

Australian Capital Territory

# Urban Forest (Approval Criteria) Determination 2024 (No 1)

**Disallowable instrument DI2024-289**

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* (the Act) 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);
- (c) Public trees;
- (d) Declared sites; and
- (e) Remnant or registered trees in a future urban area or an area that is the subject of an estate development plan.

This instrument incorporates amendments made to the Act which correct an error that meant that it was not possible to apply to remove trees within the built-up urban area. This instrument repeals and replaces the Urban Forest (Approval Criteria) Determination 2023 (No 1) DI2023-270.

### 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 2024 (No 1)*.

### **Section 2 Commencement**

This section states that the instrument commences on the day that the Justice and Community Safety Legislation Amendment Act 2024, section 2 (1) commences.

### **Section 3 Determination**

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

### **Section 4 Revocation**

This determination revokes the previous determination (DI2023–270).

The determination takes effect on the day that the day the *Justice and Community Safety Legislation Amendment Act 2024* commences.

## *Schedule 1*

**Criterion 1 (1)** provides criteria against which the Decision-Maker may approve tree damaging activities on regulated trees or public 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.

**Criterion 1 (2)** also provides for the Decision-Maker to consider factors such as exceptional circumstances, the role of the tree in the landscape and the ecological value of the tree.

**Criterion 1 (3)** requires the Decision-Maker to assess whether removal of the tree is urgently required in accordance with the provisions of section 32 of the Act when considering criteria (1) (b) and (1) (c).

**Criterion 1 (4)** allows the Decision-Maker to give an approval under section 28 of the Act to undertake major pruning on a regulated tree when the work is required as a remedial treatment, is in interest of the health of the tree, to reduce an acceptable safety risk or reduce the risk of damage to a substantial building, service or structure. The decision maker can also approve an application if the tree is substantially affecting solar access to the lessees residence, or neighbouring residence, during winter between the hours of 9am to 3pm and minor pruning is not sufficient to remedy this (excluding remnant eucalypts).

**Criterion 1 (5)** states that lopping should only be considered when criteria 1 (1) is met and the retention of the tree is considered necessary.

**Criterion 2** allows the Decision-Maker to give an approval under section 28 of the Act to carry out groundwork within the tree protection zone of a regulated tree where the groundwork will have minimal impact on the tree if the activity complies with the conditions stated in the approval.

**Criterion 3 (1)** allows the Decision-Maker to give approval for major or minor pruning of a Registered Tree under section 28 of the Act if the work is required to maintain the health and safety of the tree, to maintain clearance from services or as a remedial treatment.

**Criterion 3 (2)** allows the Decision-Maker to only give approval for pruning of a Registered Tree under criterion 3 (1) if the work is necessary and will not

substantially alter the trees shape or form, cause the tree to become unsafe, or result in the decline death or necessitate removal of the tree.

**Criterion 4** allows the Decision-Maker to give approval under section 28 of the Act to carry out groundwork within the tree protection zone of a registered tree where the groundwork will have minimal impact on the tree if the activity complies with the conditions stated in the approval.

**Criterion 5** allows the Decision-Maker to give an approval under section 28 of the Act to carry out groundwork within the tree protection zone of a registered tree where the groundwork will have minimal impact on the tree if the activity complies with the conditions stated in the approval.

**Criterion 6 (1)** requires the Decision-Maker to consider whether the tree is in decline with a short life expectancy, whether the tree is a pest species or whether the tree is part of a close planting of trees in determining whether the applicant could be granted an exemption from requiring a Canopy Contribution Agreement under the exemption powers under section 39 of the Act.

**Criterion 6 (2)** allows the Decision-Maker to also consider exceptional circumstances raised by the applicant, the value of the tree, the importance of the tree in the landscape and the ecological importance of the tree in determining whether criterion 6 (1) is met.

**Criterion 7 (1) and (2)** provides criteria for the Decision-Maker 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.

**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 schedule 1. This criterion is intended to enhance the general environmental value of the urban forest.