* with *an applicant*.

Clause 9 Section 7 (2) and (3)

This clause replaces the existing s 7 (2) and (3) with new provisions that recast how the financial settlement is calculated, to reflect operational practices and incorporate the below amendments.

The financial settlement payable by a homeowner under a CCA is reduced in accordance with new s 7 (2) (a) by \$600 for each tree replacement tree planted on site. The financial settlement is reduced by a further \$600 for each replacement tree that is not feasible to plant if the decision maker is satisfied at least 30% of the land where a protected tree is located is covered by tree canopy when an application is made.

Homeowners that have 30% tree canopy coverage on their land who are approved to remove a protected tree, must plant as many trees as the decision maker determines is feasible on their land. The financial settlement is calculated in accordance with this provision.

Clause 10 Section 7 (6), new definitions of application and infeasible tree

This clause inserts a signpost definition of *applicant*, giving it the same meaning as in new s 6 (6).

Clause 11 New Section 7A

This clause introduces an exemption from entering into a canopy contribution agreement for homeowners who do not have enough space on the land for an on-site canopy contribution and have more than 30% canopy coverage on their leased land at the time of application. When deciding if an applicant is eligible for a canopy contribution agreement exemption, the decision-maker must consider:

- whether at least 30% of the land is predicted to be covered by tree canopy immediately after the protected tree is removed; and

- if at least 30% of the land is predicted to be covered by tree canopy immediately after the protected tree is removed—the feasibility of planting a replacement tree on the land.

When the protected tree is located is part of a unit or the common property of a units plan, the decision maker may consider:

- the whole parcel of land in determining the percentage of the land covered by tree canopy; and
- the feasibility planting a replacement tree on the land when the applicant is an owner of a unit in the unit plans or an owners corporation.

Clause 12 Dictionary, note 2

This clause inserts *development approval* in note 2, which clarifies that the term has the same meaning in the regulation as it does in the Act.

Clause 13 Dictionary, definition of *canopy cover restoration period*

This clause is a minor and technical amendment to update the referenced subsection.

Clause 14 Dictionary, new definition of *common property*

This clause inserts a signpost definition of *common property* in accordance with the *Unit Titles Act 2001*.

Clause 15 Dictionary, definition of *home owner*

This clause is a minor and technical amendment to update the referenced section.

Clause 16 Dictionary, new definitions

This clause inserts signpost definitions for terms used in the regulation that have the same meaning as terms in the *Unit Titles Act 2001* and the *Unit Titles (Management) Act 2011*. It also updates the referenced section for the term *replacement tree*.

Clause 17 Dictionary, definition of *replacement trees*

This clause omits the term *replacement tree* from the Dictionary.

Clause 18 Dictionary, new definitions

This clause inserts signpost definitions for terms used in the regulation that have the same meaning as terms in the *Unit Titles Act 2001*.